



# Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

January 24, 2019

TO: Board of Selectmen

RE: Establishment of Email Accounts

There has been some interest expressed from some Board members to have individual email addresses in your capacity as a member of the Board of Selectmen. In consultation with John O'Neil, IT Director, arrangements can be made to assign an email address to each of you. The address would be your first initial and last name followed by @wilmingtonma.gov. If you would like these arrangements to be made let me know.

  
Jeffrey M. Hull  
Town Manager

**To:** Kevin Caira, Chair; Jeffrey Hull, Town Manager  
**From:** Jonathan Eaton  
**Date:** 01-20-19  
**Re:** BRAVE Act & Veterans' Tax Abatements

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On August 28, 2018, Governor Baker signed An Act Relative to Veterans Benefits Rights, Appreciation, Validation and Enforcement (known as the "BRAVE Act") into law, providing additional support for members of the veterans' community and their families, including tax credits.

The BRAVE Act added three new provisions to M.G.L. c.59, §5, as well as amending M.G.L. c.59, §5N:

1. M.G.L. c.59, §5, Clause Seventeenth F – gives the Town the authority to annually increase abatements from other provisions of c.59, §5, Clauses Seventeenth C, Seventeenth C½, and Seventeenth D, not to exceed the Consumer Pricing Index. This is at the discretion of the Town. Of these clauses, the Town has already enacted Seventeenth D, which permits a tax abatement for surviving spouses and minors whose parents are deceased.
2. M.G.L. c.59, §5, Clause Twenty-second G – broadens the scope of the applicability of §5 such that it applies to properties that are the domicile of a veteran, but ownership of the property is held in trust, owned by a conservator, or other fiduciary.
3. M.G.L. c.59, §5, Clause Twenty-second H – full property tax exemption for the families of soldiers killed or missing in action.
4. M.G.L. c.59, §5N – similar to the senior citizen tax work-off program, this permits the Board of Selectmen to permit a veterans tax work-off program which can reduce a veterans' property tax bill by as much as \$1,500.00 in exchange for services provided to the town.

I have attached the full text of the BRAVE Act and M.G.L. c.59, §5N as it existed prior to being amended by the BRAVE Act, as Exhibit A, as a point of reference and to provide the text, which is more detailed than I have summarized in this memorandum. For ease of reading, I have highlighted the referenced provisions.

Previously, the Town of Wilmington has enacted M.G.L. c.59, §5, Clause Forty-first (on April 18, 1987, senior citizen tax abatement); M.G.L. c.59, §5, Clause Seventeenth D (on April 18, 1987, tax abatement for surviving spouses and minors whose parents are deceased); and M.G.L. c.59, §5K (on May 2, 2015, senior tax work-off program). I have attached, as Exhibit B, a list of provisions of the Massachusetts General Laws accepted by the Town of Wilmington as listed on the Town's website for reference.

I recognize that late-January is not the ideal time to be suggesting new additions to the Warrant for Annual Town Meeting that affect the Town's budget, as the budget late in development. I apologize for the tardiness of this memorandum, as I just found out about the new provisions contained in the BRAVE Act at the Massachusetts Municipal Association Annual Meeting and Trade Show on January 18-19, 2019. If it is deemed to be too late in the process to include at this year's meeting, I intend on bringing this issue forward well in advance of the 2020 Annual Town Meeting.

EXHIBIT A

## Acts (2018)

### Chapter 218

AN ACT RELATIVE TO VETERANS' BENEFITS, RIGHTS, APPRECIATION, VALIDATION AND ENFORCEMENT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section 15GGGGGG the following 2 sections:-

Section 15HHHHHH. The governor shall annually issue a proclamation setting apart the fifth day of April as Gold Star Wives Day and recommending that the day be observed in an appropriate manner by the people, including prominent display of the Gold Star Flag on the property of the State House.

Section 15IIIIII. The governor shall annually issue a proclamation setting apart the last Sunday in September as Gold Star Mothers and Families Day and recommending that the day be observed in an appropriate manner by the people, including prominent display of the Gold Star Flag on the property of the State House.

SECTION 2. Chapter 10 of the General Laws is hereby amended by adding the following section:-

Section 78. (a) As used in this section, "active service in the armed forces" shall not include active duty for training in the Army National Guard or Air National Guard or active duty for training as a reservist in the armed forces of the United States.

As used in this section, the term "armed forces" shall mean the United States Army, Army of the United States, Army Reserves, United States Navy, United States Naval Reserve, United States Marine Corps, United States Marine Corps Reserve, United States Coast Guard, United States Coast Guard Reserve, Army Nurse Corps, Navy Nurse Corps, United States Air Force, United States Air Force Reserve, Air National Guard and Army National Guard and including women's branches of said armed forces.

(b) (1) Upon application, as provided in this section, there shall be allowed and paid out of the treasury of the commonwealth, without appropriation, the sums specified in this section to each person who has served in the armed forces of the United States in active service as part of Operation Enduring Freedom, Operation Iraqi Freedom, Operation Noble Eagle, Operation Inherent Resolve, Operation Freedom Sentinel or any successor or related operation and who was discharged or released under honorable conditions for such service; provided, however, that the domicile of a person on account of whose service the application is filed shall have been in the commonwealth for a period of not less than 6 months before the time of the person's entry into the service.

(2) One thousand dollars shall be allowed and paid out to each such veteran who performed active service outside of the continental limits of the United States for which the veteran qualified for hostile fire or imminent danger pay as determined by the United States Department of Defense.

(3) Five hundred dollars shall be allowed and paid out to each such veteran who performed active duty within the continental limits of the United States or outside the continental limits of the United States but did not qualify for hostile fire or imminent danger pay as determined by the United States Department of Defense for a period of not less than 6 months.

(4) Thereafter, upon return from each subsequent deployment defined under this section, there shall be allowed and paid out of the treasury of the commonwealth, subject to appropriation, 50 per cent of the sums specified in paragraphs (2) and (3) to each such veteran.

(c) If a person who is deceased would, if alive, be entitled to the benefits of this section, the sum named in this section shall be paid to the decedent's heirs-at-law; provided, however, that if there is more than 1 heir-at-law, payments shall, in either case, be made in such proportions as the state treasurer shall determine; provided further, that the state treasurer, in determining the order of precedence, shall, so far as practicable, observe the following order: (i) spouse and children; (ii) mother or father; (iii) brother or sister and (iv) other dependents. A right or payment under this section shall not be subject to the claims of creditors, capable of assignment, regarded as assets, legal or equitable of the estate of the deceased or made the basis for administration thereof.

(d) If a person died while in active service, a sum of \$1,000 shall be paid in the manner provided by subsection (c) in addition to any unpaid amount the person would have been eligible to receive pursuant to subsection (b).

(e) Applications under this section shall be filed with the state treasurer, upon forms to be furnished by state treasurer. The state treasurer may accept the written statement of the clerk of a city or town that a person claiming pay or on whose account pay is claimed by a dependent or heir-at-law, under this section, was domiciled therein on the first day of January, in any year, as prima facie evidence of the fact of such domicile and may accept such other evidence of domicile as the state treasurer may consider adequate or necessary. The clerk of a city or town shall, at the request of the state treasurer, immediately furnish such information relative to such domicile as the clerk's records may disclose. The state treasurer may require and accept such additional evidence as the state treasurer may consider necessary to establish the fact of domicile within the commonwealth as provided under paragraph (1) of subsection (b). The adjutant general shall certify to the state treasurer the dates of service and any other military information necessary to carry out this section. The state treasurer shall furnish to the adjutant general a copy of a DD-214 form or equivalent documentation as determined by the adjutant general for the permanent records of the military division of the commonwealth.

Whoever knowingly makes a false statement, oral or written, relating to a material fact in supporting a claim under this section, shall be punished by a fine of not more than \$1,000, by imprisonment for not more than 3 years or both such fine and imprisonment. An offense under this section may be prosecuted by the attorney general, or under the attorney general's direction, in any court within the commonwealth, and all fines collected thereunder shall be paid to the treasury of the commonwealth.

The state treasurer shall section upon all applications made under this section, and may

expend for clerical assistance and for such other expenses sums necessary in carrying out this section, not exceeding the sums appropriated for this purpose.

There shall be a payments appeal board. The board shall consist of: a member of the department of the state treasurer to be designated by the state treasurer; an assistant attorney general to be designed by the attorney general; and the adjutant general or a designee. A person aggrieved by a decision of the state treasurer in the matter of payments provided for by this section may appeal to the board and shall be entitled to a hearing, after due notice, upon such appeal. The decision of the board shall be final.

(f) The state treasurer may establish, and from time to time revise, such rules and regulations as may be necessary or desirable to carry out this section.

SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting after section 2YYYY the following section:-

Section 2ZZZZ. (a) There shall be a Massachusetts Veterans and Warriors to Agriculture Program Fund. The fund shall be administered by the department of agricultural resources. Notwithstanding any general or special law to the contrary, there shall be credited to the fund any revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund and any gifts, grants, private contributions or investment income earned on the fund's assets and all other sources. Money deposited in the fund that is unexpended at the end of the fiscal year shall not revert to the General Fund and shall be available for expenditure in the subsequent year and shall not be subject to section 5C.

(b) The department of agricultural resources, in consultation with the department of veteran services, shall establish, develop and implement the Massachusetts Veterans and Warriors to Agriculture Program to enhance the education, training, employment, income, productivity and retention of veterans currently working or aspiring to work in the field of agriculture in the commonwealth. Amounts credited to the fund shall be used, without further appropriation, for the costs associated with administering and implementing the program and may also be used to provide grants or loans on a competitive basis to public, private and charitable entities to finance projects in furtherance of purpose of the program. Expenditures from the fund for such purpose shall complement and not replace existing local, state, private or federal funding for related training and educational programs.

SECTION 4. The third paragraph of section 26 of chapter 31 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following 3 sentences:- Notwithstanding the administrator's right to require a physician's certificate in the case of a disabled veteran, an appointing authority shall not require, request or accept an individual's military medical record or military personnel service record for the purpose of employment; provided, however, that an appointing authority may require, request or accept the individual's DD-214 form. An appointing authority shall not impose a term or condition on an individual as a condition of obtaining or retaining employment if compliance with the term or condition would require the individual to present the individual's military medical record or military personnel service record as set forth in this paragraph; provided, however, that an appointing authority may impose a term or condition

requiring the individual to present the individual's DD-214 form. Nothing in this section shall prohibit an appointing authority to require military service records if the condition stated on the individual's DD-214 form is other than honorable.

SECTION 5. Subdivision (1) of section 4 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after paragraph

(r) the following paragraph:-

(r $\frac{1}{2}$ ) Notwithstanding any general or special law to the contrary, a member in service who: (i) served in the United States Public Health Service Commissioned Corps or the National Oceanic and Atmospheric Administration Commissioned Officer Corps; (ii) has completed not less than 4 years of membership service; and (iii) has retired or will retire on or after January 1, 1975 shall receive full credit for the period of such service; provided, however, that such a member shall receive credit for not more than 4 years of that service.

Eligibility for the creditable service of members in service shall be conditioned upon payment into the annuity savings fund of the applicable retirement system, in 1 sum or in installments upon such terms as the applicable retirement board may provide, of an amount equal to the contributions that a member would have otherwise paid into the retirement system plus buyback interest thereon for the period of commissioned corps service based upon the annual salary the member received in the first year of membership service after the member's commissioned corps service.

SECTION 6. Section 59 of chapter 33 of the General Laws, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words "34 days in any state fiscal year and not exceeding 17" and inserting in place thereof the following figure:- 40.

SECTION 7. Subsection (a) of said section 59 of said chapter 33, as so appearing, is hereby amended by adding the following sentence:- For the purposes of this subsection, "day" shall mean any 24-hour period regardless of calendar day.

SECTION 8. Said section 59 of said chapter 33, as so appearing, is hereby further amended by adding the following subsection:-

(f) For the purposes of this section, "base pay for military service" shall not include any housing, incentive, bonus, skills pay, allowance or other stipend or benefit paid to the employee for the employee's military service.

SECTION 9. Chapter 40 of the General Laws is hereby amended by inserting after section 22A $\frac{1}{2}$  the following section:-

Section 22A $\frac{3}{4}$ . (a) A municipality may designate a parking space at the city or town hall for the parking of a veteran in a motor vehicle that is owned and operated by the veteran and that displays a veteran registration plate issued pursuant to section 2 of chapter 90. The parking space shall be available during the normal business hours of the city or town hall for use by such veteran without charge. The municipality shall erect and maintain a sign designating such a parking space that shall bear the words "Veteran Parking Only – this space is reserved for those who have served. Unauthorized Vehicles May Be Removed At The Vehicle Owner's Expense". The parking space shall only be used by a veteran that meets the requirements of this subsection.

(b) A violation of subsection (a) shall be punished by a fine of \$100 and the city or town may provide for the removal of a vehicle in the manner provided in section 22D. The penalty shall not be a surchargeable offense under section 113B of chapter 175.

SECTION 10. Section 5 of chapter 59 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after clause Seventeenth E the following clause:-

Seventeenth F, Notwithstanding any provision of general or special law to the contrary, an abatement granted pursuant to clause Seventeenth, Seventeenth C, Seventeenth C½ or Seventeenth D may be increased annually at the discretion of a city or town by an amount not to exceed the increase in the cost of living as determined by the Consumer Price Index for such year. This clause shall take effect in a city or town upon its acceptance by such city or town.

