



**Town of Arlington
Legal Department**

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To: Select Board

Cc: Sandy Pooler

From: Douglas W. Heim, Town Counsel

Date: March 18, 2023

Re: Draft Votes and Comments re: Articles 9, 12, 13, 16, 19, 20, 63, 64, and 66

I write to provide the Board Draft Votes and Comments regarding the above-referenced 2023 Annual Town Meeting Warrant Articles, based upon your prior hearings for same.

**ARTICLE 9 BYLAW AMENDMENT/STENOGRAPHIC RECORD OF TOWN
MEETING**

VOTED: That Title I, Article I, Section 4 B ("Stenographic Record") is hereby stricken and removed, so as to read as follows:

**TITLE I
ARTICLE 1
TOWN MEETINGS**

SECTION 4. Duties of the Clerk

- A. Record of Attendance – A record of attendance of Town Meeting Members at all representative Town Meetings shall be made under the direction of the Town Clerk, said record to be available to the public.**

~~B. Stenographic Record—A complete stenographic record of the proceedings of the Town Meeting, including all discussion and debate, shall be made under the direction of the Town Clerk, said record shall be available to the public no later than sixty (60) days. Any partial record of the proceedings of Town Meeting shall be available to the public when said record is received by the Town Clerk prior to the required time period designated under this Section.~~

(5-0)

COMMENT: The Select Board unanimously urges Town Meeting's support for removing the Town Bylaws' requirement to maintain a live stenographer during all sessions of Town Meeting. At present, the Town video records and broadcasts all sessions, utilizes a live transcription service, and records substantive votes electronically. A live stenographer incurs a substantial cost for few if any requests for Town Meeting transcripts in recent years. Further, to the extent an official stenographer transcript is needed at a later date, a stenographer can render an official transcript from recordings of the meeting. Finally, in rare circumstances, Town Meeting has risked otherwise unnecessary adjournments based solely on the unavailability of a scheduled stenographer. Accordingly, the Select Board believes removing the requirement is a practical measure given the current state of broadcasting and accessing the audio-visual recordings of Town Meeting.

ARTICLE 12 VOTE/THREE-YEAR MORATORIUM ON THE
INSTALLATION OF ARTIFICIAL TURF ON TOWN LAND

VOTED: That no action be taken under Article 12.

(5-0)

COMMENT: The Board values the concerns raised by the proponents of this article. However, the Board strongly recommends no action for four principle reasons. First, the Conservation Commission and Board of Health are the appropriate authorities to assess environmental and human health impacts of artificial turf fields respectively. Second, there are potentially significant negative impacts of prohibiting artificial turf on the Town's over utilized playing fields, which often results in the Town's youth and adult patrons alike traveling to play on artificial turf in neighboring cities and towns, not play on grass fields. Third, the only Town field likely to be considered for new artificial turf – Poet's Corner sits on top of an uncapped landfill and is often unusable in its current state. Fourth, any future artificial turf field would require review and some level of approval by the Conservation Commission and very likely Town Meeting as well.

The Board acknowledges intense debate about PFAS material components within artificial turf, including recent developments wherein the United States Environmental Protection Agency proposed to categorically regulate PFAS materials (as opposed to individual PFAS compounds). However, the Board also respectfully submits that there is not the same broad scientific or regulatory consensus on risk posed by turf fields /9particularly with respect to what levels of exposure pose

significant risks to human health) we have held in other circumstances where local regulations have been at the vanguard of health or environmental issues. Indeed, while the proponents noted artificial turf moratoriums of varying scopes in Boston, Concord, Sharon, Wayland, Martha's Vineyard, and Belmont, artificial turf fields continue to be used and constructed in Somerville, Winchester, Medford, and many other communities. Moreover, the individualized circumstances of moratorium communities, such as artificial turf's potentially more acute impact on communities with well water bear consideration in any comparative assessment.

In summary, it is important to acknowledge that artificial turf fields have meaningful advantages to the community of playing field users, particularly given the environmental conditions present in several recreation locations; that the potential risks of artificial fields are not agreed upon; and any future decision regarding future artificial turf fields in Arlington may only be made with significant review opportunities by both bodies of competent jurisdiction *and* Town Meeting. Accordingly, the Select Board does not believe a blanket moratorium on artificial turf in Arlington is merited at this time.

