



**Town of Arlington
Legal Department**

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To: Select Board

Cc: Adam Chapdelaine, Town Manager
John Leone, Town Moderator
Andrea Nicolay, Library Director
Resident Petitioners

From: Douglas W. Heim, Town Counsel

Date: March 21, 2019

Re: Annual Town Meeting Warrant Articles: 26, 38, 39, 40, 43, 46, 51, 52, and 79

I write to provide the Select Board a summary of the above-referenced 2019 Annual Town Meeting warrant articles in advance of its upcoming hearing on March 25, 2019. As the Board will recall, where draft motions appear, new or additional language is underscored, while removed language is provided in "strikethrough."

ARTICLE 26

BYLAW AMENDMENT/BILLBOARDS AND SIGNS

To see if the Town will vote to amend the Town Bylaws, Title V, Article 1 “Billboards and Signs: Restrictions on Use,” by removing paragraphs A through I to support consolidation of the sign regulations in the Zoning Bylaw; or take any action related thereto.

(Inserted at the Request of the Town Manager)

This article proposes to eliminate much of Town Bylaws Title V, Article I as a complimentary action to Article 17, which proposes to entirely revamp the Zoning Bylaw’s sign regulations. In brief, in the wake of *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015), a Supreme Court decision with wide-ranging impacts on local regulation of non-commercial signage, as well as the Town’s comprehensive Zoning Recodification effort, the Department of Planning and Community Development engaged a consultant in a two-year process to develop an up-to-date set of sign regulations that are constitutionally sound and responsive to present needs. Among the suite of recommendations is the instant article to eliminate redundant regulation of signs and billboards, currently vested largely with the Zoning Enforcement Officer (the Building Inspector), the Zoning Board of Appeals and the ARB, and in smaller part with the Select Board under Title V, Article 1: Billboards and Signs.

A detailed rationale for striking most of this bylaw is provided in the attached memorandum from Deputy Planning Director Erin Zwirko. The portion which is proposed to remain in the Title V, Article 1 is continued regulation of so-called “notices” – temporary flyers advertising one-time yard sales, lost pets, or non-commercial public events. Notices would remain under the Select Board’s jurisdiction because they are predominantly posted in the public way (on light poles, medians, etc), which is controlled by the Board. Violations for illegally posted notices could still be enforced under the revised bylaw and Board regulations (which need not be changed). Should the Select Board be inclined towards favorable action, a motion before Town Meeting would be along the lines of the following:

VOTED: That the Town does and hereby amends Title V, Article 1 (Billboards and Signs) by deleting Sections 1 and 2 in their entirety with the exception of Section 1(J), renaming the article "The Display of Notices", and renumbering the bylaw so as to read in its entirety as follows:

ARTICLE 1: Billboards and Signs-The Display of Notices

Section 1. Restrictions on Use

~~No person, firm, association, or corporation shall erect, display, or maintain, within the limits of the Town, a billboard, sign, or other outdoor advertising device, unless it meets the following requirements or unless it was approved by the Massachusetts Outdoor Advertising Board under Section 30 and 32 of Chapter 93 of the General Laws, or by any amendments or additions thereto, in which case any such sign, billboard, or other outdoor advertising device shall comply with the requirements of this Section (1) one by January 1, 1973:~~

- ~~A. Within fifty (50) feet of any public way;~~
- ~~B. Within three hundred (300) feet of any public park, playground or other public grounds, if within view of any portion of the same;~~
- ~~C. Nearer than fifty (50) feet to any other such billboard, sign or other advertising device, unless said billboards, signs or other advertising devices are placed back to back;~~
- ~~D. On any location at the corner of any public way and with a radius of one hundred and fifty (150) feet from the point where the center lines of such ways intersect;~~
- ~~E. Nearer than one hundred (100) feet to any public way, if within view of any portion of the same, if such billboard, sign or other advertising device shall exceed a length of eight (8) feet or a height of four (4) feet;~~
- ~~F. Nearer than three hundred (300) feet to any public way, if within view of any portion of the same, if such billboard, sign or other advertising device shall exceed a length of twenty five (25) feet or a height of twelve (12) feet;~~
- ~~G. In any event if such billboard, sign or other advertising device shall exceed a length of fifty (50) feet or a height of twelve (12) feet; except that the Selectmen may permit the erection of billboards, signs or other advertising devices which do not exceed forty (40) feet in length and fifteen (15) feet in height if not nearer than three hundred (300) feet to the boundary line of any public way.~~
- ~~H. No billboard, sign, or other advertising device shall be erected, displayed or maintained in any residence district or in any block in which one half or more of the buildings on both sides of the street are used partially or wholly for residential purposes, or in any Planned Unit Development district.~~
- ~~I. No billboard, sign, or other advertising device shall be erected, displayed or maintained until a license has been issued by the Board of Selectmen. Upon receipt of an application for a license to erect, display or maintain a billboard within the limits of the Town, the Selectmen shall hold a public hearing on said application in the Town, notice of which shall be given by posting the same in three or more public places in said Town at least one week before the date of such hearing, or by publication in a local newspaper of general circulation in the Town at least one week before the date of the public hearing. A written statement as to the results thereof shall be forwarded to the applicant containing;~~

