

**GUIDEBOOK FOR TOWN CLERKS
AND PLANNING BOARDS
SUBMITTING BY-LAWS TO THE
ATTORNEY GENERAL'S OFFICE**



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INTRODUCTION

The purpose of this Guidebook is to assist town clerks, planning boards, and other local public officials in the submission of by-laws and charter provisions to the Attorney General for approval as provided in G.L. c. 40, § 32, G.L. c. 40A, § 5, G.L. c. 40C, § 3, and G.L. c. 43B, § 10. Nothing in this Guidebook or the accompanying forms distributed to towns supersedes state or local law. Statutory citations contained in this Guidebook are for reference purposes only. This Guidebook does not purport to give legal advice or opinions on any matter. Town officials are urged to consult with town counsel on both procedural and substantive legal requirements for the adoption and amendment of by-laws.

Statutes are cited in this Guidebook in the form, “G.L. c. 40A, § 5,” where “G.L.” refers to the Massachusetts General Laws (the principal collection of state statutes). “c. 40A, § 5” means “chapter 40A, section 5.” Since statutes are frequently amended by the Legislature, check to make sure you are consulting the current version.

This Guidebook and the submittal forms which accompany it are designed to provide procedures for submitting by-laws to the Attorney General for review and approval.¹ The Attorney General and the staff of the Municipal Law Unit hope that these materials will reduce the confusion that clerks and planning boards sometimes experience when preparing materials required by this office.

At the same time, we have tried not to swamp you with needless paper. Nearly all of the information prescribed on the submittal forms has always been required by the Attorney General. Three methods for collecting information are used: (1) certifications by the town clerk or planning board, (2) checklists, and (3) cover sheets to which other documents should be attached. By identifying the specific information needed and providing a simple way to supply it, we have tried to eliminate any guesswork and the need for extensive retyping.

The Attorney General reviews thousands of by-laws from over 300 towns in Massachusetts each year. By standardizing the process for submitting by-laws the Attorney General and Municipal Law Unit hope to improve the service we provide to towns and to expedite the by-law review process.

¹ As used in this Guidebook the term "by-law" includes both an entirely new by-law and an amendment of an existing by-law.

THE ATTORNEY GENERAL'S ROLE IN APPROVING TOWN BY-LAWS

The responsibility of the Attorney General to approve or to disapprove town by-laws is established by G.L. c. 40, § 32.² The Massachusetts Supreme Judicial Court has characterized the Attorney General's statutory role as a "limited power of disapproval." Amherst v. Attorney General, 398 Mass. 793, 795 (1986). Approval or disapproval of all or any portion of a by-law is based solely on issues of legality and must be completed within ninety (90) days of our receipt of all necessary documentation. The Attorney General has no authority to determine whether a by-law is wise, sensible, or the best way to accomplish a particular objective. Concord v. Attorney General, 336 Mass. 17, 24 (1957).

The legal grounds upon which the Attorney General may disapprove by-laws may be procedural or substantive in nature. Id. at 24. The Attorney General checks the town's compliance with all statutory requirements for enacting different types of by-laws. Procedural requirements are found in various state statutes and generally relate to the adoption and amendment of by-laws, the necessary form and number of votes to approve articles on the warrant, and the public timing and form of notice for meetings. Sufficient notice must be given in compliance with the applicable statutes as to the time and place of meetings and subjects to be considered at planning board hearings and town meetings. Disapproval based solely on procedural defects does not address the legal sufficiency of the proposed changes. When disapproval is based upon procedural grounds, no assumption should be made concerning the validity of the text or substance of a proposed by-law, although we will often offer informal guidance on its substantive legality should the town wish to resubmit the matter again to a subsequent town meeting.

The Attorney General's substantive review of submitted by-laws is guided by the Home Rule Amendment (Article 89) of the Massachusetts Constitution. Section 2 of the Home Rule Amendment establishes a "Right of Local Self-Government":

It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters

² For a detailed discussion of the statute, see "G.L. c. 40, § 32 In Plain English" in a later section of this Guidebook.

The Home Rule Amendment also establishes, in Section 6, the “Governmental Powers of Cities and Towns”:

Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court [i.e. the Massachusetts Legislature] has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court . . .

The Attorney General may disapprove a town by-law on substantive grounds only if it is “inconsistent with the constitution or laws” of Massachusetts. The “laws” of Massachusetts include the statutes enacted by the Legislature and regulations promulgated by state agencies acting pursuant to statutory authority, as well as court decisions construing the statutes and regulations. A town by-law is presumed to be valid unless it sharply conflicts with some constitutional, statutory or regulatory court decision, or it hinders the achievement of a clearly identifiable goal of state law. Amherst v. Attorney General, 398 Mass. 793, 795-797 (1986); Grace v. Brookline, 379 Mass. 43, 54 (1979).

The Attorney General’s staff is often asked by town officials and private citizens about the legality of various town actions, proposed by-laws, and other matters. In these instances the Attorney General must decline to give such legal advice. The Attorney General may render legal advice and opinions to state officials, the heads of state agencies, and the state legislature on matters pertaining to official functions. G.L. c. 12, §§ 3, 6, & 9. The Attorney General is not authorized to provide legal advice or opinions to town officials, private citizens, or organizations. These groups must rely upon the advice of private attorneys or the town counsel. This statute should not, however, preclude town officials, citizens, or groups from calling with questions. The Attorney General’s staff may provide informal assistance by identifying a pertinent statute or regulation, or by a referral to someone who is able to provide answers or offer guidance.

WRITING OR CALLING THE ATTORNEY GENERAL’S OFFICE

The Attorney General’s Municipal Law Unit handles submissions from cities (typically charter amendments) and towns (typically charter and by-law amendments) across the Commonwealth, although it is physically based in the Attorney General’s Western Massachusetts Office in Springfield. Within thirty (30) days of final adjournment of town meeting, the town clerk must submit all town by-laws to the Municipal Law Unit in Springfield, at the address below. We recommend that you send your by-law package by certified mail, return receipt requested, to verify that we

received it. Inquiries related to the submission of by-laws or the status of by-laws already submitted should be initially directed to the Municipal Law Unit Paralegal in Springfield:

Office of the Attorney General
Municipal Law Unit
State Office Building, Room 109
436 Dwight Street
Springfield, MA 01103-1317
Telephone: (413) 784-1240

You may also contact the Municipal Law Unit by voice or E-mail:

Bob Ritchie, Assistant Atty. Gen., Director - Ext. 26 - bob.ritchie@ago.state.ma.us
Kelli E. Lawrence, Assistant Atty. Gen. - Ext. 46 - kelli.lawrence@ago.state.ma.us
Sandy Giordano, Unit Paralegal - Ext. 17 - sandy.giordano@ago.state.ma.us

IMPORTANT STATUTES

There are four state statutes that principally address the process for enacting and approving charter and by-law amendments: G.L. c. 40, § 32 (Validation of by-laws; procedure); G. L. c. 40A, § 5 (Adoption or change of zoning ordinances or by-laws; procedure); G.L. c. 43B, § 10 (Amendments to charter previously adopted or revised under this chapter; procedure); and G.L. c. 40C, § 3 (Establishment of historic districts; pre-requisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps).³ This section of the Guidebook provides a simple explanation of the main parts of each of the four statutes.

