



BOARD OF SELECTMEN MEETING

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

OFFICE OF THE BOARD OF SELECTMEN
TOWN OF DUNSTABLE
511 Main Street Dunstable, MA 01827
(978) 649-4514 | bos@dunstable-ma.gov



BOARD/COMMITTEE/COMMISSION: Board of Selectmen
SUBMITTED TO TOWN CLERK: 9/5/2024 3:22 pm
MEETING DATE: September 10, 2024
MEETING TIME: 5:00 PM
LOCATION: Town Hall - Upper Level

NOTICE OF A PUBLIC
MEETING POSTED IN
ACCORDANCE WITH THE
PROVISIONS OF MGL 30A
§18 – 25

Topics the Chair Reasonably Anticipates will or could be Discussed:

Note: All topic placement & times are estimated and may vary *tremendously* from projections

SCHEDULED AGENDA ITEMS

1	Meeting Called to Order
2.	Public Comment
3.	Tax Aid Committee*
4.	Approval of Meeting Minutes from August 13, 2024*
5.	Brian Flynn: Sign Policy Discussion
6.	Call Special Town Meeting – November 18, 2024*
7.	Appointments: MPIC Designee from Economic Development Committee*
8.	Tax Abatement for David Simmons on the property located at 100 Simmons Way*
9.	ARPA Reallocation Proposal*
10	Designation of the Union Building Designer Services Evaluation and Selection Committee*
11	Town Administrator Report
12	Topics not reasonably anticipated by the chair.
13	Adjourn

*Votes likely to be taken (Note: This listing of matters reflects those reasonably anticipated by the chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.)

Additional Details: Meeting will be streaming at youtube.com/@townofdunstable3179



PUBLIC COMMENT

Town of Dunstable

SEPTEMBER 10, 2024

DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA



TAX AID COMMITTEE

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

Section 3D: City or town aid to elderly and disabled taxation fund; voluntary check off donations

Section 3D. A city or town which accepts the provisions of this section is hereby authorized, subject to the approval of the commissioner, to design and designate a place on its municipal tax bills, or the motor vehicle excise tax bills, or to mail with such tax bills a separate form, whereby the taxpayers of said city or town may voluntarily check off, donate and pledge an amount not less than \$1 or such other designated amount which shall increase the amount otherwise due, and to establish a city or town aid to the elderly and disabled taxation fund for the purpose of defraying the real estate taxes of elderly and disabled persons of low income.

Any amounts donated to said fund shall be deposited into a special account in the general treasury and shall be in the custody of the treasurer. The treasurer shall invest said funds at the direction of the officer, board, commission, committee or other agency of the city or town who or which is otherwise authorized and required to invest trust funds of the city or town and subject to the same limitations applicable to trust fund investments, except as otherwise specified herein. The fund, together with the interest earned thereon shall be used for the purpose specified in this section without further appropriation.

In any city or town establishing an aid to the elderly and disabled taxation fund, there shall be a taxation aid committee to consist of the chairman of the board of assessors, the city or town treasurer and three residents of the city or town to be appointed by the mayor or board of selectmen as the case may be. Said board shall adopt rules and regulations to carry out the provisions of this section and to identify the recipients of such aid.

From: [Anne Farina](#)
To: [Sue Fayne](#); [Nicole Tully](#); [Lori Brooks](#); [Erica Flynn](#); [Sandra Munroe](#); [Nikole47@verizon.net](#)
Cc: [Jason Silva](#)
Subject: RE: [External] Tax Aid Committee
Date: Thursday, August 29, 2024 10:08:48 AM
Attachments: [image001.png](#)

Thank you. See you all then.

Anne

Anne J. Farina
Vice President and Associate General Counsel
Delaware Life Insurance Company
978.407.6688 (mobile)

From: Sue Fayne <sfayne@dunstable-ma.gov>
Sent: Thursday, August 29, 2024 10:00 AM
To: Nicole Tully <nicole.tully@gmail.com>; Lori Brooks <lambrooks@gmail.com>; Erica Flynn <Eflyn351@gmail.com>; Sandra Munroe <sandyb5595@gmail.com>; Nikole47@verizon.net; Anne Farina <Anne.Farina@Delawarelife.com>
Cc: Jason Silva <jsilva@dunstable-ma.gov>
Subject: [External] Tax Aid Committee

This Message Is From an External Sender

This message came from outside your organization.

Good Morning,

Thank you so much for reaching out to express interest in serving on the Elderly & Disabled Tax Aid Committee. The Selectboard would like to invite you to attend their next meeting, Tuesday, September 10th at 5pm, at Dunstable Town Hall. I know that's early for those of you that work, so please let me know if putting you on the agenda at 6pm would work for your schedules. If you could let me know if you're able to attend either way, I'd appreciate it. Looking forward to seeing you in a few weeks! -Sue

Sue Fayne

Town of Dunstable
Executive Assistant to BOS & TA
Assistant Town Clerk
Assistant Treasurer/Collector
☎ (978) 649-4514 x224
✉ sfayne@dunstable-ma.gov
🌐 dunstable-ma.gov
📍 511 Main St., Dunstable, MA 01827



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dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender and delete this e-mail message immediately.

From: [Nicole Tully](#)
To: [Sue Fayne](#)
Subject: Re: [External] Elderly and disabled taxation fund
Date: Tuesday, August 20, 2024 3:39:55 PM

Sure, I'd be happy to help if members are still needed - great endeavor for town!

On Tue, Aug 20, 2024 at 2:43 PM Sue Fayne <sfayne@dunstable-ma.gov> wrote:

Hi Nicole,

This would be a pretty light commitment. Right now we would estimate a meeting once a quarter at most. Per the attachment, the Board would adopt the rules and regulations of Section 3D to carry out the provisions of the section to identify the recipients of such aid. In other words, ensuring recipients qualify for the aid based on the income or age requirements. I'm not sure the process to apply etc. - that could also be something the board has to establish initially. Let me know if you would like to be considered. Hope you're summer has been amazing! -Sue

-

Sue Fayne
Town of Dunstable
P: (978) 649-4514 x224
W: <https://dunstable-ma.gov>

-----Original Message-----

From: Nicole Tully <nicole.tully@gmail.com>
Sent: Friday, August 16, 2024 8:13 AM
To: BOS <bos@dunstable-ma.gov>
Subject: [External] Elderly and disabled taxation fund

Hi there,
Could you please expand on what the commitment would be for this committee? And how often would they meet?
Best,
Nicole

Sent from my iPhone

From: Nikole47@verizon.net
To: [BOS](#)
Subject: [External] Interest in holding a seat on new committee
Date: Friday, August 16, 2024 8:55:32 AM

Dunstable resident since 2011 also a senior citizen.

Nikole Roth
176 High St
Dunstable MA

It is my mission to help the long time residents (elderly) to not only remain in their homes but to investigate idea's to help them afford to keep their lands/properties. I would be honored to be part of this committee.

One fact is that social security, pensions and other forms of income related to these individuals will never in todays society be able to carry those rising cost burdens. The elderly are of great disadvantage. It is not like they can get a job. And even if they could, who would hire them?

This program could be a spring board for other programs in the future. We need more like this to bring aware to our senior population. As a RN I can tell you that in most they are the forgotten ones especially when they own homes no matter the condition.

Please consider me for a spot on this committee

Kind Regards
Nikole Roth

From: [Lori Brooks](#)
To: [BOS](#)
Subject: [External] Elderly and Disabled Taxation fund
Date: Friday, August 16, 2024 8:39:03 AM

I would be interested in serving on this board. I am a lifelong Dunstable resident.

--

Lori Brooks
295 Hall St. Dunstable
978-314-6605
978-649-7549

From: [Erica Flynn](#)
To: [BOS](#)
Subject: [External] Taxation Aid Committee
Date: Friday, August 16, 2024 9:23:07 AM

Happy to help on this if you still need volunteers!

-Erica Flynn

From: [Sandra Munroe](#)
To: [BOS](#)
Subject: [External] Taxation Aid Committee
Date: Friday, August 16, 2024 8:10:08 AM

Good morning,

I recently read about the Taxation Aid Committee, and I am interested in learning more about what I can do to help.

I have been a resident of Dunstable since 2004, and I would very much like to offer my services in any way possible.

Thank you for your consideration, and I look forward to hearing from you.

Best,

Sandra Munroe
605 Pleasant Street
Dunstable, MA 01827

978-846-4709



MEETING MINUTES 8/13/24

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA



Town of Dunstable Board of Selectmen Meeting Minutes

Tuesday, May 28, 2024

In attendance: Chair Leah Basbanes, Vice Chair Kieran Meehan, Select Board Member Ron Mikol, Town Administrator Jason Silva, Executive Assistant Sue Fayne, Police Chief Hoar

The meeting was called to order at 5 PM by Chair Basbanes.

Dangerous Dog Hearing: 143 Off Pond Street*

The Dangerous Dog hearing was opened at 5:01pm by Chair Basbanes. TA Silva then read the legal notice that was sent to Mr. Muldoon and the abutters of the property.

NOTICE

TOWN OF DUNSTABLE

DANGEROUS DOG HEARING

Notice is hereby given that under General Laws Chapter 140 §157, the Town of Dunstable will hold a Dangerous Dog Hearing on Tuesday, August 13th at 5pm, at Dunstable Town Hall, 511 Main Street, to determine whether the dog that resides at 139 Off Pond Street is a nuisance or is dangerous. All interested persons are invited to attend.

Assistant Town Clerk Sue Fayne Swore in Animal Control Officer John Greenhalgh, William Muldoon, Debbie Muldoon, and Erica Flynn.

It was stated that the complainants, Sharon Demers & Shawn Pare, were not present at the hearing.

Animal Control Officer John Greenhalgh provided a summary of the incidents.

Mr. Greenhalgh stated that there were three incidents where he had to quarantine Mr. Muldoon's German Shepard, 2-year-old Max. He stated that Max is territorial and doesn't like other dogs, especially in front of his house. He testified that he's not aggressive with people, but he does have an issue with some dogs in the neighborhood that attacked him at a younger age. Mr. Greenhalgh's opinion is that he's a good dog, he just needs to be controlled. Max loves to go to Erica Flynn's house to play with her dog, however Max doesn't like other dogs.

This became a public safety issue, when a neighbor, who was pregnant at the time, was knocked over by Max and her dog was bitten. Mr. Greenhalgh asked the question of how we confine Max without putting a label on the dog as being dangerous. His opinion is he either needs to be in a kennel or on a leash.

Mr. Muldoon stated that there isn't a leash law, so he can run free legally. Ms. Debbie Muldoon, daughter to William who recently moved in with him, stated that Max slips out of the front and side doors from her Dad, because her dad is 83 years old, making it difficult.

The Muldoon's stated that they have a letter from their K9 trainer that states that Max is not an aggressive dog.



Chair Basbanes asked if the yard where they live is fenced in. Mr. Muldoon answered that there is an area that is fenced in. He said that he's lived on Off Pond Street for 27 years and he's had many dogs. Max is the most intelligent, obedient and friendly dog he's ever had. Mr. Muldoon showed a few pictures of Max to the Board. He then spoke of a handy man who works regularly at his house, who is afraid of dogs. He said that Max has never shown him aggression and showed a photo of Max interacting with him.

Mr. Muldoon has had the dog since he was 8 weeks old. He bought him as a graduation gift for his grandson Trevor. Mr. Muldoon says he did a lot to socialize Max, he took him to the mall, Larter field, Off Pond St. for walks, and there never had been an issue. He said that Max loves to play with dogs, and in his opinion, if the neighbors were asked, they would say he's a great dog.

