



**TOWN OF WAYLAND**  
**SPECIAL TOWN MEETING**  
***November 13, 2018 ADDENDA SHEET***

---

**ARTICLE 8: ZONING USE OF PRE-EXISTING NONCONFORMING LAND THAT CONSISTS OF MORE THAN SIX DWELLING UNITS**

Page 29, bottom of page:

**CONSISTENCY WITH LAW:** Certain portions of this proposed bylaw amendment are not repugnant to federal or Massachusetts law.

**ADD:**

By way of further explanation of this statement of Town Counsel, G.L. c. 40A, Section 6 generally allows the Town to regulate the alteration of pre-existing nonconforming uses and structures. However, subparagraph (iv) of this proposed zoning amendment prohibits the transfer of title or the conversion of ownership to condominiums. While zoning bylaws may properly regulate the use of land, they are not to be used to regulate the ownership of land. In *CHR General, Inc. v. Newton*, 387 Mass. 351 (1982), the Supreme Judicial Court struck down a city ordinance restricting the conversion of rental unit apartments to condominiums, finding that the enactment of such an ordinance intrudes upon the private legal relationship between a tenant and landlord, thereby violating the Home Rule Amendment to the state Constitution, and is not a valid exercise of the city's zoning authority. In reaching this decision, the Court observed that a building composed of condominium units does not use the land differently than an identical building of rental units. Id. at 356-357.

In contrast, in an earlier case also examining the validity of a zoning bylaw restricting the conversion of rental units to condominiums, the Supreme Judicial Court upheld the bylaw, finding that the purpose of the bylaw - to guard against the conversion of nonconforming seasonal cottages to year-round residences - was a valid exercise of the town's zoning power to restrict an expansion of a nonconforming use. See *Goldman v. Dennis*, 375 Mass. 197 (1978). It should be noted, however, that the bylaw at issue in *Goldman v. Dennis* allowed the conversion of rental units to condominiums if the lot upon which each building was located satisfied the minimum requirements for single-family dwellings in the zoning district.

In the opinion of Town Counsel, subparagraph (iv) of the proposed zoning amendment more closely resembles the Newton ordinance that was found to be invalid and has recommended striking from subparagraph (iv) the following text: "...or the division of the title to the Lot in any manner that results in more the [sic] one person or entity holding a fee simple title interest to the Lot or a fraction thereof (i.e., a condominium)."

## ARTICLE 10: LIMIT DISCHARGE OF WEAPONS

Page 36, bottom of page:

### CONSISTENCY WITH LAW:

#### DELETE:

~~Some provisions of this proposed bylaw are not repugnant to federal or Massachusetts law, while other provisions may conflict with or be preempted by M.G.L. c. 140, c. 269 and other provisions.~~

#### ADD:

Certain portions of this proposed bylaw amendment are not repugnant to federal or Massachusetts law. However, some of the provisions of the petitioned bylaw amendment may be inconsistent with and/or preempted by state law, as specified in detail below. By way of further explanation of this statement of Town Counsel, an examination of each paragraph is offered below.

Paragraph A: This is similar but not identical to the existing provision of Section 139-8 of the Town Code. As proposed, paragraph A prohibits the carrying of an uncased or upholstered firearm on public property without the permission of the Board of Selectmen. This provision may be too broad and apply to other public properties such as the police station, post offices, courthouses, or other state and federal facilities, over which the Board of Selectmen have no authority. As written, this provision contains no exemption for law enforcement personnel. In addition, G.L. c. 269, Section 10(j) prohibits anyone other than a law enforcement officer from carrying a firearm onto school property; therefore, it is possible that the Attorney General, upon reviewing this bylaw, may find it pre-empted by this statute, at least as applied to schools. Finally, with respect to private property, this paragraph requires permission of the owner; to be consistent with G.L. c. 266, Section 121, Town Counsel suggests inserting “or legal occupant thereof” after “permission of its owner.”

Paragraph B: This paragraph prohibits the discharge of a firearm unless 1,000 feet from the nearest dwelling and 1,000 feet within the property line of said land. This provision is more restrictive than and inconsistent with G.L. c. 269, Section 12E, which prohibits the discharge of a firearm “within 500 feet of a dwelling or other building in use, except with the consent of the owner or legal occupant thereof” but exempts several facilities, including underground, indoor or outdoor ranges. Therefore, this paragraph may be disapproved by the Attorney General as being inconsistent with or pre-empted by state law.

Finally, this bylaw amendment could face a Second Amendment challenge by individuals who lawfully possess firearms pursuant to G.L. c. 140 and could result in difficulty relative to the enforcement of same by the Police Department.