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TOWN OF WESTMINSTER

Town of Westminster

GENERAL AND ZONING BYLAWS APPROVED AT ANNUAL TOWN MEETING JUNE 20, 2020

Changes approved by Attorney General on October 15, 2020

**Ellen M. Sheehan, CMMC
Westminster Town Clerk**



**TOWN OF WESTMINSTER
OFFICE OF THE TOWN CLERK**

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November 16, 2020

On the date written above, I have posted copies of the General and Zoning Bylaw Amendments passed at the Annual Town Meeting on June 20, 2020 and approved by the Attorney General of Massachusetts on October 15, 2020, at the following public places in the Town of Westminster:

Community/Senior Center
Town Hall
US Post Office
Forbush Memorial Library
Public Safety Building

The above amendments were also posted on our Town of Westminster website on the same day.

Ellen M. Sheehan, CMMC
Town Clerk



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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October 15, 2020

Ellen M. Sheehan, Town Clerk
Town of Westminster
11 South Street
Westminster, MA 01473

Re: Westminster Annual Town Meeting of June 20, 2020 -- Case # 9859
Warrant Article # 34 (Zoning)
Warrant Articles # 31, 32, 33 and 35 (General)

Dear Ms. Sheehan:

Articles 31, 32, 33, 34 and 35 - We approve Articles 31, 32, 33, 34 and 35 from the June 20, 2020 Westminster Annual Town Meeting. Our comments regarding Articles 31, 32 and 35 are provided below.

Article 31 – Article 31 amends the Town’s general by-laws to add a new Chapter 137, “Stormwater Management.” The purposes and objectives of the new by-law include: (1) protecting the quality and health of water resources; (2) establishing minimum stormwater management requirements and procedures in order to minimize damage to public and private infrastructure; and (3) ensuring compliance with requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable state and federal mandates. Section 137-1, “Purpose and Objectives.”

I. Law Applicable to the New Stormwater Management Bylaw

Both the federal government and the Commonwealth of Massachusetts have enacted certain regulations relative to stormwater management by municipalities. For instance, the federal Environmental Protection Agency has enacted requirements pertaining to operators of municipal separate storm sewers. *See* 40 C.F.R. § 122.34. The Massachusetts Department of Environmental Protection (the Department) has promulgated regulations at 310 C.M.R. § 10.05 (6) (k)-(q) (“Stormwater Management Standards”), pursuant to G.L. c. 131, § 40. Furthermore, the Department has promulgated stormwater regulations at 314 C.M.R. §§ 3.04 and 5.04, pursuant to G.L. c. 21, §§ 26-53 (the Massachusetts Clean Waters Act). Any local regulation of stormwater management must be supplementary to and consistent with the regulation of such matters by the federal government and the Commonwealth of Massachusetts. Operators of

municipal separate storm sewers are required to develop and implement a stormwater management plan that meets certain minimum measures. *See* 40 C.F.R. § 122.34.

The federal regulations suggest that municipalities adopt local laws or regulations as part of an effective stormwater management plan. *See, e.g.,* 40 C.F.R. § 122.34 (b) (3) (ii) (B); 40 C.F.R. § 122.34 (b) (4) (ii) (A); 40 C.F.R. § 122.34 (b) (5) (ii) (B). It appears the new Stormwater Management Bylaw is part of the Town's efforts to effectively manage stormwater.

II. Comments on the New Stormwater Management Bylaw

1. Section 137-3 - Definitions

Section 137-3 defines the terms "Applicant" and "Person" as follows:

Applicant: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sediment control permit for proposed land-disturbance activity.

Person: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

We approve the definitions of "Applicant" and "Person." However, the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). *See also* Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. *Cf. First Nat'l Bank v. Missouri*, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if "such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies"); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town's enforcement of its new by-law cannot impermissibly interfere with the operation of state or federal entities. The Town should discuss any questions regarding the proper application of the by-law with Town Counsel.

In addition, we note that the definition of "applicant" references a "soil erosion and sediment control permit" but that term is neither defined nor used elsewhere in the by-law. Instead, the by-law references a "Stormwater Management Permit." *See* Section 137-3, "Definitions;" Section 137-4 (C), "Administration;" Section 137-6 (A), "Applicability and Exemptions;" Section 137-7 (B)(1), "Enforcement;" and Section 137-13, "Surety." The Town may wish to amend the reference to a "soil erosion and sediment control permit" at a future Town Meeting. The Town should discuss any questions regarding this issue with Town Counsel.