When Max was 14 months old, he ran over to play with Sheila's dog, and the dog bit Max on the leg. A friend, Will Hayden, who sent a letter, pulled Max away from the dog and Mr. Hayden was not injured.

As for the alleged biting of Sharon Demer's dog, Mr. Muldoon says there is no proof that Max ever bit that dog. Mr. Muldoon states he was in his home cooking when Sean Pare came over and told him that he had a vet bill for his (Sean's) dog, because his dog was bitten by Max, and asked him to pay it. Mr. Muldoon said he went back and forth thinking about it for about a week, and he decided to pay him the \$1200 to keep peace with a neighbor, not because Max did anything. A few weeks later, the neighbors gave him another bill because they stated the dog got an infection from the bite. Mr. Muldoon stated he was never shown any proof.

Erica Flynn, neighbor to Mr. Muldoon, testified that she was not there for the incident in which Max bit Mugsy, but she had witnessed them playing prior to that without issue.

Per the incident in question, Max ran to Erica's porch, as he normally does, to play with her dog. Erica did not see Max on the porch, but then heard barking and saw that Max had run to the fence of the neighbor with the dogs on the other side. Erica did not see any biting or physical contact between the dogs. She states that Max is not an aggressive dog and there isn't enough room in the fence slats for Max to come in contact with the Demers dogs.

Chair Basbanes then stated that she has dogs, and to ensure that they don't wander or take off chasing something, her yard is entirely fenced in. It was suggested that Mr. Muldoon do something similar so that if Max slipped out of the door, he would still be contained safely in Mr. Muldoon's yard.

It was stated that when the dog leaves your home to go somewhere else, he's not in your control.

Vice Chair Meehan suggested an invisible fence as an alternative if he's unable to install a physical fence. Mr. Muldoon stated that they had thought about it, but he didn't think he needed to do that, but that he would investigate it.

Mr. Muldoon's daughter Debbie then came forward to share her thoughts, which supported Mr. Muldoon's opinions that Max is not an aggressive dog, that he's never assaulted a person, and that she did not believe that Max bit Demer's dog. She feels that her father is being taken advantage of. She did agree that Max would benefit from being prevented from getting outside and loose.



Selectman Mikol shared that he knows that this is a close-knit neighborhood and it's unfortunate that this is happening. He wanted to caution Mr. Muldoon that he has legal liability here, and if the dog has another incident, it will not have a happy ending. Selectman Mikol shared that he appreciates everyone coming and taking the time to discuss this issue. The neighbors Demer and Pare didn't show up and that is unfortunate. You're being put on notice tonight that you need to take care to prevent Max from having any other incidents. Selectmen Mikol then suggested that the Selectboard dismiss the case. He stated that the Board is here to protect the residents of the town and address the issue based on the recommendation of the Animal Control Officer.

Mr. Muldoon said he would get an invisible fence to keep Max contained. Erica Flynn expressed her opinion that she's concerned that an e-collar or invisible fence will not work. Max used the e-collar once and then the second time he didn't respond to it.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to dismiss** the Dangerous Dog complaint. **The vote was unanimous.**

Public Comments

Public Textile Recycle Bins (the Blue Bins) have been moved from the MUD District next to the Post Office, to the Highway/Veteran's Office building on Pleasant Street.

Approval of Meeting Minutes from May 28, 2024 & July 16, 2024 BOS Meetings*

The meeting minutes were reviewed by the Selectboard prior to the meeting and did not have any changes.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to accept** the meeting minutes from May 28, 2024 and July 16, 2024 as submitted. **The vote was unanimous.**

Appointments: Memorials & Monuments Committee – Amie Stevens*

A communication was sent out in July advertising a vacancy for the Memorials & Monuments Committee. We had 2 people step forward including Amie Stevens. The other person was willing to be a backup if needed.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to appoint** Amie Stevens to the Memorials & Monuments Committee. **The vote was unanimous.**

Appointment of Elderly and Disabled Taxation Fund Committee*

In the Special Town Meeting of 2023, the adoption of an Elderly and Disabled Taxation Fund and Committee was approved. The creation of this fund allows residents to donate via a checkbox and write in a dollar amount on their real estate and excise bills. This option went out for the first time on the last tax bill. If a resident's mortgage company pays their property taxes, they can contribute by sending a check to Town Hall. This fund will provide tax relief for elderly or disabled residents who need help with their tax bill.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to appoint** the Chair of the Board of Assessors, Brett Rock and Town Treasurer, Andrew Wall to serve on the taxation aid committee and to request the Town Administrator to solicit volunteers to serve on the committee to fill the remaining three vacancies. **The vote was unanimous.**



Bandstand Railing Replacement Contract*

The town went out with an IFB to replace the railing on the band stand. The town received a state earmark for these improvements, so to be clear, it is not coming from taxpayers. With the earmark we have replaced the roof, the stairs, some floorwork, and misc. other improvements. A very generous local contractor, Vanguard Construction, submitted a bid for \$100 to give back to the community of Dunstable, as his family enjoyed the bandstand for many, many years at various town events. Their references came back glowing, and because the project is coming in so low, we will still have a balance remaining from the earmark and have through FY26 to use it.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED** to approve a contract with Vanguard Construction in the amount of \$100 for the purposes of replacing the railing on the Town Common Bandstand and authorize the Chair to sign the contract on behalf of the Board. **The vote was unanimous.**

Personnel Policy – waiver of provision of family working in the same department – request from the Cemetery Commission*

There is a provision in the Personnel Policy regarding relatives and family members, prohibiting them from working in the same department if hired after 2010. The current Cemetery Superintendent is related to the former superintendent. The request from the Cemetery Commission is to waive this provision so the former superintendent can train and transition the responsibilities to the new superintendent. Sue Psaladakis, member of the Cemetery Commission, supports waiving the provision in this case to allow for a smooth transition. She stated they had 5 applicants for the position, conducted 2 interviews, and this person rose to the top. She has the experience & education required for the job. TA Silva said she was quite impressive. Sue requested that they are provided 6 weeks for the transition.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, at the request of the Cemetery Commission, **VOTED to waive** the provision of the Town's Personnel Policies under the heading "Appointments" on page 10 which states:

"It is the policy of the Town to prohibit relatives from working in the same department provided that this rule shall not apply to relatives working in the same department prior to October 1, 2010"

during the transition period for the position of Cemetery Superintendent, not to exceed 6 weeks from August 26, 2024. **The vote was unanimous.**

Private Signs on Public Property Policy*

A policy was drafted and presented to the Selectboard for consideration. The policy is called the Signs on Public Property Policy, which is for property under the jurisdiction of the Selectboard. The right of way bylaw cares for private signs too close to the road. This is not a bylaw, just a policy.

The purpose of this policy is to maintain the aesthetics, safety, and order of public property within the Town of Dunstable.

Prohibitions



- *No private signs shall be placed, erected, or affixed on any public property within the Town limits.*

Exceptions

- *This prohibition does not apply to signs placed by the Town for official purposes, such as traffic signs, public notices, and event signage.*
- *Temporary signage for town-sponsored events may be permitted upon approval by the Select Board or their designee.*

Enforcement

- *Any private sign placed on public property without authorization will be subject to removal by the Town without prior notice.*

There was a brief discussion regarding what are considered “Town Sponsored Events,” and it was determined that they would be events put on or sponsored by the Town of Dunstable.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to approve** the policy to regulate sign placement on public property as presented and dated August 13, 2024. **The vote was unanimous.**

Fee Increases*

Sue Fayne reviewed the proposed fee increase for the Selectboard for Permitting, Treasurer/Collector, and Town Clerk. She mentioned that Point Software increased their fee from \$10 per permit to \$12 per permit in July, so that is also reflected in the proposed increases. There was a brief discussion regarding the fee amounts and it was agreed that we will review fees on an annual or bi-annual basis.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to approve** the fee adjustments as presented and request that the Town Administrator’s office post the new municipal fee schedule on the website. **The vote was unanimous.**

ARPA Fund Reallocation: Selectmen’s Newsletter and Town Hall Boiler Repair*

2 Bills were presented for approval. The first was from Wilson Brothers, which is to replace the boiler pips due to condensation leaking. The boiler has been off since this started to prevent any more damage. The second was an invoice from DS Graphics for the printing of the Selectmen’s Summer newsletter from July 2024.

The ARPA deadline is the end of the calendar year to fully commit the money, and the end of FY26 for the money to be spent.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to approve** the payment of an invoice from DS Graphics in the amount of \$354 for the printing of the Select Board newsletter and allocate \$5,500 to repair the Town Hall boilers’ condensate drainage pipe, backflow preventer, and boiler zone circuit from the ARPA MS4 Stormwater Allocation. **The vote was unanimous.**

Nashoba Valley Medical Center Emergency Declaration

The Selectboard discussed the official resolution requesting an emergency declaration regarding the proposed closure of the Nashoba Valley Medical Center. They are a large employer in the area, our EMS goes there, and our Dunstable Residents use the hospital.



On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was **VOTED to approve** the Official Resolution Requesting Emergency Declaration Regarding the Proposed Closure of the Nashoba Valley Medical Center dated August 13, 2024. **The vote was unanimous.**

Warrant for State Primary Election 2024

A request by the Town Clerk to approve the posting of the State Primary Election Warrant for 2024.

On a **Motion** by Selectman Mikol and **seconded** by Vice Chair Meehan, it was VOTED to approve the posting of the Warrant for the 2024 State Primary at the Post Office, Town Hall, Police Station, and Library. The vote was unanimous.

The meeting was adjourned at 7:30 PM.

Respectfully Submitted,

**Sue Fayne
Executive Assistant**



SIGN POLICY DISCUSSION

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

BRIAN J. FLYNN

250 Pleasant Street
P. O. BOX 241
Dunstable, MA 01827
BF Cell: (978) 569-4498
MMF Cell: (978) 382-946
[e-mail bflynn@plumbperfectma.com](mailto:bflynn@plumbperfectma.com)

Town of Dunstable Select Board
c/o Town Administrator
511 Main Street
Dunstable, Ma 01827

ATTN: Jason Sliva

Dear Jason,

Please schedule a date and time that I can address the Select Board regarding its recently adopted policy on the placement of political signs on town owned/public land.

I wish to address the policy's direct contradiction of our town's zoning regulations, specifically Section 13.6, paragraphs c and f, and the proscribed procedure to correct that situation.

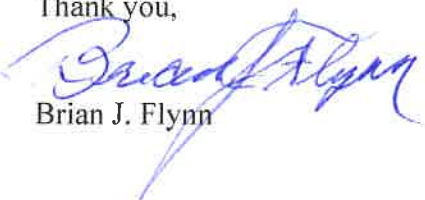
I am enclosing the following items:

- A copy of the above identified zoning regulation
- An article published by the ACLU regarding signs with expanded sections for Q3 & Q5
- An analysis of the myriad issues of free speech raised. This analysis is by an attorney with the Torrance, CA City Attorneys Department. Since the main issue addressed is the free speech right granted in the Constitution of the United States, I submit the general points raised are applicable in all states.

I would think it helpful to the discussion to have town counsel present or have some written comments from him on how the policy and the zoning regulations can be brought into congruence.

Please advise me of the appointed date and time for my appointment with the Select Board.

Thank you,


Brian J. Flynn

SECTION 13. SIGNS.

