

COMMONWEALTH OF MASSACHUSETTS
Worcester, ss.

To either of the Constables of the Town of Berlin in the County of Worcester:

Greetings: In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the inhabitants of said Town, qualified to vote in elections and in Town affairs, to meet at the Berlin Memorial School in said Berlin on Monday, the 15th day of October, 2018 next, at 7:00 o'clock in the evening, then and there to act on the following articles, or in relation thereto:

TOWN ADMINISTRATOR FORM OF GOVERNMENT SPECIAL LEGISLATION

ARTICLE 1: To see if the Town will vote to authorize the Selectmen to petition the Massachusetts Senate and House of Representatives in General Court to approve a Special Act titled "An Act Establishing a Board of Selectmen-Town Administrator Form of Government for the Town of Berlin" as printed below:

AN ACT ESTABLISHING A BOARD OF SELECTMEN – TOWN ADMINISTRATOR FORM OF GOVERNMENT FOR THE TOWN OF BERLIN

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. The Town of Berlin, hereafter referred to in this Act as "Town" shall be governed by this act. To the extent that this act conflicts with existing General Laws and special acts, this Act shall govern.

SECTION 2. The executive powers of the Town shall be vested in the Board of Selectmen, hereafter referred to in this Act as "Board", who shall have all the powers given to boards of selectmen by the General Laws, except as otherwise provided herein.

The Board shall serve as the chief goal-setting and policy-making agency of the Town. The duties and responsibilities for day-to-day management of the Town shall be delegated to the Town Administrator, hereafter referred to in this act as "Administrator." The Board shall act through the adoption of policy directives and guidelines, which shall be implemented by the Administrator and the officers and employees appointed by, or pursuant to the authority of, the Board. Individual members of the Board shall not purport to represent the Board or exercise the authority of the Board, except when specifically authorized by the Board.

The Board shall:

- (1) promulgate rules and regulations; and issue interpretations in order to implement policies and to carry out its responsibilities under state law, Town by-laws, and this Act;
- (2) exercise, through the Administrator, general supervision over all matters affecting the interests or welfare of the Town;
- (3) appoint the department heads, Town Counsel and joint appointments, except: (i) those positions elected by the voters, (ii) those positions appointed by elected officials, and (iii) those positions appointed by the Chief of the Fire & EMS Department of the Town; provided, that the Board may make appointments to temporary posts and committees the Board creates for special purposes; provided, further that the Board may make appointments for any position not otherwise referenced in this paragraph; and provided, further that the Board may appoint any open position in the Town, if the authorized appointing or hiring authority fails to fill a position within ninety (90) days of a vacancy;
- (4) have general administrative oversight of such boards, committees and commissions appointed jointly or severally by the Board;
- (5) serve as the licensing board and have responsibility over and authority for other quasi-judicial functions provided by the General Laws and the Town By-Laws;
- (6) issue all Town Meeting warrants;
- (7) review the annual proposed budget submitted by the Administrator, make recommendations with respect to the annual proposed budget as the Board deems advisable and present the budget and recommendations to the Finance Committee of the Town for its review and recommendations;
- (8) appoint an Administrator who shall: (i) be a person with the executive and administrative qualifications, especially fitted by education, training and experience, to perform the duties of the office; and (ii) not have served in an elective office in the Town for at least twelve (12) months prior to appointment; provided, that the Board may establish such additional qualifications as it deems necessary and appropriate; provided, further that the identification and screening of appropriate candidates shall be coordinated by a hiring committee that includes both employees and residents of the Town; provided, further that the Administrator shall not be required to be a resident of the Town or the Commonwealth at the time of appointment, nor at any time during the period of such service; provided further, that the Administrator shall not be subject to the Personnel By-Law of the Town, except as referenced in the Administrator's employment contract; and provided further, that the Board may reappoint the Administrator;

- (9) enter into an employment contract for a term of not more than three (3) years with an Administrator for salary, fringe benefits and other conditions of employment, including but not limited to: severance pay, reimbursement for expenses incurred in the performance of the Administrator's duties, liability insurance, conditions of discipline, termination, dismissal and reappointment, performance standards and leave;
- (10) set the compensation for the Administrator; provided, however that the compensation set by the Board shall not exceed an amount appropriated by the Town Meeting;
- (11) designate a qualified person in the event of a temporary absence of the Administrator for longer than twenty (20) working days, or in lieu of an appointee under Section 4.23, or in the event of a vacancy in the position, to serve as Interim Administrator, provided that the appointment of an acting Administrator shall be for a period not to exceed one hundred and eighty (180) days, but one renewal may be voted by the Board not to exceed a second six (6) month period, and further provided compensation for such person shall be set by the Board, and
- (12) suspend or remove the Administrator, by a majority vote of the Board, at any time, for cause following a formal procedure, including: (i) a written intent to suspend or dismiss, (ii) a written response and (iii) a public hearing; provided, that the public hearing shall be completed within thirty (30) days after the issuance of a written intent to suspend or dismiss, in accordance with the terms of the Administrator's contract.

SECTION 3. The Administrator shall be the chief administrative officer and chief financial officer of the Town and shall act as the agent for the Board. The Administrator shall be responsible to the Board for coordinating and administering all Town affairs under the jurisdiction of the Board, and all functions and activities for which the Office of Town Administrator is given authority, responsibility or control by this special act, by-law, town meeting vote, vote of the Board or otherwise. The Administrator's powers and duties shall include those outlined in Sections 4 to 7, inclusive.

SECTION 4. The Administrator shall supervise, manage and coordinate the day-to-day activities of all Town departments and employees under the jurisdiction of the Board and coordinate all activities of said departments with the activities of other departments under the jurisdiction of other elected officials, boards and commissions. The Administrator shall:

- (1) consult and advise the Board regarding the Board's policies and implement those policies;
- (2) advise the Board as to the needs of the Town and recommend to the Board, other elected Town officers and agencies such measures requiring action by said Board, other elected Town officers and agencies or by the Town Meeting as the Administrator may deem necessary or expedient. The Administrator shall keep the Board informed on issues affecting the administration and governance of the Town, in a timely manner;
- (3) attend all meetings of the Board, except when excused by the Board chair, provided however that the absence of the Administrator shall in no way prevent the Board from meeting, and consult with and advise the Board on all matters that come before the Board;
- (4) attend all Town Meetings and advise the Town Meeting on all warrant articles within the jurisdiction of the Board or the Administrator;
- (5) attend Finance Committee meetings as necessary and keep the Finance Committee informed on all matters under the jurisdiction of the Administrator that come before the committee;
- (6) manage, supervise and be responsible for the efficient administration of all departments, commissions, boards and offices under the jurisdiction of the Board; provided, however, that the Administrator shall not exercise any control over the discretionary power vested by statute in any such board, committee, commission or officer;
- (7) supervise and direct the activities of the Town's departments, boards, commissions and officers under the jurisdiction of the Board on the effective date of this Act and other departments, as may be assigned by general by-laws of the Town or any general or special law, including this Act; provided, that for this purpose, the Administrator shall have authority to require the persons so elected, or their representatives, to meet with the Administrator, at reasonable times, for the purpose of effecting coordination and cooperation among all agencies of the Town; provided, further that the Administrator shall have the right to attend and speak at any meeting of any multiple member body;
- (8) reorganize, abolish, consolidate or establish a department or position under the Administrator's authority for more efficient use of Town resources, as the Administrator deems appropriate, subject to the approval of the Board before implementation, and to additional funding by Town Meeting as necessary;
- (9) act as chief procurement officer for the Town, in accordance with Chapter 30B of the General Laws, and appoint such assistant procurement officers as provided in said Chapter 30B; establish and enforce procurement policies and guidelines in accordance with applicable state laws; be responsible for purchasing all supplies, materials, services and equipment for the departments under the jurisdiction of the Board; have the authority to award and sign contracts that do not exceed fifty thousand dollars (\$50,000.00), commonwealth highway contracts, and state and federal grants; provided, that a contract that exceeds fifty thousand dollars (\$50,000.00) shall require the approval of the Board; provided further, that the Administrator shall have the authority to sign a contract approved by the Board on behalf of the Town; and provided further, that contracts and grants signed by the Administrator shall be promptly reported, in writing, to the Board;
- (10) keep a full and complete inventory of all Town property, both real and personal;
- (11) administer the Town's insurance policies, including claims settlement; provided, however, that all insurance contracts and claims settlements shall receive the approval of the Board;