~~in the event of a disapproval of such application, the reasons therefor, within thirty days from the date of submission of the application to the Selectmen.~~

- J. Signs erected by a person, town committee, student organization or non-profit organization for the purpose of advertising an individual yard sale, non-commercial public event, or lost pet are hereby referred to as "notices" and are ~~exempt from the provisions of this article of the Town Bylaws~~ subject to Select Board regulations of "The Display of Notices" ~~to be promptly promulgated by the Select Board. upon the passage of this section.~~

Section 2. Signs Related to Premises

~~This By-Law shall not apply to signs or other devices erected and maintained in conformity with law, which advertise or indicate either the person occupying the premises in question or the business transacted thereon, or advertising the property itself or any part thereof as for sale or to let and which contain no other advertising matter.~~

Section 32. Fines for Violations

Whoever violates any of the provisions of this By-Law shall be punished by a fine of not more than one hundred dollars (\$100), and whoever, after conviction for such violation unlawfully maintains such billboard, sign or other outdoor advertising device for twenty (20) days thereafter shall be punished by a fine of not more than five hundred dollars (\$500).

Section 43. Severability Clause

If any provision of this By-Law 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 By-Law shall not be affected thereby.

ARTICLE 38

VOTE/SET SENIOR TAX DEFERRAL LIMIT

To see if the Town will vote to set a Senior Property Tax Deferral Limit consistent with Chapter 312 of the Acts of 2018, or take any action related thereto.

Following the 2018 Town Meeting's approval of your plan to expand access to senior tax deferrals by submitting special legislation to increase qualifying senior income limits above \$57,000 (the State's default limit), the Legislature and the Governor approved "An Act Relative to Real Property Tax Deferrals" (Chapter 312 of the Acts of 2018). The Act allows the Town to increase Tax Deferral Program eligible incomes above the \$57,000 limit by vote of the Select Board and Town Meeting. There is an eligibility cap, which remains anchored to the state circuit breaker limit for married couples filing jointly income eligibility set by the Commissioner of Revenue. Such limit is presently \$88,000. Thus in short, the Town can set eligibility at an level at or below \$88,000 for both single and joint filers.

VOTED: That the maximum qualifying gross receipts amount for property tax deferrals under Clause 41A of Section 5 of Chapter 59 of the Massachusetts General Laws and Chapter 312 of the Acts of 2018 be set at \$88,000, beginning in fiscal year 2020.

To see if the Town will vote to authorize the Library Board of Trustees and the Town to deaccession and/or dispose of by sale, donation, or other means, the Robbins Art Print Collection.

As the Board may recall, this article was inserted at the request of the Library Board of Trustees in order to obtain permission from the Town to sell, donate, or otherwise dispose of the entirety of the “Robbins Art Print Collection” – more than 150,000 art prints, only 20 percent of which have been catalogued over the past century. Along with relevant provisions of c. 30B, Town Bylaws Title I Article 8 requires approval of Town Meeting prior to the disposal (sale or donation) of property worth more than \$500.

- Volumes of Library Board of Trustees minutes and Town Reports spanning the last 50 years;
- Historical documents including the wills of Winfield, Caira, and Ida Robbins, Arlington Advocate archived articles, receipts for gifts from the Robbins family to the Town and/or the Library;
- Correspondence between the Robbins family and the earliest curators of the Collection;
- Receipts for art prints acquired, sold, and donated by Collection curators (alternatively referred to as a “coordinators” in later years); and

- Appraisals of the Collection and various expert opinions regarding same.

The consistent conclusions drawn over the past fifty years by Library Board of Trustees and various volunteers, staff, and interested parties has been that the collection is difficult to manage, out-of-sync with the Town Library's mission, and of very modest artistic interest to Arlington, the Greater Boston Area, or the region. To illustrate this point, please find below the minutes of a discussion of this same matter over 25 years ago from a 1992 Library Board of Trustees meeting, wherein Ms. Marjorie Cohn, a curator of prints at the Fogg Museum opined extensively on the monetary and fine art value of the collection:

Robbins Library Board of Trustees
Wednesday, Oct. 28, 1992

• **Robbins Print Collection:** A majority of the board of trustees was present for a meeting called by Library Director Maryellen Remmert-Loud with representatives of community arts groups who have been discussing how to advise the library on the disposition of the Robbins Print Collection.