- 13.1. In Residence Districts, the following exterior signs, and no others excepting temporary signs as provided in Subsection 13.6., are permitted:
- (a) In the case of a permitted or authorized use other than a dwelling or private use accessory thereto; or in the case of the sale or lease of a dwelling or any premises; or in the case of a home occupation permitted under subsection 6.1.(g) of this bylaw: two (2) signs, each not over twenty-four (24") inches by thirty-six (36") inches (60.96 cm X 91.44 cm) pertaining to such use, sale or lease.
 - (b) Historic signs and others pertaining to the identity of the occupants, the name of the premises, or other information pertinent to the residential character of the premises.
 - (c) A sign indicating the street number of the premises, in compliance with the Dunstable Building Numbers Bylaw.
- 13.2. In any Business District, the following exterior signs, and no others, excepting temporary signs as provided in Subsection 13.6., are permitted, provided they pertain to the business conducted on the premises:
- (a) A sign displayed on the wall of a building, provided that no such sign shall exceed twenty (20) square feet in area or extend beyond the building lines.
 - (b) One sign shall be permitted for each separate and distinct establishment on any premises, or for each two hundred (200') linear feet (60.96 m) of lot frontage •on the principal street, whichever allows the greater number of signs, provided that no such sign exceeds twenty (20) square feet in area.
- 13.3. Moving signs are prohibited in all districts, whether moved by mechanical means or natural forces such as wind or sun. This section shall not be construed to prohibit hanging signs, provided that they can remain stationary under ordinary weather conditions.
- 13.4. In all districts, no exterior signs shall be illuminated except by reflected white light emanating from a source external to the sign proper (but which may be attached thereto) • The source of light shall be steady, and shall be shielded from direct view at normal eye level from streets and from adjacent premises.
- 13.5. Nothing in this section shall be construed to prohibit, nor shall the foregoing regulations pertain to, legal notices, signs placed or required by governmental

bodies or applicable law, or signs directing pedestrian or vehicular traffic on private property, provided that the same do not bear advertising or promotional matter.

- 13.6. In all districts, notwithstanding the foregoing provisions, temporary signs may be erected and displayed provided they meet the following requirements: **[Added May 9, 2005]**
- (a) They may only be employed for temporary purposes in order to give notice of special or community events, local occasional sales of goods of a non-recurring nature such as yard sales, or occasional events of a similar nature.
 - (b) Temporary signs on private property shall require the permission of the owner.
 - (c) Temporary signs within public ways shall not be attached to trees, utility poles or fences, nor shall they obstruct necessary sight lines .
 - (d) Signs noticing specific events may be displayed no earlier than twenty-one days prior to the commencement of the event and shall be removed forthwith following the event, not to exceed five calendar days.
 - (e) Signs such as banner signs erected over public ways in the town shall first be approved as to content upon application to the Board of Selectmen (which approval shall not be unreasonably refused), and shall be subject to further procedures through the Board of Road Commissioners pursuant to Massachusetts General Laws, Chapter 85, Section 8, as amended.
 - (f) Signs pertaining to public elections shall be allowed provided that none shall be erected earlier than sixty (60) days prior to the election and each shall be removed forthwith following the election, not to exceed five calendar days.

KNOW YOUR RIGHTS: POLITICAL SIGNS ON PRIVATE PROPERTY



Massachusetts residents have the right to display signs in their yards or on their other personal property so long as the signs meet reasonable requirements adopted by local government that relate to public safety. No local ordinance may dictate what type of messages a resident can display on their property without a compelling reason.

This right to free speech is especially strong where the sign is political, such as “Black Lives Matter,” “Protect Democracy,” “Make America Great Again,” “All Are Welcome Here,” or contains a message supporting candidates or ballot initiatives in an election.

Residents may display such political or others signs all year round without unnecessary limits from the government.

Below, we answer some common questions that our office receives about this issue. If you feel as though your city or town is infringing on your right to display yard signs, you may print out [this open letter](https://www.aclum.org/sites/default/files/20190423_open_letter_to_towns.pdf) (https://www.aclum.org/sites/default/files/20190423_open_letter_to_towns.pdf) penned by ACLU of Massachusetts attorneys and present it to your city or town's government.

1. Do I have a right to put yard signs on my property?

2. What type of limits can the government impose on yard signs on my property?

3. Can the government ban or limit only signs with political messages?

4. What are some examples of restrictions on political yard signs that have been found unconstitutional?

5. What about public property? Can the government restrict the posting of political signs there?

3. Can the government ban or limit only signs with political messages?



No. Political speech, and particularly political speech on private property, is entitled to the highest form of protection. Therefore, a government may not, for example, allow “for sale” signs while banning “Climate Change is Real” signs.

In 2015, the Supreme Court struck down a municipal ordinance that did just this; it discriminated between signs based on the message.² These types of content-based sign ordinances are almost always unconstitutional unless the government can prove their actions were necessary to serve a compelling interest.³

2. Reed v. Town of Gilbert, Arizona, 576 U.S. ___, 135 S.Ct. 2218 (2015)

3. Neighborhood Enterprises, Inc. v. City of St. Louis, 644 F.3d 728, 737-38 (8th Cir. 2011)

5. What about public property? Can the government restrict the posting of political signs there?



The short answer is “it depends.”

For ordinances regulating speech on public property, like parks or public areas between sidewalks and streets, signs may be prohibited or removed if there is a law that applies to all signs regardless of what they say, and if that law is supported by the government’s interest, for instance, in promoting traffic safety or keeping the space visually appealing. However, the general principle is that if a municipality allows *some* signs in a public area, it must allow *all* signs in that area.

City Attorneys Department Spring Meeting
May 19-21, 1999
John L. Fellows III
City Attorney, Torrance

REGULATION OF POLITICAL SIGNS

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Outline of Topics

Baseline Decisions: *Metromedia* and *Taxpayers for Vincent*

Particular Regulations for Political Signs
Limits on When Displayed
Limits on Location and Size
Limits on How Displayed
Licensing and Permits
Removal Procedures
Cost of Removal
Findings Requirement

The Interaction of Regulation of Political Signs With Other Sign Regulations

Severability

Qualified Immunity

Conclusion

The posting of political signs is a form of speech clearly protected under the First Amendment. Any ordinance seeking to regulate or infringe upon First Amendment rights must overcome significant hurdles. A court's first task in reviewing an ordinance challenged as violating First Amendment rights "is to determine whether the ordinance is aimed at suppressing the content of speech, and, if it is, whether a compelling state interest justifies the suppression. . . . If the restriction is content-neutral, the court's task is to determine (1) whether the governmental objective advanced by the restriction is substantial, and (2) whether the restriction imposed on speech is no greater than is essential to further that objective. Unless both conditions are met the restriction must be invalidated." *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent* (1984) 466 U.S. 789, 821 (Brennan, J., dissenting)(citations omitted).

Given this burden, it is not surprising there are a substantial number of cases addressing the parameters of government's ability to regulate political signs. The state of regulation in a number of these areas is discussed below.ⁱ

Baseline Decisions: Metromedia and Taxpayers for Vincent

The United States Supreme Court's initial foray into sign regulation was the landmark case of *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490. In *Metromedia* the Court invalidated a City of San Diego ordinance that allowed on-site commercial signs but prohibited on-site noncommercial signs. Under *Metromedia* an ordinance is invalid if it imposes greater restrictions on noncommercial speech than on commercial speech, or if it regulates noncommercial signs based upon their content, that is, if it exempts from regulation certain types of noncommercial speech, such as religious signs, historical signs and temporary political signs, but not other noncommercial signs. 453 U.S. at 513, 516.

The *Metromedia* Court's consideration of the City of San Diego's prohibition on "off-site" commercial signs did not provide clear guidance because there was no majority opinion. Moreover, a side-by-side comparison of the four-justice plurality opinion and the two-justice concurring opinion to attempt to discern their common ground, is frustrating, because the marked difference in approach of the two opinions makes it extremely difficult to reconcile them.ⁱⁱ For a cogent discussion of the problems of interpreting *Metromedia*, see *Rappa v. New Castle County* (3d Cir. 1994) 18 F.3d 1043, 1055-60.

Whatever its failings, *Metromedia* did clearly establish, however, that aesthetic considerations may constitute a legitimate governmental basis for regulating signs. 453 U.S. at 510 ("It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an 'esthetic harm.'").

Three years after *Metromedia*, in *Taxpayers for Vincent*, the United States Supreme Court upheld a City of Los Angeles ordinance imposing a total ban on the posting of political signs on public property.ⁱⁱⁱ

These two key Supreme Court cases created an analytical overlay upon prior lower court decisions, particularly *Baldwin v. City of Redwood City* and *Verrilli v. City of Concord*. More importantly, they serve as the foundation for a generation of subsequent sign cases, most of which are adverse to cities.

Particular Regulations for Political Signs

Limits on When Displayed:

Preceding Election: The courts have consistently rejected attempts to regulate the display of political signs to some defined period prior to an election. (*City of Antioch v. Candidates' Outdoor Graphic Service* (N.D. Cal. 1982) 557 F. Supp. 52)[finding unconstitutional a prohibition on erection of political signs more than 60 days prior to election day]; *Orazio v. Town of North Hempstead* (E.D.N.Y. 1977) 426 F.Supp. 1144 [invalidating ordinance limiting display of political signs to six weeks preceding election].)

Following Election: The courts historically have been much more tolerant of limitations requiring the removal of political signs following an election. (*Baldwin v. Redwood City* (9th Cir. 1976) 540 F.2d 1360 cert. Den. Sub. Nom. *Leipzig v. Baldwin* (1977) 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223) [upholding requirement that signs be removed within ten days following election].)

Limits on Location and Size:

Cities have historically enjoyed substantial freedom to regulate where and how on public property political signs may be displayed. (*Taxpayers for Vincent*, 466 U.S. 789 [finding advancement of aesthetic values sufficient to justify absolute prohibition on posting of political signs on public property]. *Candidates' Outdoor Graphic Service v. City and County of San Francisco* (N.D.Cal. 1983) 574 F.Supp. 1240)(upholding San Francisco ordinance prohibiting all temporary signs on public property, except on lamp posts and utility poles, where each pole may hold one copy of a particular sign without reference to content)(signs limited to eleven inches in height and required to conform to shape of pole, so may not be longer than pole's circumference).

Regulating the posting of political signs on private property is a much more difficult question. Much of the following discussion focuses on limitations to the posting of political signs, with the primary effect upon signs displayed on private property.^{iv}

Limits on How Displayed—Number of Signs per Candidate, Number of Signs per Property, Size of Signs, Height of Signs and Aggregate Area:

The law appears to be reasonably clear that limitations on the number of signs to be posted by a candidate and the number of signs that can be posted upon a single piece of property are unconstitutional. (*Baldwin v. Redwood City*, 540 F.2d at 1369 [prohibiting regulation of the total number of signs for a given candidate].) By analogy, an attempt to require that two signs for the same candidate be separated by some distance, say 100 feet apart, would also appear to be unconstitutional because the effect would be to limit the total number of signs a candidate can post. Prohibiting more than one candidate from posting a sign on a given support would also seem likely to cause a constitutional problem.