- (12) manage and oversee the use, maintenance, repair, security and, with the approval of the Board, regulate the rental for all the Town land and buildings that fall under the jurisdiction of the Board, except for schools, libraries and lands held for conservation purposes; provided, that other municipal boards may request that the Administrator coordinate the maintenance and repair of the land and buildings under their jurisdiction;
- (13) work with Town Counsel, with the approval of the Board, to prosecute, defend and settle all litigation for or against the Town, subject to such appropriation as may be necessary to effect settlement, except litigation involving only the school department or its officers and employees;
- (14) delegate, authorize or direct any employee appointed under the jurisdiction of the Board to exercise any power, duty or responsibility which the Administrator is authorized to exercise;
- (15) be responsible for coordination of operational and strategic planning for the Town;
- (16) keep complete records of the office of the Administrator and annually submit a full report of the operations of the office to the Board, unless requested to do so more frequently by the Board;
- (17) respond to and coordinate local response to emergency situations in conjunction with public safety officers;
- (18) establish and maintain positive community relations with local organizations, groups and residents and act as Town liaison with local, state, and federal agencies;
- (19) receive and act on questions and complaints filed with the Board or the Administrator and inform the Board of the status of the resolution as appropriate;
- (20) serve as the Board's public relations officer, including the preparation of news releases and acting as the Board's spokesperson when so authorized;
- (21) prepare for the Board's review and approval the warrants for all town meetings, in conjunction with Town Counsel as necessary, including any related ballot questions, to ensure that they are proper and legal and that there are sufficient funds available for implementation;
- (22) perform any other duties or tasks assigned by the Board, assigned by the Town Meeting or mandated by applicable general or special law; and
- (23) designate, during a temporary absence, with the approval of the Board, a qualified administrative employee or officer, except a Board member, the Town Moderator, a member of the School Committee or a member of the Finance Committee, to exercise the powers and perform the duties of the Administrator for not more than twenty (20) working days, provided that the delegation shall be made in writing and shall be filed with the Town Clerk and the Board, provided further that the powers and duties of this temporary or acting administrator shall be limited to exercising the authority of the Administrator with respect to matters not admitting of delay including making temporary, emergency appointments or designations to Town office or employment but not to make permanent appointments or designations.

SECTION 5. The Administrator shall exercise overall responsibility for human resources for the Town including, but not limited to: authority for hiring, supervision, evaluation, discipline and removal of Town employees under the jurisdiction of the Board. The Administrator shall:

- (1) assist the Personnel Committee in the implementation and administration of the Personnel By-Laws of the Town and salary and classification plan;
- (2) coordinate the recruitment and screening of suitable candidates for consideration and appointment as department heads by vote of the Board; provided, that the Administrator shall provide the Board with relevant material for the evaluation of not more than five (5) candidates; provided further, that if the Board does not appoint any of the candidates, the Administrator shall continue to present candidates until a candidate is appointed; and provided further, that any department head may be removed by vote of the Board after consultation with the Administrator;
- (3) appoint and remove individuals under the jurisdiction of the Board except for department heads and Town Counsel, and except as may otherwise be provided by law; provided, that the Administrator shall consult appropriately prior to appointing and provide notice to the Board of the anticipated appointment and the terms and conditions of employment for the appointment which the Board shall approve or disapprove within fourteen (14) days of the notice; provided, further, that a failure of the Board to act within the fourteen (14) day period shall be deemed approval of the appointment and the terms and conditions thereof; and provided further, that the termination or removal of positions so appointed shall be subject to the same appointment notice and approval requirements;
- (4) assist all other hiring authorities in search, selection, and hiring processes for their direct reports;
- (5) recommend individuals to the Board for appointment to any open position in the Town, if the authorized appointing or hiring authority fails to fill a position within ninety (90) days of vacancy;
- (6) be responsible for the supervision, management, evaluation and discipline of the other Town employees under the jurisdiction of the Board, the annual performance evaluations of the department heads and shall oversee the performance evaluation program conducted by the department heads for employees within their respective departments;
- (7) act on behalf of the Board in the grievance process pursuant to collective bargaining agreements; provided that the Board may provide advice and guidelines to the Administrator;
- (8) administer the Personnel By-Law and collective bargaining agreements entered into by the Town and work with the Personnel Committee to develop and implement personnel policies and procedures for all Town employees, except the school department; provided, that with respect to the Fire and EMS Department, the authority granted to the Administrator in this clause shall be subject to Section 42 of Chapter 48 of the General Laws;

- (9) negotiate all collective bargaining agreements on behalf of the Town, except the school department, with the approval of the Board; provided, that the Administrator may seek the assistance of counsel if the Administrator deems it necessary to effect successful negotiations; and provided further, that all final agreements shall be approved and executed by the Board;
- (10) establish compensation packages for all Town employees under the jurisdiction of the Administrator who are not subject to a collective bargaining agreement with the approval of the Board and in conjunction with the Personnel Committee; provided, that such compensation shall not exceed the amount appropriated by Town Meeting and shall be subject to all applicable laws and by-laws; and
- (11) have the power to inquire and make investigation, at any time, into the conduct and operation of office or performance of duties of any officer or employee, department, board, commission or other Town agency.

