



**Town of Arlington
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager
John Leone, Town Moderator
Resident and Committee Petitioners

From: Douglas W. Heim, Town Counsel & Michael Cunningham, Deputy Town Counsel

Date: February 17, 2021

Re: Warrant Articles 12, 13, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, and 91

The Legal Department writes to provide the Select Board a summary of the above-referenced 2021 Annual Town Meeting warrant articles to assist in the Board's consideration of these articles at its upcoming hearings on February 22, 2021. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough." The majority of the articles for your consideration on the 22nd are resolutions, which the Board understands are generally speaking advisory statements, policy positions, or affirmations of Town Meeting sometimes outside the scope of the Meeting's regular jurisdiction, rather than binding, legally enforceable ordinances.

**ARTICLE 12 BYLAW AMENDMENT/CHANGING COLUMBUS DAY TO
INDIGENOUS PEOPLES DAY**

To see if the Town will vote to celebrate and recognize the heritage of the peoples indigenous to Massachusetts and Arlington by amending Title I, Article 6: Classification and Compensation Plans and Human Resource Bylaw, Section 16, Holidays, to rename “Columbus Day” as “Indigenous Peoples Day”; or take any action related thereto.

(Inserted by the Select Board at the request of the Arlington Human Rights Commission)

This Article, inserted at the request Arlington Human Rights Commission, seeks to amend the Town Bylaws to rename the federal and state holiday known as “Columbus Day” to “Indigenous Peoples Day”. The holiday falls annually on the second Monday in October. It is expected that a member of the Human Rights Commission or a designated proponent will set forth the full reasoning for the proposed Bylaw change, including the stated purpose “to celebrate and recognize the heritage of the peoples indigenous to Massachusetts and Arlington...”

It is noted that Columbus Day has been celebrated unofficially in the United States since the early 18th century, and was officially proclaimed a federal holiday in 1937, with official designation as the second Monday in October established in 1971. In Massachusetts, G.L. Part I, Title I, chapter 4, section 7, clause 18 sets aside the second Monday of October as a Massachusetts state holiday, and G.L. Part I, Title II, chapter 6, section 12V provides that the Governor declare that day to be Columbus Day. It is likely that if the proposed Bylaw change is adopted, it would not conflict with Massachusetts state law. State law indicates that the governor’s proclamation of the second Monday in October as Columbus Day only include a statement “recommending that it be observed by the people.” Specifically, and more completely, M.G.L. c. 6, §12V sets out:

“[t]he governor shall annually issue a proclamation setting apart the second Monday in October as Columbus Day and recommending that it be observed by the people, with appropriate exercises in the schools and otherwise, to the end that the memory of the courage, perseverance and spiritual fervor of Christopher Columbus, discoverer of America, may be perpetuated.” Accordingly, the permissive language of the statute does not appear to create a conflict with the proposed Town Bylaw change to rename “Columbus Day” as “Indigenous Peoples Day”.

It is further noted that several cities and towns in Massachusetts, including Amherst, Brookline, Cambridge, Great Barrington, Northampton, Somerville and Salem (celebrates both)

have passed Resolutions in recent years that recommend observance of Indigenous Peoples Day in place on Columbus Day on the second Monday in October. Our research has not revealed that this has been done previously by Bylaw change. Rather, recent changes by other municipalities have been made by Resolution. Legislation was filed at the state level in Massachusetts in 2019 to have the governor issue a proclamation setting forth the second Monday in October as Indigenous Peoples Day, instead of Columbus Day, but it not pass into law. The legislation was refiled On February 4, 2021 in the new legislative session and has been designated as SD. 664.

One further point for the Board's consideration should be that the bylaw change should take care to note that the observance of Indigenous Peoples Day would not add a new holiday for observation by Town employees. Rather, for employee purposes, it would stand in the place of any state or federal observance of "Columbus Day."

If the Board is inclined to endorse this article, an appropriate motion would be:

VOTED: That Title I, Article 6, Section 16 ("Holidays") of the Town Bylaws is hereby amended so as to read as follows:

Section 16. Holidays

(ART. 44, ATM –06/16/97) (ART. 17, ATM – 05/30/07)

In order to qualify for holiday credit, a regular employee shall have worked on the last regularly scheduled work day prior to, and the next regularly scheduled work day following such holiday, unless it is an absence for which compensation is payable as provided under this by-law.

