



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

POSTING DATE: November 23, 2015
NORFOLK, SS.

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

GREETING:

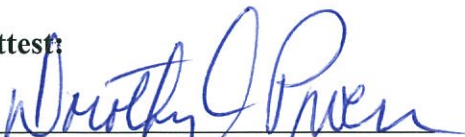
In the name of the Commonwealth of Massachusetts you are hereby directed to post in at least four public places in the Town in each of the four precincts, copies of the attached Amendments to the Town Zoning and General By-laws.

This amendment was voted under Articles 17 of the Warrant for the 2015 Fall Annual Town Meeting, which meeting was held on November 9, 2015.

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.

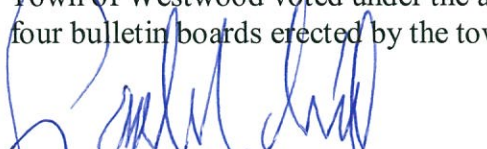
Hereof fail not and make due return upon this warrant with your action thereon to the Town Clerk.

Attest:

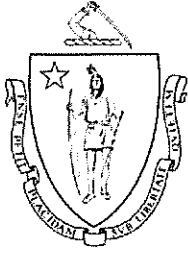


Dorothy A. Powers, CMC, CMMC
Town Clerk

By virtue of this warrant, I have this day posted attested copies of the amendment to the Bylaws of the Town of Westwood voted under the aforementioned articles of the 2015 Fall Annual Town Meeting on four bulletin boards erected by the town in public places in each of the four precincts of the Town.



Constable



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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

MAURA HEALEY
ATTORNEY GENERAL

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(508) 795-1991 fax
www.mass.gov/ago

November 20, 2015

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

NOV 20 2015
TOWN CLERK
TOWN OF WESTWOOD

**Re: Fall Annual Town Meeting of November 9, 2015 - Case # 7794
Warrant Article # 17 (General)**

Dear Ms. Powers:

Article 17 – We approve Article 17 from the Westwood Fall Annual Town Meeting of November 9, 2015.¹

Article 17 amends the Town's general by-laws, Chapter 321, "Retail Stores," by deleting the existing text of Article 1 (Restrictions on Hours of Operation of Retail Stores) and replacing it with new text, Article 1 (Hours of Operation); and adding a new Article 2 (One-day Permit for Extended Hours of Operation). The amendments essentially relax the Town's existing ban on the opening of retail stores between the hours of 12:00 midnight and 6:00 a.m. to allow for a one-day permit for extended hours of operation at the discretion of the Board of Selectmen. No store may be granted a permit for more than 10 days in any calendar year. The by-law authorizes the Board to adopt regulations regarding the terms, conditions, and procedures for the one-day permits, and grants sole discretion to the Board to issue permits under such terms and conditions as the Board "determines necessary to protect public health and safety."

We offer the following comments for the Town's consideration.

I. The By-Law Must Be Applied Consistent with G.L. c. 138.

The new Chapter 321 must be applied in a manner consistent with G.L. c. 138, which pertains to the sale of alcohol. General Laws Chapter 138, Section 12, relates to licenses authorizing the sale of alcoholic beverages to be consumed on the premises and provides in pertinent part as follows:

¹ Article 17 was filed with this Office on November 10, 2015 and the Town requested this Office to expedite our review.

The hours during which sales of such alcoholic beverages may be made by any licensee as aforesaid shall be fixed by the local licensing authorities either generally or specifically for each licensee; provided, however, that no such sale shall be made on any secular day between the hours of two and eight o'clock antemeridian and that, except as provided in section thirty-three, no such licensee shall be barred from making such sales on any day after eleven o'clock antemeridian and before eleven o'clock postmeridian, and no tavern shall be kept open on any such day between one o'clock antemeridian and eight o'clock antemeridian;

Section 12 of Chapter 138 requires alcohol licensees to refrain from alcohol sales between 2:00 a.m. and 8:00 a.m. Also, subject to the further restrictions of Section 33 of Chapter 138, Section 12 prohibits the local licensing authority from limiting sales between the hours of 11:00 a.m. and 11:00 p.m., and requires taverns to be closed from 1:00 a.m. to 8:00 a.m.

