TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC CMMC

Town Clerk
Justice of the Peace
Notary Public

POSTING DATE: August 28, 2013

NORFOLK, SS.

TO EITHER OF THE CONSTABLES IN THE TOWN OF WESTWOOD IN SAID COUNTY:

GREETING:

In the name of the Commonwealth of Massachusetts you are hereby directed to post in at least eight public places in the Town and in one or more public places in each of the four precincts a copy of the attached Amendments to the Town by-laws.

These amendments were voted under Articles 22, 23,24,& 25(Zoning) and Articles 18,19 &29(General) of the Warrant for the 2013 Annual l Town Meeting, which meeting was held on May 6, 2013.

Any claim of invalidity by reason of any defect in the procedure of adoption or amendment of the aforementioned bylaws may only be made within ninety days of the date of the posting of this notice. Copies of the bylaws are available in the office of the Town Clerk, Town Hall, 580 High Street, Westwood, Massachusetts.

Hereof fail not and make due return upon this warrant with your action thereon to the Town Clerk.

Attest:

Dorothy A. Powers, CMC, CMMC
Town Clerk

By virtue of this warrant, I have this day posted attested copies of the amendments to the Bylaws of the Town of Westwood voted under the aforementioned articles of the 2013 Annual l Town Meeting, on eight bulletin boards erected by the town and in one or more public places in each of the four precincts of the Town.

Constable

Town Hall 580 High Street, Westwood, MA 02090 Telephone: 781-326-3964 Facsimile: 781-329-8030
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MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
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August 27, 2013

Ms. Dorothy A. Powers, Town Clerk
Town of Westwood
580 High Street
Westwood, MA 02090

Re: Westwood Annual Town Meeting of May 6, 2013 ------- Case # 6756
Warrant Articles # 22, 23, 24, and 25 (Zoning)
Warrant Articles # 18, 19, and 29 (General)

Dear Ms. Powers:

Articles 22, 23, 24, 25, and 29 - We approve the amendments adopted under these Articles, and the map pertaining to Article 22, at the Westwood Annual Town Meeting that convened on May 6, 2013. Our comments on Articles 22 and 24 are provided below.

Article 18 - The amendments adopted under Article 18 make changes to a number of the Town's general by-laws. One change deletes in its entirety Chapter 90, "Personnel" and inserts a new Chapter 90, "Personnel." Section 90-1 of the new by-law provides that the by-law is adopted pursuant to G.L. c. 41, §§ 108A and 108C. We take no action on the amendments to Chapter 90 adopted under Article 18 because G.L. c. 41, §§ 108A and 108C, expressly exempt personnel by-laws and amendments from review and approval of the Attorney General.

Article 19 - We approve the amendments adopted under Article 19 except as provided below. **[See page # 3 for Disapproval # 1 of 1]**

The amendments adopted under Article 19 delete the existing Chapter 184, "Animals" and insert a new Chapter 184, "Animal Control." Because the Town deleted Chapter 184 in its entirety and inserted a new Chapter 184, the entire text of Chapter 184 is before this Office for review and approval. The new Chapter 184 defines dog behaviors that could result in the Town's Animal Control Officer imposing various forms of penalties. The new Chapter 184 also imposes licensing requirements. Our comments on the new Chapter 184 are provided below.

I. Applicable Law.

On October 31, 2012, an *Act Further Regulating Animal Control* (hereinafter "new Animal Control law") took effect in the Commonwealth. Among other amendments to G.L. c. 140, §§ 136A - 174E, the new Animal Control Law added new definitions for terms such as "Animal Control Officer,"

"Dangerous Dog," "Hearing Authority," and "Nuisance Dog." The new Animal Control Law also creates a statewide process for dealing with complaints about nuisance and dangerous dog behavior, including the process of the hearing authority to adjudicate complaints and impose penalties. Specifically, the Animal Control Law establishes a Hearing Authority, defines which local official(s) shall constitute the Hearing Authority and charges the Hearing Authority with, among other things, investigating a complaint, holding a hearing, determining if a dog is a nuisance dog or a dangerous dog and making orders, including euthanizing a dangerous dog. (*see* G.L. c. 140, § 157)

II. Comments on Specific Sections of the New Chapter 184.

A. Section 184-4 "Violations".

Section 184-4 of the by-law provides as follows:

> A. The Animal Control Officer shall cause penalties to be invoked for any of the following reasons:
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> * * *
>
> 2) If found at large when in her oestrus cycle, or if creating a nuisance.
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> * * *
>
> 5) For having bitten, injured, or physically harmed any person or domestic animal; or having caused any person to be fearful for their safety by chasing, worrying, snapping, or otherwise frightening said person.
>
> 6) For having bitten or injured any domestic animal.

The new Chapter 184 authorizes the Town's Animal Control Officer to adjudicate complaints for specific dog behavior identified in Section 184-4 (A). Section 184-4 (A) lists specific behaviors that may also be included in the definitions of "nuisance dog" or "dangerous dog" as provided in Chapter 140, § 136A. Section 136A provides in pertinent part as follows:

> "Dangerous dog", a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.
>
> * * *
>
> "Nuisance dog", a dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

General Laws Chapter 140, Section 157, provides the procedures that must be followed by the Towns for complaints pertaining to nuisance and dangerous dogs. The Town must apply the new

Chapter 184 in a manner consistent with the requirements of G.L. c. 140, § 157 when investigating nuisance and dangerous dog complaints. We suggest that the Town discuss the application of Section 184-4 with Town Counsel.

B. Section 184-6 "Control of Dogs".

Section 184-6 (B) provides as follows (with emphasis added):

> Permanent restraining or muzzling of dogs. If any person shall make a complaint in writing . . . to the Animal Control Officer of Westwood that any dog is a *nuisance by reason of vicious disposition*, or by repeated violations of any of the provisions listed in § 184-4A which are contrary to the safety and welfare of the community. [sic] The Animal Control Office shall investigate such complaint, . . . and upon finding that such dog is a nuisance as hereinbefore set forth shall order such dog to be permanently restrained and/or muzzled **or request the Selectmen to banish and remove the dog from the Town of Westwood in accordance with M.G.l. c 140**.

Section 184-6 authorizes the Animal Control Officer to order a dog permanently restrained or muzzled if the dog is a "nuisance by reason of vicious disposition or repeated violations of any of the provisions listed in Section 184-4A...". Again, if a complaint is submitted alleging a dog is a nuisance dog or dangerous dog pursuant to G.L. c. 140, then the town must follow the procedures in G.L. c. 140, including Section 157 for investigating such complaints.

Section 184-6 (B) also authorizes the Town to banish and remove dogs from the Town in "accordance with M.G.L. c. 140." We disapprove this text as indicated above in bold and underline because it is inconsistent with G.L. c. 140, § 157. **[Disapproval # 1 of 1]** Section 157 prohibits banishing a dog from a community and provides as follows:

> No order shall be issued directing that a dog deemed dangerous shall be removed from the town or city in which the owner of the dog resides.

General Laws Chapter 140, § 157, expressly prohibits exiling dogs from a community.[1] Therefore the provisions in Section 184-4 (B) authorizing banishment and removal of a nuisance or dangerous dog is inconsistent with G.L. c. 140, § 157.

Article 22 - The amendments adopted under Article 22 delete the existing Section 9.4, "Wireless Communication Overlay District" and insert a new Section 9.4, "Wireless Communication Overlay District. We approve new Section 9.4, but offer the following comments.