The following days in each year shall be considered as holiday credits:

<i>New Year's Day</i>	<i>Labor Day</i>
<i>Martin Luther King Day</i>	<i>Columbus Day <u>Indigenous Peoples Day (known as the state and federal holiday "Columbus Day")</u></i>
<i>Washington's Birthday</i>	<i>Veterans' Day</i>
<i>Patriot's Day</i>	<i>Thanksgiving Day</i>
<i>Memorial Day</i>	<i>Christmas</i>
<i>Independence Day</i>	<i>Christmas Eve Day if same Falls on a Monday Through Friday</i>

Whenever a holiday falls on Saturday, another working day off with pay shall be arranged at the discretion of the department head. Good Friday shall be considered as half day holiday credit. The day following Thanksgiving shall be treated as a holiday unless an employee is scheduled to work same by the department head in which event the employee will be granted another day off at the discretion of the department head.

ARTICLE 13

BYLAW AMENDMENT/ADDING JUNETEENTH INDEPENDENCE DAY TO HOLIDAYS

To see if the Town will vote to amend *Title I, Article 6: Classification and Compensation Plans and Human Resource Bylaw, Section 16, Holidays*, to include Juneteenth Independence Day in the list of holidays, in accordance with Clause Eighteenth of Section 7 of Chapter 4, and Sections 13 and 16 of Chapter 136, of the General Laws of the Commonwealth of Massachusetts, as amended by the bill signed by Governor Charlie Baker on July 24, 2020; or take any action related thereto.

(Inserted by the Select Board at the request of the Arlington Human Rights Commission)

This Article has been inserted at the request of the Arlington Human Rights Commission. It is expected that a member of the Commission will set out the reasoning for this proposed Bylaw amendment. In short, it is noted that Juneteenth Independence Day is a celebration of the anniversary of June 19, 1865, the date when African-Americans in Galveston, Texas first learned of the Emancipation Proclamation, passed more than two years earlier.

The date is not yet a federal holiday, but in 2007, Massachusetts became the twenty fifth state to formally recognize the holiday. As set forth in M.G.L. c. 6, §15BBBBB, “[t]he governor shall annually issue a proclamation setting apart the nineteenth of June as Juneteenth Independence Day, to be observed on June 19th of each year, in recognition of June 19, 1865 when Union General Gordon Granger announced freedom for all slaves in the Southwestern United States and in recognition of the end of slavery in the United States as well as the significant contributions, individuals of African descent have made to the commonwealth and to the United States and recommending that said day be observed in an appropriate manner by the people.” The statute, originally enacted in 2007, was amended in 2020 to eliminate language that the holiday be observed on the Sunday that is closest to June 19th, thus creating a new observed holiday.

It should be noted that the Town is still working on how the observance of Juneteenth will affect various Town employees and collective bargaining units.

If the Board is inclined to endorse this article, an appropriate motion would be:

VOTED: That Title I, Article 6, Section 16 (“Holidays”) of the Town Bylaws is hereby amended so as to read as follows:

Section 16. Holidays

(ART. 44, ATM –06/16/97) (ART. 17, ATM – 05/30/07)

In order to qualify for holiday credit, a regular employee shall have worked on the last regularly scheduled work day prior to, and the next regularly scheduled work day following such holiday, unless it is an absence for which compensation is payable as provided under this by-law.

The following days in each year shall be considered as holiday credits:

<i>New Year's Day</i>	<i>Labor Day</i>
<i>Martin Luther King Day</i>	<i>Columbus Day</i>
<i>Washington's Birthday</i>	<i>Veterans' Day</i>
<i>Patriot's Day</i>	<i>Thanksgiving Day</i>
<i>Memorial Day</i>	<i>Christmas</i>
<i><u>Juneteenth Independence Day</u></i>	<i>Christmas Eve Day if same falls on a Monday</i>
<i>Independence Day</i>	<i>Through Friday</i>

Whenever a holiday falls on Saturday, another working day off with pay shall be arranged at the discretion of the department head. Good Friday shall be considered as half day holiday credit. The day following Thanksgiving shall be treated as a holiday unless an employee is scheduled to work same by the department head in which event the employee will be granted another day off at the discretion of the department head.

