



**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 19, 2014*

NORFOLK, SS.

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

**GREETING:**

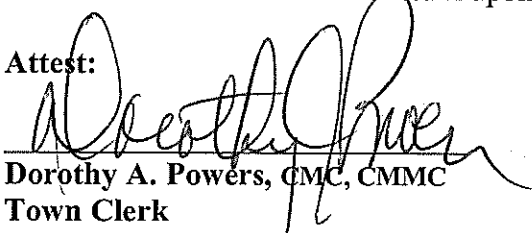
In the name of the Commonwealth of Massachusetts you are hereby directed to post in at least four public places in the Town in each of the four precincts, copies of the attached Amendments to the Town Zoning and General By-laws.

These amendments were voted under Articles 15 & 27 of the Warrant for the 2014 Annual Town Meeting, which meeting was held on May 5, 2014.

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:

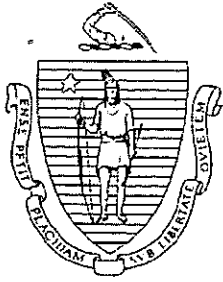
  
Dorothy A. Powers, CMC, CMMC  
Town Clerk

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 2014 Annual Town Meeting on four bulletin boards erected by the town in public places in each of the four precincts of the Town.

  
\_\_\_\_\_  
Constable

AUG 14 2014

TOWN CLERK  
TOWN OF WESTWOOD



MARTHA COAKLEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
10 MECHANIC STREET, SUITE 301  
WORCESTER, MA 01608

(508) 792-7600  
(508) 795-1991 fax  
[www.mass.gov/ago](http://www.mass.gov/ago)

August 14, 2014

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

**Re: Westwood Annual Town Meeting of May 5, 2014 ----- Case # 7174**  
**Warrant Articles # 17, 18, 19, 20, 21, 22, 23, 24, and 26 (Zoning)**  
**Warrant Articles # 15, 27, and 28 (General)**

Dear Ms. Powers:

Articles 15 and 27 - We approve Articles 15 and 27 from the May 5, 2014, Westwood Annual Town Meeting.<sup>1</sup> Our comments on Article 27 are provided below.

Article 27 - Article 27 adds to the Town's general by-laws a new by-law entitled, "Child sex offender in child safety zone."

**I. General Description of the Child Sex Offender in Child Safety Zone by-law.**

Article 27 adds a new "Child sex offender in child safety zone," by-law to the Town's general by-laws. The by-law is divided into two main sections: (A) Section 200-1 that: (1) defines the terms used in the by-law; (2) prohibits child sex offenders from being in any child safety zone<sup>2</sup>; (3) establishes exceptions from the by-law's prohibitions; (4) requires the Chief of

<sup>1</sup> In a decision issued July 20, 2014 we approved Articles 17, 18, 19, 20, 21, 22, 23, 24, 26, and 28.

<sup>2</sup> The location restriction provisions of the by-law are similar to the following town by-laws which were, for the most part, approved by this Office on the following dates: Dedham (March 24, 2008); Southborough (October 9, 2008); Somerset (October 27, 2008); Mendon (December 29, 2008); Hanson (August 12, 2009); Townsend (December 9, 2009); Ashland (March 12, 2010); Norwood (October 14, 2010); Hanover (October 18, 2010); Colrain (December 3, 2010); Shirley (January 7, 2011); Natick (March 31, 2011); Hopkinton (November 18, 2011); Framingham (December 18, 2011); Ayer (February 21, 2012); Swansea (April 6, 2012); Hubbardston (September 24, 2012); Charlemont (October 10, 2012); Barre (March 13, 2013); and Mansfield (August 6, 2014).

Police or his designee to provide notice of the by-law to certain sex offenders; (5) establishes the Town's police department as the enforcing agent and requires the Town to make available to the public a map depicting those places prohibited under the by-law; and (B) Section 200-2 that establishes the various enforcing mechanisms available to the Town to enforce the by-law's prohibitions.

More specifically, Section 200-1 (A) (2) of the by-law bans any child sex offender from being present in any child safety zone. Section 200-1 (A) (1) defines as "child safety zone" as "[a] park, playground, recreation center, library, school, camps, day-care center, private youth center, video arcade, bathing beach, swimming pool or wading pool, gymnasium, sports field or sports facility, including the parking area and land adjacent to any of the aforementioned facilities, and school or camp bus stops," which are under the jurisdiction of the Town or leased by the Town to another person for purposes of operating such facilities.

