



**Town of Arlington  
Legal Department**

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**MEMORANDUM**

TO: Board of Selectmen

FROM: Douglas W. Heim

DATE: March 4, 2016

RE: **Votes and Comments for Articles: 18, 19, 20, 24, 25, 26, 27 and 28**

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I write to provide the Board the following as draft Final Votes and Comments for your consideration at the March 7, 2016 Board of Selectmen meeting regarding the previously heard, above-referenced warrant articles.

**ARTICLE 18**                      **BYLAW AMENDMENT/EXPANDING EQUAL  
PROTECTION**

***VOTED:***        *That Title II, Article 9, Sections 2 and 5 be and are hereby amended by striking the word “gender” and replacing it with “sex, gender identity or expression” in relevant parts so as to read as follows:*

***ARTICLE 9: HUMAN RIGHTS COMMISSION***

***Section 2. Policy of the Town of Arlington***

- C. *It is the intention of this Bylaw that all persons be treated fairly and equally. The purpose of this Bylaw is to bring about the elimination of prejudice, intolerance, bigotry, unlawful discrimination, threats, coercion or intimidation based upon an individual's race, color, religious views, national origin, ~~gender~~ sex, gender identity or expression, citizenship, age, ancestry, family/marital status, sexual orientation, disability, source of income, or military status, and the disorder occasioned thereby. Nothing in this Bylaw shall be construed as supporting or advocating any particular religious or political view or lifestyle.*
- D. *It shall be considered an unlawful practice under this Bylaw for any person to deny, interfere with, threaten or subject an individual to coercion or intimidation concerning equal access to and/or discrimination in employment, housing, education, recreation, services, public accommodation and public area where such denial, interference, threats, coercion, intimidation or unlawful discrimination against a person is based upon race, color, religious views, national origin, ~~gender~~ sex, gender identity or expression, citizenship, age, ancestry, family/marital status, sexual orientation, disability, source of income, or military status.*

#### ***Section 5. Functions, Powers & Duties of the Commission***

- A. *To initiate activities designed to educate and inform the Town about the effects of prejudice, intolerance, and bigotry through the following actions:*
  - 1. *To hold public hearings and public forums, make studies and surveys and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination because of race, color, religious views, national origin, ~~gender~~ sex, gender identity or expression, citizenship, age, ancestry, family/marital status, sexual orientation, disability, source of income, or military status.*

(5-0)

**COMMENT:** This article proposes to expand the set of protected classes presently set forth in the Town's Human Rights bylaw to include transgender and gender non-conforming persons. It is the Board of Selectmen's understanding that the Commonwealth is moving slowly towards expanding its own definitions to provide for equal protection of transgender and gender non-conforming persons in state law, but the Arlington Human Rights Commission ("AHRC") believes it valuable and important to take this proactive measure now. The Selectmen agree and respectfully recommend favorable action to Town Meeting.

**ARTICLE 19**

**BYLAW AMENDMENT/ARLINGTON HUMAN RIGHTS  
COMMISSION EXECUTIVE DIRECTOR**

**VOTED:** *That Title II, Article 9, Sections 3 be and is hereby amended by striking the word “shall” and replacing it with “may” in the second paragraph of subsection B.1 and adding the words “with consultation by the Commission” at the end of the second paragraph of same so as to read in relevant parts as follows:*

***ARTICLE 9: HUMAN RIGHTS COMMISSION***

***B. Appointment & Terms of Office of Commission Members***

- 1. The Commission shall consist of thirteen (13) members, five of whom will be appointed by the school committee, four by the Town Manager subject to the approval of the Board of Selectmen and four by the Town Moderator. The term of office shall be for three years except two of the initial appointments of the school committee shall be for a term of one year, one of the initial appointments of the Manager and Moderator respectively shall be for one year, two of the initial appointments of the School Committee shall be for two years, one of the appointments of the Manager and Moderator respectively shall be for two years.***

***The members shall be sworn to the faithful performance of their duties, and shall serve until their successors are appointed and sworn. There ~~shall~~ may be an Executive Director if determined necessary by the Commission, whom shall be appointed by the Town Manager with consultation by the Commission.***

