



Approved
8/10/2021

TOWN OF WILMINGTON

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WILMINGTON, MA 01887

THE OFFICE
OF TOWN CLERK

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TOWN OF WILMINGTON, MA

Minutes
Bylaw Review Committee
Tuesday, July 27, 2021 - 4:30 p.m.
Wilmington Town Hall
121 Glen Road, Wilmington, MA – Auditorium

1. Call Meeting to Order

The meeting was called to order at 4:33 p.m. Present were committee members John Romano (acting as Chair in the absence of Robert Peterson, Jr.), Gary DePalma, Joseph Desmond, Michael McCoy, Daniel Ardito, Frank Olivieri, Christine Touma-Conway.

2. Approve Minutes to July 13, 2021 meeting

Ms. Touma-Conway pointed out that the reference to Question 119-001 was incorrectly noted in the draft minutes as "19-001." Upon motion by Gary DePalma, seconded by Joseph Desmond to change the reference to "119-001," the minutes were approved unanimously.

3. Review available responses to questions raised in prior meetings, revisit applicable unanswered questions

Ms. Touma-Conway provided a re-cap of the meeting she and Mr. Peterson had with Town Counsel on July 19, 2021, in general and then with respect to specific questions that had been raised by the committee at a prior meeting.

The need for Town Counsel review of all proposed changes was discussed. In the name of efficiency, it was decided that we will provide Town Counsel with the decisions made by the committee at the same intervals as they are sent to the Board of Selectmen. The decision was also made to invite Town Counsel to a future Bylaw Review Committee meeting once the committee had responded to all questions posed by General Code for an overall review of the process.

With respect to specific questions to Town Counsel, the questions that are referenced are to the General Code Editorial and Legal Analysis, with applicable questions attached.

QUESTION #: 1-011
READER:
PROPOSED RESPONSE: That Town Counsel's recommendation's be accepted.
DECISION: Town Counsel recommended that the term "prosecution" be replaced with "enforcement" to avoid any confusion with the concept of criminal prosecution, and that "any police officer" be replaced with "the Police Department." By motion of Mr. DePalma, seconded by Chief Desmond, the Committee voted to accept Town Counsel's recommendation unanimously.

QUESTION #: 24-004
READER:
PROPOSED RESPONSE: Do not revise
DECISION: Town Counsel recommended that despite current practice, expanding the authority of the Finance Committee would not be advisable. The committee agreed to accept the recommendation. Committee in agreement

QUESTION #: 115-001
READER:
PROPOSED RESPONSE: Again deferred pending BOH further response
DECISION: Health Director responded to initial inquiry regarding whether there are local rules and regulations relating to air pollution. The Committee directed Ms. Touma-Conway to further inquire of the Health Director as to whether it would be appropriate to remove the bylaw entirely.

QUESTION #: 127-001
READER:
PROPOSED RESPONSE: Do not revise
DECISION: At a prior meeting Ms. Touma-Conway was asked to inquire of the Board of Selectmen whether there were existing regulations with respect to Amusement devises. It was reported back that in fact there are regulations in place for the Board of Selectmen to follow, and therefore the committee was in agreement to not revise the bylaw.

4. Continue Review of Editorial and Legal Analysis – all questions are referenced to the General Code Editorial and Legal Analysis (applicable questions attached)

QUESTION #: 163-002
READER: Mr. Ardito
PROPOSED RESPONSE: Do not revise
DECISION: Committee in agreement

QUESTION #: 163-003
READER: Mr. McCoy
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 169-001
READER: Mr. Desmond
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 169-002
READER: Mr. Olivieri
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 169-003
READER: Mr. DePalma
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 169-004
READER: Mr. Romano
PROPOSED RESPONSE: Do not revise
DECISION: Committee in agreement

QUESTION #: 174-001
READER: Mr. Ardito
PROPOSED RESPONSE: Defer to Town Counsel
DECISION: The committee's original decision on this question was to revise as suggested; however, upon reading the next question, 174-002, by motion of Mr. DePalma, seconded by Mr. Ardito, the committee chose to revisit the response and instead consult with Town Counsel.

QUESTION #: 174-002
READER: Mr. McCoy
PROPOSED RESPONSE: Defer to Town Counsel
DECISION: Ms. Touma-Conway stated that it was her belief that the bylaws provide for the ability to set fees without having to proceed to Town Meeting for approval, but she is unsure of the mechanism. The committee directed her to consult with Town Counsel.

QUESTION #: 178-001
READER: Mr. Desmond
PROPOSED RESPONSE: Do not revise
DECISION: Committee in agreement

QUESTION #: 178-002
READER: Mr. Olivieri
PROPOSED RESPONSE: Revise as suggested, with a condition
DECISION: Committee in agreement that the provision should be revised as suggested, however, Ms. Touma-Conway was directed to ensure that General Code knows that the last two sentences of the provision are to remain unchanged.

QUESTION #:	181-001
READER:	Mr. DePalma
PROPOSED RESPONSE:	Defer to Fire Chief
DECISION:	Ms. Touma-Conway was directed to consult with the Fire Chief regarding whether the bylaw provisions reflect current standards. Mr. Ardito did recommend that the reference in the first sentence of the provision to “the head of the Fire Department” be changed to “the Fire Chief.”
QUESTION #:	181-002
READER:	Mr. Romano
PROPOSED RESPONSE:	Defer to Town Counsel
DECISION:	Ms. Touma-Conway was directed to direct this question to Town Counsel
QUESTION #:	181-003
READER:	Mr. Ardito
PROPOSED RESPONSE:	Defer to Fire Chief
DECISION:	Ms. Touma-Conway was directed to consult with the Fire Chief regarding the adequacy of the fine amount.
QUESTION #:	189-001
READER:	Mr. McCoy
PROPOSED RESPONSE:	Add fine of \$300 to §189-2
DECISION:	Committee in agreement
QUESTION #:	189-002
READER:	Mr. Desmond
PROPOSED RESPONSE:	Update to current citation
DECISION:	Committee in agreement
QUESTION #:	189-003
READER:	Mr. Olivieri
PROPOSED RESPONSE:	Revise as suggested
DECISION:	Committee in agreement
QUESTION #:	194-001
READER:	Mr. DePalma
PROPOSED RESPONSE:	Defer to Fire Chief
DECISION:	Ms. Touma-Conway was directed to consult with the Fire Chief
QUESTION #:	194-002 through 194-008
READER:	Mr. Romano
PROPOSED RESPONSE:	Defer to Fire Chief
DECISION:	Ms. Touma-Conway was directed to consult with the Fire Chief
QUESTION #:	194-009
READER:	Mr. Romano
PROPOSED RESPONSE:	Do not revise
DECISION:	Committee in agreement

QUESTION #: 206-001
READER: Mr. Ardito
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 206-002
READER: Mr. McCoy
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 206-003
READER: Mr. Desmond
PROPOSED RESPONSE: Revise to read: "and, if so, the applicant shall specify the types of articles to be dealt with."
DECISION: Committee in agreement

