



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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June 5, 2019

Cathryn Jane Kato, Town Clerk  
Town of Wellesley  
525 Washington Street  
Wellesley, MA 02482

**Re: Wellesley Special Town Meeting of May 13, 2019 -- Case # 9432**  
**Warrant Articles # 2, 3, 4, 5, 6, 7, and 8 (Zoning)**  
**Warrant Article # 10 (General)**

Dear Ms. Kato:

**Articles 2, 3, 4, 5, 6, 7, 8, and 10** - We approve Articles 2, 3, 4, 5, 6, 7, 8, and 10, and the map amendments related to Articles 3, 6, and 7, from the May 13, 2019, Wellesley Special Meeting. We will send the approved maps to you by regular mail. Our comments regarding Articles 2 and 3 are provided below.

**Articles 2 and 3** - Article 2 adds two new sections to the Town’s zoning by-laws pertaining to G.L. c. 40R, Smart Growth Districts. Specifically, Article 2 adds a new Section 14J, “Smart Growth Overlay Districts,” and Section 14J.1, “Wellesley Park Smart Growth Overlay District.” Article 3 amends the Town’s zoning map to add the boundaries of the Wellesley Park Smart Growth Overlay District. Our comments on Articles 2 and 3 are provided below.

A. General Laws Chapter 40R, “Smart Growth Zoning and Housing Production”

Articles 2 and 3 are adopted pursuant to G.L. c. 40R, which encourages “smart growth” zoning. Chapter 40R establishes the procedure by which a municipality may establish and amend a Smart Growth Zoning District. By-laws adopted pursuant to Chapter 40R must be approved by this Office and by the Department of Housing and Community Development (DHCD).

We approve Articles 2 and 3. However, the Town must still comply with the provisions of G.L. c. 40R, § 4b by obtaining approval from DHCD<sup>1</sup>. The Town may not be eligible for financial

<sup>1</sup> General Laws Chapter 40R, Section 4 (b), provides that “[a]fter issuance of a letter of eligibility and upon application of the town with proof of adoption of the smart growth zoning district ordinance or by-law included in the application for a letter of eligibility, along with any amendment required by the department in the letter of eligibility, the department shall confirm its approval within 30 days of receipt of the application.”

and other incentives until it receives final approval from DHCD. The Town should send the by-law amendments to the: Office of Sustainable Communities, MA Dept. of Housing & Community Development, 100 Cambridge Street, Suite 300, Boston, MA 02114. We suggest that the Town discuss any questions regarding this issue with Town Counsel. Our comments on Section 14J, are provided below.

B. Comments on By-law Section 14J, “Smart Growth Overlay Districts”

Section 14J establishes the requirements that apply generally to the Town’s Smart Growth Overlay Districts adopted pursuant to G.L. c. 40R. Section 14J (B) is the definition section and defines “Child Care Use” as follows (with emphasis added):

Child Care Use – shall have the same meaning as “day care center” or “school age child care program,” as those terms are defined in *Mass. Gen. Laws. Ch. 28A Section 9*.

The by-law’s definition of “Child Care Use” refers to definitions provided in G.L. c. 28A, § 9. However, G.L. c. 28A, § 9, was repealed by Section 43 of Chapter 215 of the Acts of 2008. The Town may wish to discuss with Town Counsel and DHCD whether to add a new definition for “Child Care Use” or to reference a different state statute.

**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

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cc: Thomas J. Harrington