- D. Executive Director. Before appointing an Executive Director, the Town Manager shall obtain the approval of the Board of Selectmen and consider the recommendation of the Commission. The Executive Director shall be an employee of the Town and report to the Town Manager. The prospective Executive Director shall have demonstrable experience in human and civil rights, as well as proven ability to work cooperatively in a diverse community.***

**(5-0)**

**COMMENT:** The Board of Selectmen supports the AHRC’s request to amend its authorizing bylaw to make the appointment of an AHRC Executive Director discretionary rather than mandatory, trusting both that the AHRC and the Town Manager are best equipped to understand the Commission’s operational needs. The Board of Selectmen wishes to remain involved in the confirmation of an Executive Director to the extent the Commission and the Town Manager believe such position necessary to staff, and continue to support the AHRC’s work and mission. As such, the Selectmen urge Town Meeting’s positive action on the recommended vote.

ARTICLE 20

BYLAW AMENDMENT/ARLINGTON HUMAN RIGHTS  
COMMISSION CHAIRPERSONS

*VOTED, that Title II, Article 9, Section 3.E.1 be and is hereby amended by adding the words “or two Co-Chairpersons” to the first sentence of the first paragraph and “Co-Chairpersons” to the second paragraph so to read as follows:*

*E. Officers, Quorum, and Adoption of Rules and Regulations*

- 1. The Commission shall elect a Chairperson or two Co-Chairpersons from among its members at the first meeting each year. The Commission shall endeavor to rotate the election of a Chairperson each year thereafter.*

*The Chairperson or Co-Chairpersons shall preside over the meetings of the Commission.*

(5-0)

**COMMENT:** The Board of Selectmen also supports the AHRC’s request to amend its authorizing bylaw to allow for “Co-Chairpersons” to better and more efficiently balance the workload of the Commission. Selectmen Curro has served on the AHRC and attested to the heavy burden a single chair can face. Therefore, we urge Town Meeting’s favorable support for the bylaw amendment.

## ARTICLE 24

## BYLAW AMENDMENT/ CAMPING PROHIBITED ON PUBLIC PROPERTY

**VOTED:** *That Title IV of the Town Bylaws (“Public Areas”) be and hereby is amended by inserting a new article to provide for the prohibition of camping on all public property in the Town of Arlington as follows:*

### *Article 6: CAMPING PROHIBITED ON PUBLIC PROPERTY*

#### *Section 1. DEFINITIONS*

*For the purpose of this section “camping” is defined as:*

- (a) Sleeping or otherwise being in a temporary shelter out-of-doors (i.e. tent sleeping bag) overnight; or*
- (b) Sleeping out-of-doors atop and or covered by material (i.e. bedroll, cardboard, newspaper) overnight; or*
- (c) Igniting and maintaining an open air fire as defined and prohibited by M.G.L. c. 48 sec. 13, unless permitted by the Arlington Fire Department under c. 48 sec. 13.*

#### *Section 2. CAMPING IS PROHIBITED*

*Camping is prohibited on all public property, except as may be authorized by the appropriate governmental authority.*

#### *Section 3. SIGNS AND DIRECTION OF TOWN PERSONNEL*

*No person shall refuse or neglect to obey any rule, posted by sign concerning the use of any area identified as public property; nor shall they refuse or neglect to obey any reasonable direction of a police officer or a person charged with maintenance and care of such an area.*

#### *Section 4. ENFORCEMENT AND PENALTY*

##### *Subsection 1*

*Persons in violation of this bylaw shall:*

- (a) first be provided written notice advising of the prohibition of camping in areas identified as public land;*

*(b) advised of alternative shelter locations as appropriate;*

*(c) advised of date by which to vacate; and*

*(d) subject to further reasonable penalties, including fines for damage to any public area caused by camping activities.*

**Subsection 2.**

*If after the written notice date to vacate passes, prohibited camping activity continues as described herein, a citation shall be issued, advising of a “final date to vacate” or be subject to arrest and seizure of all camping equipment and material.*

**Section 5. PURPOSE AND SEVERABILITY CLAUSE**

*The purpose of this section is to preserve and promote the peace, good order, safety, health, convenience, and general welfare of the Town. If any provision of this bylaw is declared unconstitutional or illegal by final judgment, order or decree of the Supreme Judicial Court of the Commonwealth, the validity of the remaining provisions of this bylaw shall not be affected thereby.*

**(5-0)**

**COMMENT:** This article aims to address a series of concerns regarding the use of public lands, including parks and open spaces as campsites without permits. Chief among those concerns are the preservation of Town parks, public safety, and the sanitation issues that accompany prolonged use of public spaces lacking bathrooms and other infrastructure. The proposed bylaw will not preclude camping under any circumstances, but rather will require advance permitting and compliance with rules for groups or individuals seeking to camp in Arlington parks or other open spaces. Also, the bylaw does not prohibit grilling outside in manner consistent with existing Arlington fire regulations.

