

Town of



Amherst Massachusetts

TOWN CLERK

Susan Audette, Acting Town Clerk
Town Hall
4 Boltwood Avenue
Amherst, MA 0100

Phone: (413) 259-3035
Fax: (413) 259-2499
townclerk@amherstma.gov
www.amherstma.gov

BYLAW APPROVAL BY STATE ATTORNEY GENERAL

I, Margaret Z. Nartowicz, Town Clerk of Amherst, Massachusetts certify that the attached is a true copy of the amendments to the Zoning Bylaws adopted under Article 35, and to the General Bylaws adopted under Article 11 of the warrant for the Annual Town Meeting that convened April 30, 2018, with the approval of the Attorney General of Massachusetts, herewith.

Attest:

Margaret Z. Nartowicz
Town Clerk
September 11, 2018

Any claims of invalidity in the case of Zoning Bylaws by reason of any defect in the foregoing procedure of adoption may only be made within 90 days of the posting of this notice.

Date posted Sept. 12, 2018

On the above date written I have posted copies of the bylaw amendments passed at the April 30, 2018 Annual Town Meeting and approved by the Attorney General of Massachusetts on July 2, 2018, at the following places in town:

- | | | | |
|------------|---------------------------|-------------|-------------------------|
| Precinct 1 | North Amherst Post Office | Precinct 6 | Fort River School |
| Precinct 2 | North Fire Station | Precinct 7 | Crocker Farm School |
| Precinct 3 | Immanuel Lutheran Church | Precinct 8 | Munson Memorial Library |
| Precinct 4 | Amherst Post Office | Precinct 9 | Wildwood School |
| Precinct 5 | Town Hall | Precinct 10 | Campus Center, UMass |

Constable, Town of Amherst

Town of



Amherst Massachusetts

TOWN CLERK

Susan Audette, Acting Town Clerk
Town Hall
4 Boltwood Avenue
Amherst, MA 01002-2351

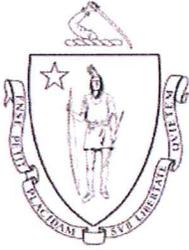
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Constable, Town of Amherst



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
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August 22, 2018

Margaret Nartowicz, Town Clerk
Town of Amherst
4 Boltwood Avenue
Amherst, MA 01002

**Re: Amherst Annual Town Meeting of April 30, 2018 -- Case # 9058
Warrant Articles # 30, 31, and 35 (Zoning)
Warrant Articles # 11 and 29 (General)**

Dear Ms. Nartowicz:

Articles 11 and 35 - We approve Articles 11 and 35 from the April 30, 2018, Amherst Annual Town Meeting.¹ Our comments on Article 11 are provided below.

Article 11 - Article 11 amends the Town's general by-laws to create an After School Program Revolving Fund. The funding sources for this revolving fund are program and tuition fees, gifts, grants and administration fees. Such funds are used to pay for the costs of operating the After School Program.

General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53 E 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 53 E 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.

The by-law states that receipts from donations will be deposited into this revolving fund. However, it is unclear whether the "donations" referred to are actually "fees" for programs or if

¹ In a decision issued on July 2, 2018, we approved Articles 29, 30, and 31.

the donations are true “gifts.” 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 donations deposited in the After School Revolving Fund comply with the requirements of G.L. c. 44, § 53A and § 53E ½.

In addition, according to DOR/DLS, many fees, charges or other receipts pertaining to schools are not properly deposited into a departmental revolving fund because these school related fees have previously been designated by the Legislature for other specific funds. DOR/DLS has published a chart pertaining to specific school revolving funds to assist municipalities in determining where certain school related fees must, or may by local option, be deposited:

<http://www.mass.gov/dor/docs/dls/training/revolvingfundchartschool.pdf>

The Town should work closely with Town Counsel and DOR/DLS to review the After School Program Revolving Fund to determine whether such funds are properly accounted for in a departmental revolving fund under G.L. c. 44, § 53E ½, or whether these school funds need to be accounted for in a separate school specific revolving fund, as detailed in the DOR/DLS link provided above.