SECTION 11. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 595, 651, 676, 725, 770 and 842, the word “five” and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 12. Said section 5 of said chapter 59, as so appearing, is hereby further amended by inserting after the word “cross”, in line 688, the third time it appears, the following words:- , or who is or was a prisoner of war.

SECTION 13. The first paragraph of clause Twenty-second A of said section 5 of said chapter 59, as so appearing, is hereby amended by adding the following sentence:- For the purposes of this section, the term “prisoner of war” shall mean a regularly appointed, enrolled, enlisted or inducted member of the military forces of the United States who was captured, separated and incarcerated by an enemy of the United States during an armed conflict.

SECTION 14. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 817 and 881, the figure “5” and inserting in place thereof, in each instance, the following figure:- 2.

SECTION 15. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out clause Twenty-second G and inserting in place thereof the following 2 clauses:-

Twenty-second G. In any city or town that accepts this clause, real estate that is the domicile of a person but is owned by a trustee, conservator or other fiduciary for the person’s benefit if the real estate would be eligible for exemption under clause Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E or Twenty-second F if the person were the owner of the real estate.

Twenty-second H. Real estate to the full amount of the taxable valuation of real property of the surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans who: (i) during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs or a branch of the armed forces that was a proximate cause of their death; or (ii) are missing in action with a presumptive finding of death as a result of active duty service as members of the armed forces of the United States; provided, however, that the real estate shall be



occupied by the surviving parents or guardians as the surviving parents' or guardians' domicile; and provided further, that the surviving parents or guardians shall have been domiciled in the commonwealth for the 5 consecutive years immediately before the date of filing for an exemption pursuant to this clause or the soldier or sailor, member of the National Guard or veteran was domiciled in the commonwealth for not less than 6 months before entering service.

Surviving parents or guardians eligible for an exemption pursuant to this clause shall be eligible regardless of when the soldier, sailor, member of the National Guard or veteran died or became missing in action with a presumptive finding of death; provided, however, that the exemption shall only apply to tax years beginning on or after January 1, 2019. Such exemption shall be available until such time as the surviving parents or guardians are deceased. No real estate shall be so exempt which has been conveyed to the surviving parents or guardians to evade taxation. This clause shall take effect upon its acceptance by any city or town.

SECTION 16. Clause Fifty-fifth of said section 5 of said chapter 59, as so appearing, is hereby amended by striking out the second paragraph.

SECTION 17. Section 5N of said chapter 59, as so appearing, is hereby amended by striking out, in lines 16 and 43, the figure "\$1,000" and inserting in place thereof, in each instance, the following figure:- \$1,500.

SECTION 18. Section 1 of chapter 60A of the General Laws, as so appearing, is hereby amended by inserting after the word "guard", in line 137, the following words:- or reserves.

SECTION 19. Section 2 of chapter 90 of the General Laws is hereby amended by inserting after the word "vehicle", in line 507, as so appearing, the following words:- or to the registrant of a motor vehicle that is owned by a partnership, trust or corporation if the motor vehicle otherwise meets the criteria of a private passenger vehicle and there is no distinctive promotional or advertisement marking visible on the motor vehicle.

SECTION 20. Said section 2 of said chapter 90 is hereby further amended by inserting after the word "person", in line 512, as so appearing, the following words:- or for 1 motor vehicle that is owned by a partnership, trust or corporation if the motor vehicle otherwise meets the criteria of a private passenger vehicle, there is no distinctive promotional or advertisement marking visible on the motor vehicle and the motor vehicle is principally used by that person.

SECTION 21. Said section 2 of said chapter 90 is hereby further amended by inserting after the word "person", in line 517, as so appearing, the following words:- or for 1 motor vehicle that is owned by a partnership, trust or corporation if the motor vehicle otherwise meets the criteria of a private passenger vehicle, there is no distinctive promotional or advertisement marking visible on the motor vehicle and the motor vehicle is principally used by that person.

SECTION 22. Said section 2 of said chapter 90 is hereby further amended by inserting after the word "vehicle", in line 521, as so appearing, the following words:- or a motor vehicle that is owned by a partnership, trust or corporation if the motor vehicle otherwise meets the criteria of a private passenger vehicle and there is no distinctive

promotional or advertisement marking visible on the motor vehicle.

SECTION 23. Section 240 of chapter 112 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The board shall promulgate regulations to determine the allowable education and work hour credits for veterans and military personnel.

SECTION 24. Section 2 of chapter 115 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

The commissioner shall create and maintain a list of firms and organizations willing to provide pro bono legal representation to veterans in the commonwealth. Such information shall be updated annually and shall be distributed to veteran's agents and available online.

SECTION 25. Section 6 of said chapter 115, as so appearing, is hereby amended by adding the following sentence:- The commonwealth shall make payments to cities and towns equal to 100 per cent of the amount of benefits paid by cities and towns to or on behalf of recipients living in permanent housing located on real property owned by the federal government or living in institutions or transitional housing, as defined in 108 CMR 2.02, if such housing is located on real property owned by the federal government; provided, however, that such payments shall be made to the city or town in which the recipient resides only for 48 months of residence; provided further, that such payments shall not be made for a recipient who has resided elsewhere in the city or town for the 6 consecutive months immediately preceding the recipient's move into such housing.

SECTION 26. Section 6B of said chapter 115, as amended by section 51 of chapter 47 of the acts of 2017, is hereby further amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, an annuity payment made to a recipient pursuant to this section shall not constitute income in an application or formula utilized by the commonwealth or a political subdivision to determine eligibility for a program or service funded or provided by the commonwealth.

Notwithstanding the forgoing, such an annuity payment may constitute income if not doing so would, under federal law, prohibit eligibility or otherwise negatively impact the recipient's benefits under the program or service; provided, however, that the commonwealth or a political subdivision thereof shall seek a waiver from any federal law with such an eligibility requirement.

SECTION 27. Section 8 of said chapter 115, as appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- If a deceased person's estate has insufficient resources to pay for the cost of the funeral and burial of a deceased person covered by this chapter, the burial agent under section 7 shall expend not more than \$4,000 for the funeral and burial; provided, however, that the cost of the funeral and burial shall be not more than \$5,000.

SECTION 28. The first paragraph of section 25 of chapter 118E of the General Laws, as so appearing, is hereby amended by inserting after clause (4) the following clause:-

(4½) the entire amount of a monthly payment to a veteran or a widowed spouse of a veteran, including pension, aid and attendance and housebound benefits, from the

United States Department of Veterans Affairs if the veteran or widowed spouse would not have received such a payment from the United States Department of Veterans Affairs but for unreimbursed medical expense; and.

SECTION 29. Section 52 of chapter 130 of the General Laws, as so appearing, is hereby amended by inserting after the word “therefor”, in line 61, the following words:- ; provided, however, that such city or town shall not charge a veteran a fee greater than the fee charged to a resident of such city or town.

SECTION 30. Section 2A of chapter 141 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The examiners shall promulgate regulations to determine the allowable education and work hour credits for veterans and military personnel.

SECTION 31. The second paragraph of section 4 of chapter 142 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The examiners shall promulgate regulations to determine the allowable education and work hour credits for veterans and military personnel.

SECTION 32. Chapter 149 is hereby amended by striking out section 52A½, as so appearing, and inserting in place thereof the following section:-

Section 52A½. An employee who is a veteran or a member of a department of war veterans listed in section 17 of chapter 8 and who desires to participate in a Memorial Day exercise, parade or service in the employee’s community of residence shall be allowed and granted a leave of absence of sufficient time to participate in such an exercise, parade or service in the employee’s community of residence. The leave of absence shall be with or without pay, at the discretion of the employee’s employer.

An employee who is a veteran or is a member of a department of war veterans listed in said section 17 of said chapter 8 shall be granted time off to observe Veterans Day. The time off shall be with or without pay, at the discretion of the employee’s employer.

This section shall not apply to employees whose services are essential and critical to the public health or safety and determined to be essential to the safety and security of such an employee’s employer or the property of the employer.

SECTION 33. Section 3 of chapter 276A of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The probation officers of a district or municipal court, or an official designee of such a probation officer, when gathering information in accordance with section 85 of chapter 276, shall also screen each defendant for the purpose of enabling the judge at arraignment to consider the eligibility of the defendant for diversion to a program. The probation officers or an official designee shall also confirm the defendant’s status as a veteran or as a person on active service in the armed forces of the United States and shall determine if the defendant has previously been diverted pursuant to clause (ii) of subsection (c) of section 4.

SECTION 34. Said section 3 of said chapter 276A, as so appearing, is hereby further amended by inserting after the second paragraph the following paragraph:-

A defendant who is determined to be a veteran or a person on active service in the armed forces of the United States and who is qualified for consideration to diversion to a program may, at arraignment, be afforded a 30-day continuance for assessment by the United States Department of Veteran's Affairs or another state or federal agency with suitable knowledge and experience of veterans affairs to determine if the veteran or person on active service would benefit from such program.

SECTION 35. Said chapter 276A is hereby further amended by striking out section 4, inserted by section 198 of chapter 69 of the acts of 2018, and inserting in place thereof the following section:-

Section 4. (a) For the purposes of this section, the term "serious mental illness" shall mean a current or recent diagnosis by a qualified mental health professional of at least 1 of the following disorders described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders: (i) schizophrenia and other psychotic disorders; (ii) major depressive disorders; (iii) all types of bipolar disorders; (iv) a neurodevelopmental disorder, dementia or other cognitive disorder; (v) any disorder commonly characterized by breaks with reality or perceptions of reality; (vi) all types of anxiety disorders; (vii) trauma and stressor related disorders; or (viii) severe personality disorders.

(b) A person shall not be diverted to a program pursuant to this chapter if the person is charged with an offense: (i) that is enumerated in the second sentence of section 70C of chapter 277; (ii) for which a penalty of incarceration greater than 5 years may be imposed or for which there is a minimum mandatory penalty of incarceration; or (iii) that shall not be continued without a finding or placed on file.

(c) Notwithstanding any contrary provision of this section, a person may be diverted to a program pursuant to this chapter if the person is:

(i) charged with an offense pursuant to subsection (a) of section 13A of chapter 265 or section 13A or 13C of chapter 268; or (ii) a veteran or a person on active service in the armed forces of the United States charged with an offense pursuant to subparagraph (1) of paragraph (a) of subsection (1) of section 24 of chapter 90 who: (A) has never previously been arrested for or been the subject of a complaint alleging a violation of an offense pursuant to said subparagraph (1) of said paragraph (a) of said subsection (1) of said section 24 of said chapter 90 or a like offense in another state or the United States or a military, territorial or Indian tribal authority; and (B) has been clinically diagnosed with a traumatic brain injury, substance abuse disorder or serious mental illness in connection with the veteran's military service or the person's active duty. The court shall consider the opinion of the prosecution in determining whether to divert a veteran or person on active service to a program pursuant to clause (ii). Diversion of a district court charge under this chapter shall not preclude a subsequent indictment on the same charges in superior court.

SECTION 39. Chapter 186 of the acts of 2007 is hereby amended by striking out, in line 17, the words "section 16 of chapter 130 of the acts of 2005" and inserting in place thereof the following words:- section 78 of chapter 10 of the General Laws.

SECTION 40. Section 11 of chapter 132 of the acts of 2009 is hereby repealed.

SECTION 41. Section 86 of chapter 47 of the acts of 2017 is hereby repealed.

SECTION 42. Notwithstanding any special or general law to the contrary, any veteran, as defined in clause Forty-third of section 7 of chapter 4 of the General Laws, or any active duty member of the armed forces of the United States of the commonwealth who has received a Bronze Star award for valiant service shall be eligible for a Bronze Star plate, as verified by either a DD-214 or 638 form, from the registry of motor vehicles.

SECTION 43. The department of veterans' services, in coordination with the executive office for administration and finance and the military division of the executive office of public safety and security, shall study the feasibility and costs associated with designating members of the Massachusetts national guard and the reserve forces of the United States with status as veterans under clause Forty-third of section 7 of chapter 4 of the General Laws.

The department shall report its findings to the clerks of the house of representatives and senate and the joint committee on veterans and federal affairs not later than September 1, 2019.

SECTION 44. There shall be established a special commission, established and governed by section 2A of chapter 4 of the General Laws, to study the cost and feasibility of exempting veterans of the commonwealth from tuition, fees and associated costs of attending public colleges and universities in the commonwealth, due to recent changes in federal veteran services and benefits related to higher education.

The commission shall consist of: the secretary of veterans' services or a designee, who shall serve as co-chair; the commissioner of higher education or a designee, who shall serve as co-chair; 1 member appointed by the governor who shall be a member of the Student Veterans of America; 1 member appointed by the speaker of the house of representatives; 1 member appointed by the senate president; 1 member appointed by the minority leader of the house of representatives; 1 member appointed by the minority leader of the senate; the house and senate chairs of the joint committee on higher education or their designees; the house and senate chairs of the joint committee on veterans and federal affairs or their designees; the chair of the house committee on ways and means or a designee; and the senate chair of the committee on ways and means or a designee.

The study shall include, but not be limited to: (i) an evaluation of the cost and feasibility of exempting veterans from paying tuition, fees and associated costs at public colleges and universities in the commonwealth; (ii) the societal impact of such an exemption for veterans and their families; and (iii) the effect of such a policy on the finances of the commonwealth.

The commission shall report its findings and any recommendations to the joint committee on veterans and federal affairs, the joint committee on higher education and the clerks of the house and senate not later than July 1, 2019.