Further, the proposed bylaw will establish uniform process and expectations for persons violating a general prohibition on camping in a manner that affords notice and opportunity to de-camp without fines or other penalties. Moreover, the bylaw requires any person illegally camping to be advised of alternate shelter locations. These components are essential to ensuring that the Town appropriately respects and assists homeless persons found camping in Arlington.

It is this Board’s long understanding that the Police Department and Health Department routinely and thoroughly engage the homeless in Arlington, and provide information, resources and options for services and shelter. As such, while the Board acknowledges and has considered concerns about “criminalizing homelessness” expressed by residents at hearing, we are confident

that this is a tool that on its face is appropriate and progressive in its implementation, and in practice, will be judiciously paired with outreach and homeless resources by Town departments.

**(5-0)**

**ARTICLE 25                                      BYLAW/DEMOLITION BY NEGLECT OF HISTORIC BUILDINGS**

**VOTED:        That no action be taken under Article 25.**

**(5-0)**

**COMMENT:** This article was withdrawn by its proponent. Accordingly the Board recommends no action.

**ARTICLE 26                                      VOTE/EMAIL ACCOUNTS FOR MEMBERS OF PUBLIC BODIES**

**VOTED:        That no action be taken under Article 26.**

**(5-0)**

**COMMENT:** This article, inserted by citizen petition of Mr. Christopher Loreti, seeks to provide yet to be determined appointed and elected Town members of boards, commissions, and committees town e-mail accounts; and further to require such members use those e-mail accounts rather than personal e-mail addresses whenever conducting Town-related business by e-mail. At present, the Town's Information Technology Department makes e-mail accounts available to elected and appointed officials as deemed appropriate and necessary. However, members of Town bodies, many of whom are volunteers are not required to use them.

In the Board of Selectmen's view, there are some merits to standardizing Town-related e-mail accounts, but expanding the availability of such accounts can be addressed without a Town bylaw. More importantly, as a community that relies heavily upon its volunteers, requiring such members to parse out any Town-related business into a Town e-mail address account and then maintain multiple e-mail accounts is onerous and potentially discouraging. In that vein, as elected officials, members of the Board have been using their personal e-mail accounts to maintain accessibility with the community prior to and during their terms in office. For many Board members, their personal e-mail address has been provided as a contact to residents, groups, and other officials for many years. Mandating that they only respond to emails to a

Town account, or that Selectmen manage multiple accounts to forward to and reply with only Town e-mail accounts is simply impractical.

Hence, while the Selectmen and the Town Manager share interest in exploring to the extent Town e-mail accounts should be made more available to Town boards, committees, or commissions, the Board of Selectmen respectfully urges that no action be taken under this article.

## **ARTICLE 27**

## **VOTE/LOBBYING BY PUBLIC OFFICIALS**

**VOTED:**                    **That no action be taken under Article 27.**

**(5-0)**

**COMMENT:** This article, inserted by the citizen petition of Mr. Christopher Loreti, seeks to prohibit Town officials, elected and appointed, from advocating policy positions (including taking a position on ballot questions or state legislation) without first holding a public meeting and vote to authorize them to do so, which the proponent terms “secret lobbying.” Without a draft motion or bylaw to consider, it is difficult for the Board of Selectmen to precisely examine the parameters of the proposal. However, as the Selectmen understand it, the Board has so many serious concerns about the legality, feasibility, and intent of this proposal that we strongly urge no action by Town Meeting.

