



**Town of Arlington  
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager

From: Douglas W. Heim, Town Counsel

Date: January 24, 2020

Re: Potential 2020 Annual Town Meeting Warrant Articles

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I write to provide the Select Board potential warrant article language for inclusion on the 2020 Annual Town Meeting Warrant, with the understanding that the inclusion of these articles at your request is solely within your discretion, is not necessarily indicative of Board support for positive action, and that some of these articles may not ultimately be considered ripe for Town Meeting. Further, adjustments may be necessary to finalize the language of any of the draft articles provided herein

**ARTICLE \_\_\_\_**

**HOME RULE/SENIOR WATER DISCOUNT**

**To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation or other Special Legislation which would permit the Town to discount fees charged to qualifying, means-tested Arlington Seniors for water and sewer usage; or take any action related thereto.**

As the Board will recall from recent discussions, a number of municipalities have enacted water and sewer discount programs for local seniors. It remains the position of this Office that a straightforward form of such a discount programs may be offered by vote of the Select Board without Town Meeting action or Home Rule Petition. However, further research has revealed that Home Rule Legislation would be required if the Board were to contemplate a model of discount similar to the Board's recent means-tested tax deferral and "work-off" programs or to certain specific subcategories of senior residents in Arlington, based upon the Department of Revenue's interpretation of *Brand v. Water Commissioners of Billerica*, 242 Mass. 223 (1922). Accordingly, it may be in the Board's interest to place an article on the warrant for further discussion.

**ARTICLE \_\_\_\_**

**BYLAW AMENDMENT/STORMWATER MANAGEMENT**

**To see if the Town will vote to amend Title V, Article 15 of the Town Bylaws ("Stormwater Mitigation") to update such bylaw so as to add, remove or amend definitions, clarify the bylaw's procedures and applicability to certain projects, and adjust fees; or take any action related thereto.**

This warrant article is jointly requested by the Engineering Division and Environmental Planner/Conservation agent in order to modestly update the Stormwater Mitigation Bylaw in the interests of improving coordinated implementation of the bylaw and clarifying its applicability to smaller scale projects.

ARTICLE \_\_\_\_

**HOME RULE LEGISLATION/RETIRED POLICE  
OFFICER DETAILS**

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation, as set forth below, to allow retired police officers to work police details: or take any other action relative thereto.

**AN ACT RELATIVE TO THE APPOINTMENT OF RETIRED POLICE OFFICERS AS  
SPECIAL POLICE OFFICERS IN THE TOWN OF ARLINGTON**

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.** The Town Manager of the Town of Arlington may appoint, at the recommendation of the Chief of Police and as the Chief of Police deems necessary, retired police officers as special police officers for the purpose of performing police details and any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work, when the special police officer is on detail assignment and an emergency response by the special police officer is required due to the inability of a regular police officer to timely respond to the emergency. Such retired police officers must have previously served as regular full-time police officers for the Town of Arlington who voluntarily retired based upon superannuation under the provisions of chapter 32 of the General Laws.

No retired police officer shall be eligible for appointment under this act if such officer has reached the mandatory age for retirement of police officers specified in chapter 32 of the General Laws and regulations promulgated thereunder and the employment of any officer appointed under this act shall terminate upon attaining such age. No officer who has been retired from the Town of Arlington Police Department for more than five years shall be eligible for appointment under this act unless the officer has maintained employment since the date of retirement as an active police officer in the Commonwealth. Prior to being appointed under this act every officer who is to be appointed must pass a medical examination by a physician chosen by the Town to determine that such officer is capable of performing the essential duties of a special police officer under this act. The cost of such examination shall be borne by the special police officer. Such officer shall provide certification to the Town that the officer is covered by personal health insurance.

**SECTION 2.** Special police officers appointed under this act shall not be subject to chapter 31 of the General Laws; sections 85H and 85H ½ of chapter 32 of the General Laws; sections 99A, 100, or 111F of chapter 41 of the General Laws; or chapter 150E of the General Laws. Special police officers appointed under this act shall be subject to chapter 151A of the General Laws.

**SECTION 3. Special police officers appointed under this act shall, when performing their duties set forth in this act, have the same power to make arrests and to perform other police functions as do regular police officers of the Town of Arlington.**

**SECTION 4. Special police officers shall be appointed for a term of one year, subject to renewal in the Town Manager's sole discretion. During the term of appointment, the officer shall serve at the pleasure of the Town Manager, subject to removal by the Town Manager at any time with or without cause. Any such removal shall be preceded by a fourteen-day written notice unless considerations of public safety and welfare, determined in the Town Manager's sole discretion, require immediate removal. In such instances, the Town Manager shall provide the officer with a written statement of reasons for the immediate removal.**

