

**CITY OF WOBURN  
MARCH 7, 2017 - 7:00 P.M.  
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
Campbell	Higgins
Concannon	Mercer-Bruen
Gaffney	Tedesco
Haggerty	

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VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE.

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**MAYOR'S COMMUNICATIONS:** None.

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**PUBLIC HEARINGS:**

On the petition by Commonwealth Investment Properties LLC, 12 Chandler Road, Burlington, Massachusetts 01803 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended Section 7.3 to alter and reconstruct a pre-existing nonconforming three family residential dwelling by razing the existing structure and replacing with a new three family dwelling house at 43-45 Church Street. PUBLIC HEARING OPENED. A report was received from the Committee on Special Permits as follows: "ought not to pass."

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On the petition by Minast, LLC, 11 Presidential Way, Woburn, Massachusetts 01801 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, to modify a special permit dated January 9, 2014, as modified by decisions dated October 29, 2015 and August 11, 2016 to allow for the deletion or modification of Condition 3 of the Decision relative to mitigation at Lot 1, Presidential Way. PUBLIC HEARING OPENED.

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On the petition by President Haggerty, Alderman Campbell and Alderman Anderson to amend the 1985 Woburn Zoning Ordinances, as amended, by adding new definitions for "Marijuana Accessories", "Marijuana Cultivator", "Marijuana Establishment", "Marijuana Product Manufacturer", "Marijuana Products", "Marijuana Retailer" and "Marijuana Testing Facility" to Section 2 Definitions; by amending Section 5.1.33c to "Medical Marijuana Treatment Center; Marijuana Establishment" by special permit in IP-2 zoning district and prohibited in all other zoning districts; and by amending Note 19b of

Section 5.1 relative to Medical Marijuana Treatment Center and Marijuana Establishment, as set forth in the petition. PUBLIC HEARING OPENED. A report was received from the Committee on Ordinances as follows: “ought to pass, as amended as follows:

Be it Ordained by the City Council of the City of Woburn that the 1985 Woburn Zoning Ordinances, as amended, be further amended as follows:

1. By adding to Section 2 Definitions between “Massage Therapist” and “Medical Marijuana Treatment Center” the following:

MARIJUANA ACCESSORIES: equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

MARIJUANA ESTABLISHMENT: a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business that is not a Medical Marijuana Treatment Center.

2. By adding Section 5.1, line 33d “Marijuana Establishment” and inserting a “P” under the IP-2 zoning district meaning and intending to allow the use in the zoning district by special permit granted by the City Council, a “-“ under all other zoning districts meaning and intending to prohibit the use in all other zoning districts, and “Note 19C” under “Notes; Other sections”.
3. By adding Note 19c of Section 5.1 Table of Use Regulations as follows:

19c. No Marijuana Establishment shall be allowed on property where the proposed marijuana establishment is to be located within five hundred feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12. The distance under this Note shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment. No Marijuana Establishment shall be allowed to cultivate, process or manufacture marijuana that is, in a manner that is, causes or contributes to a public nuisance. Public signs related to marijuana establishments shall comply with Section 13 of the 1985 Woburn Zoning Code, as amended. For the purposes of this zoning ordinance, the definitions as set forth in M.G.L. c.94G, Section 1, as may be amended from time to time, shall apply.”

A communication dated March 2, 2017 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Proposed Amendment – Section 5.1, Marijuana Establishments

I received the City Council's request to review the proposed ordinance creating a new use entitled "Marijuana Establishment", which seems to have been revised in accordance with my January 12, 2017 memorandum. I have no further or additional comments regarding the proposed Ordinance as revised.

Of course I will continue to keep the Council apprised as the state legislature wades through the various pieces of legislation that have been filed in an effort to amend M.G.L. c.94G.

Thank you for your attention to the above. Please do not hesitate to contact me if you have any additional questions regarding this matter.

Sincerely, s/Ellen Callahan Doucette

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On the petition by NAI Entertainment Holdings LLC , 846 University Avenue, P.O. Box 9108, Norwood, Massachusetts 02062-9108 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended Section 5.1.15b to amend a special permit dated May 6, 1994 as modified November 10, 2016 to allow for: 1. A revised site plan for its existing cinema building entitled "Showcase Cinemas, 25 Middlesex Parkway, Woburn, MA" dated June 10, 2016, revised August 8, 2016 and prepared by Allen & Major Associated, Inc., 100 Commerce Way, Woburn, MA 01888-0118 (the "Site Plan"); and 2. A modification to "IV General Condition" by deleting "Site" on the third line and the sixth line and replacing with "Parcel II" as shown on the Site Plan, at 25 Middlesex Canal Park. PUBLIC HEARING OPENED.