SECTION 6. The Administrator shall have the budgetary powers and responsibilities to:

- (1) establish dates by which the proposed budget, revenue statement and tax rate estimate are to be submitted to the Board;
- (2) prepare and present annually to the Board detailed budgetary estimates of amounts necessary for the administration of all Town boards, officers, committees, divisions and departments in the ensuing fiscal year, including both capital and operating items, and upon approval by the Board the Administrator shall present a requested proposed budget to the Finance Committee;
- (3) report on the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the Town together with an estimate of the necessary tax rate;
- (4) submit annually to the Board a five (5) year capital improvements program, or the same as approved by a formal Capital Planning Committee, including: (i) a list of all capital improvements and supporting data proposed to be undertaken during the next five (5) years; (ii) cost estimates, methods of financing and recommended time schedule; and (iii) the estimated annual cost of operating and maintaining any facility to be constructed or acquired;
- (5) ensure that all operating and capital budgets under the direct control of the Administrator are expended consistent with the relevant Town Meeting appropriation therefor; and coordinate with the governing bodies of departments not under the direct supervision of the Administrator to similarly ensure that their budgets are being expended consistent with law;
- (6) approve all payroll and expense warrants for payment of town funds prepared by the town accountant in accordance with Section 56 of Chapter 41 of the General Laws, and advise the board of the same; in the event of a temporary absence of the administrator, the board shall approve such warrants;
- (7) seek out, prepare, coordinate and file applications for state, federal and private grants; and
- (8) ensure that the complete and full records of the financial activity of the Town are maintained in accordance with state, federal laws and the Town by-laws and render quarterly reports to the Board, unless requested more frequently.

SECTION 7. The Administrator shall have access to all municipal books, papers and documents or information necessary for the proper performance of the duties of the Administrator. The Administrator may, without notice, cause the affairs of any division or department under the Administrator's supervision, or the conduct of any officer or employee thereof, to be examined.

SECTION 8. All laws, by-laws, votes, rules and regulations, whether enacted by authority of the Town or any other authority, that are in force in the Town on the effective date of this Act and are not inconsistent with this act shall continue in full force and effect.

SECTION 9. No existing contract, action at law, suit in equity or other proceeding pending on the effective date of this act shall be affected by this Act.

SECTION 10. This Act shall not impair the rights or obligations of any person holding a Town office or employed by the Town on its effective date, except those duties assigned by this Act to another officer or employer those duties that are subsequently assigned to another officer or employee pursuant to this act. No person who continues in the permanent full-time service or employment of the Town shall forfeit their pay, grade or time in service as a result of this Act.

SECTION 11. This act shall take effect upon its passage.

TOWN ADMINISTRATOR SEARCH PREP CONSULTANT

ARTICLE 2: To see if the Town will vote to transfer from available funds a sum not to exceed sixteen thousand dollars (\$16,000.00) for the purpose of engaging a consultant to assist the Town in the initial preparation of the hiring of a Town Administrator, said sum to be expended by the Board of Selectmen. (Town Management Study Committee)

Summary: The Town Management Study Committee is requesting these funds in order to allow the Board of Selectmen to work with a consultant to set up a hiring process for a Town Administrator. The typical timeline for the entire hiring process is 3-4 months, but a significant amount of groundwork can be done in advance, including development of the town profile and other search materials, and developing the recruitment plan.

AMENDMENTS TO REGIONAL SCHOOL AGREEMENT

ARTICLE 3: To see if the Town will vote to strike the following Section of APPENDIX I – APPORTIONMENT OF CHAPTER 70 AND REGIONAL TRANSPORTATION AID of the Berlin-Boylston Regional Agreement:

Regional Transportation Aid

Regional Transportation Aid shall be allocated its share of aid, based on its relative share of in-district students, according the following formula:

Boylston Elementary: $71AID = BORE / (BORE + BMFE + BBRE)$

Berlin Elementary: $71AID = BERE / (BORE + BMFE + BBRE)$

Berlin-Boylston Middle-High School: $71AID = BBRE / (BORE + BBFE + BBRE)$

and to replace said Section with the following language:

Regional Transportation Aid

Regional Transportation Aid shall be allocated its share of aid, based on its relative share of in-district students, according the following formula:

Boylston Elementary: $71AID = BORE / (BORE + BMRE + BBRE)$

Berlin Memorial: $71AID = BMRE / (BORE + BMRE + BBRE)$

Berlin-Boylston Middle-High School: $71AID = BBRE / (BORE + BMRE + BBRE)$

Or take any action relative thereto. (Berlin School Committee)

Summary: The above article is to correct acronyms used in the formula to allocate Regional Transportation Aid in the regional agreement.

HIGHWAY FY19 PAYROLL TRANSFER –SALARY TO PT WAGES

ARTICLE 4: To see if the Town will vote to transfer three thousand dollars (\$3,000.00) from FY19 Line budget Item 66 - Highway Salary, to FY19 budget item 68 - Highway PT Wages, or take any action relative thereto. (Board Selectmen)

Summary: This article shifts funds to permit the payment of interim PT wages for the retired Highway Supt. to provide hourly transitional assistance to the incoming Highway Supt.

C.O.A. FY19 PAYROLL TRANSFER –SALARY TO PT WAGES

ARTICLE 5: To see if the Town will vote to transfer twenty thousand dollars (\$20,000.00) from FY19 Line budget Item 83 COA Salary to FY19 budget item 84 COA PT Wages, or take any action relative thereto. (Board Selectmen)

Summary: This article shifts previously-approved funds from the salary cost line to the PT wages line of the COA budget to provide for the new PT COA Director.

MATCHING GRANT FUNDS

ARTICLE 6: To see if the Town will vote to raise and appropriate, borrow, or transfer from available funds the sum of fifteen thousand dollars (\$15,000.00) to fund the Town’s portion of any grants received which require a matching contribution by the Town, said sum to be expended by the Board of Selectmen, or take any action relative thereto. (Board of Selectmen)

Summary: This article provides funds that could be used to finance the Town’s share of so-called “matching grants” in order to qualify for various award opportunities if funds are not otherwise available in a requesting department’s budget.

FIRE – SELF CONTAINED BREATHING APPRATUS MATCHING GRANT

ARTICLE 7: To see if the Town will vote to raise and appropriate, transfer from available funds or borrow, or any combination thereof, nineteen thousand dollars (\$19,000.00) as a matching grant for the purpose of purchasing of new Self Contained Breathing Apparatus (SCBA) and related equipment, with expenditure dependent on the successful award of the corresponding federal grant for one hundred seventy thousand (\$170,000.00) or take any action relative thereto. (Fire/EMS Department)

Summary: This article is to replace our present SCBA gear.

FIRE/EMS - ADVANCED LIFE SUPPORT (ALS) OFFSET FUNDING

ARTICLE 8: To see if the Town will vote to raise and appropriate, transfer from available funds or borrow, or any combination thereof, thirty thousand dollars (\$30,000.00) for the purpose of addition to the expense portion of the Fire & EMS Department budget; or take any action relative thereto. (Fire/EMS Department)

Summary: This Article is to offset increasing costs for Advanced Life Support (ALS) services provided to the Town by area ALS Services. The Town ambulance operates at the Basic Life Support Level with Emergency Medical

Technicians. ALS provides Paramedic level of care for our patients in need of those services. Our calls for service have been increasing and a lot of our patients are older and many times have serious and or complex medical issues.

PUBLIC SAFETY - DORM SPACE DESIGN/ENGINEERING

ARTICLE 9: To see if the Town will vote to raise and appropriate, transfer from available funds or borrow, or any combination thereof, a sum of twenty five thousand dollars (\$25,000.00) for the purpose of designing and engineering the finish out construction of the second floor of the Public Safety Facility; or take any action relative thereto. (Police and Fire/EMS Departments)

Summary: This article is for approximately ten percent (10%) of the total cost of the project, set aside for the engineering and design layout of the second floor of the Public Safety Building. The rooms will consist of bunk rooms, bathrooms, office spaces, day room and kitchen. The present facilities have no accommodations for overnight coverage and we are short of office space.