2. Section 137-7 – Enforcement

Section 137-7 (D) pertains to enforcement of the by-law. Specifically, it allows the Town to charge the property owner for costs incurred by the Town to abate or remediate violations of the by-law. If the costs are not paid by the property owner, then the costs shall become a “special assessment” against the property owner and “constitute a lien” on the owner’s property.

Betterments or special assessments are special property taxes assessed to recover costs of installing infrastructure or other public improvements that specifically benefit properties in a defined area. *See* G.L. c. 80 and c. 83. According to the Department of Revenue, Division of Local Services (DOR/DLS), an expense incurred by a Town to abate or remediate violations of a by-law is not a betterment or special assessment and cannot be added to the real estate tax for collection purposes as a betterment or special assessment. Absent express statutory authority, the Town cannot impose a “special assessment” for the costs incurred by the Town for remediating violations of the by-law.

Here, although Section 137-7 (D) uses the term “special assessment,” it appears that the by-law contemplates a lien against the owner’s property, rather than adding such costs to a real estate tax bill. As such, the expenses incurred by the Town to abate or remediate violations of the by-law or permit may be considered a charge for purposes of G.L. c. 40, § 58, the municipal charges lien statute. However, in order for the Town to utilize the provisions of G.L. c. 40, § 58, the Town must either amend its by-law to specify that the costs will be a lien for purposes of G.L. c. 40, § 58, or take a separate vote authorizing the use of G.L. c. 40, § 58, for charges the Town may incur abating or remediating by-law violations. Before the Town charges any expenses or costs to the property owner, the Town should discuss these issues with Town Counsel.

4. Section 137-12 – Remedies Not Exclusive

Section 137-12 provides as follows, with emphasis added:

The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state, or local law. In addition to the provisions of enforcement listed above, the Building Commissioner may, in his discretion, enforce the provisions of the Zoning Bylaw by noncriminal disposition pursuant to MGL c. 40, § 21D. Each day on which a violation exists shall be deemed to be a separate offense. Noncriminal disposition citations may be appealed to the Gardner District Court or Worcester County Housing Court in accordance with MGL c. 40, § 21D. The penalty for violation of any provision of the Zoning Bylaw pursuant to this section shall be \$50 for the first offense; \$75 for the second offense; \$100 for the third offense; and \$125 for the fourth and each subsequent offense.

Section 137-12 authorizes the use of non-criminal disposition for enforcement of the by-law. However, Section 137-12 authorizes the “Building Commissioner” to utilize non-criminal disposition, in his discretion, to enforce the “Zoning Bylaw.” The Town’s new Stormwater Management by-law is adopted as a general by-law, not a zoning by-law. *See* Certified Vote for Article 31 (“Voted to amend the Westminster General Bylaws by adding a new general bylaw

Chapter 137 regulating Stormwater Management.”) In addition, the new by-law designates the Planning Board and the Conservation Commission (not the Building Inspector) as enforcing authorities under the by-law. *See* Section 137-7 (A), “Enforcement.” The Town may wish to amend this Section at a future Town Meeting to clarify the enforcing person and that Section 137-12 pertains to a general by-law (not a zoning bylaw). The Town should consult with Town Counsel with any questions on this issue.

5. Section 137-13 – Surety

Section 137-13 authorizes the Planning Board and/or Conservation Commission to require the permittee to post a surety, bond or other acceptable surety prior to the start of land disturbance or construction activity in order to “ensure that the work will be completed in accordance with the permit.” General Laws Chapter 44, Section 53, requires that performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town’s general fund (and subject to future appropriation), unless the Legislature has expressly made other provisions that are applicable to such receipt. General Law c. 44, Section 53G ½, does allow the deposit of surety proceeds into a special account under certain circumstances, as follows:

Notwithstanding section 53, in a...town that provides by by-law...rule, regulation or contract for the deposit of cash, bonds, negotiable securities, sureties or other financial guarantees to secure the performance of any obligation by an applicant as a condition of a license, permit or other approval or authorization, the monies or other security received may be deposited in a special account. Such by-law...rule or regulation shall specify: (1) the type of financial guarantees required; (2) the treatment of investment earnings, if any; (3) the performance required and standards for determining satisfactory completion or default; (4) the procedures the applicant must follow to obtain a return of the monies or other security; (5) the use of monies in the account upon default; and (6) any other conditions or rules as the...town determines are reasonable to ensure compliance with the obligations. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. Monies in the special account may be expended by the authorized board, commission, department or officer, without further appropriation, to complete the work or perform the obligations, as provided in the by-law...rule or regulation. This section shall not apply to deposits or other financial surety received under section 81U of chapter 41 or other general or special law.

