



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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September 11, 2019

Tracy K. Kenney, Town Clerk
Town of Canton
801 Washington Street
Canton, MA 02021

RE: Canton Annual Town Meeting of May 13, 2019 - Case # 9544
Warrant Articles # 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 (Zoning)
Warrant Articles # 11, 22, 25, and 27 (General)

Dear Ms. Kenney:

Articles 11, 22, 25, 27, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 - We approve these Articles, and the map amendments related to Article 40, from the May 13, 2019 Canton Annual Town Meeting. We will send the approved map to you by regular mail. Our comments on Articles 11, 27, 33, 34, 35, and 37 are provided below.

Article 11 - Article 11 was a vote to amend Article VIII, Section 6 to establish two new revolving funds, the Paul Revere Heritage Site Museum and the Paul Revere Heritage Rolling Mill and Open Space revolving funds.¹ The revenue source for these revolving funds includes grants, gifts, and donations. It is unclear whether “gifts” and “donations” referred to are actually “fees” for programs and services, or if the donations are true “gifts.” General Laws Chapter 44, Section 53A, pertains to the acceptance and expenditure of grants and gifts, and requires:

An officer or department of any...town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may

¹ Article 11 was also a vote to: (1) petition the Legislature for a special Act to create a nonprofit corporation to be known as the “Revere and Son Heritage Trust Inc.,” and (2) set the spending limit amounts for various revolving funds that were established under Article VIII, Section 6. We take no action on these portions of Article 11’s because they are not by-law amendments and are not subject to review and approval by the Attorney General. See G.L. c. 40, § 32.

expend such funds for the purposes of such grant or gift...in towns with the approval of the board of selectmen...

Further, Section 53A provides that “[n]otwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation.” The Town should consult with Town Counsel to ensure that any gifts or donations deposited in the Town’s Paul Revere Heritage Site Museum and the Paul Revere Heritage Rolling Mill and Open Space revolving funds comply with the requirements of G.L. c. 44, § 53A and § 53E ½.

Articles 33, 34, 35, and 37 - Based on the Attorney General’s limited standard of review of town by-laws, we approve Articles 33, 34, 35, and 37. However, for the reasons explained below, the Town should consult closely with Town Counsel before applying the by-law amendments to any substance abuse treatment facility to avoid violating the Massachusetts Zoning Act, Americans with Disabilities Act (42 U.S.C. §§, 12132 et seq.), the Rehabilitation Act (29 U.S.C. § 794(a)), and the Fair Housing Act (42 U.S.C. § 3604(f)(1) et seq.).

In the decision below, we briefly describe Articles 33, 34, 35, and 37; discuss the Attorney General’s standard of review of town by-laws under G.L. c. 40, § 32; and then explain why, governed as we are by that standard, we must approve these Articles because, on their face, they do not present a sharp conflict with state and federal law. We emphasize that our approval in no way implies any agreement or disagreement with the policy views that led to the passage of these by-laws. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

I. Description of Articles 33, 34, 35, and 37

Article 33 amends the Town’s zoning by-laws to add new definitions and amend existing definitions of the health care related uses. Specifically, Article 33 adds a new definition for “substance abuse detoxification or treatment center” as follows:

A residential unit, treatment unit, detoxification facility, or other facility licensed by the Department under 105 CMR 164.00. This may include in-patient or out-patient facilities providing care coordination, case management, medical, pharmacological, psychological, psycho-educational, rehabilitative, or social services and therapies. A substance abuse facility that offers both inpatient and outpatient services would be defined as an in-patient facility, per Section 4.2.7. A substance abuse facility that offer only outpatient services would be treated as an outpatient facility, per Section 4.2.8. This does not include hospitals, long-term care facilities, clinics or medical offices or groups of offices, such as drug or alcohol counselors where no medication is provided on-site.

