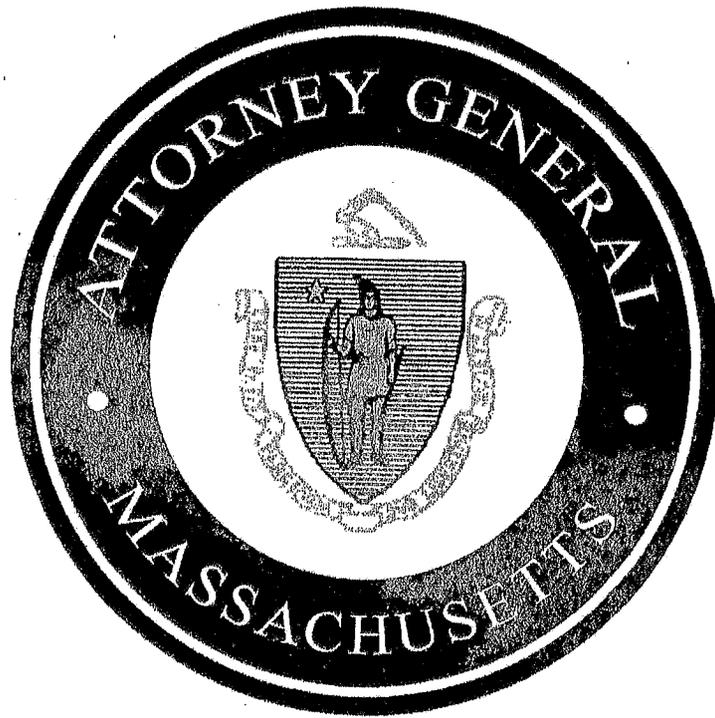


Submitting By-Laws to the
Attorney General's Office Guidebook
For Town Clerks and Planning Boards
(Including Guidelines for the Submission of Charter Amendments by Cities and Towns)



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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. City and Town officials are urged to consult with their city solicitor or town counsel on both procedural and substantive legal requirements for the adoption and amendment of by-laws and charter amendments.

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.

You can access the General Laws on-line at the state's website:

<http://www.state.ma.us/legis/legis.htm>

This Guidebook and the submittal forms which accompany it are designed to provide procedures for submitting by-laws and (charter amendments under G.L. c. 43B, § 10), 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.

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 duplication.

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 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.

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 its 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. Concord, 336 Mass. 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 form and number of Town Meeting 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, we go on to consider whether the amendments are substantively inconsistent with state law, and will state whether the amendments are disapproved in whole or in part for these additional, substantive reasons.

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

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

government, and to grant and confirm to the people of every city and town the right of self-government in local matters

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 will 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 laws enacted by the Legislature as General Laws or as Acts of the General Court, regulations promulgated by state agencies acting pursuant to statutory authority, court decisions construing the laws and regulations. A town by-law is presumed to be valid unless it sharply conflicts with state laws, regulations, or court decisions, or it impedes 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 municipal attorney. 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
1350 Main Street, 4th Floor
Springfield, MA 01103
Telephone: (413) 784-1240

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

Bob Ritchie, Assistant Atty. Gen., Director - Ext. 116 - bob.ritchie@ago.state.ma.us
Kelli E. Gunagan, Assistant Atty. Gen. - Ext. 117 - kelli.gunagan@ago.state.ma.us
Sandy Giordano, Unit Paralegal - Ext. 118 - sandy.giordano@ago.state.ma.us
Eva Wanat, Unit Secretary - Ext. 119 - eva.wanat@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 charters 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 to submit all by-laws and by-law amendments adopted at town meeting to the Attorney General for review and approval.⁴ The Attorney General must either approve the by-law

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

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.

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 from the date of receipt 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.

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 information. The ninety (90) day period will then 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-laws were 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. This does not mean that by-laws adopted at a special town meeting that takes place within or about the annual town meeting or within another special Town Meeting should be included; rather, one separate packet for each Town Meeting is required. 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 disapproval. If the Attorney General fails to approve or disapprove a by-law within the ninety (90) day 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

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

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 are effective only if the posting and publication requirements are met. General by-laws will take effect upon completion of these steps, while zoning by-laws are deemed to have taken effect on the date voted by Town Meeting, subject however to subsequent completion to posting and publishing.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.

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.

There are two additional posting and publication requirements for zoning by-laws under G.L. c. 40, § 32. The notice for zoning by-laws 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 posted and/or 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. The Attorney General's endorsement letter will always include the following text:

General Laws Chapter 40, Section 32, requires that both general and zoning by-laws and by-law amendments, once approved by the Attorney General, must be posted and published by the Town Clerk before they may be deemed to take effect. Once this statutory duty is fulfilled, unless a later effective date is prescribed in the bylaw, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied, and (2) zoning by-laws and amendments are deemed to take effect back on the date they are voted by Town Meeting.

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.

The reason for including this text in all our endorsement letters is to assure that the portion of the by-law disapproved does not appear in the by-law as posted and published by the clerk.

Chapter 299 of the Acts of 2000

Chapter 299 amends G.L. c. 40, § 32, which governs the Attorney General's statutory duty to review town by-laws for consistency with the Constitution and laws of the Commonwealth. Specifically, Chapter 299 amends

Section 32 by permitting the Attorney General to waive defects "in the procedure of adoption or amendments of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in Section 5 of Chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said Section 5." Chapter 299 also establishes the requirements that must be followed when the Attorney General elects to proceed under this provision and specific duties that must be performed by the town clerks.

If the Attorney General elects to proceed under Chapter 299, then the Attorney General will send written notice to the town clerk within a reasonable period of time setting forth with specificity the procedural defect(s) found. The 90-day review period for the Attorney General's review is thereupon suspended, and in some instances extended. Once the town clerk receives written notice, the town clerk must (1) post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and (2) publish the notice once in a newspaper of general circulation in the town. The notice must state that "any resident, the owner of any real property in the town or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim."

After the expiration of the 21 days, the town clerk must submit a certificate to the Attorney General stating either (1) that no claim was filed within the 21-day period, or (2) that one or more claims were filed within the 21-day period. If claims have been filed, the town clerk must file those claims with the Attorney General. Once the Attorney General receives the certificate from the town clerk, the 90-day review period will resume. If there are less than ten days left in the review period, the Attorney General will have ten days to conclude its review.