For the Town to deposit surety proceeds into a special account, the Town must comply with the requirements of G.L. c. 44, § 53G ½. Otherwise, surety proceeds must be deposited into the Town’s general fund, pursuant to G.L. c. 44, § 53. The Town should consult with Town Counsel with any questions regarding the proper application of Section 137-13.

Article 32 - Article 32 amends the general by-laws, Chapter 136, “Low Impact Development,” to add new text to Section 136-4 (A), “Scope and Applicability,” as follows: (new text in *italics* in original, underline added with emphasis):

This Bylaw shall be application to all new development and redevelopment, *including but not limited to approval-not-required (ANR) plans, site plans,*

definitive subdivision, reduced road subdivision, earth removal/placement of fill permit, special permit applications and any project within [the] jurisdiction of the Westminster Conservation Commission. Any project with land disturbance equal to or greater than ten-thousand (10,000) square feet shall meet the provisions of this bylaw. The bylaw shall apply to any activities that will result in an increased amount of stormwater runoff or pollutants from a parcel of land, or that will alter the drainage characteristics of a parcel of land, unless exempt under Section 3B of this Bylaw. All new development and redevelopment, under the jurisdiction of this Bylaw, shall be required to obtain a LID Permit. The LID permit process shall be coordinated with existing permitting, where applicable.

The Town's existing Chapter 136 states that it is enacted in order to "provide guidance that will prevent harmful impacts from land development activities." Section 136-1, "Findings and Intent." The purpose of Chapter 136 is to "protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to manage stormwater runoff, promote groundwater recharge and to prevent water pollution from new development and redevelopment." Section 136-2, "Purposes." The by-law requires "[a]ll new development and redevelopment, under the jurisdiction of the bylaw" to obtain a LID (low impact development) permit from the Planning Board. Section 136-4, "Scope and Availability" and Section 136-6, "Administration."

As amended, Section 136-4 defines the type of new development or redevelopment that requires a LID permit to include "special permit applications." It is unclear what the Town means by "special permit applications." In applying this portion of Section 136-4, the Town should be mindful that the right to file a special permit application is governed by G.L. c. 40A, § 9 and requires the special permit granting authority to "hold a public hearing for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application Failure by the special permit granting authority to take final action within . . . ninety days . . . shall be deemed to be a grant of the special permit" (emphasis added). The filing of a special permit application starts the administrative clock under G.L. c. 40A, § 9. Mark Bobrowski, Handbook of Massachusetts Land Use and Planning Law, § 10.03 (2003). Thus, Section 136-4 of the by-law cannot be applied in a manner that would prevent or otherwise restrict a person's right to file a special permit application with the special permit granting authority. The Town should consult with Town Counsel regarding the proper application of Section 136-4.

Article 35 – Article 35 amends the Town's general by-laws, Chapter 141, "Peddling and Soliciting," to add a new, unnumbered section "Civil Fingerprinting Bylaw." The by-law requires hawkers and peddlers and other door-to-door salespeople to submit fingerprints. The by-law is specifically authorized by G.L. c. 6, § 172B½. This statute allows cities and towns to obtain both state and national fingerprint-based criminal history, as follows:

Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 and 28 U.S.C. § 534. Fingerprint submissions may be submitted by the licensing authority to the

identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

The Executive Office of Public Safety and Security (“EOPSS”) has issued an Informational Bulletin which explains the requirements for town by-laws and the procedures for obtaining criminal history information.¹ The EOPSS information explains the requirement that the by-law must be forwarded to the State Identification Section of the Massachusetts State Police (SIS) and copied to the Massachusetts Department of Criminal Justice Information Services Office of the General Counsel to coordinate approval by the FBI Access Integrity Unit (AIU). The Town should review and comply with these requirements and consult with Town Counsel with any questions. We offer the following comments on the new by-law for the Town’s consideration.

1. Section One – Purpose and Scope

Section 1 of the bylaw authorizes the Board of Selectmen, in consultation with the Chief of Police, to “promulgate regulations to implement this bylaw.” As set forth above in more detail, any adopted by the Board of Selectmen must be consistent with state law. *See American Lithuanian Naturalization Club*, 446 Mass. At 321. The Town should discuss with Town Counsel any proposed regulations to ensure that they comply with state law.