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On the petition by Alderman Anderson to amend Section 3 Administration, Enforcement and Appeals of the 1985 Zoning Ordinance of the City of Woburn, as amended, by inserting a new Subsection 3.4 as follows: "3.4 Administrative Correction of Scrivener's Errors: Typographical or numbering errors which do not affect the intent or substance of this Ordinance or any of its articles or sections may be corrected by the City Clerk, without need of a public hearing or further legislative action, by filing a revised copy of same in the Offices of the City Clerk, City Solicitor and Building Commissioner, with a 'Scrivener's Note' providing the date and substance of the correction." PUBLIC HEARING OPENED. A communication was received from the Committee on Ordinances as follows: "ought to pass, as amended as follows: '3.4 Administrative Correction of Scrivener's Errors: Typographical or numbering errors which do not affect the intent or substance of this Ordinance or any of its articles or sections may be corrected by the City Clerk, without need of a public hearing or further legislative action. The City Clerk shall notify the City Council of the scrivener's error and the correction and, upon the City Council acceptance of the changes thereafter shall file a revised copy of same in the Offices of the City Clerk, City Solicitor and Building Commissioner, with a 'Scrivener's Note' providing the date and substance of the correction.'"

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On the petition by NBTC Realty LLC to amend the 1985 Woburn Zoning Ordinances, as amended, by adding new definitions for “Billboard” and “Electronic Billboard” to Section 2 Definitions; by amending Section 13 Sign Regulations; and by amending Section 21 Mishawum Station Transit Oriented Development Overlay District including adding a new Section 7 Billboards as set forth in the petition. PUBLIC HEARING OPENED. A communication dated March 2, 2017 was received from City Solicitor Ellen Callahan Doucette as follows:

Re: Proposed Amendment to WZO regarding Billboards

I received the City Council’s request for my opinion in regard to a pending zoning amendment which would allow billboards in the Mishawum Station Transit Oriented Development Overlay District. The proponent of the zoning amendment suggested to the Council that the enactment of the amendment would preclude the MBTA from installing its proposed billboard on nearby property. The Council wants to know if the enactment of the zoning amendment would also preclude the MBTA from installing a billboard at property it owns at Salem Street, or at any other MBTA owned location in the City.

First of all, I disagree with the proponent that the enactment of the zoning amendment will prevent the MBTA from installing a billboard at its Mishawum location adjacent to Rte. 128. Presumably, the proponent’s statement is based upon those sections of 700 CMR 3.17 (5) (g) and (h) which prohibit an off-premise permitted Electronic Sign (billboard) to be located within 1,000 feet of another off-premise permitted Electronic Sign on the same or opposite side of the traveled way. Though I have not independently confirmed this information, it is my understanding that the MBTA has or had a pending application before the MassDOT Office of Outdoor Advertising (“MOOA”) for the premises on the opposite side of Rte. 128 but because that location contained inadequate square footage, the MBTA intends to file, or has filed, a new application for property located on the same side of Rte. 128 as the proponent’s property. In either case, the MBTA’s billboard will be located within 1,000 feet of the proponent’s billboard.

It seems to me that if the Council enacted the zoning amendment, it would merely launch the proponent into a footrace with the MBTA to see whose application the MOOA would approve first. Furthermore, in certain instances MOOA can waive the 1,000 foot spacing requirement “where a proposed sign and an existing sign are separated by a building or other permanent obstruction or the geometry of the roadway is such that the motorist can only view one sign at any point on the public way at any one time”. See, 700 CMR 31.07(6). Assessment of the view is taken from the highway, not the affected properties. See, *Plamandon v. Outcepts Management & Consulting, LLC*, 81 Mass.App.Ct. 845, 853-854 (2012) (“visibility and appearance in relation to the surrounding neighborhood must be observed from the highway”).

To the specific question asked, and as stated in my February 13, 2017 legal opinion to the Planning Board, a copy of which was provided to the City Council, the MBTA is exempt from zoning ordinances and bylaws prohibiting the installation of billboards. See, *Massachusetts Bay Transp. Auth. v. City of Somerville*, 451 Mass. 80 (2008) (“the

MBTA's enabling statute, c.161A, reserves to its board of directors the duty to "determine the character and extent of the services and facilities to be furnished, and . . . gives the MBTA board exclusive authority to determine the character and extent of its facilities . . . and [to determine] the type of advertisements to erect on its facilities and . . . therefore the MBTA is exempt from local zoning regulations with respect to advertisements erected on its facilities").

