

**TOWN OF LENOX  
SPECIAL TOWN MEETING  
November 1, 2018**

**At 7:14 PM a Special Town Meeting held at the Lenox Memorial Middle and High School's Duffin Theater was called to order. A quorum for the meeting was met with over 31 present at the opening. A motion was made and seconded to waive the reading of the warrant and return of service thereof and to authorize the moderator to declare a 2/3rd vote on voice votes.**

**ARTICLE 1: It was moved, seconded and approved unanimously that the Town appropriate the sum of \$1,683,205.23 for capital expenditures in the Department of Public Works; and, further, to provide for said appropriation, to transfer the following sums:**

- 1. \$950,000 from Free Cash as certified on July 1, 2018**
- 2. \$700,000 from Retained Earnings in the Water Enterprise Fund as certified on July 1, 2018**
- 3. Unencumbered balance of \$33,205.23 appropriated and borrowed under Article 17 of the May 5, 2016 Annual Town Meeting warrant, in accordance with Chapter 44, Section 20 of the General Laws and which balance is no longer needed to complete the project for which it was initially borrowed.**

**ARTICLE 2: It was moved, seconded and unanimously approved that the Town appropriate the sum of \$30,000 to the Permanent Building Committee for planning, design and consultant expenses related to facilities for Police, Fire and Ambulance operations; and, further, to provide for said appropriation, to transfer said sum from Free Cash as certified on July 1, 2018.**

**ARTICLE 3: It was moved, seconded and unanimously approved that the Town authorize the Board of Selectmen to accept a gift of land located at 179 Housatonic Street and to authorize the Board of Selectmen to execute such documents and instruments or take any action needed to effectuate the vote taken hereunder, upon such terms and conditions as the Board of Selectmen may deem appropriate.**

**ARTICLE 4: It was moved, seconded and approved by a voice vote that the Town amend the Zoning Bylaw by amending Section 5.2, "Schedule of Uses" , and amending Section 9.1 , "Multifamily and Townhouse Buildings" with a new subsection, 9.1.5, "By Right Provision".**

**ARTICLE 5: It was moved, seconded and approved by a voice vote that the Town amend the Zoning Bylaw by deleting the definition of Apartment in Section 4, "Definitions" so there is no longer a minimum square foot area for multi-family dwelling units.**

**ARTICLE 6: Amendment proposed by Kathleen McNulty-Vaughan, 10 Post Rd.**

I move that the Town vote to amend Article 6 by revising Section 9.1.4, Dwelling Two Family (Duplex) by removing 1. “No unit contains more than two families” to be replaced with 1. “Only one family shall reside in each unit”. Amendment was moved, seconded and approved by a voice vote.

It was then moved, seconded and approved by a voice vote that the Town amend the Zoning Bylaw by revising Section 9.1.4, “Dwelling, Two Family (Duplex)” so that the size requirement is stricken.

**ARTICLE 7:** It was moved, seconded and approved by a voice vote that the Town amend the Zoning Bylaw so that minimum area requirements for dwelling units and lot sizes are removed from Section 9.5, “Mixed Use Development”.

**ARTICLE 8:** It was moved, seconded and approved by a voice vote that the Town amend the Zoning Bylaw so that the minimum area requirement for a dwelling unit is removed from Section 9.6.1, “Conversion of an Existing Dwelling”.

**ARTICLE 9:** It was moved that the Town vote to amend the Zoning Bylaw Adult Use of Marijuana in Lenox as noted below:

**Insert, into Section 4, Definitions, the following:**

***Marijuana Establishment:*** A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer, or any other type of marijuana-related business, subject to regulation under G.L. 94G; provided, however, that a Registered Medical Marijuana Dispensary shall not be deemed to be a Marijuana Establishment.