I. Applicable law.

The federal Telecommunications Act of 1996, 47 U.S.C. § 332(7), preserves state and municipal zoning authority to regulate personal wireless service facilities, subject to the following limitations:

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[1] It is our understanding that this provision was inserted in the new Animal Control Law because banishment does not address the dog's behavior but rather exports the problematic dog's behavior onto another community.

1. Zoning regulations "shall not unreasonably discriminate among providers of functionally equivalent services." 47 U.S.C. § 332(7)(B)(i)(I).
2. Zoning regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(7)(B)(i)(II).
3. The zoning authority "shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time." 47 U.S.C. § 332(7)(B)(ii).
4. Any decision "to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. § 332(7)(B)(iii).
5. "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions." 47 U.S.C. § 332(7)(B)(iv).

Federal courts have construed the limitations listed under 47 U.S.C. § 332(7) as follows. First, even a facially neutral by-law may have the effect of prohibiting the provision of wireless coverage if its application suggests that no service provider is likely to obtain approval. "If the criteria or their administration effectively preclude towers no matter what the carrier does, they may amount to a ban 'in effect'...." Town of Amherst, N.H. v. Omnipoint Communications Enters, Inc., 173 F.3d 9, 14 (1st Cir. 1999).

Second, local zoning decisions and by-laws that prevent the closing of significant gaps in wireless coverage have been found to effectively prohibit the provision of personal wireless services in violation of 47 U.S.C. § 332(7). *See, e.g.*, Nat'l Tower, LLC v. Plainville Zoning Bd. of Appeals, 297 F.3d 14, 20 (1st Cir. 2002) ("local zoning decisions and ordinances that prevent the closing of significant gaps in the availability of wireless services violate the statute"); Omnipoint Communications MB Operations, LLC v. Town of Lincoln, 107 F. Supp. 2d 108, 117 (D. Mass. 2000) (by-law resulting in significant gaps in coverage within town had effect of prohibiting wireless services).

Third, whether the denial of a permit has the effect of prohibiting the provision of personal wireless services depends in part upon the availability of reasonable alternatives. *See* 360 Degrees Communications Co. v. Bd. of Supervisors, 211 F.3d 79, 85 (4th Cir. 2000). Zoning regulations must allow cellular towers to exist somewhere. Towns may not effectively ban towers throughout the municipality, even under the application of objective criteria. *See* Virginia Metronet, Inc. v. Bd. of Supervisors, 984 F. Supp. 966, 971 (E.D. Va. 1998).

In addition, Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 requires that "[A] state or local government *may not deny, and shall approve*, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (emphasis added). The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves: 1) collocation of new transmission equipment; 2) removal of transmission equipment; or 3) replacement of transmission equipment. The Act applies "[n]otwithstanding section 704 of the Telecommunications Act of 1996." The Act's requirement that a local government "may not deny,

and shall approve, any eligible facilities request" means that a request for modification to an existing facility that does not substantially change the physical dimensions of the tower or base station must be approved. Such qualifying requests also cannot be subject to a discretionary special permit.

State law also establishes certain limitations on a municipality's authority to regulate wireless communications facilities and service providers. Under General Laws Chapter 40A, Section 3, wireless service providers may apply to the Department of Telecommunications and Cable for an exemption from local zoning requirements. If a telecommunication provider does not apply for or is not granted an exemption under c. 40A, § 3, it remains subject to local zoning requirements pertaining to cellular towers. *See* Building Comm'r of Franklin v. Dispatch Communications of New England, Inc., 48 Mass. App. Ct. 709, 722 (2000). Also, G.L. c. 40J, § 6B, charges the Massachusetts Broadband Institute with the task of promoting broadband access throughout the state. Municipal regulation of broadband service providers must not frustrate the achievement of this statewide policy.

While Section 9.4.1 of the by-law, "Purpose", provides that the by-law is intended to be consistent with the federal Telecommunications Act, we nevertheless caution the Town that its Wireless Telecommunication Facilities by-law must be applied in a manner consistent with the applicable law outlined above. We urge the Town to consult closely with Town Counsel regarding the appropriate response to applications for collocation in light of these recent amendments.

II. Comments on Specific Subsections in Section 9.4.

A. Section 9.4.2 "Location".

Section 9.4.2.1 provides that the WCOD will comprise all the land within the Town's ARO, HB, I, and IO Districts. Section 9.4.2.2 provides a list of specific parcels, which are identified by parcel number and either owner or use. We approve the properties listed in Section 9.4.2.2. However, the list of specific properties included in the WCOD must be applied in a manner consistent with the uniformity requirements of G.L. c. 40A, § 4.

General Laws Chapter 40A, Section 4, embodies a "uniformity principle" for all zoning regulations: "Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." Courts have interpreted this section to require that zoning regulations apply equally within a district: "The uniformity requirement is based upon principles of equal treatment: all land in similar circumstances should be treated alike . . . ." SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 107 (1984) *citing* Everpure Ice Mfg. Co. v. Bd. of Appeals of Lawrence, 324 Mass. 433, 439 (1949), ("A zoning ordinance is intended to apply uniformly to all property located in a particular district ... and the properties of all the owners in that district [must be] subjected to the same restrictions for the common benefit of all.")

The Town can vote to treat a certain parcel within the Town differently from other parcels so long as the Town does so for a legitimate zoning purpose. Spot zoning only exists when there is a "singling out of a particular parcel for different treatment from that of the surrounding area, producing, without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner." National Amusements, Inc. v. Boston, 29 Mass. App. Ct. 305, 312 (1990), *citing* Shapiro v. Cambridge, 340 Mass. 652, 659 (1960). Based upon the documents submitted to us by the Town

pursuant to G.L. c. 40, § 32, we cannot conclude that the Town's vote lacks a legitimate planning purpose, or is "arbitrary and unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare." Johnson v. Town of Edgartown, 425 Mass. 117, 121 (1997). On this basis we approve it.

B. Section 9.4.6 "Application and Submittal Requirements".

Section 9.4.6.2 requires a site plan prepared by a Registered Professional Engineer . . . ."

The requirement in Section 9.4.6.2 that the site plan be prepared by a registered professional engineer must be applied in a manner consistent with G.L. c. 112, § 81R. General Laws Chapter 112, Section 81R, exempts entities that are subject to the jurisdiction of DPU or DTC from the requirement of using a licensed professional engineer or registered engineer. *See* New England Telephone & Telegraph Co. v. City of Lowell, 369 Mass. 831 (1976) (city ordinance requiring use of registered engineers and land surveyors in projects involving city ways was inconsistent with and preempted by G.L. c. 112, § 81R(*l*)). Section 81R provides in pertinent part as follows:

> Nothing in said sections shall be construed to prevent or to affect: –
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> * * *
>
> (*l*) the performance of engineering work and services by a person, firm or corporation subject to the jurisdiction of the department of public utilities or the department of telecommunications and cable which work and services are performed as part of their employment and for the benefit of such person, firm, or corporation;

C. Section 9.4.9 "Discontinuance of Use".

Section 9.4.9 requires a bond or other form of financial security to cover the cost of removal facility by the Town. The amount of the surety shall be certified by a Registered Professional Engineer or Registered Professional Architect. Any surety proceeds collected by the Town must be collected and applied in a manner consistent with state law. Surety or bond proceeds do not become Town funds unless and until the applicant defaults on the obligation under the by-law. Moreover, if the Town must use the surety or bond to pay for compliance with the removal or restoration, an appropriation is required before expenditure is made to do the work. General Laws Chapter 44, Section 53, provides that "[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury." Under Section 53 all moneys received by the Town become a part of the general fund, unless the Legislature has expressly made other provisions that are applicable to such receipt. In the absence of any general or special law to the contrary, performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town's general fund, pursuant to G.L. c. 44, § 53. The Town must then appropriate the money for the specific purpose of removing the wireless facility.