2. Section Three – Use of Criminal Record by Licensing Authorities

Section 3 of the by-law authorizes the licensing authority to deny an application based on the results of the fingerprint-based criminal record background check if the licensing authority determines the results of the check render the applicant unsuitable for the proposed licensed activity. The EOPSS Informational Bulletin provides that “Municipal officials should not deny an applicant the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information or has declined to do so.” In addition, according to the EOPSS Informational Bulletin, “[i]f the applicant wants to challenge the accuracy or completeness of the record, municipal officials must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28 CFR 16.34.” The by-law does not provide this Notice to the applicant. The Town should consult with Town Counsel regarding this notice requirement. The Town may also wish to consult with Town Counsel prior to denying an application for a license based upon information received pursuant to this by-law.

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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

¹ The Informational Bulletin can be found here: <http://www.mass.gov/eopss/docs/chsb/civil-fingerprint-june-2011.pdf>

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

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cc: Town Counsel Brian Riley



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VOTE TAKEN AT THE ANNUAL TOWN MEETING, JUNE 20, 2020

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 31. Voted to amend the Westminster General Bylaws by adding a new General Bylaw Chapter 137 Regulating Stormwater Management. The text of the new bylaw will read as follows:

Chapter 137 - Stormwater Management

137-1. Purpose and Objectives

A. The purpose of this Bylaw is to establish minimum stormwater management requirements and procedures in order to minimize damage to public and private property and infrastructure; safeguard the public health, safety, environment and general welfare; protect aquatic resources and wildlife habitat; protect the quality and health of water resources; conserve groundwater supplies; and, foster climate change resiliency. This Bylaw seeks to meet that purpose through the following objectives:

(1) Establish the Planning Board and/or Conservation Commission of the Town of Westminster, or its designated agent, as the legal authority to ensure compliance with the provisions of this Stormwater Management Bylaw and its accompanying Rules and Regulations through a review process, inspection, monitoring, and enforcement.

(2) Establish administrative procedures for: the submission, review, and approval or disapproval of Stormwater Management Permits; the inspection of approved active projects; and post construction follow up.

(3) Establish decision-making processes surrounding new development and re-development that protects watershed integrity and preserves and/or restores the health of local water resources such as lakes, ponds, streams, rivers, wetlands, and groundwater.

(4) Ensure compliance with requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer



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Systems (MS4) and other applicable State and Federal mandates in order to minimize or eliminate erosion and maintain sediment onsite so that it is not transported to a water of the Commonwealth and to reduce the discharge of pollutants found in stormwater through the retention and treatment of stormwater during and after construction.

137-2. Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, pursuant to the Regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Westminister at the Town Meeting.

Nothing in this Bylaw or the regulations adopted hereunder is intended to replace or be in derogation of the requirements of the Town of Westminister Zoning Bylaw, the Westminister Wetlands Protection Bylaw, or the Westminister Subdivision Control Rules and Regulations.

137-3. Definitions

For the purposes of this Bylaw, the following shall mean:

AGRICULTURAL USE: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40, and its implementing regulations.

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sediment control permit for proposed land-disturbance activity.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps reduce the quantity or improve the quality of stormwater runoff. Some examples of BMPs are described in a stormwater design manual, Stormwater Management, Volume Two: Stormwater Technical Handbook (March, 1997, MA Department of Environmental Protection and MA Office of Coastal Zone Management, as updated or amended).

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.



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CONSERVATION COMMISSION: Town of Westminister Conservation Commission including its employees or authorized agents designated to enforce this Bylaw.

CONSTRUCTION ACTIVITY: The disturbance of the ground by removal of vegetative surface cover or topsoil, grading, excavation, clearing or filling.

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into waters of the United States of America or the Commonwealth of Massachusetts from any source.

DISTURBANCE: Any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the clearing, grading, digging, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural man-made watercourse.

ENFORCEMENT ORDER: A written order issued by the Planning Board and/or Conservation Commission in order to enforce the provisions of this Bylaw as issued in accordance with Section 7.0 of this Bylaw.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Westminister, MA.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by the United States Environmental Protection Agency (EPA) or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NEW DEVELOPMENT: Any modification of land that disturbs the ground surface or increases the impervious area on previously undeveloped sites. Any construction, land alteration, or addition of impervious surfaces resulting in total earth disturbances equal to or greater than 1 acre or activities that are part of a larger common plan of development disturbing greater than 1 acre that does not meet the definition of Redevelopment.