***Insert into Section 5.2 Schedule of Uses (under new Section J. “Marijuana Businesses”***

	R3A	R1A	R30	R15	C3A	C1A	C	I
<b>23. Marijuana Establishments</b>								
- <b><i>Marijuana Retailer</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>BA</i>	<i>BA</i>	<i>N</i>	<i>N</i>
- <b><i>Marijuana Product Manufacturer</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>Y</i>
- <b><i>Marijuana Research Facility</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>Y</i>
- <b><i>Marijuana Cultivator</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>Y</i>
- <b><i>Craft Marijuana Cooperative</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>Y</i>
- <b><i>Marijuana Laboratory (Independent Testing, Standards Testing)</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>Y</i>
- <b><i>Marijuana Transporter</i></b>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>Y</i>	<i>Y</i>	<i>N</i>	<i>Y</i>

**Delete the existing Section 8.13 and replace with the following new Section 8.13, Adult Use of Marijuana (Non-Medical):**

**Amend Table of Contents so that Section 8.13 will read “Adult Use of Marijuana (Non-Medical)”**

**8.13.1. Purpose**

The purpose of this section is to provide guidelines for siting Marijuana Establishments in suitable locations in the Town of Lenox in accordance with An Act To Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, and all applicable regulations, including 935 CMR 500.00.

**8.13.2. Site Plan Approval**

All Marijuana Establishments in Lenox shall be subject to Site Plan Approval by the Lenox Zoning Board of Appeals per the procedures of Section 3.5 of the Lenox Zoning Bylaw.

**8.13.3. On-site Consumption**

On-site consumption of marijuana and marijuana products, as either a primary or accessory use, shall be prohibited at all Marijuana Establishments. 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.

**8.13.4. General Requirements for Marijuana Establishments**

- a. There shall be no publicly visible indication of marijuana cultivation, production, processing, testing, transportation or retail at any marijuana establishment in Lenox. This includes outside storage and activities necessary for business operation, except at open-air, outdoor cultivation facilities, which shall conform to the regulations of the Cannabis Control Commission.
- b. Marijuana Establishments shall conform to the outdoor lighting requirements of Section 7.3 “Lighting” of the Zoning Bylaw.
- c. Marijuana Cultivators shall not illuminate growing operations between dusk and dawn, unless within a fully-enclosed, opaque building.
- d. Marijuana Establishments shall conform to the signage requirements of Section 7.2 “Signs” of the Zoning Bylaw.
- e. Marijuana Establishments shall conform to the parking and loading requirements of Section 7.1 “Off Street Parking and Loading Requirements” of the Zoning Bylaw.
- f. There shall be no noxious odors emitted from the cultivation or processing of marijuana and marijuana products.
- g. No use shall be allowed by a Marijuana Establishment which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive sound or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

**8.13.6. Severability**

The provisions of this Bylaw are severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.

**After much discussion both for and against cultivation, recreational and medicinal uses of marijuana an Amendment was brought forth by Rinaldo DelGallo, 24 Orchard St.**

**I move that the Town vote to Amend Article 9 as follows: to allow marijuana by right for commercial/retail if bylaws are met and Strike Special Permit - Add by-right. Motion to amend as written was defeated.**

**It was moved, seconded and defeated by a voice vote to amend the Zoning Bylaw by inserting adult marijuana uses into Section 5.2, "Schedule of Uses", and deleting the existing Section 8.13, "Temporary Moratorium on the Sale and Distribution of Recreational Marijuana", and inserting a new section 8.13, "Adult Use of Marijuana (Non-Medical)".**

**YES 252  
NO 138**

**ARTICLE 10. It was moved, seconded and approved by a voice vote that the Town extend the time frame of the "Temporary Moratorium on the Sale and Distribution of Recreational Marijuana" in existing Section 8.13, so that the moratorium will remain in effect through June 30<sup>th</sup>, 2019.**

**ARTICLE 11: It was moved by Selectman Neal Maxymillian that the Town take no action on Article 11 to impose an excise on the retail sales of marijuana for adult use at the rate of 3% as Article 9 did not pass making Article 11 unnecessary.**

**ARTICLE 12: It was moved that the Town vote to adopt a general bylaw requiring the Inspection and Registration of all Short-Term Rentals. Applicants for Short-Term Rental uses must complete a registration application with the Town Clerk of Lenox. Requirements include:**

***1. A Certificate of Compliance from the Building Commissioner***

The Building Inspections Department shall inspect the premises to determine adherence to applicable zoning, building, safety, sanitary, Board of Health, and housing codes and to determine maximum occupancy, and will issue a Certificate of Compliance if the premises meet all applicable requirements. If the Department and applicant are unable to schedule an inspection within sixty (60) days, a temporary registration number may be issued.