Article 24 - The amendments adopted under Article 24 add a definition for "Medicinal

Marijuana Dispensary" to the Town's zoning by-laws. [2] They also amend the Town's table of Principal Uses to indicate that Medicinal Marijuana Dispensaries are allowed by special permit in the Town's ARO (Administrative-Research-Office) District but prohibited from all other districts. Article 24 also prohibits any marijuana use (other than DPH approved uses) from all zoning districts. Finally, Article 24 adds a new Section 4.6 which imposes a temporary moratorium on special permits for Medicinal Marijuana Dispensaries through May 6, 2014 (presumably the date of the Town's 2014 Annual Town Meeting).

Section 4.6.1 explains the purpose of the moratorium:

> This Section is intended to provide restrictions that will allow the Town adequate time to consider regulations pertaining to facilities associated with the medicinal use of marijuana, to the extent that such facilities are permitted under state laws and regulations, and to develop appropriate standards, criteria and conditions for the establishment and operation of such facilities. Given that a law permitting the medicinal use of marijuana in the Commonwealth of Massachusetts shall be in effect beginning January 1, 2013, and the Massachusetts Department of Public Health has yet to promulgate the regulations by which such facilities shall be registered and administered, a restriction on the establishment of such facilities and other uses related to the regulation of medical marijuana in the Town shall provide the opportunity to study their potential impacts on adjacent uses and on general public health, safety and welfare, and to develop zoning and other applicable regulations to appropriately address these considerations consistent with statewide regulations and permitting procedures.

We approve the temporary moratorium because it is consistent with the Town's authority to "impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies." Sturges v. Chilmark, 380 Mass. 246, 252-253 (1980). Such a temporary moratorium is clearly within the Town's zoning power when the stated intent is to manage a new use, such as a registered marijuana dispensary and related uses, and there is a stated need for "study, reflection and decision on a subject matter of [some] complexity..." W.R. Grace v. Cambridge City Council, 56 Mass. App. Ct. 559, 569 (2002) (City's temporary moratorium on building permits in two districts was within city's authority to zone for public purposes). The time limit Westwood has selected for its temporary moratorium (through May 6, 2014) appears to be reasonable in these circumstances, where the final version of the DPH regulations was issued on May 8, 2013, and those regulations are expected to provide guidance to the Town. The moratorium is definite in time period and scope (to the use of land and/or structures for registered marijuana dispensaries), and thus does not present the problem of a rate-of-development by-law of unlimited duration which the Zuckerman court determined was ordinarily unconstitutional. Zuckerman v. Hadley, 442 Mass. 511, 512 (2004) ("[A]bsent exceptional circumstances not present here, restrictions of unlimited duration on a municipality's rate of development are in derogation of the general welfare and thus are unconstitutional.")

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[2] The by-law's definition of Medicinal Marijuana Dispensary mirrors the definition in Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana." The Department of Public Health (DPH) regulations (105 CMR 725.000) promulgated pursuant to Chapter 369 clarify that a medical marijuana treatment center will now "be known as a registered marijuana dispensary (RMD)" (725.004). We use the term "registered marijuana dispensary" throughout this decision.

However, the Town may wish to expeditiously proceed with its planning process regarding RMDs and related uses now that the DPH process for registration of RMDs pursuant to 105 CMR 725.100 has begun. A moratorium ending too long after the May 8, 2013 approval of the DPH regulations could be found to frustrate the purposes of the Act in the same way that the disapproved Wakefield ban (*See* AGO Decision on Wakefield Case # 6601 issued March 13, 2013). We suggest the Town consult with Town Counsel on this issue.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

Kelli E. Gunagan

Kelli E. Gunagan
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By-law Coordinator, Municipal Law Unit
Office of the Attorney General Martha Coakley
Ten Mechanic Street, Suite 301
Worcester, MA 01608

cc: Town Counsel Thomas McCusker

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC/CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 22 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 22. The Finance and Warrant Commission recommended and the town voted by a 2/3 vote in favor declared by the moderator, to approve certain amendments to the Westwood Zoning Bylaw and Official Zoning Map related to Section 9.4 [Wireless Communication Overlay District (WCOD)], as set forth below:

1) Replace the existing Section 9.4 [Wireless Communication Overlay District (WCOD)] with a new Section 9.4 [Wireless Communication Overlay District (WCOD)] to read as follows:

9.4 WIRELESS COMMUNICATION OVERLAY DISTRICT (WCOD)

9.4.1 **Purpose.** The purpose of the Wireless Communication Overlay District (WCOD) is to permit and regulate the use of wireless communication facilities within the Town and to encourage their location and use in a manner which minimizes negative visual and environmental impacts. It is intended that this Section be in compliance with the Federal Telecommunications Act of 1996 in that the requirements of this section: (i) do not prohibit or have the effect of prohibiting the provision of wireless communication services; (ii) are not intended to discriminate unreasonably among providers of functionally equivalent services; and (iii) do not regulate wireless communication services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions. This Section does not apply to the construction or use of an antenna structure by a federally licensed amateur radio operator, as exempted by M.G.L. Chapter 40A, Section 3.

9.4.2 **Location.** The Wireless Communication Overlay District– (WCOD 1) is herein established as an overlay district as shown on the Official Zoning Map and as described herein:

9.4.2.1 **The WCOD** shall comprise all land within the following zoning districts:

Administrative-Research-Office (ARO)
Highway Business (HB)
Industrial (I)
Industrial-Office (IO)

9.4.2.2 The WCOD shall also include the following specific parcels, or discreet portions of parcels, as shown on the Westwood Board of Assessors' Map, as of January 1, 2014:

located outside of, or attached to, an existing building or structure are less than ten (10) feet in height.

9.4.3.3 **Major wireless communication facility.** A wireless communication facility not meeting the limitations specified for a Minor wireless communication facility.

9.4.4 **Permitted Uses.** Except as otherwise provided herein and subject to the provisions of this Bylaw applicable to the underlying district, land and buildings in a WCOD may be used for any purpose permitted as of right or by special permit in the underlying district. Minor wireless communication facilities and Major wireless communication facilities may be permitted in the WCOD as set forth in this Section. Wireless communication facilities, whether Major or Minor, shall not be permitted outside the boundaries of the WCOD.

9.4.5 **Permits Required.**

9.4.5.1 Minor wireless communication facilities to be located entirely within the interior of an existing building or structure, and not involving a change to the exterior size or appearance of the building or structure, or to be located entirely within the interior of an addition to an existing building where said addition is approved pursuant to Section 7.3 of this bylaw, and which facilities are not visible from the exterior, shall be a permitted use in the WCOD, provided that the wireless communication facility complies with FCC standards for radio frequency emissions and receives a building permit from the Building Inspector. However, any addition to an existing building which is designed primarily to house a wireless communication facility, shall require a WCOD EIDR Approval from the Planning Board in compliance with the provisions of this section and Section 7.3 of this bylaw.

