

**The following version of Article 2 is the result of discussions between petitioners and Town Counsel. It is consistent with state and federal law. Petitioners intend to offer this version as the main motion at Special Town Meeting. As such, amendments, if necessary or desired, will be made against the version below.**

**The red-lined version, which begins on page 4 of this handout, is provided to allow voters to compare the revised article below with the version that is contained in the Warrant.**

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## **MOTION**

**SPECIAL TOWN MEETING – OCTOBER 3, 2012**

### **ARTICLE 2: ADOPT BYLAW RE: UTILITY HERBICIDE APPLICATION**

**I move you, Sir,**

**MOVED: that the Town amend the Code of the Town of Wayland by adding thereto the following new chapter:**

#### **“Chapter 118. HERBICIDE APPLICATION**

##### **§118-1. Purpose.**

It is the purpose of this by-law to establish the procedures by which the Board of Health may determine whether a proposed application of a pesticide, plant regulator, or herbicide by a utility upon or within its rights of way within Wayland is to be conducted in accordance with applicable state and federal requirements, for the purpose of protecting the health, environment and safety of the citizens of the Town of Wayland and the purity of its drinking water supply.

##### **§118-2. Prohibited Distribution.**

No person shall distribute, apply, handle, dispose of, discard or store any pesticide, as defined in Massachusetts General Laws Chapter 132B, Section 2, including plant regulators, or herbicide, as defined and described in 333 CMR § § 11.02 and 11.04, upon any utility right-of-way, unless and until it has received a notice of determination from the Wayland Board of Health, pursuant to the procedures set forth below.

##### **§118-3. Hearing Procedure.**

Upon the receipt by the Chair of the Board of Selectmen and the Conservation Commission of notifications, pursuant to M.G.L. c. 132B, § 6B, from a utility company contemplating use of a pesticide, plant regulator, or herbicide on any right-of-way within the Town of Wayland, the Board of Health shall schedule and hold, within 21 days of the receipt of such notice by the Chair of the Board of Selectmen or within 21 days before the date indicated by the utility company for beginning the application of such pesticide, plant regulator, or herbicide, whichever is later, a hearing at which the utility shall appear and present evidence that it has complied and will comply with applicable state and federal law pertaining applicable to the application of pesticides, plant regulators, or herbicides, including but not limited to

providing the following to the Board of Health at the time of such notification to the Chair of the Board of Selectmen:

- a. Submission of a plan at a scale of 1" = 40' of the project site showing delineation of all bodies of water, including wetlands, vernal pools, streams, ponds, public wells, the 100-year floodplain, the capture zones of Wayland's wells (as defined and described in the Wellhead Protection Plan dated June, 2011, Prepared by the Wayland Wellhead Protection Committee, et al, a copy of which plan is on file in the Office of the Town Clerk and depiction of the boundaries of each and all located sensitive areas (as that term is defined and described in the Massachusetts Department of Food and Agriculture Pesticide Board (the "Pesticide Board") regulations, 333 CMR 11.02, 11.04) in the areas where such pesticides, plant regulators, or herbicides are proposed to be applied and within the 100 feet of the of the boundaries of such areas.
- b. Written identification of all persons who will be applying any pesticide, plant regulator, or herbicide, and information demonstrating that each such person is properly certified and/or licensed to apply such pesticide, plant regulator, or herbicide;
- c. Written identification of any pesticide, plant regulator, or herbicide to be used, and a description of the exact location where each is expected to be applied;
- d. Written demonstration that all proposed pesticide, plant regulator, or herbicide use is in accordance with the Vegetation Management Plans and Yearly Operational Plans approved by the Massachusetts Department of Agricultural Resources.
- e. Written plans or procedures to assure that pesticide, plant regulator, or herbicide concentrates shall not be handled, mixed or loaded within 100 feet of a sensitive area;
- f. Written documentation of efforts to locate all sensitive areas within the locations where pesticides, plant regulators, or herbicides are to be applied;
- g. Depiction of the boundaries of each and all located sensitive areas on a plan of land of the area where pesticides, plant regulators, or herbicides are to be applied;
- h. Written description of steps to be taken to mark sensitive area boundaries in the field and/or, for any boundary which is believed to be readily identifiable, the basis for that belief.
- i. Written documentation that wetland boundaries have been delineated and that verification from the Wayland Conservation Commission has been sought by filing of one or more Requests for Determination of Applicability (as referenced in 310 CMR 10.00 et seq. or such other regulations which may in the future augment or supplant those regulations);
- j. For each sensitive area, written description of application steps and techniques which will be taken within that sensitive area.
- k. Written documentation identifying vegetation greater than 12 feet in height, and written confirmation that foliar pesticide, plant regulator, or herbicide applications will not be made to any vegetation greater than 12 feet in height except for side trimming;
- l. Written confirmation that pesticide, plant regulator, or herbicide applications will not be made when wind may cause drift, and written description and documentation of the circumstances in which wind