G.L. c. 40, § 32, In Plain English

G.L. c. 40, § 32, is the statute that establishes the general procedures for submitting by-laws to the Attorney General for approval.

Necessity of Attorney General's Approval. Within thirty (30) days of the final adjournment of town meeting, the town clerk is required by statute to submit the

³ The full text of these four sections of the General Laws are included as the Appendix to this Guidebook.

by-laws adopted at town meeting to the Attorney General for review and approval.⁴ The Attorney General must either approve the by-law as being consistent with state substantive and procedural law, or disapprove them in whole or in part as being inconsistent with state law.⁵

The Attorney General has ninety (90) days to take final action on by-laws submitted. If the Attorney General fails to act within that time, the by-law is deemed to be approved automatically.

Review period. The ninety (90) day period does not begin to run until “after the clerk of the town . . . has submitted to the Attorney General . . . adequate proof that all of the procedural requirements for the adoption of such by-law has been complied with.” In cases where the material submitted is insufficient, the Attorney General may, within that ninety (90) day period, send a written request to the town clerk for additional documentation. The ninety (90) day period will only start to run on the date the Attorney General receives the requested additional information or materials. If the Attorney General does not make such a request “it shall be presumed that the proof submitted by the clerk was adequate.”

Time Within Which to Submit By-Laws to the Attorney General. Section 32 specifies the time within which by-laws must be submitted to the Attorney General. On Form 1 of the submission packet, the town clerk must formally request approval of by-laws, and must submit all supporting information and documentation requested in the Forms Packet. This request must be made within thirty (30) days after final adjournment of the town meeting at which the by-law was adopted. All by-laws adopted at the same town meeting should be submitted together within thirty (30) days after the town meeting finally adjourns even if some of the by-laws were adopted at separate adjourned sessions of the same town meeting. If the town clerk fails to submit the by-laws within the thirty (30) day period, then within fifteen (15) days thereafter the selectmen may submit the by-laws to the Attorney General along with proof of procedural compliance, i.e., the forms packet with all requested information and documentation.

Notice of the Attorney General’s Decision. When disapproving a by-law in whole or in part, the Attorney General must state in writing the reasons for

⁴ Zoning by-laws are governed by G.L. c. 40, § 32, except to the extent that G.L. c. 40A, § 5 (part of the Zoning Act) provides a different procedure.

⁵ In addition, by-laws approved by the Attorney General must be posted and published before they take effect.

disapproval. If the Attorney General fails to approve or disapprove a by-law within the 90 period the by-law will be deemed approved. In that event, the statute directs the clerk “to enter into the record a statement that the by-law has become effective by reason of such failure of the Attorney General to act.” Before doing so, the clerk should contact the Attorney General’s office to verify that the ninety (90) day period has expired. If it has, the Attorney General’s Office will send written confirmation for the clerk’s files.

Posting, Publication, Delivery. Before any by-law takes effect, and following approval by the Attorney General, the by-law must first be posted and published as required by G.L. c. 40, § 32. By-laws do not take effect until they are posted, published, or delivered, even though they have been approved by the Attorney General.⁶ There are three alternative methods of satisfying this requirement of the statute, which are:

- (1) **Posting** - The clerk may publish copies of the by-laws or amendments approved by the Attorney General in a “town bulletin or pamphlet.” Copies of the bulletin or pamphlet must be posted in at least five public places in the town. If the town is divided into precincts, copies of the bulletin or pamphlet must be posted in at least one public place in each precinct; or
- (2) **Publication** - A "town bulletin or pamphlet" with copies of the by-laws or amendments approved by the Attorney General may be published in a newspaper of general circulation in the town. The bulletin or pamphlet must be published at least twice and the publications must be at least one week apart; or
- (3) **Delivery** - Copies of the approved by-laws may be given by delivering a copy “to every occupied dwelling or apartment in the town.” Affidavits of the persons who delivered the copies of the by-laws, filed with the town clerk, are “conclusive evidence” that proper notice was given.

There are two additional publication requirements for zoning by-laws under

⁶ Except where later dates are specified in zoning by-law amendments, the effective date of a zoning by-law amendment will be deemed to be the date on which it is adopted by town meeting. G.L. c. 40A § 5. However, G.L. c. 40A, § 6, addresses a number of circumstances under which the application of the zoning by-law amendment to specific uses and structures is otherwise provided. A detailed discussion of Section 6, and "grandfathering," is beyond the scope of this Guidebook. The town should discuss these matters with its town counsel.

G.L. c. 40, § 32. The publication must include (1) a statement that any claims that a zoning by-law is invalid because of a defect in the procedure by which the by-law was adopted or amended may only be made within ninety (90) days of the posting or of the second publication of the town bulletin or pamphlet, and (2) a statement indicating where copies of the by-law may be examined and obtained.

Whenever the Attorney General approves a by-law with portions "disapproved and deleted," we require that a copy of the by-law as published by the town clerk be sent to us as verification that the deletion was made before the by-law goes into effect. This requirement is usually noted in the Attorney General's approval letter. It is important to remember that posting/publishing of a copy of the Attorney General's letter, or posting/publishing any version of the by-law that does not reflect the deletions made by the Attorney General, does not satisfy the statutory requirements pre-requisite to the by-law taking effect.

G.L. c. 40A § 5, In Plain English

Chapter 40A is known as "The Zoning Act." Section 5 of the Act establishes the procedures for adopting and amending zoning by-laws. Zoning by-laws may not be adopted, amended or repealed unless the procedures contained in Section 5 are followed.

How zoning by-laws are initiated. The adoption or change of a zoning by-law is initiated by submitting the proposed by-law to the board of selectmen. Within fourteen (14) days after receiving a proposed zoning by-law, the board of selectmen must submit it to the planning board for review and public hearing.

Who may initiate zoning by-laws. The following may initiate the adoption or change of zoning by-laws: (1) the board of selectmen, (2) the board of appeals, (3) an individual who owns land which would be affected by the change or adoption, (4) registered voters of the town acting pursuant to G.L. c. 39, § 10, (5) the planning board, (6) a regional planning agency, and (7) by any method as provided in the town charter.

Planning board hearing. Notice of the public hearing of the planning board must be published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication must be "not less than fourteen (14) days

before the day of the hearing.⁷ The newspaper notice must include all of the following: (1) the date and place of the hearing, (2) the subject matter of the hearing described in a form which is “sufficient for identification” and (3) the place where texts and maps of the proposals may be inspected. With regrettable frequency we find that many towns fail to include the second and third of these requirements, and the Attorney General is compelled to disapprove the by-law for procedural deficiencies.⁸

Notice of the public hearing must also be mailed, postage prepaid, to all of the following: (1) the Department of Housing and Community Development, (2) the regional planning agency (if any), and (3) the planning boards of all abutting cities and towns. Notice must also be mailed to nonresident property owners who file an annual request for such notice with the town clerk no later than January 1st and pay a reasonable fee as established by town by-law. Finally, the notice must be posted in a conspicuous place in the town hall for a period of not less than fourteen (14) days before the day of the hearing.