MERGE/AMEND EARTHWORKS & LIKE KIND SOIL GENERAL BYLAWS

ARTICLE 10: To see if the Town will vote to amend the Town of Berlin General Bylaws by deleting both in their entirety: (1) Article XII "Earth Removal and Import"; and (2) Article XIX "Like Kind Soil". In their place, create a new Article XXII "Earth Removal and Import" as follows:

Article XXII - Earth Removal and Import

SECTION 1 – Purpose.

The purpose of this bylaw is to regulate earth filling operations for the protection of human health, public safety, welfare, and the integrity of the natural resources of the Town of Berlin

SECTION 2 - Establishment of Earthwork Board.

The Board of Selectmen shall serve as the Earthwork Board for the Town of Berlin

SECTION 3 – Applicability.

A. The filling of any lot or lots, not in public use, as part of a single project or series of related projects for any business, industrial, research or commercial building or multifamily residential development with greater than one hundred cubic yards (100 cy) in total of topsoil, soil, borrow, rock, sod, loam, peat, humus, clay, sand, gravel or stone or any other earth material ("earth material") within any twenty-four month period shall be done only in accordance with this bylaw.

B. The importation of any earth material as described in Section 3(a) above and/or fill imported into the Town may be done only if it is accessory, subordinate and incidental to the ongoing use of a property or proposed development or redevelopment project ("Project"). The importation of earth materials and/or fill is "accessory, subordinate and incidental" when the scale of the fill activity represents no more than that limited by the following standards:

1. Construction Projects: There shall be a one to one relationship between square feet of building area of the Project and the cubic feet of such fill. For example, if fill is required to support and enable the construction or reconstruction of several buildings with a combined total of 20,000 square feet of finished area, a maximum of 20,000 cubic feet of fill may be imported to the site.
2. Re-Grading: The applicant shall be required to demonstrate that the re-grading is necessary to achieve a specific objective for the use of the Property, rather than being done to provide a reason to import large quantities of earth materials and/or fill.

SECTION 4 -Work for which permit required; exemptions.

A. A permit shall be required under this by-law for the removal or importation of earth materials or fill in the course of excavation incidental to the construction of a principal use, accessory use and the installation of walks, driveways, parking lots and similar appurtenances to said principal or accessory use.

B. If a permit issues to import earth materials and/or fill, specific proposed deliveries may be rejected as set forth below; an issued permit does not serve to pre-approve all deliveries of imported earth material and/or fill.

C. Exemptions.

1. A permit shall not be required under this by-law for the removal of earth materials or importation of earth materials and/or fill incidental to the construction of a single-family residential building on a single parcel or lot of land for which a permit has been issued and to the installation of walks, driveways and similar appurtenances to said building; provided, that the quantity of material removed does not exceed that displaced by the portion of building, walk, driveway or similar appurtenances below finished grade or in the course of customary use of land for farming as defined in Massachusetts General Laws Chapter 128, Section 1A or agricultural composting as defined in 330 CMR 25.00 and 310 CMR 16.00.
2. The exemptions in paragraph (1) do not cover removal or importation of earth from the premises involving topographical changes or soil-stripping or loam-stripping activities, nor shall tentative or final approval of a subdivision plan be construed as authorizing the removal or importation of earth material from streets shown on the subdivision plan.

SECTION 5 – Importation Limitations and Prohibitions.

A. No earth materials and/or fill may be imported into any areas that fall within the jurisdiction of the Conservation Commission in any manner, for example due to the presence of wetlands, riverfront areas or the Buffer Zones it is charged with regulating without a valid Order of Conditions.

B. Imported earth material and/or fill may not contain debris, rebar, concrete, other building materials, clay, seashells, asphalt, glass or any solid waste of any kind. Imported materials must be soil and/or clean fill.

SECTION 6 - Earth Works Advisory Committee.

The Earth Works Advisory Committee (hereinafter referred to as the “Committee”) shall be established as follows and have the following powers and duties.

A. The Committee shall consist of five (5) members, the Building Inspector, a representative of the Conservation Commission, a representative of the Board of Health and two representatives shall be appointed by the Selectmen one (1) year terms.

B. The Committee shall file with the Board of Selectmen a written report, with recommendations, seven days (7) prior to each hearing of the Earthworks Board, and no such permit may be granted until such report has been filed.

SECTION 7 – Application Requirements.

A. An application for a permit shall be in writing and, among other documents required by the Earthwork Board, shall contain an accurate description of the portion of land from which earth is to be removed or to which earth is to be imported, shall state fully the purpose for the removal or importation thereof and shall include plans of the land involved in such form as the Earthwork Board may require. The Earthwork Board may charge reasonable fees for filing an application for earthwork. Upon receipt of an application for a permit for removal or importation of earth from or to any land, the Earthwork Board shall refer the application to the Earth Works Advisory Committee and appoint a time and place for a public hearing, notice of which shall be given to the applicant and shall be published at least twenty-one (21) days before such hearing in a newspaper of general circulation in town.

B. The following information shall be submitted with all applications:

1. The location of the proposed excavation;
2. The legal name and address of the owner of the property involved;
3. The legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder;
4. Property lines, names and addresses of all abutting property owners within three hundred (300) feet of the property line, including those across any streets;
5. A detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, at a scale of 1"-20', or as determined appropriate, showing the entire parcel of land based on a perimeter survey and showing existing topography by five (5) contours within one hundred (100) feet of, and including, the site of the proposed excavation or to the property line. This contour plan shall show locations of a sufficient number of test borings made to determine the average depth of top soil before excavation;
6. A detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, showing five (5) foot contours of the site as of the completion of the excavation project, all drawn to a scale acceptable to the Board. The plan shall further show the maximum depth that the applicant intends to excavate, the type of material the applicant intends to extract from the land, the manner and depth in which he shall replace the top soil, and the type of reseeded and planting he proposed to use;
7. Natural features such as wetlands, the 100 year flood plain, ground cover and surface and groundwater. Water-table elevation shall be determined by test pits and soil borings. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site;
8. A topographical map showing drainage facilities, final grades and proposed vegetation and trees;
9. Erosion and sediment-control plan;
10. The amount and cost of proposed restoration materials;
11. The proposed form of performance security to be used.

C. In addition to the above, the following information must be submitted with all applications for the importation of earth material and/or fill:

1. An existing conditions plan prepared by a registered land surveyor or civil engineer showing all man-made features, property lines, names and addresses of all abutters, existing topography at 5 foot contour intervals of the site and all land within 100 feet of the site, proposed 5 foot contours after the proposed filling is completed, the presence of wetlands and other resources including buffer zones that would trigger Conservation Commission jurisdiction, as well as existing driveways, septic systems, and vegetation. Where wetlands and other such resources are present, these must be established by an engineer’s delineation approved by the Conservation Commission if located closer than 250 feet from the proposed fill activity.