It should be noted that the Attorney General will not judge the merits of any such claim, with the result that the mere filing of the claim is sufficient to deprive the Attorney General from waiving the defect. On the other hand, a mere recitation that the defect was misleading or otherwise prejudicial – with a statement of reasons– is insufficient to deprive the Attorney General of the authority to waive. If no claims have been filed, the Attorney General may then waive any procedural defect in the notice. However, if there is a claim that the notice defect was misleading or otherwise prejudicial, the Attorney General may not waive the defect. Chapter 299 states that by not filing a claim of invalidity during this process a person will not be deprived of the right to assert a claim of invalidity by reason of a defect in the procedure of adoption as provided for in G.L. c. 40, § 32, and c. 40A, § 5.

Chapter 299 also allows the Attorney General and Town Counsel to agree in writing to an extension of the 90-day review period when circumstances require. This flexibility was previously not allowed under G.L. c. 40, § 32.

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 strictly followed.

How zoning by-laws are initiated. The adoption or change of a zoning by-law is initiated by the submission of a proposed by-law or by-law amendment 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 time 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. Before Chapter 299 of the Acts of 2000, the Attorney General was compelled to disapprove by-laws for procedural deficiencies with regrettable frequency because we found that many towns failed to include the second or third of these requirements. With the flexibility of Chapter 299 of the Acts of 2000, this no longer is fatal to the by-law.

Notice of the public hearing must also be mailed, postage prepaid, to all of the following: (1) the Department of Housing and Community Development,

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).

(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 Town Meeting vote. 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 subsequent planning board hearing must comply with all notice and report requirements.

Number of votes required. No zoning by-law may be adopted or amended by Town Meeting except by a two-thirds vote of those present and voting. An actual count must be taken, and the counted vote must be recorded in the records by the clerk; provided, however, that a town may decide by by-law or by vote not to take a count and record the 2/3 vote if the moderator determines that the 2/3 vote has been achieved. If the vote is unanimous, a count need not be taken, and the clerk may record the vote as unanimous. It is not adequate if a vote is declared as "unanimous except for one vote or five votes".

Previously rejected zoning by-laws. A zoning by-law or amendment that 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.

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.⁸ All too often this statement is not included in the packet submitted, making it more difficult for the Attorney General to review the submission. 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.

⁸ 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.

Effective date. The effective date of a zoning by-law is the date on which it was voted by the town meeting provided, however, 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 entitled the "Historic Districts Act." Section 3 of the Act establishes procedures for the adoption and amendment of historic district by-laws.

Establishment of an historic district

a.) **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.

b.) **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).

c.) **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.

d.) **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.

e.) **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.

Enlargement, reduction, or addition to an existing historic district -
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 a 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 is 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.

Amendments to an existing historic district. 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 extensive 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 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 by 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. The provisions of G.L. c. 39, § 15 apply.

Submission to the Attorney General. Whenever an order proposing a charter amendment under G.L. c. 43B to the voters is approved by Town Meeting (or the mayor and council), a copy of the proposed amendment must immediately be 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.

It shall be noted that the Legislature may, on petition of the local legislative body, enact a charter for a city or town, or amend an existing charter, regardless of whether the existing charter is one adopted under G.L. c. 43B or one enacted by the Legislature.

THE FORMS

Introduction

The forms supplied in this Guidebook and which are available on the MLU's website are to be used to submit by-laws and charter amendments 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. We encourage you to reproduce the forms or download them directly from our website which shall ensure the use of the most recent forms. (see "website" below)

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 "N/A".

If you are not required to submit any of the information requested on Forms 3, 5, 7 or 8, please do not include these forms in the packet. Paper size should be 8 ½ by 11 inches in size.

Finally, we ask that relevant documents be attached to the applicable form. It is sometimes very time consuming trying to match all the paperwork in some packets with the correct form.

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 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, 7, and 8 (name, address and phone number of the town counsel, planning board contact person, and clerk) will enable us to contact you, your planning board, 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 stated 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 understand fully the action taken by Town Meeting and to determine precisely what changes to the existing by-laws are proposed. 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 and the date of the vote; (3) the full text of the by-laws or amendments voted by town meeting;⁹ and (4) in some practical format provide an 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 or a relevant block of text from the existing by-law we will be unable to ascertain the full meaning of the proposed changes in context. By-law amendments must be understood to include 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 to which they relate. 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 someone not already acquainted with the town by-laws will understand what the amendments mean without having to look at other parts of the by-law to make sense of the changes.

⁹ 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.

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. Use of an annotated comparison greatly facilitates our approval of the by-law submitted.

2. TOWN MEETING ACTION -- Three (3) certified copies 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. Do not include any motions that were unfavorably voted. 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 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 -- One (1) certified copy of the complete final text of the by-law incorporating the amendments voted by town meeting. This means the text of the by-law as it will 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.

4. ANNOTATED COMPARISON -- By "annotated comparison" we mean 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 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.¹⁰ 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 Town Meeting action on 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 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

¹⁰ The town clerk should always retain indefinitely, copies of all by-laws even after they are amended, replaced, or repealed. Even when they are no longer "in effect," it is important that town records faithfully track the laws of the town over time. It is often critical when trying to determine what the zoning laws were at particular points of time in the past. Moreover, even when a by-law is replaced, it retains its status as a "public record," and may not be disposed of without approval of the Supervisor of Public Records.

two-thirds vote.¹¹ If a two-thirds (or greater) 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, 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 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 town meeting showing the vote of town meeting authorizing a declared two-thirds vote. Where town meeting wishes to authorize this only for this particular town meeting, it is best to do so by vote. Where town meeting intends to authorize this for all town meetings, it is best to do so "by by-law". While this is our preference, either result may be achieved by vote or by by-law.

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.

The requirements of 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.

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

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 all changes to the zoning map must 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 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 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 which they were voted.

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

Item 2 asks the clerk to certify that the warrant was properly "served" and that proper notice of any adjournments was given. General Laws, Chapter 39, Section 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 town may have additional notice requirements in its by-laws, but compliance with local by-laws is not within the scope of the Attorney General's review. Town counsel should be consulted about compliance with local law.