## **II. The Attorney General's Standard of Review.**

Pursuant to G.L. c. 40, § 32, the Attorney General has a limited power of disapproval of town by-laws with every "presumption made in favor of the validity of municipal by-laws." Amherst v. Attorney General, 398 Mass. 793, 796 (1986). In disapproving a by-law, the Attorney General must cite an inconsistency between the by-law and the Constitution or laws of the Commonwealth. Id. at 796. When reviewing by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court performing a facial review. Because the adoption of a by-law by Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 51 (2003). For the reasons set forth in more detail below, in giving our approval of the by-law, we do not opine as to whether the amendments would be held constitutional if reviewed by a court on a fuller factual record.<sup>3</sup>

States and municipalities across the United States have passed laws similar to that which Westwood has adopted. Several state and federal courts have upheld those laws as valid under the United States Constitution and applicable state Constitutions.<sup>4</sup> There are also several instances in which sex offender restriction laws have been struck down by the courts as

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<sup>3</sup> In the course of our review of other sex offender restriction by-laws from other Towns, we received letters submitted jointly by the American Civil Liberties Union of Massachusetts ("ACLU") and the Committee for Public Counsel Services ("CPCS"), dated 11/28/07, 11/19/10, 11/15/11, 12/13/11, and 10/03/12 opposing the by-laws on grounds of alleged inconsistencies between the by-laws and the laws and Constitution of the Commonwealth. These letters have aided us in our review and we address herein many of the issues raised in these letters.

<sup>4</sup> See State v. Stark, 802 N.W.2d 165 (S. Dakota 2011); Doe v. Miller, 405 F.3d 700, 704 (8th Cir., 2005) (Iowa); Weems v. Little Rock Police Dept., 453 F.3d 1010 (Ark. 2006); U.S. v. King, 2009 WL 3271280 (W.D. Okla. 2009); State v. Willard, 756 N.W.2d 207 (Iowa 2008); and People v. Leroy, 357 Ill.App.3d 530 (2005).

unconstitutional or preempted by state law.<sup>5</sup> However, no Massachusetts appellate court has yet reviewed sex offender restrictions similar to that which Westwood has adopted.<sup>6</sup> It should also be noted that the Supreme Judicial Court has repeatedly held that the Massachusetts Constitution puts greater restrictions on the exercise of police powers than the United States Constitution. Thus, it would be possible for sex offender restrictions to be affirmed under the federal Constitution, but struck down under the Massachusetts Constitution.<sup>7</sup>

As noted above, no Massachusetts appellate court has yet reviewed municipal restrictions on where sex offenders may be. However, in Doe v. Police Commissioner of Boston, 460 Mass. 342 (2011), the Supreme Judicial Court analyzed a statutory residency restriction, G.L. c. 6, § 178K (2) (e), which bars a Level 3 sex offender from “knowingly and willingly establish[ing] living conditions within, mov[ing] to, or transfer[ing] to any convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded which meets the requirements of the department of public health under section 71 of chapter 111.” G.L. c. 6, § 178K (2) (e). The court held that, as applied to the plaintiff, the statute failed to provide for an individualized determination that the public safety benefits of requiring a particular registered sex offender to leave a rest home outweighed the risks to the registered sex offender from the removal. Doe, 460 Mass. at 343. The court determined that the liberty and privacy rights implicated by G.L. c. 6, § 178K (2) (e), are far more substantial than the registration and dissemination provisions of the sex offender classification scheme, G.L. c. 6, §§ 187C-178Q. Thus, the court concluded that an individualized hearing in the context of classification under G.L. c. 6, § 178L and 803 C.M.R. § 1.40 (9) (c) was not sufficient to justify the application of G.L. c. 178K (2) (e). Id. at 350.

The applicability of Doe to this by-law is not completely clear. First, the court stressed that Doe was an “as applied” challenge based upon the plaintiff’s particular circumstances (*see id.* at 350, 351), whereas the Attorney General’s role here is to review the by-law for its facial validity. On the other hand, the Doe court chose to address the merits of the plaintiff’s claim

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<sup>5</sup> See Fross v. County of Allegheny, 20 A.3d 1193 (Penn. 2011); Terrance v. City of Geneva, 799 F.Supp.2d 250 (W.D.N.Y. 2011); G.H. v. Township of Galloway, 401 N.J. Super. 392 (2008); State v. Pollard, 886 N.E.2d 69 (2008); Mann v. Georgia Department of Corrections, et al., 282 Ga. 754 (2007); Elwell v. Township of Lower, 2006 WL 3797974 (N.J. Super. Ct. Law Div. 2006); City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003);

<sup>6</sup> In Three Registered Sex Offenders v. City of Lynn, (Civil Action Number ESCV2012-00749-A) the court (Feeley, J.) allowed in part the Plaintiffs’ Motion for Partial Summary Judgment, concluding that the City’s sex offender residency restriction ordinance violates the Home Rule Amendment because it conflicts with the Commonwealth’s exclusive authority to regulate and manage the post-incarceration lives of convicted sex offenders. The Town may wish to monitor any appeal from this decision and discuss the decision’s impact with Town Counsel.