QUESTION #: 206-004
READER: Mr. Olivieri
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 206-005
READER: Mr. DePalma
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 206-006
READER: Mr. Romano
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 206-007
READER: Mr. Ardito
PROPOSED RESPONSE: Do not revise
DECISION: Committee in agreement

QUESTION #: 206-008
READER: Mr. McCoy
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 213-001
READER: Mr. Desmond
PROPOSED RESPONSE: Deferred
DECISION: Ms. Touma-Conway was directed to research whether this provision was changed at a recent town meeting

QUESTION #:	213-002
READER:	Mr. Olivieri
PROPOSED RESPONSE:	Deferred
DECISION:	Ms. Touma-Conway was directed to research whether this provision was changed at a recent town meeting.
QUESTION #:	213-003
READER:	Mr. DePalma
PROPOSED RESPONSE:	Revise as suggested
DECISION:	Committee in agreement
QUESTION #:	213-004
READER:	Mr. Romano
PROPOSED RESPONSE:	Delete reference as suggested
DECISION:	Committee in agreement
QUESTION #:	220-001
READER:	Mr. Ardito
PROPOSED RESPONSE:	Do not revise
DECISION:	Committee in agreement
QUESTION #:	220-002
READER:	Mr. McCoy
PROPOSED RESPONSE:	Do not revise
DECISION:	Committee in agreement
QUESTION #:	220-003
READER:	Mr. Romano
PROPOSED RESPONSE:	Revise as suggested
DECISION:	Committee in agreement
QUESTION #:	234-001
READER:	Mr. Ardito
PROPOSED RESPONSE:	Add recommended section
DECISION:	Committee in agreement
QUESTION #:	234-002
READER:	Mr. McCoy
PROPOSED RESPONSE:	Revise as suggested
DECISION:	Committee in agreement
QUESTION #:	234-003
READER:	Mr. Desmond
PROPOSED RESPONSE:	Do not revise
DECISION:	Committee in agreement

QUESTION #: 238-001
READER: Mr. Olivieri
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 238-002
READER: Mr. DePalma
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 238-003
READER: Mr. Romano
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 238-004
READER: Mr. Ardito
PROPOSED RESPONSE: Deferred
DECISION: Ms. Touma-Conway directed to confer with Town Counsel

QUESTION #: 238-005
READER: Mr. McCoy
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 238-006
READER: Mr. Desmond
PROPOSED RESPONSE: Do not revise
DECISION: Committee in agreement

QUESTION #: 238-007
READER: Mr. Olivieri
PROPOSED RESPONSE: Revise as suggested
DECISION: Committee in agreement

QUESTION #: 238-008
READER: Mr. DePalma
PROPOSED RESPONSE: Do not revise
DECISION: Committee in agreement

5. Schedule next meeting

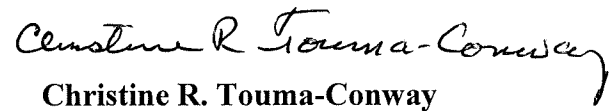
The next meeting was scheduled for Tuesday, August 10, 2021 at 4:30 p.m. in the Town Hall Auditorium.

6. Adjourn

Mr. DePalma made a motion to adjourn, seconded by Mr. Desmond.

The meeting adjourned at 6:11 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine R. Touma-Conway". The signature is written in black ink and is positioned above the printed name and title.

**Christine R. Touma-Conway
Town Clerk**

Question 1-011

Chapter 1 General Provisions
§ 1-10 Prosecutions for violations of bylaws.

Code Content:

[§ 1-10] Except when otherwise provided by law, prosecutions for offenses under the by-laws of the Town may be made by any police officer of the Town.

Section 1-10 states that offenses under the bylaws will be prosecuted by police officers which seems incorrect. Should "any police officer of the Town" be changed to the Town Counsel, or the Board of Selectmen? Note that enforcement of the bylaws is provided for in Chapter 50, Noncriminal Disposition. See the definition of "enforcing person" in § 50-1.

Pick one option from list below

☐ Revise as follows:

☐ Delete § 1-10.

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 24-004

Chapter 24 Finance Committee
§ 24-4 Report and recommendations.

Code Content:

[§ 24-4A] The Committee shall, seven days prior to any Town Meeting at which articles contained in the warrant are to be acted upon, prepare, publish and distribute by leaving copies thereof in the office of the Town Clerk, their report and recommendations on such articles which involve the transfer, raising and appropriation of monies. For each Annual Town Meeting for the transaction of business, such reports and recommendations shall show in detail the anticipated income and expenditures of the Town for the then current year and copies thereof shall at least seven days prior to such meeting be mailed to the registered voters of the Town.

Section 24-4A provides for the Finance Committee to make recommendations on "such articles which involve the transfer, raising and appropriation of monies." Is this provision still correct, or does the Finance Committee review all proposed articles?

Pick one option from list below

- ☐ Delete "which involve the transfer, raising and appropriation of monies."
- ☐ Revise as follows:

- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 115-001

Chapter 115 Air Pollution Control
§ 115-1 Board of Health regulations.

Code Content:

[§ 115-1] It shall be the duty of the Board of Health to develop rules and regulations in conformity with the State Air Pollution Regulations for the purpose of comparing the level of pollution in Wilmington with standards of air quality as established by the Commonwealth, Department of Public Health, Division of Environmental Health and/or federal air quality control programs and public law.

Chapter 115 requires the Board of Health to develop rules and regulations relating to air pollution. Does this bylaw reflect current practice? Does the Board of Health have regulations in place in accordance with this bylaw?

Pick one option from list below

☐ This bylaw is obsolete; remove.

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 127-001

Chapter 127 Amusement Devices
§ 127-3 Violations and penalties.

Code Content:

[§ 127-3] *Any person found in violation of this by-law shall be punished by a fine of \$200 for each offense.*

Section 127-3 sets a fine of \$200 for violations of Chapter 127, Amusement Devices, but it is not clear what violation this penalty would apply to. Section 127-1 provides that the Selectmen will not issue a license for an amusement device that can be used as a gaming device. Section 127-2 authorizes the Police Department to inspect licenses and seize any amusement device that is not licensed. There do not appear to be any provisions in these sections that could be violated. The bylaw does not state, for example, that it is unlawful to operate an amusement device without a license. Should the penalty in § 127-3 be removed, or are there provisions that should be added to this bylaw? If the Board of Selectmen has established regulations for licensing of amusement devices, this bylaw should be reviewed against those regulations. For statutory provisions see MGL c. 140, § 177A.

Pick one option from list below

☐ Delete § 127-3.

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 163-001

Chapter 163 Earth Removal
§ 163-2 Earth removal procedure.

Code Content:

[§ 163-2F] Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued or at such other time as may be specified in said permit, but in no case for a period more than one year.

In § 163-2F the wording "but in no case for a period more than one year" is incomplete (it has no subject). The following revision could be made: "but in no case shall a permit be issued for a period of more than one year."

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 163-002

Chapter 163 Earth Removal
§ 163-7 Violations and penalties.