9.4.5.2 Minor wireless communication facilities to be located outside of, or attached to, an existing building or structure, including an existing communication facility, utility transmission tower or pole, water tower or related facility, shall be a permitted use in the WCOD, provided that the wireless communication facility is no more than ten (10) feet in height, adds no more than ten (10) feet in height to the building or structure, and receives a WCOD EIDR Approval pursuant to this section and Section 7.3 of this bylaw.

9.4.5.3 Minor wireless communication facilities to be located entirely within the interior of a new building which is designed primarily to house a wireless communication facility, and which facilities are not visible from the exterior, shall be permitted in the WCOD only upon the issuance of a WCOD Special Permit from the Planning Board in compliance with the provisions of this section.

9.4.5.4 Major wireless communication facilities may be permitted in the WCOD only upon the issuance of a WCOD Special Permit from the Planning Board, which shall include a determination by the Planning Board that the location of the proposed facility would provide adequate screening and/or buffering such that the proposed facility would not be detrimental to the Town or to the general character or visual appearance of the surrounding neighborhood or abutting uses, and would be consistent with the intent of the Bylaw.

9.4.6 **Application and Submittal Requirements.** An application for a WCOD Special Permit or WCOD EIDR Approval shall be filed in accordance with the Planning Board's Rules and

9.4.6.8 A description of the wireless communication facility's capacity, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.

9.4.6.9 Documentation that the Applicant has the legal right to install and use the wireless communication facility.

9.4.6.10 After the submittal of an application, the Planning Board may require that the Applicant perform a "balloon test" or other test in the field sufficient to illustrate the proposed height and location of the wireless communication facility in relation to the surrounding area.

9.4.7 **Development Standards.**

9.4.7.1 An Applicant proposing a wireless communication facility must demonstrate to the satisfaction of the Planning Board that the visual and aesthetic impacts of the wireless communication facility on nearby properties will be minimal. The Applicant must also demonstrate that the facility must be located at the proposed site due to technical, topographical or other unique circumstances, and that no reasonable combination of locations, techniques, or technologies will mitigate the height or visual impact of the proposed wireless communication facility.

9.4.7.2 Co-location of wireless communication facilities is encouraged. To the extent possible, wireless communication facilities shall be located in or on existing buildings or structures, including, but not limited to, buildings, communication facilities, utility transmission towers or poles, water towers, and related facilities, provided that such installation preserves the character and integrity of these buildings or structures. The Applicant shall have the burden of demonstrating to the satisfaction of the Planning Board that a good faith effort has been made to co-locate on an existing building or structure, or on an existing Major or Minor wireless communication facility, that there are no feasible existing buildings or structures upon which to locate, and that no reasonable combination of locations, techniques or technologies will obviate the need for the proposed wireless communication facility.

9.4.7.3 Major wireless communication facilities shall be designed and constructed to accommodate the maximum number of presently interested users that is technologically practical, except where the Planning Board determines that a reduction in the size or height of a facility would be preferable despite a negative effect on co-location opportunity. In addition, if the number of proposed users is less than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.

9.4.7.4 All new antenna support structures shall be buildings or monopoles. Where appropriate to the surrounding area, at the sole discretion of the Planning Board, monopoles shall be disguised as flag poles or trees.

9.4.7.5 The highest point of a Major wireless communication facility, including its antenna support structure and any component thereof or attachment thereto, shall not exceed

9.4.7.14 Wireless communication facilities shall not interfere with nor have any negative effect on the Town's emergency radio communications.

9.4.7.15 Signs posted for advertisement or any other reasons shall not be allowed on or in the vicinity of a Major wireless communication facility, with the exception of one (1) sign not exceeding four (4) square feet in area at the facility which shall display the name and telephone number of the person and company responsible for the maintenance of the facility. The signage shall also display a 'No Trespassing' warning.

9.4.8 **Decision.** A WCOD Special Permit or WCOD EIDR Approval shall only be granted upon the determination of the Planning Board that the application meets the objectives cited herein. The Planning Board may impose reasonable conditions at the expense of the Applicant, including performance guarantees, to promote these objectives. Prior to the issuance of any WCOD Special Permit or WCOD EIDR Approval, the Planning Board shall make positive findings that:

9.4.8.1 The Applicant has demonstrated to the satisfaction of the Planning Board that there exists a significant gap in coverage and that said gap would be sufficiently reduced or eliminated by the proposed wireless communication facility.

9.4.8.2 The Applicant has demonstrated to the satisfaction of the Planning Board that the wireless communication facility must be located at the proposed site due to technical, topographical or other unique circumstances, in order to satisfy a demonstrated gap in coverage.

9.4.8.3 The Applicant has demonstrated to the satisfaction of the Planning Board that the visual and aesthetic impacts of the wireless communication facility on nearby properties will be minimal, and that no reasonable combination of locations, techniques or technologies will mitigate the height or visual impact of the proposed wireless communication facility.

9.4.8.4 The Applicant has demonstrated, in any case where a major wireless communication facility is permitted within the WCOD, that the location of the proposed facility would provide adequate screening and buffering such that the proposed facility would not be detrimental to the Town or to the general character or visual appearance of the surrounding neighborhood or abutting uses, and would be consistent with the intent of the Bylaw.

9.4.8.5 The Applicant has demonstrated to the satisfaction of the Planning Board that the wireless communication facility will have no significant adverse impact on the town and surrounding residential properties.

9.4.9 **Discontinuance of Use.** A wireless communication facility, and all accessory equipment, shall be removed within six (6) months of abandonment or discontinuation of use. As a condition of any special permit for the placement, construction or modification of a Major wireless communication facility, the Applicant shall provide a bond, in a form acceptable to the Town, or shall place into escrow a sum of money sufficient to cover the costs of removing the facility from the subject property and said funds shall be held by an independent escrow agent to be appointed by the Applicant and the Planning Board. The amount of the surety shall be certified by a Registered Professional Engineer or Registered Professional Architect. The Applicant shall authorize and, as necessary, shall provide the authorization of the owner of the property to allow the Town or the

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC/CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 23 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 23. The Finance and Warrant Commission recommended and the town voted unanimously in favor to approve certain amendments to the Westwood Zoning Bylaw related to signs, including amendments to Section 6.2 [Signs], and related amendments to Section 2.0 [Definitions], as set forth below:

1) Remove the existing Section 6.2.2.21, add a new Section 6.2.2.21 to read as follows, and renumber previous and subsequent sections as appropriate:

   6.2.2.21 Real Estate Open House Sign A temporary sign announcing a real estate open house during which an agent or owner will show property for sale or lease.

2) Replace the existing Section 6.2.2.26, with a new Section 6.2.2.26 to read as follows:

   6.2.2.26 Special Events Sign A temporary sign that advertises a charitable, nonprofit or civic event, which event may include an open house, registration or similar event associated with a charitable, nonprofit or civic organization.

