



**Town of Arlington
Legal Department**

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To: Board of Selectmen

Cc: Adam Chapdelaine, Town Manager
John Leone, Town Moderator
Ali Carter, Economic Development Planner
Christine Bongiorno, Health Director
Juli Brazile, Vision 2020

From: Douglas W. Heim, Town Counsel

Date: March 9, 2018

Re: Annual Town Meeting Warrant Articles ## 6, 7, 11, 13, 14, 15, 16, and 21

I write to provide the Board a summary of the above-referenced warrant articles to assist in the Board's consideration of these articles at its upcoming hearing on February 26, 2018. In the interests of clarity, articles are presented in the order in which they appear on the Warrant, and where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

ARTICLE 6

BYLAW AMENDMENT/CAPITAL PLANNING COMMITTEE

To see if the Town will vote to amend Title II, Article 3 of the Town Bylaws to change the number of registered voters on the Capital Planning Committee from four registered voters of the Town appointed by the Moderator to between four and six registered voters of the Town appointed by the Moderator; to specify the length of their terms as well as the manner of such appointments and reappointments; or take any action related thereto.

(Inserted at the request of the Town Moderator and the Capital Planning Committee)

This article seeks to expand the number of registered voters appointed by the Town Moderator serving on the Town's Capital Planning Committee from four to six. A representative of the Capital Planning Committee, the Moderator, and/or the Town Manager will present the reasons for expanding the number of Committee members. Should the Board be inclined to support this article, a motion to expand committee members could be constructed as set forth below.

VOTED: That Title II, Article 3, Section 5, Capital Planning Committee of the Town Bylaws be and hereby is amended to expand the number of registered voter members appointed by the Moderator from four to six by striking the word "four" in the first paragraph, replacing it with the word "six;" and adding a language after the date "July 1, 1986," and before the words "and said..." in the second paragraph, to read "with the additional two Moderator appointments added by the 2018 Annual Town Meeting commencing September 1, 2018," to read as follows:

Section 5. Capital Planning Committee

There is hereby established a Capital Planning Committee consisting of the Town Manager, the Superintendent of Schools, the Town Treasurer, the comptroller, or their designees, a member of the Finance Committee and ~~four~~ six registered voters of the town appointed by the Moderator.

The Finance Committee and Moderator appointed members shall serve for a three year term commencing July 1, 1986, with the additional two Moderator appointments added by the 2018 Annual Town Meeting commencing September 1, 2018, and said members shall be eligible for reappointment.

A vacancy shall be filled for the unexpired term in the manner of the original appointment. The committee shall choose its own officers. It may spend such sums as shall be annually appropriated.

ARTICLE 7

BYLAW AMENDMENT/TOWN MEETING WARRANT DELIVERY

To see if the Town will vote to amend TITLE I, Article 1, Section 2 by changing the manner of delivery of the Warrant to every dwelling house in town and to the Town Meeting Representatives; or take any action related thereto.

(Inserted at the Request of the Town Meeting Procedures Committee)

While I expect a representative of the Town Meeting Procedures Committee will detail their proposal at hearing, my understanding is that the intention of this article is to continue to modernize the distribution of Town Meeting materials by making one of the principal mechanisms for delivery and/or notice of Town Meeting warrants electronic, rather than a paper copies delivered to every household in Arlington. The current requirements in Title I, Article 1 state:

“A copy of the warrant for a meeting shall be posted in each municipal and school building at least seven days before the day of the Annual Meeting, fourteen days before a Special Town Meeting, and **a copy left at every dwelling house in the Town previous to the day of meeting.** A copy of the warrant for any state election shall be sent to every dwelling house only to the extent required by the General Laws. The Town Clerk shall cause notice of such meeting to be published in at least one local newspaper.”

(emphasis added).

There is no single way in which a warrant must be made available to residents. As noted by the Secretary of State for the Commonwealth, Towns have been afforded discretion to notice warrants by traditional methods of their choosing – posting them in public places, publishing them in the local newspaper, delivering a copy to every residence, or a combination of the three. However, the State also recognizes that Towns may post warrants on-line under the terms of a bylaw or other Town Meeting vote (subject to approval by the Attorney General’s Office). Thus, Arlington’s bylaws could be amended to provide for either electronic delivery or electronic posting of the warrant alongside the other traditional print methods (newspaper notice and copies posted in Town and School buildings).

ARTICLE 11 BYLAW AMENDMENT/VACANT STORE FRONT REGISTRY

To see if the Town will vote to amend Title V Article 17 of the Town Bylaws (“Registration and Maintenance of Vacant Commercial and Industrial Buildings”) to extend the period of time a property may not be used or occupied before being considered “vacant,” adjust the timing and manner of collecting annual registration fees, and adjust the timing, criteria, and manner of applying for and receiving waivers, or take any action related thereto.