Reasonable regulations on the size of individual signs appear to be constitutionally permissible. (*Id.* At 1368 [limiting individual signs to a maximum of sixteen square feet].) Similarly, height restrictions have also been sanctioned (*Candidates' Outdoor Graphic Service v. City and County of San Francisco* (N.D.CA. 1983) 574 F.Supp. 1240 [upholding ordinance limiting size of political signs placed upon lamp posts and utility poles to eleven inches in height]), so long as the size limits do not so restrict political expression as to foreclose effective exercise of free speech. (*Verrilli v. Concord* (9th Cir. 1977) 548 F.2d 262, 265, *mod.* 557 F.2d 664.)

Limitations upon the aggregate area of political signs displayed on a single property appear to be permissible under certain circumstances. In *Baldwin* the Redwood City ordinance limited the aggregate area of signs on a single parcel to 80 square feet in order to reduce accumulation of debris (540 F.2d at 1369.) Although the court found this interest "attenuated," it thought the burden imposed on free speech so minimal that the restriction passed scrutiny. (*Id.*) Similarly, in *Verrilli* the court indicated that an aggregate area restriction of 64 square feet might have been found constitutional if the city had identified substantial public interests that could not have been protected by less restrictive regulations. (548 F.2d at 265.) The City of Concord did not make the necessary showing, however. (*Id.*)

Licensing and Permits:

Once a city determines to regulate political signs, a regulatory mechanism needs to be established. Licensing and permit schemes come immediately to mind, especially since those types of schemes are frequently used for regulation of commercial signs. Permit schemes may be constitutional, so long as the process is operated with clear, content-neutral guidelines. Official discretion will render the scheme unconstitutional. (*Hynes v. Mayor of Oradell* (1976) 425 U.S. 610, 96 S.Ct. 1755, 48 L.Ed.2d 243; *Desert Outdoor Advertising v. City of Moreno Valley* (9th Cir. 1996) 103 F.3d 814; *ACORN v. City of Tulsa* (10th Cir. 1987) 835 F.2d. 735; *Gonzales v. Superior Court* (1986) 180 Cal.App.3d 1116, 1124.)

In the political-speech context a time-consuming prior approval process is probably impermissible in most cases. *Desert Outdoor Advertising*, 103 F.3d at 818. The desire to regulate signs on private property may also lead to problems if the city attempts to require a candidate to provide a written consent from each private property owner prior to issuance of a permit to post. In any event, the consent problem can be alleviated by establishment of a "notice prior to removal" procedure, that can be implemented following a complaint by the private property owner. The question of permit fees, bonds and other security to ensure removal is discussed below.

Removal Procedures:

The law is clear that pre-election summary removal/seizure procedures are unlawful, absent some exigent public health or safety justification. At a minimum, the city must give notice to the candidate and/or owner of the sign, prior to removal and provide the candidate a reasonable opportunity to remove the signs prior to agency action. An adversary hearing or expedited judicial procedure is unnecessary, but notice and an opportunity to respond to the allegation or to remove the sign must be given. (*Baldwin*, 540 F.2d at 1373-74; *Verrilli*, 548 F.2d at 264.)

Post-election removal does not appear to present major constitutional problems. The Redwood City ordinance at issue in *Baldwin* gave candidates ten days following the election to remove their signs. Failure to remove a sign in a timely manner was evidence of abandonment, which resulted in summary removal of the signs without notice. This practice was approved by the court. (540 F.2d at 1374-75.)

Cost of Removal:

The major problem associated with post-election cleanup of political signs is ensuring that someone will be motivated to perform the act. Pre-posting license fees, bonds, security deposits, nonrefundable or even refundable removal fees will not be found constitutional unless the provisions are narrowly drawn and bear some relation to the actual cost of enforcing the ordinance or removing the sign. (*Baldwin*, 540 F.2d at 1371-72 [\$5 per sign refundable "removal deposit" invalidated as disproportionately burdensome because fee bore no relation to the actual cost of removal]; *Verrilli*, 548 F.2d at 264 [\$100 cash bond held unconstitutional under reasoning of *Baldwin*].) *But see Candidates' Outdoor Graphic Service*, 574 F.Supp. at 1242 n.4 (plaintiffs conceded the validity of the removal provisions of San Francisco's ordinance).

A number of cities have or have had cost-recovery provisions for those situations where signs have to be removed by city employees, but it is not clear how many of these provisions are actually being enforced. *E.g.*, the City of Los Angeles, see *Taxpayers for Vincent*, 466 U.S. at 791 n.1 ("Any hand-bill or sign found posted, or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof and the Department of Public Works is authorized to effect the collection of said cost."); the City of San Francisco, see *Candidates' Outdoor Graphic Service*, 574 F.Supp. at 1241 n.3 ("If the City incurs any expense in removing signs posted on lamp posts and utility poles because they were posted in violation of any of the provisions of subsection (b) or were not removed within 30 days of the posting date, the person responsible for such posting may be billed as provided in Section 677.1 and, if such bill is not paid as required by that section, is subject to payment of a civil penalty as provided by Section 677.2.").

Findings Requirement:

In all situations adopting regulations imposing limitations on First Amendment speech rights, not just in cases regulating sexually-oriented businesses, cities must adopt legislative findings justifying limitations on First Amendment speech rights. Failure to do so will result in invalidation of the ordinance. *City of Cincinnati v. Discovery Network* (1993) 507 U.S. 410, 417 (city's failure to address its recently developed concern about newsracks by regulating their size, shape, appearance or number was fatal defect); *Taxpayers for Vincent*, 466 U.S. at 794 n.6 (findings); *Desert Outdoor Advertising*, 103 F.3d at 819 (failure to adopt statement of purpose was fatal); *Verrilli*, 548 F.2d at 265 (no attempt made to justify subsequently invalidated ordinance); *Candidates Outdoor Graphic Service*, 574 F.Supp. at 1244 n.6 (good findings supported ordinance). See *Estevanovich v. City of Riverside* (1999) 69 Cal.App.4th 544, 554-57 *opin. Modified, no change in judgment*, __ Cal.App.4th __ (February 9, 1999) (court observed that legislative history indicated city council hadn't considered "legislative purpose" alleged after the fact)^v.

The Interaction of Regulation of Political Signs With Other Sign Regulations

A number of complexities have been introduced by the cases following in the wake of *Metromedia* and *Taxpayers for Vincent*. One can no longer look solely to narrow cases dealing only with political signs. The sign industry is taking an increasingly active role in challenging cities with restrictive sign ordinances. And the industry has been very successful.

In *National Advertising v. City of Orange* (9th Cir.1988) 861 F.2d 246, the city's sign ordinance banned all "offsite" signs, both commercial and noncommercial. The Ninth Circuit upheld the city's ban on offsite commercial signs, but invalidated the noncommercial restrictions. The city's ordinance contained eleven categories of exemptions, including the clearly noncommercial categories of governmental signs and temporary political signs. The Court of Appeal reasoned that inclusion of these categories would require enforcement personnel to undertake content-based discrimination between varying types of noncommercial signs. Thus, the ordinance was invalid as to its regulation of noncommercial speech. *Id.* at 249.

City of Cincinnati v. Discovery Network (1993) 507 U.S. 410 did little to improve an already muddled situation. In *Discovery Network* the Court held that a city ordinance banning commercial handbills which did not also apply to newsracks containing "newspapers" was not a "reasonable fit" under *Board of Trustees of the State University of New York v. Fox* (1989) 492 U.S. 469, between the city's legitimate interest in safety and aesthetics and the means chosen to serve that interest. Therefore, because the ordinance was not content-neutral, it did not constitute a valid "time, place and manner" restriction on speech rights.

Potentially the most important, and certainly the least understood, aspect of *Discovery Network* is the cryptic footnote 11, which stated:

“While the Court of Appeals ultimately applied the standards set forth in *Central Hudson* and *Fox*, its analysis at least suggested that those standards might not apply to the type of regulation at issue in this case. For if commercial speech is entitled to ‘lesser protection’ only when the regulation is aimed at either the content of the speech or the particular adverse effects stemming from that content, it would seem to follow that a regulation that is not so directed should be evaluated under the standards applicable to regulations on fully protected speech, not the more lenient standards by which we judge regulations on commercial speech. Because we conclude that Cincinnati’s ban on commercial newsracks cannot withstand scrutiny under *Central Hudson* and *Fox*, we need not decide whether that policy should be subjected to more exacting review.”

Is the Court, by means of this footnote, trying to foreshadow the ultimate overruling of the *Central Hudson* doctrine? If so, what will be the consequences for city sign regulation schemes grounded in the *Metromedia* distinction between banning off-site commercial speech, while permitting noncommercial speech? See *Rappa v. New Castle County* (3d Cir. 1994) 18 F.3d 1043, 1074 n.54 (“The *Discovery Network* Court thus undermines the *Metromedia* plurality’s implication that a law banning commercial signs but not non-commercial signs would be constitutional. But, in any case, it seems fairly clear after *Discovery Network* that it is unconstitutional to ban commercial speech but not non-commercial speech – at least absent a showing that the commercial speech has worse secondary effects.”)

In *Outdoor Systems v. City of Mesa* (9th Cir. 1993) 997 F.2d 602, the sign ordinances of the cities of Mesa and Phoenix, Arizona, were challenged. Both ordinances permitted “on-site” commercial signs. Mesa prohibited off-site commercial, while Phoenix severely limited off-site commercial signs to a few, predominately industrial, zones. After the litigation commenced, the cities adopted a “substitution clause,” which allowed noncommercial signage to replace any authorized commercial sign.^{vi}

The ordinances were upheld, because the subsequently-enacted “substitution clause” made the ordinances content neutral as between commercial and noncommercial speech, although the ordinances distinguished between on-site and off-site commercial speech. *Id.* at 611.

In *Desert Outdoor Advertising v. City of Moreno Valley* (9th Cir. 1996) 103 F.3d 814, the City of Moreno Valley’s sign ordinance permitted only commercial speech on “on-site signs.” Off-site signs were permitted in only three zones, principally manufacturing zones. Noncommercial political speech was permitted

only on off-site signs, in the limited zones. In addition, the city's ordinance required a conditional use permit for all off-site signs; the permit was to be issued upon a discretionary finding that approval of the permit was in the best interest of the public health, safety and welfare. The sign ordinance provisions for off-site signs included exemptions for the following types of signs: official notices; public notices; directional, warning and information signs; real estate "for sale, lease or rent signs; city boundary signs; and civic, fraternal or religious signs at the city's boundaries.

The ordinance was invalidated for several reasons: it contained a standardless CUP requirement; it failed to provide findings establishing a substantial governmental interest in regulating commercial speech; it imposed greater restrictions upon noncommercial than upon commercial speech; and certain noncommercial exemptions were content-based and not supported by a compelling governmental interest. *Id.* at 821.

City of Ladue v. Gillio (1994) 512 U.S. 43 is a case of limited scope. The small town of Ladue, a suburb of St. Louis, Missouri, has a population of about 9,000. Only 3% of the city is zoned for commercial or industrial use. During the 1990 Gulf War, a resident of Ladue, Margaret Gillio, desired to post anti-war signs on her front lawn. A city ordinance prohibited homeowners from displaying any signs on their property except for "residence identification" signs, "for sale" signs and signs warning of safety hazards. Commercial establishments, churches and nonprofit organizations were permitted to erect certain signs not permitted at residences.

The Supreme Court invalidated Ladue's ordinance in an opinion joined by all justices except Justice O'Connor, who concurred in the result. In reviewing the Court's prior decisions, Justice Stevens, writing for the Court, identified two analytically distinct grounds for challenging the constitutionality of municipal ordinances regulating the display of signs. One is a measure that in effect restricts too little speech because its exemptions discriminate on the basis of the signs' messages. Alternatively, sign ordinances are subject to attack on the ground that they simply prohibit too much protected speech. 512 U.S. at 50-51. Justice Stevens reviewed the effect of Ladue's ordinance, which prohibited all neighborhood comment on political, religious or personal matters. The Court was simply unconvinced that adequate "alternative channels of communication" were available to the residents of Ladue once the important medium of yard signs had been closed off.