3) Replace the existing Section 6.2.3 with a new Section 6.2.3 to read as follows:

   6.2.3 **Sign Permits.** No sign, including a temporary sign, shall be erected, displayed, altered or enlarged until a permit for such action has been issued by the Building Commissioner. Applications may be filed by the owner of the land, building or structure, or any person who has the authority to erect a sign on the premises. All applications shall include a scale drawing specifying dimensions, materials, illumination, letter sizes, color, support systems and location with all relevant measurements. The Building Commissioner shall act within thirty (30) days of receipt of such application and required fee. Sign permits shall be issued only if the Building Commissioner determines that the sign is in compliance with all provisions of this Section and the State Building Code. Not-withstanding the above, historic designation signs, temporary real estate signs, temporary political signs, temporary special event signs, real estate open house signs, and yard sale signs shall not require a sign permit.

4) Replace the existing Section 6.2.10.1.1 with a new Section 6.2.10.1.1 to read as follows:

   6.2.10.1.1 Temporary signs may only be installed with the permission of the property owner. Temporary signs to be placed on Town property require the prior written permission of the Town Administrator, and shall be in full conformance with applicable town policy for said signs.

5) Replace the existing Section 6.2.10.4, with a new Section 6.2.10.4 to read as follows:

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC/CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 24 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 24. The Finance and Warrant Commission recommended and the town voted by a 2/3 vote in favor declared by the moderator to approve certain amendments to the Westwood Zoning Bylaw related to medicinal marijuana, including amendments to Section 4.1 [Principal Uses], Section 2.0 [Definitions], and Section 6.1.5 [Parking Requirements for Commercial Uses], and adoption of a new Section 4.6 [Interim Regulations for Medicinal Marijuana Use], as set forth below:

1) Add a new Section 4.1.5.37 to read as follows, with "BA" in columns under district ARO, and with "N" in all other columns:

   4.1.5.37 Medicinal Marijuana Dispensary

2) Add a new Section 4.1.5.38 to read as follows, with "N" in all columns:

   4.1.5.38 Other Marijuana Facility

3) Add new Sections 2.87 and 2.98 to read as follows, and renumber subsequent sections as appropriate:

   2.87 <u>Medicinal Marijuana Dispensary</u> An establishment, lawfully permitted and licensed by the state Department of Public Health or other applicable state entity, that acquires, cultivates, possesses, processes, sells, dispenses, distributes, or administers products containing or derived from marijuana, including, without limitation, food, tinctures, aerosols, oils, ointments, or smokables, and/or marijuana-related supplies or materials, to qualifying patients or their personal caregivers.

   2.98 <u>Other Marijuana Facility</u> Any acquisition, cultivation, possession, processing, sale, dispensing, distribution, or administration of products containing or derived from marijuana, including, without limitation, food, tinctures, aerosols, oils, ointments, or smokables, and/or marijuana-related supplies or materials, other than a Medicinal Marijuana Dispensary.

4) Amend Section 6.1.5 [Parking Requirements for Commercial Uses] by adding new Section 6.1.5.12 to read as follows, and renumber subsequent sections as appropriate:

6.1.5.12	Medicinal Marijuana Dispensary	One (1) space for each two hundred fifty (250) square feet of floor area or fraction thereof devoted to selling, storage, service and all other activities related to such use, exclusive of cellar and

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 25 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 25. The Finance and Warrant Commission recommended and the town voted unanimously in favor to approve housekeeping amendments to various sections of the Westwood Zoning Bylaw and Official Zoning Map as may be necessary to correct errors or inconsistencies and to clarify such sections, as set forth below:

1) Replace the words "impermeable cover and surface which the Board of Appeals finds is so designed to prevent the generation" with the words "impermeable cover and impervious surface which the Board of Appeals finds is sufficiently designed to prevent the discharge" in existing Sections 9.3.5.3 and 9.3.5.4 so that the amended sections reads as follows:

9.3.5.3	Storage of commercial fertilizers and soil conditioners, as defined in M.G.L. Chapter 128, Section 64, but only in a structure with an impermeable cover and impervious surface which the Board of Appeals finds is sufficiently designed to prevent the discharge of contaminated run-off or leachate.
9.3.5.4	Stockpiling of animal manures, but only in a structure with an impermeable cover and impervious surface which the Board of Appeals finds is sufficiently designed to prevent the discharge of contaminated run-off or leachate.

Witness my hand and seal of the Town of Westwood this 27th day of August, 2013.

Attest:

Dorothy A. Powers

Dorothy A. Powers, CMC, CMMC
Town Clerk

Town Hall 580 High Street, Westwood, MA 02090 Telephone: 781-326-3964 Facsimile: 781-251-2504
dpowers@townhall.westwood.ma.us

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC/CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 18 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 18. The Finance and Warrant Commission recommended and the town voted unanimously in favor to adopt the following amendments to the General By-laws:

Chapter 1, GENERAL PROVISIONS: §1-5 Penalty for Violation is amended by deleting said section in its entirety and replacing it with a new§ 1-5 as follows:

§1-5 –Penalty for Violation: "Whosoever violates any by-law of the Town whereby any act or thing is enjoined, required or prohibited shall forfeit and pay a fine of $100 for the first offense, $200 for the second offense and $300 for any subsequent offenses in any calendar year unless some other penalty is expressly provided by law, or some by-law of the Town. Whosoever violates any of the Traffic Rules and Regulations shall forfeit and pay for each offense a fine of $50 unless some other penalty is expressly provided by law, or by some by-law of the Town.

Chapter 30, FINANCE: Article I. Finance; sections §30-1 Membership and composition; §30-2 Organization;§ 30-6 Duties; §30-9 Voting record; §30-10 Delivery deadline;§122-7 Report;§138-8.Warrant Articles; §138-15, D(1) and E are amended so that any reference to Finance Commission in those sections will now be Finance and Warrant Commission.

Chapter 30, FINANCE: § 30-7 Town Meeting warrants is amended by deleting said section in its entirety and replacing it with a new§30-7 as follows:

§ 30-7 Town Meeting warrants: "The Finance and Warrant Commission shall consider all articles in the warrants for every Town Meeting and shall report in writing before each Town Meeting in a manner provided by by-law, its advice, estimates, and recommendations for consideration by the Town Meeting, in accordance with the provision of the Town Charter."

Chapter 30, Finance; §30-10 is amended by adding a new paragraph at the end of said section that reads as follows: Said Annual Report shall be published on the Town's website and copies made available at the Town Clerk's office, provided however, that while it is the intent of this by-law that every effort shall be made to distribute and post the report as set forth herein, failure to do so shall not invalidate the actions of the Annual Town Meeting.

Chapter 30, Article I. FINANCE: § 30-15 is amended by adding a new paragraph at the end of said section that will read as follows:

"The Town Administrator shall serve as the Chief Procurement Officer under chapter 30B of the General Laws and shall be responsible for the procurement and award of all contracts for supplies, services, materials and equipment other than those for the school department and the library; provided, however, that any contract over $100,000 shall require the approval of the Board of Selectmen.

Chapter 80, OFFICERS AND EMPLOYEES:
Article I, General Provisions, §80-2 Public records is amended by deleting said section in its entirety and substituting therefore the following new§80-2 as follows:

" Except as otherwise provided for by law, any person having custody of any Town records or books shall, during reasonable business hours and at their regular office or at some convenient place, permit such books and records to be inspected and examined under their supervision. Such officer shall furnish copies thereof on payment of a reasonable fee, as set forth by 950 CMR 32.06, however if the immediate furnishing of such copies would seriously interfere with the work upon which the officer is then engaged, any such copies shall be furnished pursuant to the state's public records law, 950 CMR 32.05(2)."