**SECTION 5. Special police officers appointed under this act shall be subject to the rules and regulations, policies and procedures and requirements of the Police Department and the Chief of Police of the Town of Arlington, including restrictions on the type of detail assignments, requirements regarding medical examinations to determine continuing capability to perform the duties of a special police officer, requirements for training, requirements for firearms qualifications and licensing, and requirements regarding uniforms and equipment. Compliance with all requirements will be at no cost to the Town of Arlington. Special police officers appointed under this act shall not be subject to section 96B of chapter 41 of the General Laws.**

**SECTION 6. Special police officers appointed under this act shall be sworn before the Town Clerk of the Town of Arlington who shall keep a record of all such appointments.**

**SECTION 7. Appointment as a special police officer under this act shall not entitle any officer appointed as such to assignment to any specific detail or type of detail, and all such assignments shall be made in the sole discretion of the Chief of Police. Special police officers appointed under this act shall be paid the hourly detail rate applicable to regular full-time officers, including any changes to such rate, but shall not be entitled to any other Town benefits.**

**SECTION 8. Retired police officers appointed as special police officers under this act shall be subject to the limitations on hours worked and on earnings by retired municipal employees under paragraph (b) of section 91 of chapter 32 of the General Laws. Any such officer shall, on or before January thirty-first of each calendar year, file a sworn statement with the Arlington Contributory Retirement Board on a prescribed form identifying the compensated number of hours worked for, and all earnings therefrom, for the Commonwealth and any of its subdivisions for which the police officer worked during the preceding calendar year.**

**SECTION 9. This act shall take effect upon its passage.**

The purpose of this article is to implement an agreement between the Town and its collectively bargain police unions to retain qualifying retired Arlington police officers to serve on police details as needed.

**ARTICLE \_\_\_\_ BYLAW AMENDMENT/FOSSIL FUEL INFRASTRUCTURE**

**To see if the Town will vote to amend Title VI of the Town Bylaws to add a new provision prohibiting the installation of fossil fuel infrastructure in new construction projects and/or major renovation and rehabilitation projects in Arlington; to set forth the terms and scope of such prohibition, and to provide for exemptions to same; or take any action related thereto.**

As the Board likely knows, several communities in the Commonwealth have considered or adopted a prohibition on installation of new infrastructure for fossil fuel-based systems (including natural gas and oil-based systems) in new construction and major renovation projects; most notably Brookline at its November 2019 Special Town Meeting. The overall purpose of these ordinances is to take action to reduce carbon emissions in response to the climate change crisis. Such ordinances have generally been limited in scope to prohibit installation of new gas or oil pipping and systems such as certain boilers, furnaces, and cooktops, primarily in new residential construction but could be broader or narrower in Arlington. Similarly, the scope of exemptions to such prohibitions likely varies considerably.

**ARTICLE \_\_\_\_ BYLAW AMENDMENT/WATER & SEWER LINE REPLACEMENT**

**To see if the Town will vote to amend the Town Bylaws to require inspection, and as needed, repair or replacement of residential and commercial water and/or Sewer connections prior to the sale of any privately owned property within the Town of Arlington; or take any action related thereto.**

A version of this article limited to water lines appeared on last year's warrant. The Director of Public Works requests your consideration of whether or not further discussion is merited on the subject both for water and sewer lines. In short, the goals of a water and/or sewer line replacement bylaw are to conserve water, address water costs associated with leaks, and replace environmentally disadvantageous materials, hopefully at a time when homeowners will have additional financial resources to make any necessary repairs or replacements.

**ARTICLE \_\_\_\_**

**TOWN BYLAW AMENDMENT/ MUNICIPAL  
AFFORDABLE HOUSING TRUST FUND**

**To see if the Town will vote to accept Massachusetts General Laws c. 44 § 55C, to authorize the creation of a Municipal Affordable Housing Trust Fund to support the development of affordable housing in Arlington, establish a new bylaw for the administration of same; or take any action related thereto.**

This warrant article is requested by the Housing Plan Implementation Committee (“HPIC”) as a means to provide a new and invaluable tool to the Town’s goal of creating and supporting affordable housing in Arlington. An Affordable Housing Trust provides significant flexibility and additional resources over and above existing resources for affordable housing. HPIC continues to work on a proposed version of the bylaw itself, but the following provides an overview of the operation and scope of an Affordable Housing Trust bylaw in Arlington for the Board in its consideration of whether or not to support an article on the 2020 Warrant:

**ARLINGTON AFFORDABLE HOUSING TRUST FUND**

**Section 1. Name of the Trust**

The Trust shall be called the “Arlington Affordable Housing Trust Fund.”

**Section 2. Purpose**

The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Arlington as defined by the Arlington Zoning Bylaw for the benefit of households earning at or below 80 percent area median income.