Trustees present were Joan Atlas, David Castiglioni, Kay Jorgensen, Barbara Muldoon and Joyce Radochia.

Community representatives were Marjorie Cohn, curator of prints at the Fogg Museum; David Ardito, chairman of the Arlington Council for the Arts; Raymond Lum, co-chair of the Arlington Historical Commission; Susanna Forster-Castillo, director of the Arlington Historical Society and Smith Museum; and James McGough, chairman of the Dallin Committee.

The Director opened the meeting by reviewing the history of the collection which could number as many as 200,000 pieces. She said that for 30 to 40 years trustees have grappled with what to do with the collection which is not fully catalogued or displayed properly. Over the years various experts have inspected the prints.

The bulk of the collection is prints from Europe with a focus on people. The collection includes duplicates of some of the works. According to the experts, the collection has little artistic merit and has no gems of great value. The trustees want to keep some of the collection at the library, which will have a new print room when construction is finished. They are looking for guidance in how to select what to keep and what to do with the remainder of the collection which has been in storage for years.

If the trustees were to dispose of some of the works which were donated by Winfield Robbins, there are legal questions about his will and conditions which would have to go before Probate Court and Town Meeting.

Mrs. Cohn said that the consensus of professional opinion is that to fully catalogue and identify the sources of the many prints which are pages torn out of books would be an enormous curatorial effort. She described the low end of the collection, which is not mounted or catalogued, as "just a mass of paper." She said the level of professional help needed to catalogue the collection is very expensive and she didn't think the effort worthwhile.

The monetary value of the collection, item by item, is minimal, she said, and does not represent a monetary treasure.

While the collection may have some intellectual value and be of value as a research collection which people would use for reference, Mrs. Cohn said she does not see the library as setting up the collection as if it were a rare book collection.

She noted that within a few miles are print collections with international reputations. If Arlington were in Kansas, for example, the interest in the collection would be different. As it is, area museums have much better collections with better works and copies of the prints which are represented in the Robbins collection.

While a catalogued collection could be useful culturally, as opposed to artistically, Mrs. Cohn said that she doesn't think in this day of video that people want to be educated at small print shows. Why should Arlington have a fourth-rate small collection of what the Museum of Fine Arts and Fogg Museum have excellent examples of, she asked, saying it is "silly of Arlington as a point of pride" to have its own print collection. She favors disposing of the collection with proceeds to benefit the library.

Ms. Forster-Castillo said the Historical Society wants to know what Winfield Robbins collected, something Ms. Remmert-Loud said may never be known because later acquisitions have been mingled with the original Winfield Robbins collection.

Ms. Forster-Castillo said the society is prepared to accept custody of the collection. She offered her services in arranging for art history interns to catalogue the collection, saying she did not like to deaccession (dispose of) materials until you know what you have.

Mr. McGough told the group that his committee is in the planning stages for a Dallin art museum which they would like to see sponsored by the town in the Dallin branch library, but financially self-sustaining. That facility could store and exhibit the Robbins print collection; however, he said there is a need to determine which prints are valuable to keep in the community. He questioned the value of the duplicates and the pages torn out of books.

Mr. Ardito, an art history teacher, said he can tell, as a user, that the library's collection of arts slides gets little use. He said as a teacher he does not see how he could use the print collection. He suggested that after works are selected for artistic, exhibit and teaching use, that the remainder of the collection be sold, with proceeds going to benefit the new Dallin museum.

Mr. Lum said he would prefer to see exhibit space devoted to things of Arlington interest. He said he is interested in the preservation and dissemination of Arlington history and he saw no value in the collection, except for the Winfield Robbins connection.

Minutes submitted by Kay Jorgensen, secretary

Since 1992, Library and Legal Department staff conducted substantial research to establish clear title to the Collection for the purposes of deaccession. Further, the recent comprehensive effort to appraise the Collection by the Childs Gallery of Boston confirmed not only that the Collection is sharply declining in monetary and fine art value, but also that perspective and impressions of the many trustees, staff and volunteers over the past fifty years is correct – the Collection is more of a burden than a blessing to the Library.

While deaccession is a worthwhile endeavor on its own merits, the trust funds supporting the art prints also warrant consideration. Winfield and Ida Robbins at different points in time provided bequests for the benefit of the Print Collection with very narrow purposes – “*the care, preservation and increase of my Collection of Prints to be under the sole control of Caira Robbins so long as she may desire,*” and “*for the purchase and care of prints*” respectively.