<sup>7</sup> See Goodridge v. Dept. of Public Health, 440 Mass. 309, 329 (2003) (“The Massachusetts Constitution protects matters of personal liberty against government incursion as zealously, and often more so, than does the Federal Constitution, even where both Constitutions employ essentially the same language. Planned Parenthood League of Mass., Inc. v. Attorney Gen., 424 Mass. 586, 590, 677 N.E.2d 101 (1997); Corning Glass Works v. Ann & Hope, Inc. of Danvers, 363 Mass. 409, 416, 294 N.E.2d 354 (1973).”)

despite its apparent mootness, *id.* 343 & n.3, “because the issues are significant and have been fully briefed and it is in the public interest to do so.” This indicates that the court viewed its conclusions of law as having some application beyond the plaintiff himself.

Second, the *Doe* court chose to characterize one effect of the statute on the plaintiff as a deprivation of an existing property interest in his place of residence.<sup>8</sup> Here, in contrast, the by-law on its face would operate prospectively to prohibit covered sex offenders from lawfully being in certain places. However, the statute at issue in *Doe* also infringed on the plaintiff’s liberty interests in “mov[ing] freely within and without the Commonwealth,” *id.* at 347-48, which is also an effect of the by-law. It was the totality of these effects on plaintiff’s various property and liberty interests that led the *Doe* court to rule that, as applied to the plaintiff, the statute was invalid because it failed to provide an individualized balancing of interests. *Id.* at 348-50. Whether the courts would reach the same conclusion with respect to the Westwood by-law is unclear. We therefore strongly suggest the Town discuss this matter with Town Counsel, as the holding of the Supreme Judicial Court in *Doe* may have significant implications for the validity of the Westwood by-law.

A court might also determine that the by-law violates the fundamental right of free movement within the Commonwealth as protected under the Declaration of Rights. *See Doe v. Police Commissioner of Boston*, 460 Mass. at 347-48 (“A restriction on the right to choose where one lives is a further imposition on the liberty interests protected by our State Constitution”); *see also Commonwealth v. Weston W.*, 455 Mass. 24, 26 (2009) (City of Lowell’s juvenile curfew ordinance is subject to strict scrutiny, is not sufficiently “narrowly tailored,” and therefore unconstitutionally infringes on a minor’s right to freedom of movement). The Town provided the Attorney General with a map that depicts those portions of the Town within which the restrictions imposed under the by-law are applicable. It is unclear whether the by-law, combined with other factors, makes it reasonably possible for a sex offender to be in the Town of Westwood. However, the Attorney General’s review of the by-law does not and cannot include the kind of factual inquiry a court might make in the course of resolving a legal challenge.

In addition, a by-law that effectively bans sex offenders from being within the Town of Westwood, or substantial portions thereof, might be the subject of a due process or other constitutional challenge in court, the outcome of which cannot be predicted with certainty. In *Zuckerman v. Hadley*, 442 Mass. 511, 512 (2004), the court held on due process grounds that “absent exceptional circumstances . . . restrictions of unlimited duration on a municipality’s rate of development are in derogation of the general welfare and thus are unconstitutional.” The court viewed the Town’s rate-of-growth by-law as pushing away its burden of accommodating new residents because its by-law limited the number of building permits that could be issued each year for single-family homes. *Id.* at 519-20. “Despite the perceived benefits that enforced isolation may bring to a Town facing a new wave of permanent home seekers, it does not serve the general welfare of the Commonwealth to permit one particular Town to deflect that wave

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<sup>8</sup> The court stated that, “[b]ecause the plaintiff has an existing placement in a rest home that the State in effect threatens to take away from him, the statute implicates property interests as well.” 460 Mass. at 348.

onto its neighbors.” *Id.* at 519. Similarly, Westwood’s by-law might be seen as an effort to avoid what a court might characterize as the Town’s shared burden of accommodating sex offenders. Although Zuckerman involved a challenge to a rate-of-growth by-law, its principle might be held to apply to sex offender restrictions. A court considering such a challenge would likely take into account, among other things, the possibility that all neighboring municipalities might enact similar restrictions, thus effectively creating a state-wide ban and implicating inter-state issues. The Attorney General’s review of the by-law does not and cannot include the kind of factual inquiry a court might make in the course of resolving such challenges.

