



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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November 8, 2021

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

**Re: Canton Annual Town Meeting of May 22, 2021 -- Case # 10208  
Warrant Articles # 35, 36, 37, 38, 39, 40, and 41 (Zoning)  
Warrant Articles # 10, 25, and 32 (General)**

Dear Ms. Kenney:

**Article 25** - Under Article 25 the Town voted to amend the Town's general by-laws to add a new Article XXIV, "Sidewalks Betterment Assessments."<sup>1</sup> We approve Article 25 because it does not present a clear conflict with state law or the constitution. *Amherst v. Attorney General*, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). However, as provided in more detail below, the new Article XXIV must be applied consistent with state laws, including G.L. c. 44, § 53 and c. 83, § 26.

In this decision, we summarize the by-law amendment adopted under Article 25 and the Attorney General's standard of review of town by-laws, and then explain why, based on our standard of review, we approve Article 25.

**I. Summary of Article 25**

Under Article 25 the Town added to its general by-laws a new Article XXIV, "Sidewalks Betterment Assessments." The new Article XXIV establishes the procedure for constructing new sidewalks or reconstructing existing sidewalks. The new Article XXIV includes five sections: (1) Section 1, "Initial Steps" that requires a formal request to the Select Board requesting a sidewalk; (2) Section 2, "Determination of Priorities," that establishes how priorities will be established if there are multiple requests for sidewalks in the same year; (3) Section 3, "Determination of Funding," that sets forth how sidewalk construction will be funded; (4) Section 4, "Sidewalk Design," that requires all new sidewalks to be five feet wide, have granite curbing, and comply with the Americans with Disability Act; and (5) Section 5, "Additional Requirements," that requires easements from affected

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<sup>1</sup> In a decision issued on September 15, 2021, we approved Articles 10, 32, 35, 36, 37, 38, 39, 40, and 41 and extended our deadline on Article 25 for an additional sixty days until November 14, 2021.

property owners and includes an exemption from the by-law's provisions for properties owned by governmental entities.

Section 1 of the by-law, "Initial Steps," includes the steps a resident must follow to formally request the construction or reconstruction of a sidewalk. The first step requires submitting a formal request to the Select Board. The second step requires the Town Engineer to review the request and make certain determinations, including an estimate of the cost to design and construct the sidewalk. Under Step 3 if the sidewalk construction is deemed "feasible" and is to be constructed on a minor street, then the by-law requires a strong majority (75% or more of the property owners must support the project and agree to share in the costs and obligations related to construction of the sidewalk). Lastly, Step 4 requires the Select Board to require benefitted property owners to pay either 100% or 50% of the cost of the sidewalk construction. Specifically, Step 4 authorizes the Select Board to order a betterment for 50% of the cost of construction; to require 100% of the sum paid to the Town before construction begins; or a combination of both a betterment and payment.

## **II. The Attorney General's Standard of Review of General By-laws**

Our review of Article 25 is governed by G.L. c. 40, § 32. 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. 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 v. Worcester, 363 Mass. 136, 154 (1973). "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).

## **III. The By-law's Requirement that a Property Owner Pay 100% or 50% of the Cost of Sidewalk Construction Must be Applied Consistent with G.L. c. 44, § 53 and c. 83, § 26**

### **A. The Requirement that Property Owners Pay 100% of the Cost of Sidewalk Construction Must be Applied Consistent with G.L. c. 44, § 53**

General Laws Chapter 44, Section 53, provides that "[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury." Under Section 53 all moneys received by the Town become a part of the general fund, unless the Legislature has expressly made other provisions that are applicable to such receipt. In the absence of any general or special law to the contrary, payment received by the Town for the construction of sidewalks, which is required to be paid before the Town moves forward with construction, must be deposited with the Town Treasurer and made part of the Town's general fund, pursuant to G.L. c. 44, § 53. The Town Meeting must appropriate the money for the sidewalk construction before the Town can use the money for sidewalk construction. We suggest that the Town discuss this issue in more detail with Town Counsel and the Department of Revenue, Division of Local Services.

B. The Requirement that Property Owners Pay a Betterment of 50% of the Cost of Sidewalk Construction Must be Applied Consistent with G.L. c. 83, § 26

Betterments or special assessments are special property taxes assessed to recover costs of installing infrastructure or other public improvements that specifically benefit properties in a defined area. See G.L. c. 80 and c. 83. General Laws Chapter 83, Section 26 authorizes towns to assess no more than fifty percent of the cost of sidewalk original construction or reconstruction with material of more permanent character. Section 26 also authorizes the towns by by-laws to limit the amount assessed on each parcel to no more than one percent of preceding year's assessed valuation.

The first sentence in Section 1, Step 4 authorizes the Select Board to require the benefited owners to pay 100% or 50% of the sidewalk construction cost. However, the second sentence authorizes the Select Board to impose a betterment assessment of 50% or a combination of a payment amount and a betterment. If the Town chooses to impose a betterment for the cost of the sidewalk construction, it must do so consistent with G.L. c. 83, including Section 26's limitation that the amount assessed cannot exceed 50% of the cost of construction. We suggest that the Town discuss this issue in more detail with Town Counsel and the Department of Revenue, Division of Local Services.