When may the town meeting vote. The town meeting may not vote on a proposed zoning by-law until either (1) the planning board submits a written or oral report presenting its recommendations on the proposal to the town meeting, or (2) the planning board issues no report and at least twenty-one (21) days have elapsed between the planning board hearing and the town meeting. If a town meeting fails to vote to adopt a proposed zoning by-law within six (6) months after the planning board hearing, no town meeting action may be taken on the proposal until a subsequent planning board hearing is held. Such a subsequent planning board hearing must comply with the notice and report requirements.

Number of votes required. No zoning by-law shall be adopted or changed by town meeting except by a two-thirds vote of those present and voting.

Previously rejected zoning by-laws. A zoning by-law which has been unfavorably acted upon by a town meeting may not be considered again until two (2) years after the date of such unfavorable action unless the planning board makes a final written or oral report recommending the adoption of such proposed by-law.

⁷ For example, an advertisement for a hearing scheduled for the 20th day of the month must first appear in the newspaper on or before the 6th day of the month. An advertisement that appears on the 7th day would be only 13 days notice and the by-law would be disapproved. See Hallenborg v. Town Clerk of Billerica, 360 Mass. 513 (1971).

⁸ We encourage the town to use Form 7-PBN, a form of Planning Board Notice drafted by the Municipal Law Unit designed to satisfy the requirements of the statute.

Submission to the Attorney General. Zoning by-laws must be submitted to the Attorney General as required by G.L. c. 40, § 32, and by G.L. c. 40A, § 5. The clerk must provide the Attorney General with a statement from the planning board explaining the by-laws, along with explanatory maps or plans.⁹ After approval by the Attorney General, the clerk must send a copy of the latest effective zoning by-law to the Department of Housing and Community Development.

Effective date. The effective date of a zoning by-law is the date on which it was voted by the town meeting provided that proper posting, publication, or delivery of the by-law as described above is subsequently accomplished. If the Attorney General disapproves a zoning by-law, then the existing by-law is deemed to remain in effect. If the Attorney General partially disapproves a zoning by-law, the portion that has been approved takes effect from the date of the town meeting vote. The existing by-law remains in effect with respect to those portions of the proposed by-law which are disapproved and deleted by the Attorney General.

Legal action. No claim may be made in any legal proceeding arising out of any possible defect in the procedure by which a zoning by-law was adopted or amended unless legal action is commenced within the ninety (90) day period specified in G.L. c. 40, § 32. No state, regional, county, or municipal officer may refuse, deny, or revoke any permit, approval or certificate because of any such claim of procedural invalidity unless legal action is commenced within that time. A notice must be filed in the town clerk's office within seven (7) days after the commencement of the legal action specifying the court, the parties, the invalidity claimed, and the date the action was filed.

G.L. c. 40C, § 3, In Plain English

G.L. c. 40C is known as "The Historic Districts Act." Section 3 of the Act establishes procedures for the adoption and amendment of historic district by-laws.

Preliminary report. The historic district study committee or the historic district commission (see G.L. c. 40C, §§ 3 and 4) must first conduct an investigation and make a report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed district(s). Copies of the report must be provided to the town planning board and to the Massachusetts Historical Commission.

⁹ Failure to provide this statement can delay our approval of the by-law and could result in a misunderstanding of its purpose, intent, and meaning. Planning Boards should be asked to provide this statement prior to the submission of the packet.

Public hearing. The study committee must hold a public hearing on its report not less than 60 days after the report is transmitted. Notice of the hearing must be given at least fourteen (14) days prior to the date of the hearing, including mailed written notice, postage prepaid, to the owners (as shown on the most recent real estate tax list of the board of assessors) of all properties to be included in the district(s).

Final report. After the hearing, the committee must submit a final report to the town meeting. The final report must contain (1) the committee's recommendations, (2) a map of the proposed district(s), and (3) a draft of the proposed by-law.

Vote. Adoption or amendment of an historic district by-law requires a favorable vote by two-thirds of the town meeting members present and voting.

Filing and recording of map. Once an historic district by-law is approved by the Attorney General, it does not go into effect until a map showing the boundaries of the district is filed with the town clerk and recorded in the registry of deeds.

Amendments of historic district by-laws. Proposed amendments of existing historic district by-laws must be submitted first to the historic district commission for its recommendation. The town meeting may vote on the amendments after the commission has issued its report on the proposal or after sixty (60) days have elapsed without such a recommendation by the commission. At town meeting, two-thirds of town meeting members present and voting in favor of the amendment is required.

G.L. c. 43B, § 10, In Plain English

G.L. c. 43B is entitled the "Home Rule Procedures Act," and is the statutory companion to the Massachusetts Home Rule Amendment. This chapter sets forth the procedures by which the great powers conferred upon local government under the Amendment are exercised and implemented. Section 3 through 9 of the chapter deal generally with the adoption of a new charter and the functions of the elected Charter Commission, while Section 10 of the Act deals generally with amendments to a charter previously adopted or revised under the Act. Only submissions under Section 10 are addressed here, since Charter Commission proposals to establish a new charter are handled in quite a different manner, and a discussion of new charters is outside the scope of this Guidebook.

Who may initiate a charter amendment. Pursuant to Section 10 of the Act, amendments may be initiated in a city by the City Council (with the concurrence of the mayor if the city has a mayor), and in a town by the Town Meeting. Only a Charter

Commission elected under c. 43B, and operating under G.L. c. 43B, §§ 3-9, may initiate a charter amendment proposing a change in (1) the composition, (2) the mode of election, or (3) the terms of office of: (a) the legislative body, (b) the mayor (or chief executive), (c) the city manager, (d) the board of selectmen, or (e) the town manager. [G.L. c. 43B, § 10(a)] Charter amendments may be proposed by certain others but only if complying with the notice, hearing, and other procedural requirements of G.L. c. 43B, § 10(b).

Number of votes required. A two-thirds vote of the city council and a two-thirds vote of town meeting is required to approve an order proposing a charter amendment to the voters.

Submission to the Attorney General. Whenever an order proposing a charter amendment to the voters is approved by town meeting (or the mayor and council), a copy of the proposed amendment must be immediately submitted to the Attorney General and to the Department of Housing and Community Development. The Attorney General has four (4) weeks within which to furnish the city council or the board of selectmen (and a copy to the Department of Housing and Community Development) setting forth any conflict between the proposed amendment and the constitution and laws of Massachusetts. The order approved by the mayor and council or by town meeting does not take effect during the four (4) week period of review by the Attorney General. If the Attorney General reports a conflict between the proposed amendment and the laws of the Commonwealth, the order proposing the amendment will not take effect except as may be specified by further proceedings under § 10(a) of the Act. If no conflict is reported, the order takes effect four (4) weeks after its submission to the Attorney General.

THE FORMS PACKET

Introduction

The forms supplied in this Guidebook are to be used to submit by-laws for review by the Attorney General. If you reproduce the forms for use by your town, please retain the form, substance, and format of the original forms supplied in this Guidebook.