General Laws Chapter 138, Section 15, pertains to licenses authorizing the sale of alcoholic beverages to be consumed off premises and provides in pertinent part:

Any holder of a license under this section shall be permitted to make sales in accordance with the terms of his license at any time between eight o'clock ante meridian and eleven o'clock post meridian, or between eight o'clock ante meridian and half past eleven o'clock post meridian on any day immediately preceding a legal holiday, except where prohibited by section thirty-three.

Section 15 of Chapter 138 requires, subject to the further restrictions of Section 33 of Chapter 138, that alcohol licensees refrain from alcohol sales between 11:00 p.m. (or 11:30 p.m. as applicable) and 8:00 a.m. The Town must apply the new Chapter 321 in a manner consistent with G.L. c. 138. We suggest that the Town discuss this issue in more detail with Town Counsel.

II. The By-law Must Be Applied Consistent with G.L. Chapter 136 and all Wage and Hour Laws.

When reviewing a request for a one-day permit under the new Chapter 321, the Board may wish to consult with Town Counsel regarding a requirement that the permit holder comply with Chapter 136 and all wage and hour laws.

The provisions of G.L. c. 136, §§ 5-16, govern what activities a business may conduct on Sundays and legal holidays. The following is a summary of these requirements from the AGO website:

Holiday Opening Laws for Retail Stores
Holiday Opening Laws

A number of holidays, including Thanksgiving and Christmas Day, are recognized as legal holidays under Massachusetts law. M.G.L. c. 4, § 7, cl. 18th. Massachusetts law specifies the

kind of work that may be performed and the type of establishments that may operate on each holiday, and under what circumstances. M.G.L. c. 136, §§ 13-16; M.G.L. c. 149, § 45. Please note that certain types of businesses (such as alcoholic beverage retailers, factories, gas stations, and pharmacies) are subject to different restrictions than other types of establishments. This summary focuses on the restrictions that generally apply to retailers.

Thanksgiving Day and Christmas Day

Thanksgiving Day is observed on the fourth Thursday in November. Christmas Day is observed on December 25, or, if it falls on a Sunday, it is officially celebrated on the following Monday. M.G.L. c. 4, § 7, cl. 18th. Most retail stores may not open on Thanksgiving Day or Christmas Day, and Massachusetts law specifies the limited categories of establishments that may open on those holidays. These include, for example, convenience stores, gas stations, and florists. When Christmas falls on a Sunday, retailers cannot operate on that day unless otherwise exempt. M.G.L. Chapter 136, § 6 (50).

New Year's Day, Columbus Day, and Veterans' Day

New Year's Day is observed on January 1, or if it falls on a Sunday, it is officially celebrated on the following Monday. M.G.L. c. 4, § 7, cl. 18th. Any retail store may open at any time on New Year's Day without a permit. M.G.L. c. 136, § 13. However, no retailer may open on Columbus Day prior to 12:00 noon or before 1:00 p.m. on Veteran's Day, unless statewide approval has been granted by the Division of Occupational Safety, and the retailer has obtained a local police permit. M.G.L. Chapter 136, §15.

Any retail store that operates on New Year's Day, Columbus Day, and Veteran's Day must pay holiday premium pay rate of at least one and one-half times the employee's regular rate of pay to each nonexempt employee who works on these holidays. This rate of pay must be paid, regardless of how many employees work in the store on these three holidays. M.G.L. c. 136, § 13. Failure to pay time and one half may result in a fine. Additionally, no retail employer may require an employee to work on New Year's Day, Columbus Day or Veteran's Day, and any employer who discharges, dismisses, discriminates against, reduces hours of, or otherwise penalizes an employee for not working in a retail store on these holidays may be fined up to \$1,000. M.G.L. c. 136, § 13; M.G.L. c. 149, § 180A.