Foti v. City of Menlo Park (9th Cir. 1998) 146 F.3d 629 is a recent Ninth Circuit opinion that invalidated a Menlo Park ordinance banning all signs on public property, except for certain exempt categories of signs. The exemptions for temporary "open house" real estate signs, signs placed by government entities, and safety, traffic and public informational signs. The Ninth Circuit had no difficulty in determining that the exemptions were content-based, "because a law

enforcement officer must read a sign's message to determine if the sign is exempted from the ordinance." 146 F.3d at 636.

In invalidating the Menlo Park ordinance the Ninth Circuit noted that it was "troubled by the wholesale exemption for government speech." *Id.* at 637. Because the plaintiffs failed to respond to the district court's request that they brief the question whether the government speech exemption was content-based under the First Amendment or speaker-based under an Equal Protection analysis, the government-exemption issue was not decided in *Foti*. And in a continuing reminder of the need to adopt strong finding justifying the imposition of restrictions on speech, the district court in *Foti* also noted that it needed fuller explanations of the city's justification for the wholesale government exemption. *Id.*^{vii}

Severability

City attorneys have long assumed that the severability clause adopted as part of most ordinances will have some prophylactic effect in the event that a reviewing court finds a portion of a local sign ordinance constitutionally infirm. Unfortunately, there is no guarantee that this will be the case. Two cases serve to drive this point home: *Desert Outdoor Advertising* and *Rappa*. In *Desert Outdoor Advertising*, the Ninth Circuit sustained a challenge brought by billboard companies against Moreno Valley's sign ordinance.

The Moreno Valley ordinance under attack in *Desert Outdoor Advertising* contained a standard "severability" clause.^{viii} It is the conventional wisdom among city attorneys that the severability clause will save the remainder of a partially-invalidated ordinance. Sadly, this appears not to be the case, at least when the challenged regulations restrict speech rights. *The Moreno Valley* court struck the entire ordinance, because "the balance of the ordinance [could not] function independently after [the court struck] the unconstitutional provisions. *Id.* While this is a traditional statement of how courts operate in deciding whether to invoke a severability clause (*National Advertising*, 861 F.2d at 249-50), the law in fact appears to be more complex.

In contrast to the Ninth Circuit's action in *Desert Outdoor Advertising*, the Third Circuit's decision in *Rappa* employed the severability doctrine in a different way. The *Rappa* court struck down an entire subchapter of the challenged Delaware statute, which generally prohibited signs within 25 feet of the right-of-way line of any public highway. 18 F.3d at 1051. The court was faced with the alternative of merely eliminating an exception allowing signs "announcing a town, village or city and advertising itself or its local industries, meetings, buildings, historical markers, or attractions." *Id.* at 1052.

The court noted that "[e]liminating the offending exception would mean that we would be requiring the State to restrict more speech than it currently does. All

existing restrictions would apply, plus there would be a restriction on signs advertising local industries and meetings. . . Thus, we hold that the proper remedy for content discrimination generally cannot be to sever the statute so that it restricts more speech than it did before – at least absent quite specific evidence of a legislative preference for elimination of the exception.” *Id.* at 1072-73. The court then invalidated the entire subchapter of the code that restricts speech rather than eliminating an exception that allowed speech. *Id.* at 1074.

There are a number of unpleasant consequences that result from judicial invalidation of a sign ordinance. First and foremost the city is left without regulatory ability until such time as it can adopt a new ordinance. Second, a successful challenger of the ordinance may acquire a vested right to certain type of existing or proposed signage. Third, if the court has refused to invoke the invalidated ordinance’s severability clause, the unintended consequences may be quite broad. The city’s ability to limit signs of all types may disappear, literally overnight. Finally, the governmental officials who enacted and enforced the constitutionally-infirm ordinance may have personal liability exposure.

Qualified Immunity

Once again *Desert Outdoor Advertising* and *Rappa* are particularly instructive. In *Desert Outdoor Advertising* the district court granted judgment on the pleadings to several city officials, on a theory of qualified immunity. Those officials had attempted to enforce the city’s sign ordinance against a billboard that had been constructed prior to incorporation of the city and without city or county permits. (The city’s sign ordinance was based on a similar pre-existing county ordinance.)

Government officials performing discretionary acts are shielded from personal civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818. The *Desert Outdoor Advertising* court reversed the district court’s grant of qualified immunity:

“For over fifty years, it has been clearly established that a licensing scheme is impermissible if it allows officials unfettered discretion to impose prior restraints on speech. . . . Furthermore, the Supreme Court’s decision in *Metromedia* and our holding in *National Advertising* make it clear that a City cannot impose greater restrictions on commercial speech than on noncommercial speech, and cannot regulate noncommercial speech on the basis of content. Because the City officials, in attempting to enforce the ordinance, violated clearly established constitutional rights of which a reasonable person would have known, they are not entitled to qualified immunity.”

In contrast to the *Desert Outdoor Advertising* court's refusal to affirm a grant of qualified immunity, the *Rappa* court reversed the district court's denial of summary judgment motions for qualified immunity. The court's decision to grant qualified immunity was based, at least in part, on the court's conclusion that *Metromedia*, because of its splintered reasoning, failed to establish a clear, binding standard by which to evaluate statutes regulating outdoor advertising. 18 F.3d at 1077-78.

Public officials acting in the Ninth Circuit should take little comfort from the *Rappa* decision. Of all the circuits, the Ninth Circuit is by far the most conservative in granting qualified immunity.

Conclusion

Crafting a constitutionally-valid sign ordinance that is effective in regulating what cities believe to be major problems with signage is a very challenging task. In order to avoid running afoul of the numerous constitutional pitfalls, many desired regulations will have to be discarded.

The consequences of an invalid sign ordinance are broad. Public officials in cities that overreach may face personal liability for adopting or enforcing unconstitutional ordinances. And the city attorney who failed to advise the liable officials of the potential pitfalls will also be in harm's way, whether as an individual defendant in the lawsuit challenging the sign ordinance's constitutional validity, or in the court of personal esteem with the attorney's public clients.

ⁱ The starting point for this paper is another city attorneys' paper: M. Katherine Jenson & John L. Fellows III, "Avoiding Section 1983 Liability for Regulation of First Amendment Rights: Signs, Newsracks, Cable TV, Solicitation, Day Workers, Council Meetings, Local Campaigns, Elections and More" (1991 Continuing Education Seminar for Municipal Attorneys – Emerging Trends in Section 1983 Liability). Since the presentation of that earlier paper, the state of the law has become even more restrictive. For example, in 1991, many city attorneys, including this author, viewed the regulation of political signs as a particular subset of sign regulation generally. Today, it is apparent, particularly in the Ninth Circuit, that regulation of political signs is interrelated with all other aspects of sign regulation, and that a defect anywhere in a city's signage regulatory scheme may cause the entire scheme to be held unconstitutional.

ⁱⁱ Justice Rehnquist observed that it was difficult to divine what principles, if any, from *Metromedia* became the "law of the land," because "the Court's treatment of the subject [was] a virtual Tower of Babel, from which no definitive principles [could] be clearly drawn." *Id.* At 569 (Rehnquist, J. dissenting).

ⁱⁱⁱ "[N]o person shall paint, mark or write on, or post or otherwise affix, any hand-bill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or police telegraph system or upon any lighting system, public bridge, drinking fountain, life buoy, life preserver, life boat or other life saving equipment, street sign or traffic sign." Los Angeles Municipal Code § 28.04.

^{iv} Private CC&Rs may provide an additional avenue for regulation of political signs on private property, but one that is beyond the scope of this discussion.

^v *Estevanovich* should be required reading for every city attorney. The Court appeared to go out of its way to highlight what it perceived to be the city attorney's failures with respect to presentation of the ordinance, beginning

with the fact that the ordinance, which was drafted by a police officer, was recommended to the city council by the city attorney. The acting city attorney's report to the council omitted discussion of the constitutionally infirm provisions. 69 Cal.App.4th at 547-48. Given the scope of potential individual liability for enacting or attempting to enforce facially invalid sign ordinances (see the discussion below), city attorneys should pay careful attention to the drafts of ordinances prepared by the agency's operating departments.

^{vi} There was no mention of any exemptions for some types of off-site signage.

^{vii} In addressing another aspect of the Menlo Park ordinance, a limitation on the number and size of signs that may be carried by a picketer, the court noted *Verrilli and Baldwin*, in a manner that strongly suggests they are still good law. 146 F.3d at 640.

^{viii} "It is the intention of the City Council in adopting this ordinance that each provision, section, sentence, clause and phrase shall be given effect and enforced to the extent legally possible without regard to whether any other provision, section, sentence, clause or phrase is found to be invalid or unenforceable." 103 F.3d at 821.



SPECIAL TOWN MEETING

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

**THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF DUNSTABLE
WARRANT
SPECIAL TOWN MEETING – November 18,
2024**



Middlesex, ss.

To either of the Constables of the Town of Dunstable in the County of Middlesex:

GREETINGS

IN THE NAME OF the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of said Town, qualified to vote in elections and town affairs, to meet at Swallow Union Elementary School, 522 Main Street in said Dunstable on Monday, November 18, 2024, at 7:00 PM, and thereafter continuing from day to day until completed, with a back-up date of November 19, 2024, at 7:00 PM in the event that inclement weather or other circumstances require a postponement, then and there to act on the following articles:

FISCAL YEAR 2024

ARTICLE 1 - Unpaid Bills of FY24: To see if the Town will vote to appropriate from Free Cash (Surplus Revenue) a sum of money for the purpose of paying unpaid bills of FY2024, or take any action in relation thereto.

Sponsored by the Board of Selectmen

ARTICLE 2 – Cell Tower on Water Tank: To see if the Town will vote to authorize the Board of Water Commissioners to enter into a lease agreement with T-Mobile Northeast LLC for the installation, operation, and maintenance of a wireless communications facility consisting of telecommunications panel antennas, remote radio units and related equipment on the Town-owned water tank, and ground equipment on the base of the Town-owned water tank, consisting of radio equipment and cabinets, together with related support equipment including fiber, electrical, and coax cabling, located at 108 Pleasant Street, Parcel 53-2, Map 17, or take any other action relative thereto.

ARTICLE 3 – High Street Property Conservation Restriction: To see if the Town of Dunstable will vote to transfer from available funds, including CPA funds, the sum of \$300,000, and authorize

the Town Treasurer, with the approval of the Select Board, to borrow up to \$700,000 under and pursuant to M.G.L. c. 44, or pursuant to any other enabling authority, to purchase through the Conservation Commission on behalf of the Town, for the sum of \$700,000, a conservation restriction for open space and conservation purposes, by negotiated purchase or otherwise, a certain property consisting of a 29.8-acre, more or less, adjacent to 346 High Street identified on Assessors Map 15 Parcels 2 and 3B, and shown as "Parcel B" and "Assessor Parcel ID: 15-2" on a plan recorded in the North Middlesex Registry of Deeds in Plan Book 251, Plan 34, which is on file with the Town Clerk; that said land be conveyed to the Town under the provisions of Massachusetts General Laws, Chapter 40, Section 8c, and as it may hereafter be amended and other Massachusetts statutes relating to Conservation, to be managed and controlled by the Conservation Commission of the Town of Dunstable, and the Conservation Commission be authorized to file on behalf of the Town any and all applications deemed necessary under the LAND Grant Program, Chapter 132A, Section 11, and/or any others in any way connected with the scope of this Article, and the Town and Conservation Commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town to affect said purchase, based upon the recommendation of the Community Preservation Committee, or take any action in relation thereto.