**Section 3. Board of Trustees**

- A. Composition. There shall be a Board of Trustees (Trustees) of the Arlington Affordable Housing Trust Fund composed of one ex officio non-voting member and seven voting members. The Town Manager or the Town Manager’s designee shall serve as the ex officio member. The voting members shall include: a member of the Select Board (designated by the Select Board) and six members appointed by the Select Board. The voting members shall include residents with relevant experience in the fields of real estate, housing, banking, finance, law, architecture, social services, or other areas of expertise applicable to advancing the purpose and goals of the Trust.
- B. Appointment of Trustees. Trustees shall serve for a term of two years, except that two of the initial Trustee appointments shall be for a term of one year, and may be re-appointed at the discretion of the Select Board.
- C. Officers. The Trustees shall designate a chair, vice chair, treasurer, and clerk.
- D. Removal. A Trustee may be removed by the Select Board for cause following a hearing.
- E. Declaration of Trust. The Trustees are authorized to execute a Declaration of Trust and Certificate of Trust for the Arlington Affordable Housing Trust Fund, to be recorded with

the Middlesex South Registry of Deeds and filed with the Middlesex South Registry District of the Land Court, following approval by the Select Board.

F. Authority and Responsibilities.

- 1) The powers of the Trustees, all of which shall be carried on in furtherance of the purposes set forth in G.L. c.44, §55C, and inclusive of any future amendments, and pursuant to the provisions of a Declaration of Trust to be approved by the Select Board, shall include the following:
  - a) To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B; provided, however, that any such money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the Trust, and such funds shall be accounted for separately by the Trust; and provided further, that at the end of each fiscal year, the Trust shall ensure that all expenditures of funds received from said chapter 44B are reported to the Arlington Community Preservation Act Committee for inclusion in the community preservation initiatives report, form CP-3, to the Department of Revenue;
  - b) To purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;
  - c) To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deem advisable notwithstanding the length of any such lease or contract;
  - d) To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;
  - e) To employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;
  - f) To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
  - g) To apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds

for such purpose, and to create reserves for depreciation depletion or otherwise;

- h) To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
  - i) To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;
  - j) To carry property for accounting purposes other than acquisition date values;
  - k) With Town Meeting approval, to borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge Trust assets as collateral;
  - l) To make distributions or divisions of principal in kind;
  - m) To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the Trustees may deem appropriate;
  - n) To manage or improve real property and to abandon any property which the Trustees determine not to be worth retaining;
  - o) To hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate; and
  - p) To extend the time for payment of any obligation to the Trust.
- 2) The powers and duties enumerated above are intended to encompass all powers and duties of the Trustees. Any action, power or duty not enumerated above shall require prior approval of the Select Board.

#### **Section 4. Acts of Trustees**

- A. A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees, with the exception that any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property must be approved by at least two-thirds of the appointed Trustees.
- B. No Trustee shall be required to post bond.
- C. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.



- D. Any borrowing by the Trust shall require the prior approval of the Arlington Town Meeting, and may not exceed 80 percent of the Trust's total assets. Any debt incurred by the Trust shall not constitute a pledge of the full faith and credit of the Town of Arlington, and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Arlington, with an acknowledgement of said statement by the holder.

## **Section 5. Funds Paid to the Trust**

Notwithstanding any general or special law to the contrary, all moneys paid to the Trust in accordance with any zoning bylaw, exaction fee, or private contribution shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. General revenues appropriated into the Trust become Trust property and these funds need not be further appropriated to be expended. All moneys remaining in the Trust at the end of any fiscal year, whether or not expended by the Trustees within one year of the date they were appropriated into the Trust, remain Trust property set forth in G.L. c.44, §55C.

## **Section 6. Meetings of the Trust**

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, G.L. c. 39, §§ 23A, 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

## **Section 7. Custodian of Funds**

The Arlington Treasurer/Collector shall be the custodian of Trust's funds and shall maintain separate accounts and records for such funds. Any income or proceeds received from the investment of funds shall be credited to and become part of the Trust Fund. In accordance with G.L. c. 44, § 55C, the books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices or take any other action relative thereto. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Select Board. The Trustee designated as treasurer shall also liaise with the custodian of the funds on a monthly basis.

## **Section 8. Legal Status**

- A. The Trust is public employer and the Trustees are public employees for the purposes of G.L. c. 258.
- B. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G.L. c. 268A.
- C. The Trust is exempt from G.L. c. 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

- D. The Trust is a governmental body for purposes of Sections 23A, 23B and 23C of G.L. c. 39.
- E. The Trust is a board of the Town for purposes of G.L. c. 30B and G.L. c. 40 § 15A but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the town shall be exempt from said Chapter 30B.

### **Section 9. Duration of the Trust**

This Trust shall be of indefinite duration, until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Select Board for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Select Board, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.