Also, we cannot conclude that, under the governing constitutional standards, the purpose and effect of the by-law are “punitive,” let alone so clearly punitive as to trigger constitutional protections related to “punishment.” *See, e.g., Smith v. Doe*, 538 U.S. 84, 92, 97, 105 (2003). It must be noted, however, that this area of the law continues to develop. *See, e.g., Commonwealth v. Cory*, 454 Mass. 559 (2009) (statutory requirement that convicted sex offender wear global positioning system (GPS) bracelet as condition of probation was punitive and violated ex post facto clause as applied to offender who committed offense before statute took effect); Commonwealth v. Goodwin, 458 Mass. 11, 19-23 (2010) (post-sentencing modification of probation conditions to require GPS monitoring of sex offender was punitive in effect, raising double jeopardy and other concerns); *but see Doe v. Sex Offender Registry Board*, 459 Mass. 603, 621-622 (2011) (increase in probation fee even if imposed retroactively was not punitive in nature so as to violate the ex post facto clause).

We note that the public safety concerns cited by the Town in support of the by-law are legitimate. The Attorney General shares those concerns. However, some may question whether the local legislative response is appropriately focused on the public safety risks it seeks to prevent and whether the nature and magnitude of the restrictions imposed by the by-law can be reconciled with applicable provisions of the Constitution and laws of the Commonwealth. Moreover, it is unclear whether by-laws such as the one Westwood adopted are reasonably likely to achieve their presumed objectives. To some extent, the by-law could conceivably frustrate the legislative objectives of the state’s Sex Offender Registry Act, G.L. c. 6, §§ 178C-178Q, by creating a disincentive for sex offenders to comply with the Act’s registration requirements. It has been reported that, in other jurisdictions, sex offender restrictions have resulted in a drop in registration compliance and in sex offenders “disappearing.” Dwight H. Merriam, *Residency Restrictions for Sex Offenders: A Failure of Public Policy, Planning & Environmental Law*, Oct. 2008, at 11. Whether this is a consequence that would render Westwood’s by-law fatally inconsistent with state law, however, is in part a fact-dependent matter beyond the scope of the Attorney General’s by-law review function and, therefore, is an issue for the courts to decide.

### **III. Analysis of Specific Provisions of Westwood’s By-law.**

#### **A. Section 200-1 (A) (1) “Definitions.”**

The by-law defines the phrase “Child Safety Zone” as follows:

Child Safety Zone - A park, playground, recreational center, library, school, camps, day-care center, private youth center, video arcade, bathing beach, swimming pool or wading pool, gymnasium, sports field or sports facility, including the parking area and land

adjacent to any of the aforementioned facilities.

We approve the definition of “Child Safety Zone,” but the by-law does not define the terms used in this definition. For example, the by-law does not define the terms “recreation facility,” “school,” “day care center,” “sport facility,” and the phrase “land adjacent to any of the aforementioned facilities.” Absent definition of these terms, it may be difficult to determine what specific locations are included in the by-law’s prohibited areas. In order to avoid a vagueness challenge, the Town may wish to define these terms. The lack of a definition for the phrase “land adjacent to any of the aforementioned facilities” is especially problematic because it is unclear how much of the land adjacent to a specified facility is within the Child Safety Zone. We suggest that the Town discuss these issues in more detail with Town Counsel.

B. Section 200-1 (A) (2) “Prohibition.”

Section 200-1 (A) (2) prohibits a child sex offender from being present in any child safety zone. Because the definition of Child Safety Zone includes libraries, Section 200-1 (A) (2) prohibits child sex offenders from entering the premises of libraries. While we approve this prohibition, restricting a sex offender’s access to a public library may be challenged on the grounds that it violates the First Amendment of the U.S. Constitution, as applied to the states by the Fourteenth Amendment, and Article 16 of the Massachusetts Declaration of Rights. *See Wayfield v. Town of Tisbury*, 925 F. Supp. 880 (D. Mass. 1996) (suspending citizen’s library privileges without predeprivation process for contesting suspension violated Due Process Clause of Fourteenth Amendment). The fact that a sex offender received procedural due process prior to the conviction or adjudication as a sex offender, and received additional process prior to any final classification as a Level 2 or 3 offender, may be relevant in any such challenge. *But see Doe v. Police Commissioner of Boston*, 460 Mass. 342, 350 (2011) (concluding that an individualized hearing in the context of classification under G.L. c. 6, § 178L and 803 C.M.R. § 1.40 (9) (c) was not sufficient to justify the application of G.L. c. 178K (2) (e)). We suggest that the Town discuss this issue in more detail with Town Counsel.