(Inserted at the request of the Town Manager)

The Town’s Vacant Store Front Registry bylaw has proven successful to date; providing the Town valuable information and perspective on commercial vacancies, encouraging safe and effective maintenance of vacant storefronts, and providing additional canvas for the showcase of art in presently unoccupied store windows. The commercial vacancy rate has also improved by a noticeable margin. However, the Planning and Community Development Department and the Inspectional Services Department have both noted improvements that should be made, based in part on their experience managing the registry, and in part on commercial property owner feedback.

First, it is recommended that the period of time a property may be vacant before requiring registration be extended from twenty-one (21) to ninety (90) days. Second, the Town should simplify its timeline and process for invoicing the registration fee or waivers of such fees to be due or requested respectively at the time of registration, and annually thereafter. Finally, the waiver process based upon financial hardship needs to be further detailed in the bylaw.

A potential vote to reflect these changes is set forth below for your consideration.

VOTED: That Title V, Article 17 be and hereby is amended as follows:

First, that Section 2. (Definitions) is amended to change the definition of “Vacant Building” subpart A. by striking the word “twenty-one” (and number “21”) and replacing it with the word “ninety” (and number “90”) so as to read:

"Vacant Building" - Any unoccupied non residential commercial or industrial real property which:

A. Is not legally occupied, is abandoned, or is not used for a period of at least ~~twenty one~~ ninety (21~~90~~) consecutive days or longer by occupants having custody or legal right of entry to such property;

and;

Second, that Section 3.B (Registration) is amended to strike the number “21” and replace it with the number “90” so as to read:

B. The Planning Director and the Building Inspector may jointly exempt a property owner from the provisions of this bylaw upon the presentation of evidence, in such form as may be convincing to them, that the failure to use or occupy a building for a period in excess of 21~~90~~ days does not violate the purpose or intent of this bylaw.

and;

Third, that Section 4 (Annual Registration Fee, Failure to Pay, Waiver) be amended to make annual registration fees due at the time of registration (and annually thereafter) by deleting and inserting language so as to read as follows:

Section 4. Annual Registration Fee, Failure to Pay, Waiver.

- A. ~~On or before October 15 of each calendar year, the Town shall send a billing statement, setting forth the annual registration fee, to the owner of the vacant property. The annual registration fee is due at the time of registration of the vacant property. The property owner will be invoiced on an annual basis until the property is leased or sold. The annual registration fee shall be set by the Board of Selectmen pursuant to M.G.L. c. 40, § 22F.~~*
- B. ~~On or before November 15 of each calendar year, the owner of any vacant property shall pay to the Town an~~ The annual registration fee to covers the administrative cost of monitoring and ensuring the security and proper maintenance of such building, as identified in said billing statement. Failure to pay the annual registration fee shall be a violation of this bylaw, and the full fee shall be deemed an assessment resulting from a violation of this bylaw. Such fee, and fines issued for violations of this bylaw, shall constitute a “municipal charges lien” on the property, to be collected in accordance with MGL c. 40, § 58.*
- C. Owners may apply for a waiver of the annual registration fee ~~on or before October 1 of each calendar year, at the time of registration of a vacant property,~~ requesting waiver of some, or the entire fee on grounds of demonstrable financial hardship, or by agreeing in writing to display public art as defined herein for the term of a vacancy. Waivers for public art display will be granted only as sufficient public art is available, appropriate to the location for display, and the Town, artist, owner agree to terms of exhibition as set forth by the Planning Department.*

Waivers requested on the basis of financial hardship are subject to a 30-day review period. If a waiver based on financial hardship is granted it will be reevaluated on a quarterly basis until property is leased or sold. If a waiver of the registration fee based on financial hardship is denied, the registration fee is due within 30 days of the decision.

ARTICLE 13 BYLAW AMENDMENT/ARLINGTON COMMISSION ON ARTS AND CULTURE

To see if the Town will vote to amend Title II, Article 8 of the Town Bylaws to change the name of the Arlington Commission on Arts and Culture, alter its membership and composition, and expand and/or alter its duties and responsibilities to include, but not limited to the following: public art, cultural district management, and seeking and distributing arts-related grants; or take any action related thereto.

(Inserted at the Request of the Arlington Committee on Arts and Culture)

The purposes of this article are to consolidate a variety of Town and quasi-Town bodies' missions, duties, and responsibilities with respect to the Town's arts and culture resources, including vesting one Town umbrella body with cultural district management, a role in the distribution of arts-related grants, and related programming and responsibilities. To accomplish these goals, the Arlington Committee on Arts and Culture proposes to adjust its authorizing bylaw, Title II, Article 8 to serve as a broader facilitator. To my understanding a representative of the Planning and Community Development Department and members of the Arlington Commission on Arts and Culture will present further details on their proposal, but generally speaking, the Town Bylaws may expand the ACAC's authorities and jurisdiction in a manner consistent with State law.