The present trusts, as valuable as they are (approximately \$1.3 million) are unlikely to be sufficient to care for and showcase 150,000+ prints, but can also only be used for a limited more current purposes without amendment or disbursement. It may be that if Town Meeting agrees to deaccession the entirety of the Print Collection, the Town could either work with the Division of Public Charities to amend the trust, or allow a friendly action to disburse the trust in probate consistent with the *cy pres* doctrine to the benefit of the Library the Robbins family helped to establish.

Should the Select Board be inclined towards positive action, a vote to deaccession the collection could be as follows:

VOTED: That the Town hereby authorizes and requested that the Library Board of Trustees, through the Town Manager, dispose of the entirety of the Robbins Art Print Collection through sale, donation or other means, including all prints and pieces of artwork donated or bequeathed directly by Winfield, Caira, or Ida Robbins, and those artworks acquired with funds from trusts established to further the Collection in a manner consistent with the requirements of the General Laws and the Town of Arlington Bylaws.

ARTICLE 40

VOTE /ROBBINS LIBRARY PARKING COSTS

To see if the Town will vote to change the cost of parking in the spaces behind and in front of the Robbins Library, or take any action related thereto.

(Inserted at the request of Andrew Fischer and 10 registered voters)

****Tabled from February 11, 2019***

As the Board knows, it serves as the Parking Commissioners for the Town of Arlington pursuant to G.L. c. 90 sec. 20A and 20A 1/2, setting the parking rules and regulations for the Town, including its parking fees. Thus, while Mr. Fischer may certainly present his perspective on the fees charged for Robbins Library Parking, Town Meeting cannot supersede your statutorily granted authority to do so by vote, resolution, or otherwise. At most, Town Meeting could take a non-binding vote to express its collective opinion about parking fees.

ARTICLE 43

HOME RULE LEGISLATION/MEANS-TESTED SENIOR TAX RELIEF

To see if the Town will vote to authorize and request the Select Board to file Home Rule Legislation which would establish a locally controlled, means-tested senior citizen property tax exemption, known as a local option “circuit breaker” program; or take any action related thereto.

(Inserted by the Select Board)

In keeping with the Board's commitment to easing the tax burden for long-time residents on limited, fixed incomes such as retired persons, this article proposes to establish a local means-tested "circuit breaker" tax relief program for Arlington Seniors. The concept was first employed as a pilot special legislation program in Sudbury and adopted by other similar communities including Concord. The Sudbury model is summarized as follows:

- Town residents over 65 years of age;
- Residing in Arlington for more than 10 years;
- Who own homes worth less than the median assessed value in Arlington; and
- Have incomes less than the State "circuit breaker" ceiling (\$58,000 for singles, and \$88,000 for couples, the latter of which is also consistent with the recommended Senior Tax Deferral Limit);
- May apply to have their property tax not exceed 10 % of total income.

The Board may of course elect to modify the foregoing criteria to achieve differing results. The model special legislation requires acceptance of the program via town-wide local ballot question before implementation, includes a revocation mechanism, and includes an automatic sunset provision, absent an affirmative action to extend the program. Applied most recently to Concord, approximately 200 residents were eligible for the local circuit-breaker, and the non-eligible average tax-bill was estimated to increase by \$70 to cover the cost of the benefit to eligible seniors. I have also attached Concord's means-tested tax relief application guide for your review as reference material.

Should the Board be inclined towards positive action, Sudbury's model legislation is included herein for reference:

*AN ACT AUTHORIZING THE TOWN OF SUDBURY TO ESTABLISH A MEANS TESTED
SENIOR CITIZEN PROPERTY TAX EXEMPTION.*

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. With respect to each qualifying parcel of real property classified as Class one, residential in the town of Sudbury there shall be an exemption from the property tax equal to the total amount of tax that would otherwise be assessed without this exemption less the sum of (i) 10 per cent of the total annual qualifying income for purposes of the states "circuit breaker" income tax credit, and (ii) the amount of the state's "circuit breaker" credit the applicant was eligible to receive in the year prior to the application being filed. The percentage of total annual

qualifying income may be raised by section 3. In no event shall property taxes be reduced by more than 50 per cent by this exemption. The exemption shall be applied to the domicile of the taxpayer only. For the purposes of this act, "parcel" shall be a unit of real property as defined by the assessors under the deed for the property and shall include a condominium unit.