Typing is the preferred method for filling out forms, but legible printing or handwriting is acceptable. Please fill in every space provided with the appropriate information. If the question is not applicable to your situation, please state “none” or

“NA”.

If you do not have any of the information requested on Forms 3, 8 or 9, please do not include them in the package. Paper size should be no larger than 8 ½ by 11 inches.

Finally, we ask that attached documents be stapled to the applicable form. Paper clips, yellow stickers, and other fasteners should be kept to a minimum.

Form 1: Cover Letter/Request for Approval of By-Law

The first form is a cover sheet addressed to the Attorney General’s Municipal Law Unit in Springfield requesting the Attorney General to review specified by-laws, as required by G.L. c. 40, § 32.

In the first three items you are asked to fully identify the town meeting at which the by-laws submitted were adopted. Item 1 identifies whether the by-laws were enacted at an annual or special town meeting. When you have materials to submit relating to more than one town meeting -- e.g. when you have a special town meeting held concurrently with the annual town meeting -- use a separate forms packet for each separate town meeting. Please do not send by-laws enacted at two or more town meetings in the same packet. Items 2 and 3 give the dates of the first and subsequent sessions of the meetings.

In item 4 you are asked to state the number (or letter) designation of the warrant articles under which the submitted by-laws which were voted by the town meeting. Please group the article numbers in the appropriate categories (zoning, historic district, general, or charter amendment). Except for maps (in item 5), no article should be listed in more than one category.

In item 5 you are asked to list the number (or letter) designation of the warrant articles under which zoning map amendments were voted. Note that under G.L. c. 40A, § 4, the zoning map is a part of the town's zoning by-law, and every amendment of the town zoning map must therefore be approved by the Attorney General.

Items 6 and 7 (name, address and phone number of the town counsel and clerk) will enable us to contact you and your town counsel quickly if we have any questions or need additional information. Where a law firm is listed as town counsel, please provide the name of the individual attorney in that firm assigned to advise the

town regarding town meeting matters. The clerk must sign the cover letter in the space indicated.

Form 2: Town Meeting Action.

In this form, you are required to provide full documentation for the by-law or amendment as initially proposed in the warrant and as subsequently voted by town meeting. The four (4) parts of this form are designed to equip the Attorney General to fully understand the action taken by town meeting and to determine precisely what changes to the existing by-laws were made. To accomplish this we require that you provide us with all of the following: (1) all, or an appropriate portion, of the existing by-laws of the town to which the proposed amendments relate; (2) certified copies of the main motions (or amended main motions) voted upon by town meeting, annotated with the votes cast thereon; (3) the full text of the by-laws or amendments voted by town meeting;¹⁰ and (4) in some practical format for annotated comparison clearly showing the differences between the existing by-law and the by-law reflecting the amendments voted by town meeting.

We require that you attach to Form 2 the following:

1. EXISTING BY-LAW -- One (1) certified copy of those entire portions of the existing by-law within which each proposed amendment occurs. This requirement is very important since without the full text of a relevant block of text from the existing by-law we would be unable to ascertain the full meaning of the proposed changes in context. By-law amendments must be understood to mean even minor technical changes in current by-laws such as amendments to tables showing uses permitted in different zoning districts, amendments which re-codify, reorganize, or renumber existing by-laws previously approved by the Attorney General, and revised internal references to by-law sections.

While most by-law amendments are self-explanatory, there are many instances in which the proposed amendments make no sense without the availability of other sections of the by-law. For example, a proposed by-law amendment that simply says “Change the designation in Table 15 (RA) under ‘Uses Permitted’ from ‘P’ to ‘SP’” is virtually incomprehensible to us unless we have a copy of those portions of the existing by-law to which the proposed change relates. The important thing is to ask whether

¹⁰ It is not sufficient to use the text of the warrant article for this purpose, unless town meeting voted in terms of the article without change.

someone not already acquainted with the town by-laws would understand what the amendments mean without having to look at other parts of the by-law to make sense of the changes.

Another common circumstance in which submitting a copy of the existing by-laws would be helpful is where the proposed amendments reorganize or rearrange a set of by-laws that the Attorney General had previously approved. Very often the amendments make few or no substantive changes to the existing by-law. If the clerk provides a copy of the existing by-law, we can then compare the two rather than having to start from scratch. In the ANNOTATED COMPARISON described below, we require that the existing by-law be marked or annotated so as to show which sections are being amended and which sections remain unchanged. Not only will this enable us to review a large by-law much faster, it will also increase the likelihood that the Attorney General will approve the by-law.

2. TOWN MEETING ACTION -- One (1) certified copy of *the main motion (or the amended or substituted main motion) under each article* as voted by town meeting. Where the form of the main motion voted upon by town meeting is identical to the text of the warrant article, it is sufficient to state that the motion was in terms of the article or otherwise the same as the language of the article. Where, however, the initial motion made under the article is amended by motion from the floor of town meeting, we require that you submit with your packet **one (1) certified copy of every such motion to amend or motion to substitute** if such motion receives a favorable vote. For each such motion favorably acted upon, indicate the date of the vote and the votes cast in favor of and opposed to the motion.

The Attorney General is required to compare the text of the original warrant article with the text of the main motion (or amended main motion) under the article to ascertain whether the motion finally voted upon by town meeting substantially changes the “subject matter” of the original article as contained in the warrant. See G.L. c. 39, § 10, and whether the by-law as voted by town meeting was within the scope of the original article.

3. FINAL VERSION OF BY-LAW AS AMENDED -- Three (3) certified copies of the *complete final text* of by-law incorporating the amendments voted by town meeting. This means the text of the by-law as it would appear in the town's official records at the conclusion of the process, assuming it were to be approved by the Attorney General and published by the town clerk as required by G.L. c. 40, § 32.

Each copy must be annotated with the date of the vote and the votes cast in favor of and opposed to the main motion (or amended main motion).

4. ANNOTATED COMPARISON -- By "annotated comparison" we mean to ask for a composite document indicating all changes (including deletions and additions) to the existing by-law. This may be done in any manner by which the changes are clearly indicated. For example, you may annotate a copy of the existing by-law (#1 above) or a copy of the final version of the by-law as amended (#3 above) by underlining, italicizing, interlineating, or otherwise highlighting or indicating all changes. Be sure to include a legend explaining your chosen method so that we can follow your chosen system. Preferably, you may substitute for the above a computer-generated "compare-document" in which the deleted text is shown in "strike-out" format, and new text is shown in "redline" format.

Additional Comments on Form 2 - After the Attorney General takes action on the by-laws submitted for approval, you will receive an endorsement letter signed by an Assistant Attorney General stating whether the final by-laws have been approved or disapproved, and if disapproved an explanation, and one (1) certified copy of each final by-law approved for your public records.

The documents attached to and accompanying Form 2 are the most important information for our review of by-laws. One objective of this Form 2 is to obtain three identical certified copies of the actual legal document that (following approval and publication) would become part of the town's official by-laws. It is extremely important to have an official document which accurately records the by-law as voted upon. An official copy, showing the votes cast for and against the by-law, will help to clear up any questions about the by-law text, the effective date, or related matters. Even if your town later prints a booklet containing all current by-laws, you should retain a separate file of final by-laws together with the endorsement showing the formal approval or disapproval of the Attorney General.