drift may occur.

- m. Written confirmation that no aerial application of pesticides, plant regulators, or herbicides will occur; and
- n. Documentation which shows the consideration, if any, given to alternatives other than pesticide, plant regulator, or herbicide application which might achieve the goals sought by said pesticide, plant regulator, or herbicide application

The foregoing documentation and information shall be submitted to enable the Board of Health to determine whether the proposed application of pesticides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Department of Food and Agriculture.

#### **§118-4. Determination by Board of Health.**

Upon the conclusion of the submission of evidence by the utility, and any evidence submitted by any resident of the Town of Wayland or other interested party, the introduction of which evidence shall be within the discretion of the Board of Health, the Board of Health shall determine whether the proposed application of pesticides, plant regulators, or herbicides in particular locations would be consistent with the product's labeling and other restrictions imposed by the Pesticide Board or its subcommittees and whether the applicant is proposing to use particular pesticides, plant regulators, or herbicides only as permitted by law. If the Board of Health determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board of Health shall issue a written notice of determination to the utility company to that effect. If the Board of Health determines that the proposed application does not comply with the product's labeling and all legal requirements imposed by state and federal law, the Board shall issue written notice of determination to the utility company specifying the deficiencies in the proposed application. A copy of such notice of determination of deficiencies shall be sent to the Massachusetts Department of Agricultural Resources.

#### **§118-5. Remediation of Deficiencies.**

Upon issuance by the Board of Health of a notice of determination to the utility company specifying deficiencies in the proposed application the affected utility company may request a further hearing before the Board of Health at which it may present further evidence, either that has met the product's labeling specifications and the requirements of applicable state and federal law, or that it has remedied the deficiencies outlined by the Board of Health's notice. Upon receipt of such a request, the Board of Health, shall, within 14 days of receipt of the request, schedule a hearing upon such request. At the conclusion of the second hearing, the Board of Health shall again determine whether the proposed application of pesticides, plant regulators, or herbicides in particular locations is consistent with the product's labeling and other restrictions imposed by the Pesticide Board and whether the applicant is proposing to use particular pesticides, plant regulators, or herbicides only as permitted by law. If the Board of Health determines that the proposed application complies with all legal requirements imposed by state and federal law, the Board shall issue a written notice of determination to that effect. If the Board determines that the proposed application does not comply with the product's labeling specifications and all legal requirements imposed by state and federal law, the Board shall issue a written notice to the utility company, specifying the deficiencies found by the Board of Health. A copy of such notice of determination of deficiencies shall be sent to the Massachusetts Department of Agricultural Resources. No further hearings shall be held, but the affected utility may begin the process anew, by issuing a new notice of intent to utilize pesticides or plant regulators.

#### **§118-6. Enforcement and Penalties for Violations**

**§118-6.1. Enforcement.** The Board of Health or its designated agent or agents shall be

responsible for the enforcement of this chapter.

**§118-6.2. Penalties.** The penalty for each violation of this chapter shall be \$300.00. Each day that a violation continues shall constitute a separate offense. Fines for violations of this Chapter shall be recovered by indictment or on criminal complaint before a district court, or by noncriminal disposition in accordance with Massachusetts General Laws Chapter 40, Section 21D.

**§118-6.3. Other Penalties and Remedies.** In addition to, or as an alternative to the penalties in §118-6.2, the Town, acting through the Board of Health, may petition or request that the Commonwealth seek the penalties and remedies for violations of Massachusetts General Laws Chapter 132B set forth in Section 14 thereof. Nothing in this subsection shall prohibit the Town from seeking any other remedies available to it for violations of this Chapter or said Chapter 132B.”

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