Item 3 contains the certified attachments to Form 4 which 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.

The town clerk must sign and date the bottom of this form.

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]. Proposals from a Charter Commission to adopt or amend a town charter 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 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 municipal attorney 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 will 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: Relevant Laws or Special Authority

This form is mandatory with each packet submitted. In some instances consistency with state law depends, for example, on a prior acceptance of a local option statute, a special act of the Legislature, the Cape Cod Commission Act, or a charter provision unique to the town. If not provided with the special information requested on Form 6, the Attorney General will disapprove a by-law that, need not be disapproved in light of this special information. Providing this information will both speed our review of the by-laws submitted and increase their prospects of approval.

A. 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).¹² Before the Attorney General can approve a by-law based upon a local option, 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 6. 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

B. Special Acts of the Legislature - Some towns may have a special statute that authorizes them to do what is not otherwise permitted by by-law or the general laws of the state. Before the Attorney General can approve a by-law based upon a Special Act, we require proof that the Legislature has previously

¹² 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.

voted to accept the Act 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 Special Act to Form 6. 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 Legislature did not pass the Act, and that the by-law is thus inconsistent with state law that requires such acceptance.

C. Martha's Vineyard Act (Chapter 831 of the Acts of 1977) – The Attorney General does not review regulations adopted pursuant to Chapter 831 of the Acts of 1977, which created the Martha's Vineyard Commission. One of the Martha's Vineyard Commission statutory responsibilities is the designation of critical planning districts within Martha's Vineyard and the regulation of development within these critical planning districts. Section 10 of Chapter 831 of the Acts of 1977 provides that after the designation of a district of critical planning concern, a municipality whose boundaries include all or part of the district may adopt regulations in conformance to the guidelines for the development of the district as set forth in the designation. Section 10 further provides that “[a]ll regulations so adopted shall be incorporated, without regard to the provisions of section thirty-two of chapter forty of the General Laws, by the municipality into the official . . . by-laws and maps of the municipality and shall not be effective prior thereto. . . . A municipality may amend or rescind regulations in the manner provided for adoption and approval.” (Emphasis added.) The text of Section 10 authorizes the town to adopt and amend such regulations without complying with G.L. c. 40, § 32. Thus, local regulations and amendments thereto adopted under the authority of Chapter 831 of the Acts of 1977 need not be reviewed by this Office.

D. Town Charter Provisions – Some towns may have a charter provision that authorizes them to do what is not otherwise permitted by by-law or the general laws of the state. Before the Attorney General can approve a by-law dependent upon a charter provision, we require that a copy of the applicable charter provision be attached to Form 6.

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 will proceed much faster and prospects 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 6. Also, include any relevant provision of the town's charter which uniquely equips the town to adopt by-laws that towns are otherwise not allowed to adopt.

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;¹³
- (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.

We remind the town that the statute requires the submission of "a statement, which should be prepared by the planning board, clearly explaining the proposed by-law." All too often the statement is not submitted, leaving the Attorney General uncertain about the purpose of the by-law proposed. ("Note: See the 'Date Calculator' attached to this Guidebook.")

¹³ 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."

Form 8: 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 - General Laws, Chapter 40C, Section 3, provides in pertinent part that no 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 - General Laws, Chapter 40C, Section 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 districts 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.

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 and by-laws affecting great ponds 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.

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

General Laws, Chapter 90, Section 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.)

Fire district and water district by-laws.

Pursuant to G.L. c. 48, § 77, a by-law, rule, or regulation 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. General Laws, Chapter 48, Section 77, applies only to fire districts and not water districts or other districts. The Attorney General is not charged with the review and approval of water districts.

Pawnbrokers

Pursuant to G.L.c. 140, § 78, cities or towns that grant licenses to pawnbrokers must develop regulations, to the satisfaction of the Commissioner of Banks, relative to the business carried on and the rate of interest to be charged by them. Both, the Commissioner of Bank's approval and the Attorney General's approval are required before a by-law establishing rates of interest to be charged by pawnbrokers may take effect.

Personnel by-laws.

Pursuant to G.L. c. 41, §§ 108A and 108C, personnel by-laws and amendments thereto are not subject to the approval of the Attorney General. By-laws adopted under Section 108A pertain to classification of positions, job descriptions, and employee benefits. By-laws adopted pursuant to Section 108C consolidate, in a single chapter or article, all provisions of its by-laws pertaining to the administration of its personnel.

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

Department of Housing and Community Development

100 Cambridge Street, Suite 300

Boston, MA 02114

Tel (617) 573-1363

Fax (617) 573-1330

Director of the Division of Law Enforcement within the Department of Fisheries, Wildlife and Environmental Law Enforcement in the Executive Office of Environmental Affairs

251 Causeway Street, Ste 400

Boston, MA 02114-1701

Tel (617) 626-1500

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Division of Banks and Loan Agencies

One South Station, 3rd Floor

Boston, MA 02110

Tel (617) 956-1500

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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 01775

Tel (978) 567-3125

Fax (978) 567-3121

Massachusetts Historical Commission

220 Morrissey Blvd.

Boston, MA 02125-3314

Tel (617) 727-8470

Fax (617) 727-5128

Date Calculator

for zoning by-law amendments in towns.
 a work in process!

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 - Bob Ritchie, MLU Director, April 11, 2003

[Note: dates that appear in BOLD are critical. Failure to comply can be fatal.]