Applicants may need to apply for a Special Permit from the Zoning Board of Appeals (ZBA).

***2. Registration with the Town Clerk***

Upon receipt of applicable zoning and building permits as may be needed, the Town Clerk shall issue a registration number and certificate. To complete the registration, the following information is required:

- a) Name, address, telephone number(s), email address.
- b) Notarized affidavit certifying the location of the host's domicile and primary legal residence. Documentation may be requested including Homestead Exemption, state tax filing, voter registration, etc. For Short-Term Rental-Entire Dwelling Units, information for a local contact responsible for the property 24/7 if the owner/leaseholder is not available.
- c) The registration number shall be displayed at all times in online listings, or any other form of listing, and at the Short-Term Rental property.

### ***3. Annual Renewal***

Annual renewal through the Building Inspections Department is required and will be granted subject to continuing evidence of adherence to local and state zoning, building, safety, sanitary and housing codes as well as annual inspection.

### ***4. Fees***

The Select Board or its designee may set and periodically revise a schedule of fees for registration, permit application, and inspections of Short-Term Rental properties.

### ***5. Effective Date***

This Bylaw shall take effect as of approval by the Attorney General. Enforcement of said General Bylaw shall begin on May 1, 2019.

### **Article 12 resident comments:**

**Ted Silverman, 520 East St. – He understands the State will be taking up this issue, why over-burden our Bldg. Dept?**

**Henry Nadig, 146 Hubbard St. – Very onerous; this will criminalize folks who ignore this; it's not clear**

**Danielle Viletto, 27 Schermerhorn Pk. – Read a letter from Deborah Rimmner, from PB. Letter stated that this feels like a ban and can the Planning Board come back in May with a clear plan.**

**Thomas Viletto, 118 Plunkett St. – Believes what is property is the 1700's definition, property through labor.**

**Eric Federer, 35 Cliffwood St. – This is about business; not personal. Rental property on his street are being advertised as Estates, Suites, Berkshire Cottages; feels STR's should be limited.**

**Beth Tracy Gamble, 47 Tucker St. – Moved for a Secret Ballot which failed.**

**Steven Seltzer, 921 East. – Shocked by Warrant not having clarification about inspections per cease and desist letter. Urged fellow voters to vote No as the State needs to weigh in.**

**James Harwood, 34 Walker St. – Onerous article, will be a quagmire if STR is reclassified, sprinklers, elevators are not necessary and some will try and take advantage of the system**

**Mark Manoli, 178 Housatonic St. – Let State weight in, rentals are needed to augment income here and to keep a healthy economy.**

**Tjasa Sprague, 55 Kemble St. – concerned about regulations regarding Historic Homes.**

**David Fisher, 25 Kneeland Ave. – Purchased a home in a Residential Zone so he thought he'd always be in a Residential Zone.**

**Ralph Petillo, 303 Housatonic St. – Rooms Tax here is Huge. Can we charge tax on Short Term Renters? The State must weigh in.**

**Susan Foulds, 44 Walker St. – Thank you Planning Board, very complex issue.**

**Kameron Spaulding, 27 Housatonic St. representing the Planning Board began discussing inspections of Rental of Homes and Inspections of Rental of Rooms, Ronald Maitland, 2 Coldbrooke South Dr. Called the Question; motion carried. It was moved, seconded and opposed that the Town adopt a general by-law requiring the inspection and registration of all Short-Term Rentals in Lenox.**

**ARTICLE 13: It was moved that the Town vote to amend the Zoning Bylaw by deleting existing Section 8.8.1, inserting new definitions in alphabetical order into Section 4, “Definitions” of the existing Zoning Bylaw, and inserting two new subsections into Section 9, “Special Residential Regulations” of the existing Zoning Bylaw.**

***Add to Section 9 as Section 9.10, Short-Term Rentals***

**9.10.1 PURPOSES:**

The provisions of this bylaw section are intended to clarify the limits and uses of residential housing for Short-Term Rentals in Lenox:

- To protect neighborhoods from undue commercial activity, maintaining their character and livability;
- To minimize public safety risks for guests and visitors and to minimize possible nuisances for abutters;
- To sustain the supply and affordability of residential housing available to community families and individuals who live and work in the region.