ARTICLE 14

BYLAW AMENDMENT/TREE PRESERVATION AND PROTECTION

To see if the Town will vote to amend the Town Bylaws, Title V Regulations Upon the Use of Private Property, Article 16: Tree Protection and Preservation, Section 4, Procedures and Requirements for the Preservation of Trees, to increase the fees for tree removal or to authorize the Board of Selectmen to set the fees for tree removal, in the interests of reflecting the true cost of tree removal; or take any action related thereto.

(Inserted at the request of the Tree Committee)

As the Board will recall, the 2016 Arlington Town Meeting approved a new bylaw aimed at fostering thoughtful approaches to development and redevelopment in the interests of protecting Arlington's tree canopy. Distinct from the protections afforded public shade trees under the General Laws, the bylaw regulates trees on private property under certain conditions. Specifically, the Tree Protection Bylaw requires that developers, homeowners or contractors seeking building or demolition permits submit a site plan indicating which mature, healthy trees located in the setback are going to be removed. For each qualifying tree removed, responsible parties can mitigate by planting trees or by paying fees into the Town's Tree Fund for tree plantings.

To my understanding, after a full year of application of the Tree Protection Bylaw, the Tree Committee is concerned that the mitigation fee (\$500) is insufficient to capture the true costs of replacing trees via the Town's Tree Fund, and as such, ensure responsible stewardship of trees. They propose several options to change the mitigation structure set forth in Title V, Article 16, Section 4.C, which could bring the protection of trees on private property more in line with the protection of public shade trees.

One option is to follow the method employed in the Town of Concord, which vests the authority with its Select Board to set the fees for tree removal. Under Concord's example, a per-DBH fee structure was implemented, such that a more mature tree costs more to remove than a younger, smaller one. Another option is to insert a specific DBH-based fee in the bylaw in the place of the \$500 fee. Again, following Concord's assessment of costs (though set by the Select Board rather than in the Bylaw itself), they require \$375 per DBH, such that a mature 10" DBH tree would require \$3,750 in mitigation fees. It is important to note that the scope of the Tree

Committee's proposal does not remove responsible parties' option of planting a replacement tree on the property in lieu of mitigation fees.

ARTICLE 15

BYLAW AMENDMENT/NOISE ABATEMENT

To see if the Town will vote to amend Title V, Article 12 of the Town Bylaws to regulate the permissible hours and volume of noise generated by parties and events on residential private property, by reducing the permissible hours of operation and/or decibel levels of loudspeakers and sound amplifying devices used for entertainment, requiring neighbor notifications for parties on residential private property in which noise amplification will be used, and providing for exemptions for certain well known Town-wide events and/or celebrations periods such as "Porch Fest;" or take any action related thereto.

(Inserted at the request of Meredith DiMola and ten registered voters)

This article was inserted by the resident petition of Ms. Meredith DiMola and I anticipate that she will present the Board with information on the purpose and benefits of a bylaw amendment to address concerns about noise generated by events and parties on private property, particularly in residential areas. It is my understanding that among the issues the article seeks to address include the permissible hours in which loudspeakers or other amplification devices for entertainment purposes should be permitted, and providing some mechanism for neighbors to have advanced knowledge of parties and events utilizing such equipment in the interests of assisting them to plan accordingly.

ARTICLE 16 BYLAW AMENDMENT/TIME OF TOWN MEETING SESSIONS

To see if the Town will vote to amend Title I, Section 1, to change the time of Town Meeting from 8:00 p.m. to 7:00 p.m.; or take any action related thereto.

(Inserted at the request of Bill Hayner and ten registered voters)

This straightforward article submitted by the resident petition of Bill Hanyer seeks to amend Title I, Section 1 of the Town Bylaws to start Town Meeting an hour earlier, at 7:00 p.m. While I anticipate that Mr. Hayner will present the basis and benefits of this article at hearing, it bears noting that the article does not propose to adjust the time Town Meeting adjourns. Hence, if successful, this article would also add an hour to each session of Town Meeting.

ARTICLE 21 VOTE/VISION 2020

To see if the Town will vote to further revise Article 41 of the Annual Town Meeting of 1992, which established the Vision 2020 Standing Committee, to amend the name of committee to “Envision Arlington,” provide a new statement of purpose, and revise the length of terms for Standing Committee Members;; or take any action related thereto.

(Inserted at the request of the Vision 2020 Standing Committee)

This Article, requested by the Vision 2020 Standing Committee builds upon the reforms to Vision 2020 approved under Article 12 of the 2015 Annual Town Meeting, by seeking a further amendment to its original charter from the 1992 Town Meeting (both the original charter and the 2015 revisions are attached hereto for the Board’s reference) to primarily update its mission and rename Vision 2020, “Envision Arlington.” Vision 2020 representatives are expected to present further information at hearing, but the Standing Committee has already drafted a vote for the Board’s consideration.

VOTED: That the 1992 vote of Town Meeting (Article 41) as subsequently amended by the of the 2015 vote of Town Meeting, (Article 12) reorganizing is hereby replaced in its entirety with the following:

A. Vision 2020 Name Change

That the committee previously known as Vision 2020 Standing Committee will henceforth be known as Envision Arlington Standing Committee.