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 that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
Municipal Law Unit
Office of the Attorney General
Ten Mechanic Street, Suite 301
Worcester, MA 01608
508-792-7600

cc: Town Counsel Joel Bard

ARTICLE 35
Form 2 – Submission 2
TOWN MEETING ACTION

VOTED Yes 156, No 19 with 5 abstaining to amend Article 15 of the Zoning Bylaw by adding the language in ***bold italics*** and deleting the ~~lined-out~~ language:

ARTICLE 15 INCLUSIONARY ZONING

SECTION 15.0 INTENT AND PURPOSE

SECTION 15.1 REGULATIONS

SECTION 15.0 INTENT & PURPOSE

The purpose of this Article is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community, by maintaining and increasing the supply of affordable and accessible housing in the Town of Amherst. This purpose includes:

- 15.00 Ensuring that new residential development generates affordable housing as defined in ~~Section 12.20~~ ***Article 12***.
- 15.01 Ensuring that affordable housing created under this section remains affordable over the long term, with the majority of such housing remaining affordable in perpetuity, except as may be otherwise required under state or federal programs.
- 15.02 Maintaining a full mix of housing types and unrestricted geographic distribution of affordable housing opportunities throughout Amherst.
- 15.03 To the extent allowed by law, ensuring that preference for new affordable housing is given to eligible persons who live or work in Amherst.

SECTION 15.1 REGULATIONS

To ensure the purposes of this section, the following regulations shall apply to residential development in Amherst:

- 15.10 All residential developments ***resulting in a net increase in dwelling units above the number already existing on the site***, and requiring a Special Permit ***for the use itself or for modification of one or more certain dimensions as described below*** ~~and resulting in additional new dwelling units~~ shall provide affordable housing units at the following minimum rates:

Total Development <i>Net Increase in</i> <u>Unit Count</u>	Required Affordable <u>Unit Provision</u>
1-9 units	None*
10-14 units	Minimum one (1) dwelling unit
15-20 units	Minimum two (2) dwelling units
21 units or more	Minimum 12% of total unit count

*While provision of affordable units is not required for developments containing 1-9 units under

this section, the Bylaw encourages affordability and provides for incentives. See Sections 4.33 and 4.55.

***Special Permit-modified dimensions triggering this bylaw:
Building Coverage greater than standard maximum; or
Lot Coverage greater than standard maximum; or
Additional Floor(s) beyond the standard maximum; or
Height more than 2 feet greater than standard maximum***

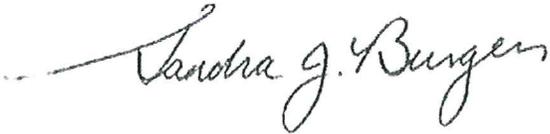
~~Where two or more units are required to be provided under this section, a minimum of forty nine percent (49%) of affordable units shall be eligible and countable for the purpose of the Commonwealth's 40B Subsidized Housing Inventory (SHI) or its successor. Calculation of the number of total affordable units or the number of SHI eligible units shall, if the required percent of the total results in a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5.~~

- 15.11 Affordable and accessible dwelling units provided under Section 15.10 shall be counted as meeting the requirements for density bonuses under the provisions of Section 4.55, Density Bonuses, of this Bylaw.
- 15.12 The applicant shall establish such housing restrictions, conditions, and/or limitations as are necessary to ensure that the affordable housing units provided under this section will be ~~permanently~~ available for purchase ***or rental*** by eligible ~~low and moderate-income~~ buyers ***and tenants***, and available for a minimum of twenty years in the case of rental housing. ***in perpetuity or to the extent allowable under law.***
- 15.13 Housing constructed by a public agency or non-profit corporation using a Federal, state, or local housing assistance program may adhere to the requirements set forth by the funding agency provided that the purpose of these regulations are met.
- 15.14 In any residential development, affordable housing units provided shall be dispersed throughout the development, and shall be comparable to market rate units in terms of the quality of their design, materials, and general appearance of their architecture and landscape. ***Affordable units shall be comparable to market rate units in terms of size and bedroom count except as otherwise allowed by the Permit Granting Board or Special Permit Granting Authority.***
- 15.15 ***The Permit Granting Board or Special Permit Granting Authority may grant a Special Permit for modifications as provided below, except that when four (4) or more affordable units are required under the provisions of Article 15 of this Bylaw, a minimum of 50% must be provided on-site.***
- 15.150 ***Off-site affordable units may be allowed for projects principally located in the B-G, B-VC, B-N, and those B-L districts abutting the B-G District. Off-site units shall be located within the same zoning district or within 500 feet of the premises of the development and shall comply with Section 15.14.***

15.151 Payment of fees-in-lieu of affordable units may be allowed, payable prior to the granting of a Certificate of Occupancy for any dwelling units associated with the development, to the Town of Amherst Municipal Affordable Housing Trust. The fee-in-lieu value for each affordable unit not provided shall be three (3) times the current Median Family Income for Amherst as determined by the U.S. Department of Housing and Urban Development (HUD) or successor agency.

Action taken 5/21/18.

A true copy, Attest:

A handwritten signature in cursive script that reads "Sandra J. Burgess". The signature is written in dark ink and is positioned to the right of the "Attest:" text.

Sandra J. Burgess
Town Clerk