SECTION 2. The board of assessors may deny an application if they find the applicant has excessive assets that place them outside of the intended recipients of the senior exemption created by this act. Real property shall qualify for the exemption under section 1 if all of the following criteria are met:

(a) the qualifying real property is owned and occupied by a person whose prior year's income would make the person eligible for the circuit breaker income tax credit under subsection (k) of section 6 of chapter 62 of the General Laws;

(b) the qualifying real property is owned by a single applicant age 65 or older at the close of the previous year or jointly by persons either of whom is age 65 or above at the close of the previous year and if the joint applicant is 60 years of age or older;

(c) the qualifying real property is owned and occupied by the applicant or joint applicants as their domicile;

(d) the applicant or at least 1 of the joint applicants has been domiciled in the town of Sudbury for at least 10 consecutive years before filing an application for the exemption;

(e) the maximum assessed value of the domicile is no greater than the prior year's average assessed value of a Sudbury single family residence plus 10 per cent; and

(f) the board of assessors has approved the application.

SECTION 3. The exemption under section 1 shall be in addition to any other exemption allowable under the General Laws, except that there shall be a dollar cap on all the exemptions granted by this act equal to .5 per cent of the fiscal year's total residential property tax levy for the town of Sudbury, including the levy for the regional high school if not included in the town of Sudbury's tax levy at some subsequent date with the total exemption amount granted by this act allocated proportionally within the tax levy on all residential taxpayers. After the first year of such exemption, the total cap on the exemptions granted by this act shall be set annually by the board of selectmen within a range of .5 to 1 per cent of the residential property tax levy for the town of Sudbury, including the levy for the regional high school. In the event that benefits to the applicants may be limited because the percentage established annually by the selectmen would otherwise be exceeded, the benefits shall be allocated by raising the total annual qualifying income percentage as required in section 1 as necessary to not exceed the cap. In the event the cap exceeds the need for the exemption, the total cap on the exemptions granted by this act shall be reduced to meet the need.

SECTION 4. A person who seeks to qualify for the exemption under section 1 shall, before the deadline established by the board of assessors, file an application, on a form to be adopted by

the board of assessors, with the supporting documentation of the applicant's income and assets as described in the application. The application shall be filed each year for which the applicant seeks the exemption.

SECTION 5. Acceptance of this act by the town of Sudbury shall be by an affirmative vote of a majority of the voters at any regular or special election at which the question of acceptance is placed on the ballot. Sections 1 to 4, inclusive, and sections 7 and 8 shall take effect 30 days after an affirmative vote by the town.

SECTION 6. This act may be revoked by an affirmative vote of a majority of the voters at any regular or special town election at which the question of revocation is placed on the ballot. Revocation of sections 1 to 4, inclusive, and sections 7 and 8 shall take effect 30 days after an affirmative vote by the town.

SECTION 7. No exemption shall be granted under this act until the Department of Revenue certifies a residential tax rate for the applicable tax year where the total exemption amount is raised by a burden shift within the residential tax levy.

SECTION 8. This act shall expire after 3 years of implementation of the exemption.

Approved, July 27, 2012.

ARTICLE 46 ACCEPTANCE OF LEGISLATION/ESTABLISHMENT OF A COMMISSION ON DISABILITIES FUND

To see if the Town will vote to accept provisions of Mass General Law 40, Section 22G regarding allocating all funds received from fines assessed for violations of handicap parking to the Arlington Commission on Disabilities. Funds so received shall be deposited by the city or Town Treasurer in a separate account and shall be used solely for the benefit of persons with disabilities. Expenditures from said account, including accrued interest, if any, shall be made upon the recommendation of the Commission of Disabilities in accordance with the accepted procedures of the Town for the disbursement of funds, including the approval of the Town Manager or Select Board. The Town Treasurer shall submit annually a report of said account to the Town Manager or Select Board for review and a copy of said report shall be forwarded to the Bureau of Accounts; or take any action related thereto.

(Inserted at the request of the Commission on Disabilities)

****Tabled from February 25, 2019***

In 1993 the Town voted to establish a Disability Commission by special act (rather than by adoption of G.L. c. 40 sec. 8J). However, the Town has yet to vote to adopt G.L. c. 40 sec.

22G, which allows a Disability Commission to receive the proceeds of fines associated with violations of handicap parking rules and apply such funds directly the benefit of disability programs without requiring specific appropriation by Town Meeting. If adopted, such expenditures must still be approved by the Town Manager or Select Board and reported annually.

Should the Board be inclined towards positive action, a recommended vote would be substantially as follows:

VOTED: That the Town hereby accepts G.L. c. 40 sec. 22G and establishes a dedicated fund for fines assessed for violations of handicap parking in the Town of Arlington; such funds to be expended as recommended by the Arlington Commission on Disabilities upon the approval of the Town Manager/Select Board.