B. Envision Arlington Standing Committee Establishment and Purpose

That the Town hereby provides for the appointment of a committee and advisory board, to be called the Envision Arlington Standing Committee, which will create, implement, monitor, and review methods for open, town wide public participation in the Envision Arlington process. The Envision Arlington process is intended to be an ongoing process of discussion, action and review whereby all members of the community are invited to participate in a range of activities (including surveys, forums and online discussions) aimed at developing and refining how our community realizes the intentions of vision statements for Arlington (previously known as Town Goals under Vision 2020). The committee will create task groups or working groups, and support existing ones, consisting of residents, community groups, town personnel and other stakeholders. The committee will report to Town Meeting on the action items and evolving vision that will result from the Envision Arlington process.

C. Standing Committee Membership, Quorum, Administration, & Organization

The Standing Committee shall consist of nine (9) Voting Members including a Chairperson, and a ten (10) person non-voting Advisory Board. Voting members and the Advisory Board shall both be charged with fulfilling the mission of Envision Arlington. Only Voting Members shall have authority to make decisions and set policy of the Committee and otherwise bind the committee by a majority vote of a quorum. However, the Advisory Board shall have the right to be recognized at meetings and request topics and issues be placed before the Standing Committee on agendas. A quorum shall consist of a majority of Voting Members (5).

1. Appointment of Voting Members

a. Voting Members shall be comprised of:

- i. Two (2) Town of Arlington residents appointed by the Town Moderator for three year terms;*

- ii. *Two (2) Town of Arlington residents appointed by the Superintendent of Schools with approval of the School Committee for three year terms;*
 - iii. *Two (2) persons appointed by the Town Manager with approval of the Board of Selectmen for three year terms;*
 - iv. *Two (2) persons appointed by the Director of Planning and Community Development with approval of the Arlington Redevelopment Board for three year terms; and*
 - v. *One (1) Chairperson, who shall be a resident nominated by a majority vote of the eight (8) above-listed Voting Members following recommendations from the Town Manager and School Committee Members, and approved by the Board of Selectmen. The Chairperson shall serve an initial three-year term, with all subsequent terms for three years.*
- b. *All Voting Members shall be eligible for reappointment.*
- c. *At all times at least one of the four collective appointments between the Town Manager and the Director of Planning shall be a current Town employee. All Town Manager and Director of Planning appointees who are not Town employees must be Town residents.*
- d. *A vacancy of the Committee shall be filled by the relevant appointing or designating authority.*

2. *Advisory Board*

The Advisory Board will be composed of the following ten (10) total members: the Town Manager, the Superintendent of Schools, the Town Moderator, the Director of Planning and Community Development, Town Counsel, one secondary student residing in the Town of Arlington appointed by the Superintendent and approved by the School Committee on a one-year term, and the Chairpersons of the Board of Selectmen, the School Committee, the ARB and the Finance Committee or such bodies' designees.

D. *Effective Date and Appointments*

Following Town Meeting approval of this revised vote, all active Voting Member appointments to the Vision 2020 Standing Committee will remain in effect for the Envision Arlington Standing Committee.

REFERENCE MATERIAL

Warrant Article #12

From the Votes of 1992 Annual Town Meeting:

ARTICLE 41: ESTABLISH 2020 STANDING COMMITTEE

VOTED: (Unanimously)

That the Town hereby appoints a committee to be called the Vision 2020 Standing Committee which shall oversee the progress and implementation of the Vision 2020 recommendations made to the Town and contained in the report given under Article 40. It will report on said progress and implementation each year to the Annual Town Meeting until discharged. This committee will ensure the continuation of the long range planning process of Vision 2020 initiated by the Town in 1990 and shall reevaluate the "Articles of Our Common Purpose" each year. This committee shall also create, implement, monitor, and review methods for open, town wide public participation in the Vision 2020 process.

The Standing Committee shall consist of the Town Manager; the Superintendent of Schools; the Town Moderator; the Director of Planning and Community Development; the Chairs of the Selectmen, School Committee, Finance Committee, Redevelopment Board, or at each of said committee's option, a member of each as voted by their respective memberships; two Town Meeting Members to be appointed by the Moderator; two residents of the Town, one each to be appointed by the Selectmen and the School Committee; a representative of each Article Group as recommended by their respective memberships to be appointed by the Town Manager, subject to the approval of the Board of Selectmen; one secondary student to be appointed by the Arlington School Superintendent, through applications submitted by interested secondary students residing in Arlington, which appointment shall be subject to approval of the School Committee.

Each appointee shall serve for a term of one year, but may be appointed for successive terms. Appointees shall serve until their successors are appointed.