Code Content:

[§ 163-7C] The penalties for violations of this by-law shall be as follows:

The penalties prescribed in § 163-7C, \$50 for the first offense, \$100 for the second offense and \$200 for each subsequent offense, are prescribed by MGL c. 40, § 21(17). No changes should be made.

Question 163-003

Chapter 163 Earth Removal
§ 163-7 Violations and penalties.

Code Content:

[§ 163-7D] In addition, for each offense they shall replace any and all material removed in violation of the provisions of this by-law.

Section 163-7D provides: "they shall replace any and all material removed in violation of the provisions of this by-law." It is not clear who "they" refers to in this sentence.

Pick one option from list below

☐ Revise to read: "In addition, for each offense the person violating this bylaw shall replace any and all material removed in violation of the provisions of this bylaw."

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 169-001

Chapter 169 Excavations and Trenches

Article I Barriers on Excavations

§ 169-1 Notice to erect barriers; violations and penalties.

Code Content:

[§ 169-1] The owners of land which has been excavated are hereby required to erect barriers or take other suitable measures within five days after such owners have been notified in writing by the Selectmen that in their opinion such excavation constitutes a hazard to public safety. Any person violating the provisions of this section shall be fined \$300 for each offense. Each day of such violation shall constitute a separate offense.

Article I of Chapter 169 requires property owners to erect barriers around excavations within five days of notice from the Selectmen, subject to a fine of \$300 for failure to comply. This bylaw should be reviewed in conjunction with MGL c. 40, § 21(19), which requires barriers to be erected within two days of notice and prescribes a maximum fine of \$200. It authorizes bylaws:

For requiring any person excavating land or any person in charge of such excavation and for requiring any owner of land which has been excavated to erect barriers or take other suitable measures within two days after such person has been notified in writing by the mayor or city manager and the city council, the selectmen or the building inspector, of the city or town in which the land is located that in their opinion such excavation constitutes a hazard to public safety. The penalty for violation of any ordinance or by-law made hereunder shall not exceed two hundred dollars per day for every day such person is in violation of such notice commencing with the fourth day thereof.

Pick one option from list below

☐ Change "five days" to "two days" and change the fine from \$300 to \$200.

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 169-002

Chapter 169 Excavations and Trenches

Article II Trench Safety

§ 169-4 Authority. fee.

Code Content:

[§ 169-4] This article is enacted pursuant to the provisions of M.G.L. Ch. 82A, the regulations of the Department of Public Safety in conjunction with the Division of Occupational Safety as promulgated under 520 CMR 14.00. A reasonable fee to defray the cost of administration incurred in the review and processing of permits under this by-law shall be established pursuant to M.G.L. Ch. 40, S. 22F and Ch. 82A, S. 2.

The following minor correction is needed in § 169-4: "This article is enacted pursuant to the provisions of M.G.L. Ch. 82A[,] and the regulations of the Department of Public Safety in conjunction with the Division of Occupational Safety as promulgated under 520 CMR 14.00."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 169-003

Chapter 169 Excavations and Trenches

Article II Trench Safety

§ 169-10 Immediate shutdown; reinspection.

Code Content:

[§ 169-10] Whenever the permitting authority or an inspector from either the Department of Public Safety or the Division of Occupational Safety deems a condition at a trench site to be a threat to public safety, he may order that the area around the trench be made safe for the general public and may further order the immediate shutdown of the site until such time as the condition has been corrected to the satisfaction of the authority responsible for the immediate shutdown. Conditions which warrant immediate shutdown of a trench site by the permitting authority, an inspector from the Department of Public Safety or the Division of Occupational Safety may include those conditions set forth in 520 CMR 14.05(5). The trench site shall remain closed until all necessary repairs and corrections have been made to the satisfaction of the authority responsible for the immediate shutdown, provided however, that the Department of Public Safety and Division of Occupational Safety shall have concurrent jurisdiction to authorize the reopening of a trench shut down by either agency. Reopening of the site may not occur until the site has been inspected by the authority ordering the immediate shutdown and found to be safe for reopening and operation.

It appears that the following revision should be made in § 169-10; see similar wording in the first sentence of this section: "Conditions which warrant immediate shutdown of a trench site by the permitting authority[,] or an inspector from either the Department of Public Safety or the Division of Occupational Safety may include those conditions set forth in 520 CMR 14.05(5). "

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 169-004

Chapter 169 Excavations and Trenches

Article II Trench Safety

§ 169-12 Violations and penalties.

Code Content:

[§ 169-12] Any person violating this article shall be fined \$300 for each offense, each day constituting a separate offense. The enforcing persons for this by-law shall be the permitting authority or his designees and any one fire shift commander of the Town of Wilmington. Non-criminal disposition of violations shall be available to apply to violations pursuant to Chapter 50, Article I, of the by-laws.

Section 169-12 provides for a fine of \$300 for violations of Article II, Trench Safety, and for use of the noncriminal disposition procedure. As \$300 is the maximum fine authorized for a bylaw violation by MGL c. 40, § 21, no changes would appear to be needed.

Pick one option from list below

- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 174-001

Chapter 174 Fees

§ 174-1 Sealing of weights and measuring services.

Code Content:

[§ 174-1] *The fees for sealing of weights and measuring services shall be fixed in accordance with Chapter 1, Section 3.*

Section 174-1 provides for fees for sealing of weights and measuring services to be fixed in accordance with § 1-3. Section 1-3 provides for fees to be approved by the Town Manager and Board of Selectmen. Fees for sealers and inspectors are prescribed by MGL c. 98, § 56. Pursuant to that statute, the Town can establish different fees, but such fees would have to be adopted by a Town Meeting bylaw. It states: "Except as otherwise established in a town by town meeting action and in a city by city council action, by adoptions of the appropriate by-laws and ordinances to set such fees, sealers shall receive and inspectors may demand the following fees for sealing and inspecting the following weighing or measuring devices:"

Pick one option from list below

☐ Replace § 174-1 with "The fees for sealing of weights and measuring services shall be as prescribed in MGL c. 98, § 56."

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 174-002

Chapter 174 Fees

§ 174-3 Town Clerk fees.

Code Content:

[§ 174-3] *The fees of the Town Clerk shall be fixed in accordance with Chapter 1, § 1-3.*

Section 174-3 provides for fees of the Town Clerk to be fixed in accordance with § 1-3. Section 1-3 provides for fees to be approved by the Town Manager and Board of Selectmen. Town Clerk fees are prescribed by MGL c. 262, § 34. Pursuant to that statute, the Town can establish different fees, but such fees would have to be adopted by a Town Meeting bylaw. It states: "Unless otherwise established in a town by town meeting action and in a city by city council action; and in a town with no town meeting by town council action, by adoption of appropriate bylaws and ordinances to set such fees, the fees of city and town clerks shall be as follows:"

Pick one option from list below

☐ Replace § 174-3 with: "The fees of the Town Clerk shall be as prescribed in MGL c. 262, § 34."

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 178-001

Chapter 178 Firearms and Hunting

Chapter 178, Firearms and Hunting, does not include a penalty, so the penalty of \$300 prescribed in Chapter 1, § 1-5, would apply. Is that satisfactory, or should a different penalty be included in Chapter 178?