ARTICLE 51

ENDORSEMENT OF CDBG APPLICATION

To see if the Town will vote to endorse the application for Federal Fiscal Year 2020 prepared by the Town Manager and Select Board under the Housing and Community Development Act of 1974 (PL 93-383) as amended; or take any action related thereto.

(Inserted by the Select Board and at the request of the Town Manager)

This article presents the annual vehicle for consideration and endorsement of Community Development Block Grant expenditures. Julie Wayman, CDBG Administrator is expected to present a summary of grants for the Board's approval. The Board and Manager are reminded that the Manager also holds a vote on approval of this item.

ARTICLE 52

REVOLVING FUNDS

To see if the Town will vote to hear or receive a report concerning the receipts and expenditures of approved revolving funds, amend the Town Bylaws to adopt new revolving funds, and/or to appropriate sums of money to such revolving funds and determine how the money shall be raised or expended; or take any action related thereto.

(Inserted by the Select Board)

This article represents our standard annual warrant article for reporting revolving fund receipts and expenditures to Town Meeting under Town Bylaws, Title I, Article 22. The Board

will also receive any proposed votes to adopt new funds and/or appropriate money into funds from the Comptroller and Deputy Town Manager.

ARTICLE 79

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
**Tabled from February 11, 2019 Meeting with Additional Comments Below*

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.

*****Additional Comments**

As discussed at the Board's first hearing on this article, permit me to present two options for addressing the substance of the proponent's concerns.

Option 1: Amending Existing Select Board Parking Policies and Regulations & No Town Meeting Action

If the Board is inclined to adopt an exemption program in keeping the goal of the proponents' article, it may do so without further action from Town Meeting by asserting a "No Action" posture towards the article, but taking the following votes relative to your current policies and regulations.

VOTED: That the Select Board hereby amends Traffic Rules and Orders Article V (Parking), Section 14 (ALL NIGHT PARKING) as follows:

Section 14.

(A) ALL NIGHT PARKING – Between the hours of 1:00 A.M. and 7:00 A.M. no vehicles shall be allowed to park on any public street in the Town for more than one (1) hour, unless such parking is for good cause as determined and authorized by the Director of Community Safety, Director of Police Services, or in their absence, the on-duty senior superior officer (shift Commander) of the Police Services Division, or as permitted pursuant to part B of this Section, below.

(B) HARDSHIP EXEMPTIONS – The Town shall exempt from the all night parking prohibition those persons who can demonstrate long-term hardship, providing a renewable overnight parking permit on an annual basis. To qualify for long-term hardship, residents must establish first their lack of viable off-street parking, and second, either (1) a long-term or permanent disability which requires on-street overnight parking in the immediate vicinity of such residents' housing; or (2) demonstrated economic hardship.

And;

FURTHER VOTED: **That the Select Board hereby amends Section I of its Parking regulations as follows:**

I. Overnight Parking

There is an On Street Overnight Parking Ban: Between the hours of 1:00 A.M. to 7:00 A.M. no vehicles shall be allowed to park on any public street in the Town for more than one (1) hour, unless such parking is for good cause as determined and authorized by the Arlington Police Department (Police Chief, or in their absence, the on-duty Senior Superior Officer/Shift Commander) and/or the Select Board.

Furthermore, residents with permanent disabilities and/or demonstrated economic hardship warrant exemption from the parking ban where sufficient immediate access to overnight parking resources is unavailable to them.

Thus, the Town recognizes ~~there are a few~~ distinct categories of circumstances where a resident may need an:

- Overnight parking waivers provided by the Police Department for short-term parking relief;
- Discretionary Overnight parking permit provided by the Treasurer's Office or Select Board Office for long-term and short-term parking relief; and
- Overnight parking exemption permits provided by the Select Board Office for long-term parking relief for qualifying disabled and/or low-income residents.
- the Treasurer's Office Waivers.

A. Overnight Parking Waivers (Short-term)

An overnight On-Street Parking Waiver (Temporary/Maximum 14 per calendar year) is provided by the Police Department with no fee for the following circumstances:

1. Expecting an overnight guest
2. Disabled motor vehicle
3. For a driveway out of service: contact the Inspectional Services office at 781- 316-3390 for a pod, dumpster, or other building related circumstances.

~~How to~~ Requesting an Overnight Parking Waiver from the Arlington Police Department:

1. Make a Request online at: www.arlingtonma.gov via the Request/Answer Center (login required).
 - Select Make a Request
 - Select “Overnight Parking Request” (login or create an account) and fill out form; or
2. Call the Overnight Parking Request Hotline at 781-316-3960
Overnight Parking Waivers 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 (one of three only: overnight guest, disabled vehicle, driveway maintenance)
 - Date of Request (Note: Saturday at 10:00 P.M. is the latest you can request a parking waiver for Sunday 1:00 A.M. to 7:00 A.M., and so on)

If you submit your Overnight Parking Request before the deadline, your waiver will automatically be approved, unless you have previously used your 14 per calendar year waivers.