Chapter 80, OFFICERS AND EMPLOYEES
Article I. General Provisions, §80-3. Vacancy in elected office is amended by deleting said section it its entirety and substituting a new §80-3, as follows:

"If a vacancy occurs in the office of Moderator, such vacancy shall be filled in accordance with the Town Charter section 2-9-2. A vacancy occurring in the office of Selectmen, Town Clerk, Town Treasurer or Tax Collector shall be filled in accordance with the provisions of the General laws. A vacancy in the office of Regional School Representative shall be filled by vote of the School Committee and Board of Selectmen in accordance with the provisions of the General laws.

Chapter 90 PERSONNEL: is deleted in its entirety and substituting therefore a new Chapter as follows:

<u>§ 90-1. Purpose and Authorization</u>
The purpose of the Personnel By-law is to establish fair and equitable personnel policies and to establish a system of personnel administration based on merit principles that ensures a uniform, fair and efficient application of personnel policies. This by-law is adopted pursuant to the authority granted by Article LXXXIX of the Constitution of the Commonwealth and M.G.L. c. 41, § 108A and 108C.

<u>§ 90-2. Application</u>
All Town departments and positions shall be subject to the provisions of this by-law except elected officers, employees with personal contracts, and employees of the School Department. To the extent that any Town employee is subject to a collective bargaining agreement, in the event of a conflict and/or an inconsistency between said agreement and this by-law, then said agreement shall govern the terms and conditions of that employee's work.

<u>§ 90-3.Town Administrator</u>
Pursuant to Section 6-2-1(k) of the Town Charter, the Town Administrator is responsible for administering personnel policies, practices, rules and regulations, compensation and classification plan and related matters, in consultation with the Personnel Board, for all municipal employees and administering all collective bargaining agreements entered into by the Town.

Additionally, pursuant to Section 6-2-1(a)(i) of the Town Charter, the Town Administrator is authorized to appoint, discipline, suspend or remove town officers, department heads or principal deputies or agents of elected and appointed boards or officers, and other employees, including employees in civil service positions, for whom no other method of selection is provided by the charter or general or special laws, consistent with the Town's personnel policies and subject to the terms of any applicable collective

bargaining agreements; provided, however, that the Town Administrator shall keep the chairman of the Board of Selectmen, or the chairman's designee, informed as to status of all personnel decisions made or to be made hereunder and shall consult with the appropriate department head or principal deputy or agent prior to hiring an employee for that department.

§90-4. Human Resources functions

The Town Administrator may organize human resources and personnel functions in a Human Resources Department. Subject to appropriation, the Town Administrator may, consistent with the provisions of Section 6-2-1(a) (i) and (ii) of the Charter, appoint a Human Resources Director to act by and for the Administrator to impartially and equitably oversee all personnel activities and responsibilities of the Town, other than employees of the School Department; provided, however, that the Town Administrator shall retain responsibility for all such delegated acts.

§90-5 Personnel Board

A. Composition; Mode of selection; Term of office: Qualifications. The Moderator shall appoint a Personnel Board consisting of five persons for three-year overlapping terms as provided in Section 7-4-1 of the Town Charter. Each term of office shall commence 30 days following the adjournment of the business session of the Annual Town Meeting, and every member shall serve until a successor is qualified. Any registered voter of the Town may be appointed to the Board; provided, however, that no elected official of the Town or Town employee shall be appointed to the Board. The Board shall annually elect a Chairperson and a Vice Chairperson from its membership at the first meeting following the appointment of new members, and may reorganize as necessary or appropriate. Any three members of the Board shall constitute a quorum for the transaction of business. The affirmative vote of three members shall be necessary for any official act of the Board to be effective.

B. Powers and Duties. The Board shall be responsible for formulating recommendations on and reviewing the classification and compensation plans, which plans shall be subject to such approval as required by law. The Personnel Board shall also evaluate classification of positions generally, including requests for reclassification, and cause a review of all positions in the classification plan at appropriate intervals in accordance with proper personnel practices. The Personnel Board shall also, in consultation with the Town Administrator, monitor the implementation and practices of the Town's personnel policies. Finally, the Personnel Board shall provide advice and assistance, to the extent requested, to the Town Administrator and Human Resources Director on any aspect of personnel policies and practices.

§90- 6. Personnel System

A personnel system shall be established by promulgation of policies pursuant to section 5. The personnel system shall make use of current concepts of personnel management and may include but not be limited to the following elements:

A. Method of Administration. A system of administration which assigns specific responsibility for all elements of the personnel system, including: maintaining personnel records, implementing effective recruitment and selection processes, maintaining the classification and compensation plans, monitoring the application of personnel policies and periodic reviews, and evaluating the personnel system.

B. Classification Plan. A position classification plan for all employees subject to this by-law shall be established, based on similarity of duties performed and the responsibilities assumed so that the same qualifications may be reasonably required for, and the same schedule of pay may be equitably applied to, all positions in the same class. Nothing in the classification plan shall infringe upon or supersede an appointing authority's ability to hire an employee into a newly

created position provided that the Town Administrator and Personnel Board are first consulted regarding an appropriate starting salary. As part of its regular review, the Personnel Board shall seek to update the Classification and Compensation Plans to include any new positions added during the prior year.

C. A Compensation Plan. A compensation plan for all positions subject to this by-law shall consist of:
   1. A schedule of pay grades, including minimum, maximum and intermediate rates for each grade; and

   2. An official list indicating the assignment of each position to specific pay grades.

D. A Recruitment and Selection Policy. A recruitment, employment, promotion and transfer policy which ensures that reasonable effort is made to attract qualified persons and that selection criteria are job related.

E. Personnel Records. A centralized recordkeeping system which maintains essential personnel records.

F. Personnel Policies. A series of personnel policies which establishes the rights, the benefits to which certain personnel employed by the Town are entitled, and the obligations of said employees to the Town.

G. Other Elements. Other elements of a personnel system as deemed appropriate or required by law.

§ 90-7. Adoption and Amendment of Personnel Policies

The Board of Selectmen shall promulgate personnel policies defining the rights, benefits and obligations of certain employees subject to this by-law. Policies shall be adopted or amended as follows:

A. Preparation of Policies. Any member of the Board of Selectmen, Personnel Board, the Town Administrator, or any three employees may suggest policies for consideration. The Town Administrator shall refer such policies to the Personnel Board, which Board need not consider any proposal already considered in the preceding 12 months. Any person proposing a new or amended policy shall provide the substance and the reason for the proposed policy in writing. The Personnel Board shall hold a public hearing on any proposed policies or amendments. Any proposed policies or amendments shall be posted at least five days prior to the public hearing in prominent work locations, copies of all proposals shall be provided to representatives of each employee collective bargaining unit, and a copy shall be submitted to the Board of Selectmen.

B. Public Hearing. The entity responsible for suggestion of the proposed policy or amendment shall present the purpose of the proposal and the implication of any proposed change at the public hearing. Any person may attend the hearing, speak and present information. The Town Administrator and the Personnel Board shall, within -20 days after such public hearing, shall consider the proposed policies and recommend that the Board of Selectmen adopt the policies (with or without modifications), reject the policies, or indicate that further study is necessary.