SECTION 45. The executive office of health and human services, in conjunction with the department of veterans' services, shall conduct a study on access to benefits of the United States Department of Veterans Affairs for military veterans who may be in state or county correctional custody in the commonwealth.

The study shall investigate any impediments, through state, county or federal policy, logistical challenges or otherwise, that veterans in custody may face when seeking to apply for benefits under a federal or state program or seeking to access medical evaluations for the purpose of completing, revising or renewing such a benefit's application.

The office shall submit a report on the study to the clerks of the senate and house, the joint committee on veterans and federal affairs and the senate and house committees on ways and means not later than July 1, 2019.

SECTION 46. Notwithstanding any general or special law to the contrary, the department of veterans' services, in consultation with the public employee retirement administration commission, shall conduct a study on the feasibility and cost to the commonwealth of allowing a member of a retirement system who: (i) is a veteran, as defined in clause Forty-third of section 7 of chapter 4 of the General Laws; and (ii) served in the armed forces of the United States, to receive credit for active service in the armed services of the United States; provided, however, that such creditable service shall not include service for more than 4 years; provided further, that such creditable service shall not be allowed for any period of active service for which the veteran has received credit pursuant to paragraph (h) of subdivision (1) of section 4 of chapter 32 of the General Laws; and provided further, that the amount shall not exceed the 80 per cent allowed to retire.

Creditable service time, both enlisted and commissioned, may be applied toward retirement on a ratio of 5 years guard service or 5 years active reserve service substitutable for each year of active service. The department shall also examine the feasibility of including members of the nurse cadet core in the definition of "veteran" said clause Forty-third of said section 7 of said chapter 4.

The study, along with any recommendations, shall be submitted to the clerks of the house and senate, the joint committee on public service, the joint committee on veterans and federal affairs and the house and senate committees on ways and means by March 1, 2019.

SECTION 47. The executive office of health and human services, in conjunction with the department of veterans' services and the center for health information and analysis, shall conduct a study on the transportation of veterans in emergency medical situations to facilities that are not facilities of the United States Department of Veterans Affairs. For the purposes of this section, "veteran" shall mean a veteran who is receives benefits under the TRICARE program, as defined in 10 U.S.C. 1072(7).

The study shall: (i) identify, after seeking consultation with the United States Department of Veterans Affairs, reimbursement guidelines for ambulance services for transportation of veterans to facilities that are not facilities of the United States Department of Veterans Affairs in emergency medical situations; (ii) identify gaps in reimbursement payments where the commonwealth may be eligible for payments to health care facilities or for ambulance services; (iii) determine the associated costs and the reimbursements that are available to veterans when transported to facilities that are not facilities of the United States Department of Veterans Affairs; (iv) recommend

potential notification procedures by medical facilities to advise veterans regarding the process of seeking state or federal medical reimbursements; and (v) recommend any gaps to insure proper continuity of care.

The office shall submit a report on the study to the clerks of the senate and house, the joint committee on veterans and federal affairs, the joint committee on health care financing and the senate and house committees on ways and means not later than March 1, 2019.

SECTION 48. The executive office of health and human services, in consultation with the executive office of public safety and security, shall partner with a college or university in the commonwealth to conduct a study relative to the needs of veterans and military members in the criminal justice system who are suffering from mental health or substance abuse issues associated with their service in the military.

The study shall review and make legislative recommendations for issues including, but not limited to, current court programs available to veterans, the effectiveness of pre-trial diversion, pre-trial probation, post-conviction relief, access to treatment programs, tracking of cases, victims' rights and assistance and outreach and training to judges with the goal of reducing recidivism and maintaining independence and sobriety through systems integration, outreach and recovery for traumatized veterans.

The executive office shall file a report on the study with the joint committee on veterans and federal affairs, the joint committee on the judiciary, the joint committee on mental health and substance use and recovery, the house and senate committees on ways and means, the executive office of the trial court and the Massachusetts District Attorneys Association not later than January 1, 2020.

*Approved, August 9, 2018.*

**Part I** ADMINISTRATION OF THE GOVERNMENT  
**Title IX** TAXATION  
**Chapter 59** ASSESSMENT OF LOCAL TAXES  
**Section 5N** REDUCTION OF PROPERTY TAX  
OBLIGATION OF VETERAN IN  
EXCHANGE FOR VOLUNTEER  
SERVICES

Section 5N. In any city or town which accepts this section, the board of selectmen of a town, or in a municipality having a town council form of government, the town council or the mayor, with the approval of the city council in a city, may establish a program to allow veterans, as defined in clause Forty-third of section 7 of chapter 4 or a spouse of a veteran in the case where the veteran is deceased or has a service-connected disability, to volunteer to provide services to that city or town. In exchange for such volunteer services, the city or town shall reduce the real property tax obligations of that veteran on the veteran's tax bills and that reduction shall be in addition to any exemption or abatement to which that person is otherwise entitled; provided, however, that person shall not receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for the services provided pursuant to that reduction; and provided further, that the reduction of the real property tax bill shall not exceed \$1,000 in a given tax year. It shall be the responsibility of the city or town to maintain a record for each taxpayer including, but not limited to, the number of hours of service and the total amount by which the real property tax has been reduced and to provide a copy of that record to the assessor in order that the actual tax bill reflect the reduced rate. A copy of that record shall also be provided to the taxpayer prior to the issuance of the actual tax bill. The cities and towns shall have the power to create local rules and procedures for implementing this



section in a way that is consistent with the intent of this section. Nothing in this section shall be construed to permit the reduction of workforce or otherwise replace existing staff.

The amount by which a person's property tax liability is reduced in exchange for the volunteer services shall not be considered income, wages or employment for purposes of taxation as provided in chapter 62, for the purposes of withholding taxes as provided in chapter 62B, for the purposes of workers' compensation as provided in chapter 152 or any other applicable provisions of the General Laws. While providing such volunteer services, that person shall be considered a public employee for the purposes of chapter 258 and those services shall be deemed employment for the purposes of unemployment insurance as provided in chapter 151A.

A city or town, by vote of its legislative body, subject to its charter, may adjust the exemption in this clause by: (i) allowing an approved representative for persons physically unable to provide such services to the city or town; or (ii) allowing the maximum reduction of the real property tax bill to be based on 125 volunteer service hours in a given tax year, rather than \$1,000.

EXHIBIT B

# ACCEPTED MASS. GENERAL LAWS

MGL Chapter	Amended by Chapter of the Acts of	Date of Action	Action	Topic
54 Sec 40		2/16/1891	Accepted	Ballots
	C254 Acts of 1897	3/7/1898	Accepted	Soldier's Pay
	C101 S1-5 Acts of 1901	11/5/1901	Accepted	Dangerous Bld
C49 S43		3/2/1902	Accepted	Sidewalks
	C191 Scts of 1907	4/4/1908	Accepted	Bd of Survey
		1/1/1909	Accepted	Sidewalks
C102 S178-190		11/5/1912	Accepted	Pension Laborers
C32 S 77		11/4/1913	Accepted	Workmen's Comp
C152 S 69			Accepted	County
		3/2/1914	Accepted	Workmen's Comp
			Accepted	Town
	C625 Acts of 1910	3/2/1914	Accepted	Town Accountant
C41 S110		3/2/1914	Accepted	8 hour day
C41 S 111	C514 S42 Acts of 1909	11/3/1914	Accepted	Sat. half holiday
		11/3/1914	Accepted	Laborer's Vac.
	C 790 Acts of 1914	11/3/1914	Accepted	Enrollment
			Accepted	Public Works
	C 187 Acts of 1902	3/5/1915	Accepted	Employees
			Accepted	Junk Collecting
	C 187 Acts of 1902	3/1/1915	Accepted	Annual Town Mtg
	C 59 Acts of 1916	3/5/1917	Accepted	Slaughter House
	C 153 Acts of 1916	3/5/1917	Accepted	Jitneys
	C 293 Acts of 1916		<b>Rescinded</b>	
	C 367 Acts of 1911	3/4/1918	Accepted	School Halls
	C 254 Acts of 1917	3/4/1918	Accepted	Soldier's Pay
	C 795 Acts of 1914	3/4/1918	Accepted	Fire Prevention
		11/4/1919	Accepted	Continuation Sch
C 71 S 21		3/6/1922	Accepted	Finance Comm.
C 39 S 11		5/3/1923	<b>Rejected</b>	Accounting Sys
	C 576 Acts of 1922		Accepted	Renting Boats
	C 140 Acts of 1910		Accepted	Sunday Sales
	C 423 Acts of 1909		Accepted	Town Accountant
	C 207 Acts of 1911		Accepted	School Halls
	C 369 Acts of 1911		Accepted	Fire Prevention
	C795 Acts of 1914		Accepted	Water Supply
	C276 Acts of 1926	3/14/1927	Accepted	WVA Sheldon-Fire
	C83 Acts of 1928	3/12/1928	Accepted	Police/Fire Pensions
C 32 S 88		3/12/1928	Accepted	Playgrounds
C 45 S 14		8/6/1928	Accepted	Building Inspection
C143 S3 6-12		8/6/1928	Accepted	

# ACCEPTED MASS. GENERAL LAWS

MGL Chapter	Amended by Chapter of the Acts of	Date of Action	Action	Topic
C 31 S 49		3/11/1929	Accepted	Police Chief Civil Serv
C 104 S 22		5/16/1930	Accepted	Planning Board
C 139 S 1-3		6/21/1938	Accepted	Nuisance Abatement
C 143 S 6-12		6/21/1938	Accepted	Dangerous Bldg
C 31 S 48, 49		3/10/1941	Accepted	Collection-Water Rates
C 48 S 56		3/9/1942	Accepted	5/1 rotation for permanent firemen
C 85 S 11a		6/22/1942	Accepted	Reg. and use bicycles
	C587 Acts of 1946	7/8/1946	Accepted	Sale of Town Park
C48 S 42-44		7/8/1946	Accepted	Fire Dept.
C32 S 1-28iii		11/5/1946	Accepted	Contributory Retirement
C 48 S 49		3/10/1947	Accepted	Fire Dept.
C 48 S 59		11/2/1948	Accepted	Fire Dept./Two Platoon
	C6 Acts of 1947	11/2/1948	Accepted	Two Platoon System
C 41 S 81a		3/14/1949	Accepted	Accounting System
		12/19/1949	Accepted	Town Planning Board
	C592 Acts of 1950	11/7/1950	Accepted	Town Manager Form Government
	C108 Acts of 1949	5/9/1949	Accepted	GW Buck
C 40 S 6b		3/19/1951	Accepted	Police/Fire Uniforms
	C639 Acts of 1950	3/19/1951	Accepted	Civil Service - Civil Defense
	C538 Acts of 1950	3/19/1951	Accepted	Private Way/Repairs
C147 S 16c		3/17/1952	Accepted	Police/2 days off out of 7
C 74		9/29/1952	Accepted	Vocational Education
C 111 S 128		3/13/1954	Accepted	Eviction/Unfit Dwellings
C 48 S 58a		3/12/1955	Accepted	Fire Dept.
	C398 Acts of 1955	6/29/1955	Accepted	Athletic Fields/Schools
C 31 S 48		3/3/1956	Accepted	Fire Dept. Civil Service
C 41 S 111d		3/3/1956	Accepted	Police/Fire Vacations
C 40 S 426g,h,i		3/10/1956	Accepted	Assessment/laying pipe
C121 S 26Q		3/10/1956	Accepted	Floridate Water Supply
	C550 Acts of 1952	10/29/1956	Accepted	Redevelopment Authority
C54 S 6		3/9/1957	Accepted	Elderly Housing Project
	C399 Acts of 1954	3/9/1957	Rejected	Precincts
C 136 S 4b		8/8/1957	Accepted	North Metro. Sewerage District
C 136 S 4b		8/8/1957	Rejected	Sunday Bowling
C 41 S IIIg		3/8/1958	Accepted	Sunday Bowling
C 41 S IIIb		3/8/1958	No Action	Annual Vacations
C 32B		6/9/1958	Accepted	Retirement Disability
	C427 Acts of 1957	3/8/1959	No Action	Sick Leave
		3/7/1959	Rejected	Group Life Insurance
	C56 Acts of 1959	3/7/1959	Accepted	Floridation continued

