

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
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August 9, 2016

Edward Ryan, Esq.
Ryan, Boudreau, Randall & Kirkpatrick
125 College Street
South Hadley, MA 01075

**Re: Extension of 90-day review period of Article 12
South Hadley Annual Town Meeting of May 11, 2016
Case # 7962**

Dear Attorney Ryan:

Pursuant to the requirements of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, the Attorney General and Town Counsel are authorized to extend the 90-day period provided for the Attorney General’s review of town by-laws for not more than an additional 90 days. This letter serves to satisfy the requirements of G.L. c. 40, § 32, as amended. In light of our need for time to further discuss the proposed by-laws’ consistency with state law, we hereby jointly agree to extend the Attorney General’s review period of Article 12 for an additional 60 days. Our decision on Article 12 will now be due on **October 20, 2016**.

Please sign this letter to reflect your agreement and return the signed letter to us. We will then file the letter with the Town Clerk, with a copy to you. Thank you for your accommodation in this matter.

Very truly yours,

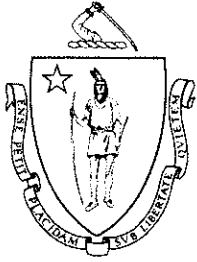
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Edward Ryan /mc
Town Counsel

8/9/16
Date



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Received
 Town of South Hadley
 OCT 05 2016
 Town Clerk
 1:30 pm

MAURA HEALEY
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October 5, 2016

Carlene C. Hamlin, Town Clerk
 Town of South Hadley
 116 Main Street
 South Hadley, MA 01075

**RE: South Hadley Annual Town Meeting of May 11, 2016 - Case # 7962
 Warrant Articles # 9, 11 and 12 (General)**

Dear Ms. Hamlin:

Article 12 - We approve Article 12 from the May 11, 2016 South Hadley Annual Town Meeting.¹ Our comments regarding Article 12 are provided below.

Article 12 amends the Town’s General By-laws, Section 1007, “Nuisances,” to add a new Section 1007.3. The new Section 1007.3 prohibits the creation of “blighted property;” requires a property owner to provide contact information to the Building Commissioner within sixty (60) days of property becoming vacant; and requires the owner of vacant property to pay a \$100 annual inspection fee. The new Section 1007.3 also establishes a fine of \$300 per day for failure to register a vacant property.

In addition, the new Section 1007.3 permits an additional fine of \$300 per month if the property remains vacant for more than 30 months, as follows: (emphasis added):

If a structure is unoccupied for more than thirty months without cause or reason as determined by the Building Commissioner an additional fine of \$300 per month may be levied or otherwise allowed under MGL 40 U. The property owner will be notified ten days in advance of the impending fine via registered USPS mail to the last address registered with the Building Department or the last address available to the town. An appeal of fines or a request for extension for extenuating circumstances may be requested to the Selectboard.

The portion of the new Section 1007.3 authorizing this additional fine does not provide a process by which the Building Commissioner will make a determination that the structure is unoccupied “without cause or reason,” including identifying any standards or criteria that will be utilized by the Building Commissioner in making such determination. To ensure that this

¹ In a decision issued August 9, 2016, we approved Articles 9 and 11.

determination is not left to the unfettered discretion of the Building Commissioner, the Town should consult with Town Counsel regarding possible future amendments to the by-law to establish standards and criteria that will guide the Building Commissioner's determination.

The Town should also consult with Town Counsel regarding the proper application of this portion of new Section 1007.3 to ensure that the Town does not impermissibly interfere with a private civil relationship in violation of the Constitution and laws of the Commonwealth. Specifically, Section 7 of the Home Rule Amendment prohibits towns from "enact[ing] private or civil law governing civil relationships except as incident to an exercise of an independent municipal power." CHR General, Inc. v. City of Newton, 387 Mass. 351, 355-56 (1982) (holding a city ordinance restricting the conversion of rental units to condominiums was a private or civil law governing the relationship between landlord and tenant and was invalid under the Home Rule Amendment.) The Town should consult with Town Counsel to ensure that this portion of the new Section 1007.3 is applied in a manner that would not mandate a property owner to enter into a private relationship of a seller/buyer or landlord/tenant or otherwise require that the owner must live in the structure, in order for the owner to avoid the imposition of an additional fine.

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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

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cc: Town Counsel Edward Ryan