ARTICLE 78

**RESOLUTION/TREE CANOPY AS A
PUBLIC HEALTH RESOURCE**

To see if the Town will vote to adopt a resolution recognizing Arlington’s tree canopy as a public health resource; or to take any action related thereto.

(Inserted at the request of Beth Melofchik and ten registered voters)

To our understanding, the purpose of this article is to pass a resolution affirming the Town’s values with respect to its Tree Canopy by recognizing that the tree canopy serves as a public

health resource for multiple reasons ranging from cleaner air to climate resiliency. Various Town bylaws, regulations, and plans agree with the general notion asserted, including Title V, Article 16 of the Town Bylaws (“Tree Protection and Preservation”), section 1 (“Findings and Purpose”), which states as follows:

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.

We expect Ms. Melofchik will provide further information on the expected parameters of the resolution and definition of a public health resource, as well as the rationale for pursuing the resolution generally. It should be noted however that a resolution of Town Meeting, does not necessarily impact decision-making authorities in those circumstances where tree removal is at issue. For example, while a Town Meeting resolution may inform a general sense of the community’s values on some policy level, it would not in and of itself alter what criteria are utilized under the Wetlands Protection Act or our local wetlands bylaw before the Conservation Commission in evaluating an application.

ARTICLE 79

RESOLUTION/ENCOURAGEMENT OF ENERGY EFFICIENT AND/OR SUSTAINABLE ENERGY INSTALLATIONS IN HISTORIC DISTRICTS

To see if the Town will vote to urge the Arlington Historic Districts Commission to allow installation in the Historic Districts of any solar panel, heat pump, or other energy-efficient technology that does not cause irreversible changes to historic features or materials; or to take any action related thereto.

(Inserted at the request of Susan R. Doctrow and ten registered voters)

This article proposes a non-binding resolution to encourage the Arlington Historic District Commissions (a series of seven commissions composed of primarily at-large members and members specific to each historic district) to permit installation of any energy-efficient technology that does not cause “irreversible changes to historic features or materials” of

applicable structures. We expect the proponent will further detail the intended scope and parameters of this resolution.

To provide context to the resolution, the Massachusetts Historic Districts Act G.L. c. 40C, empowers communities to protect and preserve historic resources in specifically defined historic districts (typically neighborhoods in Arlington rich with certain periods of architecture and features) through a local review process carried out here by a series of Arlington Historic District *Commissions*. The general process and criteria for evaluating repairs, renovations and new construction in an historic district are set forth in Article 4 , Section 2 (“Factors to Be Considered by the Commissions” of Title VII of the Town’s Bylaws (“Historic Districts”) as follows:

In passing upon matters before it, the relevant Commission shall consider, among other things, the historic and architectural value and significance of the site, building, or structure, the general design, arrangement, texture, material, and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures, the Commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the Commission may in appropriate cases impose dimensional and set-back requirements other than those required by the Zoning By Law.

The Commission shall not consider interior arrangements or architectural features not subject to public view.

The Commissions’ criteria and processes are further detailed in Arlington Historic District Commissions’ Design Guidelines.

AHDC reviews typically focus on exterior design and presentation matters and those portions of houses that are viewable from the street, as the notion of districts is in part rooted on maintaining the historic character of streetscapes. As one might expect, preserving historic visual presentations while installing modern technologies such as solar panels poses both broad and site-specific questions and challenges. The present policy of the AHDC (as codified in its Design Guidelines) is to consider solar panels for example on a case-by-case basis with the burden on owners to demonstrate that panels “will not be detrimental to the historic fabric of the structure or the district.” Further, the Commissions favor freestanding panels or detached on-site

panels and placement on accessory structures before placement on primary historic district structures.

A resolution may prove instructive to the Commissions in terms of the viewpoint of Town Meeting, but it cannot determine the District Commissions' policies.

