



**Town of Arlington
Legal Department**

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To: Select Board

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

From: Douglas W. Heim, Town Counsel

Date: February 7, 2019

Re: Annual Town Meeting Warrant Articles

I write to provide the Board a supplementary summary of the following yet to be numbered warrant article to assist in the Board's consideration of these articles at its upcoming hearing on February 11, 2019.

ARTICLE 80

RESOLUTION/OVERNIGHT PARKING EXEMPTION PROGRAM FOR MEDICAL AND FINANCIAL HARDSHIPS

To see if the Town will vote to or take any action related thereto: A non-binding resolution to support an overnight parking program that provides exemptions for persons with medical and/or financial hardships.

(Inserted at the request of Laura Kiesel and 10 Registered Voters)

This resident petition article calls for a Town Meeting resolution to support a change in the present Overnight Parking Ban Policy in the interests of providing a broader, or at least more procedurally efficient and private, exemption for residents with financial and medical hardships. The proponents of this article understand that Town Meeting lacks the authority to dictate a policy to the Select Board, and as such, have brought forth the instant request for a resolution.

As the Board knows, it acts as Parking Commissioners for the Town pursuant to M.G.L. c. 90 sec. 20A and 20A 1/2 , and therefore is charged with establishing parking rules and penalties. Relative to overnight parking, the Select Board's Parking Policies and Regulations forbid parking for more than one hour from the hours of 1:00 a.m. to 7:00 a.m. This memo will not detail the history and policy rationale behind the ban, but it should be noted that as recently as 2013, a non-binding local ballot question on whether or not the Overnight Parking Ban should be maintained was "approved" by 64% of voters.

The Select Board's articulation of the Overnight Parking Ban allows for both waivers and overnight on-street parking permits (both temporary and permanent) based upon the following criteria/circumstances:

Overnight On-Street Parking Permit (permanent or temporary) is provided by the Board of Selectmen for the following circumstances:

1. Engineering impossibilities for having a driveway (permanent)

Example: utilities running through property disallowing construction;

2. Medical Services (temporary and permanent)

Example of temporary: Hospice care and rehab care Example of permanent: Daily medical care;

3. Driveway construction (temporary)

Example of temporary: driveway and/or side walls being built;

4. Extenuating circumstances (temporary and permanent) Example of temporary: family living arrangement transitions Example of permanent: family living arrangement for safety (ie. restraining order)

The Board's policy also outlines a procedure for residents seeking a permanent on-street permit:

How to Request an Overnight Parking Permit:

To request an On-Street Permit (permanent):

- *Request in writing to the Board of Selectmen's Office. This request will be processed and the applicant will be scheduled as an agenda item within four (4) to six (6) weeks after submittal.*

Inspection reports will be requested from Police and Fire Departments for recommendations.

The fee is \$160.00 for the initial year and renewable yearly for \$75.00.

Overnight Parking Permit requests require the following information:

- *Address (your address, car must be parked in front of your house)*
- *Car registration # and State*
- *Phone number (to best reach you)*
- *Reason for the request*
- *Date of request*

I expect the resident petitioners will outline reasons why either an entirely new exemption scheme or adjustments to the present regulations are compelling and/or necessary. However, it must be stressed that only the Select Board has the authority to establish such a scheme or make such adjustments.

As a final note, permit me to address an issue raised by an advocate for the resolution at the Select Board's last meeting, which appeared to be that the Town faces some potential liability for exclusionary policies under a theory of disparate impact on low and moderate income or disabled persons. In brief, the burden-shifting analysis required to examine disparate impact liability likely rests upon whether or not there are substantial and legitimate reasons for the Town's Overnight Parking Ban and whether or not less impactful alternatives exist. To this Office's understanding, there are a variety of sound reasons for the overnight parking ban. Moreover, comprehensive alternatives have been thoroughly explored and deemed cost-prohibitive. As such, the Board and Town Meeting's exploration of this article should be guided

primarily by those principles which are always considered – balancing competing policy needs with the interests in equity of groups detrimentally affected by a policy like the Overnight Parking Ban – rather than acute concern for legal liability.