Pick one option from list below

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 178-002

Chapter 178 Firearms and Hunting

§ 178-1 Discharge prohibited; exceptions; permits for target ranges.

Code Content:

[§ 178-1A] Within the Town limits of Wilmington, Massachusetts no person or persons shall discharge any firearm, air or gas operated gun of any kind except members of the Police Department and other authorized law enforcement officers whether federal, state or municipal in performance of their lawful duties; also with the exception of a person protecting his life or property, also excepting the discharge of firearms using blank ammunition in fulfilling but not limited to the needs of historical, ceremonial, construction, competitive and sporting activities, and a person at an authorized target range. The Police Chief may issue permits for target ranges and shall inspect such places and establish safety requirements for their use. The permit shall be valid for one year and may be revoked for cause at any time by the Police Chief.

We recommend the following minor corrections in § 178-1A:

Within the Town limits of Wilmington, Massachusetts, no person or persons shall discharge any firearm[,] or air_ or gas-operated gun of any kind except members of the Police Department and other authorized law enforcement officers, whether federal, state or municipal, in performance of their lawful duties; also with the exception of a person protecting his life or property[,]; also excepting the discharge of firearms using blank ammunition in fulfilling but not limited to the needs of historical, ceremonial, construction, competitive and sporting activities, and a person at an authorized target range.

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 181-001

Chapter 181 Fires and Fire Prevention

Article I Fire Lanes

§ 181-1 Obstructing access; designation of fire lanes.

Code Content:

[§ 181-1] It shall be unlawful to obstruct or block any traveled private way with a vehicle or other means so as to prevent access by fire apparatus or equipment; and further it shall be unlawful to obstruct or park a vehicle in any fire lane, such fire lanes to be designated by the head of the Fire Department and posted as such. Said fire lanes to be a distance of 12 feet from the curbing of a sidewalk in a shopping center, apartment complexes and similar locations. Where no sidewalk with curbing exists, the distance shall be 20 feet from the front wall of the building or any other distance that the Fire Chief determines necessary for public safety.

The requirements for designation of fire lanes in § 181-1 should be reviewed by the Fire Chief or other appropriate Town officials to ensure they reflect current standards.

Pick one option from list below

☐ Revise as follows:

- ☐ Revise as follows: (revisions attached).
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 181-002

Chapter 181 Fires and Fire Prevention

Article I Fire Lanes

§ 181-2 Removal of vehicles or objects.

Code Content:

[§ 181-2A] Towing and/or storage fees are not to exceed that which is provided in or as authorized by statute law.

The reference to "statute law" in § 181-2A could be made more specific by referring to MGL c. 159B, § 6B, Towing away and storage of motor vehicles; maximum charges; liens; annual statements.

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 181-003

Chapter 181 Fires and Fire Prevention

Article I Fire Lanes

§ 181-4 Violations and penalties.

Code Content:

[§ 181-4] Any person violating any of the foregoing sections shall for the first offense be punished by a fine of up to \$50. Each day that such violation continues, shall constitute a separate offense.

Section 181-4 sets the penalty for a first violation of Article I, Fire Lanes, at a fine of up to \$50. Is this amount satisfactory? A fine of up to \$100 is authorized by MGL c. 89, § 7A. Note that in order for the noncriminal disposition procedure to be used to enforce this bylaw the fine would need to be changed to a specific amount. Also no fine is specified for subsequent offenses. Perhaps this section could be revised as follows: "Any person violating any of the foregoing sections shall ~~for the first offense~~ be punished by a fine of ~~up to~~ \$50. Each day that such violation continues[,] shall constitute a separate offense."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 189-001

Chapter 189 Graffiti

§ 189-1 Graffiti abatement.

Code Content:

[§ 189-1F] Failure to comply. If the property owner knowingly fails to comply with the order to abate the graffiti, that property owner shall be fined \$300 for every day during which he knowingly violates such order.

A fine of \$300 is prescribed for violations of § 189-1, Graffiti abatement, and § 189-3, Possession and manufacture of spray paint by minors. No penalty is prescribed for violations of § 189-2, Sale of spray paint to minors. Should a fine of \$300 also be included in § 189-2?

Pick one option from list below

- ☐ Add fine of \$300 to § 189-2.
- ☐ Include separate penalty section with a fine of \$300 to apply to all violations of Ch. 189; remove individual penalties from §§ 189-1 and 189-3.
- ☐ Revise as follows:

- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 189-002

Chapter 189 Graffiti

§ 189-2 Sale of spray paint to minors.

Code Content:

*[§ 189-2B] For purposes herein, bona fide evidence of majority identity and identity of person is a document issued by a federal, state, county or municipal government or subdivision or agency thereof, including, but not limited to, a motor vehicle operators license, a registration certificate issued under the Federal Selective Service Act (50 App. U.S.C. *451 et seq.), identification card issued to a member of the Armed Forces or a birth certificate. Proof that the defendant, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any sale transaction forbidden hereby, shall be a defense to any criminal prosecution therefore.*

The citation for the Selective Service Act in § 189-2B is outdated. The correct current reference is 50 U.S.C. § 3801 et seq.

Pick one option from list below

- ☐ Update to current citation.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 189-003

Chapter 189 Graffiti

§ 189-2 Sale of spray paint to minors.

Code Content:

*[§ 189-2B] For purposes herein, bona fide evidence of majority identity and identity of person is a document issued by a federal, state, county or municipal government or subdivision or agency thereof, including, but not limited to, a motor vehicle operators license, a registration certificate issued under the Federal Selective Service Act (50 App. U.S.C. *451 et seq.), identification card issued to a member of the Armed Forces or a birth certificate. Proof that the defendant, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any sale transaction forbidden hereby, shall be a defense to any criminal prosecution therefore.*

The following corrections should be made in the last sentence of § 189-2B: "Proof that the defendant, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any sale transaction forbidden hereby[,] shall be a defense to any criminal prosecution ~~therefore~~ therefor."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 194-001

Chapter 194 Hazardous Materials

Article I Underground Tanks

Article I of Chapter 194 regulates underground tanks and appears to have last been amended in 2004. In 2009 (St. 2009, c. 4) the state enacted MGL c. 21O, Operation and Removal of Underground Storage Tanks. Is the Town's bylaw still in use, or does the Town now follow the requirements of MGL c. 21O?

Pick one option from list below

☐ Article I, Underground Tanks, is no longer in use; remove. (If this option is chosen, the remaining questions on Article I can be skipped.)

☐ Revise as follows:

☐ Revise as follows: (revisions attached).

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 194-002

Chapter 194 Hazardous Materials
Article I Underground Tanks
§ 194-3 Definitions.

Code Content:

[INVENTORY VERIFICATION] Includes procedures listed under § 194-6A of this by-law and 527 CMR (Code of Massachusetts Regulations) 5.06.