Each of the three (3) certified copies of the final version of the by-law must contain the following: (1) the date the town meeting actually voted on the main (or amended main) motion under the article, (2) the complete final text of the by-law incorporating all floor amendments favorably acted upon by town meeting, and (3) the final votes cast by town meeting on the motion or amended main motion. If any one of these three elements is not shown on the face of the certified copies, we will have to ask you to send three new certified copies of the final by-law containing all of the requested information. This could significantly delay our approval.

For passage of most by-laws, a favorable vote of a simple majority of town meeting members present and voting is required. Zoning by-laws (G.L. c. 40A, § 5) and historic district by-laws (G.L. c. 40C, § 3) require a two-thirds vote.¹¹ If a two-thirds (or more) vote is required, the actual vote count must be given unless the vote is unanimous. G.L. c. 39, § 15. Note that G.L. c. 39, § 15, now provides that a town may decide by by-law or by vote not to take a count, but rather to allow the moderator to declare that a two-thirds vote has been achieved. If the final by-laws attached to Form 2 do not show the actual vote count when it is required, we will have to ask you for new certified copies of the final by-law which shows the actual count. If the actual two-thirds vote count is not available (or was not taken at the town meeting), the Attorney General will disapprove the by-law. However, if the town has an existing by-law, or has taken a vote at this particular town meeting not to take a count but rather to authorize the moderator to declare a two-thirds vote at this town meeting, then the town clerk must provide either of the following:

(1) the date on which the by-law authorizing a declared two-thirds vote was adopted by town meeting, and the date it was approved by the Attorney General's office; or

(2) a copy of the minutes from this town meeting showing the vote of town meeting authorizing a declared two-thirds vote for this town meeting only. Where, for example, the town schedules a special town meeting for the same day as the annual town meeting, in the absence of a by-law authorizing a declared two-thirds vote, there would have to be a separate vote for each of the two town meetings authorizing the declared two-thirds vote for that town meeting only. One vote cannot serve for both town meetings.

If a majority vote is sufficient then the final vote may be declared by the moderator as having achieved "a majority" or "a unanimous" vote, or as having passed in accordance with an actual counted vote.

As noted on Form 2, it would be helpful if you were to submit each final by-law on a separate piece of paper, allowing us to send back by-laws as soon as they have been approved, retaining any others that require more time for review. It would also be helpful if the second and third certified copies were not stapled together with the first copy and Form 2, since unit staff would later have to separate the three copies for processing and filing.

¹¹ This is not an exhaustive list of the types of by-laws which require more than a majority vote.

The requirements of this Form 2 are not satisfied, for example, by the submission of (a) the warrant article as the final version of the by-law voted by town meeting (unless certified thereon as being voted verbatim by town meeting), (b) lists of the articles annotated with the votes taken under that article, (c) the minutes of town meeting, or any other format that differs from the format prescribed above.

Form 3: Maps: Zoning and/or Historic District.

Form 3 is a cover sheet to which two certified copies of each zoning and historic district map are to be attached. Both G.L. c. 40A, § 4 (the Zoning Act), and G.L. c. 40C, § 3 (the Historic Districts Act), require that official maps be prepared showing the boundaries of the districts established by town by-law. The zoning map is an integral part of the town's zoning by-laws, and changes to the zoning map must first be approved by the Attorney General before they take effect. Whenever, therefore, town meeting amends the zoning by-law in any manner that results in a change in the zoning map, the amendments must be shown on the zoning map and the map showing the changes must be submitted to the Attorney General for approval. You need not send us a map for every zoning article, but only when the town meeting votes to add a new district, to eliminate an existing district, to change the boundaries of an existing zoning or historic district, or to make any other physical revision of the official map.

Maps should show, in color, each area that is the subject of the proposed by-law or by-law amendment, suitably labeled with the articles that make or entail changes to the map. A zoning map may be used to show the boundaries of one or more historic district(s), provided the district(s) are properly marked in color and labeled with the article number. While we have found coloring to be the preferred way to identify the different districts clearly, a map will not be disapproved if districts are not marked in color provided that the boundaries of the different districts are clearly delineated and suitably labeled.

Large, bulky maps are difficult to handle and take up file space. Whenever possible, maps should be in a format no larger than 8 ½ inches by 11 inches. Where larger maps are necessary (because readability requires a larger size or a large map is all that is available), we prefer maps no larger than 24 inches by 36 inches or other maps which can be easily folded to fit into a standard file folder. Maps which must be rolled (even if enclosed in cardboard cylinders) should not be used unless there is absolutely no alternative.

If there are no maps to go with the by-laws submitted to the Attorney General, Form 3 need not be included in the package you mail to us.

Form 4: Town Meeting Certification.

This form and its attachments allow us to determine whether the town meeting itself was properly convened, and whether the actions taken by town meeting are within the scope of the town meeting warrant articles under they were voted.

Item 1 asks the clerk to certify that the quorum requirement for town meeting was satisfied. If your town has no quorum requirement, write "0" (zero) in the blank. Sign your name in the space provided.

Item 2 asks the clerk to certify that the warrant was properly "served" and that proper notice of any adjournments was given. G.L. c. 39, § 10, requires that the warrant be served at least seven (7) days before the annual town meeting and at least fourteen (14) days before a special town meeting. The warrant must be served in accordance with any applicable town by-law or charter provision, a previous vote of the town, or any procedure previously accepted by the Attorney General. Notice of adjournments must comply with any applicable town by-law or prior town meeting vote.

The certified attachments to Form 4 serve to verify and document the town's compliance with the legal requirements for calling a town meeting. The "opening of the warrant" shows the date and place for which the meeting was called; it is usually the first paragraph of the warrant. The "closing of the warrant" shows the members of the Board of Selectmen, the date they issued the warrant, and the manner in which they ordered that the warrant be served. This information is usually found in the last paragraph of the warrant.

The "officer's return of service" shows the date of service of the warrant and the date and place(s) the warrant was posted, and any other information which may be required by town by-law.

Form 5: Charter Amendments Adopted Under G.L. c. 43B, § 10.

The adoption of a municipal charter or the amendment of an existing municipal charter may be proposed by a Charter Commission elected in accordance with the provisions of the Home Rule Procedures Act [G.L. c. 43B]. Such proposals are not submitted with this Form 5, but come to the Attorney General for review directly from the Commission. Charters may also be amended by a Home Rule Special Act of the Legislature, in connection with which the approval of the Attorney General is not

required.

A third method for amending municipal charters is set forth in the Home Rule Procedures Act [G.L. c. 43B, §§ 10(a) and 10(b)]. Use this Form 5 only when submitting charter amendments adopted under either Section 10(a) or 10(b).