A true copy of the vote under
Article 41 of the Warrant for
The Annual Town Meeting of the
Town of Arlington at the session
Thereof held June 8, 1992

From the votes of 2015 Annual Town Meeting

ARTICLE 12

REVISION OF TOWN COMMITTEE/VISION 2020 STANDING COMMITTEE

VOTED: (AFFIRMATIVE) (ELECTRONIC TALLY, YES – 178, NO – 2)

That the 1992 vote of Town Meeting (Article 41) establishing the Vision 2020 Standing Committee is hereby amended by striking the vote in its entirety and replacing it with the following:

A. Vision 2020 Standing Committee Establishment and Purpose

That the Town hereby provides for the appointment of a committee and advisory board to be called the Vision 2020 Standing Committee which shall oversee the progress and implementation of the Vision 2020 recommendations made to the Town and contained in the report given under Article 40 of the 1992 Annual Town Meeting and report on said progress and implementation each year until discharged. This committee will ensure the continuation of the long range planning process of Vision 2020 initiated by the Town in 1990 and shall reevaluate the Town Goals adopted by Town Meeting in 1993 at least every two years. This committee shall also create, implement, monitor, and review methods for open, town-wide public participation in the Vision 2020 process.

B. Standing Committee Membership, Quorum, Administration, & Organization

The Standing Committee shall consist of nine (9) Voting Members including a Chairperson, and a ten (10) person non-voting Advisory Board. Voting members and the Advisory Board shall both be charged with fulfilling the mission of Vision 2020. Only Voting Members shall have authority to make decisions and set policy of the Committee and otherwise bind the committee by a majority vote of a quorum. However, the Advisory Board shall have the right to be recognized at meetings and request topics and issues be placed before the Standing Committee on agendas. A quorum shall consist of a majority of Voting Members (5).

1. Appointment of Voting Members

a. Voting Members shall be comprised of:

- i. Two (2) Town of Arlington residents appointed by the Town Moderator, one of which shall serve an initial two-year term, and the other an initial three-year term, with all subsequent terms for three years;
- ii. Two (2) Town of Arlington residents appointed by the Superintendent of Schools with approval of the School Committee, one of which shall serve an initial one-year term, and

- the other an initial two-year term, with all subsequent terms for three years;
 - iii. Two (2) persons appointed by the Town Manager with approval of the Board of Selectmen, one of which shall serve an initial one-year term, and the other an initial two-year term, with all subsequent terms for three years;
 - iv. Two (2) persons appointed by the Director of Planning and Community Development with approval of the Arlington Redevelopment Board (“ARB”), one of which shall serve an initial one-year term, and the other an initial three-year term, with all subsequent terms for three years; and
 - v. One (1) Chairperson, who shall be a resident nominated by a majority vote of the eight (8) above-listed Voting Members following recommendations from the Town Manager and School Committee Members, and approved by the Board of Selectmen. The Chairperson shall serve an initial three-year term, with all subsequent terms for three years.
- b. All Voting Members shall be eligible for reappointment.
 - c. At all times at least one of the four collective appointments between the Town Manager and the Director of Planning shall be a current Town employee. All Town Manager and Director of Planning appointees who are not Town employees must be Town residents.
 - d. A vacancy of the Committee shall be filled by the relevant appointing or designating authority.

2. Advisory Board

The Advisory Board will be composed of the following ten (10) total members: the Town Manager, the Superintendent of Schools, the Town Moderator, the Director of Planning and Community Development, Town Counsel, one secondary student residing in the Town of Arlington appointed by the Superintendent and approved by the School Committee on a one-year term, and the Chairpersons of the Board of Selectmen, the School Committee, the ARB and the Finance Committee or such bodies’ designees.

C. Effective Date and Appointments

Following Town Meeting approval of this revised vote, all Voting Member appointments except the appointment of the Chairperson shall be made on or before July 1, 2015, and the Chairperson shall be appointed on or before August 14, 2015. Until the Chairperson is appointed, the Standing Committee may designate a Vice Chair from within its membership to administer the Committee’s

business. The presently serving Standing Committee shall continue to govern Vision 2020 until July 1, 2015.

A true copy of the vote under
Article 12 of the Warrant for the
Annual Town Meeting of the Town of Arlington at the session
held May 4, 2015.
ATTEST: Town Clerk

Warrant Article #14

From Title V, Article 16 of the Town Bylaws:

Article 16: TREE PROTECTION AND PRESERVATION

(ART. 22, ATM - 05/02/16)

Section 1. Findings and Purpose

The Town of Arlington finds that preservation of the tree canopy and planting of replacement trees is essential to preserving the character and aesthetic appearance of the Town and maintaining quality of life and the environment in the Town. Trees improve air quality, protect from heat and glare, reduce noise pollution, limit topsoil erosion and storm water runoff, provide natural flood control, enhance property values, contribute to the distinct character of neighborhoods, and offer natural privacy to neighbors.

Section 2. Definitions

A. The following definitions shall apply to this By-law:

"Building Footprint" - Outline the total area covered by a building's perimeter at ground level.

"Caliper" - Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

"DBH (Diameter at Breast Height)" - Diameter of a tree trunk measured in inches at a height of four and a half (4 1/2) feet above the ground; or, for multiple-trunk trees, the measured in inches at a height of four and a half (4 1/2) feet above the ground; or, for multiple-trunk trees, the aggregate diameters of the multiple trunks at a height of four and a half (4 1/2) feet above ground.