Within Article I, Underground Tanks, there are four references to sections in 527 CMR Chapter 5 and six references to sections in 527 CMR Chapter 9; these two chapters no longer exist. Title 527, Board of Fire Prevention Regulations, now consists of Chapter 1.00, Massachusetts Comprehensive Fire Safety Code, and Chapter 12.00, Massachusetts Electrical Code (Amendments). Chapters 2.00 through 11.00 are blank and reserved. If Article I is retained, the Town will need to review the references to 527 CMR Chapter 5 and 527 CMR Chapter 9 and provide instructions on how these references should be updated.

Pick one option from list below

☐ Revise as follows:

- ☐ Revise as follows: (revisions attached).
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 194-003

Chapter 194 Hazardous Materials

Article I Underground Tanks

§ 194-3 Definitions.

Code Content:

[MONITORING SYSTEM] *A full time system installed for the purpose of early detection of leaks, such as observation wells, visual or audible alarms, statistical inventory reconciliation (SIR) process conducted in connection with an in-tank monitoring system, or their equivalent as approved by the Fire Chief, minimum standards of monitoring systems shall detect a leak at a minimum rate of 0.20 gallons per hour or more with the probability of detection of 0.95, and the probability of false alarm of 0.05.*

In § 194-3 the definition of "monitoring system" refers to "a leak at a minimum rate of 0.20 gallons per hour" but similar wording in the definition of "leakage or leak" refers to "a leak of 0.02 gallon per hour." Should these two amounts be made consistent? The complete definition of "leakage or leak" reads: "Means any uncontrolled movement, measurable by the tank monitoring system that can accurately detect a leak of 0.02 gallon per hour or more with probability of detection 0.95, and the probability of false alarm of 0.05."

Pick one option from list below

- ☐ Both definitions should read "0.20 gallon per hour."
- ☐ Both definitions should read "0.02 gallon per hour."
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 194-004

Chapter 194 Hazardous Materials

Article I Underground Tanks

§ 194-5 Standards applicable to installation of new tanks.

Code Content:

[§ 194-5C] Tank location. Underground tanks that are to be installed within 1,000 feet of a public water supply well shall submit, for review by the Fire Chief, Board of Health or its agent, and the local Water Commissioners or their agent, a plan outlining the procedures or devices, such as product sensors and/or area monitoring devices, to be used to prevent water supply contamination. The plan shall be endorsed by representatives of the three departments noted above prior to tank installation. Tanks currently within 1,000 feet of a public water supply well shall be upgraded to meet the provisions of § 194-5A and B of this by-law within five years of the effective date of this Underground Storage Tank By-law as amended.

We recommend the following revision in the first sentence of § 194-5C: "The operator/owner of underground tanks that are to be installed within 1,000 feet of a public water supply well shall submit, for review by the Fire Chief, Board of Health or its agent, and the local Water Commissioners or their agent, a plan outlining the procedures or devices, such as product sensors and/or area monitoring devices, to be used to prevent water supply contamination."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 194-005

Chapter 194 Hazardous Materials

Article I Underground Tanks

§ 194-6 Leak detection for existing and new tanks.

Code Content:

[§ 194-6A(3)] The owner and operator shall participate in a program of regularly scheduled inventory verification, at least once every two years, in accordance with 527 CMR 5.05(6). The operator of tanks 20 years of age or older shall submit to the Fire Chief annually a report certifying that the inventory verification has been performed, stating the calculate gain/loss over the verification periods.

In § 194-6A(3) the wording "the calculate gain/loss" apparently should read "the calculated gain/loss."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 194-006

Chapter 194 Hazardous Materials

Article I Underground Tanks

§ 194-7 Procedure in case of spill or leak (also, see Appendix A).

Code Content:

[§ 194-7A] Leak reporting. Any owner/operator who is aware of a spill, abnormal loss of product stored underground, or abnormal gains of water in a tank, shall report such spill, loss or gain immediately to the Fire Chief. The Fire Chief shall be responsible for other notification, except as required by law and outlined in Appendix A.

Section 194-7 refers to an Appendix A. The Town's bylaw compilation does not include this Appendix.

Pick one option from list below

- ☐ Include Appendix A; copy enclosed.
- ☐ Add note that Appendix A is on file at the Town Clerk's office.
- ☐ Handle as follows:

- ☐ Defer decision until after Code publication.

Question 194-007

Chapter 194 Hazardous Materials

Article I Underground Tanks

§ 194-8 Administration.

Code Content:

[§ 194-8D] Licenses issued in accordance with M.G.L. Ch. 148 s. 13 for underground tanks shall be renewed annually. Tank owners shall submit to the Fire Chief and the licensing authority (Board of Selectmen) a statement certifying satisfactory leak-detection results over the period of the permit (in accordance with § 194-6B of this by-law) and inventory verification, at least 30 days before the issuance of a permit renewal for the time periods specified herein. Test results shall accompany the permit renewal application.

Article I, Underground Tanks, uses both "permit" and "license." For example, § 194-8D begins "Licenses issued" but the rest of the subsection refers to the "period of the permit," "permit renewal" and "permit renewal application." Are there two different items, a permit and a license, or are these terms being used interchangeably? Should one of them be changed for consistency?

Pick one option from list below

- ☐ All references should be to a license.
- ☐ All references should be to a permit.
- ☐ Revise as follows:
- ☐ Both "license" and "permit" are correct; do not revise.
- ☐ Defer decision until after Code publication.

Question 194-008

Chapter 194 Hazardous Materials

Article I Underground Tanks

§ 194-8 Administration.

Code Content:

[§ 194-8G] Any operator who violates any provision of this by-law shall be subject to a fine of \$300 for each offense. Each day during which such violation continues shall constitute a separate offense. This By-law may be enforced pursuant to Mass. Gen. Laws Ch. 40, Sec. 21D, as amended, by a local police officer or any other officer having police powers. Upon request of the Board of Health and the Board of Selectmen, Town Counsel shall take such legal action as may be necessary to enforce this by-law.

Section 194-8G sets a fine of \$300 for violations of Article I, Underground Tanks, and provides for noncriminal disposition. No changes are recommended; \$300 is the maximum fine authorized by MGL c. 40, § 21.

Pick one option from list below

- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 194-009

Chapter 194 Hazardous Materials

Article II Contaminated Soil

§ 194-15 Enforcement.

Code Content:

[§ 194-15] Failure to comply with any provision of this article is a violation of this article. Each separate day of failure to comply constitutes a separate violation. Additionally, each individual instance of violation within each day constitutes a separate violation. In addition to and without limitation of any other available remedies, any person or entity who violates any provision of this article shall be subject to civil and/or criminal prosecution in a court of competent jurisdiction, including without limitation a civil action for injunctive relief to enjoin any such violation. Any violation of this article shall be punishable by a fine of \$300. In addition to and without limitation of any other available remedies, this article may be enforced by use of the non-criminal disposition procedure set forth in M.G.L. c. 40 § 21D.

Article II of Chapter 194 prohibits bringing contaminated soil into the Town, subject to a fine of \$300; the noncriminal disposition procedure is authorized. Provided that it reflects current requirements, this article appears satisfactory as written.

Pick one option from list below

☐ Revise as follows:

☐ Revise as follows: (revisions attached).