Therefore, enactment of the zoning amendment will be of absolutely no effect regarding the installation of a billboard upon any other MBTA owned property in the City, including Salem Street.

Thank you for your attention to the above. Please do not hesitate to contact me if you have any additional questions regarding this matter.

Sincerely, s/Ellen Callahan Doucette

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On the petition by 600 MetroNorth Corporate Center to amend the 1985 Woburn Zoning Ordinances, as amended, by amending Section 13 Sign Regulations relative to billboards; and by adding a new Section 29 Billboards as set forth in the petition. PUBLIC HEARING OPENED. A communication dated February 15, 2017 was received from Tina P. Cassidy, Planning Board Director, Woburn Planning Board as follows:

Re: Proposed zoning text amendment to allow billboards as special permit use (City Council) in the OP-93 and IP-2 Zoning Districts/600 MetroNorth Corporate Center LLC

Dear Mr. Campbell:

At a meeting of the Woburn Planning Board held on Tuesday, February 14, 2017, members of the Board voted unanimously (6-0-0) to continue the public hearing to the Board's February 28, 2017 meeting.

Please feel free to contact me if you have any questions relative to this matter.

Respectfully, s/Tina P. Cassidy, Planning Board Director

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On the petition by Park Avenue Solar Solutions, 102 Greenwich Avenue, Greenwich, Connecticut 06830 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended Section 26 to install an approximately 586 kW carport solar array over existing parking lot at 300 Wildwood Avenue. PUBLIC HEARING OPENED.

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On the petition by Alderman Gately concerning the structure or structures located in the City of Woburn, County of Middlesex, Commonwealth of Massachusetts known and

numbered as 52-54 High Street, Woburn, Massachusetts, for the purposes of determining whether said structure or structures are a public nuisance, a nuisance to the neighborhood, a dilapidated or dangerous building or other structure, as said terms are used in Massachusetts General Laws Ch. 139, Sec. 1, and if so, enter an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. PUBLIC HEARING OPENED.

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**CITIZEN'S PARTICIPATION:** None.

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**COMMITTEE REPORTS:**

**FINANCE:**

On the Order to authorize borrowing in the sum of \$1,900,000.00 for the purposes of purchasing parcels of land and constructing a parking lot at 455-465 and 467-471 Main Street, committee report was received "ought to pass".

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**PERSONNEL:**

On the re-appointment of Angela Amato, Eleanor Camillieri, Dorothy Capone, Jack Kelly, Barbara Ridley and Doris Stanton as Members of the Council on Aging, committee report was received "ought to pass".

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**ORDINANCES:**

On the Order to amend the 1989 Woburn Municipal Code, as amended, Section 2-9 Appointments to fill vacancies, committee report was received "ought to pass, as amended as follows:

Be it ordained by the City Council of the City of Woburn that Section 2-9 Appointments to fill vacancies in the 1989 Woburn Municipal Code, as amended, be further amended by deleting the section in its entirety and replacing with the following:

2-9 Appointments to fill vacancies.

1. Pursuant to Mass. Gen. L. Ch. 41, § 61A, if the office of city auditor, city treasurer, city collector of taxes, or other officer having charge of a city department, or its deputy, is vacant, or if any such officer, because of disability or absence, is unable to perform his duties, the Mayor, without confirmation by the city council, shall appoint a temporary officer to hold such office and exercise the powers and perform the duties thereof until another is duly elected or appointed and has qualified according to law, or the officer who was disabled or

incapacitated resumes his duties. The Mayor shall notify the City Council of such temporary appointment within forty-eight (48) hours. No such temporary officer shall be appointed by the Mayor under this provision for a period longer than sixty (60) days. If after the sixty (60) days, such office is still vacant, the appointment shall be filled in accordance with the following:

- a. **Mayor Appointed Offices:** Whenever a vacancy occurs in any office now filled by appointment by the Mayor, the Mayor shall appoint a person in the manner of the original appointment, to fill such a vacancy and to hold office for the balance of the unexpired term and until a successor is appointed and qualified. Whenever any person holding office appointed by the Mayor shall be temporarily unable to discharge the duties of the office, the Mayor may appoint a person to discharge such duties until the Mayor determines that such inability has ceased. The Mayor shall notify the City Council of such appointment within forty-eight (48) hours.
  - b. **City Council Appointed Offices:** Whenever a vacancy occurs in any office now filled by appointment by the City Council, the City Council shall appoint a person in the manner of the original appointment, to fill such a vacancy and to hold office for the balance of the unexpired term and until a successor is appointed and qualified. Whenever any person holding office appointed by the City Council shall be temporarily unable to discharge the duties of the office, the City Council may appoint a person to discharge such duties until the City Council determines that such inability has ceased. The City Clerk shall notify the Mayor of such appointment within forty-eight (48) hours.
2. **Definitions – The following shall apply to Section 2-9:**
- a. "Appointed" shall mean the act of naming or designating someone to a position or office.
  - b. "Temporarily unable to discharge the duties of the office" shall mean the position holder is not able to perform the duties required of the office. Any officer that is unable to perform the duties required of the office due long-term illness, long-term sickness, long-term disability, or leave under the Family Medical Leave Act ("FMLA"), shall be determined by the Human Resources Director. After such determination, the Human Resources Director shall notify the Mayor and the City Council of such determination.
  - c. "Temporary vacancy" shall mean the position holder is unable to discharge the duties of the office. A temporary vacancy may occur as a result of a suspension, serious illness of long duration, or a leave of absence. An example of such an absence includes situations under the FMLA. A temporary vacancy is not created when the position holder is on vacation or out sick for a short period of time.

- d. "Vacancy" or "vacant" shall mean the position is currently unoccupied. If permanent, a position is rendered vacant usually, as a result of the resignation, retirement or termination of the occupant, leaving the position to be newly filled or appointed."

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**PUBLIC SAFETY AND LICENSES:**

On the petition by Gevorg Melikyan dba Milano Jewelry for a new Pawn Brokers License, committee report was received "ought not to pass".

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On the petitions for renewal of Common Carrier Licenses by M&L Transit Systems Inc. and TransAction Corporate Shuttles, Inc., committee report was received "ought to pass".

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On the petition by EC Inc. dba Xpress Fuel for renewal of a Second Class Motor Vehicles Sales License, committee report was received "ought to pass".

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**NEW PETITIONS:**

Petition by James L. McKeown Boys and Girls Club of Woburn, Charles Gardner Lane, Woburn, Massachusetts 01801 for a Special Event Permit to allow a road race and health walk on city streets beginning at Library Park and around Horn Pond on May 7, 2017.

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Petitions for renewal of a Secondhand Dealers and Secondhand Collectors License by Gevorg Melikyan dba Milano Jewelry, 494 Main Street, Unit B; GameStop #3315, 103 Commerce Way, Suite B; and Musto Jewelers, 186 Cambridge Road, #9.

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Petition by Robson Dias, 2 Westgate Drive #202 for renewal of a Livery License.

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Petition by NSTAR Electric Company dba Eversource Energy and Verizon New England, Inc. for a grant of right in a way on Main Street southwesterly side at and northeast of Charles Gardner Lane to remove two joint occupancy poles Pole 1/92 and Pole 1/91A, on Charles Gardner Lane northwesterly side at and southwest of Main Street to install one joint occupancy pole Pole 1/92, and on Charles Gardner Lane southeasterly side at and southwest of Main Street to install one joint occupancy pole Pole 1/91A.

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Petition by Burbank LLC, 16 Highland Street, Woburn, Massachusetts 01801 for a special permit pursuant to 1985 Woburn Zoning Ordinances, as amended, Section 7.3 to

allow alteration of a nonconforming structure and use (three family dwelling) by razing existing structure and replacing with a new three family dwelling at 25 Hawthorne Street.

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Petition by WMK, LLC dba MobilityWorks, 299 C&E Washington Street, Woburn, Massachusetts 01801 pursuant to 1985 Woburn Zoning Ordinances, as amended, Section 5.1.45 to allow use of 10,150 square feet of space in existing building for sale office and automotive shop to convert standard vehicles to wheelchair accessible vehicles and fourteen overnight parking spaces at 299 C&E Washington Street.

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**COMMUNICATIONS AND REPORTS:**

A communication dated February 24, 2017 was received from Charles O’Connor, Parking Clerk, Police Headquarters, 25 Harrison Avenue as follows:

Council Members,

In accordance with Massachusetts General Laws Chapter 90, Section 20½ I am submitting the following parking ticket report. Figures cited below are for the Month of January 2017: Number of violations issued 106, Numbers of violations paid 37, Number of violations outstanding 64, Amount collected and submitted to Collectors Office \$6,804.80, Parking fines referred to the Handicap Commission \$3,700.00.