"Demolition" - Any act of destroying, pulling down, removing or razing a building or commencing the work of total or substantial destruction of a building.

"Protected Tree" - Any existing healthy tree on private land with a DBH of ten (10) inches or greater, located in the setback area, which does not pose an immediate hazard to person or property or is not under imminent threat of disease or insect infestation.

"Setback Area" - The Portion of the property which constitutes the minimum depth of side, rear and front yards as per the Zoning Bylaw of the Town of Arlington.

"Tree Fund" - An existing Town account established for the purpose of buying, planting, and maintaining trees in the Town which may receive deposit of contributions in lieu of planting new trees by property owners and fines collected under this By-law.

"Tree Plan" - A site plan drawn and stamped by a certified land surveyor or engineer showing all Protected Trees in the setback areas and indicating, on the site plan or in a separate document, which Protected Trees will be retained, which will be removed, and, as to Protected Trees which will be removed, whether mitigation will be by replacement on the property or by payment into the Tree Fund.

"Tree Removal" - The cutting down of a tree.

"Tree Warden" - The Tree Warden or his/her designee.

B. Additional definitions may be provided in rules and regulations approved by the Board of Selectmen where consistent with intent and efficient execution of this By-law.

Section 3. Applicability

A. The requirements of this By-law and all applicable rules and regulations apply to the following Circumstances:

- (1) Proposed demolition of an existing residential or non-residential structure;
- (2) Proposed construction on a developed lot which would result in an increase of 50 percent or more of the total building footprint of the new structure(s) when compared to the total footprint of pre-existing structures; or
- (3) Proposed construction of any scope on a lot with no residential or non-residential structure on it.

B. Sites under the jurisdiction of the Arlington Redevelopment Board ("ARB") or the ARB as the Planning Board, the Zoning Board of Appeals, or the Conservation Commission pursuant to Arlington's Wetlands Protection By-law (Title V, Article 8) may waive the requirements of this By-law in full or in part where such waiver serves the interest of the community and

the reasons therefore are memorialized by such bodies.

C. The requirements of this By-law shall not apply to trees defined as Public Shade Trees under G.L. c.87 § 1.

Section 4. Procedures and Requirements for the Preservation of Trees

A. Removal of Protected Trees on applicable sites shall be prohibited unless such removal is authorized by a written approval of the Tree Plan and commencement of work, in accordance with this Bylaw.

B. In all instances of construction or demolition as defined and applicable herein, the owner of the property shall submit a Tree Plan accompanied by a fee of \$50, to the Tree Warden prior to or concurrent with an application for a building or demolition permit. Additionally, if any Protected Trees were removed during the 12 months preceding the application for a building or demolition permit, such trees shall be accounted for on the Tree Plan to the best of the owner's ability, and shall be mitigated pursuant to paragraph 4.C

C. For each Protected Tree removed, there shall be either (1) a replacement tree planted on the property no later than 180 days after the Certificate of Occupancy is issued, of a minimum caliper of two and a half (2.5) inches and of a species native to the area and expected to reach a height of 50 feet or more at maturity; or (2) a \$500 payment made to the Tree Fund prior to commencement of work on the property, which the Town shall use to plant replacement trees in the vicinity of the tree removal or in other locations in the discretion of the Tree Warden.

D. If the Tree Plan is consistent with the requirements of this Bylaw, the Tree Warden shall so certify in writing approving the Tree Plan and commencement of work. Said certification shall occur within 10 business days. If the Tree Plan as submitted does not satisfy the requirements of this By-law and associated rules and regulations, the Tree Warden shall so notify the applicant with recommendations to achieve compliance. The Tree Warden shall be permitted access to the site during normal business hours to verify and ensure compliance with the approved Tree Plan.

E. An Owner aggrieved of the Tree Warden's determination on a Tree Plan, or with respect to the need for such a plan, may appeal such determinations to the Board of Selectmen at a public hearing. A written decision on such appeals shall be rendered with 14 business days of the close of such hearing(s).

Section 5. Enforcement and Fines

A. Following a determination of violation by the Tree Warden, an owner shall be subject to fines for the activities listed below, to be paid into the Tree Fund, said fines to be set forth in rules and regulations issued by the Board of Selectmen.
Said activities are:

(1) Removal of a Protected Tree on an applicable site without prior written approval of commencement of work per Section 4.D, \$300 per day of work. There shall also be a fine for each Protected Tree removed.

(2) Removal of a Protected Tree which is not identified for removal in the Tree Plan. There shall be a fine for each Protected Tree removed, \$300.

(3) Failure to mitigate tree removal within the time set forth in Section 4.C of this By-Law. There shall be a fine of \$300 for each day until mitigation is achieved.