C. Recommended Policies. The Town Administrator, or the Personnel Board at the administrator's request, shall transmit recommendations in writing to the Board of Selectmen within 20 days of any recommendation on proposed personnel policies or amendments. The recommendations shall contain the text of the proposed policy or amended policy, an explanation of the policy and the implications of the policy. The Board of Selectmen shall consider recommendations of the Town Administrator and Personnel Board and may adopt, reject or return recommendations for further

action. The Board of Selectmen need only act on proposed policies recommended for adoption. Policies shall become effective upon approval of the Board of Selectmen, unless some other date is specified.

D. Computation of Time. In computing time (days) under this by-law only days when the Town Hall is open for business shall be counted.

§ 90-8. Severability
The provisions of this by-law and any regulations adopted pursuant to this by-law are severable. If any by-law provision or regulation is held invalid, the remaining provisions of the by-law or regulations shall not be affected thereby.

Chapter 138. TOWN MEETINGS: § 138-2. Annual Town Meeting is amended by deleting § 138-2 in its entirety and substituting therefore a new §138-2 Annual Town Meeting as follows:

"All business, except the election of officers and determination of such matters as by law are required or permitted to be upon the ballot, shall be considered at an adjournment thereof, as provided in the Town Charter. There shall also be a second business session Annual Town Meeting held in the last three months of the calendar year on a date to be determined by the Board of Selectmen, which meeting shall be an "Annual Town Meeting" for purposes of the General laws; provided however, that the Board of Selectmen may, at its discretion, cancel said Fall Annual Town Meeting, no later than September 15 in any year, so long as no more than ten petitioned articles have been submitted for inclusion on the warrant of said Fall Annual Town Meeting, as set forth in the Charter, 2-6-1. Business sessions shall be called for 7:30 p.m.

Chapter 138, TOWN MEETINGS: § 138-3.Town Meeting warrant is amended by deleting section 138-3, in its entirety and substituting therefore a new § 138-3 as follows:

"Every Town Meeting shall be called by a Warrant, directed by the Board of Selectmen to a constable or other duly appointed person, which shall be served by posting attested copies thereof online and in four public places equally distributed among the four precincts, and at least seven days before the time stated in the warrant for holding an Annual Town Meeting or at least 14 days before the time stated in the warrant for holding a Special Town Meeting.

Chapter 138, TOWN MEETINGS: § 138-4. Publication and printing of warrant is amended by adding a new paragraph, as follows:

""The Finance and Warrant Commission shall distribute at least 30 days prior to the business session a summary of each article contained in the warrant of the Annual Town Meeting to the listed residence of each voter of the Town. A copy of the complete warrant shall be included in the Finance and Warrant Commission report for the Annual Town Meeting and shall also be distributed to the listed residence of each voter of the Town prior to such annual Meeting. Prior to each Special Town Meeting, the Finance and Warrant Commission shall distribute a summary of each article contained in the warrant for said meeting to the listed residence of each voter of the Town. The summaries and reports required hereunder shall be posted on the Town's website and copies made available at the Town Clerk's office provided however that while it is the intent of this by-law that every effort shall be made to distribute and post the summaries and reports as set forth herein, failure to do so shall not invalidate the action of the Town Meeting to which they relate.

Chapter 138, TOWN MEETINGS,§138-7, titled Voter initiative for Town Meeting action is amended by deleting said title in its entirety and substituting the following; § 138-7-1. "Petition."

Chapter 138, Town Meetings, §138-7, is amended by adding a new §, 138-7-2 titled Pre-Petition to read as follows:

"A. Any five voters of the Town may submit to the Board of Selectmen or the Finance and Warrant Commission not less than 30 days prior to the closing of the warrant, a proposed warrant article and shall designate a "lead Petitioner" for the purposes of this section.

B. The Board of Selectmen or the Finance and Warrant Commission shall include the proposed article on an agenda at a regular or special meeting for discussion and provide the lead petitioner with nonbinding guidance no later than seven days prior to the close of the warrant.

C. Failure to submit an article under §138-7-2 shall not prevent the filing of a petition under § 138-7-1; provided however, that any guidance provided to the petitioners under § 138-7-2 shall not be binding on the Finance and Warrant Commission or Board of Selectmen in the event that a petition is submitted under §138-7-1"

Chapter 142. TOWN REPORT, ANNUAL§142-2, titled Distribution deadline is amended by deleting said section in its entirety and substituting the following:

"The Selectmen shall, on or about the 25th day of February, cause the Annual Town Report to be posted on the Towns website with copies available at Town offices. "

Witness my hand and seal of the Town of Westwood this 27th day of August, 2013.

Attest:

Dorothy A. Powers

Dorothy A. Powers, CMC, CMMC
Town Clerk

Awaiting approval by the Attorney General

Town Hall 580 High Street, Westwood, MA 02090 Telephone: 781-326-3964 Facsimile: 781-251-2504
dpowers@townhall.westwood.ma.us

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC/CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 19 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 19. The Finance and Warrant Commission recommended and the town voted unanimously in favor to amend Chapter 184 of the General by-laws, "Animals" by deleting said chapter in its entirety and substituting therefor the following:

CHAPTER 184

Article I. Animal Control

§ 184-1. Definitions.
The following terms shall have the meaning herein given:

AT LARGE
Means unaccompanied by a responsible person.

ANIMAL CONTROL OFFICER
Means that person appointed by the Selectmen or otherwise serving in the capacity of Animal Control Officer for the Town of Westwood.

OESTRUS CYCLE
Means the technical term for the common expression "in heat."

OUT OF CONTROL
Means accompanied by a person not exerting the proper supervision.

RESTRAINED
Means being kept leashed when outside the bounds, or fenced within the bounds of the property of the owner or keeper.

§ 184-2. Complaints.
If any person shall make a complaint in writing *Note: A supply of forms which may be used for this purpose shall be available from the Town Clerk, Animal Control Officer, or police station.* and under oath the Animal Control Officer of Westwood that any dog has committed a violation of any of the provisions listed in §184-4, the Animal Control Officer shall investigate such complaint and after finding such violation shall cause such dog to be impounded or restrained and cause the owner or keeper of such dog to receive a written warning or pay a penalty as set forth in §184-3. The Animal Control Officer shall keep a

written record of each such investigation and shall provide a copy thereof to the owner or keeper of the dog and the complainant.

§ 184-3. Penalties.

The penalty imposed upon an owner or keeper of a dog which has committed a violation of any of the provisions listed in §184-4 except for those offenses set forth in §184-4A (5) and (6) shall be $25 for the first offense, $50 for the second offense and $75 for each subsequent offense. The penalty for violations of any of the provisions listed in §184-4A (5) and (6) shall be a mandatory penalty of $50 for the first offense and $100 for each subsequent offense.

§ 184-4. Violations.

A. The Animal Control Officer shall cause penalties to be invoked for any of the following reasons:

1) If found without a license, collar, or tag as required by M.G.L. c. 140.

2) If found at large when in her oestrus cycle, or if creating a nuisance.

3) No dog shall be permitted to be unrestrained while in or near any school yard, public park, public playground, public cemetery, or public or school recreational field or facility. Further, no person shall permit a dog under that person's control to defecate on any school yard, Public Park, public playground, public cemetery, or public or school recreational field or facility or any public property abutting thereto. Further, no dog shall be permitted to be at large or out of control of a responsible person in any other public area not designated within this subsection.

4) If found at large or not in control of dog's owner.