# ACCEPTED MASS. GENERAL LAWS

MGL Chapter	Amended by Chapter of the Acts of	Date of Action	Action	Topic
	C268 Acts of 1952			
C 31 S 47E		3/14/1959	Accepted	Holiday day off - Police
C 41 S 108D		3/14/1959	Rejected	Welfare Dept/Compensaton
C 41 S 110A		3/14/1959	Rejected	Minimum Compensation/Fire
	C287 Acts of 1959			
C 44 S 8		3/14/1959	No Action	Saturday/Town offices closed
		7/1/1959	Accepted	Regulate Sand and Gravel removal
		7/1/1959	Accepted	Construction of Standpipe
				**Pursuant to the minutes of 7/1/1959 this chapter was not accept
	C297 Acts of 1958			
C 6 S 73		3/12/1960	Accepted	Operation of system of sewers
C 40 S 8C		3/12/1960	No Action	Council on Aging
C 41 S 108G		3/14/1964	Accepted	Appointment of Conservation Commission
C 147S 32-47 inclusive		3/14/1964	Accepted	Salary for Police
C 41 S 108F		3/14/1964	Accepted	Wilmington Boosters for Boxing
C 71, S 16-16I		3/14/1964	Accepted	Salary for Firefighters
		10/25/1965	Accepted	Regional Vocational School
				**Ballot vote Yes: 403 No: 67
C41 S 108I		3/8/1969	Accepted	Police Fingerprinting-Compensation
C 147 S 17G		3/14/1970	Accepted	Time and Half for Police Overtime
C 48 S 58D		3/14/1970	Accepted	42 Hour week/Fire
	C 486 Acts of 1971			
C 40 S 8A		3/4/1972	Accepted	Beano
C 40 S 8G		10/30/1972	Accepted	Establishment of Deveopment & Industrial Commission
C40 S 8D		3/10/1973	Rejected	Mutual Aid
C 41 S 81E		6/25/1973	Accepted	Establishment of Historic Commission
C 32B S 9E		6/25/1973	Accepted	Adoption of Official Map
C 91 S 29		6/25/1973	Accepted	BC/BS for retired employees
C 32B S 7A		6/25/1973	Rejected	Liability of DPW improvements
C 40 S 8G		3/9/1974	Rejected	50/50 split of BC/BS
C 71 S 82-85		3/9/1974	Accepted	Mutual Aid
C 32B S 7A		3/15/1975	Accepted	Certain rights of High School students
C 41 S 100I		3/15/1975	Accepted	50% payment by Town for insurance
S 6		3/12/1977	Accepted	Indemnify Town Official against financial loss
	C 297 Acts of 1958			
C90 S 20C		3/12/1977	Accepted	Water & Sewer Assessments
C 83 S16A-F		3/19/1977	Accepted	Mandatory State Zoning
C 40 S 22D		5/19/1979	Accepted	Establish Parking Fines
C 90 S 18A		5/19/1979	Accepted	Water and Sewer Rates
C 90 S 20A 1/2		4/26/1980	Accepted	Towing Vehicles
C 40 S 4G		4/26/1980	Accepted	Pedestrian Ways
	C 586 Acts of 1977			
		4/24/1982	Accepted	Parking fine Schedule & Collection
		9/20/1982	Accepted	Ability to Advertise for Equipment
	C 743 Acts of 1981			
		9/20/1982	Accepted	Real Estate Exemption

# ACCEPTED MASS. GENERAL LAWS

MGL Chapter	Amended by Chapter of the Acts of	Date of Action	Action	Topic
C 148 S 26C		4/23/1983	Accepted	Smoke & Heat Detectors
C 148 S 26E	C 573 Acts of 1982	4/23/1983	Accepted	Smoke Detectors
C 148 S 26G	C 545 Acts of 1982	4/23/1983	Accepted	Pertaining to Automatic Sprinklers
	C 653 Acts of 1982	10/24/1983	Accepted	Real Estate Exemption - Under GL C 59 S 5, clauses 37A & 41B
C 41 S 97A		10/28/1984	Accepted	Police
C 59 S 5 Clause 41	C 73 Acts of 1986	4/18/1987	Accepted	Fiscal Year 1987 Budget
C 59 S 5 Clause 17D		4/18/1987	Accepted	Property Tax Exemption - Estate
C 40 S 15C		4/18/1987	No Action	Scenic Roads
C 60 S 23B		4/23/1988	Accepted	Establish Lien Certificate fee
	C 640 Acts of 1985	4/22/1989	Accepted	Grading of Certain Licenses and Permits
	C 245 Acts of 1988	4/22/1989	Accepted	Grant funds to complete subdivision
C 41 S 100B		4/22/1989	Accepted	Indemnification of Police and Fire fighters
C 148 S 26H	C 642 Acts of 1989	4/28/1990	Accepted	Automatic Sprinklers
S 41	C 653 Acts of 1989	4/30/1990	Accepted	Assesment Date of New Growth - Real Estate
C 148 S 26I	Section 34 Chapter 642 Acts 1989	4/30/1990	Passed Over	Quarterly taxes
C 64G S 3A		4/30/1990	Accepted	Local room tax 4%
C 41	Chapter 653 Acts of 1989	4/20/1991	Accepted	Regarding Quarterly Tax Bills
S 121 & 122	Chapter 138 Acts of 1991	4/18/1992	Accepted	Retiree Health Benefits
C 60 S 3C	Chapter 194 Acts of 1986	4/22/1995	Accepted	Scholarship Fund
C 32B S 91/2		12/4/1995	Accepted	Insurance for Surviving Spouse of Insured Employee and Retired Employees
C 41 S 108L		12/4/1995	Accepted	Educational Incentives for fulltime Police Officers
C 140 S 147A		4/18/1998	Accepted	Abolish Middlesex County Dog program
C 64G S 3A		4/22/2006	Accepted	Establish a room tax fee
C 64L S 2A		4/23/2011	Accepted	Establish a meals tax
C 41 S 110A		4/23/2011	Accepted	Closed on Saturday
	Chapter 137 of the Acts of 2003	4/28/2012	Accepted	Public Employees Serving in the Armed Forces
C 32B S 20		5/2/2015	Accepted	Establish Post Employment Liability Trust Fund
C 59 S 5K		5/2/2015	Accepted	Senior Tax Volunteer Program



Town of Wilmington  
Office of the Town Manager  
121 Glen Road  
Wilmington, MA 01887-3597

PHONE: (978) 658-3311

FAX: (978) 658-3334

TTY: (978) 694-1417

*WWW.WILMINGTONMA.GOV*

January 25, 2019

Mr. Beera Ram  
Michael's Place  
110 Lowell Street  
Wilmington, MA 01887

Dear Mr. Ram:

At the Board of Selectmen's meeting on Monday, January 14, 2019 the Board conducted an informational hearing to ascertain information related to your business Sumanbeera, Inc. DBA Michael's Place for purposes of confirming compliance with your All Alcohol License. During the meeting you stated that you remain the sole manager of the business, that the business hours are 11:00 a.m. to 9 p.m. Monday through Sunday and that you are on the premise every day except Monday. You also confirmed that you are the sole owner of the business and have no partners.

When told that an employee in your restaurant had advised the Board's administrative assistant that "Mike" and "Jesse" were the managers you responded that they are not the managers but are friends. You confirmed that you are responsible for ordering the alcohol and for monitoring the sale of alcohol to patrons.

You were advised of the need to arrange with the Wilmington Police Department to be fingerprinted in accordance with the Town of Wilmington Inhabitant By-Laws Revised Chapter 5 Section 53 Criminal History Check Authorization. It is my understanding that you have complied with the requirement to be fingerprinted.

Additionally, you were advised of actions that needed to be taken as a result of an inspection by the Fire Department which identified a defective vent, and an inspection by the Building Inspector which determined that emergency lights were inoperable. He also noted that you were not present on Wednesday, January 23, 2019, the date of the inspection.

Mr. Beera Ram

-2-

January 25, 2019

It is my understanding that you have addressed the issue with the vent. Once the emergency lighting has been addressed and the Building Inspector conducts a re-inspection a Certification of Inspection form signed off by the Fire Chief and Building Inspector will be provided to the Town Manager's office.

You are once again directed to address the emergency lighting and arrange for a re-inspection by the Building Inspector. Failure to complete these steps by Friday, February 8, 2019 may result in the need to take enforcement actions. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey M. Hull". The signature is written in a cursive style with a large initial "J".

Jeffrey M. Hull  
Town Manager

cc: Board of Selectmen  
Michael R. Begonis, Police Chief  
Joseph T. McMahan, Fire Chief  
John T. Spaulding, Building Inspector





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[WWW.WILMINGTONMA.GOV](http://WWW.WILMINGTONMA.GOV)

January 25, 2019

Michael Kennealy, Secretary  
Executive Office of Housing and Economic Development  
Room 2101  
One Ashburton Place  
Boston, MA 02108

Dear Secretary Kennealy:

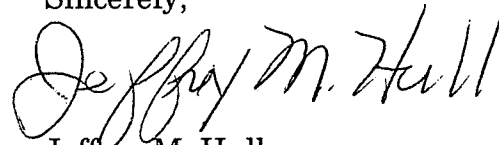
I am writing on behalf of myself and the Board of Selectmen seeking your support for two expenditures which are vital to the Town of Wilmington. Both expenditures are contained within the so-called Economic Development Bond Bill otherwise known as An act relative to economic development in the Commonwealth, Chapter 228 of the Acts of 2018. In line item 7002-1120- the language that was adopted reads as follows: *provided further, that not less than \$1,000,000 shall be expended for improvements to commuter parking and other facilities for the North Wilmington commuter rail station in the town of Wilmington; provided further, that not less than \$250,000 shall be expended for economic development infrastructure improvements on the route 38 corridor in the town of Wilmington.*

The Town is seeking that Governor Baker include both projects in his Fiscal Year 2020 - 2024 capital budget. The first expenditure would assist in addressing a serious problem that exists in north Wilmington at the Haverhill commuter rail crossing on Middlesex Avenue Route 62. Due to the lack of an appropriate platform, commuter trains, particularly trains heading to Boston, must stop on Route 62 to allow passengers to enter and exit the commuter train. With regularity emergency apparatus including Wilmington police cruisers, ambulances and fire apparatus in route to emergencies must stop at this crossing until the train leaves the roadway. Since Wilmington has only one public safety building and no substations, fire and EMS in particular must rely on this route to access calls in the northern part of Wilmington and sections of Interstate Route 93. Funding of the \$1,000,000 can be applied towards design services and other costs associated with constructing a new ADA compliant platform. The new platform would enable the commuter trains to pick up and drop off passengers without blocking Route 62.

The second expenditure relates to Route 38, a main commercial corridor extending through the middle of Wilmington. The Town has struggled in recent years with retaining both retail and restaurant businesses along portions of this corridor. The \$250,000 included in the bond bill will enable the Town to develop a robust and "forward thinking" economic development plan for rejuvenating this key commercial/retail area. Given the inroads that online shopping continues to make on "brick and mortar" businesses, the Town needs to rethink ways to create a business environment that attracts a mix of businesses to address the needs of residents and patrons from neighboring communities and creates more employment opportunities.

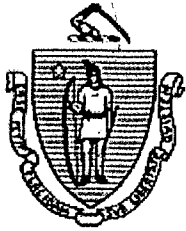
Your efforts to support inclusion of these important projects in the Governor's 5-year capital plan will enable the Town to ensure timely emergency response to all areas of the community and create economic opportunities. Thank you for your consideration.

Sincerely,



Jeffrey M. Hull  
Town Manager

cc: Board of Selectmen  
Governor Charles D. Baker  
Secretary Michael Heffernan, Executive Office for Administration and Finance  
Senator Bruce E. Tarr  
Representative Kenneth I. Gordon  
Representative David A. Robertson  
Michael R. Begonis, Police Chief  
Joseph T. McMahon, Fire Chief  
Valerie J. Gingrich, Planning & Conservation Director



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

1000 Washington Street, Suite 620  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
www.mass.gov/dtc

19 JAN 11 AM 9:52

TOWN OF  
WILMINGTON, MASS

CHARLES D. BAKER  
GOVERNOR  
KARYN E. POLITO  
LIEUTENANT GOVERNOR

JAY ASH  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT  
JOHN C. CHAPMAN  
UNDERSECRETARY  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATIONS  
KAREN CHARLES PETERSON  
COMMISSIONER

January 8, 2019

Chairman Board of Selectmen  
Town Hall  
121 Glen Road  
Wilmington MA 01887

Re: License Expiration Notice

Dear Chairman:

According to the Department of Telecommunications and Cable's (Department) records, your cable television license (license) with Verizon New England, Inc. expires on 2/25/2022. Federal law provides for a formal renewal process that begins between 36 and 30 months before a license expires. As the Issuing Authority, you may begin the process of determining your community's cable-related needs and review Verizon New England, Inc.'s performance under the current license. This is known as the "ascertainment process." You must notify Verizon New England, Inc. if you elect to begin the ascertainment process. You may also be required to begin the ascertainment process if you receive a notice from Verizon New England, Inc. invoking the formal renewal process; you must begin the ascertainment process within six months of receiving such notice.

You may want to form a cable advisory committee (CAC) as part of the formal renewal process and delegate to it certain duties. If you form a CAC, please provide the Department with the name and contact information for at least one CAC member. I have enclosed a fact sheet describing the typical responsibilities of a CAC, and please see M.G.L. c. 268A concerning potential conflicts of interest for both municipal officials and CAC members.

For your convenience, the Department has prepared a "Practical Guide to Cable Television License Renewal" that is available at [www.mass.gov/dtc](http://www.mass.gov/dtc). The Department is also available to advise you regarding your duties and rights during the renewal process. While we cannot assist you with substantive negotiations, we would be happy to meet with you and/or your CAC to discuss procedural requirements.

If you would like to schedule a meeting or if you have any questions regarding the renewal process, please contact the Department at 617-305-3580 or [dtc.efiling@mass.gov](mailto:dtc.efiling@mass.gov).

Sincerely,

Shonda D. Green  
Department Secretary



## COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

### Cable Advisory Committee

Under Massachusetts regulations, an Issuing Authority (“IA”), such as the mayor of a city or the board of selectmen of a town, may appoint a Cable Advisory Committee (“CAC”) to advise the IA throughout the licensing process. 207 C.M.R. § 3.01(3). In many instances, the CAC remains as an active committee throughout the term of the license. Currently, there are over 280 CACs in the Commonwealth. The composition of the CAC is determined by the IA, including the number of members on the CAC.