2. A list of proposed Generating Sites, i.e., the sites from which earth materials and/or fill has been removed, if known at the time of the Application. If not known at that time, such information shall be provided prior to any deliveries from a previously undisclosed Generating Site, which may or may not be approved by the Earthworks Board once disclosed.
 3. Deliveries from any proposed Generating Site shall be reviewed and approved by the Earthworks Board only upon a certification by a Licensed Site Professional that the proposed earth material is a match to the earth material at the Receiving Site.
 4. The quantity in cubic feet of material to be imported under the permit, including a calculation thereof prepared by a licensed engineer.
 5. Prior to the commencement of any fill deliveries or any individual phase of deliveries if there are to be several, the Applicant must provide to the Earthworks Board full documentation of the material to be imported to the Receiving Site. This material must include the name and address of those responsible for the removal of the material from the Generating Site and a full analysis of the composition of such soil, including lab reports establishing the nature of the substances contained within the soil. In addition, the Applicant must provide the Earthworks Board with full documentation of those who will undertake the transportation of such materials. The Earthworks Board has the authority to reject any proposed delivery based on the materials submitted pursuant to this sub-paragraph if it finds that the materials do not match sufficiently, or it finds that any such delivery will violate this Bylaw in any material respect. The rejection of a proposed delivery is not inconsistent with the issuance of a Permit; as this Bylaw specifically contemplates delivery by delivery analysis, review and approval.
- D. Local Transportation Plan. The Applicant must submit to the Earthworks Board a Transportation Plan showing proposed routes through the Town to the Receiving Site; dates and times of day of expected deliveries; measures for protecting Town roads, bridges, and vegetation within the Town's road rights of way; protection of property owned by others that might be affected by truck movement; and all other relevant logistics related to the transport of the materials within the Town. The Earthworks Board may condition any Permit with limitations on the volume of deliveries during specified time periods, times of deliveries, dust and fumes control, the location of any truck queuing, requirements of engine shut down during queuing and any other reasonable restriction aimed at protecting the health, safety and welfare of the residents of the Town, its property and the property of others. A permit may be denied by the Earthworks Board if it makes a finding that any of the above considerations are unlikely to be properly mitigated to its satisfaction regardless of conditions it might impose on the permit.
- E. Fees.
1. New permit: five hundred dollars (\$500.00).
 2. Renewal permit: two hundred fifty dollars (\$250.00).

SECTION 8 - Conditions for granting of permit.

A permit for removal or importation of earth materials and/or fill shall be granted only if the Earthwork Board determines that such removal or importation is neither detrimental to the neighborhood nor injurious to the recharge of the water table or the condition of surface water. The exercise of any permit granted under provisions of this by-law shall be subject to conditions, limitations and safeguards to be set forth therein by the Earthwork Board to protect the groundwater supply, health, welfare, convenience and safety of the public and to promote the best interests of the neighborhood and of the town. These conditions may include but are not limited to: method of removal; type and location of temporary structures; hours of operation; routes for transporting the material through the town; area and depth of excavation; distance of excavation from street and lot lines; steepness of slopes excavated; reestablishment of ground levels and grades; provisions for permanent and temporary drainage; disposition of boulders and tree stumps; replacement of loam over the area of removal; planting of the area to suitable cover; and inspection of the premises as permitted by law by the Earthwork Board or its representative.

SECTION 9 - Performance bond; duration of permit; public hearing.

The Earthwork Board may require, as a condition to the granting of a permit for the removal or importation of soil, loam, sand, gravel, stone or other earth material, that the permittee furnish cash, a certified check or a surety company bond to the town as obligee in a penal sum to be fixed by said Earthwork Board as it shall deem sufficient to cover the cost of the performance of all labor and material as shall be required to carry out all the conditions, limitations and safeguards as may be imposed by said Earthwork Board in connection with the removal or importation of the particular substances for which the permit is issued. No permit shall be issued under provisions of this by-law for a period of more than one (1) year, although permits may be renewed. Prior to issuing or renewing any permit, the Earthwork Board shall appoint a time and place for a public hearing, notice of which shall be given to the applicant and all abutters and shall be published at least twenty-one (21) days before such hearing in a newspaper having a circulation in the town.

SECTION 10 - Investigation of violations; suspension or revocation of permit.

If the Earthwork Board shall be informed or shall have reason to believe that any provision of this by-law or any permit or condition thereunder has been, is being or is about to be violated, the Earthwork Board shall make or cause to be made an investigation of the facts, and if the Earthwork Board finds any violation, the Earthwork Board shall

send a notice ordering cessation of the improper activities to the owner of the premises in question or his duly authorized agent and to the occupant of the premises. If, after such notice, the violation continues, the Earthwork Board or the Building Inspector may suspend any permit it has issued or take such other action as is necessary to enforce the provisions of the chapter and/or seek penalties as provided in MGL C. 40, § 21. Violation of this bylaw shall be punishable by a fine of fifty dollars (\$50.00) for a first offense; one hundred dollars (\$100.00) for a second offense and for each subsequent offence, two hundred dollars (\$200.00). Each day of violation shall constitute a separate offense. Any permit granted by the Earthwork Board may be revoked for cause shown, after a public hearing, notice of which shall be given to the permittee and shall be published at least seven (7) days before such hearing in a newspaper of general circulation in town. The suspension or revocation of a permit shall not relieve the permittee of his obligations thereunder, except at the discretion of the Earthwork Board.

SECTION 11 - Record of proceedings and decisions.

The Earthwork Board shall record all proceedings brought under this by-law in a book to be kept for that purpose and shall file in the office of the Town Clerk a copy of all decisions, and the said Town Clerk shall keep a proper index thereof.

SECTION 12 – Effective date.

This chapter shall take effect upon its approval by the Attorney General and publication as provided by law; provided, however, that any continuous earthwork activities in actual legal working operation on the date of enactment, may continue unaffected by this chapter until the termination date specified in said permit. Permits for operation of the latter activities will be required from this Board upon the termination of their existing permits.

SECTION 13 – Severability.

If any provision of this by-law shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions.

Or take any action relative thereto. (Selectmen)

CABLE ACCESS STATION FY19 FUNDING

Article 11: To see if the Town of Berlin will vote to appropriate from the Peg Access & Cable Related Fund a sum of forty two thousand five hundred dollars (\$42,500.00) to be used in accordance with the PEG Access grant and M.G.L. Chapter 44, Section 53F3/4, said sum to be expended by the Cable Access Committee (Cable Access Committee).

Summary: To appropriated money from the Peg Access & Cable Related Fund account for that cost related to the operations of Cable per the PEG Access agreement. The new modernization laws changed the way that we appropriated the funds and the article was overlooked at the annual town meeting giving the Cable Access Committee the ability to spend money.