Event	Event Date	Can be as early as	But no later than	Comments
Date #1 - Date on which the "proposed amendment" is submitted to the Select Board. The proposal can be submitted by any of the following: [1] Selectmen [2] Planning Board; [3] Local Board or Official; [4] Petitioner(s).	D1 = _____	n/a	n/a	<ul style="list-style-type: none"> Statute does not prescribe the form or format for a "proposal." It is the "proposal" and not the "warrant article" to which the PB Notices and Hearing relate.
Date #2 - Date on which the Select Board sends the "proposed amendment" to the Planning Board.	D2 = _____	D1	14 days after D1	<ul style="list-style-type: none"> Where "proposal" is made by PB, we deem D2 = D1.
Date #3 - Date on which the first notice of Planning Board Hearing is published in a newspaper of general circulation in the town.	D3 = _____	D2	14 days before D10	<ul style="list-style-type: none"> Need not be same newspaper as D4. Form 7-PBN is recommended. It covers all the bases. Notice must include: <ul style="list-style-type: none"> [1] Time and place of hearing. [2] Subject matter sufficient for identification. [3] Place where text and maps may be inspected.
Date #4 - Date on which the second notice of Planning Board Hearing is published in a newspaper of general circulation in the town.	D4 = _____	any day in the next successive week after D2	the day before the hearing, but in the next successive week after D2	<ul style="list-style-type: none"> Need not be same newspaper as D3. Form 7-PBN is recommended. It covers all the bases. Notice must include: <ul style="list-style-type: none"> [1] Time and place of hearing. [2] Subject matter sufficient for identification. [3] Place where text and maps may be inspected.
Date #5 - Date on which Notice of Planning Board Hearing is posted in a conspicuous place in the Town Hall.	D5 = _____	D2	14 days before D10	<ul style="list-style-type: none"> Must remain posted continuously for 14 days prior to the hearing. Form 7-PBN is recommended. It covers all the bases. 48 hour Open Meeting Law Notice is not sufficient.
Date #6 - Date on which a copy of PB Notice is mailed to DHCD	D6 = _____	D2	D10	<ul style="list-style-type: none"> Notice date not prescribed but must be reasonably prior to D10. The notice is open to challenge if mailed so shortly before the hearing as to offer little or no opportunity to attend the hearing. Waiver of notice or affidavit of actual notice can cure a defect here. The statute states that the waiver or affidavit is to be submitted to the Town Clerk "prior to the town meeting." Practically speaking, however, if the waiver or affidavit is submitted after town meeting, a challenge by DHCD is foreclosed, and no other party has standing to assert this defect.

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<p>Date #7 - Date on which a copy of PB Notice is mailed to Regional Planning Agency.</p>	<p>D7 = _____</p>	<p>D2 _____</p>	<p>D10 _____</p>	<p>[Note: dates that appear in BOLD are critical. Failure to comply can be fatal.]</p> <ul style="list-style-type: none"> • Notice date not prescribed but must be reasonably prior to D10. The notice is open to challenge if mailed so shortly before the hearing as to offer little or no opportunity to attend the hearing. • Waiver of notice or affidavit of actual notice can cure a defect here. The statute states that the waiver or affidavit is to be submitted to the Town Clerk "prior to the town meeting." Practically speaking, however, if the waiver or affidavit is submitted after town meeting, a challenge by the RPA is foreclosed, and no other party has standing to assert this defect. • (See attached list of RPAs and the cities and towns in each. Prepared by MMA)
<p>Date #8 - Date on which a copy of PB Notice is mailed to planning boards of abutting cities/towns.</p>	<p>D8 = _____</p>	<p>D2 _____</p>	<p>D10 _____</p>	<ul style="list-style-type: none"> • Notice date not prescribed but must be reasonably prior to D10. The notice is open to challenge if mailed so shortly before the hearing as to offer little or no opportunity to attend the hearing. • Waiver of notice or affidavit of actual notice can cure a defect here. The statute states that the waiver or affidavit is to be submitted to the Town Clerk "prior to the town meeting." Practically speaking, however, if the waiver or affidavit is submitted after town meeting, a challenge by an abutting planning board is foreclosed, and no other party has standing to assert this defect.
<p>Date #9 - In cases involving boundary, density, or use changes within a district, the date on which a copy of the PB Notice is mailed to any non-resident owner who has filed a request with the town clerk and whose property lies in the district where the zoning change is sought.</p>	<p>D9 = _____</p>	<p>D2 _____</p>	<p>D10 _____</p>	<ul style="list-style-type: none"> • Notice date not prescribed but must be reasonably prior to D10. The notice is open to challenge if mailed so shortly before the hearing as to offer little or no opportunity to attend the hearing. • Waiver of notice or affidavit of actual notice can cure a defect here. The statute states that the waiver or affidavit is to be submitted to the Town Clerk "prior to the town meeting." Practically speaking, however, if the waiver or affidavit is submitted after town meeting, a challenge by the non-resident property owner is foreclosed, and no other party has standing to assert this defect.
<p>Date #10 - Date of Planning Board Hearing.</p>	<p>D10 = _____</p>	<p>the day after D4</p>	<p>65 days after D2 (or D1 if there is no Planning Board)</p>	<ul style="list-style-type: none"> • It is possible for the hearing to be adjourned to one or more later dates if required to complete the hearing.

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Date #11 - Date on which the Select Board signs the TM warrant.	D11 = _____	D1	14 days before D14 for STM - or - 7 days before D14 for ATM	<ul style="list-style-type: none"> The warrant can be signed before D1 or after D10. Some Select Boards wait for the outcome of the PB Hearing before settling on the final language of the warrant article. The adequacy of the PB Notice turns on the subject of the amendment proposed, not on the language of the warrant article, which may be fashioned after the PB hearing.
Date #12 - Date on which the TM warrant is published/noted in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town, or in a manner approved by the Attorney General. [G.L. c. 39, § 10]	D12 = _____	D1	14 days before D14 for STM - or - 7 days before D14 for ATM	<ul style="list-style-type: none"> Can be oral or written. Written highly recommended. This condition is satisfied both by favorable and unfavorable recommendations. If not written, PB must make its report to TM.
Date #13 - Planning Board Report with Recommendations.	D13 = _____	D10	D15	
Date #14 - Date on which Town Meeting first convenes.	D14 = _____	14 days after publication for STM - or - 7 days after publication for ATM	the date specified in warrant	
Date #15 - Date on which Town Meeting votes on the proposed amendments.	D15 = _____	D10	6 months after D10	<ul style="list-style-type: none"> In the absence of a PB Report with Recommendations, 21 days must elapse after D10 (or after the date on which the PB Hearing relating to the amendment concludes) before TM can vote. The vote of TM must be on a motion that is within the scope of the article, as distinct from the subject matter originally proposed.
Date #16 - Date on which Town Meeting finally adjourns.	D16 = _____	D14	n/a	
Date #17 - Date on which any applicable referendum period ends.	D17 = _____	(determined by charter)	(determined by charter)	
Date #18 - Date on which AG receives amendments from Town Clerk for approval.	D18 = _____	D16	30 days after D16	<ul style="list-style-type: none"> Confusion - or worse - can result from by-law submissions made long after TM. This can possibly compromise the integrity of the town's by-laws.