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 206-001

Chapter 206 Junk and Secondhand Dealers
§ 206-1 License and application procedure.

Code Content:

[§ 206-1] The Board of Selectmen, acting in its capacity as the licensing authority for the Town of Wilmington may, upon petition, license such persons as it deems suitable to be dealers of junk, old metals, and/or second hand articles and to be keepers of shops for the purchase, sale or barter of such articles pursuant to law within the Town of Wilmington. Such licenses shall not be valid to protect the holders thereon in a building or place other than that designated in the license. All licenses shall contain a provision that the licensee agrees to abide by and be subject to all the provisions of this by-law, including all amendments thereof.

In § 206-1 the wording "the holders thereon" should read "the holders thereof": "Such licenses shall not be valid to protect the holders thereof in a building..."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 206-002

Chapter 206 Junk and Secondhand Dealers
§ 206-1 License and application procedure.

Code Content:

[§ 206-1A(3)] Notwithstanding the foregoing Subsection A(2), the term "dealer" shall not include an entity whose regular business involves the operation of retail thrift stores which fund charitable activities. Examples of such entities include, but not limited to, Savers, Inc., Goodwill Industries International, Inc. and the Salvation Army.

The word "are" should be included in § 206-1A(3): "Examples of such entities include, but are not limited to, Savers, Inc., Goodwill Industries International, Inc., and the Salvation Army."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 206-003

Chapter 206 Junk and Secondhand Dealers
§ 206-1 License and application procedure.

Code Content:

[§ 206-1B] Applications. Applications for such licenses shall be examined and reported upon by the Chief of Police or his designee(s). The Chief of Police shall be informed as to whether or not the applicant wishes to engage in business as a second-hand dealer of any of the above stated articles and, if so, shall specify the types of articles to be dealt with. The applicant will be required to provide information as to whether or not the licensee has previously held a similar license in another jurisdiction, whether any such license was ever revoked, suspended or surrendered, and if so the reason therefore.

In § 206-1B it is not clear who the subject of "shall specify the types of articles to be dealt with" is. Is it the applicant, or the Chief of Police?

Pick one option from list below

- ☐ Revise to read "and, if so, the applicant shall specify the types of articles to be dealt with."
- ☐ Revise to read "and, if so, the Chief of Police shall specify the types of articles to be dealt with."
- ☐ Revise as follows:

- ☐ Defer decision until after Code publication.

Question 206-004

Chapter 206 Junk and Secondhand Dealers
§ 206-1 License and application procedure.

Code Content:

[§ 206-1B] Applications. Applications for such licenses shall be examined and reported upon by the Chief of Police or his designee(s). The Chief of Police shall be informed as to whether or not the applicant wishes to engage in business as a second-hand dealer of any of the above stated articles and, if so, shall specify the types of articles to be dealt with. The applicant will be required to provide information as to whether or not the licensee has previously held a similar license in another jurisdiction, whether any such license was ever revoked, suspended or surrendered, and if so the reason therefore.

Also in § 206-1B the wording "the reason therefore" should read "the reason therefor."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 206-005

Chapter 206 Junk and Secondhand Dealers
§ 206-1 License and application procedure.

Code Content:

[§ 206-1C] Filing and expiration. Applications for new licenses under this by-law may be filed at any time with the licensing authority. Applications for the re-issuance of licenses already existing should be filed at least 30 days before the expiration of such license. All licenses issued under this rule shall expire annually on the first day of May. Persons whose licenses have expired and have not been re-issued will be liable to prosecution for engaging in any business for which the license is required.

In § 206-1C we recommend changing "under this rule" to "under this bylaw."

Pick one option from list below

- ☐ Revise to "under this bylaw."
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 206-006

Chapter 206 Junk and Secondhand Dealers
§ 206-3 Transactions with minors; retention of property.

Code Content:

[§ 206-3C] Lost and stolen property. If the Wilmington Police Department determines that there is probable cause to conclude that a particular item of property in the possession of a licensee has been stolen or if the Wilmington Police Department determines that a particular item of property in the possession of a licensee has been reported as lost or stolen, a stop order shall be issued to the licensee which shall bar any transfer of the subject property pending conclusion of an investigation or of any necessary legal proceedings commenced by the person claiming that the property is lost or stolen is positively identified by the person claiming to be the rightful owner, the property shall be held by the Wilmington Police Department in custody, according to existing policies and procedures of the Wilmington Police Department and pending the ultimate outcome of any legal proceedings regarding rightful ownership. If the Wilmington Police Department's investigation establishes that the property is in fact not lost or stolen, the stop order shall be immediately revoked.

Wording is missing in § 206-3C. Perhaps the following revision could be made: "a stop order shall be issued to the licensee which shall bar any transfer of the subject property pending conclusion of an investigation or of any necessary legal proceedings commenced by the person claiming that the property is lost or stolen. If the property is positively identified by the person claiming to be the rightful owner, the property shall be held by the Wilmington Police Department in custody, according to existing policies and procedures of the Wilmington Police Department and pending the ultimate outcome of any legal proceedings regarding rightful ownership."

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 206-007

Chapter 206 Junk and Secondhand Dealers

§ 206-4 Fees, revocation, violations, rules and regulations.

Code Content:

[§ 206-4C] Penalty for violations. The penalty for violations of this by-law shall be enforced in accordance with the provisions of the By-Laws of the Inhabitants of the Town of Wilmington, Revised as well as Massachusetts General Laws, Chapter 40, Section 21D. The penalty for a first violation of this by-law shall be \$100, and for any second or subsequent offense violation shall be \$200. For any second or subsequent violation, the penalty shall apply to each individual item of property or incident that was not properly documented or permitted.

Section 206-4C sets the penalty for violations of Chapter 206 at a fine of \$100 for a first violation and \$200 for a second or subsequent violation and authorizes the use of the noncriminal disposition procedure. These amounts are higher than the fine of \$20 authorized by MGL c. 140, § 55, which states:

Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals or second hand articles without a license, or in any other place or manner than that designated in his license or after notice to him that his license has been revoked, or violates any such rule, regulation or restriction, shall forfeit twenty dollars.

Pick one option from list below

☐ Revise § 206-4C to set the fine at \$20 for all violations.

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 206-008

Chapter 206 Junk and Secondhand Dealers
§ 206-4 Fees, revocation, violations, rules and regulations.

Code Content:

[§ 206-4C] Penalty for violations. The penalty for violations of this by-law shall be enforced in accordance with the provisions of the By-Laws of the Inhabitants of the Town of Wilmington, Revised as well as Massachusetts General Laws, Chapter 40, Section 21D. The penalty for a first violation of this by-law shall be \$100, and for any second or subsequent offense violation shall be \$200. For any second or subsequent violation, the penalty shall apply to each individual item of property or incident that was not properly documented or permitted.

In § 206-4C we recommend changing "offense violation" to "violation" so this sentence reads "The penalty for a first violation of this bylaw shall be \$100 and for any second or subsequent violation shall be \$200."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 213-001

Chapter 213 Licenses and Permits
§ 213-1 List of delinquent parties.

