

COMMONWEALTH OF MASSACHUSETTS  
TOWN OF MANCHESTER-BY-THE-SEA

OCTOBER 16, 2017 TOWN MEETING WARRANT

Essex, ss.

To any of the Constables of the Town of Manchester-by-the-Sea:

Greetings:

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn the inhabitants of the Town of Manchester-by-the-Sea qualified to vote in elections, to meet in the Memorial School, on Lincoln Street, in Manchester-by-the-Sea, on Monday, the sixteenth day of October, two thousand and seventeen AD, at seven o'clock in the evening, for the purpose, to wit:

**ARTICLE 1:** To see if the Town will vote to amend the Town's Zoning Bylaw by deleting the current language of Section 6.1.2 and replacing it in its entirety with the following new language, or take any other action related thereto:

**6.1.2 Changes, Extensions and Alterations:**

A nonconforming structure or use may be changed, extended or altered, provided that the Board of Appeals grants a special permit after finding that the resulting structure or use would not be substantially more detrimental or injurious to the neighborhood than the existing structure or use. This requirement does not apply either to: (a) alteration, reconstruction, extension or structural change to a single or two-family residential structure that would not increase the non-conforming nature of the structure; or (b) any alteration, reconstruction, extension or structural change to a single or two-family residential structure on a lot with insufficient area, frontage, or width, provided that (i) the lot contains at least 50% of the area, frontage, and width required for a buildable lot pursuant to Section 5.4 of the Zoning By-law, (ii) the footprint of the structure would not increase by more than 50% and (iii) the remaining requirements of Sections 5.4 and 5.5 of the Zoning By-Law would be satisfied by the proposed alteration, reconstruction, extension or structural change.

Per petition of the Planning Board and ZBA

**ARTICLE 2:** To see if the Town will vote to amend the Town's Zoning Bylaw by adding a new Section 6.20, TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS, as follows, or take any other action relative thereto:

**Section 6.20.1 Purpose**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016 by Chapter 351 of the Acts of 2016 and thereafter, on July 28, 2017 by Chapter 55 of the Acts of 2017) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by

March 15, 2018 and to begin accepting applications for licenses no later than April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a “Recreational Marijuana Establishment”), as defined in G.L. c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

### **Section 6.20.2                      Definition**

“Recreational Marijuana Establishment” shall mean a “marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.”

### **Section 6.20.3                      Temporary Moratorium**

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through December 31, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

**ARTICLE 3:** To see if the Town will vote to amend the Town’s Zoning Bylaw Section 7.4.1 by reducing the terms of members of the Zoning Board of Appeals from 5 years to three years, and amending the language for appointments, with text to be added shown in bold and text to be deleted stricken through, or to take any other action related thereto:

#### Section 7.4.1: Board of Appeals – Appointment; Organization

The Board of Appeals, also known as the Zoning Board of Appeals, shall consist of five regular members and two associate members appointed by the Board of Selectmen for ~~five~~ **three** year terms. The regular members shall be appointed such that the term of **at least** one member shall expire each year. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall elect one of its members as chairman and one of its members as clerk, each to serve for a one year term. Two associate members shall be appointed such that their terms do not expire the same year.

**ARTICLE 4:** To see if the Town will vote to amend the Town’s Zoning Bylaw by updating the maps referenced in Section 4.8.2 as follows, with text to be added shown in bold and text to be deleted stricken through, or take any other action relative thereto:

**Section 4.8.2.1** The Flood Plain District is herein established as an overlay district. Any use otherwise permitted in the underlying district is permitted as a matter of right in the Flood Plain District, provided the use meets the following additional requirements and those of the Massachusetts State Building Code dealing with construction in flood plains and coastal high hazard areas as applicable. The Flood Plain District includes all special flood hazard areas within the Town of Manchester-by-the-Sea designated as Zone A, AE, AH, AO, or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Manchester-by-the-Sea are panel numbers 25009C0429F dated July 3, 2012; and panel numbers 25009C0431G, 25009C0432G, 25009C0433G, 25009C0434G, 25009C0441G, 25009C0442G, 25009C0451G, **25009C0453G, 25009C0454G**, and 25009C0475G, dated July 16, 2014. The exact boundaries of the District shall be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2013, **as those documents were updated by FEMA Letter of Map Revision (LOMR) dated March 12, 2017, for panels 25009C0453G and 25009C0454G, effective as of July 25, 2017.** The FIRM, ~~and~~ FIS booklet, **and LOMR** are ~~both~~ incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Director of Public Works.