Note, however, that any charter amendment proposing a change in (1) the composition, (2) the mode of election or appointment, or (3) the terms of office of: (a) the legislative body, (b) the mayor (i.e. chief executive officer), (c) the city manager, (d) the board of selectmen, or (e) the town manager, may not be proposed under G.L. c. 43B, § 10, but only upon the proposal of a Charter Commission in accordance with G.L. c. 43B, §§ 3-9, or by a Special Act.

We ask that you consult with your town counsel before specifying which kind of municipal charter the town now has, and whether the order proposing the amendment was approved under Section 10(a) or under Section 10(b) . A copy of the existing charter is requested as Attachment #1 to Form 5.

The role assigned to town meeting by the Home Rule Procedures Act under Sections 10(a) and 10(b) is technically not an amendment of the charter, but rather that an "approval" of "an order proposing a charter amendment to the voters." Thus, where an article might say: "To see if the town will vote to amend the town charter by . . . (etc) ," the article should be understood to mean "To see if the town will approve an order proposing a charter amendment to the voters"

After receipt of Form 5 and the information and attachments prescribed, the Attorney General then has four (4) weeks within which to issue a written opinion setting forth any conflicts between the proposed amendment and the Constitution and laws of the Commonwealth. The Attorney General will send a copy of that opinion to (a) the municipal legislative body and (b) the Department of Housing and Community Development. The order of the local legislative body proposing the amendment will take effect four (4) weeks after the date of submission to the Attorney General unless before that date the Attorney General reports that the proposed amendment conflicts with the Constitution or laws of the Commonwealth, in which case the order will not take effect and the proposed amendment may not be placed on the ballot for voter action.

Form 6: (Reserved)

Form 7: Zoning Procedures Attachments.

This form replaces prior Forms 6, 7, and 7 Supplement. This form is a cover sheet to which the following certified documents must be attached. The form was designed to serve also as a checklist for the town in complying with the date-critical requirements of the state zoning laws. Please fill in all the dates specified on the form, and provide us with all of the following:

- (a) A copy of the original proposal for the zoning by-law amendment, in whatever form the original proposal was made. Whether the proposed amendment was initially proposed by the planning board or by any other party, you must attach a copy of the text of the proposal that was made available for inspection not less than fourteen (14) days prior to the public hearing, as stated in the planning board notice.
- (b) A copy of both published notices of the planning board's public hearing, showing (1) the dates of publication, (2) the name of the newspaper, and (3) the number of the warrant article to which each item in the notice relates;¹²
- (c) A copy of the notice of public hearing posted by the planning board with a certification that the notice was posted in a conspicuous place in the town hall for a period of not less than fourteen (14) days before the day of the hearing.
- (d) a certificate from the planning board that notice of its hearing was sent by prepaid mail to the persons and agencies listed on the form.
- (e) a copy of the planning board report with recommendations, if written.

Form 8: Relevant Laws.

While the information requested on this form is not always required, in some instances consistency with state law depends, for example, on a special act of the

¹² G.L. c. 40A, § 5, states that “[n]otice of the time and place of [the planning board’s] public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing.”

Legislature, a prior acceptance of a local option statute, or a charter provision. If not provided with this special information on Form 8, the Attorney General will disapprove a by-law that, in the special circumstances of the town, need not be disapproved. Providing this information will both speed our review of the by-laws submitted and increase the chances for their approval. If you do not have any of the requested information, please do not include this form in the packet.

Acceptance of "Local Option" Statutes - Many state statutes authorize towns, by by-law, to do what is not otherwise permitted by the general laws. These are often referred to as "local option statutes," where town meeting is given the opportunity "to accept" the provisions of the statute in order to do what the statute authorizes. See, for example, G.L. c. 140, § 147A (authorizing by-laws concerning the regulation of dogs) and G.L. c. 40, § 57 (authorizing by-laws denying local permits upon failure to pay local taxes).¹³ Before the Attorney General can approve a by-law based upon an "acceptance statute," we require proof that the town had previously voted (at this or any prior town meeting) to accept the statute in the manner provided therein. If you submit any such by-law to the Attorney General for approval, please attach proof of the town's vote of acceptance of the statute to Form 8. This will save us from having to request it from you later. If you fail to provide the information the Attorney General will assume the town did not accept the provisions of its statute, and that the by-law is thus inconsistent with state law that requires such acceptance.

Questions about acceptance ("local option") statutes may be directed to the Commissions Section of the Secretary of State (see address and telephone number below):

Office of the Secretary of State
Commissions Section
One Ashburton Place, Room 1719
Boston, MA 02108
617-727-2836

Relevant statutes or regulations - Assuming that the by-laws submitted to us comply with all applicable procedural requirements, the Attorney General's principal function is to determine whether by-laws approved by a town meeting conflict with substantive state law. This is a comprehensive and time-consuming process. Our review

¹³ Note that a vote of town meeting "accepting" the provisions of a general law is itself not the adoption or amendment of a town by-law, and thus need not be submitted to the Attorney General for approval. However, nothing prevents a town meeting under one or more articles from accepting the provisions of a local option statute and then proceeding directly to the adoption of a by-law authorized by such acceptance.

will proceed much faster and the chances of approval will be greatly improved if the town provides us with a citation or copy of any state laws which, in the town's opinion, authorize enactment of the by-law in question. This information is especially useful in the case of "special acts" which apply only to your town. Please write the article number and citation of the statute or regulation in the space provided, or attach a copy to Form 8. Also include any relevant provision of the town's charter which uniquely equips the town to adopt by-laws that other towns are not allowed to adopt.

Form 9: Historic District.

This form replaces prior Forms 9 & 10, and enables us to verify that the town has met the procedural mandates of G.L. c. 40C, § 3. The form is required whenever the town establishes a new historic district, enlarges or reduces the boundaries of an existing district, creates an additional district, or amends an historic district by-law in any other way. You are required to specify which of the above was voted under the article and to provide the information required in the appropriate section of the form.

Filing with the Town Clerk and Recording in the Registry of Deeds - G.L. c. 40C, § 3, provides in pertinent part that no ordinance or by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the town clerk and has been recorded in the registry of deeds for the county or district in which the town is located, and the provisions of G.L. c. 36, § 13A shall not apply.

Filing with Massachusetts Historical Commission - G.L. c. 40C, § 15, provides, in pertinent part, that all by-laws creating an historic district adopted by a town under authority of Chapter 40C and under authority of any special law - unless the special law shall otherwise provide - amendments thereto, maps of historic district created thereunder, and annual reports and other publications of commissions, and rosters of membership therein, shall be filed with the Massachusetts Historical Commission.

An Attachment Checklist is provided as a reminder of the materials that are required to be filed with the form.

SPECIAL BY-LAWS

Blasting and underground storage tanks.

Pursuant to G.L. c. 148, § 9, towns are authorized to enact by-laws regulating blasting operations, or the use, handling, transportation and storage of explosives and inflammable materials. By-laws regulating blasting operations or dynamite or gunpowder must be approved by the Attorney General and must also be submitted to the Massachusetts Board of Fire Prevention Regulations within ten (10) days after passage for the Board's approval. A copy of all by-laws regulating storage and transportation of inflammable liquids, such as underground storage tank by-laws, must be submitted to the Board, although the Board's approval is not required. Please send a copy of any correspondence with the Board showing proof of compliance with G.L. c. 148, § 9, when you submit your by-laws to the Attorney General.

