

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION
1350 MAIN STREET
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY
ATTORNEY GENERAL
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TEL: (413) 784-1240
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December 10, 2010

Sandra J. Burgess, Town Clerk
4 Boltwood Avenue
Amherst, MA 01002

RE: Amherst Special Town Meeting of November 8, 2010 --- Case # 5809
Warrant Article # 13 (General)
Warrant Articles # 10 and 11 (Zoning)

Dear Ms. Burgess:

Articles 10, 11, and 13 - We return with the approval of this Office the amendments to the Town by-laws adopted under these Articles on the warrant for the Amherst Special Town Meeting that convened on November 8, 2010.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

enc.

cc: Town Counsel (via email)

Town of



AMHERST

Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

TOWN CLERK
(413) 259-3035
Email: townclerk@amherstma.gov

ARTICLE 10
Form 2 – Attachment 2
TOWN MEETING ACTION

ARTICLE 10. Zoning Amendment - Farm Stands & Farmland (Planning Board)

VOTED by a declared two-thirds to amend Section 3.312 and Article 12 of the Zoning Bylaw, by deleting the ~~lined-out~~ language and adding the language in *bold italics*, as follows:

A. Amend Section 3.312

3.312 Salesroom or farm stand for the sale of nursery, garden or other agriculture produce (including articles of home manufacture from such produce)

Class I and Class II farm stands shall be located on a farm shall be property a minimum of two (2) acres in size where it can be demonstrated that the sale of products produced from the agricultural use of the property annually generates at least \$1,000 per acre based on gross sales dollars, or, on a property a minimum of five acres in size for both Class I and Class II facilities.

3.3120 Class I *Farm stand*

R-O												
<u>R-LD</u>	<u>R-N</u>	<u>R-VC</u>	<u>R-G</u>	<u>R-F</u>	<u>B-G</u>	<u>B-L</u>	<u>B-VC</u>	<u>B-N</u>	<u>COM</u>	<u>OP</u>	<u>LI</u>	<u>PRP</u>
	<u>FPC</u>											
SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR
	SPR											

Standards & Conditions

For produce grown during either June, July, August & September of every year, or during the harvest season of the crop(s) raised on land of the owner or lessee, at least 25 percent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located. For produce generated without regard



to seasons, at least 25% of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located, and at least an additional 50 percent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land, other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture (including the growing and keeping of nursery stock and the sale thereof), floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, all as provided for under MGL Ch. 40A, Sec. 3, as amended.

3.3121 Class II *Farm stand*

R-O

<u>R-LD</u>	<u>R-N</u>	<u>R-VC</u>	<u>R-G</u>	<u>R-F</u>	<u>B-G</u>	<u>B-L</u>	<u>B-VC</u>	<u>B-N</u>	<u>COM</u>	<u>OP</u>	<u>LI</u>	<u>PRP</u>
	<u>FPC</u>											
SP	SP	SP	SP	SP	SPR	SPR	SPR	SPR	SPR	SP	SP	SP
	SP											

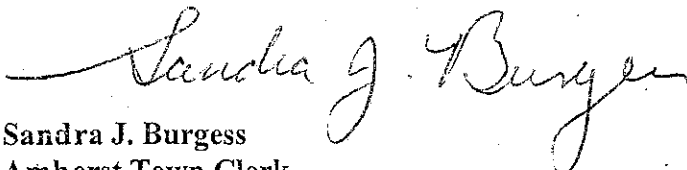
For produce grown during June, July, August & September of every year, or during the harvest season of the primary crop(s) raised on land of the owner or lessee, at least 15% of the products for sale shall be produced by the owner or lessee of the land on which the facility is located. For produce generated without regard to seasons, at least 15% of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located, and at least an additional 50 percent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land, other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture (including the growing and keeping of nursery stock and the sale thereof), floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another.

B. Amend Article 12, Definitions, by adding the following new definitions in alphabetical order and renumbering the remaining sections accordingly:

12. *Farmland: Land under agricultural use as defined in MGL Ch. 128, Section 1A, and MGL Ch. 61A, Sections 1 and 2, inclusive, as amended, and, including for the purposes of this Bylaw, the lawful propagation and raising of wild or game species under applicable state and federal law, and, land under agricultural use whose soils are classified as prime, unique, or of state and local importance by the USDA Soil Conservation Service. The provisions of MGL Ch. 40A, Section 3, shall apply.*

Action taken on 11/8/2010.