Date Calculator

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Date #19 - Date on which AG approves (or disapproves) proposed amendments.	D19 = _____	D18 _____	90 days after D18	[Note: dates that appear in BOLD are critical. Failure to comply can be fatal.] • Can be extended by AG for insufficient information or by agreement between AG and Town Counsel. • Can be extended pending waiver of minor defects pursuant to G.L. c. 40, § 32. • No exact date is prescribed, but uncertainty results where amendments approved by the AG are not posted/published pursuant to G.L. c. 40, § 32. The notice must include a statement that claims of invalidity by reason of any defect in the procedure of adoption or amendment may be made only within 90 days of the posting or within 90 days of the second publication. The notice must also include a statement indicating where copies of the by-law or amendment may be examined and obtained.
Date #20 - Date on which Town Clerk posts/publishes the by-law or amendment as prescribed by G.L. c. 40, § 32.	D20 = _____	D19 _____	(unspecified)	• Only after all of the following are done: [1] TM votes the amendments (D15); [2] the AG approves the amendments (D19); and [3] the Town Clerk posts and publishes as required by law (D20). • Zoning by-laws and amendments thereto are deemed to take effect on the date voted by TM, subject to the above conditions being satisfied.
Date #21 - Date on which amendments take effect.	D21 = _____	D15 _____	any later date as prescribed in the amendments.	• Zoning by-laws and amendments thereto are deemed to take effect on the date voted by TM, subject to the above conditions being satisfied.
Date #22 - Date on which claims of invalidity for defect in procedures of adoption may be made.	D22 = _____	D20 _____	within 90 days of D20	

GENERAL LAWS OF MASSACHUSETTS

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

[paragraph numbers added]

[1] 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.

[2] Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon the running of the 90-day period provided for the attorney general's review pursuant to this section shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the

right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

[3] Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

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 of 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.

Notice of Planning Board Hearing
Relative to
Proposed Zoning By-Law Amendments

Pursuant to G.L. c. 40A, § 5

The Planning Board of the Town of [_____] will hold a public hearing to discuss proposed amendments to the town's zoning by-laws. The public hearing will be held as follows:

Place: [_____]
Date: [_____]
Time: [_____]

The subject matter of the proposed amendments is/are as indicated below. The complete text and maps relative to the proposed amendments are available for inspection during regular business hours at the following place(s):

[_____]
[_____]

[Note: the above information is strictly required by G.L. c. 40A, § 5.]

*Article
Number*

Subject Matter of Proposed Amendments Sufficient for Identification

[Note: This notice (1) must be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication not less than 14 days before the day of the public hearing, and (2) must be posted in a conspicuous place in the town hall for a period of not less than 14 days before the day of the public hearing.]

*Article
Number*

Subject Matter of Proposed Amendments Sufficient for Identification

BY-LAW SUBMITTAL FORMS (Revised 1/2004)

Form 1 — Cover Letter (MANDATORY)

On Form 1, the town clerk makes a formal request for approval of by-law/charter amendments, and provides basic information related to the packet. We have added a place for a contact person on the planning board. All Articles and maps being submitted may be listed on 1 form. It is not necessary to list zoning on 1 form and general on another.

Form 2 — Town Meeting Action (MANDATORY)

Attach to Form 2:

1. a certified copy of the existing by-law;
2. three (3) certified copies of town meeting action;
3. a certified copy of the final version of the by-law as amended; and,
4. an annotated comparison indicating all changes to the existing by-law.

Form 3 — Zoning and/or Historic District Maps (AS REQUIRED)

Please attach two (2) certified copies of all maps where the vote of Town Meeting entails a change in the zoning map. Identify Article numbers on map.

Form 4 — Town Meeting Certification (MANDATORY)

This form allows us to determine if the town meeting was properly convened. We have added a request for a copy of the text referred to, but not set forth in the warrant articles. In the past, we have had to call the clerk to obtain this text.

Form 5 — Additional Information Required for Charter Amendments Proposed Pursuant to G.L.c. 43B, § 10 (AS REQUIRED)

This form is intended for use in connection with the procedures for *charter amendments* as set forth in G.L. c. 43B, § 10.

Form 6 — Relevant Laws (MANDATORY)

This form enables us to determine if the Town's authority to enact the submitted by-law derives from a local option statute or a special act. The Town risks disapproval if its authority derives from a local option statute or special act which is not disclosed to the Attorney General.

Form 7 — Zoning Procedures/Attachments (AS REQUIRED)

This form enables us to verify that the town has complied with the procedural requirements of G.L. c. 40A, § 5, for the enactment of zoning by-laws. Please remember to attach a copy of each item requested. Also, we have added language requesting in dates 3 & 5 that you mark the article numbers in the planning board notice that is published and posted. We have asked that this be done in the past, but some do and some don't.

Form 8 — Additional Information Required for the approval of Historic District By-laws Adopted Pursuant to G.L.c. 40C, § 3 (AS REQUIRED)

This form enables us to verify that the town has met the procedural requirements of G.L. c. 40C, § 3.

NOTE: Please omit the forms not being used in the submission of your packet.