The IA may, at its discretion, define the role and responsibilities of the CAC to the extent permitted under G.L. c. 166A. Thus, there is almost complete local control as to the tasks assigned to an advisory committee, so long as these tasks do not conflict with the statutory requirements of the IA in G.L. c. 166A. While an IA may delegate to a CAC the authority to negotiate a license agreement, an IA may not delegate authority to execute such an agreement. CAC responsibilities vary according to the current status of the license or the objectives of the IA. The following list includes some typical responsibilities assigned to CACs in the Commonwealth:

- Inform and educate the public about cable television service;
- Assess the cable needs of the community and recommend policy changes;
- Conduct regular meetings with cable company representatives to discuss matters of mutual interest;
- Report to the IA on company compliance with the license;
- Supervise the cable operator’s response to complaints;
- Respond to citizen’s questions regarding the cable television system; and
- Keep abreast of community programming issues.

CACs are considered “governmental bodies” within the purview of the Massachusetts Conflict of Interest law, G.L. c. 268A.

Recognizing that CACs fulfill an important and valuable link between the IA, the licensee, and the citizens of the community, the Department of Telecommunications and Cable (“Department”) seeks to build positive professional relationships with the CACs. The Department's staff works closely with local committees to educate them on the licensing process and improve information-sharing.

The Department’s program includes an informational presentation available to communities. Please contact the Department to schedule a presentation or to discuss any cable licensing matter.

# **CABLE TELEVISION LICENSE RENEWAL PROCESS**

## **A PRACTICAL GUIDE**

**Updated March 2015**

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**Prepared by the Massachusetts Department of  
Telecommunications and Cable**

**1000 Washington Street, Suite 820  
Boston, MA 02118-6500  
617-305-3580  
[www.mass.gov/dtc](http://www.mass.gov/dtc)**

# INTRODUCTION

This Practical Guide is presented by the Massachusetts Department of Telecommunications and Cable ("Department") in our supervisory role with respect to cable television licensing. Under both federal and Massachusetts law, no cable operator may construct and/or operate a cable television system in a community without first obtaining a license. In Massachusetts, the city manager, mayor or board of selectmen is responsible for issuing a license and, hence, is designated as the Issuing Authority. Since Massachusetts law limits the term of a license, Issuing Authorities must periodically review and renew licenses. The Department oversees the licensing renewal process, which has been established under federal law, and supplemented by our regulations.

By establishing a formal renewal process, Congress sought to protect a municipality's right to a cable system that is responsive to the needs and interests of the local community. Congress also sought to protect cable operators, which have invested in infrastructure in a community, from an unfair denial of a renewal license. The Department's goal in developing this Practical Guide is to ensure that both municipalities and cable operators are aware of their rights and responsibilities as they contemplate license renewal and to guide them through the process.

In this Practical Guide, the Department first presents an overview of the role of government in cable television licensing. We describe each level of regulatory oversight with a focus on the resources available to Issuing Authorities. Next, the Department outlines the formal renewal process, highlighting the rights and responsibilities of each party under that process. Lastly, we discuss an alternative method by which parties may negotiate informally to reach an agreement. Since there are no procedural protections in informal negotiations, we recommend that this method be used only where there are no contested issues between the parties.

The guidance we provide herein offers both Issuing Authorities and cable operators direction on the most prudent manner in which to proceed under the rules established by Congress so that each party's rights and interests are protected. The information in this Practical Guide is necessarily general in nature. The Practical Guide is not a substitute for particularized advice from an attorney. In addition, federal and Massachusetts laws and regulations are subject to change. Therefore, persons should refer to the current Massachusetts General Laws, the Code of Massachusetts Regulations, the federal Communications Act of 1934, as amended, or the appropriate federal rules and regulations, or they may consult the Department with case-specific questions.

## **THE ROLE OF GOVERNMENT**

Licenses to construct and/or operate cable television systems are granted by the "Issuing Authority" of a city or town. Pursuant to section 1 of chapter 166A of the Massachusetts General Laws, the Issuing Authority is the mayor of a city, the board of selectmen of a town, or the city manager of a city with a plan D or E charter. The Issuing Authority decides initially whether to go forward with the licensing process, recommends services and terms to be included in the license, and decides whether to grant a license. Upon license renewal, the Issuing Authority reviews the performance of the cable operator, determines the services and terms to be included in the renewal license, and decides whether to grant a renewal license.

The Issuing Authority takes these actions within the framework provided by federal and state law. Congress has enacted a series of laws that establish many of the substantive and procedural requirements governing cable television licensing. For example, federal law requires that each operator obtain a license to service a particular area, and that the license be non-exclusive. Federal law also specifically addresses local access programming and franchise fees. Further, federal law establishes the process by which licenses are granted and renewed. The Federal Communications Commission ("FCC") is charged with ensuring that cable operators and licensing authorities comply with federal law.

In addition to federal oversight regulation, many states have enacted laws regarding cable television regulation. In Massachusetts, the Department oversees cable television licensing and ensures that municipalities and cable operators comply with both federal and state law, particularly where state law is more restrictive than federal law. For example, state law limits the term of a license to 15 years for an initial license and ten years for a renewal license. The Department also acts as an appellate body, as a cable operator may appeal to the Department for review of an Issuing Authority decision.

Since it is the Department's enabling legislation and regulations promulgated thereunder that establish the regulatory framework for Issuing Authorities to follow, the Competition Division has created the position of Municipal Liaison to bridge these two bodies. The Municipal Liaison's chief function is to assist municipal officials as they work through the licensing process. The Municipal Liaison will meet with local governments to explain the statutory and regulatory requirements. The Department maintains, as public records available for inspection, a copy of each license granted in Massachusetts. In addition, we maintain, on our website, an electronic library of many of the licenses executed in Massachusetts. By providing this assistance, the Department seeks to ensure that Issuing Authorities act in compliance with federal and state law to obtain a license that best serves the needs of the community.

# **THE FORMAL RENEWAL PROCESS**

Under federal and Massachusetts law, cable operators may not provide cable television service without obtaining a license from the Issuing Authority. Congress anticipated that cable operators would seek renewal licenses in order to continue providing cable television service in areas where money has been invested in infrastructure. Congress also recognized that municipalities should review the performance of a cable operator and ensure that the operator continues to meet the community's needs and interests. Thus, Congress established a formal renewal process that considers each of these interests. By following the formal renewal process, Issuing Authorities protect their right to a cable television system that serves the needs and interests of the community and cable operators protect their investment from a unfair denial of a renewal license. An Issuing Authority or cable operator must explicitly invoke the protections of the formal renewal process. Generally, each party must notify the other that it intends to proceed under the formal process.

The framework set forth by federal law provides a 36-month period in which to conduct license renewal proceedings. This 36-month period is often referred to as the "Renewal Window." The process consists of two phases: 1) reviewing the cable operator's performance under the current license and ascertaining the needs and interests of the community ("Ascertainment"); and 2) applying the results of the first phase to the review of the cable operator's proposal. The Department recommends that a municipality complete the first phase within 24 months. At most, the ascertainment phase should not extend longer than 30 months. This timeframe affords the municipality sufficient time to review and consider the cable operator's proposal and make a determination whether to grant renewal of the license before the current license expires.

## **PHASE I -ASCERTAINMENT**

### **COMMENCEMENT**

The formal renewal process must begin between 36 and 30 months prior to expiration of the license. The Issuing Authority may commence the formal renewal process on its own initiative and must inform the cable operator that it has done so. While there is no specific action that an Issuing Authority must take in order to demonstrate it has commenced the formal renewal process, the Issuing Authority should perform some tangible act to begin to ascertain the community's cable-related needs and interests. For example, the Issuing Authority could begin to survey the community or hold a public hearing.

Most often, the cable operator will request, in writing, that the Issuing Authority commence the renewal process. The cable operator will make this request between 36 and 30 months prior to the expiration of the license. If the cable operator requests that the Issuing Authority commence the renewal process, the Issuing Authority must begin ascertaining the community's cable-related needs and interests within six months of receiving the cable operator's request.

In either case, the letter requesting commencement of the formal license renewal process or advising that a community has commenced the formal renewal process is called a "Renewal Letter." The Renewal Letter is often referred to as the "626 letter" (626 refers to the section of the federal Communications Act that sets forth the franchise renewal process).

The protections of the formal renewal process must be invoked in a timely manner, that is between 36 and 30 months prior to the expiration of the current license. If neither the Issuing Authority nor the cable operator requests commencement of the formal process within this period, the



opportunity to conduct the renewal license under the formal renewal process expires and neither party is able to claim the protections provided by federal law.

## **ASCERTAINMENT**

Ascertainment is a series of actions taken by the Issuing Authority by which the Issuing Authority reviews the cable operator's performance under the existing license and identifies the cable-related needs and interests of the community. Many Issuing Authorities find it helpful to appoint a committee to assist in gathering information about a cable operator's performance and the community's needs and interests. The size and make-up of the cable advisory committee ("CAC") is determined by the Issuing Authority, and its members may include both residents and non-residents of the community. A CAC is considered a governmental body within the purview of the Massachusetts conflict of interest laws, at General Laws chapters 268A and 268B, and is subject to the guidelines contained therein.

The Issuing Authority, in appointing a CAC, should define the CAC's role and duties. Under Massachusetts law, only the Issuing Authority may make the final licensing decision. However, this does not preclude the Issuing Authority from relying on the CAC's recommendations.

An Issuing Authority and its CAC may choose a wide variety of methods to assess the cable operator's past performance and determine the future needs and interests of the community. An Issuing Authority may:

- Hold a public hearing. While a public hearing is required after receipt of the cable operator's proposal as part of the Issuing Authority's deliberative process, some municipalities choose to hold additional hearings during the ascertainment phase to solicit input from the community with respect to the cable operator's performance as well as the future needs and interests of the community;
- Conduct a municipality-wide survey;
- Meet with community organizations such as schools, senior citizen centers, and police and fire services to determine their proposed needs;
- Review the current license held by the cable operator in the municipality to determine, for example, which terms and conditions have been particularly beneficial to the community;
- Review the cable operator's financial forms (CTV Forms 200 and 400);
- Review consumer complaint records, including CTV Form 500 and municipal records;
- Obtain and review a map of the service area (often referred to as a street or strand map) to determine, in part, whether there are unserved parts of the community;
- Tour the cable operator's technical facilities (i.e., headend) and PEG access studio; and
- Review licenses granted by other communities in Massachusetts (many have been filed electronically and are available at the Department's web page).

There is no law or regulation that explicitly establishes a deadline by which an Issuing Authority must complete ascertainment. The Department has interpreted federal law as requiring Issuing Authorities to complete ascertainment no later than six months prior to the current license expiration date. The better practice, however, is to ensure that ascertainment is complete 12 months prior to license expiration in order to maximize the amount of time an Issuing Authority has to review a cable operator's proposal. Under federal law, a cable operator may not submit a formal renewal proposal until the Issuing Authority has completed ascertainment. This timeline allows a cable operator to respond to the results of the ascertainment studies in preparing its proposal. Upon receipt of the proposal, an Issuing Authority has only four months, or until the expiration of the current license, whichever occurs first, to make a determination on the proposal. Prolonging completion of the ascertainment thus reduces the amount of time during which an Issuing Authority may review and deliberate on a cable operator's proposal.

Under Massachusetts regulations, the Issuing Authority must notify the cable operator in writing upon completion of ascertainment. In its written notification, the Issuing Authority must specifically state the date that ascertainment was complete. The Issuing Authority should provide its ascertainment results as a part of a Request for Proposals ("RFP"). Presenting the ascertainment results to the cable operator is critical in demonstrating the community's needs and without it, a proposal in response to an RFP may not accurately represent the community's needs.

As part of the RFP, the Issuing Authority may provide the cable operator with a draft license in its RFP that contains terms and conditions consistent with the ascertainment results. The Issuing Authority should provide a reasonable deadline for the cable operator to respond to the RFP, that is, to submit what is known as the Formal Renewal Proposal. Generally, a period of at least 30 days is considered a reasonable response time. However, in establishing a deadline for responses, the Issuing Authority must be aware of the length of time remaining before the current license expires.

## **PHASE II - REVIEW OF PROPOSAL**

After the Issuing Authority has completed ascertainment, the cable operator may (on its own initiative) or must (within the time frame established by the Issuing Authority in the RFP) submit its renewal proposal. The cable operator submits its proposal on the Department's Form 100 and often supplements it with additional information.

Upon receipt of the proposal, the Issuing Authority must:

- 1) provide prompt public notice that the cable operator has submitted a renewal proposal; and
- 2) during the four-month period that begins upon the receipt of the proposal, renew the franchise or issue a preliminary assessment that the franchise should not be renewed; and
- 3) at the request of the cable operator or on its own, commence an administrative proceeding to consider whether:
  - A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
  - B) the quality of the cable operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the cable system, has been reasonable in light of community needs;

- C) the cable operator has the legal, financial, and technical ability to provide the services, facilities, and equipment as set forth in the cable operator's proposal; and
- D) the cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

If the Issuing Authority determines, upon initial review of the proposal, that it will accept the cable operator's proposal and grant the license, there is no need to commence an administrative proceeding. Nonetheless, under the Department's regulations, the Issuing Authority must conduct a public hearing to allow the public an opportunity to comment on the cable operator's proposal.

The administrative proceeding is an evidence gathering proceeding that must be conducted so as to afford both the Issuing Authority and cable operator due process, including the right to introduce evidence, question witnesses, and require the production of evidence. If the Issuing Authority bases the preliminary denial of the renewal proposal on criteria (A) or (B), the Issuing Authority must provide the cable operator with notice of non-compliance and an opportunity to cure.

At the conclusion of the administrative proceeding, the Issuing Authority must issue a written decision granting or denying the cable operator's proposal for renewal.