ARTICLE 4 – Acceptance of Donation of Land – 19 Lowell Street: To see if the Town will vote to accept as a gift, take, or otherwise acquire a parcel of land at 19 Lowell Street, identified on the Assessor's Map 17-4-0, consisting of 3.71 acres, more or less, and to authorize the Select Board to take any other action or execute any documents necessary to effectuate the conveyance of same to the Town, or take any other action related thereto.

ARTICLE 5 – Creation of Capital Improvement Program Trust Fund: To see if the Town will vote to accept the provisions of Massachusetts General Laws Chapter 40, Section 5B, and authorize the establishment of a Capital Improvement Program Trust Fund, for the purpose of funding capital improvement projects for the Town, or take any other action relative thereto.

GENERAL BYLAW AMENDMENT

ARTICLE 6 – Amend Departmental Revolving Fund Bylaw: To see if the town will vote to amend the Departmental Revolving Funds Section of the General Bylaws as follows (amendments are underlined):

Recreation Revolving Fund, Section D. Program or Activity Expenses Payable From Fund:

Expended for the repairs, maintenance and/or improvement to Town recreational sites (including Town Field, Larter Field, tennis courts, and any other facility under Recreation purview), and/or staffing, materials, equipment, etc. to support recreational programming.

And you are hereby directed to serve this warrant, by posting attested copies thereof, one at the Post Office and one at the Town Hall in said Dunstable fourteen days at least before the time of holding such Town Meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of the meeting as aforesaid.

Given under our hands this _____ day of _____, two thousand and twenty-four.

DUNSTABLE BOARD OF SELECTMEN

Ron Mikol

Leah D. Basbanes

Kieran Meehan

A true copy.
Attest:

Brynn Durno, Town Clerk

DATE: _____, 2024

I have served this warrant by posting attested copies thereof, one at the Post Office and one at the Town Hall _____ days before said meeting.

Date

Constable



TAX ABATEMENT – 100 SIMMONS WAY

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

From: [Vicki Tidman](#)
To: [Jason Silva](#)
Cc: [Susan Bresnick](#)
Subject: abatement request for 100 Simmons St
Date: Wednesday, August 14, 2024 1:05:12 PM

Jason,

Please have the Board of Selectmen request that the Board of Assessors grant real estate abatements on the property located at 100 Simmons Street (17-53-2). In the request the BOS should state due to a clerical error in the Assessors software the land use code was not changed to exempt. A bill was erroneously generated in David Simmon's name. The resident has paid the bills and therefore should be refunded a total of \$19,926.72.

Let the BOS know that I apologize for the error.

*Vicki Tidman, MAA
Town Of Dunstable
511 Main Street
Dunstable, MA 01827
(978)649-4514 ext. 225*

Middlesex North Registry of Deeds

Electronically Recorded Document

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Recording Information

Document Number	: 38417
Document Type	: DEED
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Receipt Number	: 821004
Recording Fee (including excise)	: \$125.00

MASSACHUSETTS EXCISE TAX
Middlesex North ROD #14 001
Date: 08/31/2018 01:23 PM
Ctrl# Doc# 00038417
Fee: \$.00 cons: \$100.00

Middlesex North Registry of Deeds
Richard P. Howe Jr., Register
360 Gorham Street
Lowell, Massachusetts 01852
978/322-9000
www.lowelldeeds.com

Record and return to:

Town of Dunstable
511 Main Street
Dunstable, MA 01827
Attn: Mark Haddad

This space reserved for Recorder's use only

QUITCLAIM DEED

I, **DAVID F. SIMMONS**, also known as **DAVID SIMMONS** ("Grantor"), for good and valuable consideration paid of less than **ONE HUNDRED and 00/100 DOLLARS (\$100.00)**, grant to **THE TOWN OF DUNSTABLE**, a municipal corporation with a usual place of business at 221 Main Street, Dunstable, Massachusetts 01505 ("Grantee"), **WITH QUITCLAIM COVENANTS**, two parcels of land, with the buildings and improvements thereon, in Dunstable, Massachusetts, described as follows:

Parcel 1

The land known and numbered as 114 Pleasant Street, Dunstable, Massachusetts, situated on the southerly side of Pleasant Street and being shown on a plan entitled, "Plan of Land on Pleasant Street in the Town of Dunstable, Mass., to be acquired by Gerald & Rena Simmons" dated May 17, 1969, recorded with the Middlesex North Registry of Deeds in Plan Book 108, Plan 154, and containing, 44,426 square feet of land, more or less, according to said plan.

Parcel 2

The land known and numbered as 108 Pleasant Street, Dunstable, Massachusetts, shown as Lot 3A on a plan entitled "Plan of Land Heirs of Florence E. Hampton" dated September 2, 2000, recorded with the Middlesex North Registry of Deeds in Plan Book 204, Plan 111, and containing 5.60 acres of land, more or less, according to said plan.

Grantor hereby reserves a life estate in the premises described herein as Parcel 1, as more particularly described in that certain Life Estate Agreement between Grantor and Grantee dated October 26, 2017, and recorded herewith.

Grantor hereby declares under the pains and penalties of perjury that Grantor terminates any and all estates of homestead in and to the premises being conveyed, and that Grantor has no knowledge of any other person or persons who can claim the benefits under the Massachusetts Homestead Act.

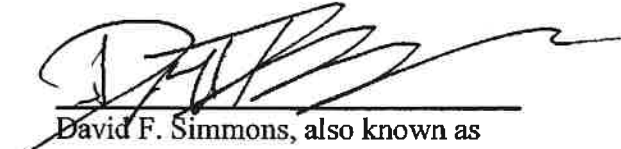
Except as otherwise provided in the Life Estate Agreement described above, Parcel 1 and Parcel 2 shall only be used for the following municipal purposes: (i) the construction, use, and

maintenance of a public safety building; (ii) necessary water infrastructure improvements to facilitate the development of a public safety building, which may also benefit other public and private properties; (iii) open space without public access, and (iv) passive recreation with public access, provided that no passive recreation use shall commence until after the death of Grantor.

For Grantor's title to Parcel 1, see that certain deed dated August 11, 2011, recorded with the Middlesex North Registry of Deeds in Book 25168, Page 294. For Grantor's title to Parcel 2, see that certain deed dated November 26, 2001, recorded with the Middlesex North Registry of Deeds in Book 12409, Page 35.

[SIGNATURE PAGE FOLLOWS]

30th IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed effective as of the day of August, 2018.

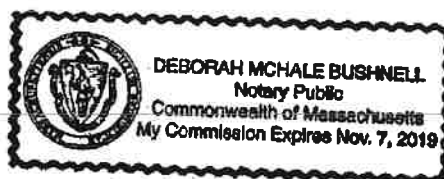

David F. Simmons, also known as
David Simmons

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 30th day of August, 2018, before me, the undersigned notary public, David F. Simmons, also known as David Simmons, personally appeared, proved to me through satisfactory evidence of identification, which was MA drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public
Printed Name: Deborah McHale Bushnell
My Commission Expires: 11/7/2019 [Seal]



ACCEPTED this 30th day of August, 2018.

Town of Dunstable,
by its Board of Selectmen,
as authorized by vote of Dunstable Town Meeting
on November 7, 2017

By: Leah D. Basbanes
Leah D. Basbanes, as authorized by vote of
Board of Selectmen on August 28, 2018

Record of Special Town Meeting
November 7 2017
Swallow Union School
John Callahan, Temporary Town Clerk

Special Town Meeting was opened at 7:00pm November 7 2017 by Dana Metzler, Moderator. The Moderator swore in four counters from the registered voters before the start of the Meeting. The four persons sworn in by Dana Metzler were:

Brian Reynolds	103 Oak Street
Brian Locapo	59 Old Dam Way
Robert Ricciardelli	223 Pond Street
Anne Fenochetti	504 Main Street

As the Town Clerk Carol Skerrett was absent, a motion was introduced to nominate a Temporary Town Clerk. One nomination was made for John M. Callahan 16 Kimberly Lane. A paper ballot had been distributed to voters at check-in. Voters marked ballots and deposited in ballot box overseen by a Dunstable Police officer. Leah Basbanes counted votes. Walter Alterisio and Ronald Mikol observed. Brian Falk, town counsel, also observed the vote count. The tally of 56 votes for and none against John Callahan was announced by the Moderator. John Callahan accepted the position. Dana Metzler administered the oath and a certificate signed by John Callahan.

As Temporary Town Clerk, John Callahan, read the warrant to voters. A motion was offered and seconded and vote taken to dispense with the reading of the articles. John Callahan finished the reading of the warrant.

Ryan McLane and Jennifer McKenzie of the Groton Dunstable Regional School District committee presented a update on news from the district and took questions from the voters.

The articles were then read in order.

Article 1 read by Kiernan Meehan, seconded, and discussion followed. Board of Selectmen announced support the article. Motion made to vote the article and seconded. Article was passed on hand vote unanimously (required 9/10 vote). Motion carried.

Article 2 Fiscal year 2018 Free Cash read by Christine Muir, seconded and discussion followed. Board of Selectmen and Financial Advisory Board announced support the article. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 3 Fiscal Year 2018 Free Cash read by Leah Basbanes, seconded and discussion followed. Financial Advisory Board announced no support for the article. Motion made to vote the article and seconded. Hand vote was deemed too close to call by Moderator who called for tellers to count. Counters reported 42 votes for and 28 votes against the article. Vote count was announced to voters. Article passed with majority in support. Motion carried.

Article 4 Fiscal Year 2018 Free Cash read by Walter Alterisio, seconded and discussion followed. Board of Selectmen announced support for the article. Financial Advisory Board announced support the article. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 5 Transfer for Repair Water Enterprise Fund read by Ronald Mikol, seconded and discussion followed. Financial Advisory Board announced support the article. Discussion about Enterprise Fund followed. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 6 GDRSD Capital Stabilization read by Ryan McLane, seconded and discussion followed. Presentation by Ryan McLane. Board of Selectmen announced no support for the article. Financial Advisory Board announced support for the article. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 7 Public Safety Building Parcel Donation read by Ronald Mikol, seconded and discussion followed. Board of Selectmen announced support the article. Financial Advisory Board announced support the article. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 8 Public Safety Building Closing and Title Costs read by Walter Alterisio, seconded. No discussion. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 9 Fiscal Year 2018 Free Cash read by Leah Basbane, seconded and discussion followed. Board of Selectmen announced support for the article. Fiscal Advisory Board announced support the article. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 10 Fiscal Year 2018 Free Cash read by Leah Basbanes, seconded and discussion followed. Board of Selectmen support the article. Financial Advisory Board do not support the article. Hand vote was deemed too close to call and Moderator called for tellers to count. Counters reported 36 votes for and 28

True Copy Attest



Carol A. Skerrett, Town Clerk

votes against the article. Article passed with majority in support. Motion carried.

Article 11 Recreation Music Donation Account read by Brian Locapo, seconded. No discussion. Motion made to vote the article and seconded. Article passed on hand vote with majority in support. Motion carried.