Town: _____

Attorney General Tom Reilly
Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, Massachusetts 01103-1629
TEL: (413) 784-1240, FAX: (413) 784-1244
Website: www.ago.state.ma.us (Government Access / Municipal Law Unit)

NOTE: Do not forget to sign in Section 8

Dear Attorney General Reilly:

Pursuant to G.L. c. 40, § 32, I hereby request approval of the enclosed amendments to town by-laws. GL. c. 40, §32 specifies that this request must be made within thirty (30) days after final adjournment of Town Meeting

- 1.) Town Meeting (select a, b, or c): **NOTE: If (c) is selected, please specify (i), (ii), or (iii).**
- (a) Annual (b) Special (c) Other: [_____]
- i authorized by Charter
 ii authorized by Special Act
 iii authorized by By-Law

2.) Date Town Meeting First Convened: _____

3.) Date (s) of Adjourned Sessions: _____

4.) Identify Warrant Article(s) Submitted: _____

(a) Zoning: _____

(b) Historical District: _____

(c) General: _____

(d) Charter Amendment: _____
(Proposed amendments to an existing charter pursuant to M.G.L.c. 43B, § 10)

5.) Identify Zoning Maps Relating to Warrant Article(s): _____

6.) Town Counsel

8.) Town Clerk

Attorney: _____

Name (Print): _____

Firm: _____

Signature: _____

Address: _____

Address: _____

Phone: () _____

Phone: () _____

E-Mail: _____

E-Mail: _____

Fax Number: () _____

Fax Number: () _____

Work Schedule: _____

7.) Planning Board – Contact Person

Name (Print): _____

Phone: () _____

Work Schedule: _____

E-Mail: _____

Fax Number: () _____

Town _____

Date TM Convened _____

TOWN MEETING ACTION

Please provide the following:

Submission # 1. [] **EXISTING BY-LAW -- One (1)** certified copy of the entire main section of the existing by-law within which each proposed amendment occurs. This requirement is very important since without the full text of the entire main section of the existing by-law being amended we will be unable to ascertain the full meaning of the proposed changes in context. By-law amendments include even minor technical changes in current by-laws, amendments to tables showing uses permitted in different zoning districts, and amendments which re-codify, reorganize or renumber existing by-laws previously approved by the Attorney General.

Submission # 2. [] **TOWN MEETING ACTION -- Three (3)** certified copies of the main motion, or amended main motion voted by town meeting, with the date and votes thereon. Also include a copy of each floor amendment favorably acted upon by town meeting.

Submission # 3. [] **FINAL VERSION OF BY-LAW AS AMENDED -- One (1)** certified copy of the by-law (Submission #1) as amended by town meeting (Submission #2).

Submission # 4. [] **ANNOTATED COMPARISON** -- Please indicate 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, or otherwise highlighting or indicating all changes. Be sure to include a legend explaining the method chosen. Preferably, you may substitute for the above a computer-generated "compare" document in which the deleted text is shown in "strike-out" format, and the new text is shown in "redline" format.

For any vote requiring a simple majority it will be sufficient to certify that the moderator declared that the motion carried. Where the vote was unanimous, it will be sufficient to certify that the moderator declared that the motion carried unanimously.

For any vote requiring more than a simple majority and where the vote was not unanimous an actual vote count must be taken. Zoning by-laws and historic district by-laws require a two-thirds vote.

However, if the town has either (a) by vote of this town meeting, or (b) in a previously adopted general by-law voted that a counted vote need not be taken and that the Moderator may declare that the required vote has been achieved, then such declaration of the Moderator will be sufficient. If by (a), then please attach a copy of the minutes from this town meeting showing the vote to dispense with a counted vote; if by (b), then please identify the by-law including the date on which it was adopted by town meeting [], and the date it was approved by the Attorney General's Office [].

Town: _____

Date TM Convened: _____

MAPS: ZONING AND/OR HISTORIC DISTRICTS

TWO certified copies of the zoning and/or historic district map(s) are attached.



NOTE: The map must be of a scale that clearly shows the parcel(s) or boundaries affected by each Article, suitably annotated to identify parcel(s) or boundaries. All changes should be shown in color or other method of highlighting the parcel(s) or boundaries affected.

If no maps are being submitted to the Attorney General for approval, do not include this form in the package submitted.

► **Remember:**

Your certification must be affixed to the maps submitted.

Town: _____

Date TM Convened: _____

TOWN MEETING CERTIFICATION

1. Quorum

A quorum was present at the town meeting, including any adjourned sessions thereof. According to our town charter or by-law, our quorum requirement for town meeting is [_____] registered voters. (Please write "0" if the town has no quorum requirement.)

2. Service of the Warrant (Please check one)

The service of the town meeting warrant was in accordance with:

- 1. town by-law;
- 2. a previous vote of the town; or
- 3. a procedure accepted by the Attorney General; and

any adjournments of the Town Meeting were made in accordance with the town by-law or vote of Town Meeting.

3. Attachments

- (a) a copy of the complete Town Meeting warrant, including the opening of the warrant, including all articles, the closing, and the officer's return of service.
- (b) a copy of the text referred to, but not set forth in the warrant articles.

NOTE: Sometimes a warrant article will not contain the actual text of a proposed amendment to the town by-laws, but rather will refer to text set forth or located elsewhere, such as in the town clerk's office or the office of the planning board. Here it will be necessary for you to send us a copy of the text referred to, or a copy of what is on file and available for inspection. Otherwise, we will not know what the article proposes.

I hereby certify the above information to be complete and accurate.

Attest: _____

Town Clerk

Date: _____

Additional Information Required for Charter Amendments Proposed Pursuant to G.L. c. 43B, § 10¹

1. Existing Charter -- [Attachment #1: a complete copy of the existing charter]

- 1(a) A Home Rule Charter adopted under G.L. c. 43B, § 9; or
- 1(b) A Special Act Charter established by Special Act of the Legislature; or
- 1(c) Laws having the force of charter by virtue of section nine of Article LXXXIX of the Amendments to the Constitution.

Attachment #1 Complete copy of the existing charter []

2A. If the charter amendment was proposed either by the city council or the town meeting pursuant to G.L. c. 43B, § 10(a):

The date on which the proposal was approved by a 2/3rds vote of the town meeting but (if a city) the date on which the proposal was approved by the mayor in any municipality that has a mayor as defined in the last sentence of G.L. c. 43B, § 10(a).

Date Order Approved by the town meeting: [_____]

Date Order Approved by the mayor (if applicable): [_____]

OR

2B. If the charter amendment was proposed upon the suggestion of those identified in G.L. c. 43B, § 10 (b):

- (a) Was the proposed amendment one substantially the same as one already considered and voted upon within the last twelve (12) months? [Note: If "yes," then you must either petition for a Special Act of the Legislature or proceed under G.L. c. 43B, §§ 3-9.]
- (b) Date the petition was filed with the clerk: [Attachment #2: a copy of the petition]
Filing Date: [_____]
- (c) Within three (3) months of the filing date [2B(b)], did the city council or board of selectmen order a public hearing on the proposed change(s)?
Order Date: [_____]
- (d) Before what board was the public hearing held?
Charter Commission
City Council
Board of Selectmen

¹ Municipal charters may be amended in accordance with the procedures set forth in G.L. c. 43B, § 10 (Home Rule Procedures Act), and this Form 5 is intended for use in connection with these procedures. 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. Note that any charter amendment that proposes 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.