### **GRANTING A RENEWAL LICENSE**

If the Issuing Authority determines that the cable operator satisfies each of the four criteria, and decides to grant a renewal license to the cable operator, the Issuing Authority must issue a public, written statement detailing the reasons for the grant of the renewal. The Issuing Authority must file a copy of the issuing statement, renewal license, and license application (Form 100) with the Department within seven days of granting the license. In addition, the Department requests that the Issuing Authority also submit the license in electronic format.

### **DENYING A RENEWAL LICENSE**

If the Issuing Authority determines that the cable operator has failed to satisfy one or more of the criteria, and has not cured any claimed non-compliance, the Issuing Authority must issue a written statement detailing the reasons for its denial within 14 days of the decision to deny. The written decision must include the basis for the denial, that is, identify which of the four criteria the cable operator did not satisfy. The Issuing Authority must file a copy of this statement along with the renewal proposal (Form 100) with the Department.

### **APPEAL OF ISSUING AUTHORITY DECISION**

A cable operator who is aggrieved by a decision of an Issuing Authority to deny a renewal license may appeal to the Department for review of that decision. Any such appeal must be filed within 30 days of the date of the Issuing Authority decision.

# INFORMAL NEGOTIATIONS

While Congress established the formal renewal process, Congress also determined that where Issuing Authorities and cable operators are able to negotiate an agreement outside of the formal renewal process, they should be allowed to do so in a manner that best fits the parties' needs. That is, where a municipality has a good working relationship with a cable operator and there are no compliance issues, the parties are not required to follow the formal process. Rather, the parties may negotiate an agreement informally. Since there are no procedural safeguards in informal negotiations, this method should be used only where there are no contested issues between the parties.

When negotiating informally, a cable operator may submit a proposal for the renewal of a license at any time, and the Issuing Authority may, after affording the public adequate notice and an opportunity to be heard, grant or deny such a proposal. By negotiating informally, parties avoid the time requirements of the formal process. For example, Issuing Authorities are not obligated to review a cable operator's proposal within 120 days, as required under the formal process. However, even with informal negotiations, state law requires that the Issuing Authority hold a public hearing on the cable operator's proposal.

There is no regulatory requirement that an Issuing Authority conduct ascertainment if it chooses to negotiate with a cable operator rather than follow the formal process. Nevertheless, the Issuing Authority's negotiating position can only be enhanced if it has ascertainment results to substantiate its requests. It is highly recommended that an Issuing Authority conduct some form of ascertainment prior to entering into negotiations with a cable operator.

In practice, cable operators in Massachusetts will often request an Issuing Authority to commence the formal renewal process, but simultaneously request that the parties negotiate informally. Thus, the parties actually enter into informal negotiations while conducting the formal renewal process. While this is acceptable, there are two potential areas where confusion may result:

## 1) The Nature of the Proposal - Formal Proposal versus Informal Proposal

There is a distinction between a proposal submitted for discussion purposes and one that is submitted as a formal renewal proposal, namely, the submission of the formal renewal proposal triggers the 120-day review period. In order to avoid any confusion or violation of process, an Issuing Authority negotiating informally should ensure that the cable operator identify any informal proposal submitted as "Informal" or "For Informational Purposes Only."

## 2) "Reservation of Rights"

As indicated above, often a cable operator will request that the parties negotiate informally, while "reserving its rights" under the formal renewal process. In essence, the cable operator protects itself from an unfair license denial, but is relieved of following the strict time requirements of the formal process. The Issuing Authority is similarly relieved of the strict requirements of the formal process, including the requirement to conduct ascertainment. However, it is unlikely that a decision to deny a license will stand without appropriate ascertainment to support it. Thus, it is recommended that an Issuing Authority conduct ascertainment even when negotiating informally. Moreover, if informal negotiations do not result in a renewal license, the cable operator may revert back to the formal process, and submit a formal renewal proposal for the Issuing Authority's consideration. The review is limited to 120 days under federal law. Therefore, in order to ensure that sufficient time exists

for the Issuing Authority to review a formal proposal, the Department recommends that an Issuing Authority complete ascertainment 12 months prior to the license expiration date, but absolutely no later than six months prior to the license expiration date.

Informal negotiations may be a productive and efficient means for many Issuing Authorities and cable operators to reach mutually agreeable license terms, particularly where the parties have developed a solid professional relationship. However, where a party which has agreed to proceed informally has "reserved its rights" under the formal renewal process, both parties should proceed with the understanding that the requirements of the formal process may become applicable.

# REFERENCES

## RELEVANT LAWS AND REGULATIONS

Massachusetts General Laws, Chapter 166A

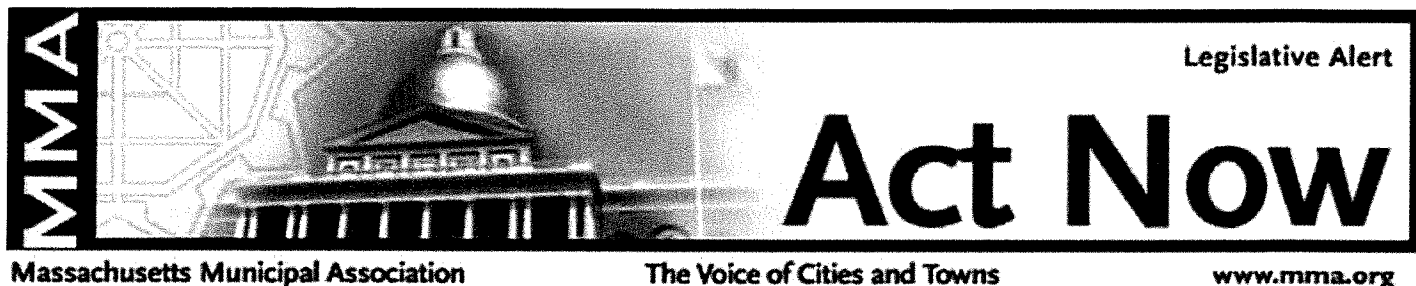
Code of Massachusetts Regulations, 207 C.M.R. §§ 3.00-10.00

United States Code, 47 U.S.C. § 546

## ADDITIONAL RESOURCES

Information regarding cable television licensing may be found on the Department's website at [www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/municipal-info/](http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/municipal-info/). The Department's website also provides several licenses in electronic format that are available for download.

A comprehensive glossary of cable-related terms is available on the Department's website at [www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/glossary-of-cable-television-terms.html](http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/competition-division/cable-tv-division/glossary-of-cable-television-terms.html).



Massachusetts Municipal Association

The Voice of Cities and Towns

www.mma.org

## **GOV. BAKER FILES \$42.7 BILLION FY 2020 BUDGET PROPOSAL**

- **UNRESTRICTED MUNICIPAL AID WOULD INCREASE BY \$29.7M (2.7%)**
- **GOV'S CH. 70 PLAN WOULD INCREASE FY 2020 SCHOOL AID BY \$200M (4.3%)**
  - **BUT MANY DISTRICTS STUCK AT \$20-PER-STUDENT MINIMUM AID**
- **CHARTER SCHOOL & SPECIAL ED REIMBURSEMENTS UNDERFUNDED**
- **MOST OTHER MUNICIPAL AND SCHOOL ACCOUNTS LEVEL-FUNDED**

January 23, 2019

Earlier this afternoon, Gov. Charlie Baker submitted a \$42.7 billion fiscal 2020 state budget plan with the Legislature, proposing a spending blueprint that would increase overall state expenditures by 1.5 percent, as the Administration deals with slow revenue growth by restraining most spending across the board and placing an estimated \$297 million into the state's rainy day fund. The budget relies on "significant" one-time revenues of at least \$200 million from a "sales tax modernization proposal."

### **UNRESTRICTED MUNICIPAL AID INCREASED BY \$30 MILLION**

As Gov. Baker pledged to local officials on Jan. 18 at the MMA's Annual Meeting, his budget includes a \$29.7 million increase in Unrestricted General Government Aid, tracking the expected 2.7% increase in state tax revenues.

### **OVERALL CHAPTER 70 SCHOOL AID WOULD GO UP BY \$200 MILLION, YET A LARGE PERCENTAGE OF DISTRICTS WOULD REMAIN AT MINIMUM AID ONLY**

The Governor filed separate legislation to amend the Chapter 70 school finance law, and provided a \$200 million increase in school aid in his fiscal 2020 budget recommendation to fund the first year of what the Administration says is a seven-year plan to implement a number of changes to the current law, primarily in the areas recommended by the Foundation Budget Review Commission. An initial look at House 1 indicates that a large percentage of cities, towns and school districts would not benefit from the formula changes in fiscal 2020, and would remain minimum-aid-only. The budget plan sets the minimum aid increase at only \$20-per-student, which would present large challenges for all of these communities. MMA members from across Massachusetts unanimously adopted a resolution calling for at least \$100-per-student minimum aid at last week's Annual Meeting.

### **CHARTER SCHOOL REIMBURSEMENTS REMAIN SIGNIFICANTLY UNDERFUNDED; FIXING THE CHARTER SCHOOL FINANCE SYSTEM MUST BE PART OF ANY CHAPTER 70 REFORM PLAN**

Further, the Administration is proposing a few changes to the Charter School Reimbursement Program, but this does not come close to achieving the permanent fix that is needed to repair the flawed charter school finance system. Current reimbursements this year are set at \$90 million, \$72 million below the full funding level of \$162 million. The Governor's budget would increase charter

school reimbursements to \$106 million, and would change the 6-year funding schedule of 100-25-25-25-25-25 to a new 3-year 100-60-40 schedule, phased in over 3 years, however the plan would also increase the facilities assessment payments to charter schools, and make other changes.

The MMA's immediate analysis is that charter school reimbursements would continue to fall far short, and this restructuring would not fix the charter school finance system. This would continue to divert Chapter 70 funds away from municipally operated school districts, and place greater strain on the districts that serve 96% of public school children. No matter what changes are made to the Chapter 70 formula, major problems will continue unless a true resolution of the charter school funding problem is integrated into any reform or update of the school finance system.

#### **SPECIAL EDUCATION CIRCUIT BREAKER UNDERFUNDED**

The Governor's budget would add \$4.5 million to fund the Special Education Circuit Breaker program at \$323.9 million, an increase of only 1.4%. Because special education costs are expected to rise in fiscal 2020, this means that the Governor's budget substantially underfunds reimbursements. Today DESE officials said the House 1 appropriation would result in a 70% reimbursement, rather than the statutory 75%. This is a vital account that every city, town and school district relies on to fund state-mandated services. The MMA will again be asking lawmakers to ensure full funding in fiscal 2020.

#### **REGIONAL SCHOOL TRANSPORTATION REIMBURSEMENTS LEVEL FUNDED**

Gov. Baker's budget submission would level-fund regional transportation reimbursements at the \$68.9 million amount. This will be a hardship for virtually all communities in regional districts. Reimbursements for transportation of out-of-district vocational students remains significantly underfunded at \$250K. Increasing these accounts is a priority for cities and towns.

#### **McKINNEY-VENTO REIMBURSEMENTS LEVEL FUNDED**

The Governor's budget would level-fund reimbursements for the transportation of homeless students at \$9.1 million. The impact of this funding level will vary from community-to-community depending on the number of homeless families that remain sheltered in local hotels and motels. The Administration has been successful in reducing the number of homeless students who are dislocated from their original district, but those communities that continue to provide transportation to many students may continue to see shortfalls.

#### **PAYMENTS-IN-LIEU-OF-TAXES (PILOT), SHANNON GRANTS AND LIBRARY AID LEVEL FUNDED**

The Governor's budget would level fund PILOT payments at \$28.48 million, Shannon anti-gang grants at \$8 million, and fund library grant programs at \$19.8 million.

**PLEASE CONTACT YOUR LEGISLATORS TODAY AND CALL ON THEM  
TO COMMIT TO COMPREHENSIVE REFORM OF OUR SCHOOL FINANCE LAWS TO  
BENEFIT ALL COMMUNITIES, INCLUDING FIXING THE FLAWS IN CHARTER SCHOOL  
FUNDING, AND FULLY FUNDING KEY MUNICIPAL AND SCHOOL PROGRAMS**

**THANK YOU!**



REC'D: TOWN MANAGER



19 JAN 22 PM 3:53

TOWN OF  
WILMINGTON, MASS

January 14, 2019

Board of Selectmen  
Town of Wilmington  
121 Glen Road  
Wilmington, MA 01887

**Re: International Package Update**

Dear Chairman and Members of the Board:

We are committed to keeping you and our customers informed of Xfinity TV changes. As we had informed you in December, Star India, the owner of Indian television channels, announced that it would no longer be offering its programming to Comcast and other video programming distributors in the United States effective January 5, 2019. As a result, Comcast no longer has the rights to carry the Star networks which has resulted in changes to our International Hindi selections as provided below.