Memorial Day, Labor Day, and Independence Day

Independence Day is observed on the fourth day of July, or if it falls on a Sunday, it is officially celebrated on the following Monday. M.G.L. c. 4, § 7, cl. 18th. Generally, if a retailer has more than 7 employees, then any nonexempt workers (meaning those employees who are not exempt administrative, executive, or professional employees), must be paid for any time worked on Memorial Day, Labor Day, and Independence Day at a rate of pay at least one and one-half times their regular hourly rate. M.G.L. Chapter 136, § 16. A retail employer covered by this section who fails to pay holiday premium pay as required, or requires an employee to work, may be fined as provided in M.G.L. Chapter 149, § 180A.

We urge the Town to consider incorporating a permit condition that requires compliance with the statutes governing Sunday/holiday hours, including a prohibition on requiring employees to report to work late in the evening of Thanksgiving Day, for example, to prepare for a 12:00 midnight opening.

In addition, the Town should consider a permit requirement that retail establishments must comply with various wage and hour laws (minimum wage, payment of wages, tips, meal breaks, travel time, reporting pay, child labor, overtime, Small Necessities Leave Act, and if applicable the Earned Sick Time law). The Fair Labor Division of the Attorney General's Office is available as a resource for information on these requirements, and a poster summarizing these requirements is attached to this decision.

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.

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Municipal Law Unit
Office of the Attorney General
Ten Mechanic Street, Suite 301
Worcester, MA 01608
508-792-7600

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 17 of the Warrant for the Fall Annual Town Meeting held on November 9, 2015.

Fall Annual Town Meeting, Article 17. The Finance and Warrant Commission recommended and the Town voted by a 2/3 voice vote in favor declared by the Moderator to amend the Code of the Town of Westwood, Chapter 321 [Retail Stores], by striking Article 1 [Restrictions on hours of operation of retail stores] entirely and replacing it with new Article 1 [Hours of Operation], and by adding a new Article 2 [One-day Permit for Extended Hours of Operation], so that Chapter 321 reads as follows:

Chapter 321: Retail Stores

§321-1 Article 1: Hours of Operation

For the purpose of controlling and abating noise and illuminations and to protect and promote the nighttime tranquility, no person shall sell at retail, including the sale of food, shall be open for transaction of retail business, accept deliveries, or allow the removal of solid waste between the hours of 12:00 midnight and 6:00 a.m., except as expressly permitted pursuant to a one-day permit granted by the Board of Selectmen in accordance with §321-2. The term "food" as used by this bylaw shall include any article or commodity, however stored or packaged, intended for human consumption. Notwithstanding the foregoing, nothing contained within this Chapter 321 shall be deemed to prohibit or limit a retail business from conducting interior activities that are accessory to the operation of the retail business, such as cleaning, stocking, food preparation and other supporting operations between the hours of 12:00 midnight and 6:00 a.m., provided that (i) truck deliveries shall not occur during the hours of 12:00 midnight to 4:00 a.m.; (ii) during the hours of 4:00 a.m. to 6:00 a.m. truck deliveries shall be made solely to sealed loading docks, with no exterior loading or unloading permitted; and (iii) waste removal shall in all events not occur between 12:00 midnight and 6:00 a.m.

§321-2 Article 2: One-day Permit for Extended Hours of Operation

The Board of Selectmen may, at the Board's sole discretion, grant a one-day permit to allow a retail store to remain open for the transaction of retail business between the hours of 12:00 midnight and 6:00 a.m. as part of a special event. The terms and conditions of said one-day permit shall be such as the Board of Selectmen determines necessary to protect public health and safety. No retail store may be granted a permit under this provision for more than 10 days in any calendar year. The Board of Selectmen may adopt, and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of one-day permits.

Witness my hand and seal of the Town of Westwood this 23rd day of November, 2015

Attest:

Dorothy A. Powers

Dorothy A. Powers, CMC, CMMC
Westwood Town Clerk