- (e) Was the public hearing held not later than four (4) months from the filing date [2B(b)]?
Hearing Date: _____
- (f) Was the notice of the public hearing published in a newspaper of general circulation in the city or town at least seven (7) days prior to the date of the public hearing?
[Attachment #3: a copy of the newspaper notice showing the date of publication]
Publication Date: _____
- (g) Except where the hearing was before the city council, did the board or committee holding the public hearing report its recommendations to the city council or town meeting? Was the report oral or written ?
Report Date: _____ [Attachment #4: a copy of the Report, if written]
- (h) If a city, was final action taken by the city council not later than (6) months after the filing date [2B(b)]?
Final Action Date: _____
- (i) If a town, was final action taken by town meeting not later than the first annual town meeting held at least six (6) months after the filing date [2B(b)]?²
Final Action Date: _____

Attachment #3 Copy of Newspaper Publication [___]
Attachment #4 A Copy of the Report [___] [n/a: ___]

3. Submission to the Attorney General³

Date on which the proposed amendment was submitted to the (a) Attorney General [_____] and (b) to the Department of Housing and Community Development [_____]

I certify the above information to be complete and accurate.

Attest: _____ Date: _____
Town Clerk

² This confusing language simply means that town meeting may act any time prior to the first annual town meeting that takes place 6 months or more from the date on which the petition was filed. Note also that at any time after the public hearing, two hundred (200) registered voters or twenty per cent (20%) of the total number of registered voters, whichever is less, may request the selectmen to call a special town meeting to consider the suggested amendment, and the selectmen shall call a special town meeting to be held not more than forty-five (45) days after the receipt of the request.

³ Immediately following a vote by a municipal legislative body (city or town council, town meeting) proposing to the voters an amendment of the charter, use this Form 5 to submit a copy of the proposed amendment to the Attorney General for approval. 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 sends a copy of that opinion to (a) the municipal legislative body and (b) DHCD. 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.

RELEVANT LAWS or SPECIAL AUTHORITY

I. MANDATORY (must be completed by the town clerk):

A. Is any by-law submitted in this packet specially authorized or otherwise dependent upon the town's acceptance of a local option statute. If so, please staple to this page a copy of the town meeting vote or Town by-law accepting the relevant statute and identify the warrant article to which it applies.

Yes _____ If yes, specify which article(s) and attach copy.
No _____

B. Is any by-law submitted in this packet specially authorized or otherwise dependent upon a Special Act of the Legislature. If so, please staple to this page a copy of the Act and identify the warrant article to which it applies. NOTE: This includes drafts of Special Acts that the town is in the process of obtaining.

Yes _____ If yes, specify which article(s) and attach copy
No _____

C. Is any by-law submitted in this packet specially authorized or otherwise dependent upon the Martha's Vineyard Commission Act. If so, please identify the article(s) to which such Act applies.

Yes _____ If yes, specify which article(s) and attach copy
No _____

D. Is any by-law submitted in this packet specially authorized or otherwise dependent upon a provision of the town charter. If so, please staple to this page a copy of the provision and identify the article(s) to which such provision applies.

Yes _____ If yes, specify which article(s) and attach copy
No _____

Except as stated in response to A, B, C, and D above, I certify that the amendments submitted for approval do not depend for their validation on local option statutes, Special Acts of the Legislature or on provisions of the town charter.

I certify that the information attached is complete and accurate.

Attest: _____ Date: _____
Town Clerk

II. OPTIONAL

A. If there is a statute or regulation (state or federal) which, in the town's opinion, provides authority for adoption of any amendment submitted in this packet, please staple a copy of the statute or regulation to this page and identify the warrant article to which it applies.

B. If the town has submitted any by-law to the Attorney General that is identical or similar to a by-law of another town, please attach a copy of the other town's by-law to this page and identify the warrant article to which it applies.

Planning Board Hearing Date _____ Relative to Article(s) _____
(When necessary, you may need to use multiple copies of this Form 7.)

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: _____ (If applicable)	Date: (Attach Copy of Original Proposal)
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> (If applicable)	Date:
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 (Hearing Date).]</i> Note: Please mark Article number next to <u>each</u> Article referred to in the notice.	Date: (Attach Copy)
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>	Date: (Attach Copy)
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> Note: Please mark Article number next to each Article referred to in the notice.	Date: (Attach Copy)
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>	Date:
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>	Date: _____ or, No Agency: [<input type="checkbox"/>]
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>	Date:
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>	Date: or None Filed: [<input type="checkbox"/>]
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>	Date:
Date #11. Date on which the Selectmen <u>signed</u> the Town Meeting <u>Warrant</u> .	Date:
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>	Date:
Date #13. Planning Board <u>Report with Recommendations</u> . <i>[Note: the report may be written or oral.]</i>	Written: [<input type="checkbox"/>] (Attach Copy) Oral [<input type="checkbox"/>] Neither: [<input type="checkbox"/>]
Date #14. Date on which <u>Town Meeting</u> voted 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>	Date:

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

**Additional Information Required for the Approval of
HISTORIC DISTRICT BY-LAWS adopted pursuant to G.L. c. 40C, § 3¹**

Note: This Form 8 is to be used when submitting to the Attorney General for approval the adoption or amendment of historic district by-laws. Where more than one amendment is proposed, you must submit a separate copy of this Form 8 for each amendment unless the information asked for is the same for all amendments.

Section 1

Town Meeting Action

A. Town Meeting voted under Article(s) [_____]

<input type="checkbox"/>	to <u>establish</u> an historic district	Complete Sections 1 & 2 (Skip Section 3)
<input type="checkbox"/>	to <u>enlarge</u> historic district boundaries	Complete Sections 1 & 2 (Skip Section 3)
<input type="checkbox"/>	to <u>reduce</u> historic district boundaries	Complete Sections 1 & 2 (Skip Section 3)
<input type="checkbox"/>	to create an <u>additional</u> historic district	Complete Sections 1 & 2 (Skip Section 3)
<input type="checkbox"/>	to <u>amend</u> an historic district by-law	Complete Sections 1 & 3 (Skip Section 2)

B. 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. Does the by-law specify buildings, structures or sites to be included in the district?