The following International services and/or packages are no longer available:

- Star India Gold
- Star Bhart (One)
- Star Bhart (Star One)
- Star India News
- Star India Plus
- Vijay
- Tamil: Vijay
- Desi 3 Pack: Zee, Star India Plus and Xfinity TV Latino
- Desi 4 Star Pack: Star India Plus, Star Bharat (Life OK), ABP News, Star India Gold

The following Hindi packages included the Star channels that we no longer have the rights to carry. As a result, we have removed the Star channels and adjusted the package name and price as follows:

Old Package Name	Old Price	NEW Package Name	New Price
Hindi 2 Pack	\$24.99	Zee TV: Hindi	\$14.99
Hindi 3 Pack	\$29.99	Hindi 2 Pack: Zee TV, SET Asia	\$24.99
Hindi 8 Pack	\$34.99	Hindi Pack: Zee TV, SET Asia, TV Asia, NDTV 24x7, NDTV Good Times	\$29.99
Hindi 10 Pack	\$49.99	Hindi Plus Pack: Zee TV, SET Asia, TV Asia, NDTV 24x7, NDTV Good Times	\$39.99

The following Hindi packages, while no longer available for new subscriptions, included the Star channels that we no longer have the rights to carry. As a result, we have removed the Star channels, adjusted the package name and, in most cases, adjusted the package price as follows:

Old Package Name	Old Price	NEW Package Name	New Price
SET Asia, <i>Star India Plus</i>	\$14.99	SET Asia	\$14.99
Zee TV, <i>Star India Plus</i>	\$24.99	Zee TV: Hindi	\$14.99
Desi 4 Pack: Zee TV, SET Asia, <i>Star India Plus</i> , <i>Star Bharat (Life OK)</i>	\$32.99	Hindi 2 Pack: Zee TV, SET Asia	\$24.99
Desi 4 Pack: Zee TV, SET Asia, <i>Star India Plus</i> , TV Asia	\$32.99	Desi Pack: Zee, SET Asia, TV Asia	\$26.99
Desi 4 Pack: Zee TV, <i>Star India Plus</i> , TV Asia, Willow	\$32.99	Zee TV, TV Asia & Willow	\$26.99
Desi 4 Pack: Zee TV, <i>Star India Plus</i> , SET Asia, Willow	\$29.99	Zee TV, SET Asia, Willow	\$26.99
Desi 5-Pack: Zee TV, <i>Star India Plus</i> , SET Asia, TV Asia, Willow	\$32.99	Desi Pack w Willow: Zee TV, SET Asia, TV Asia, Willow	\$29.99
Desi Mega Pack: Zee TV, <i>Star India Plus</i> , SET Asia, TV Asia, <i>Star Bharat (Life OK)</i> , ABP News, <i>Star India Gold</i>	\$42.99	Desi Mega Pack: Zee TV, SET Asia, TV Asia, ABP News	\$29.99
Desi Mega Pack: Zee TV, <i>Star India Plus</i> , SET Asia, TV Asia, <i>Star Bharat (Life OK)</i> , ABP News, <i>Star India Gold</i> , Willow	\$42.99	Desi Mega w Willow: Zee TV, SET Asia, TV Asia, ABP News, Willow	\$34.99
Desi Mega & Willow: Zee TV, <i>Star India Plus</i> , SET Asia, TV Asia, <i>Star Bharat (Life OK)</i> , ABP News, <i>Star India Gold</i> , Willow	\$42.99	Desi Mega w Willow: Zee TV, SET Asia, TV Asia, ABP News, Willow	\$34.99
Desi Mega & Willow Plus: Zee TV, <i>Star India Plus</i> , SET Asia, TV Asia, <i>Star Bharat (Life OK)</i> , ABP News, <i>Star India Gold</i> , Willow	\$42.99	Desi Mega w Willow: Zee TV, SET Asia, TV Asia, ABP News, Willow	\$34.99

Customer accounts for those receiving any of the above services were automatically updated on January 5, 2019. Customers affected by these changes received notice via a direct mail letter.

Please do not hesitate to contact me at 781-769-5986 should you have questions.

Very truly yours,

*Catherine Maloney*

Catherine Maloney, Sr. Manager  
Government Affairs

January 22, 2019

RECEIVED  
TOWN CLERK

2019 JAN 23 AM 9:58

Re: Applications for Approval of Construction of a  
Residential Drug Rehabilitation Facility at 362 Middlesex Avenue

To: Jeffrey Hull, Kevin Caira, Daniel Veerman, Members of the Town of Wilmington Zoning  
Board of Appeals, and Members of the Town of Wilmington Board of Selectmen:

We are concerned citizens of the Town of Wilmington who respectfully demand the following actions:

- 1.) That Mr. Veerman, Chairman of the Board of Appeals, voluntarily recuse himself from all further involvement in the Special Permit application for the 362 Middlesex Ave proposed Detox Facility. Given his public statements regarding "junkies" and his documented bias against those who would use the proposed rehabilitation facility (see below), he cannot vote to deny the Special Permit without subjecting himself and the Town to a claim for damages and other relief brought by the developer under the Americans With Disabilities Act. As a result, he has a conflict of interest as a matter of law.
- 2.) Should Mr. Veerman fail to recuse himself, that the Board of Selectmen call upon Town Counsel to prepare and submit a written legal opinion regarding the steps to be taken to remove Mr. Veerman from participating in any actions regarding this project. A copy of the written opinion should be posted by the Town as a public document.
- 3.) Should Mr. Veerman fail to recuse himself, that the Town take such steps as may be necessary to disqualify Mr. Veerman from acting on this matter, suspend him from considering matters related to this project, and/or remove him from the Board of Appeals consistent with applicable law.
- 4.) That the subject items contained within this letter be timely added to the agenda for the Board of Selectmen Meeting that is currently scheduled to be held on Monday January 28, 2019 for public comment and Board action thereafter.
- 5.) That Mr. Kevin Caira as the Chairman of the Board of Selectmen upon receiving public comment at the January 28, 2019 meeting, move the Board to consider and vote upon these demands during said meeting.
- 6.) Should Mr. Caira fail to afford the relief requested above, that Mr. Hull move the Board to consider and vote upon these demands during said meeting.
- 7.) Should Mr. Hull fail to afford the relief requested above, that the individual members of the Board move the Board to consider and vote upon these demands during said meeting.
- 8.) That the Board of Appeals not make any "reasonable accommodations" as requested under threat of suit by the applicant's attorney. The applicant is a profit making entity, does not have any binding commitments regarding land use and charitable purpose in the future, and does not have charitable status. The proposed waste disposal system violates state law and is a danger to public health. No "reasonable accommodations" are appropriate because the applicant and/or its affiliates currently own property in a zone where the proposed facility can be constructed (assuming a lawful waste disposal system is designed) consistent with current Zoning Bylaws.
- 9.) That no action should be taken by the Board of Appeals until the appeal from the approval of the "subdivision" by the Planning Board now pending before the Land Court and any appellate court in the future has been determined.

We acknowledge and appreciate the severity of the opioid epidemic and the need for communities to provide treatment to its residents. This opposition is in no way meant to suggest that Wilmington is not an appropriate community in which to place a detoxification facility. However, for all the reasons stated in the letter from Hinckley Allen to the Wilmington Board of Appeals dated December 12, 2018, it is clear that the facility proposed at 362 Middlesex Ave should not be approved. Each member of the Board of Appeals acknowledged that they read the letter, and we are providing an additional copy to any recipients of this letter that may not have already received the letter.

We make these demands based on the following facts:

There is currently a request from the developer for a "reasonable accommodation", claiming that such relief is required under the Federal Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). The developer cites a court decision regarding violations of the FHA and ADA that holds that to find liability for a violation by the Town, "... there must be evidence of discriminatory purpose motivating the action."

The applicant's attorney, Mr. Bobrowski, has threatened to file suit in federal court seeking relief under the ADA and FHA to get the Special Permit approved. Mr. Veerman, a member of the Board of Appeals, was criticized in October of 2017 for saying on his personal Facebook page, "I think hypodermic needles are routinely found in that area. It's greasy. The junkies are out of control." As a result of that expressed bias, Mr. Veerman was compelled for financial reasons to vote in favor of granting the Special Permit. Mr. Veerman argues in his defense that an earlier decision from the Massachusetts State Ethics Commission clearing him with respect to his conflict of interest issues also exonerated him from any potential discrimination claims. He is wrong, at least in part, because the opinion *did not give Mr. Veerman or the Town immunity from suit under federal law. Mr. Veerman has a direct, substantial and compelling interest in voting in favor of the Special Permit to avoid his civil liability for a violation of the Americans with Disabilities Act.* It follows that it would be financially and legally irresponsible for the Town to allow Mr. Veerman to vote on this issue knowing that if Mr. Veerman votes to deny the Special Permit, the Town is subject to suit.

We are demanding that the Board of Appeals delay its decision with regards to making "reasonable accommodations" until the completion of certain events because it is in the best interest of the Town to do so and because delaying the decision does not subject the applicant to any unnecessary or additional delays to the proposed project. We ask that the Town establish written standards for granting "reasonable accommodations" that could be used by the Board of Appeals in the 362 Middlesex Ave project as well as any future projects that may require such accommodations. We also ask that the Board of Selectmen use this time to explore the possibility of appointing a replacement member to the Board of Appeals to fill in for Mr. Veerman with regards to the 362 Middlesex Ave application. Since the applicant's request for "reasonable accommodations" is contingent upon the Planning Board decision being upheld, it would be a considerable waste of resources if the Planning Board decision is ultimately overturned.

In the very early stages of the proposed project at 362 Middlesex Ave, Mr. Michael Caira, the former Town Manager of Wilmington MA, acted as a "community liaison" for the project. Although he is no longer acting as a "community liaison" he made it known to the Board of Selectman and the Town Manager at a meeting on September 25, 2017 that he "... looked at this project the same way I would have looked at a project as a Town Manager." Mr. Caira introduced the potential applicants to town officials and spoke in favor of the project. According to the meeting minutes "Mr. Caira was adamant that the community's obligation to it's young residents does not end upon graduation. The Town needs to do more than talk about the problem". Mr. Caira's brother, Kevin Caira, is the current Chairman of the Board of Selectmen. If Kevin Caira does not add the items contained within this letter to the agenda for the Board of Selectmen Meeting that is currently scheduled to be held on Monday January 28, 2019 for public comment and Board action thereafter and fails upon receiving public comment at the January 28, 2019 meeting to move the Board to consider and vote upon these demands during said meeting, we will file a complaint with the Massachusetts State Ethics Commission on the basis of an improper effort to assist a sibling achieve personal goals by manipulating the topics discussed at the Board of Selectmen meeting.

Sincerely,

Concerned Citizens of Wilmington MA  
18 Church Street # 179, Wilmington, MA 01887

See Attached Signature Pages

cc: Atty. Silverstein  
Town of Wilmington Board of Appeals  
Town of Wilmington Board of Selectmen  
Town Clerk  
Town Manager

Signature Page Re:

January 22, 2019

Re: Applications for Approval of Construction of a  
Residential Drug Rehabilitation Facility at 362 Middlesex Avenue

To: Jeffrey Hull, Kevin Caira, Daniel Veerman, Members of the Town of Wilmington Zoning

Board of Appeals, and Members of the Town of Wilmington Board of Selectmen:

~~Joseph Bynnes~~ 9 Pinewood Rd. Wilm.

Joseph Bynnes 9 Pinewood Rd

~~Adam Hecht~~ Adam Hecht 10 PineWood Rd

~~Kelly Richards~~ Kelly Richards 31 Shady Lane

~~Share McNeeley~~ Share McNeeley 9 Shady Lane

~~Kim McNeeley~~ Kim McNeeley 9 Shady Lane Dr.

~~Suzanne Sullivan~~ Suzanne Sullivan 60 Lawrence St

~~Paul Meimaris~~ Paul Meimaris 27 Oakdale Rd

~~Joseph Reberic~~ Jacqueline Reberic 2 Judith Rd.

~~Joseph Reberic~~ Joseph Reberic 2 Judith Rd

Jane Ammon 36 BIRKWOOD RD

Pete Ammon 36 BIRKWOOD RD

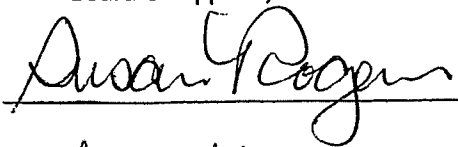
Signature Page Re:

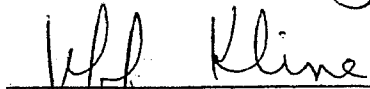
January 22, 2019


Re: Applications for Approval of Construction of a Residential Drug Rehabilitation Facility at 362 Middlesex Avenue


To: Jeffrey Hull, Kevin Caira, Daniel Veerman, Members of the Town of Wilmington Zoning


Board of Appeals, and Members of the Town of Wilmington Board of Selectmen:

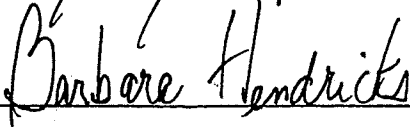
 Susan Rogers 10 Shady Ln. Dr.

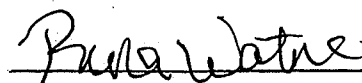
 JEFF KLINE 34 Oakdale Rd


 David Sargent 8 North St

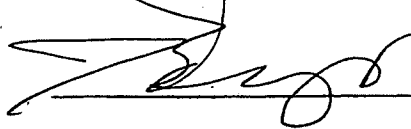
 Ethan Sawyer 58 Lawrence St

 Sharon Sawyer 58 Lawrence St.

 Barbara Hendricks 59 Lawrence St.

 Rina Watne 52 Lawrence St.

 Dan Watne 52 Lawrence St.

