



Town of Westminster

ZONING BYLAWS APPROVED AT SPECIAL TOWN MEETING NOVEMBER 29, 2016

Changes approved by Attorney General on May 15, 2017

Ellen M. Sheehan
Westminster Town Clerk



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

Ellen M. Sheehan
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Westminster, MA 01473
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July 6, 2017

On the date above written, I have posted copies of the Zoning Bylaw amendment passed at the Special Town Meeting on November 29, 2016 and approved by the Attorney General of Massachusetts on May 15, 2017 at the following public places in the Town of Westminster:

Senior Citizen's Center
Town Hall
Public Safety Building
Forbush Memorial Library
Depot Package Store Bulletin Board (Precinct 1)

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VOTE TAKEN AT THE SPECIAL TOWN MEETING , NOVEMBER 29, 2016

An affirmative vote was taken before Article 1 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.

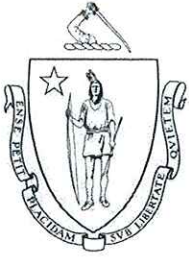
ARTICLE 9. Voted to amend the Westminister Zoning Bylaw (Chapter 205 of the Code of the Town of Westminister, Massachusetts) by amending Section 205-37.2, Adult Entertainment Facilities and Activities, paragraph C., as follows (new language appears in *italics* and is underlined), or act in relation thereto. (2/3 vote required)

C. No special permit for an adult entertainment facility (as listed in the Table of Use Regulations¹) shall be granted except in accordance with the following conditions and requirements:

- 1) Shall not be located within a radius of 1,400 feet of any type of residential zoning district.
- 2) Shall not be located within a radius of 1,400 feet of any school, library, or teaching facility, whether public or private, governmental or commercial, which school, library, or teaching facility is attended by persons under 18 years of age.
- 3) Shall not be located within a radius of 1,400 feet of any church, synagogue, or permanently established place of religious services, which is attended by persons under 18 years of age, or day-care center.
- 4) Shall not be located within a radius of 2,000 feet of any other adult entertainment facility.
- 5) Signs. Adult entertainment facilities shall be limited to one sign (freestanding or attached) with a total display area of no more than 10 square feet. The sign shall have no moving parts, shall be illuminated only by a direct, external lighting source, and shall be set back a minimum of 50 feet from all street or property lines.
- 6) Structures associated with the proposed use shall be located a minimum of 150 feet from any street line.

A True Copy, Attest:

Ellen M. Sheehan
Westminister Town Clerk



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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May 15, 2017

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

**Re: Westminster Special Town Meeting of November 29, 2016 - Case # 8238
Warrant Article # 9 (Zoning)**

Dear Ms. Sheehan:

Article 9 – We approve Article 9 from the Westminster Special Town Meeting of November 29, 2016. Our comments on Article 9 are detailed below.

Article 9 adds certain text to the Town's existing zoning by-law, Section 205.37.2, Adult Entertainment Facilities and Activities, paragraph C, to clarify the buffer zone requirements for such facilities.¹ We approve these limited amendments and note that the remaining (existing) by-law text is not before us for review and approval pursuant to G.L. c. 40, § 32.

We strongly suggest the Town consult with Town Counsel regarding whether the existing by-law text would withstand a challenge based on the decisions in Showtime v. Ammendolia, 885 F.Supp.2d 479 (2012) and the related case of Showtime v. Town of Mendon, 769 F.3d 61 (2014). In the first decision the U.S. District Court ruled that a special permit requirement for adult uses was invalid because it failed to provide narrow and objective standards for the grant of the special permit, and thus vested excessive discretion in the special permit granting authority. Showtime, 885 F. Supp. 2d at 489-90. In the second decision the First Circuit ruled invalid the hours of operation restriction in Mendon's by-law because the same restrictions were not imposed on any other business in Mendon and the restriction failed to survive intermediate scrutiny. Showtime, 769 F.3d at 75.

In our review of Article 9 pursuant to G.L. c. 40, § 32 we do not have the complete factual record that the courts in Showtime had in reviewing the Mendon adult entertainment by-

¹ Specifically, the amendments make clear that Adult Entertainment Facilities "shall not be located" within the established radius around residential zoning districts, schools, libraries, etc.

law. In approving the amendments adopted under Article 9 we make no statement regarding whether the existing by-law would survive a constitutional challenge based upon a complete factual record. Therefore, we urge the Town to consult with Town Counsel to determine whether a future amendment to the by-law is needed in light of the Showtime decisions.

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.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

By: Margaret J. Hurley
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cc: Town Counsel Brian Riley