ARTICLE 13

VOTE/APPOINTED TOWN CLERK

VOTED: That (1), Town Meeting hereby approves the conversion of the Town's elected Town Clerk from an elected position to an appointed position pursuant to G.L. c. 41 sec. 1B; and (2), that in accordance with G.L. c. 41 sec. 1B, the Select Board are hereby requested and authorized to place the following question on the 2024 Annual Town Election Ballot:

"Shall the town vote to have its elected Town Clerk become an appointed Town Town Clerk of the town?"

Yes _____ No _____ "

(5 – 0)

COMMENT: The Select Board recommends Town Meeting's support for a local ballot question on converting the Office of the Town Clerk from an elected office to an appointed position as recommended by the Town Clerk study previously authorized by Town Meeting. Only upon a positive outcome from a local ballot question can the Clerk's position be changed to an appointed office.

Foremost, while the duties of the Town Clerk are very important they are almost entirely dictated by federal and state law in addition to the Town Bylaws. As such, while the duties of the position have increased in complexity and scope, they remain administrative in nature rather than focusing on matters of policymaking like the School Committee or the Select Board. Moreover, of the 120 communities which now utilize an appointed Town Clerk, none of them have experienced a decline in the quality of services or the objectivity of their clerks based on their appointed nature.

An elected Town Clerk must be a Town resident interested in running for office. While the Select Board has confidence in its current Town Clerk, the quality of the clerks could vary dramatically depending on who is willing to run for office, whereas an appointed clerk can be hired

regardless of their residency and based purely on their qualifications. For these reasons, the Board is comfortable putting this question to the voters of Arlington.

ARTICLE 16 SPECIAL LEGISLATION/APPOINTMENT OF TOWN MANAGER OR TEMPORARY TOWN MANAGER

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT AMENDING THE TOWN MANAGER ACT OF ARLINGTON RELATIVE TO THE APPOINTMENT OF THE TOWN MANAGER”

Section 1. Chapter 503 of the Acts of 1952 (The Town Manager Act of Arlington) as subsequently amended, section 12(b) is hereby amended as follows:

12(b) When a vacancy occurs in the office of Town Manager for any reason other than for expiration of their term, the select board shall as soon as possible appoint a qualified officer of the Town as Interim Town Manager to fulfill all the duties set forth in this Act until a permanent successor may be appointed, but in any event not later than one hundred and eighty ninety days after such vacancy occurs, ~~and~~ A permanent successor Town Manager shall within one hundred and eighty days be appointed for a period not longer than the balance of the unexpired term or a new three (3) year contract at the Board’s discretion. Such appointment shall, in so far as practicable, be subject to the same conditions and qualifications for the office of Town Manager as set forth in section eleven; ~~and~~ If not so practicable to make a permanent appointment within one hundred and eighty days, the select board shall so appoint a qualified officer of the town as acting manager for a period of not more than one (1) year the balance of the unexpired term, .

Section 2. This Act shall take effect upon its passage.”

(4 - 0) Mr. Helmuth recused himself.

COMMENT: The Select Board requests Town Meeting’s support for revisions to the Town Manager Act with respect to filling a vacancy before the end of a Manager’s three-year contract term. In brief, the current Manager Act contemplates only a short window of ninety (90) days to appoint a successor, or allows the Town to appoint an Acting Manager from among the Town’s employees. In either case, the new manager or “Acting Manager” is required to serve the balance of the prior Manager’s term. In the Board’s view this structure for addressing a vacancy of the Town’s chief executive officer is too ambiguous on the front end, and too rigid on the back end. The Board therefore proposes a clearer, but more flexible three-phase approach for appointing successor managers:

1. Immediately appoint a qualified officer of the Town as “Interim Manager” for a period of no more than 180 days;
2. Within the 180 day period, conduct a process for a permanent appointment for *either* a new three year contract, or the remaining balance of the previous Manager’s term at the Board’s discretion; and

3. Should it prove impractical to make a permanent appointment within the 180-day period, appoint an “Acting Town Manager” for no more than one year.