A true copy, Attest:



Sandra J. Burgess
Amherst Town Clerk

Town of



AMHERST

Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

TOWN CLERK
(413) 259-3035
Email: townclerk@amherstma.gov

ARTICLE 11
Form 2 – Attachment 2
TOWN MEETING ACTION

ARTICLE 11. Zoning Amendment - Medical Use Definitions (Planning Board)
VOTED unanimously to amend Sections 12.251 and 12.252, by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

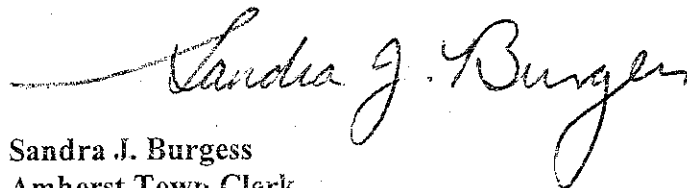
12.251 Medical center: Two (2) or more medical group practices, or ~~an equivalent aggregation of~~ medical offices, ***or combination thereof***, operating in the same building or on the same property, which may also contain associated ***principal or*** accessory uses such as diagnostic testing facilities, physical therapy, therapeutic or counseling services, pharmacies, medical supply retailers, and similar uses. A medical center shall not include medical residential facilities.

12.252 Medical group practice: A medical, dental, or psychiatric practice ***larger than a medical office***, including ~~the full time equivalent of four (4) or more~~ principal health care providers, ~~and three (3) or more~~ other medical or dental professionals, ~~exclusive of and~~ administrative or clerical staff, providing services on the premises. A medical group practice ***and its principal health providers shall offer medical services within one area of medical practice (ex., general practice, orthopedics, cardiology, obstetrics and gynecology, oncology, etc.) or within a small number of closely related areas of medical practice, and*** may also contain in-house diagnostic testing facilities, medical counseling services, and similar services, or may be associated with other similar accessory or complementary principal uses in the same building.

[The motion included re-numerating both of the amended sections.]

Action taken 11/8/2010.

A true copy, Attest:



Sandra J. Burgess
Amherst Town Clerk



Town of



AMHERST Massachusetts

TOWN HALL
4 BOLTWOOD AVENUE
AMHERST, MA 01002-2301

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ARTICLE 13 Form 2 – Attachment 2 TOWN MEETING ACTION

ARTICLE 13. Petition – Dog Welfare (Vickers)

VOTED to adopt the following general bylaw:

In order to enhance the quality of life of citizens and dogs in the Town of Amherst, and to protect the general public from damage and nuisance that may be caused by dogs confined outdoors, this bylaw regulates the confinement and tethering of dogs.

Prolonged Confinement of Dogs Outside

(A) Prolonged Chaining or Tethering of Dogs is Prohibited.

No person owning or keeping a dog in the town shall chain or tether a dog to a stationary object including but not limited to any structure, dog house, pole or tree for longer than eight (8) total hours in any 24-hour period. Any tethering employed shall not allow the dog to leave the owner/guardian's or keeper's property. The tether must be designed for dogs (e.g., logging chains and other lines or devices not for the purpose of tethering dogs may not be used). No chain or tether shall weigh more than one-eighth (1/8) of the dog's body weight. Nothing in this section shall be construed as prohibiting a person from walking a dog on a hand-held leash.

No dog under the age of six (6) months shall be tethered outside for any length of time.

(B) Permissible Outside Confinement.

A person owning or keeping a dog in the town may confine such dog outside, subject to the restrictions stated elsewhere in this by-law, through the use of any of the following three methods:

- (1) Inside a pen or secure enclosure, if the following conditions are met:
 - (a) The pen or secure enclosure has adequate space for exercise with a dimension of at least one hundred (100) square feet. Commercial dog kennels with pens intended for the



temporary boarding of dogs are exempt from this requirement.

(b) The pen or secure enclosure is constructed with chain link or other similar material as determined by the Building Inspector, with all four (4) sides enclosed.

(c) The minimum height of the fence is adequate to successfully confine the dog.

(2) A fully fenced, electronically fenced, or otherwise securely enclosed yard, wherein a dog has the ability to run but is unable to leave the enclosed yard.

(3) A trolley system or a tether attached to a pulley on a cable run, if the following conditions are met:

(a) Only one dog may be tethered to each cable run.