**ARTICLE 80 RESOLUTION/FACILITIES DEPARTMENT
REPORT/CLARIFY RESPONSIBILITIES, TRACK
PROGRESS OF THE DEPARTMENT OF FACILITIES AND
MAINTENANCE**

To see if the Town will vote to endorse a resolution calling for a quarterly report of achievements based on the original departmental plan, finalized January 2015, to be provided to the Select Board; or take any action related thereto.

(Inserted at the request of Barbara Thornton and ten registered voters)

We anticipate that Ms. Thornton will provide further information on the rationale for this resolution of Town Meeting, but to our understanding the overall goal of the article is to encourage periodic facilities reports directly to the Select Board. As the Board knows, it may request information and reports from the Facilities Department through the Town Manager at its discretion. A Town Meeting resolution may well be an avenue for a broader discussion of issues and/or an affirmation of Town Meeting's perspective, but it is not required for the Select Board in order to determine whether or not or which departments will provide you quarterly reports.

**ARTICLE 81 RESOLUTION/BROADWAY CORRIDOR DESIGN
COMPETITION**

To see if the Town Meeting will vote to allow the Town to plan and sponsor a design competition to encourage new housing and mixed use construction in the Broadway Corridor area of Arlington. This warrant article builds on findings from the Fall 2019 Broadway Corridor Study, and creates a "demonstration area project"; or take any action related thereto.

(Inserted at the request of Barbara Thornton and ten registered voters)

To our understanding, Ms. Thornton seeks to gain Town Meeting's endorsement for a design competition rooted in the 2019 Broadway Corridor Study. While the Department of Planning and Community Development and/or the Arlington Redevelopment Board may wish to provide supplemental comment on this matter, the resolution may be a vehicle for forwarding discussions of how mixed-use might be realized on a broader score in Arlington. However, as with any

Town government-initiated committees to no more than seven per year; or take any action related thereto.

(Inserted at the request of Barbara Thornton and ten registered voters)

The instant resolution proposes a suite of measures meant to ensure respectful and productive management of Town-created public bodies, and further ensure that public bodies continue to serve effective purposes. Among the measures proposed is support for local Town public bodies by offering training for at least one member to serve as a facilitator in the interest of maintaining respectful productive dialogues, as well as to assess the productivity of each Town-created public body at least every five years. We note that Town Meeting may dissolve anybody created by a simple vote of Town Meeting, but obviously not those created by bylaw, state law, or as subcommittees or advisory boards of another Town entity like the Select Board.

**ARTICLE 84 RESOLUTION/FORMALLY INVITE ARLINGTON
HOUSING AUTHORITY REPRESENTATIVES TO PRESENT TO TOWN MEETING**

To see if the Town will vote to endorse a resolution calling for a the Director of the Arlington Housing Authority to be formally invited to present the AHA proposed annual budget and other key initiatives to the Town Meeting as a regular, annual event; or take any action related thereto.

(Inserted at the request of Barbara Thornton and ten registered voters)

This article seeks Town Meeting's resolution to formally invite the Arlington Housing Authority to report to Town Meeting or other appropriate annual event for public education and understanding. As the Board knows, the Housing Authority is not an entity of the Town Government, even though there are limited circumstances in which the Town Government is required to participate in limited fashion in business that affects the Authority (for example, appointment of a tenant representative on the Housing Authority per the recently revised state statute). Town Meeting may of course extend such an invitation to the Housing Authority.

ARTICLE 85

RESOLUTION/ACKNOWLEDGING NATIVE LANDS

To see if the Town will vote to celebrate and recognize the heritage of the peoples indigenous to Massachusetts and Arlington by resolving to encourage the reading of this land acknowledgement statement at the beginning of all public meetings of the Town; or to take any action related thereto.

Accordingly, the text of such a land acknowledgement statement would read:

“We acknowledge that the Town of Arlington is located on the ancestral lands of the Massachusett Tribe, the tribe of Indigenous peoples from whom the Colony, Province, and Commonwealth have taken their names. We pay our respects to the ancestral bloodline of the Massachusett Tribe and their descendants who still inhabit historic Massachusett territories today.”