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.



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PLANNING BOARD: Town of Westminister Planning Board including its employees or authorized agents designated to enforce this Bylaw.

PROFESSIONAL ENGINEER (P.E.): A registered Professional Engineer within the State of Massachusetts in good standing.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phase projects that disturb the ground surface or increase the impervious area on previously developed sites. Any construction, land alteration, or improvement of impervious surfaces resulting in total earth disturbances equal to or greater than 1 acre (or activities that are part of a larger common plan of redevelopment disturbing greater than 1 acre) that does not meet the definition of New Development.

STORMWATER: Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PERMIT: The written approval granted by the Planning Board to undertake a construction activity pursuant to a Stormwater Management Permit Application. A valid Stormwater Management Permit must be signed by a majority of the Planning Board participating at a duly noted public hearing, and such permit must be recorded at the Worcester Registry of Deeds, prior to the start of any work.

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwaters, and vernal pools.

WETLAND RESOURCE AREAS: Areas specified in the Massachusetts Wetlands Protection Regulations, 310 CMR 10.00, et seq., as amended, and in the Town of Westminister Chapter 202 Wetlands Bylaw, as amended.

137-4. Administration

A. The Planning Board shall be the permit granting authority for this Bylaw except when a project subject to review under this Bylaw falls under the jurisdiction of the Conservation Commission in which case the Conservation Commission shall be the permit granting authority hereunder. Any powers granted to or duties imposed upon the Planning Board may be delegated in writing by the Planning Board to any Town employee, board, commission, committee or agent, hereby known as the "Reviewing Agent."

B. The Planning Board shall not have jurisdiction over stormwater issues within areas where the Conservation Commission has jurisdiction under the Wetlands Protection Act and/or any local regulations.



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C. The Planning Board or its Reviewing Agent shall take any of the following actions as a result of an application for a Stormwater Management Permit as specifically defined within the Stormwater Management Rules and Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, or Disapproval.

D. A decision of the Planning Board or its Reviewing Agent shall be final. Further relief from a decision by the Planning Board or its Reviewing Agent made under this Bylaw shall be appealable to the Superior Court, in accordance with M.G.L. c. 249, §4.

137-5. Amendments and Regulations

The Planning Board may adopt, and periodically amend, the Stormwater Management Rules and Regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Stormwater Management Bylaw by majority vote of the Planning Board, after conducting an advertised public hearing to receive comments on any proposed revisions. The hearings shall be duly advertised in a paper of general circulation in the Town of Westminister no less than fourteen (14) days prior to the date of the public hearing.

137-6. Applicability and Exemptions

A. No person may undertake a construction activity, including clearing, grading, and excavation that results in a land disturbance to an area equal to or greater than one (1) acre of land or will disturb less than one acres of land but is part of a larger common plan of development or sale that will ultimately disturb an area equal to or greater than one (1) acre of land within the Town of Westminister without first obtaining a Stormwater Management Permit issued by the Planning Board.

B. Exemptions:

(1) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection act regulation 310 CMR 10.04, as amended;

(2) Maintenance of existing landscaping, gardens, or lawn areas associated with a single-family dwelling;

(3) The construction of fencing that will not substantially alter existing terrain or drainage patterns;

(4) Normal maintenance and improvements of the Town of Westminister's publicly owned roadways and associated drainage infrastructure; and



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(5) Emergency repairs to any stormwater management system or feature that poses a threat to public health or safety, or other action as deemed necessary by a Town department or board to abate such a threat to public health or safety.

137-7. Enforcement

A. The Planning Board and/or the Conservation Commission, or an authorized agent of the Planning Board and/or Conservation Commission, shall enforce this Bylaw, and any associated regulations, orders, violations notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. The Planning Board and/or Conservation Commission may issue a written order to enforce the provisions of this Bylaw, which may include requirements to:

- (1) Cease and desist from construction or land disturbing activity until there is compliance with this Bylaw and the stormwater management permit;
- (2) Repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan;
- (3) Maintain, install, or perform additional erosion and sediment control measures;
- (4) Perform monitoring, analyses, and reporting;
- (5) Remediate adverse impact resulting directly or indirectly from malfunction of the stormwater management system or erosion and sediment control system;
- (6) Cease and desist from unlawful discharges, practices, or operations; and/or,
- (7) Remediate contamination in connection therewith.