Article 12 Saturday Office Hours read by Leah Basbanes, seconded and discussion followed. Motion made to vote the article and seconded. Article passed on hand vote unanimously in support. Motion carried.

Motion made by moderator and seconded to adjourn Special Town Meeting. Motion carried and majority vote passed on hand vote. Motion carried. Special Town Meeting adjourned at 8:56pm.

John Callahan, Temporary Town Clerk

Quorum Certificate

In accordance with The Town of Dunstable's Town Meetings, Town Elections & Records Bylaw, I hereby certify that the quorum for an Annual or Special Town Meeting is 50 registered voters of the Town of Dunstable.

Total number of voters checked in at the Special Town Meeting of November 7, 2017: 82

Carol A. Skerrett
Town Clerk CMMC

Middlesex North Registry of Deeds

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Recording Information

Document Number	: 38418
Document Type	: AGR
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Recording Fee	: \$75.00

Middlesex North Registry of Deeds
Richard P. Howe Jr., Register
360 Gorham Street
Lowell, Massachusetts 01852
978/322-9000
www.lowelldeeds.com

LIFE ESTATE AGREEMENT

This Life Estate Agreement (this "Agreement") is dated as of October 26, 2017 and is by and between **DAVID F. SIMMONS**, an individual with an address of PO Box 165, Dunstable, Massachusetts 01827 ("Simmons"), and the **TOWN OF DUNSTABLE**, a Massachusetts municipal corporation, having an address of 511 Main Street, Dunstable, Massachusetts 01827 (the "Town").

RECITALS

WHEREAS, Simmons is the owner of the real property located at and known as 114 Pleasant Street, Dunstable, Massachusetts (the "Premises"), more particularly described in a deed recorded with the Middlesex North Registry of Deeds in Book 25168, Page 294;

WHEREAS, Simmons desires to gift his right, title and interest in and to the Premises to the Town, subject, however, to a life estate in the Premises; and

WHEREAS, Simmons and the Town desire to enter into an Agreement in which the rights and obligations of the parties are established for the term of the life estate.

NOW THEREFORE, the parties agree as follows.

TERMS OF AGREEMENT

For good and valuable consideration paid of less than One Hundred Dollars (\$100), and in consideration of the mutual covenants contained in this Agreement, Simmons and the Town agree as follows:

1. Deed: Life Estate. Simmons shall execute and deliver to the Town a quitclaim deed for the Premises (the "Deed") that shall convey to the Town good, clear, record and marketable title to the Premises, subject, however, to a life estate retained by Simmons in the Deed. The Deed shall be agreed upon by both Parties.
2. Closing. Simmons shall deliver the Deed to the Town as of the date set forth in that certain "Agreement for Donation and Acceptance of Real Property" between the Parties dated 10/26, 2017 (the "Closing").
3. Title. The Town will obtain a title report for the Premises.. Simmons shall not, without the Town's consent in each instance, permit any title encumbrance to attach to the title to the Premises except a lien of the Town.
4. Septic System. Simmons and the Town acknowledge that the Premises are served by a septic system. The Town may, from time to time, perform an inspection of the System at its sole cost and expenses. Simmons agrees not to inspect the System without the consent of the Town.
5. Life Tenant Obligations. During the term of the life estate, Simmons agrees:

- (a) To maintain, at Simmons' sole expense, the policy of insurance currently in effect, general liability insurance in an amount of at least \$1,000,000 for personal liability. The foregoing insurance shall (i) name the Town as an additional insured, (ii) be on an occurrence basis, and, (iii) be primary and not in excess or contributing or secondary to any other insurance available to the Town.
 - (b) To maintain, at Simmons' expense, property insurance covering the Premises in an amount equal to the full estimated replacement cost of the Premises. All payments in the event of a loss shall be paid to Simmons, subject, however, to the provisions of Section 10.
 - (c) To pay for all heat, water and other utilities furnished to the Premises by the date that the same are due. Simmons shall provide evidence of payment to the Town on request.
 - (d) To pay all real estate taxes assessed to the Premises by the Town of Dunstable by the date that the same are due.
 - (e) Subject to the provisions of Section 10 below, to maintain the Premises, at Simmons' expense, in the same repair and condition as the Premises are in at the date of the Closing, reasonable wear and tear, damage by fire or other casualty excepted.
6. The Town's Maintenance Obligations. The Town, at the Town's expense, shall maintain, repair and replace the System, the roof, structural elements, exterior walls and the heating, ventilating, plumbing and electrical systems and components which serve the Premises in at least the same condition and repair as the same are in on the date of the Closing, provided, however, that the cost of any maintenance, repair or replacement item is in excess of Ten Thousand Dollars (\$10,000).
7. Risk of Loss. Simmons (i) assumes the risk of loss with respect to all property of Simmons on the Premises during the term of the life estate. Further, if any of Simmons' property is damaged by any cause, no part of the loss shall be charged to the Town.
8. Indemnity. Simmons agrees to protect, indemnify, hold harmless and defend the Town and its officers, directors and employees from and against any and all loss, cost, damage, liability or expense (including, but not limited to reasonable attorneys' fees), arising out of or related to any claim, suit or judgment brought by or on behalf of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death, or property damage sustained by such person or persons which arises out of, is occasioned by, or is in any way attributable to the use and occupancy of the Premises by Simmons or any person under her control. Notwithstanding the foregoing to the contrary, the Town shall not be entitled to the benefit of this Section in the event of any omission, fault, negligence or other misconduct of the Town that is the cause of the loss, cost, damage, liability or expense.
9. Insurance Certificates. Simmons agrees to deliver to the Town, from time to time upon request, satisfactory evidence of (i) all existing insurance policies for the insurance

required by Section 5, (ii) new policies for insurance about to expire at least thirty (30) days before the expiration, and (iii) payment of all insurance premiums.

10. Damage to Premises. In the event of damage to the Premises resulting from a casualty or condemnation, all proceeds (the "Proceeds") shall be applied by Simmons to the reasonable fees and disbursements of attorneys and other professionals incurred by Simmons in collecting the Proceeds and to the cost of restoring the Premises. If the Proceeds are insufficient to pay the entire cost of restoration, then Simmons shall pay up to \$10,000 of any deficiency and the Town shall pay the portion of the deficiency, if any, in excess of \$10,000. Simmons agrees to pay any Proceeds received by Simmons to the Town so that the Town may complete the Town's obligations set forth in Section 6.
11. Access. The Town shall have the right to enter the Premises at reasonable times and after reasonable notice for the purpose of performing inspections at its sole cost and expense, for performing the Town's obligations under this Agreement and for the purpose of showing the Premises to others.
12. Alterations. Simmons shall make no structural alterations to the Premises without the Town's prior written consent. Notwithstanding the foregoing, Simmons may make non-structural alterations without the Town's consent.
13. Severability. If any of the terms of this Agreement or any application thereof shall be invalid or unenforceable, the other provisions and any other application of such provisions shall not be affected thereby.
14. Construction. This Agreement is to be construed as a Massachusetts contract, is not subject to any oral understandings, or written understandings not set forth herein, and may be canceled or amended only by a written instrument executed by the parties to this Agreement. This Agreement shall bind and inure to the benefit of each Simmons and the Town and their respective heirs, executors, administrators, personal representatives, successors and assigns.

EXECUTED as an instrument under seal as of the date first written above.

SIMMONS


David F. Simmons

TOWN

TOWN OF DUNSTABLE

By:



Name: Walter F. Alterisio

Title: Chair, Board of Selectmen, duly
authorized by a vote of the Board of
Selectmen on Oct 18,
2017

Middlesex North Registry of Deeds

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Recording Information

Document Number	: 38415
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Middlesex North Registry of Deeds
Richard P. Howe Jr., Register
360 Gorham Street
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AFFIDAVIT PURSUANT TO M.G.L. c. 183, § 5B

Marginal Reference Requested to: Book 25168, Page 294

AFFIDAVIT

I, David F. Simmons, being first duly sworn, depose and say as follows:

To the best of my knowledge, the individual named as Gerald W. Simmons in a deed dated August 11, 2011, recorded with the Middlesex North Registry of Deeds in Book 25168, Page 294, conveying the property known and numbered as 114 Pleasant Street, Dunstable, Massachusetts, to me, is not the same person as the individual named as Gerald R. Simmons in a Notice of Federal Tax Lien recorded with the Registry in Book 25224, Page 131.

[SIGNATURE ON FOLLOWING PAGE]

Signed under the pains and penalties of perjury this 30th day of August, 2018.


David F. Simmons

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

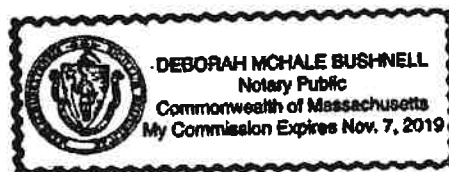
On this 30th day of August, 2018, before me, the undersigned notary public, David F. Simmons personally appeared, proved to me through satisfactory evidence of identification, which was MA drivers licence, to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.


Notary Public

Printed Name: Deborah McHale Bushnell

My Commission Expires: 11/7/2019

[Seal]



CERTIFICATE

I, Deborah McHale Bushnell, hereby certify that I am an attorney at law with an office at 214A Main Street, Groton, Massachusetts 01450, and that the facts stated in the foregoing Affidavit are relevant to the title to the premises therein described and will be of benefit and assistance in clarifying the chain of title thereto.


Deborah McHale Bushnell, Esq.
214A Main Street
Groton, Massachusetts 01450

BK1889

MASSACHUSETTS QUITCLAIM DEED SHORT FORM (INDIVIDUAL) 881

BK1889 PG 125

We, William A. Hampton and Florence E. Hampton, husband and wife, both of Dunstable, Middlesex

County, Massachusetts,

~~being-unmarried~~, for consideration paid, grant to Gerald W. Simmons and Rena F. Simmons, husband and wife, as tenants by the entirety, both of Pleasant Street, in said Dunstable,

of-

with quitclaim covenants

the land in said Dunstable, with the buildings thereon, situated on the southerly side of Pleasant Street and being shown on a plan entitled,

~~(Description and amount of land)~~

"plan of Land on Pleasant Street in the Town of Dunstable, Mass., to be acquired by Gerald & Rena Simmons", dated May 17, 1969, William A. Hampton, Jr., Reg. Land Surveyor, which plan is to be recorded herewith, and being thus bounded:

NORTHERLY by said Pleasant Street two distances measuring 105.20 feet and 95.57 feet, as shown on said plan;

EASTERLY by land of W. A. & F. E. Hampton, as shown on said plan, 218.00 feet;

SOUTHERLY by land of W. A. & F. E. Hampton, as shown on said plan, 209.30 feet; and

WESTERLY by land of H. E. McGovern, as shown on said plan, 216.34 feet.

Containing, according to said plan, 44,426 square feet of land, more or less.

Being a portion of the premises conveyed to us by Frances E. Maxey by deed dated August 30, 1941 and recorded in Middlesex North District Registry of Deeds, Book 966, Page 493.