Foremost, the balance of the Board simply disagrees with the proponent’s characterization of “lobbying” and “secret lobbying.” As an elected official, it is a Selectmen’s duty to advocate for what we believe is in the best interests of the Town. At times individual members of the Board express their views to local or Commonwealth policymakers. Whenever they do so, they take great care to make it clear that their opinion does represent the entire Board. As political speech by elected officials, prohibiting Selectmen from stating such personal positions relative to the Commonwealth or anyone else offends the principles of the First Amendment.

Moreover, such regulation of elected officials’ speech is wholly unnecessary. A series of state laws already govern ethics (c. 268A) and lobbying (c. 3 §§ 39-50), which protect the public from illicit conduct or influence by officials. To the extent that this proposal aims to address legal conduct, which appears to be the case, the public’s recourse relative to elected Town officials who take unsatisfactory positions on ballot questions, legislation, or anything else is at the ballot.

Finally, the proponent’s objection to the membership of Town officials in the Massachusetts Municipal Association (“MMA”) as symptomatic of “secret lobbying” further illustrates to this Board the fallacies of this article. The MMA is a non-partisan, non-profit



association of municipal officials from the vast majority of Massachusetts cities and towns. It provides many resources to officials unrelated to advocacy. To the extent it does engage in advocacy, it leverages the shared perspectives of municipalities all over the State to positive effect. The MMA's activities are hardly clandestine, but more importantly, on balance, the benefits to such an association are obvious.

Hence, this article's proposal is at best unnecessary, and at worst, will be used to excoriate Town officials who legitimately express their opinions on matters of public policy. Therefore, the Board of Selectmen strongly recommends no action under this article.

## **ARTICLE 28**

### **VOTE/AUTHORIZING COMMUNITY CHOICE AGGREGATION**

**VOTED:** *Pursuant to M.G.L. c. 164 sec. 134, Town Meeting hereby authorizes the appropriate Town officials and departments to commence the process of developing a Community Choice Electrical Aggregation Program, and to research, develop and participate in a contract, or contracts to aggregate the electricity load of the residents and businesses in the Town of Arlington and for other related services, independently, or in joint action with other municipalities, and authorize the Town Manager to execute all documents necessary accomplish the same.*

**COMMENT:** Article 28 seeks Town Meeting's required authorization to enter into a Community Choice Electrical Aggregation (CCA) agreement with an energy broker on behalf of the Town of Arlington to provide electricity services for Town residents and business owners. An authorized CCA would provide Town residents a new option in a market otherwise sorely lacking in choices for consumers. Hence, if a CCA is completely adopted, residents and business owners could choose to continue to use Eversource as their electricity supplier (or their current alternative energy supplier) or use the new Town-selected provider.

Applied to Arlington, the Board anticipates that a CCA would offer solid prospects of lower energy prices simultaneously derived from more environmentally friendly energy sources. It is the Board's understanding that while the vote of Town Meeting should not set the parameters of the ultimate CCA contract, in addition to market choice and competitive pricing, a cornerstone of the rationale to authorize a CCA is providing a path for Arlington's power supply to be derived from more sustainable, cleaner energy sources.

That said, the vote of Town Meeting to authorize a CCA is simply the first step. Town residents and other stakeholders will have many opportunities to comment upon and shape a plan before electricity consumers have to make a choice to opt-out. While there are modest variations, the complete process is generally as follows:

1. Vote to Authorize CCA at Town Meeting.
2. Issue a Request for Proposals for an Aggregator.<sup>1</sup>
3. Develop a CCA Plan with Aggregator in Consultation with the Department of Energy Resources.
4. Review of the CCA Plan by Town Manager, Board of Selectmen and Consumers.
5. Vote on the CCA Plan by Board of Selectmen for submittal to DPU.
6. Submit the Plan for DPU Approval
7. DPU conducts a Hearing
8. Issue the RFP for Competitive Suppliers
9. Selection of Competitive Supplier by Town Manager
10. Notification of Enrollment for Eligible Consumers.
11. Opt-Out Period (30 days prior to first service date).
12. Transfer of Participating Consumers to the Selected Competitive Suppliers

In sum, especially given the significant additional process afforded before a CCA would be in place The Board recommends the authorization of Town Meeting to enter into a CCA.

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<sup>1</sup> Here, Arlington proposes to use a Metropolitan Area Planning Council RFP to use “Good Energy” as a broker.