



**Town of Arlington
Legal Department**

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MEMORANDUM

TO: Select Board

FROM: Douglas W. Heim

DATE: March 5, 2020

RE: **Votes and Comments for Articles: 12, 13, 78, 80, 82, 84, 85, 86, 87, and 88**

I write to provide the Board the following as draft Final Votes and Comments for your consideration at the March 9, 2020 Select Board meeting regarding the previously heard, above-referenced warrant articles.

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

VOTED: That Title I, Article 6, Section 16 ("Holidays") of the Town Bylaws be and is hereby amended to strike the words "Columbus Day" and insert the words "Indigenous Peoples Day (known as the state and federal holiday 'Columbus Day')'" 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:

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

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.

(5 – 0)

COMMENT: This Article, inserted at the request Arlington Human Rights Commission, seeks to amend the Town Bylaws to rename the federal and state holiday on the second Monday in October known as "Columbus Day" to "Indigenous Peoples Day". The holiday falls annually on the second Monday in October. The proposed amendment is a piece of a wider effort to celebrate and recognize the heritage of the peoples indigenous to Massachusetts and Arlington in lieu of the often mythologized 15th Century explorer Christopher Columbus and his expeditions and colonies established on behalf of the Spanish Crown.

The Select Board unanimously recommends positive action on this article, and notes that the Massachusetts Legislature is presently considering similar changes to the state law. We further note that the above motion includes the language "known as the state and federal holiday 'Columbus Day'" to make it clear that a new holiday is not being created for Town employees.

ARTICLE 13

**BYLAW AMENDMENT/ADDING JUNETEENTH
INDEPENDENCE DAY TO HOLIDAYS**

VOTED: That Title I, Article 6, Section 16 (“Holidays”) of the Town Bylaws is hereby amended to add a new holiday “Juneteenth Independence Day” 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:

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

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.

(5 – 0)

COMMENT: This Article has also been inserted at the request of the Arlington Human Rights Commission for the purpose of recognize a Massachusetts state holiday – Juneteenth Independence Day – a celebration of the anniversary of June 19, 1865, when African-Americans in Galveston, Texas first learned of the Emancipation Proclamation, passed more than two years earlier. The Commonwealth originally recognized Juneteenth in 2007 as set forth in G.L. c. 6 sec. 15BBBBB, but on a Sunday. In 2020, Massachusetts’ recognition of the holiday was amended so that it would be observed on the 19th of June and thus created a new observed holiday.

The Board thus recommends positive action on this article to join the State in commemorating the importance of Juneteenth. As a technical matter, 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.

ARTICLE 78

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

VOTED: That no action be taken on Article 78.

(4 – 1) Mr. Diggins voted in the negative.

COMMENT: As a general matter, the Select Board supports recognizing and sustaining the value of Arlington's tree canopy. It is not yet clear what the resolution proposes to add to the Town's commitment to or recognition of such a resource whether articulated in the Town's already existing "Tree Protection and Preservation Bylaw;" evidenced in the work of the Tree Committee established by the Select Board; or protected by the Town's Wetlands Bylaw, or the General Law's public shade tree laws. For example, the Town's Tree Preservation bylaw highlights the importance of trees relative to air quality, heat, noise pollution, and flood control, as well as their aesthetic value. While a minority of the Board sees no harm in forwarding the resolution to Town Meeting, the majority does not wish to recommend a resolution without understanding with some specificity what the resolution seeks to recognize where there is broad agreement between the Select Board, Town Departments, and Town Meeting.

ARTICLE 80

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

VOTED: That no action be taken on Article 80.

(5 – 0)

COMMENT: The Select Board appreciates the proponent's proposal and discussion about establishing regular reporting on the state of Arlington's facilities in a public meeting of the Board. The Board makes this recommended vote of no action because a resolution of Town Meeting is not required for the Select Board to take this valuable idea under advisement. Indeed, rather than vote to recommend a Town Meeting discussion of a matter under its jurisdiction, the Select Board voted to establish a bi-annual facilities reporting schedule and set forth parameters for same after hearing.

ARTICLE 82

**RESOLUTION/ADVANCED REGISTRATION AND
ORGANIZATION OF TOWN MEETING SPEAKERS**

VOTED: That no action be taken on Article 82.

(4 – 1) Mr. Diggins voted in the negative.

COMMENT: The Select Board appreciates the goals of the proponent, but also respects the Town Moderator's objections, as well as Arlington's long-standing practices in a representative Town Meeting. Town Meeting may by resolution comment on the Moderator's administration of the Meeting of course. However, in sum, while well intentioned, the Moderator has serious concerns about developing speaker lists or limiting discourse outside of the proceedings of the Meeting in ordinary contexts. The majority of the Board is inclined to defer to the Moderator.