**9.10.2 GENERAL STANDARDS:**

- All Short-Term Rental property owners or leaseholders shall ensure that renters refrain from activity and behavior producing noxious light, odor, dust, fumes, amplified sound, excessive noise, and other nuisances.

**DEFINITIONS (For inclusion in Section 4, “Definitions” of the existing Zoning Bylaw):**

- **Dwelling Unit:** A single unit providing complete, independent living facilities for one (1) or more persons including permanent provision for living, sleeping, cooking and sanitation.
- **Short-Term Rental:** All or part of a residential dwelling unit that is used to provide overnight accommodations for any rental period less than 30 consecutive days.

- **Primary Residence:** The dwelling unit that is the domicile and legal residence of the owner or leaseholder.
- **Residential Use:** The use of a dwelling, or room or group of rooms within a dwelling, used or intended for use by one family or household for living, sleeping, cooking and eating for 30 consecutive days or more.

	R3A	R1A	R30	R15	C3A	C1A	C	I	References
Short-Term Rental of Rooms	Y	Y	Y	Y	Y	Y	Y	Y	Section 9.10
Short-Term Rental of Rooms within an Accessory Dwelling Unit Permitted Prior to 11/1/18	Y	Y	Y	Y	Y	Y	Y	Y	Section 9.10, Section 9.2

#### TABLE OF USES:

Y=By-Right

#### 9.10.3 SHORT-TERM RENTAL OF ROOMS:

The following requirements shall apply:

1. Rental of up to two bedrooms shall be permitted year-round.
  - a. Up to two bedrooms in an Accessory Dwelling Unit so long as the Accessory Dwelling Unit received a Special Permit under Section 9.2 of the Lenox Zoning Bylaw prior to November 1, 2018.
2. The owner or leaseholder shall occupy the home during the rental period.
3. The home shall be the primary residence of the owner or leaseholder with lodging as an accessory use.
4. Registration and inspection:
  - a. A Certificate of Compliance and Registration are required;
  - b. Premises shall be subject to annual inspection;
  - c. One type of Short-Term Rental Registration may be held per address per year.
5. Except for a home occupation that complies with this Bylaw, no other uses shall be permitted on the property.
6. Parking must be off street, on premises, with one (1) space per bedroom rented and one (1) per owner available.
7. No additions or external modifications may be made to the property for lodging use.
8. Only continental breakfast from the common family kitchen is permitted.
9. This Zoning Bylaw shall take effect as of the positive Town Meeting vote. Enforcement of said Zoning Bylaw shall begin on May 1, 2019.

	R3A	R1A	R30	R15	C3A	C1A	C	I	References
Seasonal Short-Term Rental of Entire Dwelling Units	BA	BA	BA	BA	BA	BA	BA	BA	9.10
Short-Term Rental of Entire Accessory Dwelling Units	N	N	N	N	N	N	N	N	Section 9.10, Section 9.2

## **TABLE OF USES:**

BA=Special Permit required from the Zoning Board of Appeals.

### **9.10.4 SEASONAL SHORT-TERM RENTAL OF ENTIRE DWELLING UNITS**

The following requirements shall apply:

1. Rentals shall be permitted from Memorial Day through Labor Day, and weekends only through Columbus Day.
2. The dwelling unit shall be the primary residence of the owner or leaseholder with lodging as an accessory use.
3. Registration and Inspection:
  - a. A Certificate of Compliance and Registration are required.
  - b. Premises shall be subject to annual inspection.
  - c. One type of Short-Term Rental Registration may be held per address per year.
4. The Special Permit shall be issued only to the primary resident of the property and shall not be transferable. Subsequent owners shall apply for a Special Permit in their own name.
5. Parking must be off street, on premises, with a maximum of two (2) vehicles used by renters.
6. Except for a home occupation that complies with this Bylaw,
  - a. no other uses shall be permitted on the property, and
  - b. no special events accessory to the Short-Term Rental may be held on the premises.
7. No additions or external modifications may be made to the property for lodging use.
8. This Zoning Bylaw shall take effect as of the positive Town Meeting vote. Enforcement of said Zoning Bylaw shall begin on May 1, 2019.

8.9.

