




**Town of Arlington
Legal Department**

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To: Board of Selectmen

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David Good, Chief Technology Officer
Fred Ryan, Police Chief
Christine Bongiorno, Director of Health & Human Services
Proponent of Articles

From: Douglas W. Heim, Town Counsel 

Date: February 5, 2016

Re: Annual Town Meeting Warrant Articles ##24, 26, and 27.

I write to provide the Board of Selectmen a summary of the above-referenced warrant articles to assist in the Board's consideration of these articles at its upcoming hearing on February 8, 2016. I note that in this instance, there are no reference materials from this Office for the articles discussed herein.

ARTICLE 24

BYLAW AMENDMENT/ CAMPING PROHIBITED ON PUBLIC PROPERTY

To see if the Town will vote to amend the Town Bylaws to establish an Article prohibiting camping on all public property and to take any action related thereto.

(Inserted at the request of the Town Manager)

This article is presented on the advice of the Legal Department in consultation with the Arlington Police Department ("APD") and Health and Human Services Department ("HHS"). In short, its purpose is to ensure that Arlington Police and other appropriate Town Departments have the tools necessary to fairly and adequately address safety and sanitation concerns created by persons camping overnight on public property such as Arlington's parks, school grounds, or other land owned by the Town or Commonwealth without the prior permission.

While some specific concerns have been created by homeless encampments in Arlington, this bylaw addresses a broader scope of concerns. Moreover, establishing a bylaw that by default prohibits overnight camping does not divest APD or HHS of their discretion to determine the most appropriate courses of action to address community concerns. Further, it must be stressed that with respect to homeless persons camping in Arlington, both APD and HHS emphasize their respective commitments to assisting homeless persons attain appropriate resources and shelter.

Finally, the proposed bylaw does not impact camping on private property or public property *with the permission of the appropriate Town or Commonwealth Department*. As such, any person or group seeking to camp on Town land, would merely need to seek permission in advance, providing appropriate details and complying with reasonable rules and regulations.

Based on the foregoing, the following presents a suggested motion for Town meeting:

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); or*
- (b) Sleeping out-of-doors atop and or covered by material (i.e. bedroll, cardboard, newspaper); or*
- (c) Cooking over an open flame or fire out-of-doors (i.e. campfire).*

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.

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

To see if the Town will vote to provide email accounts for the exclusive use of Town business to members of the Board of Selectmen, School Committee, Finance Committee, Board of Assessors, Redevelopment Board, and possibly other public bodies; or take any action related thereto.

(Inserted at the request of Christopher Loreti and ten registered voters)

This article was inserted by the citizen petition of Mr. Christopher Loreti. It is my understanding that Mr. Loreti will present further information at hearing, though the clear objective is to provide some action to ensure that Town e-mail accounts for members of certain elected and appointed boards and bodies are made available. At present, such an option for Town officials is not codified in the bylaws, though the Town's Information Technology Department makes e-mail accounts available to elected and appointed officials in appropriate circumstances. I assume, without being certain, that the proposed action would eliminate such discretion for the listed boards, committees, and commissions, and potentially others.

In my opinion non-employees cannot be required to use a Town e-mail account. Further, there is likely additional administrative cost to be incurred setting up and maintaining additional

Town accounts. However, regardless of whether a resolution or bylaw based on this article were approved, all persons using Town accounts, including volunteers must read and sign the Town's Acceptable Use Policy.

ARTICLE 27

VOTE/LOBBYING BY PUBLIC OFFICIALS

To see if the Town will vote to prohibit policy-making elected and appointed officials from lobbying or engaging others to lobby on their behalf, on matters affecting the Town unless the specific lobbying initiatives have been approved at an open session of a public meeting of a public body of the Town; or take any action related thereto.

(Inserted at the request of Christopher Loreti and ten registered voters)

This article was inserted by the citizen petition of Mr. Christopher Loreti. It is my understanding that Mr. Loreti will present further information at hearing. Based on the article itself and earlier information provided by the proponent, my expectation is that a proposed vote would seek to prohibit elected and appointed officials from lobbying state officials directly or indirectly on various issues without first making a public vote to authorize such lobbying. As conveyed to the proponent, it is difficult to fully assess the general proposal without knowing further details, most significantly how "lobbying" shall be defined, and who shall determine what constitutes lobbying by what process.

I am not presently aware of any other examples of this type of local bylaw or regulation. State Ethics Laws applicable to public officials are oriented towards prohibiting accepting gifts from lobbyists as defined by M.G.L. c. 268A. Moreover, the Massachusetts Lobbying Law, M.G.L. c. 3 §§ 39-50, excludes "employees or agents of the commonwealth or of a city, town, district or regional school district who are acting in their capacity as such employees or agents..." from its provisions. c. 3 § 50.

While the overall intent of the article is apparent, without knowing further specifics, my chief concern is whether or not a proposed vote put before Town Meeting would encroach upon authorities and duties reserved for elected bodies such as this Board or the School Committee and their members, the Town Manager, or other Town officials traditionally vested with discretion to advocate the policy interests of the Town, particularly in time-sensitive matters. I also hold some concerns about the potential breadth of Town officials covered under a resolution or bylaw to this effect, and the ability of elected officials to publicly assert positions and prerogatives, which may not be held by a majority of elected bodies.