**ARTICLE 83 RESOLUTION/PROTOCOLS FOR DELIBERATIVE
COLLABORATION IN TOWN GOVERNMENT INITIATED CITIZEN**

VOTED: That no action be taken on Article 83.

(4 – 1) Mr. Diggins voted in the negative.

COMMENT: The Select Board recognizes the issues highlighted by the proponent and respects the desire to provide training and resources to boards and commissions where needed. However, Town Meeting has no authority to require any public body engage in such programs. Moreover, it would seem more appropriate to evaluate the need for such resources on a case-by-case basis and then work with relevant town or school departments and support staff to identify available training opportunities tailored to specific circumstances.

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

VOTED: That no action be taken on Article 84.

(5 - 0)

COMMENT: The Select Board supports an invitation being extended to the Arlington Housing Authority (“AHA”), but notes that neither it, nor Town Meeting have any authority to require AHA, which is governed by the State’s Department of Housing and Community Development, not the Town. The Board urges no action because the Town Moderator, present at hearing, advised the proponent and the Board that he will extend an invitation to AHA this year and every following year.

ARTICLE 85 **RESOLUTION/ACKNOWLEDGING NATIVE LANDS**

VOTED: That Town Meeting hereby Adopts the following resolution previously adopted by the Select Board on January 25, 2020:

RESOLVED that all Town entities are encouraged to celebrate and recognize the heritage of the peoples indigenous to Massachusetts and Arlington by including the following land acknowledgement at the beginning of all of the Town’s public meetings in a substantially similar form to the following:

“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.”

(5 – 0)

COMMENT: The Select Board respectfully recommends positive action on this non-binding resolution to encourage, but not require recitation of a land acknowledgment prior to commencing public meetings in a form substantially similar to the language recommended to the Board by the Arlington Human Rights Commission. The purpose of the acknowledgments in whatever form and on whatever schedule any given public body utilizes them, is to recognize and respect peoples indigenous to Massachusetts and Arlington as historical stewards of the land we live upon and the relationship that exists between indigenous peoples in modern American and their traditional territories.

Some members of the Board noted some concern with choosing which historic and present matters bear reflecting upon prior to commencing public meetings. Similarly, Board members also noted that committee and commission chairs have substantial discretion to determine how to structure and operate their meetings. However, on balance, the Select Board unanimously agreed that a non-binding recommendation that boards and bodies provide opportunity for land acknowledgments tailored to their work is important, and that Town Meetings endorsement of same is valuable.

(5 – 0)

ARTICLE 86

RESOLUTION/CELEBRATING INDIGENOUS PEOPLES DAY

VOTED: That Town Meeting hereby Adopts the following resolution previously adopted by the Select Board on January 25, 2020:

WHEREAS the Indigenous Peoples of the lands that would later become known as the Americas and specifically the Massachusett tribe in the lands which would later become

known as Menotomy (from an Algonquian word), have occupied these lands since time immemorial; and

WHEREAS the Town of Arlington, Massachusetts (the “Town”) wishes to honor our nation and town's Indigenous roots, history and contributions; and

WHEREAS the cultures of the Indigenous Peoples of the Americas are worthy of being promoted, their history is rich, diverse, and worthy of celebration; and

WHEREAS the actions and policies of European colonizers of the Americas actively destroyed and suppressed parts of those cultures, and racism has served to perpetuate high rates of poverty for Indigenous Peoples and led to inequities in health, education, and housing, as illustrated most recently with the severe impact of COVID-19 on Indigenous communities; and

WHEREAS the Town has a history of opposing racism, and prominent residents throughout history such as Cyrus Dallin were particularly active in advancing the rights of Indigenous peoples; and

WHEREAS Indigenous Peoples Day was first proposed in Geneva in 1977 by a delegation of Native Nations to the United Nations-sponsored International Conference on Discrimination Against Indigenous Populations in the Americas; and

WHEREAS in 1990, representatives from 120 Indigenous nations at the First Continental Conference on 500 Years of Indian Resistance unanimously passed a resolution to transform Columbus Day into an occasion to strengthen the process of continental unity and struggle towards liberation, and thereby use the occasion to reveal a more accurate historical record; and