Code Content:

[§ 213-1] The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the Tax Collector, shall annually furnish each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve-month period, and that such party has not filed in good faith a pending application for an abatement of such tax or has a pending petition before the Appellate Tax Board.

The text of Chapter 213 was copied from MGL c. 40, § 57. To match the current wording of this statute, which was amended in 2016 (St. 2016, c. 218), the following revisions should be made:

The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the Tax Collector, shall annually, and may periodically, furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges ~~for not less than a twelve-month period~~, and that such party has not filed in good faith a pending application for an abatement of such tax or ~~has~~ a pending petition before the Appellate Tax Board.

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 213-002

Chapter 213 Licenses and Permits

§ 213-2 Denial, suspension or revocation of license or permit.

The following revisions could be made in § 213-2 to match the current wording of MGL c. 40, § 57:

The licensing authority ~~shall~~ may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the Tax Collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the Tax Collector; provided, however, that written notice is given to the party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than 14 days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension.

Any license or permit denied, suspended or revoked under this section shall not be ~~issued~~ reissued or renewed until the licensing authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges payable to the municipality as of the date of issuance of said certificate.

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 213-003

Chapter 213 Licenses and Permits
§ 213-3 Payment agreement.

Code Content:

[§ 213-3] Any party shall be given an opportunity to enter into a payment agreement with the Tax Collector, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be rounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

In § 213-3 the wording "shall be rounds" should read "shall be grounds."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 213-004

Chapter 213 Licenses and Permits
§ 213-5 Exceptions.

Code Content:

[§ 213-5] This chapter shall not apply to the following licenses and permits granted under the General Laws of the Commonwealth of Massachusetts: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eight-five; sales of articles for charitable purposes; section thirty-three of chapter one hundred and one; children work permits; section sixty-nine of chapter one hundred and forty-nine; clubs, associations dispensing food or beverage licenses, section twenty-one E of chapter one hundred and forty; dog licenses; section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven; and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty.

In § 213-5 the reference to MGL c. 85, § 11A, relating to bicycle permits, could be deleted as that section was repealed in 2008.

Pick one option from list below

- ☐ Delete reference as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 220-001

Chapter 220 Marijuana
Article I Public Consumption

Article I of Chapter 220 prohibits the use or consumption of marijuana in public areas, subject to a fine of \$300. Use of the noncriminal disposition procedure is authorized. This article appears satisfactory as written.

Pick one option from list below

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 220-002

Chapter 220 Marijuana
Article II Marijuana Establishments

Article II of Chapter 220 prohibits all marijuana establishments in the Town. This article does not include a penalty, so the penalty of \$300 prescribed by § 1-5 would apply. Is that acceptable, or should a different penalty be included in this article?

Pick one option from list below

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 220-003

Chapter 220 Marijuana

Article II Marijuana Establishments

§ 220-3 Marijuana establishments prohibited.

Code Content:

[§ 220-3] Pursuant to Section 3 of Chapter 94G of Massachusetts General Laws, all types of marijuana establishments, as defined by Section 1 of Chapter 94G of Massachusetts General Laws and as may otherwise be defined by Massachusetts law or regulation, including without limitation all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers, on-site consumption at a business location, all other types of licensed marijuana-related businesses, and the conducting of any such activity for commercial purposes by whichever name used, shall be prohibited within the Town of Wilmington. This prohibition shall not be construed to affect the medical use of marijuana as expressly authorized by the provisions of Chapter 369 of the Acts of 2012 and 105 CMR 725.000; or to take any other action related thereto.

In § 220-3 the references to Chapter 369 of the Acts of 2012 and 105 CMR 725.000 are no longer correct. The cited provisions were replaced in 2017 by MGL c. 94I, Medical Use of Marijuana (adopted by St. 2017, c. 55) and 935 CMR 501.000, Medical Use of Marijuana, respectively. These references should be updated accordingly.

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 234-001

Chapter 234 Parks and Recreation

Article I Coasting

Article I of Chapter 234 provides that "No person shall coast upon ice or snow upon any public way except one on which the Selectmen or Town Manager shall by public notice permit such coasting." No penalty is indicated, so the fine of \$300 prescribed in § 1-5 would apply. However, MGL c. 85, § 10, prescribes a maximum fine of \$20 for bylaws regulating the use of sleds for coasting. Should a fine of \$20 be included in Article I?

Pick one option from list below

☐ Add section to Article I reading "Violation of this article shall be subject to a fine of \$20."

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 234-002

Chapter 234 Parks and Recreation

Article II Curfew in Public Parks, Playgrounds and Fields

§ 234-4 Juveniles.

Code Content:

[§ 234-4A] Parental responsibility. It shall be unlawful for the parent or the legal guardian of a juvenile to suffer to permit, or by insufficient control, to allow the juvenile to be in violation of § 234-3A above, unless such parent or legal guardian has made a missing person notification to the Town Police Department.

In § 234-4A the wording "to suffer to permit" is incorrect. We recommend the following revisions: "It shall be unlawful for the parent or the legal guardian of a juvenile to suffer to or permit[,], or, by insufficient control, to allow the juvenile to be in violation of § 234-3A above, unless such parent or legal guardian has made a missing person notification to the Town Police Department."

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 234-003

Chapter 234 Parks and Recreation
Article II Curfew in Public Parks, Playgrounds and Fields
§ 234-5 Enforcement: violations and penalties.

Code Content:

[§ 234-5] As an alternative to criminal prosecution under applicable provisions of the General Laws, including, but not limited to, General Laws Chapter 266, Section 120, the Town, acting through its Police Department, may elect to use the non-criminal disposition procedure set forth in General Laws Chapter 40, Section 21D. The penalty for violation of this article shall be \$100 for the first offense and \$150 for each offense thereafter.

Section 234-5 sets the penalty for violations of Article II, Curfew in Public Parks, Playgrounds and Fields, at \$100 for the first offense and \$150 for each subsequent offense and authorizes use of the noncriminal disposition procedure. Are these penalties still satisfactory?

Pick one option from list below

- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 238-001

Chapter 238 Pawnbrokers
§ 238-1 License and application procedure.

Code Content:

[§ 238-1] The Board of Selectmen, acting in its capacity as the licensing authority for the Town of Wilmington may, upon petition, license such persons as it deems suitable to be pawnbrokers pursuant to law within the Town of Wilmington. Such licenses shall not be valid to protect the holder thereon in a building or place other than that designated in the license. All licenses shall contain a provision that the licensee agrees to abide by and be subject to all the provisions of this by-law, including all amendments thereof.

In § 238-1 the wording "the holder thereon" should read "the holder thereof."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 238-002

Chapter 238 Pawnbrokers
§ 238-1 License and application procedure.

Code Content:

[§ 238-1A] Applications. Applications for such licenses shall be examined and reported upon by the Chief of Police or his designee(s). The applicant will be required to provide information as to whether or not the licensee has previously held a similar license in another jurisdiction, whether any such license was ever revoked, suspended or surrendered, and if so the reason therefore.

In § 238-1A the wording "the reason therefore" should read "the reason therefor."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Defer decision until after Code publication.

