



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

August 24, 2017

Naida Parker, Town Clerk
Town of Rochester
One Constitution Way
Rochester, MA 02770

**RE: Rochester Annual Town Meeting of May 22, 2017 - Case # 8456
Warrant Article # 16 (Zoning)
Warrant Articles # 5, 15 and 17 (General)**

Dear Ms. Parker:

Articles 5, 15, 16 and 17 - We approve Articles 5, 15, 16 and 17 from the May 22, 2017 Rochester Annual Town Meeting. Our comments regarding Articles 5, 15 and 17 are provided below.

Article 5 - Article 5 amends the Town's general by-laws to add a new, unnumbered by-law, "Departmental Revolving Funds." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." See G.L. c 44, §§ 53 and 53E ½. In addition, receipts reserved by law (for example, betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin 2017-01B, "Authorization of Departmental Revolving Funds and Model By-law/Ordinance:" <http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf> and an "Overview of Statutory Treatment of Municipal Revenues:" <http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law adopted under Article 5. However, the Town should consult closely with Town Counsel to ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund. In addition, the Town should consult closely with Town Counsel to ensure that any deposits into a revolving fund are properly from "fees, charges or other receipts" associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department.

Further, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be "made not later than the beginning of the fiscal year in which the fund shall begin." The Town established these revolving funds by by-law at a vote of Town Meeting on May 22, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1, 2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 5. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on certain revolving funds in the by-law.

I. Donations and Fundraising Proceeds.

Several revolving funds established under Article 5 include fundraising or donations in the revenue source. Specifically, the revenue source for the "Rochester Country Fair" revolving fund is "entrance, advertising, vendor fees and fundraising activities." The revenue source for the "Local Cultural Council" revolving fund is "vendor fees, application fees, and fundraising activities." The revenue source for the "COA Programs and Activities" revolving fund is "fees and receipts from fundraising, senior program activities, and rental fees for use of the building." The revenue source for the "Fire/EMS Equipment" revolving fund is "donations or fundraising specifically for Fire/EMS equipment."

The by-law states that receipts from fundraising activities and donations will be deposited into these revolving funds. However, it is unclear whether the "fundraising" or "donations" referred to are actually a "fee" for programs and services, or if the fundraising and donations are a true "gift." General Laws Chapter 44, Section 53A, pertains to the acceptance and expenditure of grants and gifts, and requires:

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

with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift...in towns with the approval of the board of selectmen...

Further, Section 53A provides that “[n]otwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation.” The Town should consult with Town Counsel to ensure that any fundraising proceeds or donations deposited in the “Rochester Country Fair,” “Local Cultural Council,” “COA Program and Activities,” and/or “Fire/EMS Equipment” revolving funds comply with the requirements of G.L. c. 44, § 53A and § 53E ½.

Article 15 - Article 15 amends Section XVI, “Revocation or Denial of Licenses and Permits,” by deleting the words “annually” and “for not less than a twelve-month period” in the first paragraph of subsection 2. Section XVI is authorized by G.L. c. 40, § 57, a local option statute that allows a town to adopt a by-law regarding the denial, revocation, or suspension of local licenses and permits for failure to pay local taxes, fees, assessments, betterments or municipal charges. Recently, the State adopted Chapter 218 of the Acts of 2016, “*An Act Modernizing Municipal Finance and Government*,” which took effect on November 7, 2016, unless otherwise noted in the Act. Among other amendments, Section 37 of the Act amends G.L. c. 40, § 57 by inserting after the word “annually” the words “and may periodically.” Section 38 of the Act amends G.L. c. 40, § 57, by deleting the words “for not less than a twelve-month period.” General Laws Chapter 40, Section 57, requires the by-law to include the text set forth in the statute.

Under Article 15, the Town deleted the required text “annually” and failed to insert the new required text “and may periodically”. Therefore, the revised Section XVI, “Revocation or Denial of Licenses and Permits” does not include all the text required under G.L. c. 40, § 57. The Town should discuss with Town Counsel whether the by-law should be amended at a future Town Meeting to include the text required under G.L. c. 40, § 57.

Article 17 - Article 17 amends the Town’s Surface Water Protection By-law, Section C, by deleting certain text and inserting new text. Specifically, the vote under Article 17, provides as follows:

Delete Section C, which currently reads:

C. Any person or entity in violation of the provisions herein shall be fined by a fine of \$100 for the first violation and \$500 for each subsequent violation.

Insert the following:

C. Any person or entity in violation of the provisions herein shall be fined by a fine of \$100 for the first violation and \$300 for each subsequent violation.

We approve the new text inserted in Section C under Article 17. However, we note that the text Article 17 purports to delete is not text existing in the Town’s general by-laws because the text “and \$500 for each subsequent violation” was previously disapproved and deleted by our

office. See decision issued October 20, 2016 in Case # 8015 (available on the Attorney General's website at: <http://www.mlu.ago.state.ma.us/Search.aspx?section=1>). When the Attorney General disapproves proposed by-law text there is no requirement for a subsequent Town Meeting to delete the disapproved text. Instead, the text is deleted from the Town's by-laws (and does not take effect), per the Attorney General's authority under G.L. c. 40, § 32. The Town should consult with Town Counsel with any questions on this issue.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418
nicole.caprioli@state.ma.us

cc: Town Counsel Blair Bailey