There is a backlog of 1,652 unpaid tickets dating from January 2004 to December 2016. A 21 day late notice is sent to vehicle owners who have not paid the fine. After 28 days, if the fine still has not been paid, that information is forwarded to the Registry of Motor Vehicles for administrative action.

Respectfully submitted, s/Charles O’Connor, Parking Clerk

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A communication dated February 16, 2017 was received from Police Chief Robert J. Ferullo, Jr. as follows:

Subject: Request to install flag pole

The city of Woburn Police Department would have no issue with a flag pole being installed in memory of Officer Jack Maguire provided all other regulatory requirements of such an installation are complied with.

s/Robert J. Ferullo, Jr., Chief of Police

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A communication dated February 22, 2017 was received from Thomas J. Tinlin, Administrator, MassDOT, Ten Park Plaza, Suite 4160, Boston, Massachusetts 02116 as follows:

Re: Woburn – MassDOT Project 608067: Intersection Reconstruction at Route 3 (Cambridge Road), Bedford Street and South Bedford Street

Dear Mr. Campbell:

In response to your February 13<sup>th</sup> letter regarding the City Council's request that MassDOT place the referenced project on the Transportation Improvement Program (TIP), the decision to program funding in this region is made by the Boston Area Metropolitan Planning Organization (MPO) as part of their annual TIP development process. While the Secretary and Chief Executive Officer of MassDOT serves as the Chair, the MPO is comprised of 22 voting members, including MassDOT Highway Division, Metropolitan Area Planning Council (MAPC), the Massachusetts Bay Transit Authority (MBTA), MBTA Advisory Committee, the Massachusetts Port Authority (Massport), the Regional Transportation Advisory Council, the Cities of Beverly, Boston (2), Everett, Newton, Somerville and Woburn, and the towns of Arlington, Bedford, Braintree, Framingham, Lexington, Medway and Norwood. The MPO is the federally designated entity charged with developing transportation plans and programs for this region.

During the TIP development process, MassDOT will advocate for this project. The City of Woburn is encouraged to submit written or oral comments to the MPO regarding this project. MassDOT is also developing its Capital Investment Plan (CIP) for state fiscal years 2018-2022. This document outlines MassDOT's spending program and will reflect projects programmed on the TIP. Comments or suggestions on current or future transportation projects, programs, priorities and concerns can be submitted using MassDOT's online comment tool available on our website.

If you have further questions regarding this matter or the TIP development process, please contact District 4 Highway Director Paul Stedman.

Sincerely, s/Thomas J. Tinlin, Administrator

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**UNFINISHED BUSINESS OF PRECEDING MEETING:**

On the Veto Message relative to the Order to amend Title 14, Article I, Section 14-7 of the 1989 Woburn Municipal Code, as amended, Trash Removal and Recycling – Condominium Associations.

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**APPOINTMENTS AND ELECTIONS:**

A communication dated February 28, 2017 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear City Clerk Campbell:

By the power vested in me as Mayor of the City of Woburn, I hereby appoint Shannon Ryan, 139 School Street, with three-year term to expire March 30, 2018, to the Woburn Board of Registrars of Voters; subject to approval by the City Council.

Ms. Ryan's appointment fills the seat of Oliver C. Galante, who recently passed away.

Respectfully, s/Scott D. Galvin, Mayor

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A communication dated February 28, 2017 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear City Clerk Campbell:

By the power vested in me as Mayor of the City of Woburn, I hereby appoint Jonathan W. Surette, 15 Donna Road, to the Woburn Golf and Ski Authority, subject to confirmation by the City Council, with a term to expire Dec. 31, 2017.

Mr. Surette's appointment fills the seat of Richard Lynch, who recently resigned from the Authority

Respectfully, s/Scott D. Galvin, Mayor

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A communication dated February 28, 2017 was received from His Honor the Mayor Scott D. Galvin as follows:

Dear City Clerk Campbell:

By the power vested in me as Mayor of the City of Woburn, I hereby appoint Charles J. Natale Jr., 2 Kathleen Drive, to the Woburn Golf and Ski Authority, subject to confirmation by the City Council, with a six-year term to expire Dec. 31, 2021.

Mr. Natale's appointment fills the seat of Robert Dunnigan, who recently resigned from the Authority.

Respectfully, s/Scott D. Galvin, Mayor

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**MOTIONS, ORDERS AND RESOLUTIONS:** None.