(b) The tether must be attached to a properly fitting collar or harness worn by the dog, with enough room between the collar and the dog's throat through which two (2) adult fingers may fit. Choke collars and pinch collars are prohibited for the purposes of tethering a dog to a cable run.

(c) There must be a swivel on at least one end of the tether to minimize tangling of the tether.

(d) The tether and cable run must each be at least ten (10) feet in length. The cable must be mounted at least four (4) feet but not more than seven (7) feet above ground level.

(e) The length of the tether from the cable run to the dog's collar or harness must allow continuous access to clean water and appropriate shelter at all times as described in paragraph (C) of this bylaw. The trolley system or tether must be of appropriate configuration to confine the dog to the owner/guardian's or keeper's property, to prevent the trolley system or tether from extending over an object or an edge that could result in injury or strangulation of the dog, and to prevent the trolley system or tether from becoming tangled with other objects or animals.

(C) Access to Water and Shelter.

Any person owning or keeping a dog in the town confined outside in accordance with Paragraph (B) of this section must provide the dog with access to clean water and an appropriate dog shelter. The dog shelter must allow the dog to remain dry and protected from the elements. Such shelter shall be fully enclosed on at least three sides, roofed, and have a solid floor. The entrance to the shelter shall be flexible to allow the dog's entry and exit, and sturdy enough to block entry of weather elements. The shelter shall contain clean bedding and be small enough to retain the dog's body heat and large enough to allow the dog to stand, lie down, and turn comfortably. The enclosure shall be structurally sound and in good repair. Suitable drainage must be provided so that water, ice, or waste is not standing in or around the shelter.

(D) No Outside Confinement at Night.

No person owning or keeping a dog in the town may leave a dog chained, tethered or confined outside between the hours of 11:00 p.m. and 7:00 a.m.

(E) Exceptions to Outdoor Confinement.

Exceptions to the above restrictions on outdoor confinement shall be made for dogs actively engaged in conduct directly related to the business of shepherding or herding cattle or other livestock or conduct that is directly related to the business of cultivating agricultural products, if

the restraint is reasonably necessary for the safety of the dog.

(F) Cruel Conditions and Inhumane Chaining or Tethering are Prohibited.

No person owning or keeping a dog in the town may subject the dog to cruel conditions or inhumane chaining or tethering at any time. Cruel conditions and inhumane chaining or tethering are defined but not limited to the following conditions:

- (1) Filthy and dirty confinement conditions, including but not limited to exposure to excessive animal waste, garbage, dirty water, noxious odors, dangerous objects that could injure or kill the dog upon contact, or other circumstances that could cause harm to the dog's physical or emotional health.
- (2) Taunting, prodding, hitting, harassing, threatening or otherwise harming a tethered or confined dog.
- (3) Subjecting the dog to dangerous conditions, including attack by other animals.

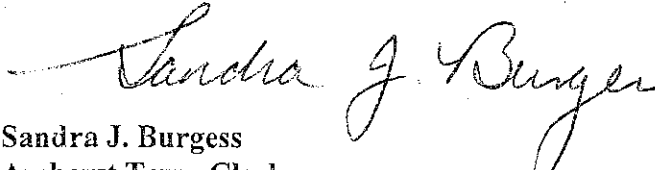
(G) Violations and Penalties

Any person owning or keeping a dog in the town who violates any provisions of this ordinance are subject to the following penalties and enforcement actions:

- (1) First violation. Violator will be subject to a warning only unless the town deems conditions warrant a penalty, in which case the violator will be subject to a fine of fifty dollars (\$50.00) and must meet remediation requirements set forth by the town no later than ten (10) calendar days after the violation. Failure to satisfy the conditions of the first violation shall immediately subject the violator to a second violation.
- (2) Second violation. Violator will be subject to a fine of one hundred dollars (\$100.00) and must meet remediation requirements set forth by the town no later than ten (10) calendar days after the violation. Failure to satisfy the conditions of the second violation shall immediately subject the violator to a third violation.
- (3) Third violation. Violator will be subject to a fine of three hundred dollars (\$300.00), impoundment of the dog in the town's shelter at the owner/guardian's expense pending compliance with the by-law, and potential loss of ownership of the dog.

Action taken on 11/10/2010.

A true copy, Attest:


Sandra J. Burgess
Amherst Town Clerk