Personnel by-laws.

Pursuant to G.L. c. 41, § 108A, and G.L. c. 41, § 108C, personnel by-laws and amendments thereto are not subject to the approval of the Attorney General.

Boating and great ponds.

Two types of by-laws require the approval of the Director of the Division of Law Enforcement within the Department of Fisheries, Wildlife and Environmental Law Enforcement in the Executive Office of Environmental Affairs, in addition to the approval of the Attorney General: (1) by-laws enacted by one town or jointly with another town concerning the operation and maintenance of vessels and related activities on the waters of the Commonwealth (G.L. c. 90B, § 15), and (2) by-laws affecting great ponds not exceeding five hundred acres that concern boating, speed limits, a limitation on engine horsepower, a prohibition on the use of internal combustion engines, a ban on water skiing and other high speed uses and a limitation of such uses to certain areas and certain times (G.L. c. 131, § 45).

Since the Director's review encompasses matters of policy and uniformity throughout the Commonwealth, persons contemplating by-laws concerning these subjects should discuss the issues involved with the Director's field representatives before the town meeting votes on them. Such boating by-laws should be forwarded to the Director for his approval immediately after final adjournment of the town meeting. Both the Director's approval and the Attorney General's approval are required before such by-laws may be enforced.

Fire district by-laws.

Pursuant to G.L. c. 48, § 77, a by-law adopted by a fire district imposing a penalty must be approved by the Attorney General and published at least three (3) times in one or more town newspapers, or, if there is no such town newspaper, then in one or more newspapers published in the county where the fire district is situated. Fire district by-laws which do not impose penalties need not be submitted to the Attorney General.

By-laws & ordinances relative to the use and operation of aircraft.

G. L. c. 90, § 39B, acknowledges the right of cities (by ordinance or regulation) and towns (by by-law or regulation) to regulate the use and operation of aircraft within the boundaries of an airport or restricted landing area within the municipality. Section 39B, however, provides that no such ordinance, by-law, or regulation shall take effect until first submitted to and approved by the Massachusetts Aeronautics Commission. The statute is silent on when the filing must be made, how long the Commission has for its review, or the criteria to be used by the Commission in determining whether to approve. (See 702 CMR Sections 1 through 7.)

For reference the addresses and telephone numbers of the state agencies mentioned are above are as follows:

***Director of the Division of Law Enforcement within the Department of
Fisheries, Wildlife and Environmental Law Enforcement in the Executive
Office of Environmental Affairs***
175 Portland Street, Second Floor
Boston, MA 02114-1701
Tel (617) 727-3905
Fax (617) 727-8551

Department of Housing and Community Development
1 Congress Street, 10th Floor
Boston, MA 02114
Tel (617) 727-7765

Massachusetts Aeronautics Commission
10 Park Plaza
Room 6620
Boston, MA 02116-3966

Tel (617) 973-8881
Fax (617) 973-8889

Massachusetts Board of Fire Prevention Regulations

State Road P.O. Box 1025
Stow, MA 01715
Tel (978) 567-3100
Fax (978) 567-3121

Massachusetts Historical Commission

220 Morrissey Blvd.
Boston, MA 02125-3314
Tel (617) 727-8470
Fax (617) 727-5128

GENERAL LAWS OF MASSACHUSETTS

Chapter 40: Section 32. Validation of by-laws; procedure.

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. If the attorney general does not, within said ninety days, request of such town clerk in writing further proof of such compliance stating specifically wherein such proof is inadequate, it shall be presumed that the proof submitted was adequate. If the attorney general disapproved a by-law he shall give notice to the town clerk of the town in which the by-law was adopted of his disapproval, with his reasons therefor. If a by-law of a town takes effect by reason of the failure of the attorney general to seasonably act upon a request for its approval, the clerk of such town shall enter in his records a statement that the by-law has become effective by reason of such failure of the attorney general to act. 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. The publication of a zoning by-law shall include a statement that claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of such posting or of the second publication and a statement indicating where copies of such by-law may be examined and obtained. The requirements of publishing in a town bulletin or pamphlet and posting, or publishing in one or more newspapers, as above, may be dispensed with if notice of the by-laws is given by delivering a copy thereof at every occupied dwelling or apartment in the town, and affidavits of the persons delivering the said copies, filed with the town clerk, shall be conclusive evidence of proper notice hereunder. This section shall not apply to cities.

Chapter 40A: Section 5. Adoption or change of zoning ordinances or by-laws; procedure.
(paragraph numbers added)

[1] Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten

registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

[2] No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting cities and towns. The department of community affairs, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning

ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

[3] Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

[4] No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend

and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

[5] No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

[6] No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

[7] When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by

explanatory maps or plans.

[8] The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

[9] A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

[10] No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after

commencement of the action.

Chapter 43B: Section 10. Amendments to charter previously adopted or revised under this chapter; procedure.

Section 10. (a) Amendments to a city or town charter previously adopted or revised under this chapter may be proposed by the city council of a city or the town meeting of a town by a two thirds vote in the manner provided by this section; provided, that amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager. In this

section, the word "mayor" shall mean an officer elected by the voters as the chief executive officer of a city or an officer lawfully acting as such, and the term "two thirds vote" shall mean, in cities, a vote, taken by yeas and nays, of two thirds of the members of a city council present and voting thereon, and shall mean, in towns, the vote of two thirds of the voters present and voting at a duly called meeting.

(b) In addition to any amendment proposed by a city council or town meeting under subsection (a) the city council or town meeting shall consider and vote upon any suggested charter amendment which it would have the power to propose under subsection (a), and which is not substantially the same as an amendment already considered and voted upon by it within the last twelve months, and which is suggested to it in a written request signed

by the mayor or city manager or any member of the city council in a city or by the town manager or any selectman of a town, or is suggested to it by a petition in substantially the form set forth in section fifteen, signed and completed in accordance with the instructions contained therein by at least ten registered voters in the case of a town and by as many registered voters, in the case of a city, as would be required to nominate a charter commission member in such city under section five, which written request or petition shall be filed with the city or town clerk. At the earliest convenient time not later than three months after the date any suggested amendment is filed with the city or town clerk, the city council or board of selectmen shall order a public hearing to be held thereon before it or before a committee selected or established by it for the purpose, provided that any number of suggested amendments may be considered at the same hearing. Such a hearing shall be held not later than four months after the filing date of any suggested amendment to be considered, and at least seven days notice of such public hearing shall be published in a newspaper of general circulation in the city or town. Except where the hearing is held by a city council, the board or committee holding the public hearing shall report its recommendations to the city council or town meeting, as the case may be. Final action on such a suggested amendment shall be taken not later than six months after such filing date in the case of a city and, in the case of a town, not later than the first annual town meeting held at least six months after such filing date, provided that at any time after the public hearing two hundred registered voters of a town or twenty per cent of the total number of registered voters of such town, whichever is less, may in writing request the selectmen to call a special town meeting to consider the suggested amendment, and the selectmen shall thereupon call such meeting which shall be held not more than forty-five days after the receipt of the request.