SPECIAL ARTICLE CLOSE-OUT

ARTICLE 12: To see if the Town will vote to close out the following Special Article accounts in the total amount of forty thousand, one hundred twenty three dollars and thirty-eight cents (\$40,123.38):

	Funding From:	Art.# :	FY	Special Article Purpose:	Remaining balance:	Return to:
a.	Free Cash	Art 9 STM	2015	Selectmen – Inspectors Tablets	\$6,000.00	Free Cash/General Fund
b.	Raise & Appropriate	Art 25	2016	Selectmen – Energy Audit Pub Safety, Municipal Building and BMS	\$25,000.00	Free Cash/General Fund
c.	Free Cash	Art 21	2013	1870 Town Hall Generator Repairs	\$1,850.50	Free Cash/General Fund
d.	Highland Commons Public Safety	Art 26	2018	Fire & EMS Hydraulic Rescue Tools	\$106.23	Highland Commons Public Safety
e.	Free Cash	Art 15	2018	BMS – Dishwasher Repair/Replacement	\$4,126.80	Free Cash/General Fund
f.	Highland Commons Cultural	Art 18	2018	BMS – Swing Set Mats	\$870.50	Highland Commons Cultural
g.	Free Cash	Art 24	2015	BMS – Parking Lot Repairs	\$1,398.14	Free Cash/General Fund
h.	Highland Commons Cultural	Art 29	2017	Library – Two Computer Carrels	\$771.21	Highland Commons Cultural

To the stabilization fund, and/or transfer to another appropriation, and/or close out to the general fund, and/or to take any other action relative thereto. (Selectmen)

SUMMARY: The purpose of this article is to close out unspent special article accounts after the completion of a purchase or project.

ABANDONED FUNDS

Article 13: To vote to see if the Town will adopt Massachusetts General Law Chapter 200A, Section 9A relative to the disposition of abandoned funds by the Town of Berlin, or take any other action relative thereto. (Treasurer/Collector)

Summary: This change is the result of the Municipal Modernization Act and speeds up and changes the manner in which the town can claim funds that have not been cashed within a year (abandoned). Section 9A. (a) In any city, town or district that accepts this section in the manner provided in Section 4 of Chapter 4, there shall be an alternative procedure for disposing of abandoned funds held in the custody of the city, town or district as provided in this section.

It requires all checks issued to contain: "void if not cashed within 1 year from date of issue". There are a few steps regarding how and when to advertise the abandoned payments including a second newspaper advertisement for any checks over \$100. Prior to escheat of the funds, the treasurer of the city, town or district shall hear all claims on funds that may arise and if it is clear, based on a preponderance of the evidence available to the treasurer at the time the claim is made, that the claimant is entitled to disbursement of the funds, the treasurer shall disburse funds to the claimant upon receipt by the treasurer of a written indemnification agreement from the claimant wherein the claimant agrees to hold the city, town or district and the treasurer of the city, town or district harmless in the event it is later determined that the claimant was not entitled to receipt of the funds. This is an alternative to Chapter 4 Section 4 that is a more cumbersome method of handling abandoned property by the Commonwealth and Municipalities.

BORROWING PREMIUMS

ARTICLE 14: To see if the Town will vote to supplement each prior vote of the Town that authorizes the borrowing of money to pay costs of capital projects to provide that, in accordance with Chapter 44, Section 20 of the General Laws, the premium received by the Town upon the sale of any bonds or notes thereunder, less any such premium applied to the payment of the costs of issuance of such bond or notes, may be applied to pay project costs and the amount authorized to be borrowed for each such project shall be reduced by the amount of any such premium so applied. (Treasurer/Collector)

Summary: This new option came about as a result of the Municipal Modernization Act. It allows the town to use premium funds to either reduce the amount borrowed or to apply the premiums annually against the payment in even denominations. A premium bond is a bond trading above its par value. A bond trades at a premium when it offers a coupon rate higher than prevailing interest rates. This is because investors want a higher yield and will pay more for it.

AUTHORITY TO DENY BUILDING PERMITS/LICENSES FOR NON-PAYMENT OF TAXES

ARTICLE 15: A vote to see if the Town will adopt a bylaw allowing the Treasurer to deny local licenses and permits to any taxpayer who has neglected or refused to pay local taxes within two weeks of the official due date as allowed by changes made to M.G.L. Chapter 40, Section 57 in the Municipal Modernization Act. (Treasurer/Collector)

Summary: The town already has a bylaw that allows the Tax Collector to deny permits (limited to certain categories) if a property owner has not paid their taxes for a year or more. The Municipal Modernization Act changed the wording that eliminates the 1 year limit. There is debate regarding if the prior bylaw is automatically updated, or if a vote should be taken to "firm up" any change. It was recommended by the majority of the attendees at the annual Collector/Treasurer school this year to vote this in and establish a specific time frame the Tax Collector should go by that Town Meeting agrees to. Some communities have already changed it to lower specific times. I am recommending two weeks (14 days) *after the official due date* of a real estate or personal property tax due date. Excise tax is not eligible permit denial. There some permits that cannot be denied by the Tax Collector. Although a tight policy, it does allow the Tax Collector to okay a permit providing the taxpayer has agreed to and complied with a payment plan.

TAX COLLECTOR FEES

ARTICLE 16: To vote to see if the town will accept a bylaw effective December 1, 2018 that all fees collected and accrued by the by the Tax Collector pursuant to MGL Chapter 60 Section 15 since July 1, 2018 through November 31, 2018 and any fees collected and turned over to the Treasurer from Dec 1, 2018 forward shall not be reimbursed or credited to the Collector. (Treasurer/Collector)

Summary: This article changes the recipient of fees collected by the Tax Collector from the tax collector to the Town's general fund. This is one of the steps taken as we consolidate and appoint the Treasurer/Collector. It covers all fees collected since July 1, 2018 thru its approval date.

MARIJUANA TAX

ARTICLE 17: To see if the Town of Berlin will vote to accept M.G.L. c 64N, s.3, and impose a local sales tax upon the sale of recreational marijuana originating within the Town by a vendor at a rate of three percent (3%) of the gross receipts of the

vendor from the sale of recreational marijuana, marijuana products, and marijuana edibles, said excise to take effect on the first day of the calendar quarter commencing at least thirty (30) days after such vote of Town Meeting, or take any action relative thereto. (Treasurer/Collector)

Summary: This is a tax that can be voted in by a municipality to allow a local tax to be imposed on the sale of merchandise up to 3% of the sales. This is being sponsored by the Treasurer to insure it is already in place if the sale of marijuana merchandise should happen in our town. This does not support nor oppose the sale of this product but is a safety net similar to the meals tax and hotel tax we voted in.