**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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By: Kelli E. Gunagan  
Assistant Attorney General  
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10 Mechanic Street, Suite 301  
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cc: Town Counsel Paul R. 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](http://town.canton.ma.us)

ANNUAL TOWN MEETING  
TOWN OF CANTON  
MAY 22, 2021  
ARTICLE 25

**ARTICLE 25**

**AMEND GENERAL BY-LAWS BY ADDING SIDEWALK BETTERMENT ASSESSMENT BY-LAW**

**Article 25** To see if the Town will amend the General By-laws by adding a new By-law entitled "Sidewalk Betterment Assessments" as new By-law Article XXIV as follows; or to take any action related thereto:

**ARTICLE XXIV SIDEWALKS BETTERMENT ASSESSMENTS.**

The following procedures shall govern the construction of new sidewalks or the reconstruction of a sidewalk with material of more permanent character than that with which it was originally constructed:

**Section 1. Initial Steps:**

Step 1: Resident submits a formal request to the Select Board office requesting a sidewalk. Request should identify the street and the cross streets where the sidewalk would start and end. The request should include signatures from at least 50% of the land owners in the target area.

Step 2: The Town Engineer determines the following:

If the section of road is considered a "Major Road / Collector" (MassDOT definition) or if the section of road is identified in Canton's Complete Streets Prioritization Plan.

Any material issues related to steep grades, site constraints, lack of use, inadequate width of the public way right-of-way or public safety reasons

If the street is a public way

The most appropriate side to install the sidewalk

An estimate of the cost to design and construct the sidewalk.

Step 3: If sidewalk construction is deemed feasible, and the road is a minor street not on the Complete Streets Prioritization Plan, *a strong majority, 75% or more of the owners must represent to the Town in writing that they support the project and will assume a share of the costs and obligations related to the layout and construction of the sidewalks. One way to accomplish this is to request each property owner to sign and return the sample outline attached as Exhibit 1.*

Step 4: Depending on the classification of the road, the Select Board may take action to require benefited owners to pay either 100% or 50% of the cost of the project. *The Board may order a betterment (i.e., a special tax) to be assessed equally against each of the benefited property owners for 50% share of the costs for the sidewalk. As part of this By-Law, the Board may determine that the property owners' share will be paid as (i) a 100% full sum payment per agreement with the Board paid to the Town before the Board instructs the DPW to move forward with the project, (ii) a betterment assessment of 50%, or (iii) some combination thereof, as determined by the Board in the Board's sole discretion, based upon any relevant factors and all applicable laws, regulations and bylaws. The duration of any betterment assessment is not to exceed 10 years or other period allowed by law or otherwise advisable based upon available rates, terms and conditions for any borrowings by the Town.*

**Section 2. Determination of Priorities:**

In the event that multiple requests for sidewalks come forth in the same year, staff time and potential funding will be dictated by the following priority list:

- A. *First priority:* Requests for sidewalk construction (new sidewalk)  
On any arterial or collector roadway where there are not existing sidewalks; or  
A minor roadway listed on the Complete Streets Prioritization Plan; or  
At any location that may be deemed by the Superintendent of Public Works or the Chief of Police to be a potentially serious safety hazard for pedestrians; or  
On any public way which is being resurfaced or reconstructed, or coordinated with utility upgrades; or  
On an established pedestrian route within ½ mile to a heavily used destination such as a commercial center, school, bus stop, train station, or recreation area.

- B. *Second priority:* Requests for sidewalk construction at locations where sidewalks already exist on approximately 50% or more of the same side of the public way;
- C. *Third priority:* All other requests for sidewalk construction

### **Section 3. Determination of Funding:**

Sidewalks on roads not designated as Major Road / Collectors (MassDOT classification) or included in Canton's Complete Streets Prioritization Plan shall not be recommended to town meeting by the Select Board for funding from public sources. Private ways, regardless of classification, shall not be recommended to Town Meeting by the Select Board for funding from public sources.

For sidewalk requests on roads with these designations, the Select Board will make best efforts to request funding at least 50% of the total cost with a combination of applying for grants and a request for Town Meeting appropriations. For requests for Town Meeting funding, Steps 1 – 3 must be completed no later than 120 days before the start of Annual Town Meeting. Proposed funding sources for Town funding as proposed by the Select Board are to be from cash reserves and not from borrowing. If cash reserves do not exceed 13% of the operating budget, sidewalk projects will not be recommended by the Select Board to Town Meeting for funding. If funding is not provided by Town Meeting or by grants, residents have the option to continue but all funding will be provided by private sources, or through a Town of Canton betterment upon benefited residents as described in Step 4 of Section 1 of this By-Law.

### **Section 4. Sidewalk Design:**

All new sidewalks constructed under this By-Law will be of standard size (5 ft) and meet all Americans with Disability Act ("ADA") standards. Sidewalks will use granite curbing.

### **Section 5. Additional requirements:**

#### **A. Easements**

If there is inadequate width of the public right-of-way to accommodate a new sidewalk, all affected property owners will be asked by the Select Board as a condition of the Select Board requesting action by Town Meeting, to grant to the Town an easement for the Town to use their properties for public way purposes, including any rights reasonably necessary for sloping, sidewalks or drainage that might be located outside the paved portion of the street, based upon the Town's standard form easement. If all affected property owners do not agree to grant easements, the Board of Selectman shall not recommend action by Town Meeting.

#### **B. Exemptions**

Properties owned by governmental entities for public purposes are exempt from betterments and special assessments, but individuals, and charitable, religious or other organizations, benefiting from a sidewalk construction, otherwise ordinarily eligible for full or partial exemptions from annual property taxes, are not exempt.  
**Select Board**

**MOVED:** That the General By-laws be amended by adding a new By-law entitled "Sidewalk Betterment Assessments" as new By-law Article XXIV as written in the warrant with one modification to Section 3: Determination of Funding, by replacing "13%" with "15%".

**FINANCE COMMITTEE VOTE: 8-0-0**

Tim McKenna, Chair of the Finance Committee moved Article 25 as printed in the warrant.

#### **ADOPTED UNANIMOUS SHOW OF HANDS**

Attest:

  
Tracy K. Kenney, Canton Town Clerk