C. Section 200-1 (A) (3) “Exceptions.”

Section 200-1 (A) (3) provides exceptions from its prohibitions, including the following:

(b) The facility in a child safety zone also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:

[1] The child sex offender’s entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and

[2] The child sex offender shall not participate in any religious education programs that include individuals under the age of eighteen (18).

(c) The property also supports a use lawfully attended by a child sex offender’s natural or adopted child(ren), which child’s use reasonably requires the attendance of the child sex offender as the child’s parent upon the property, subject to the following condition:

[1] The child sex offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.

It is unclear what the Town means by "as posted to the public." Specifically, it is unclear if Sections 200-1 (A) (3) (b) and (c) impose a notice posting requirement in the child safety zones. The Town may wish to consult with Town Counsel about a future amendment to the by-law to clarify this phrase.

1. Section 200-1 (A) (3) (b).

Section 200-1 (A) (3) (b) specifically provides an exception for facilities in a child safety zone that also support a church, synagogue, mosque, temple or other house of religious worship so as long as: (1) the child sex offender's presence upon the property occurs only during the hours of worship, religious program or service as posted to the public; and (2) the child sex offender shall not participate in any religious education programs that include individuals under the age of eighteen.<sup>9</sup> Based on the definition of "child safety zone" we construe the exception (with its use of the word "support") to apply to those instances in which the places defined in "child safety zone" are also used as a church, mosque, temple or other house of religious worship. (For example, where a day care center or private youth center is located on the premises of such a house of worship). The definition of "child safety zone" does not include churches, synagogues, mosques, temples, or other places of worship. Thus, these places are not otherwise prohibited under the by-law. Section 200-1 (A) (3) (b) may be challenged on the grounds that they violate religious liberty protections in the First Amendment of the U.S. Constitution, as applied to the states by the Fourteenth Amendment; Article 2 of the Massachusetts Declaration of Rights; and amendment article 18, section 1, of the Massachusetts Constitution.

"No law shall be passed prohibiting the free exercise of religion." Amend. art, 18, § 1. Under this provision, "[c]onduct motivated by sincerely held religious convictions will be recognized as the exercise of religion," and if a law "substantially burdens the[] free exercise of religion," then unless the government shows "that it has an interest sufficiently compelling to justify that burden," the law is invalid. Attorney Gen. v. Desilets, 418 Mass. 316, 322-323 (1994). In the present circumstances, as in Desilets, it appears that no separate discussion of the First Amendment's Free Exercise Clause or of the religious liberty guarantees of Article 2 of the Declaration of Rights is necessary. See Desilets, 418 Mass. at 322, 334.

Numerous fact-intensive questions are involved in determining whether a "substantial burden" on the free exercise of religion would result from (1) limiting a child sex offender's presence at a house of worship located in a Child Safety Zone to the actual hours of worship and other publicly-posted religious programs and services, and/or (2) prohibiting child sex offenders from participating in religious education programs at such houses of worship in Child Safety

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<sup>9</sup> It is unclear whether this applies to religious education program open to attendance by individuals under eighteen years old or to religious education programs that actually have individuals under eighteen years old in attendance. If the former, would a child sex offender have to leave a religious education program if an individual under eighteen years old appeared? The Town may wish to address this issue at a future Town Meeting.



Zones if such programs include persons under 18 years of age. And while the Town's interest in protecting the safety of children would likely be considered compelling, whether that interest justifies the particular burdens imposed by the by-law is likewise partly a fact-dependent question. *See generally Desilets*, 418 Mass. at 329-332 (declining to finally determine whether Commonwealth's interest was sufficiently compelling to justify a law burdening free exercise of religion, where factual record was insufficiently developed; remanding to allow Commonwealth to develop record further). Based on the Attorney General's limited standard of review of town by-laws, and the limited facts available to us as a part of that review, we cannot conclude as a matter of law that the Town's interest in protecting its children is insufficiently compelling to justify the limitations placed on the exception offered in Section 200-1 (A) (3) (b). We strongly suggest, however, that the Town discuss the application and possible amendment<sup>10</sup> of Section 200-1 (A) (3) (b) with Town Counsel.