[Yes () No ()]

C. A two-thirds vote was determined:

1. () by a counted vote: "yes" votes = [] "no" votes = [];

or

2. () by declaration of the Moderator pursuant to the provisions of G.L. c. 39, § 15, as amended. (If the two-thirds vote was declared by the Moderator, please attach a certified copy of either (i) the vote taken at this town meeting so authorizing, or (ii) a copy of the by-law provision so authorizing.)

¹ Historic District By-laws are authorized by statute "... to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith." [G.L. c. 40C, § 3]

Attachment #1 - Copy of Vote [C(2)(i)] or Copy of By-Law Provision [C(2)(ii)]

Section 2

Procedures applicable to (1) the establishment of a new historic district, (2) the enlargement or reduction of an existing historic district, and (3) the creation of an additional historic district

A. Investigation and Report - Prior to the establishment, enlargement, or reduction of an historic district, or the creation of an additional historic district, 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. The Committee or Commission is required to transmit copies of the report to both the Planning Board and to the Massachusetts Historical Commission for their respective consideration and recommendations.

1. The investigation and report was made by:
 - (a) the Historic District Commission; or
 - (b) an Historic District Study Committee.
2. Date of the report: Date [_____]
3. A copy of the report was transmitted:
 - (a) to the Planning Board: Date [_____] and
 - (b) to the Massachusetts Historical Commission: Date [_____]

[Note: In the case of an enlargement or reduction of an existing historic district, the investigation and report shall be by the Historic District Commission having jurisdiction over that district, instead of a Study Committee. In the case of the creation of an additional historic district, the investigation and report shall be by the Historic District Commission of the town (or by the Historic District Commissions acting jointly if there be more than one) instead of by a Study Committee unless the Commission(s) recommend otherwise.]

Attachment #2 - Copy of the report.

B. Public Hearing - Not less than sixty days after the transmittal of its report to the Planning Board and to the Massachusetts Historical Commission, the Commission (or Committee) shall hold a public hearing on the report after due notice has been given at least fourteen (14) 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.

1. A public hearing on the report was held by the Commission (or the Committee) on:
Date of the public hearing: [_____]

[Note: The hearing shall be not less than sixty (60) days from the date on which the report was transmitted to the Planning Board and to the Massachusetts Historical Commission as set forth in Section 2(A)(3)(a)&(b) above.]

2. Written notice of the public hearing was 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 any new, enlarged, or additional historic district, and in the case of a reduction to an existing district, to the owners of each property in the district.

Written notice was mailed to property owners: Date: [_____]

C. Final Report, Map, Draft of Proposed By-law - The Commission (or Committee) shall submit to the Town Meeting a final report with its recommendations, together with a map and a draft of the proposed by-law or amendments thereto.

1. Did the Commission (or Committee) submit a final report with recommendations to Town Meeting?

[Yes () No ()]

Attachment # 3 - Final Report

2. Did the Commission (or Committee) submit a map of the proposed district to Town Meeting?

[Yes () No ()]

Attachment # 4 - Map of Proposed District

3. Did the Commission (or Committee) submit to Town Meeting a copy of the proposed by-law or amendments thereto?

[Yes () No ()]

Attachment # 5 - Proposed By-Law or Amendment

Section 3

Procedures Applicable to the Amendment of an Existing Historic District By-Law

An Historic District By-Law may, from time to time, be amended in any manner not inconsistent with the provisions of G.L. c.40C by a two-thirds vote of Town Meeting, provided that the substance of such amendment has first been submitted to the Historic District Commission having jurisdiction over that district for its recommendation and its recommendation has been received by Town Meeting or sixty (60) days have elapsed without such recommendation.

A. The substance of the proposed amendment was submitted by _____ to the Historic District Commission having jurisdiction of the district.

Date: [_____]

Attachment # 6 - Notice to Commission Setting Forth the Substance of Proposed Amendment

- B. The Historic District Commission submitted to Town Meeting its recommendation on the substance of the proposed amendment: Date: [_____],
or
 More than sixty (60) days have elapsed without recommendations from the Historic District Commission to Town Meeting.

Note 1 - 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 section thirteen A of chapter thirty-six shall not apply.

Note 2 - 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.

- Attachments Checklist -

#1	Copy of Vote [C(2)(i)] / Copy of By-Law Provision [C(2)(ii)]	<input type="checkbox"/>
#2	Copy of the report	<input type="checkbox"/>
#3	Final Report	<input type="checkbox"/>
#4	Map of Proposed District	<input type="checkbox"/>
#5	Proposed By-Law or Amendment	<input type="checkbox"/>
#6	Notice to Commission Setting Forth the Substance of Proposed Amendment	<input type="checkbox"/>

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data. The text also mentions that regular audits are necessary to identify any discrepancies or errors in the accounting process.

In addition, the document highlights the role of technology in modern accounting. The use of software can significantly reduce the risk of human error and streamline the workflow. It suggests that businesses should invest in reliable accounting software that can integrate with other systems, such as CRM and ERP, to provide a comprehensive view of the company's financial health.

Furthermore, the text discusses the importance of staying up-to-date with the latest accounting standards and regulations. This is particularly crucial for businesses operating in a highly regulated industry. The document suggests that companies should consult with professional accountants or tax advisors to ensure they are fully compliant with all applicable laws and regulations.

Finally, the document stresses the importance of clear communication between all stakeholders involved in the accounting process. This includes management, accountants, and external auditors. Regular meetings and reports can help to keep everyone informed and ensure that there is no misunderstanding of the company's financial position or the accounting procedures being followed.

In conclusion, the document provides a comprehensive overview of the key principles and practices of effective accounting. It emphasizes the need for accuracy, transparency, and compliance, and suggests that businesses should leverage technology and professional expertise to achieve the best results. By following these guidelines, companies can ensure that their financial records are reliable and that they are in full compliance with all relevant regulations.