C. If the Planning Board and/or Conservation Commission determines that abatement or remediation of adverse impacts is required, the Enforcement Order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Westminster may, at its option, undertake such work, and the property owner shall reimburse the Town's expense.



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D. Within thirty (30) days after completing all measures necessary to abate the violation, the violator and the property owner shall be notified of the costs incurred by the Town of Westminster, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Planning Board within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Planning Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, § 57, after the thirty-first day at which the costs first become due.

137-8. Entry to perform duties under this Bylaw

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Planning Board and/or Conservation Commission or its Reviewing Agent, may enter upon privately owned property for the purpose of performing their duties under this Bylaw and Regulations and may make or cause to be made such examinations, surveys or sampling as the Planning Board and/or Conservation Commission or Reviewing Agent deems reasonably necessary.

137-9. Waivers and Provisions for Relief

A. Planning Board may waive strict compliance with any requirement of this Bylaw promulgated hereunder, where:

- (1) Such action is allowed by federal, state & local statutes and/or regulations,
- (2) Is in the public interest,
- (3) A public safety issue exists, or
- (4) Is not inconsistent with the purpose and intent of this Bylaw.

B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this Bylaw does not further the purposes or objectives of this Bylaw. The Planning Board may require documentation to be submitted and stamped by a qualified P.E. registered in Massachusetts or a Certified Professional in Erosion and Sediment Control (CPESC).



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137-10. Civil Relief

If a person violates the provisions of this Bylaw, permit, notices, or order issued thereunder, the Planning Board and/or Conservation Commission may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

137-11. Criminal Penalty

Any person who violates any provision of this Bylaw, order or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

137-12. Remedies Not Exclusive

The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law. In addition to the provisions of enforcement listed above, the Building Commissioner may, in his discretion, enforce the provisions of the Zoning Bylaw by noncriminal disposition pursuant to MGL c. 40, § 21D. Each day on which a violation exists shall be deemed to be a separate offense. Noncriminal citations may be appealed to Gardner District Court or Worcester County Housing Court in accordance with MGL c. 40, § 21D. The penalty for violation of any provision of the Zoning Bylaw pursuant to this section shall be \$50 for the first offense; \$75 for the second offense; \$100 for the third offense; and \$125 for the fourth and each subsequent offense.

137-13. Surety

The Planning Board and/or Conservation Commission may require the permittee to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by Town counsel, and be in an amount deemed sufficient by the Planning Board and/or Conservation Commission to ensure that the work will be completed in accordance with the permit. If the project is phased, the Planning Board and/or Conservation Commission may release part of the bond as each phase is completed in compliance with the Stormwater Management Permit but the bond may not be fully released until the Planning Board and/or Conservation Commission has received the final inspection report as required by the Stormwater Management Rules and Regulations and issued a Certificate of Completion.



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137-14. Severability

If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

A True Copy, Attest:

Ellen M. Sheehan, CMMC

Westminster Town Clerk



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VOTE TAKEN AT THE ANNUAL TOWN MEETING, JUNE 20, 2020

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 32. Voted to amend Chapter 136 of the Westminster General Bylaws (Low Impact Development) by amending Item A under Section 136-4 (Scope and Applicability) as follows (new language appears in *italics*):

LOW IMPACT DEVELOPMENT (LID) BYLAW FOR THE TOWN OF WESTMINSTER

136-4. SCOPE AND APPLICABILITY

A.) This Bylaw shall be applicable to all new development and redevelopment, *including but not limited to approval-not-required (ANR) plans, site plans, definitive subdivision, reduced road subdivision, earth removal/placement of fill permit, special permit applications and any project within jurisdiction of the Westminster Conservation Commission. Any project with land disturbance equal to or greater than ten-thousand (10,000) square feet shall meet the provisions of this bylaw.* The bylaw shall apply to any activities that will result in an increased amount of stormwater runoff or pollutants from a parcel of land, or that will alter the drainage characteristics of a parcel of land, unless exempt under Section 3B of this Bylaw. All new development and redevelopment, under the jurisdiction of this Bylaw, shall be required to obtain a LID Permit. The LID permit process shall be coordinated with existing permitting, where applicable.