Waivers are at the discretion of the Arlington Police Department

These limited Overnight Parking Waivers are approved at the discretion of the Arlington Police Department and are granted as a courtesy for the above mentioned circumstances. The APD feels these guidelines will be sufficient for most residents and provides a balance between upholding the overnight parking bylaw and providing some relief to residents. This process will also eliminate abuses of this courtesy and allow police dispatch to focus on emergency calls and other higher priority tasks. If you have an extenuating circumstance not listed above, please contact the Select Board’s Office at 781-316-3020.

B. Discretionary Overnight Permits Temporary and Annual (Short-term & Long-term)

Discretionary Permits to Park Overnight in Arlington, either in Municipal Lots and On-Street are provided to those residents who cannot otherwise accommodate demonstrable parking needs either because they warrant long-term relief for a more specifically tailored long-term circumstance other than a qualifying exemption.

“On-Street Permits” are generally limited to residents who specifically require parking at or near their residence because of an articulable and urgent need.

1. Discretionary Municipal Lot Parking Overnight Permits (permanent) is are provided by the Treasurer’s Office for a fee for residents who do not have permanent off-street parking available for all vehicles in their household. Residents are advised that there

is limited space in municipal lots, and conditions and limitations apply. the following circumstance for those residents

~~Need overnight parking—long term Example: a residence without permanent off-street parking for all household vehicles.~~

2. Discretionary Overnight On-Street Parking Permits (short-term and long-term permanent or temporary) is are provided by the Select Board for the following limited circumstances:

a. Engineering impossibilities for having a driveway (permanent)

Example: utilities running through property disallowing construction.

b. Medical Services (temporary and permanent) Example of temporary: Hospice care and rehab care

Example of permanent: Daily medical care

c. Driveway construction (temporary)

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

d. Non-exempt Extenuating circumstances (temporary and permanent)

Example of temporary: family living arrangement transitions

Example of permanent: family living arrangement for safety (ie. restraining order)

On-street permits are valid only for space immediately in front of or adjacent to the permit holder's residence.

How to Request ~~an~~ Regular Overnight Parking Permit To request a Municipal Lot Permit (~~permanent~~):

- Buy permits at the Treasurer's Office with proof of Arlington residence for one of multiple municipal lot locations (see attached Parking Map).

The fee is \$365.00 annually and prorated every three (3) months.

How to request a Discretionary ~~an~~ On-Street Permit (Long-term or temporary permanent):

- Request in writing to the Select Board'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 and input may be sought from the Safety Officer and Parking Clerk is necessary.

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

~~To request an On-Street Permit (Short-term temporary):~~

- ~~• Request in writing to the Select Board Office. This request will be processed by the Office with input from the Safety Officer and Parking Clerk when necessary.~~

The fee is determined on an individual basis per circumstance.

C. ~~Permits~~ Overnight Exemption Permits (Long-term)

Permits to Park Overnight in Arlington, either in Municipal Lots and On-Street are provided to those residents who cannot otherwise accommodate demonstrable parking needs either because they qualify for the Overnight Parking Exemption because they

Under both categories, “On-Street Permits” are generally limited to residents who specifically require parking at or near their residence, usually because of an identifiable disability or other pressing need.

3. Overnight Parking Exemption Permits

Pursuant to Traffic Rules and Orders Section 14(B), Arlington residents who can establish *both* that off-street parking is unavailable to them; *and* that they:

- Have a long-term or permanent disability; or
- Cannot afford off-street parking due to economic hardship.

Residents qualifying for exemption permits based upon a disability will be afforded on-street parking permits at no-cost.

Residents qualifying for exemption permits based upon economic hardship will be afforded municipal lot or on-street parking permits at no cost depending upon the reasonable proximity of lots, availability, and other as otherwise merited by cause. All on-street permits are valid only for space immediately in front of or adjacent to the permit holder’s residence as identified by the Board Office.

How to apply for an Overnight Parking Exemption Permit:

- Request in writing to the Select Board's Office. This request will be administratively processed to ensure qualification for exemption with recommendations from the Police and Fire Departments, including the Safety Officer, but without requiring appearance at a public hearing.
- For applicants claiming an exemption on the basis of disability, written proof of qualification may be demonstrated by proof of registration of a handicap parking plate, enrollment in SSDI (demonstrated by a disability benefits letter), or a letter identifying the resident as disabled on a physician's/medical professional's letterhead stationary.
- For applicants claiming an exemption on the basis of economic hardship, written proof of hardship may be demonstrated proof of eligibility for SNAP, Medicaid, SSI, or other eligibility for need-based which demonstrates income below 80 % AMI.
- Information submitted for exemption qualifications will be kept confidential to the maximum extent allowed by law.
- Denial of qualification for exempt status may be appealed to the Select Board.