**Article 5:** To see if the Town will vote to designate and dedicate as conservation land and Article 97 property for the purposes of protecting public water supplies, fresh and coastal water quality, and open space, the parcels listed below which were acquired by the Town by tax possession, and transfer the care, custody and control of said parcels from the tax title custodian for tax title purposes to the Conservation Commission pursuant to Mass. General Laws Chapter 40, Section 8C, or take any other action relative thereto:

| <i>Deed Acreage</i> | <i>Assessors Reference</i> | <i>Assessed Value</i> | <i>Initial Taking Book-Page (owner)</i> | <i>Affidavit of Low Value Book-Page (date)</i> | <i>Deed to Town Book-Page (date)</i> |
|---------------------|----------------------------|-----------------------|---|--|--------------------------------------|
| 2.62 acres          | 63 0 33                    | \$13,100              | 5109-369 (MacWhinnie)                   | 5336-463                                       | 5361-775 (5/18/1966)                 |
| 1.673 acres         | 63 0 34                    | \$ 8,400              | 13597-182 (Fish)                        | 13914-233*                                     | 14941-414 (7/9/1998)                 |
| 1.5 acres           | 64 0 20                    | \$7,500               | 4708-530 (Davis)                        | N/A  | 5120-427 (10/31/1963)                |

\*Notice of foreclosure in tax lien case

Per petition of the Conservation Commission

**ARTICLE 6:** To see if the Town will vote to amend Sections 1, 3 and 12 of Article XXI of the General By-laws, as follows, with text to be added shown in bold and text to be deleted stricken through, or take any other action relative thereto:

Section 1        Affordable Housing Trust

There shall be a Manchester-by-the-Sea Affordable Housing Trust, the purpose of which shall be the **acquisition, creation**, preservation, **rehabilitation and support** of affordable housing in the Town **of** Manchester-by-the-Sea for the benefit of low and moderate income households. The Trust shall be governed by Trustees in accordance with Massachusetts General Laws Chapter 44, Section 55C and the authority granted by Town Meeting, as revised from time to time.

Section 3        Purposes

The purpose of this Trust shall be the **acquisition, creation**, preservation, **rehabilitation and support** of affordable housing in the Town of Manchester-by-the-Sea for the benefit of low and moderate income households and in furtherance of this purpose, to acquire by gift, purchase, or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property, both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that all property comprising this Trust and the net earnings thereof shall be used only in the Town exclusively for the benefit of all of the inhabitants of the Town of Manchester-by-the-Sea for the purposes for which this Trust was formed and no part of the activities of the Trust shall consist of propaganda or otherwise attempting to influence legislation or participation in or intervention in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office and no part of the net earnings of this Trust shall inure or be payable to or for the benefit of any private individual or corporation.

Section 12       Accounts

The Town Treasurer shall be responsible for:

- a) The preparation, maintenance and fair presentation of the books and records of the Trust in accordance with accounting principles generally accepted in the United States of America; which includes the design, implementation and maintenance of internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. And
- b) To have these Trust accounts and statements audited annually by an independent auditor in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Governmental Auditing Standards* issued by the Comptroller General of the United States of America together with the auditor's Opinions and Management Letter.

