

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
(508) 795-1991 fax
www.mass.gov/ago

June 29, 2017

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

**RE: South Hadley Special Town Meeting of January 11, 2017 - Case # 8250
Warrant Article # 15 (Zoning)
Warrant Articles # 10, 11, 12, 14, 16 and 20 (General)**

Dear Ms. Hamlin:

Articles 14 and 15 - Except as noted below we approve Articles 14 and 15 from the January 11, 2017 South Hadley Special Town Meeting.^{1, 2} Our comments regarding Articles 14 and 15 are provided below.

Article 14 - Article 14 recodifies the Town's general by-laws as follows:

...renumbering and revision of the various bylaws of the Town from their original numbering or their numbering in the General Bylaws, as amended through May 11, 2016, to the numbering or codification, arrangement, sequence and captions and the comprehensive revisions to the text of the General By-laws as set forth in the Final Draft of the Code of the Town of South Hadley, dated October 2016...

The documents submitted to this Office indicate that the revisions to the general by-laws were limited to non-substantive renumbering, reorganization and repositioning changes specifically identified in a document entitled "Town of South Hadley Changes to Bylaws Made During

¹ In a decision issued March 28, 2017, we approved Article 20 and took no action on Articles 10, 11, 12 and 16.

² We take no action on the portions of the "Final Draft of the Code of the Town of South Hadley, dated October 2016" that do not pertain to the Town's re-codified general and zoning by-laws. Specifically, we take no action on Division 2, Regulations of the Board of Health, Conservation Commission, Council on Aging, Department of Public Works, Library Trustees, Recreation Department and Subdivision Regulations (Division 2, Chapters 300:1 - 360:1); Division 3, Policies pertaining to benefits, damage claims, inspectional services, library policies, personnel policy, social media, vehicles town-owned, and workplace policy manual (Division 3, Chapters 400:1 - 478:1); and the Appendix (A500:1 and A501:1).

Codification Project” [“Codification Summary”] presented to Town Meeting and provided to this Office by the Town Clerk.³ Our approval of the re-codified general by-laws, and specific revisions (except as indicated below), is limited solely to those changes that were identified in the documents submitted to this Office. Our comments on the specific identified changes are provided below.

1. Chapter 1, General Provisions.

Section 1-6, Violations and Penalties was amended to increase the maximum penalty amount from “not exceeding \$300” to “not exceeding \$600” as follows:

Any person who violates a provision of any bylaw or rule and regulation of the Town, whereby any act or thing is enjoined or prohibited or required, shall, unless other provision is expressly made, be liable to a penalty not exceeding ~~\$300~~ \$600 for each offense after notice by the Town to cease or perform, as applicable. Each day any such violation of these by-laws shall continue after such notice shall constitute a separate offense.

We disapprove and delete the text \$600 in Section 1-6 because it conflicts with G.L. c. 40, § 21. (**Disapproval # 1 of 1**). A fine amount “not exceeding \$600” conflicts with the provisions of G.L. c. 40, § 21, which limits the penalties for by-law violations to “not exceeding three hundred dollars for each offense.” G.L. c. 40, § 21. For this reason, we must disapprove and delete the text in Section 1-6 that seeks to impose a fine in excess of \$300.00.⁴ The Town should consult with Town Counsel regarding a future amendment to Section 1-6 to insert a new fine amount.

Article 15 - Article 15 recodifies the Town’s zoning by-laws as follows:

...renumbering and revision of the Zoning Bylaw of the Town from its original numbering, as amended through May 11, 2016, to the numbering or codification, arrangement, sequence and captions and the comprehensive revisions to the text of the Zoning By-laws as set forth in the Final Draft of the Code of the Town of South Hadley, dated October 2016...

The documents submitted to this Office indicate that the revisions to the zoning by-law were limited to non-substantive renumbering, reorganization and repositioning changes specifically identified in a document entitled “Town of South Hadley Changes to Bylaws Made During Codification Project” [“Codification Summary”] presented to Town Meeting and

³ The specific revisions are identified by additions shown in bold and underline and deletions shown in strikethrough.

⁴ We acknowledge that in the Final Draft of the Code of the Town of South Hadley, dated October 2016, the fine amount shown in Section 1-6 still provides for a fine “not exceeding \$300.” Town Counsel explained to us that the Town realized that G.L. c. 40, § 21, limits the fine amount to no more than \$300 and therefore the Town did not intend to make this change. However, the Town failed to delete this specific amendment from the Codification Summary. As such, Town Meeting voted to amend Section 1-6 to increase the fine amount to “not exceeding \$600.” The Town should consult with Town Counsel about a future amendment to Section 1-6 to clarify the fine amount.

provided to this Office by the Town Clerk.⁵ Our approval of the re-codified zoning by-laws, and specific revisions, is limited solely to those changes that were identified in the documents submitted to this Office. Our comments on the specific identified changes are provided below.

1. Section 255-10 - Terms Defined.

Section 255-10 is amended to add a new sub-section (B) to the definition of family, as follows:

B. Notwithstanding the above, a family shall be deemed to include a group residence, limited, further defined as a premises licensed, regulated, or operated by the Commonwealth of Massachusetts or operated by a vendor under contract with the commonwealth for the residential living, care, or supervision in any single dwelling unit of five or more mentally ill or mentally retarded persons or persons with disabilities.

The Town must ensure that this definition of “family” is applied consistent with the Fair Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, and/or the Massachusetts Zoning Act, G.L. c. 40A, § 3. The Town should consult closely with Town Counsel when applying this definition.

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

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418
nicole.caprioli@state.ma.us

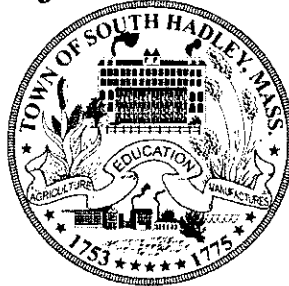
cc: Town Counsel Edward J. Ryan, Jr.

⁵ The specific revisions are identified by additions shown in bold and underline and deletions shown in strikethrough.

Town of South Hadley

Office of the Town Clerk

Carlene C. Hamlin
Town Clerk
CMMC



116 Main Street • Room 108 • South Hadley, MA 01075
Phone (413) 538-5017 x115 • Fax (413) 538-7565
E-Mail: chamlin@southhadleyma.gov

A complete listing of the Town By-Laws is on file in the Town Clerk's Office and online on the town's website.

<http://southhadleyma.gov/185/Bylaws>

ARTICLE 14. To see if the Town shall accept the renumbering and revision of the various bylaws of the Town from their original numbering or their numbering in the General Bylaws, as amended through May 11, 2016, to the numbering or codification, arrangement, sequence and captions and the comprehensive revisions to the text of the General Bylaws as set forth in the Final Draft of the Code of the Town of South Hadley, dated October 2016, said codification having been done under the direction of the Selectboard and Town Counsel, and said Code being a compilation and comprehensive revision of the present bylaws of the Town. All bylaws of a general and permanent nature, as amended, heretofore in force and not included in the Code shall be repealed, except that such repeal shall not affect any suit or proceeding pending as the result of an existing law, and such repeal shall not apply to or affect any bylaw, order or article heretofore adopted accepting or adopting the provisions of any statute of the Commonwealth. These bylaws shall be referred to as the "Code of the Town of South Hadley, Massachusetts."