A True Copy, Attest:

Ellen M. Sheehan, CMMC

Westminster Town Clerk



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ARTICLE 33. Voted to amend Chapter 97 of the Westminster General Bylaws (Earth Removal & Placement of Fill) by amending Items B and C under Section 97.7 (Applicability) and Section 97.8 (Exemptions From Permitting Requirements) as follows (deleted text appears as strikethrough and new language appears in *italics*):

Chapter 97, Article III: EARTH REMOVAL AND PLACEMENT OF FILL

§ 97-7. Applicability

- A. All earth removal and earth filling operations in the Town shall provide the following information, in writing, to the Building Inspector within six months of the effective date of this Bylaw:
1. The map and parcel number of the subject property;
 2. An estimate of the amount of material left to be removed (if earth removal);
 3. An estimate of the amount of fill material remaining to be placed (if fill);
 4. An estimate of the anticipated annual volume of activity;
 5. A description of completed and planned reclamation of the property;
 6. The date the operation began; and
 7. The anticipated date of completion or cessation of the operations.
- B. Except as provided in Sections 97-8 or 97-14, a Permit shall be required for any of the following activities:
1. Earth removal that involves 2,000 ~~1,000~~ cubic yards or more of material per calendar year (January through December).
 2. The filling of land that involves 2,000 ~~1,000~~ cubic yards or more of material per calendar year (January through December), provided that it involves either:
 - i. The disturbance of two *one* or more acres of land, or



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- ii. The filling of land in excess of eighteen inches in depth above the existing grade.

C. An earth removal or filling operation that does not exceed any of the above thresholds shall not require a Permit, but is subject to the following requirements (unless otherwise agreed to, in writing, by the abutting property owner):

1. The operation shall not encroach closer than ten *fifty (50)* feet to a property line,
2. *An undisturbed fifty (50) foot buffer strip shall be maintained along all property boundaries.*
3. No greater than a 1:1 slope shall exist between the operation and the ten-foot buffer.

§ 97-8. Exemptions from Permit Requirements

The following earth removal or fill operations are exempted from the requirement to obtain a Permit under this Bylaw, provided that (i) the earth removal and/or fill operation is limited to no more than three contiguous lots and does not exceed a total area of six *five* acres, and (ii) the operation is not conducted, maintained, and/or left in a condition so as to alter the natural drainage flow beyond the property; or to cause dust, silt, soil, or other materials to be deposited on adjacent properties; or to otherwise cause nuisances, hazards, or other objectionable conditions detrimental to health, safety, or property values in adjacent areas. The PGA shall, upon petition by an abutter or by any Town Official or Town Board, review an operation that would be exempt from the Permit requirement pursuant to this Section 97-8, and may determine that, because of the nature and scope of the earth removal or fill operation, a Permit is nonetheless required. (Deleted text moved to the end of this section)

A: Earth removal or the placement of fill associated with the installation of septic systems, which shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.00).

B Earth removal or the placement of fill associated with the installation of foundations for new buildings and/or building additions, which shall be governed by MGL Chapter 143 and the Commonwealth of Massachusetts Building Code (780 CMR).

C: Earth removal or the placement of fill proposed for land falling within the Town's Floodplain Protection District, which shall be governed by Sections 205-9 and 205-46 of the Westminister Zoning Bylaw and require a Special Permit from the Zoning Board of Appeals



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D: Earth removal or the placement of fill proposed for land falling within the Town's Wetland Protection District and associated buffer zones, which shall be governed by the Wetland chapter within the Town's General Bylaws (Chapter 202) which is administered by the Conservation Commission, and the Massachusetts Wetlands Protection Act.

E: Earth removal or the placement of fill that involves less than 2,000 1,000 cubic yards on a single lot.

F: Earth removal or the placement of fill, where the operation occurs entirely within an individual parcel and where a town-accepted public way is not used for the transportation of the material.

G: Earth removal or the placement of fill within the right-of-way for a new subdivision road that has been approved by the Planning Board or Zoning Board where there is already a bond in place with the Town to ensure performance. *For earth removal outside of a new subdivision road right-of-way, a permit will be required if the amount of earth removed exceeds the thresholds specified in Section 97.7.*

H. The PGA shall, upon petition by an abutter or by any Town Official or Town Board, review an operation that would be exempt from the Permit requirement pursuant to this Section 97-8, and may determine that, because of the nature and scope of the earth removal or fill operation, a Permit is nonetheless required.

A True Copy, Attest:

Ellen M. Sheehan

Westminster Town Clerk



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VOTE TAKEN AT THE ANNUAL TOWN MEETING, JUNE 20, 2020

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 34. Voted to amend the Westminister Zoning Bylaw (Chapter 205 of the Code of the Town of Westminister, Massachusetts) by amending Article II (Definitions) Section 205.13 (Minimum Building Requirements) to add a new Item 4 under Subsection B that would prohibit flag lots from using cul-de-sacs for their required frontage (new language appears in *italics*).