#### **Comments from Residents:**

**Paul Marshall, - 35 Hubbard St. – Rents out as Air B&B to benefit us. We can rent rooms, have them inspected etc. but it doesn't help Short Term Renters who sometimes rent rooms on a Short Term basis.**

**Billy Keen, Pittsfield was allowed to speak on behalf of the Board of Realtors. Berkshire County Relators feels this is Unjust, sales way down in Lenox due to Short Term Rental bylaws.**

**Susan Lyman, 28 Schermerhorn Pk. – approves of the amendment as STR's degrade the neighborhood.**

**Danielle Viletto, 27 Schermerhorn Pk. – Rents her home, vets her people very carefully and rents to good people.**

**Beth Tracy Gamble – 47 Tucker St. – Houses are being purchased for Investment properties; this will adversely affect our community schools. Vote Yes.**

**Thomas Viletto, 118 Plunkett St. – Feels we are trying to change the meaning of property ownership.**

**James Harwood, 34 Walker St. – proposed an amendment which was very permissive, Town Counsel felt the bylaw very restrictive and Mr. Harwood withdrew his amendment, all verbally,**



**Steven Seltzer, 921 East St. – You are taking away our rights, no one knows the tax loss, Kameron Spaulding and Joel Bard had a side bar over BAN vs Restriction. Mr. Seltzer asked the PB to please put your thinking caps on again.**

**Ted Silverman, 520 East St. – felt this was not about Registration; Why limit folks to May – Sept?**

**Mary Jo Miller, 194 Main St. – spoke of her commitment to the Town, urged citizens to compromise and vote Yes; neighborhoods must be Residential, Values of home must be protected, Keep Residential Commercial Free – against absentee homeowners.**

**Rinaldo DelGallo, 24 Orchard St. – I propose that the Town vote to amend the Zoning Bylaw Section 9.10.4. 1. Rentals shall be permitted for the entire dwelling all year and strike Memorial Day through Labor Day and weekends only through Columbus Day.**

**Sarah Hitchcock, 81 Walker St. – wants sense of community, Halloween Trunk or Treat is a PLUS, loves the town, and has stayed in B&B, against absent homeowners and landlords.**

**Christopher Fenton, 38 Taconic Ave. – Asked question of PB member Kameron Spaulding, Can a homeowner who owns 2 homes in Lenox rent 1 for Long/Short Term Rental? Mr. Spaulding replied: No.**

**Thomas Romeo, 54 Reynolds Ave. – I rent STR's, there should be a Residency requirement. Please Vote Yes on DelGallo Amendment No on Article.**

**Kathleen McNulty Vaughan, 10 Post Rd. – Should we Table this and Take a Hiatus from this.**

**Moderator McNinch asked for Vote on DelGallo Amendment to amend 9.10.4. 1. Rentals shall be permitted for the entire dwelling all year and strike Memorial Day through Labor Day and weekends only through Columbus Day. Amendment passed.**

**Kameron Spaulding, 27 Housatonic St. – I move that the Town vote to amend the Zoning Bylaw by deleting Section 9.10.4.2 in its entirety and amend Section 9.10.4. 4. To delete the phrase “primary resident” and replace it with “owner.” Subsequently withdrawn.**

**Suzanne Merritt, 99 New Lenox Rd. – We’ve lost half of our audience. We have no idea what’s going on. Please table this.**

**James Harwood, 34 Walker St. – Motion to refer Article 13 to the Planning Board. It was moved, seconded and unanimously approved to refer Article 13 to amend the Zoning Bylaw by deleting existing Section 8.8.1, inserting new definitions in alphabetical order into Section 4, “Definitions” of the existing Zoning Bylaw, and inserting two new subsections into Section 9, “Special Residential Regulations” of the existing Zoning Bylaw to the Planning Board.**

**ARTICLE 14: It was moved, seconded and unanimously approved that the Town take no action on Article 14 to Vote on the acceptance of a local option tax on Short-Term rental occupancy.**

**ARTICLE 15: It was moved, seconded and approved unanimously that the Town amend Chapter IX, Financial Affairs, Section 6 Departmental Revolving Funds of the Town Bylaws by adding a new subsection 5.3, to establish and authorize**

**a revolving fund for use by the Land Use Department under MGL Chapter 44, Section 53E ½.**

**It was voted unanimously to dissolve the meeting at 9:31 PM.**

**Attest:**

**/s/ Kerry L Sullivan**

**Kerry L. Sullivan  
Town Clerk**