Article 34 amends the Town’s Table of Use Regulations to allow for health care related uses in various zoning districts in the Town. Specifically, one change allows hospitals, long-term care facilities, substance abuse detoxification or treatment centers by special permit in the Town’s

Light Industrial, Light Industrial (B), and Light Industrial (C) Districts and prohibits such uses in all of the Town's other zoning districts.

Article 35 adds new Sections 4.2.7 and 4.2.8, special regulations for hospital, long term-care facilities, health care facilities and substance abuse detoxification or treatment centers. The new Sections 4.2.7 and 4.2.8 impose infrastructure, landscaping, and dimensional requirements on such uses.

Lastly, Article 37 amends Section 6.1 "Off-Street Parking," to add parking requirements for hospital, long term-care facilities, health care facilities and substance abuse detoxification or treatment centers.

II. Attorney General's Standard of Review and General Zoning Principles

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom, 363 Mass. at 154 (emphasis added). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Articles 33, 34, 35, and 37 as amendments to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (quoting Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). Nevertheless, where a zoning by-law conflicts with state or federal law or the Constitution, it is invalid. *See*

Zuckerman v. Hadley, 442 Mass. 511, 520 (2004) (rate of development by-law of unlimited duration did not serve a permissible public purpose and was thus unconstitutional). In general, a municipality “is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders.” Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature]...” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Protections of Disabled Persons in State and Federal Law

Although we must approve Article 33, 34, 35, and 37 under the Attorney General’s limited standard of review, the Town should consult closely with town Counsel when applying the by-laws, and specifically those pertaining to substance abuse treatment centers, so that the Town does not violate the numerous statutory protections for disabled persons in state and federal law.

A. Massachusetts Zoning Act, G.L. c. 40A, § 3, ¶ 4

The Massachusetts Zoning Act, G.L. c. 40A, § 3, ¶ 4 prohibits town by-laws that have a discriminatory effect on disabled persons, as follows:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.

Persons suffering from drug addiction are considered disabled under G.L. c. 40A, § 3, and facilities that serve this population are entitled to the protections of the statute. *See S. Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F. Supp. 2d 85, 95 (D. Mass. 2010) (“Federal regulations define ‘handicap’ to include drug addiction or alcoholism that ‘substantially limits one or more major life activities.’”) (citation omitted); Granada House, Inc. v. City of Boston, 1997 WL 106688 at *9 (Mass. Super. Feb. 28, 1997) (“Massachusetts would look to federal law, including the [Fair Housing Act], in interpreting the phrase ‘disabled person’ and ‘persons with disabilities’, and that by so doing, the [Massachusetts Zoning Act] must be read to bar the City’s discriminatory treatment of a group home for recovering drug and alcohol users under the Code.”); Spectrum Health Systems, Inc. v. City of Lawrence, No. 2015-288-C (Essex Superior Ct.) (“Based upon the record now before this Court, the plaintiff Spectrum is entitled to those protections set out under G.L. Ch. 40A, § 3, as amended.”).

In applying the by-laws, specifically during the special permit process, the Town must be careful not to impose additional land use restrictions on substance abuse treatment centers that are not imposed on similar uses in the Town because such restrictions would violate G.L. c. 40A, § 3. *See Brockton Fire Department v. St. Mary Broad Street, LLC*, 181 F. Supp. 155, 157 (D. Mass. 2016) (ruling that the City could not enforce the Massachusetts Sprinkler Law, G.L. c. 148, § 26H, against sober homes because such enforcement would constitute “facially disparate imposition of the Sprinkler Law on a group residence sheltering disabled individuals.”); *see also Jeffrey’s House*,

Inc. v. City of Fitchburg, 2016 WL 4926415 at *7 (D. Mass. 2016) (Because the Massachusetts Sprinkler Law “imposes a health and safety requirement on sober homes... which is not imposed on homes housing families and certain unrelated groups of a similar size” it “runs afoul of the [Massachusetts Zoning Act] where it is a ‘facially disparate’ statute which ‘shall constitute discrimination.’ ”) (internal citations omitted). The Town should consult with Town Counsel on this issue.