MIDDLESEX
NORTH



= husband = of said grantee,
= wife =

~~release~~ to said grantee all rights of ~~convey by the survey~~ and other interests therein

Witness OUR hand and seal this 19th day of June 1969

William A. Hampton
Florence E. Hampton

The Commonwealth of Massachusetts

Middlesex

ss. Lowell,

June 19, 1969

Then personally appeared the above named William A. Hampton and Florence E. Hampton and acknowledged the foregoing instrument to be their free act and deed, before me

Richard B. Walsh
Notary Public
My commission expires Mar. 29, 1974

Rec June 20 1969 8:30AM #8442



ARPA REALLOCATION PROPOSAL

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

ARPA Funds

Purpose	Balance
Select Board Newsletter	\$25.54
ARPA Reporting and Compliance	\$11,520.00
IT Upgrades	\$620.92
Election Ballot Drop Box	\$355.88
Town Hall Electrical	\$68.73
Fire Electrical	\$4,877.87
Fire HVAC	\$350.00
Gov Services Remote, Laptops	\$2,236.92
Police Vests	\$1,062.23
MS4 Stormwater	\$59,845.20
Police Cruiser	\$713.09
Town Hall Boilers	\$5,500.00
Salt Shed Roof	\$135.00
Total	\$87,311.38

ARPA Reallocation

Purpose	Balance	Balance After Reallocation
Select Board Newsletter	\$25.54	\$0.00
ARPA Reporting and Compliance	\$11,520.00	\$2,000.00
IT Upgrades	\$620.92	\$0.00
Election Ballot Drop Box	\$355.88	\$0.00
Town Hall Electrical	\$68.73	\$0.00
Fire Electrical	\$4,877.87	\$0.00
Fire HVAC	\$350.00	\$0.00
Gov Services Remote, Laptops	\$2,236.92	\$0.00
Police Vests	\$1,062.23	\$0.00
MS4 Stormwater	\$59,845.20	\$59,845.20
Police Cruiser	\$713.09	\$0.00
Town Hall Boilers	\$5,500.00	\$5,500.00
Salt Shed Roof	\$135.00	\$0.00
Total	\$87,311.38	

Total Being Reallocated

Purpose	Balance
Select Board Newsletter	\$25.54
ARPA Reporting and Compliance	\$9,520.00
IT Upgrades	\$620.92
Election Ballot Drop Box	\$355.88
Town Hall Electrical	\$68.73

Fire Electrical	\$4,877.87
Fire HVAC	\$350.00
Gov Services Remote, Laptops	\$2,236.92
Police Vests	\$1,062.23
Police Cruiser	\$713.09
Salt Shed Roof	\$135.00
Total	\$19,966.18

Proposed Reallocation

Purpose	Balance
General IT	\$2,000.00
Vital Records	\$1,000.00
Newsletter	\$2,100.00
Fire Reporting System Upgrade	\$5,000.00
Town Hall Air Handling Unit	\$9,866.18
Total	\$19,966.18



UNION BUILDING EVALUATION & SELECTION COMMITTEE

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

LEGAL NOTICE

**Town of Dunstable
Legal Notice
Request for Qualifications
Designer Services – Union Building Exterior Restoration**

Sealed proposals will be received at the Dunstable Town Administrator's Office, 511 Main Street, Dunstable, MA 01827 no later than 2 PM, Wednesday, September 25, 2024 at which time and place they will be opened for the following:

Designer Services: Union Building Exterior Restoration

The contract award is made by the Dunstable Select Board. The Town reserves the right to reject any and all proposals and waive any informality in the proposal process, if deemed in the Town's best interest.

Proposal documents are available upon request after 10:00 AM on August 19, 2024 from the Town Administrator's Office at Dunstable Town Hall, 511 Main Street, Dunstable, MA 01827 or on the Town Administrator's webpage at <https://www.dunstable-ma.gov/town-administrator> under the Invitation for Bids and Request for Proposals tab.

The Designer's fee will be negotiated, but shall not exceed one hundred thousand dollars and zero cents (\$100,000).

Proposers must have completed similar work in the state of Massachusetts within the last two calendar years, must be licensed and registered in Massachusetts, and have five years of experience providing relevant services. All sub-consultants must be listed and qualifications must be provided.

Open Office Hours:
Mon-Thurs: 9:00 AM- 4:00 PM



Town of Dunstable Designer Selection Procedures

Date: July 16, 2024

1. These procedures govern the selection of designers for any municipality or local public agency building project subject to the state designer selection law, M.G.L. c. 7C, §§ 44-58. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. The Select Board ("Approving Body") has the authority to conduct the designer selection process for the Awarding Authority. The Approving Body may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Approving Body shall designate the individual or group of individuals (hereinafter referred to as "the Committee") who will conduct the designer selection process. No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's immediate family:
 - a. has a direct or indirect financial interest in the award of the design contract to any applicant;
 - b. is currently employed by, or is a consultant to or under contract to, any applicant;
 - c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
 - d. has an ownership interest in, or is an officer or director of, any applicant.
4. A Request for Qualifications (RFQ) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Approving Body, at least two weeks before the deadline for filing applications.
5. The advertisement shall contain the following information:
 - a. a description of the project, including the specific designer services sought, the time period within which the project is to be completed, and, if available, the estimated construction cost;
 - b. if there is a program for the building project, a statement of when and where the program will be available for inspection by applicants;

- c. when and where a briefing session (if any) will be held;
 - d. the qualifications required of applicants;
 - e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;
 - f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;
 - g. when and where the RFQ can be obtained and the applications must be delivered.
6. The RFQ shall include the current "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction," which is available for download from the Massachusetts Designer Selection Board website at [**Procedures for Municipalities and Public Agencies not within DSB Jurisdiction.**](#) The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
- a. prior similar experience;
 - b. past performance on public and private projects;
 - c. financial stability;
 - d. identity and qualifications of the consultants who will work with the applicants on the project; and
 - e. any other criteria that the Committee considers relevant to the project.
8. The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so.
9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Approving Body.² No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, § 44C, shall be included as a finalist on the list.
- The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation and recorded vote, if any, shall be public records and shall be maintained in the contract file.
10. If the fee was set prior to the selection process, the Approving Body shall select a designer from the list of finalists. If the Approving Body selects a designer other than the one ranked first by the Committee, the Approving Body shall file a written justification for the selection with the Committee and maintain a copy in the contract file.

11. If the fee is to be negotiated, the Approving Body shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Approving Body shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Approving Body is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Approving Body prior to selection of finalists.
12. If the Approving Body is unable to negotiate a satisfactory fee with any of the finalists, the Approving Body shall recommend that the Committee select additional finalists.
13. The Approving Authority may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Approving Authority may commission, at its discretion, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's work to insure its reasonableness and its adequacy before allowing the designer to continue on the project, *provided* the Approving Authority otherwise complies with the statutory requirements for selecting a designer under Chapter 7C of the General Laws, including those set forth in M.G.L. c. 7C, § 54(a)(i).
14. Every contract for design services shall include the following:
 - a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
 - b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
 - c. certification that no person, corporation, or other entity, other than a bona-fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and

- d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, § 39R(c), and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, § 39R(d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

- 15. The Awarding Authority shall not enter into a contract for design services unless the Awarding Authority or the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the Awarding Authority prior to the award of the contract.
- 16. Every contract for design services shall include a provision that the designer or its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the design contract.
- 17. In the event of an emergency that precludes the normal use of these designer selection procedures, the Approving Body may elect to authorize expedited procedures to address the emergency. The Approving Body shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.

The Approving Body may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Approving Body shall rank the finalists in order of qualification and select the designer for the emergency work.

- 18. The Awarding Authority shall publish the name of any designer awarded a contract in the *Central Register*.
- 19. The following records shall be kept by the Awarding Authority:
 - a. all information supplied by or obtained about each applicant;
 - b. all actions taken relating to the project; and

- c. any other records related to designer selection.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

- 20. The Awarding Authority shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7C, § 48(h), and file completed evaluations with the Board and any other agency named in M.G.L. c. 7C, § 48(h).
- 21. Nothing in these Procedures shall be interpreted to require the establishment of a board or waive or reduce the requirements of any other applicable law or regulation.
- 22. For any municipal design or construction project *that includes funding provided by the Commonwealth, in whole or in part* (such as reimbursements, grants and the like), cities and towns must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Awarding Authority shall take steps to assure that it complies with all [Supplier Diversity Office](#) requirements.



TOWN ADMINISTRATOR REPORT

Town of Dunstable

SEPTEMBER 10, 2024
DUNSTABLE TOWN HALL
511 Main Street | Dunstable, MA

Town Administrator's Report

September 10, 2024

Bandstand Railing

The project to replace the railing has begun. Vanguard Construction is performing the work. The new railing is slightly taller and different design due to building code requirements.

Town Hall Boiler Repairs

The boiler repairs at Town Hall are complete. The horizontal portion of the condensate pipe was replaced, backflow preventer, and boiler zone circuit setter were replaced, as well.

Cell Tower on Water Tank RFP

As you know, the Town has received a response to the RFP issued for a cell tower on the Town water tank. The Board of Water Commissioners reviewed the proposal at their meeting in August, and has invited the respondent to attend their meeting this month.

Cybersecurity Training

In addition to the state training grant the Town received from the Executive Office of Technology Services and Security, the Town's IT vendor, Umbral Technologies is providing a cybersecurity training tomorrow, Wednesday, September 11.

Municipal Citizens Academy

The first session of the Citizens Academy is planned for this Thursday from 6 PM to 8 PM at the library. The first session will be conducted by public safety department heads – Police Chief, Fire Chief, and Director of Patriot Emergency Communications Center. We currently have 13 participants registered.

Community Compact Grants

We were notified yesterday that the Town was successful in securing 2 Best Practices Community Compact Grants – one to update our compensation and classification schedule and job descriptions and the other to assist in ensuring our regional partnership with Pepperell is sustainable over the long-term in the Treasurer/Collector's office.

Charter Communications Franchise Agreement

As you know, the Town's franchise agreement with Charter Communications expired in 2021. Recently, I have been able to make contact with Charter and begun discussions around a renewal of the franchise agreement. I expect a draft proposal to be ready for the Board's consideration soon.

Massachusetts Cultural Council Festivals and Projects Grant

The Town recently received notice it's been awarded \$2,500 from the MCC Festivals and Projects grant to support organizing a block party during the year.

Affordable Homes Act

The legislature recently adopted the Affordable Homes Act which has some effect on the Town's local bylaws on Accessory Dwelling Units. The law allows one accessory dwelling unit (ADU) to be developed by right in all lots in single-family zoning districts, with a special permit required for any additional ADU. ADUs will still be subject to site plan review, dimensional requirements, water and sewer regulations, and regulation on their use as short-term rentals. The bill also limits parking requirements for ADUs, allowing municipalities to require a maximum of one additional space for an ADU, except for ADUs within 0.5 miles of a transit station, where no additional parking may be required.

Effective February 2, 2025: "No zoning ordinance or by-law shall prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district"

Amends chapter 40A, Section 3 to allow ADUs in single-family residential neighborhoods

- New ADU definition
- Reasonable Regulations
- Parking limitations
- Other restrictions

Municipalities may not:

- Require owner occupancy of either the accessory dwelling unit or the principal dwelling;
- Require more than 1 additional parking space for an accessory dwelling unit;
- Require any additional parking spaces if ADU located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station;

Municipalities may:

- Subject ADUs to reasonable regulations, including, but not limited to, 310 CMR 15.000 et seq. (Title V), if applicable, site plan review, regulations concerning dimensional setbacks and the bulk and height of structures and may be subject to restrictions and prohibitions on short-term rental, as defined in section 1 of chapter 64G.
- Require a special permit for more than 1 accessory dwelling unit, or rental thereof, in a single-family residential zoning district.

- The executive office of housing and livable communities may issue guidelines or promulgate regulations to administer this requirement.