**Nothing herein shall be deemed to limit the Trustees' authorities, powers and duties as otherwise set forth in this Bylaw and any applicable state or federal law. The Trust may utilize the services of Town staff, consultants, employees, and/or officials,**

**upon such terms and conditions as mutually agreeable between the Town and Trust, to effectuate the purposes of the Trust.**

**ARTICLE 7:** To see if the Town will vote to amend the General By-laws by adding a new SECTION 30A to ARTICLE X, POLICE AND OTHER REGULATIONS, as follows:

SECTION 30A: No Parking Zones

- A. Parking on both sides of the following streets or portions of streets is prohibited, except (1) within 200 feet of religious institutions during organized services or ceremonies, and (2) when temporarily authorized by the Manchester By-the-Sea Police Department:

Beach Street (east of Tappan Street)  
Blossom Lane  
Cobb Avenue  
Eagle Head Road  
Masconomo Street  
Old Neck Road  
Proctor Street  
Sea Street  
Smith's Point Road  
Tappan Street

- B. The penalty for violation of this by-law shall be a fine of \$100. Each day of violation shall constitute a separate offense.
- C. The Manchester By-the-Sea Police Department shall enforce this by-law.

Per Citizen Petition

**ARTICLE 8:** To see if the Town will vote to amend Article X, Section 28.C.2 of the Town's General Bylaw by deleting from the first sentence the words "without a permit from the Board of Health," and by deleting the second sentence. As so amended, Section 28.C.2 would read in its entirety: **"No person or keeper may maintain more than a total of four (4) domesticated animals of the same species over the age of three (3) months"**.

Per Citizen Petition

**ARTICLE 9:** To see if the Town will vote to amend the Town's General Bylaws by adding a new Section 43 to Article X as follows, or to take any other action relative thereto:

## **CONSTRUCTION SITE ACTIVITY**

### **Section A. Definitions.**

For purposes of this Article the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Construction- Any activity requiring a building permit and any and all activity necessary or incidental to the erection, assembling, altering, installing, repair or equipping of buildings, structures, roadways, or utilities, including demolition, land clearing, grading, excavating, and filling and paving.

Demolition- Any dismantling, intentional destruction or removal of structures or portions thereof, utilities, public or private right-of-way surfaces, or similar property.

Domestic Power Equipment - Electrical, battery or generator powered equipment intended for use in residential areas by a homeowner on an intermittent basis. Examples include, but are not limited to, chain saws, log splitters, power saws, drills, grinders, lawn and garden tools.

Emergency- An occurrence or set of circumstances requiring immediate action involving:

- a. the restoration of public utilities; or
- b. the restoration of property to a safe condition following a public calamity; or
- c. the protection of persons or property from imminent exposure to danger.

Emergency Work - Work which is performed in an effort to alleviate an emergency.

Emergency Vehicle- Any vehicle being operated as part of emergency work.

Heavy Equipment- Commercial or industrial equipment such as motorized earth moving equipment, jack hammers, pavement breakers, pile drivers, trucks for loading and unloading dumpsters, tractor-trailers, and parking lot maintenance equipment.

Pavement Breaker - Any hydraulically or pneumatically powered impact device intended to cut or trench pavement, subbase macadam, gravel, concrete, or hard ground.

Person- Any individual, partnership, association, firm, company, trust, corporation, department, bureau or agency, or any other entity recognized by law as the subject of rights and duties and any person, as herein defined, operating under a contractual arrangement or agreement with the Town.

Pile Driver - An impact device designed or used for the driving of piles, columns and other supports into soil or other material by means of impact, vibrations, pressure, or other means.

## **Section B. Exceptions.**

The provisions of this Bylaw shall not apply to:

- A. Emergency Alert. The emission of sound for the purpose of alerting persons to the existence of an emergency.
- B. Emergency Work. The emission of sound in the performance of Emergency Work.
- C. Emergency Vehicles.
- D. Snow Removal. The emission of sound for the purpose of clearance or removal of snow.

- E. Explosives. The emission of sound resulting from the use of explosives when authorized by the Fire Department in accordance with Board of Fire Prevention Regulations, 527 CMR 13, and other relevant regulations and statutes of the Commonwealth of Massachusetts.
- F. The temporary, intermittent or occasional use of homeowner's domestic power equipment.
- G. Work done by or for the municipality as approved by the Board of Selectmen.