B. The ADA, the Rehabilitation Act, and the Fair Housing Act

The Americans with Disabilities Act (42 U.S.C. §§, 12132 et seq.) (“ADA”), the Rehabilitation Act (29 U.S.C. § 794(a)) (“RA”), and the Fair Housing Act (42 U.S.C. § 3604(f)(1) et seq.) (“FHA”) all prohibit municipal by-laws from discriminating against disabled persons. “Under the ADA and FHA, a public entity such as the [Town] is prohibited from implementing a zoning scheme that treats disabled individuals differently than non-disabled individuals.” U.S. v. City of Baltimore, 845 F.Supp. 2d 640, 647-648 (D. Md. 2012) (Baltimore’s zoning code requirement that residential substance abuse treatment programs obtain a conditional ordinance before locating in any district for which they were otherwise eligible was facially discriminatory in violation of the ADA and FHA). “[C]ourts have found ADA and FHA violations not only in cases of specific zoning actions such as outright permit denials, but also in cases of burdensome procedural zoning requirements uniquely placed on disabled individuals.” Id. at 648 (collecting cases). Even if a local ordinance or by-law does not use the word “disability” it can be found to discriminate against disabled persons if the effect is to impose unique land use burdens on disabled persons. Community Housing Trust v. Dep’t of Consumer & Regulatory Affairs, 257 F.Supp.2d 208, 224-25 (D.D.C. 2003) (District of Columbia requirement that community based residential facilities obtain a certificate of occupancy expressly targeted individuals with disabilities, even if it did not use the word “disability,” and was thus facially discriminatory). “Response to community pressure may support a finding that discriminatory animus motivated a defendant in enforcement or regulation efforts.” Safe Haven Sober Houses, LLC v. Good, 82 Mass. App. Ct. 1112, *3 (2012) (citing South Middlesex Opportunity Council, Inc. v. Framingham, 752 F. Supp. 2d 85, 95 (D.Mass. 2010)). The Town should consult closely with Town Counsel when it applies the by-law amendments related to substance abuse treatment center adopted under Article 33, 34, 35, and 37, to avoid running afoul of these statutory protections.

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

Kelli E. Gunagan

By: Kelli E. Gunagan
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cc: Town Counsel Paul DeRensis

Any claim of invalidity by reason of any defect in the procedure of adoption or amendment to the Zoning By-Law must be made with 90 days following the second publication of this notice. Copies of article votes and maps are available for examination by the public in the office of the Town Clerk in Town Hall, 801 Washington Street; at the Canton Public Library, 786 Washington Street; and on the Town website at town.canton.ma.us

ANNUAL TOWN MEETING

TOWN OF CANTON

MAY 15, 2019

SECOND SESSION

ARTICLE 11

AUTHORIZE CERTAIN REVOLVING FUNDS

Article 11 To see what revolving funds, pursuant to c. 44, section 53E ½ of the General Laws of the Commonwealth, the Town will establish by by-law and to determine the limit on total amount that may be expended from said revolving accounts, for various boards, commissions or departments of the town, for the fiscal year beginning July 1, 2019 and ending June 30, 2020, or to take any other action related thereto.

Board of Selectmen

Article 11 – Motion 1

MOVED: That the General By Laws Article VIII Section 16 be amended by adding a new revolving fund for the Paul Revere Heritage Site Museum as follows:

Revolving Fund	Department Board, Committee, Agency or Officer Authorized to Spend from Fund	Fees, Charges of Other Receipts Credited to Fund	Program of Activity Expenses Payable from Fund	Fiscal Years
#152 – Paul Revere Heritage Site Museum Fund	Paul Revere Heritage Committee	Museum grants, museum gifts, museum endowments, museum contributions, museum donations, museum rentals, museum admission receipts, receipts from events.	Providing additional funding for museum maintenance expenses, operating expenses, capital expenses, repair expenses, building expenses, event expenses.	Fiscal Year 2020 and subsequent years.

