



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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

TOWN OF SOUTH HADLEY
TOWN CLERK'S OFFICE
SEP 30 PM 3:07

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

September 30, 2021

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

Re: **South Hadley Annual Town Meeting of June 9, 2021 -- Case # 10259**
Warrant Articles # 7, 8, 9, 10 and 14 (General)

Dear Ms. Hamlin:

Articles 10 and 14 - We approve Articles 10 and 14 from the June 9, 2021 South Hadley Annual Town Meeting. Our comments regarding Article 10 are provided below.

Article 7 - We take no action on Article 7 because it is a vote to adopt and accept the provisions of G.L. c. 32B, § 20 regarding the "Other Post-Employment Benefits Liability Trust Fund" and authorize related actions including the execution of the trust, designation of the trustee, the transfer of monies to the trust and investment of same. The vote under Article 7 is not a by-law amendment and is therefore not subject to the Attorney General's review and approval pursuant to G.L. c. 40, § 32. However, the Town should consult with Town Counsel regarding whether the vote needs to be filed with the Secretary of State and the Department of Revenue/Division of Local Services (DOR/DLS).

Articles 8 and 9 - We take no action on Articles 8 and 9 because they are not by-law amendments. Article 8 is a vote to authorize the use of G.L. c. 203C in establishing "prudent investor" guidelines related to South Hadley's Financial Policies. Article 9 is a vote to accept G.L. c. 200A, § 9A regarding "tailings and draft/check processing" contained within and related to the South Hadley Financial Policies. The votes under Articles 8 and 9 are not by-law amendments and are therefore not subject to the Attorney General's review and approval pursuant to G.L. c. 40, § 32. However, the Town should consult with Town Counsel regarding whether these votes need to be filed with the Secretary of State and DOR/DLS.

Article 10 - Under Article 10 the Town voted to amend its general by-laws to insert a new Chapter 142, "Redemption of Tax Title Real Estate." The new Chapter 142 authorizes the Treasurer to enter into a written payment agreement with any person entitled to redeem ownership of a parcel in tax title. Section 142-1. The categories of real property that are eligible for a payment agreement are commercial property, residential property, industrial property and

open space. Section 142-2. The by-law sets forth conditions that must be met prior to the Town and the property owner entering into an agreement, including that the property owner is required to pay, at the time of execution of the agreement, a minimum of 25% of the amount due. Section 142-3 (3). The by-law further provides that “[t]he Agreement may not be longer than five (5) years in duration.” Section 142-3 (4). Lastly, although the by-law does not specifically state what percentage of interest, if any, may be waived, the by-law provides that: “[a]fter the Town has received 75% of the total amount due, the Redeemer shall be entitled to a credit equal to 25% of the accrued interest on the tax title account. This credit shall be applied against the final installment payment(s) due under the Agreement.” Section 142-4.

General Laws Chapter 60, Section 62A allows municipalities to adopt by-laws that authorize payment agreements between the Treasurer and person entitled to redeem parcels in tax title. General Laws 60, Section 62A requires specific information in the by-law, as follows:

Municipalities may by bylaw...authorize payment agreements between the treasurer and persons entitled to redeem parcels in tax title. Such agreements shall be for a maximum term of no more than 5 years or such lesser period as the...bylaw may specify and may waive not more than 50 per cent of the interest that has accrued on the amount of the tax title account, subject to such lower limit as the...bylaw may specify. An ordinance or bylaw under this section shall provide for such agreements and waivers uniformly for classes of tax titles defined in the ordinance or bylaw.

Any such agreement must require a minimum payment at the inception of the agreement of 25 per cent of the amount needed to redeem the parcel. During the term of the agreement the treasurer may not bring an action to foreclose the tax title unless payments are not made in accordance with the schedule set out in the agreement or timely payments are not made on other amounts due to the municipality that are a lien on the same parcel.

A by-law adopted pursuant to G.L. c. 60, § 62A must: (1) authorize payment agreements between the treasurer and persons entitled to redeem parcels in tax title; (2) provide the term applicable to all agreements, not to exceed five years; (3) specify the percentage of accrued interest on the amount of the tax title account that may be waived, not to exceed more than 50 per cent of such accrued interest; (4) provide for such agreements and waivers uniformly for classes of tax titles defined in the bylaw; (5) require a minimum payment at the inception of the agreement of 25 percent of the amount needed to redeem the parcel; and (6) provide that, during the term of the agreement, the treasurer may not bring an action to foreclose the tax title unless payments are not made in accordance with the schedule set out in the agreement or timely payments are not made on other amounts due to the municipality that are a lien on the same parcel.

The new Chapter 142 does not specifically state the percentage of accrued interest, if any, that may be waived although Section 142-4 provides that the redeemer shall be entitled to “a credit equal to 25% of the accrued interest” after the Town has received 75% of the total amount due. The Town must ensure that it applies the new Chapter 142 consistent with G.L. c. 60, § 62A. The Town may wish to discuss with Town Counsel whether an amendment to the by-law is needed at a future Town Meeting to specifically include information on the amount of interest, if any, that may be waived.

In addition, Section 142-3 (4) provides that “[t]he agreement may not be longer than five (5) years in duration.” We construe Section 142-3 (4) as making the term of all such agreements five years, because the by-law may not leave it to the Treasurer to determine the length of the tax title agreements. Such discretion would be inconsistent with G.L. c. 60, § 62A. See The Department of Revenue, Division of Local Services (DOR/DLS) Informational Guideline Release (“IGR”) explaining the requirements of G.L. c. 60, § 62A, which can be found at <https://dls.gateway.dor.state.ma.us/gateway/DLSPublic/IgrMaintenance/240>. The IGR states at page 2, Section I (A): “Municipalities must adopt a payment by-law or ordinance before any tax agreements may be made with taxpayers. The by-law or ordinance must specify the scope of the program, the details of which may vary for different categories of tax titles. The by-law or ordinance may not delegate any of those decisions to the treasurer or other board or officer.” (emphasis supplied). The Town must apply the by-law consistent with G.L. c. 60, § 62A and should consult with Town Counsel with any questions on this issue.

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

cc: Town Counsel Lisa L. Mead

