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ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
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March 18, 2008

Diane Crory, Town Clerk
37 Shattuck Street
Littleton, MA 01460

**RE: Littleton Special Town Meeting of June 11, 2007 -- Case # 4608
Warrant Article # 2 (General)**

Dear Ms. Crory:

Article 2 - I return with the approval of this Office the amendments to the town by-laws adopted under this Article on the warrant for the Littleton special town meeting that convened on June 11, 2007.

The vote under Article 2 provides as follows:

Unanimously voted that the Town, rescind its vote under Article 11 of the May 5, 2007 Annual Town Meeting and to vote, pursuant to Chapter 43C, Sections 11 and 14 of the General Laws, establish a Department of Finance and Budget, as follows and amend the Code of the Town by adding a new Chapter thereto as follows: . . . (emphasis added).

The vote under Article 2 adds to the town's general by-laws a Chapter establishing the Department of Finance and Budget. The vote under Article 11 of the May 5, 2007, Annual Town Meeting was also a vote to add to the town's general by-laws a new Chapter pertaining to the establishment of the town's Department of Finance and Budget ("Department"). Thus, we construe the phrase "[u]nanimously voted that the Town, rescind its vote under Article 11 of the May 5, 2007 Annual Town Meeting" to mean that the Town is deleting the Department of Finance and Budget by-law adopted under Article 11 of the May 5, 2007, Annual Town Meeting and inserting the by-law adopted under Article 2 of the June 11, 2007, Special Town Meeting.

In a letter dated March 17, 2008, we approved the Department of Finance and Budget by-law adopted under Article 11 of the May 5, 2007, Annual Town Meeting. However, our letter included a number of comments pertaining to the text of the proposed by-law. In our letter we suggested that the Town discuss these comments with town counsel and amend the by-law accordingly at a future town meeting. The Department of Finance and Budget by-laws adopted at the May 5, 2007, Annual Town Meeting and the June 11, 2007, Special Town Meeting are for the most part identical. Thus, the issues addressed in our letter dated March 17, 2008, also apply



to the text presently before and are incorporated into this letter. I have enclosed a copy of the March 17, 2008, for your review.

Lastly, in approving the amendments adopted under Article 2, we remind the town of the requirements of G.L. c. 40, § 32. Section 32 pertains to the by-law review process. Specifically, Section 32 provides in pertinent part as follows:

Except to the extent that a zoning by-law may take effect as provided in section five of chapter forty A, before a by-law takes effect it shall be approved by the attorney general or ninety days shall have elapsed without action by the attorney general after the clerk of the town in which a by-law has been adopted has submitted to the attorney general a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with. Such request and proof shall be submitted by the town clerk within thirty days after final adjournment of the town meeting at which such by-law was adopted. If the town clerk fails to so submit such request and proof within such thirty days, the selectmen, within fifteen days thereafter, may submit a certified copy of such by-law with a request for its approval, a statement explaining the proposed by-law, including maps and plans, if necessary, and adequate proof that all procedural requirements for the adoption of such by-law has been complied with. . . . Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town. (emphasis added).

General Laws Chapter 40, Section 32, requires the town clerk to submit proposed by-law amendments to the Attorney General for review and approval thirty days after the final adjournment of town meeting. The amendments voted under Article 2 were adopted at the June 11, 2007, Special Town Meeting but not received by our Office until January 15, 2008. The failure to submit proposed by-law amendments to the Attorney General in accordance with G.L. c. 40, § 32, affects the effective date of the by-laws. Therefore, as you are aware, the by-law amendments adopted under Article 2 have not taken effect and will not take effect until the posting and publication requirements set out in Section 32 have been satisfied. We suggest that you discuss this issue in more detail with your town counsel.

Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

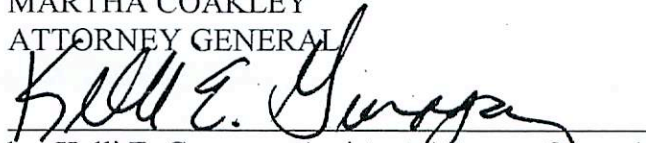
If the Attorney General has disapproved and deleted one or more portions of any by-law or

by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL



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enc.
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