5) For having bitten, injured, or physically harmed any person or domestic animal; or having caused any person to be fearful for their safety by chasing, worrying, snapping, or otherwise frightening said person.

6) For having bitten or injured any domestic animal.

7) For chasing any vehicle or bicycle on a public way or way open to public traffic.

8) If the dog is found to bark, howl, or in any other manner to basically disturb the quiet of any person.

9) For having disturbed, spilled, or otherwise upset rubbish or trash.

10) For having littered, defecated, or caused damage to the property of any person (except for the property of the owner/keeper of the dog).

11) If found at large or out of control after having been ordered restrained by the Animal Control Officer.

B. An impounded dog or domestic animal shall be released to its owner or keeper upon payment of the penalty as described in §184-3 and upon payment of the pound fees as provided for in M.G.L.c.140. The following conditions, if applicable, shall also apply:

1) In the case of a dog impounded under Subsection A. (1) above, upon the obtaining of a license as required by law.

2) Except as hereinafter provided in § 184-5, in the case of a dog impounded under Subsection A.(2) above, upon the agreement of the owner or keeper to undertake such restrictions or controls of the animal to prevent violations of Subsection A.(2) as the Animal Control Officer shall reasonably require.

C. Dogs impounded and unclaimed by the owner or keeper within seven days may be put up for adoption or euthanized in accordance with the M.G.L. c.140§151A.

D. For purposes of Subsection C. above, no dog shall be obtained for the purpose of scientific experimentation, investigation, or instruction as discussed in M.G.L. c. 140, § 151.

§ 184-5. Control of dogs in oestrus cycle.
If the Animal Control Officer determines that a dog in her oestrus cycle is attracting other dogs to the area, which conditions cause disturbances on or damage to neighboring property or public areas, he may impound the dog for the duration of the oestrus cycle, releasing it thereafter to the owner or keeper upon payment of penalties, if applicable, and upon payment of pound fees; as an alternative, the Animal Control Officer may require that the owner, or keeper, place and keep such a dog, while in such cycle, in a kennel or remove it from the area so that the nuisance is abated.

§ 184-6. Control of dogs.

A. Restraint of dogs. In addition to and not in limitation of any other remedies or penalties, the Animal Control Officer shall order the owner or keeper of a dog to restrain a dog for violation of any of the provisions listed in §184-4A. After a period of no less than 21 days, the Animal Control Officer may, at his discretion, remove an order of restraint if the owner or keeper of the dog satisfies him that the dog is unlikely to repeat the offense.

B. Permanent restraining or muzzling of dogs. If any person shall make a complaint in writing *Note: A supply of forms which may be used for this purpose shall be available from the Town Clerk, Animal Control Officer, or police station.* to the Animal Control Officer of Westwood that any dog is a nuisance by reason of vicious disposition, or by repeated violations of any of the provisions listed in §184-4A which are contrary to the safety and welfare of the community. The Animal Control Officer shall investigate such complaint, which may include an examination on oath of the complainant, the owner or keeper and witnesses, and upon finding that such dog is a nuisance as hereinbefore set forth shall order such dog to be permanently restrained and/or muzzled or request the Selectmen to banish and remove the dog from the Town of Westwood in accordance with M.G.L.c140.

§ 184-7. Enforcing officer.
This by-law shall be enforced the Animal Control Officer of Westwood and/or others who may be appointed from time to time by the Board of Selectmen of Westwood for such purpose.

§ 184-8. Validity.

A. The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.
B. This by-law is not intended to derogate or limit any powers, rights, or obligations set forth in M.G.L. c. 140 but is in addition thereto.

§ 184-9. Enforcement.
In addition to the foregoing and not in limitation thereof, the Animal Control Officer shall impound any dog found at large.

§ 184-10. Licensing; dogs worrying, maiming or killing livestock.

A. No person shall own or keep a dog in the Town of Westwood which is not duly licensed as required by the provisions of M.G.L c. 140, § 137 The registering, numbering, describing and licensing of dogs shall be conducted in the office of the Town Clerk of said Town. Any person who no longer owns a dog shall notify the Town Clerk immediately.

B. When license fees for dogs are due in January of each year and the dog is a spayed female or neutered male, the spaying or neutering certificate must be presented at the time of license application. All rabies shot certificates must be shown before a new license can be issued.

C. Notwithstanding the provisions of M.G.L. c. 140, § 139 or any other provision of law to the contrary, the annual fees charged for the issuance of licenses for dogs shall be established by the Town Clerk in accordance with the provisions of M.G.L. c. 40, § 22F. No license fee or part thereof shall be refunded because of the subsequent death, loss, spaying or removal from the Town or other disposal of said dog.

   1) Effective January 1, 2011, the term of any license issued by the Town Clerk shall be for the period of January 1 to December 31. The Town may impose a late fee of not less than $50 in accordance with the provisions of M.G.L.c.140,§141 to be paid by the owners who license said dog or dogs after April 1, of any given year.

D. Notwithstanding the provisions of M.G.L. c. 140, § 147 or any other provision of law to the contrary, all money received from the issuance of dog licenses by the Town of Westwood, or recovered as fines or penalties by said Town under the provisions of M.G.L. c. 140 or by vote of the Town under Article 38 of the warrant for the 1981 Annual Town Meeting relating to dogs, shall be paid into the treasury of said Town and shall not thereafter be paid over by the Town Treasurer to Norfolk County.

E. Notwithstanding the provisions of M.G.L. c. 140, § 160 or any other provision of law to the contrary, whoever suffers loss by the worrying, maiming or killing of his livestock or fowls by dogs, outside the premises of the owners or keepers of such dogs, shall, after investigation as provided in M.G.L. c. 140, § 161, be paid from the treasury of said Town.

Witness my hand and seal of the Town of Westwood this 27th day of August, 2013.

Attest:

Dorothy A. Powers

Dorothy A. Powers, CMC, CMMC
Town Clerk

Awaiting approval by the Attorney General

Town Hall 580 High Street, Westwood, MA 02090 Telephone: 781-326-3964 Facsimile: 781-251-2504
dpowers@townhall.westwood.ma.us

TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE TOWN CLERK

Dorothy A. Powers, CMC CMMC

Town Clerk
Justice of the Peace
Notary Public

To Whom It May Concern:

I hereby certify the following action taken under Article 29 of the Warrant for the Annual Town Meeting held on May 6, 2013.

Annual Town Meeting, Article 29. The Finance and Warrant Commission recommended and the town voted unanimously in favor to amend Chapter 338 – SOLICITING AND CANCASSING as follows:

§338-5. Application Requirements: by adding a new section C as follows:

b. The application will be considered and acted upon within two business days of its submission. If not acted upon within two business days, the applicant shall be notified.

§338-6. Background check: by deleting this section in its entirety and inserting therefore the following:

§338-6 Subject to the provisions of the Massachusetts Criminal Records Offender Statute, M.G.L. c. 6, §167 et seq., regulations promulgated thereunder and Chapter 339 Fingerprint Based Criminal Record Background Checks, of the Code of the Town of Westwood, the Westwood Police Department shall conduct a criminal records check of each applicant for a Town of Westwood door-to-door sales permit to determine the applicant's fitness and suitability to conduct door-to-door sales.

Witness my hand and seal of the Town of Westwood this 27th day of August, 2013.

Attest:

Dorothy A. Powers

.Dorothy A. Powers, CMC, CMMC
Town Clerk

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