The Board believes this proposal provides more certainty in the immediate aftermath of an unanticipated vacancy, more time to conduct a thorough search for a successor as needed, and more flexibility in the event that a quality candidate is not identified or alternatively, merits a full three-year contract rather than the balance of the unexpired term.

ARTICLE 19

SPECIAL LEGISLATION/REPEAL MBTA PROHIBITION

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT REPEALING CHAPTER 439 OF THE ACTS OF 1976,”

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, Chapter 439 of the Acts of 1976, *“An Act Prohibiting The Massachusetts Bay Transportation Authority From Locating Mass Transportation Facility Within Certain Distance Of The Arlington Catholic High School,”* is repealed and nullified.

SECTION 2. This act shall take effect upon its passage.

(3 – 1) Mr. DeCoursey voted in the negative and Mr. Helmuth recused himself.

COMMENT: The majority of the Select Board respectfully requests Town Meeting’s support to repeal a 1976 Special Act (“An Act Prohibiting The Massachusetts Bay Transportation Authority From Locating Mass Transportation Facility Within Certain Distance Of The Arlington Catholic High School” or “The Act”), which prohibited the MBTA from constructing any mass transportation facility, including but not limited to a rapid transit station and parking garage, on any land located within seventy-five yards of Arlington Catholic High School. Mr. DeCoursey dissented because in his view, the Act did not prevent the proposed expansion of the Red Line through Arlington. Indeed, he noted that Governor Dukakis, a strong proponent of public transportation, came to Arlington to sign the Act into *Law*. Mr. DeCoursey further questioned whether a petition to repeal the Act would impact more pressing local legislative priorities. Nonetheless the balance of the Board agrees that it would be valuable to clear outdated home rule legislation which serves little practical purpose today and may inadvertently signal the Town’s reticence to improve its mass transit service options.

ARTICLE 20

ACCEPTANCE OF LEGISLATION/G.L. c. 32B sec. 20 OPEB TRUST FUNDS

VOTED: That the Town of Arlington hereby accepts General Laws Chapter 32B, Section 20, and establish an Other Post-Employment Benefits Liability Trust Fund (OPEB Fund), effective July 1, 2023.

AND FURTHER VOTED: That the Town of Arlington establishes an Other Post-Employment Benefits Liability Fund (OPEB Fund) Board of Trustees pursuant to General Laws Chapter 32B, Section 20, with five (5) members consisting of the members of the Arlington Contributory Retirement Board, with each member trustee serving for a term commensurate with the terms as member of such Board.

(5 – 0)

COMMENT: This article, submitted at the request of the Arlington Contributory Retirement Board (“Retirement Board”) seeks to accept a local option statute authorizing the establishment of an Arlington Other Post-employment Benefits Liability Trust Fund (“OPEB”) – *an authority Arlington already holds by special legislative means before the local option was revised by the 2016 Municipal Modernization Act.* Unfortunately however, without the administrative step of adopting G.L. c. 32B sec. 20, our OPEB Trustees – the Retirement Board cannot invest such funds with Pension Reserves Investment Management Board (“PRIM”) through the State Retiree Benefit Trust Fund (“SRBTF”) alongside many other municipalities and state entities. The SRBTF/PRIM holds a number of advantages over other vehicles for investing OPEB funds, including lower fees and enhanced risk mitigation. Hence, while this local option statute is in all other aspects redundant with our prior acquisition of special legislative authority, the Select Board asks Town Meeting honor this request from the Retirement Board, which has long served the Town well as OPEB fund trustees.

ARTICLE 63

RESOLUTION/ FILE AND ACCEPT GRANTS WITH AND FROM EOEEA FOR LAND AND WATER CONSERVATION FUND GRANT PROGRAM

VOTED: That Town Meeting does and hereby resolves as follows:

A RESOLUTION TO FILE AND ACCEPT GRANTS WITH AND FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS FOR THE LAND AND WATER CONSERVATION FUND GRANT PROGRAM FOR IMPROVEMENTS TO THE COMMON

Whereas, the parcel of land known as the Veteran Memorial Park is by far a community-wide asset and the preservation and improvements to this facility are a Town priority as evidenced in the most recent Open Space and Recreation Plan; and

Whereas, Arlington is dedicated to park and recreation purposes under M.G.L. Chapter 45, Section 3; and