**Section C. Daytime-Only Construction Activities.**

The operation of Heavy Equipment, Pavement Breakers or Pile Drivers at Construction or Demolition sites shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday and shall be prohibited on Sundays and legal state or federal holidays.

**Section D. Enforcement and Penalties.**

The Building Inspector or his designee shall be responsible for the enforcement of this Bylaw.

This Bylaw may be enforced through any lawful means in law or equity, including, but not limited to, non-criminal disposition pursuant to G.L. c. 40, §21D. Violations of this Bylaw shall be punished by the following fines:

- (1) First Offense \$25.00
- (2) Second Offense: \$50.00
- (3) Third and Subsequent Offenses: \$100.00

**Section E. Notification.**

The Building Inspector will provide a copy of this Bylaw to any individual applying for any permit for work that might involve noise levels subject to this Bylaw but his failure to do so will not affect the enforceability of this Bylaw.

**Section F. Validity.**

The validity of any section or provision of this Bylaw shall not invalidate any other section of provision thereof.

**Section G. Effective Date.**

This Bylaw shall take effect upon compliance with the provisions of Massachusetts General Laws, c. 40, §32.

**ARTICLE 10:** To see if the Town will vote to create a Capital Stabilization Fund per MGL Chapter 40 Section 5B for the purpose of setting aside funds for future capital improvement projects, or take any other action relative thereto.

**ARTICLE 11:** To see if the Town will vote to amend Article IV, Section 4 of the Town's General Bylaw by deleting the \$50.00 threshold and replacing it with a reference to the thresholds established by state statute. The amended sentence is proposed to read as follows, with deleted language shown as struck through and inserted language shown as bold, or take any other action relative thereto:

Article IV, Section 4: Any board or officer in charge of a department may, with the approval of the Selectmen, sell any personal property not required by said department if the market value of such property as determined by the Selectmen does not exceed ~~\$50.00~~ **the threshold as established by MGL Chapter 30B, § 15 as may be amended**, and may sell any such personal property of greater value if the sale is made at a public auction or sealed bid with the joint authorization of the Selectmen and the Chairman of the Finance Committee. Sealed bids shall be invited by informing a sufficient number of interested parties to insure fair competition and by public advertisement by at least one insertion in a newspaper having a circulation in Manchester. Such invitations shall state when and where the items for sale can be viewed, and the time and place at which bids will be opened, and shall reserve to the Town the right to reject any and all bids. All bids shall be opened in public. If personal property of any value instead of being separately sold can be delivered to a vendor as part of the consideration for the duly authorized purchase by the town of other personal property, the Selectmen alone may authorize such a transaction. Notwithstanding the provisions of this section, any specific sale of any personal property may be made on any terms if specifically authorized by a vote of the town.

And you are directed to serve this warrant by posting attested copies thereof, one at the Town Hall Building, one at the Police Station, one at the Fire House, one at the Memorial School, and one at the Post Office, fourteen (14) days, at least, before the time of holding said meeting.

Hereof fail not to make due return of this warrant, with your doings thereon, to the Town Clerk three (3) days before the day of this meeting.

Given under our hands at Manchester-by-the-Sea, aforesaid, this 25<sup>th</sup> day of September, 2017.

BOARD OF SELECTMEN

\_\_\_\_\_  
Eli G. Boling, Chairman

\_\_\_\_\_  
Susan M. Beckmann, Vice Chairperson

\_\_\_\_\_  
Arthur K. Steinert

\_\_\_\_\_  
Thomas P. Kehoe

\_\_\_\_\_  
Margaret F. Driscoll

To the Town Clerk:

I have served the foregoing Warrant by posting attested copies thereof as directed by the By-Law of the Town and the Commonwealth.

\_\_\_\_\_  
Constable

\_\_\_\_\_  
Date of Posting

\_\_\_\_\_  
Received by Town Clerk

NOTE: The Board of Selectmen and the Finance Committee will be making their recommendations on the articles on the Town Meeting floor.