MARIJUANA ZONING BYLAW DEFINITIONS/PROCESS

ARTICLE 18: To see if the Town will vote to amend the Zoning By-Laws by adding the following language to Article 14-Definitions:

- a. Marijuana Cultivator: an entity licensed to cultivate, process and package marijuana and to transfer marijuana to other marijuana establishments, but not to consumers.
- b. Marijuana Establishment: a Marijuana Cultivator, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed adult use marijuana-related business, or any combination thereof, except a Registered Marijuana Dispensary (RMD).
- c. Marijuana Product Manufacturer: an entity licensed to obtain manufacture, process and package marijuana and marijuana products, and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.
- d. Marijuana Retailer: an entity licensed to purchase and transport marijuana and marijuana products from Marijuana Establishments and to sell, or otherwise transfer marijuana and marijuana products to Marijuana Establishments and consumers.
- e. Marijuana Research Facility: means an entity licensed by the Cannabis Control Commission to engage in marijuana research projects.
- f. Marijuana Products: products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
- g. Independent Testing Laboratory: an entity licensed by the Cannabis Control Commission to test marijuana and marijuana products, including certification for potency and the presence of contaminants.
- h. Registered Marijuana Dispensary (RMD): A use operated by an entity registered and approved by the Cannabis Control Commission in accordance with 935 CMR 501.00, and pursuant to all other applicable state laws and regulations, also to be known as a Medical Marijuana Treatment Center, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. An RMD shall explicitly include facilities which cultivate and process medical marijuana, and which may also dispense and deliver medical marijuana and related products.
- i. Marijuana Transporter: an entity with a fixed location that is licensed by the Cannabis Control Commission to purchase, obtain, and possess marijuana and marijuana products solely for the purpose of transporting, temporary storage, sale and distribution to marijuana establishments, but not to consumers.

and to add the following language as a new “Section 585 - Medical Marijuana and Adult Use Marijuana Establishments”

585.1 Purpose

- (a). To provide for the placement of Marijuana Establishments and RMDs in appropriate places and under conditions in accordance with the provisions of Massachusetts General Law Chapters 94G and 94I.
- (b) To minimize the adverse impacts of Marijuana Establishments and RMDs on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other sensitive land uses.
- (c) To regulate the siting, design, placement, security, safety, monitoring, modification, and discontinuance of Marijuana Establishments and RMDs.

585.2 Applicability

- (a) No Marijuana Establishment or RMD shall be established except in compliance with the provisions of this Bylaw.

(b) If any provision of this Section or the application of any provision of this Bylaw is held invalid, the remainder of this Section, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Section are severable.

585.3 General requirements and conditions for all Marijuana Establishments and RMDs

- (a) The hours of operation of marijuana establishments shall be set by the Berlin Zoning Board of Appeals, the special permit granting authority.
- (b) No Marijuana Establishment or RMD shall be located within 500 feet of the property boundary line of any lot in use as a public or private pre-school, primary or secondary school, junior college, college, licensed day-care center, church, library, park, playground, or other Marijuana Establishment or RMD. Distance shall be measured in a straight line from the nearest point of the property boundary line in question to the nearest point of the property boundary line where the Marijuana Establishment or RMD will be located.
- (c) On-site consumption of marijuana and marijuana products, as either a primary or accessory use, shall be prohibited at all Marijuana Establishments and RMDs unless permitted by a local ballot initiative process, as allowed by M.G.L. c.94G §3(b). The prohibition of on-site social consumption shall include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site.
- (d) No Marijuana Establishment or RMD shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a van or truck, with the exception of vehicles used in the licensed transportation of marijuana and marijuana products
- (e) Marijuana Establishment or RMD shall be located within a permanent building and may not be located in a trailer, cargo container, or other similar nonpermanent, movable enclosure.
- (f) Marijuana Retailers and RMDs engaged in retail dispensing of medical marijuana shall not be permitted to have drive-through service.
- (g) No outside storage of marijuana, related supplies or promotional materials is permitted.
- (h) All Marijuana Establishments and RMDs shall be ventilated in such a manner that no:
 - a. Pesticides, insecticides, or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere.
 - b. Odor from marijuana can be detected by a person with a normal sense of smell at the exterior of the Marijuana Establishment or RMD or at any adjoining use or property.

585.4 Special Permit and Site Plan Approval Requirements

A Marijuana Establishment or RMD shall only be allowed by special permit from the special permit granting authority in accordance with Section 1220 of the Zoning By-law and site plan approval in accordance with Section 1230 of the Zoning By-law, subject to the following statements, regulation, requirements, conditions and limitations.

1. No special permit for any Marijuana Establishment or RMD shall be issued without site plan approval first having been obtained from the special permit granting authority, as provided for in Section 1230 Site Plan Review. In addition to the standards set forth herein, the site plan must meet all dimensional, parking, landscaping, and signage requirements within this Bylaw.
2. A special permit for a Marijuana Establishment or RMD shall be limited to one or more of the following uses that shall be prescribed by the special permit granting authority:
 - a. Marijuana Cultivator
 - b. Marijuana Product Manufacturer
 - c. Marijuana Retailer
 - d. Independent Testing Laboratory
 - e. Marijuana Research Facility
 - f. Marijuana Transporter
 - g. Registered Marijuana Dispensary
 - h. Any other type of licensed marijuana-related business
3. In addition to the application requirements set forth above, a special permit application for a Marijuana Establishment or RMD shall include the following:
 - a. The name and address of owner(s) of the Marijuana Establishment or RMD
 - b. Copies of all required provisional licenses or certificates of registration issued to the applicant by the Cannabis Control Commission and any other applicable regulatory agencies
 - c. Evidence of the applicant's right to use the site of the Marijuana Establishment or RMD for the proposed use, such as a purchase and sale agreement, deed, owner's authorization, or lease

- d. A letter from the Town of Berlin Police Chief, or designee, acknowledging receipt and approval of the Marijuana Establishment or RMD security plan, including lighting, fencing, gate and alarms. The special permit granting authority shall only require submission of those portions of the security plan into the public record which are not otherwise confidential
 - e. All Marijuana Cultivators and RMDs engaged in cultivation operations shall submit a resource use plan to the Planning Board outlining planned practices for use of energy, water, waste disposal and other common resources and to ensure there will be no undue damage to the natural environment. The Resource Plan, if applicable, shall include an electrical system overview, proposed energy demand and proposed electrical demand off-sets, ventilation system and air quality, proposed water system and utility demand.
 - f. The applicant shall submit a traffic circulation plan for the site to ensure the safe movement of pedestrian and/or vehicular traffic on site. A traffic impact and access study shall be required for all Marijuana Retailers and RMD retail operations. The study shall be based on standard traffic engineering guidelines developed by the Massachusetts Environmental Protection Act (MEPA). The Planning Board may waive the requirement of a traffic impact study if, in the opinion of the Planning Board, a traffic impact study is not necessary to ensure safe movement of pedestrian or vehicular traffic on site.
 - g. All application requirements for Site Plan Review as specified in Section 1230 of this By-Law shall apply unless certain requirements are waived by the special permit granting authority as non-applicable to the particular applicant.
4. Mandatory findings. All Site Plan review and Special Permit determinations shall be conducted on a case-by-case basis, taking into consideration (i) the particular form of Marijuana activity proposed; (ii) the site location (including proximity of abutters, schools, sensitive natural habitat or historic resources; (iii) traditional uses of the site and their similarity to or difference from the proposed activities; and (iv) the intensity of the proposed activities, including impacts on neighbors and the environment. The special permit granting authority shall not issue a special permit for a marijuana establishment unless it finds that:
- a. The Marijuana Establishment or RMD is designed to minimize any adverse impacts on abutters and other parties in interest, as defined in MGL c. 40A, Section 11.
 - b. The applicant has satisfied all the conditions and requirements as set forth herein and has received a provisional certificate of registration or license from the Cannabis Control Commission.
5. A special permit granted under this section shall have a term limited to the duration of the applicant's ownership of the premises as a marijuana establishment. Special permits may be transferred only with the approval of the special permit granting authority in the form of an amendment to the special permit with all information required.