Whereas, Arlington's ultimate restoration, guided in principal by the Master Plan, will greatly enhance this facility with improved infrastructure, path systems, site lighting, universal access, etc.; and

Whereas, the main focus of the Plan is to increase the available park space to adequately host major events and activities. This overall cost and fiscal budget constraints prevented the Town from proceeding forward with implementation as one project; and

Whereas, the project was instead viewed as a series of phases, to be implemented over time, by priority as fiscal resources were available, with the intention of securing grant funding, when and if available, to assist in this effort; and

Whereas, the Executive Office of Energy and Environmental Affairs (EOEEA) is offering reimbursable grants to cities and towns to support the preservation and restoration of urban parks through the Land and Water Conservation Fund Act (P.L. 88-578, 78 Stat 897); and

Whereas the Phase I of this Restoration Project will cost a total of \$1,000,000 (One Million Dollars) and the Town has allocated \$200,000 in Community Development Block Grant funds for Phase I of this project.

Therefore be it resolved that the Town Manager be and is hereby authorized to file and accept grants from the Executive Office of Energy and Environmental Affairs; and

Be it further resolved, that the Town Manager be and is hereby authorized to take such other actions as are necessary to carry out the terms, purposes, and conditions of this grant to be administered by the Parks and Recreation Department.

That this resolution shall take effect upon passage.

(5 – 0)

COMMENT: While the Select Board strongly believes that the Manager already possess the authority affirmed by this resolution as one of his powers and duties under the Town Manager Act, this resolution was requested by the Executive Office of Energy and Environmental Affairs and supports the exciting and worthy improvements to Veteran's Memorial Park. The Select Board is grateful for the dedication of all the staff working to update and improve this central, multipurpose park space in the Town's center, but especially grateful for the work of the Director of Veterans Services, Jeff Chunglo and Health and Human Services Director, Christine Bongiorno. Accordingly, the Board requests Town Meeting join in its enthusiasm for this resolution.

RESPONSIBILITY AND BOTTLE BILL LEGISLATION

VOTED: That Town Meeting does and hereby resolves as follows:

RESOLUTION IN SUPPORT OF AN EXTENDED PRODUCER RESPONSIBILITY AND BOTTLE BILL

Whereas, local governments must arrange and pay for the management of waste and recycling, and state policies currently make local governments responsible for achieving waste diversion goals; and

Whereas, Massachusetts faces a finite and dwindling amount of landfill space and capacity at waste-to-energy disposal facilities; and

Whereas, municipalities must find alternative ways of managing products banned from disposal or incineration through the MassDEP Waste Disposal Bans using taxpayer funding; and

Whereas, excess packaging, single-use products, products designed for disposal, and hazardous products contaminate recycling streams, increasing costs to municipalities; and

Whereas, local governments do not have the resources to adequately address the contamination rates of recycling streams, nor hard-to-manage and hazardous products; and

Whereas, costs paid by local governments to manage products are, in effect, subsidies to the producers of products designed for disposal or recycling, and hard-to-manage or hazardous products; and

Whereas, there are significant environmental and human health impacts associated with improper and inefficient management of all categories of waste, and the costs of such impacts are externalized with the burden placed on taxpayers; and

Whereas, Extended Producer Responsibility (EPR) is a policy approach in which producers are obligated to pay for and manage the end-of-life collection and disposal/recycling of their products and/or product packaging, reducing costs to municipalities, and which has been shown to be effective at increasing recovery of materials and reducing costs of recycling systems overall; and

Whereas, when the higher costs of responsible management for products are placed on the producer, there is an incentive to design products that are durable, easier to repair and recycle and less toxic; and

Whereas, there has been national support for EPR legislation in the form of resolutions and policies (National Association of Counties, July 2008; National League of Cities, November 2009; US Conference of Mayors, June 2020); and

Whereas, in January 2019, the Massachusetts Municipal Association passed a resolution which supports statewide product stewardship legislation; and

Therefore be it resolved, that by the adoption of this Resolution, the Town of Arlington urges MassDEP and the Massachusetts Legislature to continue taking timely action to promote a circular economy in Massachusetts to manage excess packaging, single-use products, products designed for disposal, and hazardous products; and

Be it further resolved, that the Town of Arlington Town Meeting requests the Massachusetts Legislature enact product specific and framework legislation to have producers share in the responsibility for product waste management costs by passing extended producer responsibility laws, including bills currently under consideration, which will shift costs from municipalities and give producers the incentive to design products to make them easier to reuse and recycle and less toxic.