B. Wherever there is reasonable cause to believe that an owner or their agent willfully violates this By-Law or an approved Tree Plan, the Town may institute a civil action for injunctive relief in a court of competent jurisdiction ordering appropriate parties to correct a condition in violation, or to cease an unlawful use of the property.

C. An owner aggrieved of the Tree Warden's determination of violation(s) may appeal such determination(s) to the Board of Selectmen at a public hearing.

Section 6. Administration

The Board of Selectmen shall establish further administrative rules and regulations for the review and approval of Tree Plans, as well as enforcement determinations. Failure to issue rules and regulations will not have the effect of suspending or invalidating this By-law.

Section 7. Severability Clause

If any provision of this By-law 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 By-law shall not be affected thereby.

Section 8. Relationship to Other Laws

Nothing in this By-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Arlington By-laws or laws of the Commonwealth of Massachusetts.

Warrant Article #15

From Title V, Article 12 of the Town Bylaws:

ARTICLE 12: NOISE ABATEMENT

ART., S.T.M., 7 12/7/98, ART ATM 6/20/05, ART. 25, ATM 05/14/2012, (ART. 2, STM – 4/24/13)(ART. 14, ATM - 4/24/17)

Section 1. Definition.

Except as may be otherwise specified in this Section, all acoustical terminology used in this Article shall have the meaning stated in American National Standard Acoustical Terminology [ANSI S1.1-1998 (R2004) or as it may be revised.]

For purposes of this Article the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Construction

Any activity requiring a building permit and any and all activity necessary or incidental to the erection, assembling, altering, installing, repair or equipping of buildings, roadways, or utilities, including demolition, land clearing, grading, excavating, and filling and paving.

DB(A)

The A-weighted sound level in decibels, as measured by a type I or II sound level meter complying with the provisions of Specifications for Sound Level Meters [(ANSI S1.4-1983 (R2001) with amendment S1.4A-1983 or as it may be revised], American National Standards Institute (ANSI), properly calibrated, and operated on the AA@ weighting network, slow setting.

Demolition

Any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Domestic Power Equipment

Electrical, battery or generator powered equipment intended for use in residential areas by a homeowner. Examples include but are not limited to chain saws, log splitters, power saws, drills, grinders, lawn and garden tools.

Emergency

An occurrence or set of circumstances requiring immediate action involving

- a. the restoration of public utilities or
- b. the restoration of property to a safe condition following a public calamity or

- c. the protection of persons or property from imminent exposure to danger.

Emergency work

Work which is performed in an effort to alleviate an emergency.

Emergency Vehicle

Any vehicle being operated as part of emergency work.

Heavy Equipment

Commercial or industrial equipment such as motorized earth moving equipment, jack hammers, pavement breakers, pile drivers, trucks for loading and unloading dumpsters, tractor-trailers, and parking lot maintenance equipment.

Pavement Breaker

Any hydraulically or pneumatically powered impact device intended to cut or trench pavement, subbase macadam, gravel, concrete, or hard ground.

Person

Any individual, partnership, association, firm, syndicate, company, trust, corporation, department, bureau or agency, or any other entity recognized by law as the subject of rights and duties, including the Town, its agencies and departments and any person, as herein defined, operating under a contractual arrangement or agreement with the Town.

Pile Driver

An impact device designed or used for the driving of piles, columns and other supports into soil or other material by means of impact, vibrations, pressure, or other means.

Section 2. Exceptions.

The provisions of this Article shall not apply to:

- A. Emergency Alert. The emission of sound for the purpose of alerting persons to the existence of an emergency or as otherwise specifically permitted by the provisions of this Article.
- B. Emergency Work. The emission of sound in the performance of emergency work.
- C. Public Speakers. Public speaking and public assembly activities except those activities otherwise regulated by this Article.
- D. Activities with Permits. Events and activities (other than construction work) for which proper permits or licenses have been issued.
- E. Emergency Vehicles.
- F. Snow Removal. The emission of sound for the purpose of clearance or removal of snow.

- G. Explosives. The emission of sound resulting from the use of explosives when authorized by the Arlington Fire Department in accordance with Board of Fire

Prevention Regulations 527 CMR 13 and other relevant regulations and statutes of the Commonwealth of Massachusetts.

- H. Religious Uses. Devices used in conjunction with places of religious worship.

- I. Town Horn. The sounding of the Town Horn.

- J. The intermittent or occasional use, during the daytime (as defined in Section 3, Subsection A), of homeowner's domestic power equipment. other than leaf blowers powered by internal combustion engines, which shall be subject to the restrictions set forth in Section 3(D), below. (ART. 2, STM – 4/24/13)

Section 3. Daytime-Only Activities.

The following acts are specifically prohibited.

- A. Prohibited Times. Operating, or permitting the operation of any of the following devices or vehicles.