(c) Whenever an order proposing a charter

amendment to the voters is approved by the mayor and city council or town meeting, a copy of the proposed amendment shall be immediately submitted to the attorney general and to the department of housing and community development and such order shall not take effect for four weeks after the date of such submission. Within such four weeks the attorney general shall furnish the city council or board of selectmen with a written opinion setting forth any conflict between the proposed amendment and the constitution and laws of the commonwealth. A copy of the opinion shall at the time be furnished to the department of housing and community development. If the attorney general reports that the proposed amendment conflicts with the constitution or laws of the commonwealth, the order proposing such amendment shall not take effect except as may be specified by further proceedings of the mayor and city council or town meeting under subsection (a). If the attorney general reports no such conflict, such order shall become effective four weeks after its submission to the attorney general.

(d) No order or vote under subsection (a), (b) or (c) shall be subject to referendum or shall, except as provided in subsection (a), require the concurrence of the mayor.

(e) The provisions of subsections (a), (b), (c) and (d) shall apply to amendments of laws having the force of a city or town charter by virtue of section nine of Article LXXXIX of the Amendments to the Constitution as well as to amendments of a charter previously adopted or revised under this chapter.

Chapter 40C: Section 3. Establishment of historic districts; pre-requisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps.

Section 3. A city or town may, by ordinance or by-law adopted by two-thirds vote of the city council in a city or by a two-thirds vote

of a town meeting in a town, establish historic districts subject to the following provisions:-- Prior to the establishment of any historic district in a city or town an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section and in section four, who shall transmit copies of the report to the planning board, if any, of the city or town, and to the Massachusetts historical commission for their respective consideration and recommendations. The buildings, structures or sites to be included in the proposed historic district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. The Massachusetts historical commission may consult with the director of economic development, the director of housing and community development and the commissioner of environmental management with respect to such reports, and may make guidelines for such reports, and, after public hearing, establish rules as to their form and manner of transmission. Not less than sixty days after such transmittal the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of a proposed ordinance or by-law, to the city council or town meeting.

An historic district may be enlarged or reduced or an additional historic district in a city or town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or

reduction of an existing historic district the investigation, report and hearing shall be by the historic district commission having jurisdiction over such historic district instead of by a study committee; (b) in the case of creation of an additional historic district the investigation, report and hearing shall be by the historic district commission of the city or town, or by the historic district commissions acting jointly if there be more than one, instead of by a study committee unless the commission or commissions recommend otherwise; and (c) if the district is to be reduced written notice as above provided of the commission's hearing on the proposal shall be given to said owners of each property in the district. Any ordinance or by-law creating an historic district may, from time to time, be amended in any manner not inconsistent with the provisions of this chapter by a two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty days have elapsed without such recommendation.

No ordinance or by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the city clerk or town clerk and has been recorded in the registry of deeds for the county or district in which the city or town is located, and the provisions of section thirteen A of chapter thirty-six shall not apply.

Planning Board Hearing Date _____ **Relative to Article(s)** _____

(When necessary, you may need to use multiple copies of this Form 7.)

<p>Date #1. Date on which the proposed <u>amendments</u> were <u>submitted</u> to the Board of <u>Selectmen</u>. Amendments were originally proposed by: _____</p>	<p>Date: (Attach Copy of Original Proposal)</p>
<p>Date #2. Date on which the Selectmen submitted the proposed amendments to the Planning Board. <i>[Note: must be within 14 days of Date #1 (Submission of original proposal to Board of Selectmen).]</i></p>	<p>Date:</p>
<p>Date #3. Date on which the <u>first</u> Notice of Planning Board hearing was <u>published</u> in a newspaper of general circulation in the town. <i>[Note: must be at least 14 days prior to Date #10 (HearingDate).]</i></p>	<p>Date: (Attach Copy)</p>
<p>Date #4. Date on which the <u>second</u> Notice of Planning Board hearing was <u>published</u> in the newspaper. <i>[Note: must be sometime during the week immediately following the week in which Date #3 (First published notice of Planning Board Hearing) falls.]</i></p>	<p>Date: (Attach Copy)</p>
<p>Date #5. Date on which Notice of Planning Board Hearing was <u>posted</u> in a conspicuous place in the Town Hall. <i>[Note: must be at least 14 days prior to Date #10 (Hearing Date).]</i></p>	<p>Date: (Attach Copy)</p>
<p>Date #6. Date on which copy of Notice of Planning Board Hearing was <u>mailed</u> to the Department of Housing and Community Development. <i>[Note: any date reasonably prior to Date #10 (Hearing Date).]</i></p>	<p>Date:</p>
<p>Date #7. Date on which copy of Notice of Planning Board Hearing was <u>mailed</u> to the Regional Planning Agency, if any. <i>[Note: any date reasonably prior to Date #10 (Hearing Date).]</i></p>	<p>Date: _____ or, No Agency: [<input type="checkbox"/>]</p>
<p>Date #8. Date on which copy of Notice of Planning Board Hearing was <u>mailed</u> to the planning boards of each abutting city or town. <i>[Note: any date reasonably prior to Date #10 (Hearing Date).]</i></p>	<p>Date:</p>
<p>Date #9. In cases involving boundary, density, or use changes within a district, date on which Notice of Planning Board Hearing was mailed to any <u>non-resident property owner</u> who had filed a request with the town clerk and whose property lies in the district where the zoning change is sought. <i>[Note: need be done only when requests have been filed with the town clerk.]</i></p>	<p>Date: or None Filed: [<input type="checkbox"/>]</p>
<p>Date #10. Date of the Planning Board <u>Hearing</u>. <i>[Note: must be within 65 days of Date #2 (When Selectmen submitted proposed amendments to Planning Board).]</i></p>	<p>Date:</p>
<p>Date #11. Date on which the Selectmen <u>signed</u> the Town Meeting <u>Warrant</u>.</p>	<p>Date:</p>
<p>Date #12. Date on which the Town Meeting <u>Warrant</u> was <u>posted</u>. <i>[Note: must be at least 7 days prior to an annual town meeting and at least 14 days prior to a special town meeting.]</i></p>	<p>Date:</p>
<p>Date #13. Planning Board <u>Report with Recommendations</u>. <i>[Note: the report may be written or oral.]</i></p>	<p>Written: [<input type="checkbox"/>] (Attach Copy) Oral [<input type="checkbox"/>] Neither: [<input type="checkbox"/>]</p>
<p>Date #14. Date on which <u>Town Meeting</u> <u>voted</u> on the proposed amendments. <i>[Note: where the Planning Board has failed to submit a report with recommendations to Town Meeting, Town Meeting may not vote to adopt the proposed amendments, unless Date #14 (Town Meeting) is at least 21 days after Date #10 (Planning Board Hearing).]</i></p>	<p>Date:</p>

I certify that information set forth above is complete and accurate and that within the two years prior to this town meeting, either: (1) No unfavorable action was taken on any of the above articles, or (2) the Planning Board recommended the adoption thereof.

Town Clerk

Date