(Inserted at the request of the Arlington Human Rights Commission)

This Article was developed and drafted by the Arlington Human Rights Commission. It is expected that a representative or member of the Human Rights Commission will provide further details on the rationale for the proposal. As stated, the resolution seeks to recognize and respect peoples indigenous to Massachusetts and Arlington as historical stewards of the land and the relationship that exists between peoples indigenous and their traditional territories. This Article, if passed, would establish a non-binding Resolution that would leave to the discretion of the public meeting’s presiding chairperson whether a land acknowledgment is read at the beginning of a public meeting.

ARTICLE 86

RESOLUTION/CELEBRATING INDIGENOUS PEOPLES DAY

To see if the Town will vote to celebrate and recognize the heritage of the peoples indigenous to Massachusetts and Arlington by resolving to encourage celebration of Indigenous Peoples Day throughout the Town on the second Monday in October; or take any action related thereto.

(Inserted at the Request of the Arlington Human Rights Commission)

This Article was developed and drafted by the Arlington Human Rights Commission and is nearly identical in substance to what the Select Board has already endorsed within its capacity and jurisdiction. It is expected that a representative or member of the Human Rights Commission will provide further details on the rationale for the proposal. As stated, the resolution seeks to celebrate and recognize the heritage of peoples indigenous to Massachusetts and Arlington by resolving to encourage the celebration of Indigenous Peoples Day throughout

Arlington on the second Monday in October. This Article, if passed, would establish a non-binding Resolution that would encourage and promote the celebration of the rich and diverse history and cultures of Indigenous Peoples.

It is noted that several cities and towns in Massachusetts, including Amherst, Brookline, Cambridge, Great Barrington, Northampton, Somerville and Salem (celebrates both Columbus Day and Indigenous Peoples Day) have passed resolutions in recent years that recommend and encourage the observance of Indigenous Peoples Day in place of Columbus Day on the second Monday in October.

**ARTICLE 87 RESOLUTION/OVERNIGHT PARKING WAIVER FOR
RESIDENTS OF MULTI-FAMILY DWELLINGS IN
PRECINCT 4**

Be it hereby resolved, that it is the will of Town Meeting that a waiver of Town bylaws be adopted to allow residents of multi-family dwelling with long, narrow driveways in Precinct 4 in East Arlington to park overnight on Town streets outside their homes. Such a waiver is intended to address the unique hardship faced by residents who experience significant delays and inconvenience during morning hours when trying to gain access to their vehicles blocked-in by those other residents; or take any action related thereto.

(Inserted at the request of Silvia Dominguez and ten registered voters)

**ARTICLE 88 RESOLUTION/RESIDENT PARKING PROGRAM FOR
PRECINCT 4**

Be it hereby resolved, that it is the will of Town Meeting that the Town establish a resident permit parking program for precinct 4 in East Arlington in order to alleviate weekday street parking scarcity created by Alewife T Commuters. Such a program would make allowances for contingencies including but not limited to the parking needs of Mass Ave businesses; DPW snow removal; emergency vehicle access; and visitor parking; or take any action related thereto.

(Inserted at the request of Silvia Dominguez and ten registered voters)

This pair of articles seeks resolutions of Town Meeting to support specific parking policies for Precinct 4 – overnight parking waivers for multi-family dwellings and/or a permit parking program for Precinct 4 in recognition of the specific parking constraints and demands of the precinct. As the Select Board knows, Town Meeting does not have general authority over

regulation of public street parking, overnight or otherwise, except to the extent parking is required by the Arlington Zoning Bylaw. Rather, the substance of both of these articles is purely within the Select Board's jurisdiction.

In past years, the Select Board has noted the results of a non-binding Town-wide referendum on overnight parking, as well as the costs and operational challenges of implementing a parking program similar to those which are employed in Somerville or Cambridge. Town Meeting may certainly discuss matters within the context of the proposed resolution, but cannot bind the Select Board with a favorable or unfavorable action on these articles.

ARTICLE 89

RESOLUTION/PRINCE HALL DAY

To see if the Town will vote to declare June 24 as Prince Hall Day; or take any action related thereto.