## 2. Section 200-1 (A) (3) (c).

Section 200-1 (A) (3) (c) provides an exception for property that also supports a use<sup>11</sup> lawfully attended by a child sex offender's natural or adopted child(ren), which child's use reasonably requires the attendance of the child sex offender as the child's parent upon the property. However, the exception limits the child sex offender's entrance and presence upon the property to only during the hours of the activity related to the use as posted to the public. We also approve the exception in Section 200-1 (A) (3) (c), but caution the Town that a court may determine that this text is inherently vague because it provides insufficient guidance for sex offenders who are parents of children to comply with the by-law. This exception does not define or explain when a child's participation in an activity in a Child Safety Zone would "reasonably require" the attendance of parent who is a child sex offender. The parent's attendance at a parent-child-teacher meeting might be reasonably required; however, the parent's attendance at a child's sporting event might present a closer question. "A 'statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.'" *Commonwealth v. Carpenter*, 325 Mass. 519, 521 (1950) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). This principle applies equally to municipal by-laws and regulations. *See Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 134 (1949). Because the use of the term "reasonably requires" could require persons of common intelligence to guess at its meaning, it may be inadequately defined in the by-law. We suggest the Town discuss this issue with Town Counsel and consider amending the by-law at a future Town Meeting to add precision to this term. In addition, for the reasons provided above in Section 200-1 (A) (3) (b), the exceptions in Section 200-1 (A) (3) (c) must be applied in a manner consistent with the protections given to the free exercise of religion under the federal and state Constitutions.

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<sup>10</sup> For example, any burden on the free exercise of religion imposed by the prohibition against child sex offender participation in religious education programs involving persons under age 18 might be reduced by the addition of a proviso allowing such participation where the offender's own child is participating in the program.

<sup>11</sup> Much as in Section 200-1 (A) (3) (b), we construe this exception's phrase "supports a use" to mean "is the site of a use."

D. Section 200-2. "Penalties and remedies."

Sections 200-2 (A) and (B) provides that violations of the by-law may constitute violations of G.L. c. 272, § 59, for which the violator is subject to arrest without a warrant. General Laws Chapter 272, Section 59, is a statutory grant of authority to arrest in specific instances i.e., remaining in a street in violation of a by-law. Whether a police officer has the authority to arrest under G.L. c. 272, § 59, for a violation of this by-law is matter governed by state law. We suggest that the Town discuss the specific use of G.L. c. 272, § 59, to enforce the by-law with Town Counsel.

**IV. Conclusion.**

Although we approve Article 27 we urge the Town to discuss the application and effectiveness of the by-law with Town Counsel, especially in light of the Supreme Judicial Court's ruling in Doe v. Police Commissioner of Boston.

**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,  
MARTHA COAKLEY  
ATTORNEY GENERAL

*Kelli E. Gunagan*

by: Kelli E. Gunagan, Assistant Attorney General  
By-law Coordinator, Municipal Law Unit  
Ten Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 x 4406

cc: Town Counsel Thomas P. 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 15 of the Warrant for the Annual Town Meeting held on May 5, 2014:*

*Annual Town Meeting, Article 15.* The Finance and Warrant Commission recommended and the Town voted by a 2/3 vote in favor declared by the Moderator to amend the Code of the Town of Westwood by striking Chapter 30, Section 15 in its entirety and inserting in its place the following:

§ 30-15 Contracts; public bid.

[Amended 1981 ATM by Art. 22; 1983 ATM by Art. 41; 1986 ATM by Art. 15; 1991 ATM by Art. 14; 1992 ATM by Art. 20; 2001 ATM by Art. 27; 5-3-2010 ATM by Art. 15; 5-6-2013 ATM by Art. 18]

No contract for the purchase of equipment, supplies or materials; no contract for auditing or consulting work; and no contract for design engineering and construction projects, the actual or estimated cost of which amounts to \$25,000 or more, except in cases of special emergency involving health or safety of the people or their property, shall be awarded unless proposals for the same have been invited by advertisement in at least one newspaper of general circulation in the Town, or if there is no such newspaper, in a newspaper published in the county, and, if required by M.G.L., in the Central Register and/or the Goods and Services Bulletin, and on the town's web page, which publications are to be at least two weeks before the time specified for the opening of said proposals. Such advertisement shall state the time and place for opening the proposals in answer to said advertisement and shall reserve to the Town the right to reject any or all such proposals. All such proposals shall be opened in public. Unless authorized by the Board of Selectmen, a procurement officer shall not solicit or award a contract for a term exceeding three years, including any renewal, extension, or option. No bill or contract shall be split or divided for the purpose of evading any provision of this section. The Chief Procurement Officer(s) shall be responsible for enforcement of this section.

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.