1. before 9:00 A.M. or after 5:00 P.M. on Saturday, Sunday or legal holiday
2. before 8:00 A.M. or after 6:00 P.M. on all other days
 - a. Heavy equipment (as defined in Section 1), and
 - b. All electric motors or internal combustion engines, or other construction devices, tools or equipment, used in construction, drilling, demolition, maintenance, or earth moving, including but not limited to bulldozers, backhoes, concrete mixers, dump trucks, pneumatic tools, rollers, scrapers, air compressors, generators, jackhammers, cranes, pavement breakers, pile drivers, rock drills, and chainsaws.

- B. Loudspeakers. Operating or causing to be operated a public address loudspeaker, whether mobile or stationary, after 9:00 P.M. or before 8:00 A.M.

- C. Bug Zappers (ART. 38, ATM 2010). Operating or causing to be operated after 10 P.M. or before 7 A.M. (8 A.M. on Saturday, Sunday, or a legal holiday) any electronic device for killing, trapping, or repelling insects or other pests if such device emits audible sound beyond the line of the property on which the device is located.

- D. Use of Leaf Blowers Powered By Internal Combustion Engines

1. For purposes of Paragraphs 1-5 of this subsection, the term, “leaf blowers” shall mean “gas-powered leaf blowers used for commercial or municipal purposes.”

2. The use of leaf blowers is prohibited between June 15th and September 15th except in accordance with the following restrictions, which shall not apply to the use of leaf blowers to perform emergency operations or for clean-up associated with storms, hurricanes and the like:
 - a. The use of leaf blowers is prohibited on:
 - i. Sundays and legal holidays;
 - ii. Mondays through Fridays except between the hours of 7:30 a.m. and 5:30 p.m.; and
 - iii. Saturdays except between the hours of 8:00 a.m. and 4:00 p.m.
 - b. No more than one leaf blower may be used on any lot of 6,000 square feet or smaller. One additional leaf blower may be used for each additional 6,000 square feet or portion thereof comprising one lot.
 - c. Leaf blowers may be used for no more than 30 minutes at a time with shut down time of 15 minutes in between operation.
3. At no time shall any leaf blower be used in such a way as to permit the distribution of leaves, dust, or other debris beyond the vertically extended lines of the property on which the leaf blower is being used.
4. Leaf blowers shall at all times be operated at the lowest possible practical speed necessary to accomplish the task for which they are being used.
5. As of June 15, 2014, or one year after the effective date of this Bylaw, whichever is later, no commercial landscaper, commercial landscape company, or other entity engaged in the business of providing home and yard repair, clean-up, and maintenance services for a fee shall use any leaf blower within the Town in the exercise of that business unless the manufacturer specifies that the sound emitted from said leaf blower is no greater than 74 dB(A) at 50 feet at full throttle. (ART. 2, STM – 4/24/13)

Section 4. Maximum Sound Levels.

- A. Sound Measurement. When a sound source is located in public spaces, sound measurements shall be made at, and sound level determination made in relation to, any location lawfully accessible to the public. When the sound source is located on private property, sound measurements shall be made at the boundary line of such property or as close thereto as is feasible.
- B. Sound Limitations. No person or persons owning, leasing, or controlling the operation of any source or sources of sound shall permit, either willfully, negligently, or by failure to provide necessary equipment or facilities or to take necessary precautions, the production

of sound with a sound level greater than 85 dB(A) at any time, other than sounds associated with construction or maintenance work.

For any sounds above 85 dB(A) associated with construction or maintenance work, the Town Manager or the Town Manager's designee is authorized to require the person to provide noise monitoring equipment, pay for consultants to advise the Town as to feasible alternatives to accomplish the work at lower sound levels, implement any reasonable noise mitigation measures, and/or to impose any reasonable time restrictions on the activity.

Section 5. Penalties.

Any person violating any provision of this Article shall be subject to a fine of \$200.00 for each offense and/or an action in a court of competent jurisdiction, seeking an order to cease and desist from such activity. Each day or part thereof if any violation continues shall constitute a separate offense.

Section 6. Manner of Enforcement.

Violations of this Article shall be prosecuted in the same manner as other violations of the Town By-Laws provided, however, that in the event of an initial violation of the provision of this Article, a written notice shall be given the violator requiring the cessation of the activity. No complaint or further action shall be taken in the event the cause of the violation has been removed, the condition abated or fully corrected upon the receipt of such notice.

In the event the violator cannot be located in order to serve the notice, the notice as required herein shall be deemed to be given upon mailing such notice by registered or certified mail to the violator at his last known address or at the place where the violation occurred. At the discretion of the Town Manager subject to the approval of the Board of Selectmen, repetition of the same offense may result in the immediate filing of a complaint and/or action in a court of competent jurisdiction to cease and desist same.

Section 7. Notification.

The Building Inspector will provide a copy of this bylaw to any individual applying for any permit for work that might involve noise levels subject to this bylaw but his failure to do so will not affect the enforceability of this bylaw.

Section 8. Conflict with other Regulations.

The provision(s) of this Article or the application of such provision(s) to any person or circumstances shall be held invalid, the validity of the remainder of this Article and applicability of such provisions to other persons or circumstances shall not be affected thereby.