§ 205-13 Minimum building requirements.

A. No building shall be erected, except on a lot fronting on a street, and there shall be not more than one principal building on any lot, except as allowed under this chapter.

B. Flag lots. In addition, any parcel larger than five acres may be further divided without process through the Subdivision Control Law,^[1] provided that each created lot either conforms with the appropriate land space requirements for that zoning district or the following:

- (1) Each parcel shall have a minimum of 54 feet of frontage for an access to a Town road, this width to be maintained to the circumference of the radius described in Subsection C(1) below;
- (2) Each parcel shall contain a minimum of two and one-half (2 1/2) times the land area it would normally require in each zoning district; and
- (3) There shall be no more than two such accesses adjacent to each other.
- (4) *Flag lots cannot use cul-de-sac turnarounds for their required road frontage.*

A True Copy, Attest:

Ellen M. Sheehan, CMMC
Westminister Town Clerk



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VOTE TAKEN AT THE ANNUAL TOWN MEETING, JUNE 20, 2020

An affirmative vote was taken at this time to accept the provisions of MGL Chapter 39, Section 15, which allows the Moderator to dispense with a count in matters requiring a two-thirds vote by statute, where the vote is unanimous or clearly overwhelming at this Annual Town Meeting.

ARTICLE 35. Voted to amend the Westminister General Bylaws at Chapter 141, "Peddling and Soliciting," by adding as follows.

CIVIL FINGERPRINTING BYLAW

SECTION ONE: Purpose and Scope

This Bylaw authorizes the Police Department to conduct state and national fingerprint based criminal history checks for individuals applying for specific licenses in Town to enhance public safety, as authorized by Massachusetts General Laws Chapter 6, Section 172B½. To carry out the criminal history checks authorized by this bylaw, the Police Department shall be authorized to use state and Federal Bureau of Investigation ("FBI") records, provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with all applicable law.

The Bylaw further authorizes the Board of Selectmen, in consultation with the Chief of Police, to promulgate regulations to implement this bylaw, which may include, but shall not be limited to, establishment of submission deadlines, procedures for making recommendations to the licensing authority or making a licensing as a result of the criminal history check, procedures for assessing, correcting or amending any such record, criteria for fitness determinations, security of information obtained and penalties for failure to comply with this bylaw.

SECTION TWO: Criminal History Check Authorization

The Police Department shall, as authorized by Massachusetts General Laws Chapter 6, Section 172B½, conduct State and Federal Fingerprint Based Criminal History checks for individuals and entities for the following licenses:

- Hawking and Peddling or other Door-to-Door Salespeople



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At the time of fingerprinting, the Police Department shall notify the individual being fingerprinted that the fingerprints will be used to check the individual's criminal history records and obtain the individual's consent. After the applicant completes a consent form, provides his/her fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this bylaw to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services ("DCJIS"), and/or the FBI or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks for the license applicants specified in this bylaw.

The Town authorizes the Massachusetts State Police, the DCIS and the FBI and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this bylaw. The Town authorizes the Police Department to receive and utilize State and FBI records in connection with such background checks, consistent with this bylaw and its implementing regulations. In accordance with its implementing regulations, the Police Department shall communicate the results of fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town.

SECTION THREE: Use of Criminal Record by Licensing Authorities

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this bylaw. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed licensed activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination.

Licensing authorities of the Town are hereby authorized to deny an application for any license specified herein and in the implementing regulations, including renewals and transfers of said licenses, from any person who is determined unfit for the license due to information obtained pursuant to this bylaw. Factors that shall be considered in making a determination of fitness shall include, but not be limited to, whether the record subject has been convicted of, or is under pending indictment for a crime, that bears upon the subject's ability or fitness to serve in that capacity, including any felony or a misdemeanor that involved force or threat of force, possession of a controlled substance, or sex-related offense.



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SECTION FOUR: Fees

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be one hundred dollars (\$100) for each fingerprinting and criminal history check. A portion of the fee, as specified in Massachusetts General Laws Chapter 6, Section 172B½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

SECTION FIVE: Effective Date

This bylaw shall take effect after compliance with Massachusetts General Laws Chapter 40, Section 32 have been met.

A True Copy, Attest:

Ellen M. Sheehan, CMMC
Westminster Town Clerk