Be it further resolved, that the Zero Waste Arlington committee and the DPW Recycling Coordinator be authorized to send letters to the Massachusetts Municipal Association, MassDEP, the State legislature, and any other local government and to use other advocacy methods to urge support for EPR Framework or product legislation and related regulations when deemed appropriate; and

Be it further resolved, that the Town of Arlington encourages all manufacturers to share in the responsibility for eliminating waste through minimizing excess packaging, designing products for durability, reusability, repairability and the ability to be recycled; using recycled materials in the manufacture of new products; and providing financial support for collection, processing, recycling, or disposal of used materials; and communicating with waste haulers and local governments about end-of-life management of their products and product packaging.

(3 – 0 –1) Mr. Diggins Abstained and Mr. Helmuth recused himself.

COMMENT: All members of the Board whom heard this article support and urge action on extended producer responsibility “EPR” legislation. EPR as a broad policy charges product manufacturers with varied product-category-specific obligations with respect to the lifecycle of goods, ranging from measures to extend the lifespan or ability to repair certain products, to requiring recycling and hazard waste management by manufacturers for those goods which are expensive and/or difficult to safely dispose of by communities. The end goal is to reduce waste overall, encourage recycling of resources, and force thoughtful design and product management to mitigate the harms of hazardous materials. The majority of the Board supports a resolution to provide legislators and Commonwealth agencies support for such legislation. Mr. Diggins concurs with the values articulated by the resolution, but is unconvinced that a Town Meeting Resolution is the optimal vehicle for the pursuit of such goals.

ARTICLE 66

RESOLUTION/IMPROVE MBTA SERVICE

VOTED: That Town Meeting does and hereby resolves as follows:

Whereas, the last streetcar from Arlington Heights to Harvard Square ran on November 18, 1955; and

Whereas, the last MBTA train from Arlington to North Station ran on January 10, 1977; and

Whereas, the last 79 bus from Arlington Heights to Alewife ran on March 12, 2021; and

Whereas, on December 18, 2022, six days after the Green Line Extension opened to Tufts-Medford, the MBTA reduced service on the 80 bus that connects Arlington Center with the Green Line Terminus; and

Whereas, despite challenges faced by Arlington commuters and student pass holders due to poor service, the MBTA reduced service on the 77 bus on December 18, 2022; and

Whereas, the Town of Arlington's MBTA assessment of \$3,208,065; and

Whereas, the Town of Arlington is committed to amending our zoning for the purpose of increasing the number of transit-friendly residential units; and

Whereas, the Town of Arlington and the City of Cambridge have built bus lanes to facilitate the movement of buses along Massachusetts Avenue;

Now therefore be it resolved, the Town of Arlington asks the MBTA to provide frequent, reliable service along Massachusetts Avenue with convenient connections to the Red Line; and

Be it also resolved, the Town of Arlington asks the MBTA to provide frequent, reliable service from Arlington Heights, through Arlington Center, and along Medford Street and Boston Avenue with convenient connections to the West Medford commuter rail station and the Tufts-Medford terminus of the Green Line Extension; and

Be it also resolved, the Town of Arlington seeks a partnership with the MBTA to plan significant improvements to the transit infrastructure in Arlington.

A copy of this resolution shall be sent to the Governor, the Lieutenant Governor, members of the General Court representing the Town of Arlington, the MBTA Board of Directors, the MBTA General Manager, and the Secretary of Transportation.

(3 – 0 – 1) Mr. Diggins abstained and Mr. Helmuth recused himself.

COMMENT: The majority of the Select Board supports this resolution registering the Town's concerns with the reductions in Arlington Bus service even as the Greenline expands its service elsewhere in the MBTA system. The Town pays a significant annual assessment as an MBTA member community and has demonstrated its commitment to public transit, yet the MBTA continues to pare back what service Arlington receives, which will also render the Greenline extension less accessible to Arlington. Mr. Diggins supported the general sense of the resolution, but expressed reservation about the efficacy of a resolution in this instance.