 Janice Sawyer 58 Lawrence St



28 State Street  
Boston, MA 02109-1775  
p: 617-345-9000 f: 617-345-9020  
hinckleyallen.com

Kelley A. Jordan-Price  
kprice@hinckleyallen.com

December 12, 2018

**VIA HAND-DELIVERY**

Town of Wilmington Board of Appeals  
Town Hall  
121 Glen Road  
Wilmington, MA 01887

**Re: Opposition to Request for Special Permit to Construct Forty-Eight (48) Bed  
Rehabilitation Facility at 362 Middlesex Avenue, Wilmington, MA  
Board of Appeals Case 7-18**

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Dear Board Members:

I write on behalf of 16 residents living in the residential neighborhood that directly abuts the property located at 362 Middlesex Avenue in Wilmington (the "Property"). We submit this letter in connection with the Special Permit Application (the "Application") filed by Bettering LLC (the "Petitioner") with the Town of Wilmington Board of Appeals (the "Board of Appeals" or the "Board"), for a special permit, pursuant to Sections 3.4.6, 6.1.3 and 6.1.4 of the Wilmington Zoning Bylaw (the "Bylaw"), "to construct a forty-eight (48) bed rehabilitation facility over the site of the razed building [previously] located at the Property." See Application for Hearing filed on 1/10/18. As explained in further detail below, the proposed use – which we understand is not a generic rehabilitation facility but, rather, is actually a privately owned, for-profit, acute detoxification ("detox") facility – is not a permitted use under the Bylaw. Moreover, even if an acute detox facility were a permitted use under the Bylaw, the Board should nevertheless exercise its discretion to deny a special permit for the proposed use because, among other things, the proposed use is not in harmony with the general purpose and intent of the Bylaw and otherwise fails to comply with all of the Bylaw's requirements.

The Property is situated within a General Business ("GB") District in Wilmington. The Property directly abuts a Residential District where numerous families with infants and toddlers, as well as grade school and high school-age children, all reside. In addition, the Property is located just a few hundred feet away from a school bus stop, where school-aged children congregate on a daily basis on their way to and from school. The Petitioner has made application for a special permit pursuant to Section 3.4.6 of the Bylaw, claiming that the detoxification facility is a "Hospital" or "Nursing Home" within the meaning of the Bylaw. Assuming the Petitioner took appropriate steps to effectuate a zoning freeze and is grandfathered from current zoning under the Bylaw (an issue that the residents dispute and reserve all rights to challenge), hospitals and

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nursing homes are permitted uses in the GB District upon the issuance of a special permit from the Board. The Residents respectfully request that the Board deny the Application because the proposed use, namely an acute detox facility, does not meet the definition of hospital or nursing home under the Bylaw and, accordingly, is not a permitted use in the GB District upon the issuance of a special permit or otherwise.

Section 3.4.6 of the Bylaw defines "Hospital and Nursing Home" as a "[h]ospital, community health center, sanitarium, nursing, rest or convalescent home." See Bylaw at § 3.4.6. Although I understand that the Petitioner has been reticent to commit to specific terminology to classify the precise type of facility at issue, the Petitioner has characterized the facility as offering acute detox treatment, or short-term, first-stage treatment for patients withdrawing from drug and alcohol dependency. Given this description, the facility would likely be a Medically Monitored Inpatient Detoxification ("MMID") facility licensed pursuant to 105 CMR §164.133. As an initial matter, it should be noted that the Petitioner's failure to identify the specific type of facility at issue is grounds for denial of the Application. Indeed, Section 10.5.10 of the Bylaw clearly and unambiguously requires that "[e]ach application for a special permit . . . shall contain a complete description of the proposed use." See Bylaw at § 10.5.10. Because the Application does not contain any type of "description of the proposed use," let alone a "complete" one, but, rather, only generically references a "rehabilitation facility," the Application should be denied on that basis alone. In addition, Section 3.3.1 of the Rules and Regulations of the Wilmington Board of Appeals (the "Rules and Regulations") specifically requires that the following points "be identified and factually supported on the application form," namely that "the proposed use (conditions and character of operations) is in harmony with the general purpose and intent of the Wilmington Zoning Bylaw" and that the "use complies with all requirements of the Wilmington Zoning Bylaw." See Rules and Regulations at § 3.3.1. Here, once again, not only has the Petitioner failed to provide a complete description of the proposed use, but it has also failed to make any attempt whatsoever to explain how the proposed use, including its conditions and character of operation, would be in harmony with the general purpose and intent of the Bylaw and/or how the proposed use would otherwise comply with all requirements of the Bylaw. Again, these glaring procedural deficiencies, alone, warrant the denial of the Application.

Even if the Petitioner had appropriately set forth a complete description of the proposed use in the Application and had purported to explain how the proposed use and character of operations would be in harmony with the general purpose and intent of the Bylaw, the Application should nevertheless still be denied because the proposed use is not permitted in the GB District upon the issuance of a special permit or otherwise. The Bylaw use at issue is a "Hospital and Nursing Home," which, as noted above, is defined as a "[h]ospital, community health center, sanatorium, nursing, rest or convalescent home." An MMID facility, or some other type of alcohol and drug detox facility, simply cannot be considered a "hospital" or "nursing home" within the meaning of the Bylaw. Indeed, the definition of hospital and nursing home omits any mention of an MMID facility, in particular, or any type of detoxification facility, in general. An MMID facility or other similar type of detoxification facility is not a hospital, a community health center, a sanitarium or a nursing, rest or convalescent home. As such, it is not a permitted use in the GB District even upon issuance of a special permit.

Hospitals, and nursing and convalescent homes, on the one hand, and MMID and other types of detoxification facilities, on the other, are subject to entirely separate licensing and regulatory requirements in the Commonwealth. Hospitals are licensed by the Department of Public Health pursuant to General Laws Chapter 111, §§ 51-56 and 70, and are subject to regulations promulgated at 105 CMR § 130.000 *et seq.* Nursing and convalescent homes are regulated by the Executive Office of Health and Human Services/Department of Public Health pursuant to G.L. c. 111, Section 72 and the regulations codified at 105 CMR §151.000 *et seq.* MMID and other types of detoxification facilities are also licensed by the Department of Public Health, but pursuant to G.L. c. 111B, §§ 6, 6A and 6B; c. 111E, § 7; and c. 90, §§ 24 and 24D, and the entirely separate and distinct licensing and regulatory scheme set forth at 105 CMR 164.000 *et seq.* – regulations that were codified in 2008 – several decades after the hospital and nursing and convalescent home regulations were enacted. Furthermore, the regulations applicable to detoxification facilities define the term “facility” as “a substance abuse intervention or treatment agency that is publicly or privately owned, for-profit or not-for-profit” and make no reference to a hospital, community health center, sanitarium or nursing or convalescent home, directly, by reference, by implication or otherwise. *Id.* at § 164.006. Other sections of the regulations confirm that stand-alone MMID facilities/detoxification facilities are not hospitals or nursing homes. *See, e.g.,* 105 CMR 164.404 (regulation setting forth inspections of the physical plant provides, “If the residential facility is located in another facility such as a hospital or nursing home...”); *see also* definition of “Inpatient Detoxification Service” (“a residential program of substance abuse evaluation and withdrawal symptom care provided in freestanding or hospital-based settings”) (emphasis supplied). Stand-alone detox facilities, such as the one before the Board, are simply not hospitals or nursing homes. *See e.g., Turner v. Board of Appeals of Boxford*, 61 Mass. App. Ct. 647 (2004) (Court looks to different Massachusetts licensing statutes in upholding zoning board’s determination that “hospitals” do not constitute “veterinary hospitals”).

Also noteworthy is that fact that the definition of hospital and nursing home appeared in the Bylaw in its original enactment in or around the 1970s. At that time, MMID facilities and similar types of detoxification facilities were not in existence. As such, the drafters of the Bylaw did not -- and could not -- have intended to include the concept of MMID and/or acute detoxification facilities within the Bylaw definition of “Hospital and Nursing Home.”

The Residents urge that any attempt to broaden the statutory definition of hospital and nursing home to include MMID/acute detoxification facilities within its reach be resisted. The Bylaw, of course, is a prohibitive bylaw, providing, in pertinent part, that “[i]t is the intent of this Bylaw to prohibit in any district any use which is not specifically permitted herein . . .” *See, e.g., APT Asset Management, Inc. v. Board of Appeals of Melrose*, 50 Mass. App. Ct. 133, 139 (2000) (bylaw is considered prohibitive, rather than permissive, where it provides that uses not expressly authorized are prohibited). Because the definition of “Hospital and Nursing Home” omits any reference whatsoever to an MMID or detoxification facility, these types of facilities are simply not permitted under the Bylaw.

Even if the type of detoxification facility at issue fell within the Bylaw definition of “Hospital” or “Nursing Home,” the Board should nevertheless exercise its discretion to deny the Application. The Bylaw provides that a “special permit is a permit to use property for the

purpose specified and shall not reverse, alter or vary any provision of this Bylaw applicable thereto.” See Bylaw at § 10.5. Because MMID and/or detoxification facilities do not fall under the definition of “Hospital and Nursing Home” under the Bylaw, the Board should not bend the definition to allow this type of use by special permit as to do so would be violative of the Bylaw. Furthermore, in rendering a special permit decision, the Board must specifically find that “the proposed use is in harmony with the general purpose and intent of [the] Bylaw” and that the “use complies with all of the requirements of [the] Bylaw. See Bylaw at § 10.5. The Bylaw further provides that the Board “shall also make such further findings as it deems appropriate and may impose such additional conditions, safeguards and limitations as it deems appropriate to protect the surrounding neighborhood . . .” *Id.* In addition, in rendering its decision, the “board must act fairly and reasonably on the evidence presented to it, keeping in mind the objects and purposes of the enabling act and the bylaw.” *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 638-639 (1970).

The “Purpose” of the Bylaw is set forth in Section 1.2 and provides, in part:

The purpose of this Bylaw is to implement the zoning powers granted to the Town of Wilmington under the Constitution and Statutes of the Commonwealth and includes, but is not limited to, the following objectives: . . . to secure safety from fire, flood, panic and other dangers . . . to conserve the value of land and buildings . . . to encourage the most appropriate use of all land . . . throughout the town . . . and to preserve and enhance the development of the natural, scenic and aesthetic qualities of the community.

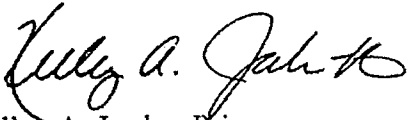
The proposed use – an acute detoxification facility in a general business district that directly abuts a residential neighborhood and which is just feet away from a bus stop where school-aged children gather and congregate several times a day -- does not advance but, rather, directly undermines several objectives of the Bylaw, including securing safety from various dangers, encouraging the most appropriate use of land, and preserving and enhancing the qualities of the community. Furthermore, the Petitioner has not -- and cannot -- explain how this facility would satisfy the objectives of the Bylaw and/or would not detrimentally impact the surrounding neighborhood. Statistics/studies show the elevation in crime rates and significant diminution in property values in residential communities surrounding these very types of facilities. Moreover, the Property is located right across the street from a liquor store and bar, as well as various establishments containing public bathrooms. These are the very types of places where, statistics and studies again show, individuals leaving detox facilities tend to gravitate towards, given the high rate of immediate relapse. This is simply not an appropriate location in the Town for this type of facility – from several perspectives, including the impact that the location would have not only on neighborhood residents but also on the patients themselves. In short, the proposed use is not in harmony with the Bylaw, and there are no safeguards or limitations that could be put in place to adequately protect the surrounding neighborhood, thus rendering the proposed use at this location inappropriate for special permit consideration. As such, the Residents respectfully request that the Board deny the Application.

The proposed project is riddled with other issues. For example, I note that the Application indicates that the Petitioner is seeking relief under Sections 6.1.3 and 6.1.4 of the Bylaw for "Nonconforming Uses" and "Nonconforming Structures." The bare-bones materials submitted by the Petitioner omit any reference to nonconforming uses and/or structures, and, as such, it is impossible even to begin to evaluate the type of relief that may be requested here. This failure, again, warrants denial of the Application pursuant to Section 10.5.10 of the Bylaw and Section 3.3.1 of the Rules and Regulations. In any event, to the extent the Petitioner seeks any such relief, the relief cannot "be substantially more detrimental to the neighborhood than the existing" nonconforming use and/or structure. Given what we know of the proposal so far, it would be inconceivable how the proposal could satisfy those standards. In addition, there may be other dimensional and frontage issues concerning the proposal, which would need to be evaluated carefully. I also understand that there are issues with inappropriate septic flow rates being utilized.

The Residents acknowledge and appreciate the severity of the opioid epidemic and the need for communities to provide treatment services to its residents. This opposition is in no way meant to suggest that Wilmington is not an appropriate community in which to place an MMID or other type of detoxification facility. Careful consideration, however, needs be put into the selection of potential, appropriate locations in the Town for the placement of such facilities – a process that has already taken place in the Town through the Bylaw amendments that were enacted this past year. These amendments expand the definition of Hospital and Nursing Home to include a Detox Facility and allow the placement of such facilities in certain Industrial Districts upon the issuance of a special permit. The Board should not shoehorn the use into a Bylaw definition that was not intended to encompass such a use or otherwise through the special permit process that would not further but, rather, would undermine the general purpose and intent of the Bylaw.

Thank you for your consideration of the above. If we can provide any further information to the Board at this time, please let us know.

Very truly yours,



Kelley A. Jordan-Price  
KAJP/md

cc: Kelly Richards  
Kaelan Richards  
Christine Prendergast  
Patrick Prendergast  
Kimberly McNeeley  
Shane McNeeley  
Mary Jane Byrnes  
Joe Byrnes  
Paul Meimari  
Adriana Reguera  
Peter Mullarky  
Joan Mullarky  
Frank Lafleur  
Jane Ammon  
Robert Doucette  
Susan Rogers