FINANCE COMMITTEE VOTE: 7-0

Robert Barker, Chairperson of the Finance Committee, moved Article 11, Motion 1 as printed in the warrant.

ADOPTED VOICE VOTE. MODERATOR DECLARED MOTION ADOPTED

Article 11 – Motion 2

MOVED: That the General By Laws Article VIII Section 16 be amended by adding a new revolving fund for Paul Revere Heritage Rolling Mill and Open Space as follows:

Revolving Fund	Department Board, Committee, Agency or Officer Authorized to Spend from Fund	Fees, Charges of Other Receipts Credited to Fund	Program of Activity Expenses Payable from Fund	Fiscal Years
#142 – Paul Revere Heritage Site Rolling Mill and Open Space Fund	Board of Selectmen	Rolling Mill, open space or historical grants, Rolling Mill, open space or historical gifts, Rolling Mill, open space or historical endowments, Rolling Mill, open space or historical contributions, Rolling Mill, open space or historical donations, Rolling Mill rentals, grounds rentals, grounds use, receipts from events.	Providing additional funding relative to the Rolling Mill, Grounds and Museum maintenance expenses, operating expenses, capital expenses, repair expenses building expenses, event fees.	Fiscal Year 2020 and subsequent years

and that the Board of Selectmen be hereby authorized to petition the General Court for a home rule Special Act to create a municipal affiliated nonprofit corporation as a body politic and corporate pursuant to chapter 180 of the General Laws or any other applicable statute to be known as "Revere & Son Heritage Trust, Inc.," whose board of trustees is to be appointed by the Board of Selectmen of the Town of Canton

and the numbers of such board members are to be determined by the Board of Selectmen, for the purpose of the creation and operation of an open-to-the-public Paul Revere Museum of Discovery and Innovation and the Paul Revere Heritage Site located at Lots 3A and 3B as shown on the plan entitled "Subdivision Plan of Land in Canton Massachusetts" prepared by VHB, Inc. and dated October 8, 2018, as determined by the board of trustees; and further to authorize the General Court with the approval of the Board of Selectmen to make changes in the language of the home rule petition to accomplish the public purpose thereof.

FINANCE COMMITTEE VOTE: 7-0

Robert Barker, Chairperson of the Finance Committee, moved Article 11, Motion 2 as printed in the warrant.

ADOPTED VOICE VOTE, MODERATOR DECLARED MOTION ADOPTED WITH ONE OPPOSING VOTE

Article 11 - Motion 3

MOVED: That the spending limits for the revolving funds established pursuant to General By-Laws Article VIII, Section 16 pursuant to the provisions of MGL chapter 44, section 53 E ½ for the 2020 fiscal year beginning July 1, 2019 through June 30, 2020 and that each Revolving Fund shall be credited with the balance remaining in such fund at the end of the FY 2019 as set forth below:

Revolving Fund #	Name of Revolving Fund	FY20 Spending Limit
110	Veteran's Services Special Revenues	\$100,000
119	Library Revolving Fund	\$75,000
130	Recreation Revolving Fund	\$500,000
132	Student Parking Fees	\$100,000
134	Pequitside Farm Rentals	\$50,000
135	Greenlodge Street Parking Fees	\$100,000
136	Beautification Fund	\$10,000
137	Animal Control Special Revenues	\$50,000
138	Library Building Rentals	\$50,000
140	COA Revolving Fund	\$50,000
141	Board of Health Special Revenue	\$50,000
142	Paul Revere Heritage Site Rolling Mill and Open Space fund	\$120,000
145	Traffic Mitigation Fund	\$50,000
152	Paul Revere Heritage Site Museum Fund	\$100,000

FINANCE COMMITTEE VOTE: 7-0

Robert Barker, Chairperson of the Finance Committee, moved Article 11, Motion 3 as printed in the warrant.

ADOPTED VOICE VOTE, MODERATOR DECLARED MOTION ADOPTED

Attest:


Tracy K. Kenley, Canton Town Clerk