(Inserted at the request of Beth Melofchik and ten registered voters)

This resolution seeks to honor 18th Century abolitionist and Revolutionary War era civil rights leader and founder of African-American Freemasonry, Prince Hall. To our understanding, Hall lived and worked predominantly in Boston and is buried in the North End's Copp's Hill Burying Ground. However, in 1868 a member of Boston's "Prince Hall Freemasons" deeded land in Arlington known as Prince Hall Mystic Cemetery or simply Prince Hall Cemetery to his lodge to serve as a burial ground for members, thus establishing a special connection between Hall's legacy and Arlington. Upon information and belief, the Arlington Historical Society identified the site after nearly one hundred years of disuse, and following restoration efforts led by the Society, the Prince Hall Masons, and Town grant funds, rededicated the cemetery and secured the site on the National Register of Historic Places. Since the time of its rededication, members of the Prince Hall Grand Lodge have held an annual Memorial Day ceremony at the cemetery joined by the Arlington Historical Society.

The Select Board may, independent of Town Meeting, declare June 24th or another date Prince Hall Day, as is its usual practice. A resolution of Town Meeting may of course reinforce same and we expect the proponent to outline the substantive resolution for the Meeting to you.

ARTICLE 90

RESOLUTION/PROGRAM TO INSTALL ELECTRIC VEHICLE CHARGING STATIONS

Be it hereby resolved, that this is the will of Town Meeting that the Town of Arlington should implement, along with adequate funding, a comprehensive program to install electric vehicle charging stations throughout the Town starting with East Arlington where none have been installed to date; or take any action related thereto.

(Inserted at the request of Silvia Dominguez and ten registered voters)

While we expect Ms. Dominguez will provide further detail on the purpose, scope, and parameters of the instant article, it is apparent that goal of this article is a resolution to establish electrical vehicle charging stations throughout the Town, with an emphasis on East Arlington. It is unclear at this juncture whether the proposal is oriented towards encouraging and/or subsidizing private development of charging stations or if municipal charging stations are contemplated. In either case, Town Meeting may of course resolve to support such programs. In the case of municipal charging stations, significant consideration would have to be afforded to the nature and extent of the service the Town would provide for the benefit of private residents as opposed to vehicles for Town or School Department vehicles.

ARTICLE 91

RESOLUTION/DECLARE CLIMATE EMERGENCY IN THE TOWN OF ARLINGTON

To see if the Town will vote to endorse a resolution calling for a Declaration of Climate Emergency in which the Town would take immediate action in areas within the Town's authority to reduce greenhouse gas emissions, report on the quantity of the Town's emissions, promote and encourage climate action by other government authorities, and protect the rights of people at greatest risk, for the purpose of reducing harm from the pace of warming and global ecological collapse to the maximum extent possible; or take any action related thereto.

(Inserted at the request of Parke Wilde and ten registered voters)

This article seeks a resolution of Town Meeting to recognize the immediacy and scope of the climate change crisis by declaring a "climate emergency" in the Town of Arlington and setting forth a series of action areas, goals, and reporting measures to ensure that Arlington takes steps necessary to address the threat of climate change to the Town and its residents (as well as the region, nation, and world of course). As a resolution of Town Meeting, consistent with comment on all the foregoing resolution articles, it is important to underscore that action under

this article is not binding on the Town or its decision-makers, such as permit granting authorities, etc. Similarly, it cannot in and of itself form the basis for consideration of climate change or resiliency as a matter of law. It does however call for policies and ordinance reforms that can achieve such ends, some, if not many of which have been undertaken to varying degrees ranging from the Clean Energy Future Committee's impending "Net Zero Plan" and the Town Managers' efforts to account for and reduce the Town's carbon footprint or the installation of solar panels on Town and School facilities, to the Conservation Commission's recently revised regulations and the special legislation on fossil-fuel infrastructure regulations passed at the 2020 Fall Special Town Meeting. Finally, this Office notes its appreciation for the proponents' early and comprehensive efforts to consult with many Town officials and committees, including the Legal Department on both the form and the substance of their draft resolution.