Witness my hand and seal of the Town of Westwood this 14<sup>th</sup> day of August, 2014

Attest:

*Dorothy A. Powers*

Dorothy A. Powers, CMC, CMMC  
Westwood Town Clerk



# TOWN OF WESTWOOD

COMMONWEALTH OF MASSACHUSETTS

## OFFICE OF THE TOWN CLERK

*Dorothy A. Powers, C.M.C. & C.M.M.C.*

Town Clerk  
Justice of the Peace  
Notary Public

*To Whom It May Concern:*

*I hereby certify the following action taken under Article 27 of the Warrant for the Annual Town Meeting held on May 5, 2014:*

*Annual Town Meeting, Article 27.* The Finance and Warrant Commission recommended and the Town voted by a 2/3 vote in favor declared by the Moderator, to amend the Code of the Town of Westwood, Part II, General Legislation, by adding thereto Chapter 200, Child Safety Zones, Article I, Child Sex Offenders, as follows:

### **§ 200-1. Child sex offender in child safety zone**

A. *Prohibition regarding child sex offender in child safety zone.*

- (1) *Definitions:* For the purpose of this article, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

CHILD SAFETY ZONE -- A park, playground, recreation center, library, school, camps, day-care center, private youth center, video arcade, bathing beach, swimming pool or wading pool, gymnasium, sports field or sports facility, including the parking area and land adjacent to any of the aforementioned facilities, and school or camp bus stops, which is:

- (a) Under the jurisdiction of any department, agency or authority of the Town of Westwood, including but not limited to the School Department; or
- (b) Leased by the Town of Westwood to another person for the purpose of operating a park, playground, recreation center, bathing beach, swimming pool or wading pool, gymnasium, sports field, or sports facility.

CHILD SEX OFFENDER --

- (a) Any person required to register as a sex offender pursuant to M.G.L.A. c. 6, §§178C to 178P, inclusive and given a Level 2 or Level 3 designation by the sex offender registry board under §178K and whose victim was a child under the age of 16 or who has not yet been classified and who resides, has secondary addresses, works or attends an institution of higher learning in the commonwealth and who has been convicted of or who has been adjudicated as a youthful offender or as a delinquent juvenile, or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication of the following offenses: indecent assault and battery on a child under 14 under M.G.L.A. c. 265, §13B; rape of a child under 16 with force under §22A of said Chapter 265; rape and abuse of a child under §23 of said Chapter 265; assault of a child with intent to commit rape under §26C of said Chapter 265; kidnapping of a child under the age of 16 under §26 of said

Chapter 265; enticing a child under the age of 16 for the purpose of committing a crime under §26C of said Chapter 265; indecent assault and battery on a mentally retarded person under §13F of said Chapter 265; assault with intent to commit rape under §24 of said Chapter 265; inducing a minor into prostitution under M.G.L.A., c. 272, §4A; living off or sharing earnings of a minor prostitute under §4B of said Chapter 272; disseminating to a minor matter harmful to a minor under §28 of said Chapter 272; posing or exhibiting a child in a state of nudity under §29A of said Chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under §29B of said Chapter 272; unnatural and lascivious acts with a child under the age of 16 under §35A of said Chapter 272; drugging persons for sexual intercourse under §3 of said Chapter 272; aggravated rape under M.G.L.A., c. 277, §39; any attempt to commit a violation of any of the aforementioned sections pursuant to M.G.L.A., c. 272, §6 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, and whose victim was a child under the age of 16.

- (b) A person who has been adjudicated a sexually dangerous person under M.G.L.A., c. 123A, §14 as in force at the time of adjudication, or a person released from civil commitment pursuant to M.G.L.A., c. 123A, §9, whichever last occurs, on or after August 1, 1981, and whose victim was a child under the age of 16.
- (c) A person who resides in the Commonwealth of Massachusetts, has a secondary address, works at or attends an institution of higher learning in the Commonwealth and has been convicted in any other state, in a federal or military court or in any foreign jurisdiction of any crime the essential elements of which are substantially the same as any of the crimes specified in above at Subsection (a), and which requires registration as a sexual offender in such other state or in the federal or military system, and who resides or works in this Commonwealth on and after August 1, 1981, and whose victim was a child under the age of 16.

(2) *Prohibition.* It shall be unlawful for a child sex offender to be present in any child safety zone.

(3) *Exceptions.* The provisions of this chapter shall not apply to:

- (a) Any person whose name has been removed from the Massachusetts Sex Offender Registry or from the registry of any other state or in the federal or military system by act of a court or by expiration of the term such person is required to remain on such registry or reclassified as a Level 1 in Massachusetts or lowest offender category in another jurisdiction.
- (b) The facility in a child safety zone also supports a church, synagogue, mosque, temple or other house of religious worship, subject to all of the following conditions:
  - [1] The child sex offender's entrance and presence upon the property occurs only during hours of worship or other religious program/service as posted to the public; and
  - [2] The child sex offender shall not participate in any religious education programs that include individuals under the age of 18.
- (c) The property also supports the use lawfully attended by a child sex offender's natural or adopted child(ren), which child's use reasonably requires the attendance

of the child sex offender as the child's parents upon the property, subject to the following condition:

[1] The child sex offender's entrance and presence upon the property occurs only during hours of activity related to the use as posted to the public.

