



THE COMMONWEALTH OF MASSACHUSETTS  
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July 24, 2025

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

**Re: Wellesley Annual Town Meeting of April 1, 2025 – Case # 11749**  
**Warrant Articles # 34.2, 38.1, 39.1, and 40.1 (Zoning)**  
**Warrant Articles # 9.1, 34.1, 35.1, 36.1, and 37.1 (General)**

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Dear Ms. Kato:

**Articles 9.1, 34.1, 34.2, 35.1, 36.1, 37.1, 38.1, and 39.1** - We approve Articles 9.1,<sup>1</sup> 34.1, 34.2, 35.1, 36.1, 37.1, 38.1, and 39.1 from the April 1, 2025 Wellesley Annual Town Meeting. Our comments regarding Articles 34.1, 34.2, and 39.2 are provided below.

**Article 40.1** - We have retained Article 40.1 and will issue a decision on this Article on or before our deadline of July 29, 2025.

**Articles 34.1 and 34.2** - Under Article 34.1 the Town voted to amend the general by-laws to add a new Article 20, “Wellesley Affordable Housing Trust.”<sup>2</sup> Under Article 34.2 the Town

<sup>1</sup> Except we take no action on the portions of the vote under Article 9.1 that revoked the acceptance of G.L. c. 44, § 53D and transferred money from certified free cash to the “Recreation Department - Programming,” as these portions of the vote are not by-law amendments and are therefore not subject to the Attorney General’s review and approval under G.L. c. 40, § 32. The Town should consult with Town Counsel with any questions regarding these portions of Article 9.1.

<sup>2</sup> We take no action on the portions of Article 34.1 as follows: (1) voting to accept the provisions of G.L. c. 44, § 55C to establish a trust known as the “Wellesley Affordable Housing Trust” and (2) authorizing the Select Board to petition the General Court for a Special Act to dissolve its Housing Development Corporation, because these portions of the vote are not by-law amendments subject to the Attorney General’s review and approval under G.L. c. 40, § 32. However, votes to accept local option statutes should be filed with the Secretary of State’s office and the Department of Revenue/Division of Local Services. The Town should consult with Town Counsel with any questions on this issue.

voted to amend it's zoning by-laws to delete reference from several sections of the zoning by-laws of the "Wellesley Housing Development Corporation" and insert reference to the "Affordable Housing Trust."<sup>3</sup> We approve Articles 34.1 and 34.2 and offer comments for the Town's consideration to ensure the proper application of the Affordable Housing Trust by-law adopted under Article 34.1.

Section 20.3 identifies the powers of the Trustees to carry out the purposes of the Affordable Housing Trust. Section 20.3 (a) authorizes the Trustees to accept and receive real property, personal property, and money, including money from Chapter 44B. The Town must ensure that it applies the new by-law consistent with G.L. c. 44, § 55C, that authorizes a municipality to establish an affordable housing trust fund. For the most part, the by-law tracks the provisions of the statute. However, Section 20.3 (a) does not include the portion of G.L. c. 44, § 55C that imposes certain requirements on the use of Chapter 44B money as follows:

provided, however, that any such money received from chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the trust, and such funds shall be accounted for separately by the trust; and provided further, that at the end of each fiscal year, the trust shall ensure that all expenditures of funds received from said chapter 44B are reported to the community preservation committee of the city or town for inclusion in the community preservation initiatives report, form CP-3, to the department of revenue;

In addition, the by-law does not include the following provisions of G.L. c. 44, § 55C:

- (d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.
- (e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.
- (f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.
- (g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

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<sup>3</sup> Specifically, the Town amended the following Sections: (a) Section 3.6.B; (b) Section 5.7.D.2; and (c) Section 5.7.F.4.

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(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the...town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.

The Town must apply the by-law consistent with G.L. c. 44, § 55C, including the above requirements. The Town should consult with Town Counsel to ensure the proper application of the by-law and to determine if the Town should consider a future amendment to the by-law to include the noted statutory provisions.

**Article 39.1** - Under Article 39.1, the Town amended its zoning by-laws, Section 3.7, "Flood Plain or Watershed Protection Districts" to make specific identified changes in order to "add additional definitions, update FIRM and FIS reports, updated floodway encroachment language, delete outdated agency addresses, and add a disclaimer of liability to comply with the state's Model Bylaw." The amendments to Section 39.1 are adopted as part of a federal requirement for communities that choose to participate in the National Flood Insurance Program (NFIP).

The text amended under Section 39.1 appears to follow the "Massachusetts 2020 Model Floodplain Bylaw" provided by the Massachusetts Department of Conservation and Recreation Flood Hazard Management Program. (DCR Flood Hazard Management Program). See <https://www.mass.gov/guides/floodplain-management#-2020-massachusetts-mo>. The DCR Flood Hazard Management Program is the state coordinating office for the NFIP and, according to their website, they have provided the Model Floodplain Bylaw to Massachusetts communities "to assure that their local bylaws...contain the necessary and proper language for compliance with the" NFIP. For this reason, we approve Article 39.1. The Town should consult with Town Counsel and the DCR Flood Hazard Management Program with any questions regarding the application of Section 3.7.

**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.

Very truly yours,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

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