



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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July 24, 2002

Barbara A. Siira, Town Clerk  
322 Concord Road  
Sudbury, MA 01776

RE: Sudbury Annual Town Meeting of April 1, 2002 — Case # 1995  
Warrant Articles # 2, 31, 33, and 34 (General)  
Warrant Articles 37, 38, 39, and 40 (Zoning)

TOWN CLERK  
SUDBURY, MASS  
02 JUL 25 PM 12:41

Dear Ms. Siira:

Articles 2, 33, 34, 37, 38, 39, and 40 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Sudbury town meeting that convened on April 1, 2002, and the map pertaining to Article 39.

Article 31 - I return with the approval of this Office the amendments to the town by-laws adopted under this Article, except as provided below.

The amendments adopted under Article 31 add a new "Community Preservation Committee" by-law to the town's general by-laws. Section 5 of the proposed by-law pertains to the effective date of the by-law and provides in pertinent part as follows:

Following Town Meeting approval, this article of the Bylaws shall take effect immediately upon approval by the Attorney General of the Commonwealth.

We disapprove and delete the above quoted text from Section 5 because it is inconsistent with General Laws Chapter 40, Section 32. [Disapproval # 1 of 1]. Section 32 provides in pertinent part:

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 effective date of a by-law is governed by Section 32. A by-law takes effect once it is approved by our Office and posted and published by the town clerk in accordance with Section 32. Town of Concord v. Attorney General, 336 Mass. 17, 20-21 (1957). The by-law amendments adopted under Article 31 will not take effect until all of these requirements have been satisfied. Therefore, it is inconsistent with state law for the proposed by-law to provide that its provisions take effect upon approval by the Attorney General.

**Article 33** - The amendments adopted under this Article delete Section 27 in its entirety and insert a new Section 27 captioned "Handicapped Parking." Subsection (a) of the proposed by-law requires reserved parking spaces for vehicles "owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by M.G.L. c.90 §2 . . . ." This text for the most part tracks the text in G.L. c. 40, § 21, cl. 23. However, G.L. c. 40, § 21, cl. 23, also recognizes vehicles bearing the official identification of a handicapped person issued by any other state or any Canadian Province. Thus, a vehicle displaying a handicapped license plate issued by another state or Canadian Province would be allowed to park in the handicapped spaces required under this by-law.

We also call your attention to G.L. c. 40, § 21, cl. (23) (a), which provides that any such by-law establishing handicapped parking spaces shall require the number of reserved parking spaces as set forth in the formula contained in subsection (a) of clause (23). However, as to the number of reserved spaces, the by-law deviates from the mandatory formula in subsection (a), substituting therefor the formula embodied in 521 C.M.R. §1.00 et seq. Specifically, 521 C.M.R. § 23.2.1 provides the minimum number of accessible parking spaces required for parking facilities. By making this substitution, the town does not necessarily act in a manner inconsistent with state law, provided that the proposed by-law itself requires a number of handicapped spaces equal to or exceeding the number required by the subsection (a) of clause 23 formula.

The provisions of G.L. c. 40, § 21, cl. 23 (a), 521 C.M.R. § 23.2.1, and the proposed by-law clearly have overlapping scope, and in such circumstances where provisions of each do not fully correspond, the more stringent provision shall control. Where state law does not expressly or impliedly preempt local action on the same subject, towns have the power to adopt by-laws governing matters that are concurrently the subject of state laws and regulations, but such by-laws must be as stringent or more stringent than the corresponding provision of the state law or regulation.

The provisions of 521 C.M.R. § 23.2.1 for the most part are equal to or more stringent in the requiring of a certain number of handicapped accessible spaces; however, in at least one instance, we point out that the provisions of G.L. c. 40, § 21, cl. 23 (a) are more stringent and that it is in the category of forty to fifty parking spaces.

G.L. c. 40, § 21, cl. 23 (a)		521 C.M.R. § 23.2.1	
Parking Spaces	Handicapped Parking	Parking Spaces	Handicapped Parking
15-25	1	15-25	1
26-40	5% not less than 2	<del>26-50</del>	<u>2</u>
<u>40-100</u>	<u>4% not less than 3</u>	51-75	3
100-200	3% not less than 4	76-100	4
200-500	2% not less than 6	101-150	5
500-1,000	1½% not less than 10	151-200	6
1,000-2,000	1% not less than 15	201-300	7
2,000-5,000	¾ of 1% not less than 20	301-400	8
more than 5, 500	½ of 1% not less than 30	401-500	9
		501-1,000	2% of total
		1,001 and over	20 plus 1 for each 100 over 1,000

(Emphasis Added)

Clause 23 (a) requires “four percent, but not less than three” accessible parking spaces for a facility with forty to one hundred parking spaces; however, 521 C.M.R. § 23.2.1 and the by-law require two handicapped accessible parking spaces for a parking facility containing twenty six to fifty spaces. In this instance, the provisions of G.L. c. 40, § 21, cl. 23 (a) would govern. Thus, care should be taken when implementing the new by-law to ensure that the by-law complies with the minimum requirements of G.L. c. 40, § 21, cl. 23 (a). We suggest that the town discuss this issue in more detail with town counsel.

**NOTE:** We ask that you forward to us a copy of the final text of the amendments adopted under Article 31 after making the deletions identified in this letter. It will be sufficient to send us a copy of the by-laws as published pursuant to G.L. c. 40, § 32.

Very truly yours,

THOMAS F. REILLY  
ATTORNEY GENERAL



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