585.5 Abandonment or discontinuance of use.

- 1. A special permit shall lapse if not exercised within one year of issuance
- 2. A Marijuana Establishment or RMD shall be required to remove all material, plants, equipment and other paraphernalia within six months of ceasing operations.

Or take any action relative thereto. (Planning Board)

Summary: Presently, there is a moratorium on the establishment of marijuana uses in the Town of Berlin that will expire on Dec. 31, 2018. This proposed Zoning Bylaw amendment would address two issues. Definitions for the many types of marijuana uses established by the Cannabis Control Commission would be added to the definitions section of our Zoning By-Law and this article would establish guidelines and procedures that the Zoning Board of Appeals would follow when considering an application for Site Plan Approval and a Special Permit for any proposed marijuana use. It is important for this Zoning to be accepted since failure to approve any of the other marijuana related articles on this Special Town Meeting warrant would result in marijuana uses being allowed in any zone with similar allowed uses.

LEAST RESTRICTIVE -PROPOSED ZONING USE TABLES – MARIJUANA

ARTICLE 19: To see if the Town will vote to amend the Zoning Bylaw by adding the following to Section 320 - Table of Principal Use Regulations:

Commercial Uses	RA	MD	CV	C	LB	LI	ARC
Marijuana Establishments and other licensed marijuana-related business							
Marijuana Cultivator	N	N	N	N	SR	SR	N
Marijuana Product Manufacturer	N	N	N	N	SR	SR	N

Marijuana Retailer	N	N	N	N	SR	SR	N
Marijuana Research Facility	N	N	N	N	SR	SR	N
Independent Testing Facility	N	N	N	N	SR	SR	N
Registered Marijuana Dispensary	N	N	N	N	SR	SR	N
Marijuana Transporter	N	N	N	N	SR	SR	N
Any other type of licensed marijuana-related businesses	N	N	N	N	SR	SR	N

Or take any action relative thereto. (Planning Board)

Summary: This Zoning Bylaw amendment would list in Section 320 – Table of Principal Uses each of the marijuana uses added to our definitions section in Article 18 above. It would provide for the establishment of those uses in the Limited Industrial and Limited Business Zoning Districts after Site Plan Approval (S) and a Special Permit (R) are approved by the Zoning Board of Appeals. Marijuana uses would not be allowed in any other Zoning District in Berlin.

MODERATELY RESTRICTIVE - PROPOSED ZONING USE TABLES – MARIJUANA

ARTICLE 20: To see if the Town will vote to amend the Zoning Bylaw by adding the following to Section 320 - Table of Principal Use Regulations:

Commercial Uses	RA	MD	CV	C	LB	LI	ARC
Marijuana Establishments and other licensed marijuana-related business							
Marijuana Cultivator	N	N	N	N	SR	SR	N
Marijuana Product Manufacturer	N	N	N	N	SR	SR	N
Marijuana Retailer	N	N	N	N	N	N	N
Marijuana Research Facility	N	N	N	N	SR	SR	N
Independent Testing Facility	N	N	N	N	SR	SR	N
Registered Marijuana Dispensary	N	N	N	N	N	N	N
Marijuana Transporter	N	N	N	N	SR	SR	N
Any other type of licensed marijuana-related businesses	N	N	N	N	SR	SR	N

Or take any action relative thereto. (Planning Board)

Summary: This Zoning Bylaw amendment would list in Section 320 – Table of Principal Uses each of the marijuana uses added to our definitions section in Article 18 above. It would provide for the establishment of those uses in the Limited Industrial and Limited Business Zoning Districts with the exception of “Marijuana Retailer” and “Registered Marijuana Dispensary” after Site Plan Approval (S) and a Special Permit (R) are approved by the Zoning Board of Appeals. Marijuana uses would not be allowed in any other Zoning District in Berlin.

MOST RESTRICTIVE - PROPOSED ZONING USE TABLES – MARIJUANA

ARTICLE 21: To see if the Town will vote to amend the Zoning Bylaw by adding the following to Section 320 - Table of Principal Use Regulations:

Commercial Uses	RA	MD	CV	C	LB	LI	ARC
Marijuana Establishments and other licensed marijuana-related business							
Marijuana Cultivator	N	N	N	N	N	N	N
Marijuana Product Manufacturer	N	N	N	N	N	N	N
Marijuana Retailer	N	N	N	N	N	N	N
Marijuana Research Facility	N	N	N	N	N	N	N
Independent Testing Facility	N	N	N	N	N	N	N
Registered Marijuana Dispensary	N	N	N	N	N	N	N

Marijuana Transporter	N	N	N	N	N	N	N
Any other type of licensed marijuana-related businesses	N	N	N	N	N	N	N

Or take any action relative thereto. (Planning Board)

Summary: This Zoning Bylaw amendment would list in Section 320 – Table of Principal Uses each of the marijuana uses added to our definitions section in Article 18 above. This article would deny all marijuana uses in all Zoning Districts.

CITIZENS’ PETITION – MARIJUANA QUESTIONS

ARTICLE 22: To see if the Town will vote to amend the General Bylaws of the Town of Berlin by adding a new General Bylaw Article as follows:

Article ____ Marijuana Not Medically Prescribed

Consistent with MGL Ch. 94G, Section 3(a)(2), all types of Marijuana establishments as defined in MGL Ch. 94G, Section 1(j), to include all Marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses, shall be prohibited within the Town of Berlin.

Or take any other action thereon. (Citizens’ Petition)

ARTICLE 23: To see if the Town will vote to amend the Zoning Bylaws of the Town of Berlin by adding a new Zoning Bylaw Article as follows:

Article ____: Marijuana Not Medically Prescribed

Consistent with MGL Ch. 94G, Section 3(a)(2), all types of Marijuana establishments as defined in MGL Ch. 94G, Section 1(j), to include all Marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses, shall be prohibited within the Town of Berlin.

Or take any other action thereon. (Citizens’ Petition)

ARTICLE 24: To request that the Selectmen place on the Ballot for an election during the next year the following question:

Ballot Question

Shall the Town prohibit the operation of all types of Marijuana establishments as defined in G.L. Ch. 94G, Section 1(j), including all Marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related businesses, shall be prohibited within the Town of Berlin?

Or such other question that may be appropriate to approve the Bylaw stated above. (Citizens’ Petition)

And you are directed to serve this Warrant, by posting up attested copies thereof as per vote of the Town in said Town, fourteen (14) days at least before the time of holding said meeting.

Hereof fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of meeting as aforesaid.

Given under our hands this 29th day of September in the year of our Lord two thousand eighteen.

BOARD OF SELECTMEN
Christine Keefe, Chairman
Lisa Wysocki, Vice Chairman
Margaret Stone, Clerk

IMPORTANT DATES/EVENTS/PLACES

<p><i>Friday, October 5, 2018</i> <i>9 a.m. – 8 p.m.</i></p>	<p>Open Voter Registration for Special Town Meeting</p>	<p>Town Clerk’s Office 23 Linden Street</p>
<p><i>Monday, October 15, 2018</i> <i>7 p.m.</i></p>	<p>Special Town Meeting</p>	<p>Berlin Memorial School 34 South Street</p>

Board of Selectmen
23 Linden Street
Berlin, MA 01503

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