Snow Operations & Snow Emergencies

No waivers will be granted during snow emergencies, in snow removal operations as defined by Public Works, or when other parking restrictions are in place. This will allow Public Works to conduct their snow removal operations more effectively. This applies to all residents; *even those with parking permits must be off the street*. You can read more about Snow Emergency Declarations on the Snow & Ice Information page on the Town's website.

Both the online Overnight Parking Waiver System and the Hotline will not be in service during these times. If you previously were granted a waiver, it will automatically be null and void and you may not necessarily be alerted of this fact. To be alerted of snow emergencies via email, you can subscribe to "Town of Arlington Notifications" at Arlingtonma.gov/subscriber.

Option 2: Reporting to Town Meeting on the Resolution of the Proponents

If the Board is not inclined to adopt revisions to its policies at this time, it may of course vote upon its position relative to the contemplated resolution or develop a distinct resolution consistent with the scope and intent of the article.

As a draft resolution for the Board and Town Meeting's consideration, the proponents provided the "Whereas" language set forth below, and this office the "Resolved" language based upon my understanding of their goals.

VOTED: It is hereby resolved that:

"WHEREAS the best available peer review data reveals that car ownership is intimately and often inextricably connected to keeping and maintaining a job and therefore to economic viability and mobility for lower income and working class individuals and families in the United States; and

"WHEREAS car ownership has also has been found to play an integral role in enabling lower income and working class families to relocate to and reside in higher opportunity towns and cities such as Arlington--that is, places with stronger schools and housing markets, more green spaces, and better health outcomes; and

"WHEREAS many higher-paying jobs available to those without college degrees often mandate ownership of a car; and

"WHEREAS many jobs available are increasingly offered in the outer suburbs in areas not practically accessible by public transit; and

"WHEREAS many disabled folks require cars because our inadequate and inefficient public transportation does not allow them to independently meet their basic living needs in order to access work, medical appointments, and groceries, etc.--with the vast majority of MBTA subway and bus stops being non-compliant with the ADA; and

"WHEREAS there have been reported incidents of some landlords and/or real estate agents in Arlington being evasive or dishonest to prospective tenants about the availability of off-street parking or the existence of an overnight on-street parking ban; and

"WHEREAS there are documented incidents of landlords charging tenants extraneous--and in some cases, exorbitant--monthly parking fees for off-street parking on top of rent and citing the on-street parking ban as an incentive to do so; and

"WHEREAS the overnight on-street parking ban thereby unwittingly acts as an exclusionary zoning law that serves as an impediment for lower income and disabled folks to relocate here or remain in Arlington if they cannot find a residential dwelling with accessible or affordable off-street parking; and

"WHEREAS the current process for applying for a overnight parking waiver requires that a person attend a Select Board hearing in person to make their appeal, which occurs in the evening in a room that is not easily accessible for those with certain disability--posing a potential logistical challenge to attend; and

"WHEREAS this hearing also subjects the individual requesting the waiver to public scrutiny

and judgement, and is filmed and aired on live television, posing the dilemma of an invasion of privacy into the intimate details of one's financial and/or medical situation; and

“WHEREAS the Town of Arlington has outlined goals in its Envision 2020 to enhance its diversity and inclusion of under-represented members of the community and welcome all to live here, including those who are lower income and/or disabled, even as the current parking ban is counter-productive to fully realizing those goals; and

“WHEREAS the Town of Arlington's Diversity Taskforce Group (DTG) voted unanimously in favor of the creation of a warrant article that would support a culturally sensitive approach to overnight parking exemptions;

NOW, THEREFORE, BE IT RESOLVED, that Town Meeting supports the establishment of an overnight parking ban exemption program for qualifying residents based upon disability or financial hardship and unavailability of off-street parking.

BE IT FURTHER RESOLVED, that Town Meeting urges the Town to identify and utilize objective criteria for determining applicant qualifications based upon existing local, state, and/or federal indicia of disability or financial hardship.

BE IT FURTHER RESOLVED, that Town Meeting supports the maximum protection of the privacy interests of applicants, particularly those seeking exemptions on the basis of disability by establishing a process that does not require public hearing, but rather uses the aforementioned criteria to determine eligibility in a confidential manner.