Question 238-003

Chapter 238 Pawnbrokers
§ 238-1 License and application procedure.

Code Content:

[§ 238-1B] Filing and expiration. Applications for new licenses under this by-law may be filed at any time with the licensing authority. Applications for the re-issuance of licenses already existing should be filed at least 30 days before the expiration of such license. All licenses issued under this rule shall expire annually on the first day of May. Persons whose licenses have expired and have not been re-issued will be liable to prosecution for engaging in any business for which the license is required.

In § 238-1B we recommend changing "All licenses issued under this rule" to "All licenses issued under this bylaw."

Pick one option from list below

- ☐ Revise as suggested.
- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 238-004

Chapter 238 Pawnbrokers

§ 238-3 Transactions with minors; retention of property.

Code Content:

[§ 238-3B] Holding period. No licensee shall permit any property taken by him in pawn to be sold, modified or removed from the licensed premises until a period of 30 days has elapsed from the date of receipt unless the licensee has obtained written permission from the Wilmington Police Department. No such permission shall be granted until the expiration of at least two full days from the date of acquisition, purchase or receipt. All property covered by this subsection shall remain on the licensed premises and shall not be made available for purchase, acquisition or other transfer until the applicable holding period has expired.

Section 238-3B establishes a holding period of 30 days for property acquired by a pawnbroker. Town Counsel should be consulted as to whether this time period should be revised to match MGL c. 140, § 71, which provides:

Articles deposited in pawn with a licensed pawnbroker shall, unless redeemed, be retained by him on the premises occupied by him for his business for at least four months after the date of deposit, if not of a perishable nature; and, if perishable, for at least one month after said date. After the expiration of the applicable period of time, he may sell the articles by public auction, apply the proceeds thereof in satisfaction of the debt or demand and the expense of the notice and sale, and pay any surplus to the person entitled thereto on demand; provided, that no such sale of any article which is not of a perishable nature shall be made unless not less than ten days prior to the sale a written notice of the intended sale shall have been sent by registered mail to the person entitled to the payment of any surplus as aforesaid, addressed to his residence, as appearing in the records of such pawnbroker.

Pick one option from list below

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

Question 238-005

Chapter 238 Pawnbrokers

§ 238-3 Transactions with minors; retention of property.

Code Content:

[§ 238-3C] Lost and stolen property. If the Wilmington Police Department determines that there is probable cause to conclude that a particular item of property in the possession of a licensee has been stolen or if the Wilmington Police Department determines that a particular item of property in the possession of a licensee has been reported as lost or stolen, a stop order shall be issued to the licensee which shall bar any transfer of the subject property pending conclusion of an investigation or of any necessary legal proceedings commenced by the person claiming that the property is lost or stolen is positively identified by the person claiming to be the rightful owner, the property shall be held by the Wilmington Police Department in custody, according to existing policies and procedures of the Wilmington Police Department and pending the ultimate outcome of any legal proceedings regarding rightful ownership. If the Wilmington Police Department's investigation establishes that the property is in fact not lost or stolen, the stop order shall be immediately revoked.

Wording is missing in § 238-3C. Perhaps the following revision could be made: "a stop order shall be issued to the licensee which shall bar any transfer of the subject property pending conclusion of an investigation or of any necessary legal proceedings commenced by the person claiming that the property is lost or stolen. If the property is positively identified by the person claiming to be the rightful owner, the property shall be held by the Wilmington Police Department in custody, according to existing policies and procedures of the Wilmington Police Department and pending the ultimate outcome of any legal proceedings regarding rightful ownership."

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 238-006

Chapter 238 Pawnbrokers

§ 238-4 Fees; revocation of license; violations; rules and regulations.

Code Content:

[§ 238-4A] License fee. For every license granted under the by-law and every re-issuance thereof, the licensee shall pay to the licensing authority a fee of \$100. In addition for every such license and every re-issuance thereof, the licensee shall furnish the bond required by Massachusetts General Laws, Chapter 140, Section 77.

Section 238-4A sets a fee of \$100 for a pawnbroker's license. This amount is consistent with the maximum license fee authorized by MGL c. 140, § 77, so no changes are recommended. That section also requires the fee to be set by Town Meeting, so it would appear that this fee should be retained in this bylaw. The statute provides: "The fee for a license as a pawnbroker or renewal thereof shall be established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, but in no event shall any such fee be greater than one hundred dollars."

Pick one option from list below

- ☐ Revise as follows:
- ☐ Do not revise.
- ☐ Defer decision until after Code publication.

Question 238-007

Chapter 238 Pawnbrokers

§ 238-4 Fees; revocation of license; violations; rules and regulations.

Code Content:

[§ 238-4C] Penalty for violations. The penalty for violations of this by-law shall be enforced in accordance with the provisions of the By-Laws of the Inhabitants of the Town of Wilmington, Revised as well as Massachusetts General Laws, Chapter 40, Section 21D. The penalty for a first violation of this By-Law shall be \$100, and for any second or subsequent offense violation shall be \$200. For any second or subsequent violation, the penalty shall apply to each individual item of property or incident that was not properly documented or permitted.

We recommend the following revisions in § 238-4C to clarify this wording; note in particular that the wording "subsequent offense violation" is incorrect:

~~The penalty for violations of This bylaw shall be enforced in accordance with the provisions of the By-Laws of the Inhabitants of the Town of Wilmington, Revised Chapter 50, Noncriminal Disposition, Article I, of the Town bylaws as well as MGL c. 40, § 21D. The penalty for a first violation of this bylaw shall be \$100[,] and for any second or subsequent offense violation shall be \$200.~~

Pick one option from list below

☐ Revise as suggested.

☐ Revise as follows:

☐ Defer decision until after Code publication.

Question 238-008

Chapter 238 Pawnbrokers

§ 238-4 Fees; revocation of license; violations; rules and regulations.

Code Content:

[§ 238-4C] Penalty for violations. The penalty for violations of this by-law shall be enforced in accordance with the provisions of the By-Laws of the Inhabitants of the Town of Wilmington, Revised as well as Massachusetts General Laws, Chapter 40, Section 21D. The penalty for a first violation of this By-Law shall be \$100, and for any second or subsequent offense violation shall be \$200. For any second or subsequent violation, the penalty shall apply to each individual item of property or incident that was not properly documented or permitted.

Section 238-4C sets the penalty for violation of Chapter 238, Pawnbrokers, at a fine of \$100 for a first violation and \$200 for a subsequent violation and authorizes use of the noncriminal disposition procedure. The Town might want to review MGL c. 140, § 175, which authorizes a fine of not more than \$50 for carrying on the business of a pawnbroker without a license: "Whoever, not being licensed, carries on such business or is concerned therein within such town, or, being licensed, carries on such business or is concerned therein in any other place or manner than that designated in his license or after notice to him that his license has been revoked shall be punished by a fine of not more than fifty dollars."

Pick one option from list below

☐ Change the fine to \$50 for all violations.

☐ Revise as follows:

☐ Do not revise.

☐ Defer decision until after Code publication.