WHEREAS the District of Columbia, States of Alaska, Louisiana, Maine, Michigan, Minnesota, New Mexico, Oregon, South Dakota, Vermont, Wisconsin, and localities including Somerville MA, Cambridge MA, Brookline MA, Newton MA, Marblehead MA, Northampton MA, Amherst MA, Portland ME, Los Angeles CA, San Francisco CA, Denver CO, Portland OR, Seattle WA, Columbus OH and many more have adopted Indigenous Peoples Day as a countercelebration, in lieu of Columbus Day, to promote Indigenous cultures and commemorate the history of Indigenous Peoples; and

WHEREAS Columbus Day commemorates the landing of Christopher Columbus in the Americas specifically on the Caribbean islands of The Bahamas on October 12, 1492 and, later, on Hispaniola (present-day countries of the Dominican Republic and Haiti); and voyages of Columbus to the Americas initiated the transatlantic slave trade and the era of conquest, and his governorship of the Caribbean instituted systematic policies of slavery and extermination of Indigenous populations, especially the Taino/Arawak people whose population was reduced from approximately 8 million to 100,000, being further reduced by the continuation of his policies until near-extinction in 1542.

NOW, THEREFORE, BE IT RESOLVED that the Arlington Town Meeting joins the Select Board in proclaiming that the second Monday of October shall be commemorated as Indigenous Peoples Day in Arlington, superseding local references to Columbus Day and in recognition of the position of Indigenous Peoples as native to these lands, and the suffering they faced during and since the European conquest;

and be it further **RESOLVED** that the people of Arlington, as well as local businesses, organizations, and public institutions are encouraged to observe Indigenous Peoples Day by reflecting upon the dispossession of the homelands and villages of the Massachusett people of this region who lived here for millennia prior to the arrival of European settlers, and upon the history of the other Indigenous Peoples who have lived in Arlington, and by celebrating the survival of Indigenous Peoples and recognizing their struggle to perpetuate and celebrate their ancestral heritage and practices, as well as celebrating the thriving cultures and values that Indigenous Peoples have brought and continue to bring to our Town and the wider community;

and be it further **RESOLVED** that in any observances, Arlington shall endeavor to include Indigenous representation from amongst its residents and from the Massachusett tribe and will also seek representation from Indigenous organizations in the area such as the North American Indian Center of Boston, United American Indians of New England, Cultural Survival, and IndigenousPeoplesDayMA.org as well as other Arlington community representation from segments of the community;

and be it further **RESOLVED** that the Arlington Public Schools are encouraged to join in this observance with appropriate exercises and/or instruction in all schools around the time of Indigenous Peoples Day, to the end that the culture, history and diversity of Indigenous Peoples be celebrated and perpetuated; and

and be it further **RESOLVED** that local businesses, organizations, and public institutions are encouraged to evaluate their imagery and insignia, to ensure that representations of Indigenous Peoples are not misappropriated, with a preference for using the Town Seal in official capacities.

(5 – 0)

COMMENT: This Article from the Arlington Human Rights Commission builds upon a January 25, 2020 proclamation and is nearly identical in substance to what the Select Board has already endorsed within its capacity and jurisdiction. While there is some overlap with said previous action, the Board urges Town Meeting’s support for a non-binding Resolution further promote the celebration of the rich and diverse history and cultures of Indigenous Peoples.

The Board takes care to note that celebrating Indigenous Peoples Day is in no way a repudiation of celebration of Italian-Americans and their forebears, as the mythologized Columbus’ expeditions and cruel governance over Caribbean islands has little to do with Italian immigrants

and Italian-Americans' enormous contributions to United States history and culture. Indeed, there was discussion at hearing about whether or not both Indigenous Peoples Day and some form of "Columbus Day" could be celebrated. While it is not an easy matter to navigate ways of celebrating all of the diverse populations in the United States for their unique histories and contributions, the Board is convinced that in light of the injustices suffered by indigenous peoples and the present challenges indigenous persons and communities face, refocusing the holiday in question on the value of the indigenous communities of the past and present should be prioritized here in Arlington.

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

VOTED: That no action be taken on Article 87.

(5 – 0)

COMMENT: The Select Board recommends no action on this article because parking regulation of public streets is within the sole jurisdiction of the Select Board. However, the Board and the article's proponent have committed to further discussions of potential pilot programs in recognition of the substantive issues raised by the proponent.

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

VOTED: That no action be taken on Article 88.

(5 – 0)

COMMENT: Similar to Article 87, the Select Board recommends no action on this article because parking regulation of public streets is within the sole jurisdiction of the Select Board. However, as with the previous article, the Board and the article's proponent have committed to further discussions of potential pilot programs in recognition of the substantive issues raised by the proponent.