(d) The property also supports a polling location in a local, state or federal election, subject to all of the following conditions:

[1] The child sex offender is eligible to vote;

[2] The property is the designated polling place for the child sex offender; and

[3] The child sex offender enters the polling place property, proceeds to cast a ballot with whatever usual and customary assistance is to any member of the electorate, and vacates the property immediately after voting.

(e) The property also supports a school lawfully attended by a child sex offender as a student under which circumstances the child sex offender may enter upon the property supporting the school at which time the child sex offender is enrolled, for such purposes and at such times as are reasonably required for the education purposes of the school.

(f) The property also supports a court, government office or room for public governmental meetings, subject to all of the following conditions:

[1] The child sex offender is on the property only transact business at the government office or place of business, excluding a library, or attend an official meeting of a governmental body; and

[2] The child sex offender leaves the property immediately upon completion of the business or meeting.

B. *Notice:* The Chief of Police or his designee shall make reasonable efforts to provide prompt, actual written notice of the enactment of this section (which notice shall contain a copy of the bylaw) to all persons who are listed on the sex offender registry as of the effective date of this section and who were given a Level 2 or Level 3 designation, as well as those persons who are added to the sex offender registry at such levels thereafter, which persons' addresses (as shown on the sex offender registry) are within the Town of Westwood. Such notice requirement may be satisfied by the mailing such notice by registered or certified mail, return receipt required to the last known address of such person as listed on the sex offender registry or as otherwise known to the Chief of Police. The failure of any person to receive such actual written notice shall not be a defense to a violation of this section.

C. *Enforcement procedures.*

(1) Upon reasonable belief of a police officer that a child sex offender is present in a child safety zone in violation of this section, the officer shall obtain from the suspected child sex offender his/her name, address, and telephone number. Should the police officer thereafter establish that the individual is a child sex offender as defined in this section, then the officer shall issue a written citation that such individual is in violation of this section and also require that the individual leave the child safety zone. An individual who refuses to leave or is later found to be in the same child safety zone shall be subject to the penalties set for at §200-2.

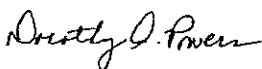
- (2) A map depicting and a written list describing the child safety zones shall be created and maintained by the Information Technology/GIS Department in coordination with the Police Department, which shall be reviewed annually or as the need arises for changes. Said map and list as well as a copy of this section shall be available to the public at the offices of the Town of Westwood Police Department and the Town Clerk and at all public buildings and will also be posted on the Town of Westwood's official website. In the event that the list, map or the words of this section shall conflict then the words of this section shall control.

## § 200-2. Penalties and remedies

- A. Any violation of §200-1 may be subject to criminal penalties and prosecution in a court of competent jurisdiction and shall result in a criminal fine of up to \$150 for a first violation. Refusal to leave a child safety zone or being later found in the same child safety zone shall result in a criminal fine of up to \$300. A second violation of the section shall be subject to a criminal fine of up to \$300. A child sex offender commits a separate offense for each and every violation of this section. Except for persons who are not yet 17 years of age when they commit any such offense, violation of this section may further constitute a violation of M.G.L.A. c. 272, §59, for which the violator is also subject to immediate arrest without warrant. The issuance of a citation shall not preclude the Town from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this section, to include written notification to the parole and/or probation officer and the Commonwealth's Sex Offender Registry Board that the child sex offender has violated a municipal bylaw.
- B. As an alternative, any violation shall result in a non-criminal fine of \$150 for first violation. Refusal to leave a child safety zone or being later found in the same child safety zone shall result in a non-criminal fine of \$300. A second violation of §200-1 shall be subject to a non-criminal fine of \$300. A child sex offender commits a separate offense for each and every violation of this section. Except persons who are not yet 17 years of age when they commit any such offense, any violation of this section may further constitute a violation of M.G.L.A. c. 272, §59, for which the violator is also subject to immediate arrest without warrant. The issuance of a citation shall not preclude the Town from seeking or obtaining any or all other legal and equitable remedies to prevent or remove a violation of this section, to include written notification to the parole and/or probation office and the Commonwealth's Sex Offender Registry Board that the child sex offender has violated a municipal bylaw.
- C. *Injunction.* If a child sex offender is present upon or within a safety zone in violation of § 200-1 above, Town Counsel or designee may bring an action in the name of the town to permanently enjoin any such violation as a public nuisance.

Witness my hand and seal of the Town of Westwood this 14<sup>th</sup> day of August, 2014

Attest:



Dorothy A. Powers, CMC, CMMC  
Westwood Town Clerk