TOWN OF HULL
OFFICE OF THE TOWN CLERK

Lori West
Town Clerk
Justice of the Peace
Notary Public

POSTING DATE: December 2, 2021
PLYMOUTH, SS.

TO ANY CONSTABLE OF THE TOWN OF HULL IN SAID COUNTY:

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to post in at least five public places in the Town in each of the three precincts, Town Hall, Town of Hull Police Department-**Precinct 3**, Hull Public Library-**Precinct 1**, Town of Hull (Allerton) Post Office, and Town of Hull Main Post Office-**Precinct 2**, with copies of the attached Amendment to the Town General By-laws.

These amendments were voted under Warrant Articles # 6, (General) 11, 12 and Zoning Article 16 (**CORRECTED DECISION**) from the Warrant for the 2021 Annual Town Meeting, which the meeting was held on May 8, 2021.

As relates to any Zoning by-law, any claim of invalidity by reason of any defect in the procedure of adoption or amendment of the aforementioned by-laws may only be made within ninety days of the date of the posting of this notice. Copies of the by-laws are available in the office of the Town Clerk, Town Hall, and 253 Atlantic Avenue, Hull, Massachusetts and by the online version available on the Town of Hull Website under the Town Clerk's webpage at: www.town.hull.ma.us.

Hereof fail not and make due return upon this warrant with your action thereon to the Town Clerk.

Attest:
Lori West
Lori West
Town Clerk

By virtue of this warrant, I have this day posted attested copies of the amendment to the Bylaws of the Town of Hull voted under the aforementioned articles of the 2020 Annual Town Meeting on five bulletin boards erected by the town in public places in each of the three precincts of the Town.

Kathleen A. Peloquin
Kathleen Ann Peloquin
Date: December 2, 2021

MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
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November 22, 2021

Lori West, Town Clerk
Town of Hull
253 Atlantic Avenue
Hull, MA 02543

Re: Hull Annual Town Meeting of May 8, 2021 — Case # 10156
Warrant Articles # 6, 11, 12, and 16 (Zoning)
Warrant Article # 6 (General)

CORRECTED DECISION

Dear Ms. West:

Articles 6, 11, and 16 - We approve Articles 6, 11, and 16, and the map amendments adopted under Article 16, from the May 8, 2021 Hull Annual Town Meeting. We will send the approved map to you by regular mail. [1] Our comments on Article 16 are provided below.

Article 12 - The Attorney General's deadline for a decision on Article 12 is extended for an additional ninety days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for the thirty-day extension is attached hereto. We will issue our decision on Article 12 on or before **November 30, 2021.**

Article 16 - We approve Article 16 and explain why it qualified for a simple majority vote pursuant to recent amendments to G.L. c. 40A, § 5 in the "housing choice" provisions of the economic development bill, Chapter 358 of the Acts of 2020, signed by the Governor on January 14, 2021.

Article 16, a citizen-petitioned Article, proposed to re-zone certain parcels in Town from the Single-Family B zone to the Single-Family A zone. As a result of this proposed re-zone the required minimum lot size for these parcels would be reduced from 12000 square feet to 6500 square feet, and the lot frontage requirement would be reduced from 75 feet to 60 feet.

The Town complied with all the procedural requirements in G.L. c. 40A, § 5 for a zoning by-law amendment, and the motion under Article 16 passed by a simple majority. This was the correct

[1] We take no action on that portion of Article 6 that seeks a special act to amend Chapter 8 of the Acts of 1989, An Act Providing for Selectmen, Town Manager, Open Town Meeting Form of Government for the Town of Hull.

quantum of vote under the recent amendments to G.L. c. 40A, § 5 included in Chapter 358 of the Acts of 2020. This "housing choice" legislation is intended to promote housing production by making it easier for cities and towns to approve housing-supportive zoning amendments. The legislation authorizes cities towns to adopt certain zoning by-law amendments through a simple majority vote as opposed to the two-thirds majority vote traditionally required by G.L. c. 40A, § 5.

One of the categories that qualify for a simple majority vote is a zoning by-law amendment that modifies requirements for "lot area [or] setbacks…to allow for additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law." Chapter 358, Section 19 (3) (b). The amendments adopted under Article 16 so qualify because they reduce the minimum lot size and frontage requirements for the parcels that were re-zoned. [2]

Because Article 16 passed by the correct quantum of vote, and presents no conflict with state law, we approve it. We also remind the Town that DHCD has issued guidance on the recent housing choice legislation that can be accessed here:

https://www.mass.gov/info-details/housing-choice-and-mbta-communities-legislation

Please feel free to contact us 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
Kelli E. Gunagan
By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel James B. Lampke

[2] We acknowledge the comments received from a Hull resident, Ms. Paquin in opposition to the Article but find no basis upon which to disapprove the amendments adopted under Article 16.

MAURA HEALEY
ATTORNEY GENERAL

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November 30, 2021

Lori West, Town Clerk
Town of Hull
253 Atlantic Ave
Hull, MA 02045

Re: Hull Annual Town Meeting of May 8, 2021 -- Case # 10165
Warrant Articles # 6, 11, 12, and 16 (Zoning)
Warrant Article # 6 (General)

Dear Ms. West:

Article 12 - Under Article 12 the Town voted to amend its zoning by-laws to add a new Section 410-6.5, "Green Buildings," requiring all new construction for commercial buildings and residential buildings of three or more units to comply with one of three Green Building Rating Systems. However, the Massachusetts State Building Code (Code) comprehensively regulates energy standards, and the Massachusetts Supreme Judicial Court has ruled that, if the Code comprehensively regulates a topic, municipalities are preempted from adopting local requirements on the topic. St. George Greek Orthodox Cathedral of Western Mass. v. Fire Dep't of Springfield, 462 Mass. 120, 128 (2012) (Building Code preempted city ordinance requiring certain type of fire protection signaling system.) As further explained below, we must disapprove Article 12 because it is preempted by the Code, which includes comprehensive statewide standards for building construction, including energy standards, and is "intended to occupy the field of building regulation." St. George, 462 Mass. at 130 n. 14 (2012). [1]

In this decision, we summarize the by-law amendments adopted under Article 12 and the Attorney General's standard of review of town by-laws and then explain why, based on our standard of review, we must disapprove Article 12.

As with our review of all by-laws, we emphasize that our disapproval does not imply any agreement or disagreement with the policy views that led to the passage of the by-law. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986)

[1] In a decision issued on September 1, 2021, this Office approved Articles 6, 11, and 16 and extended our deadline for a decision on Article 12 for an additional 90 days until November 30, 2021.

(requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). [2]

I. Summary of Article 12

Under Article 12 the Town voted to amend its zoning by-laws to add a new Section 410-6.5 "Green Buildings." The stated goal of the by-law is to promote environmentally sustainable and energy-efficient design and development practices. Section 410-6.5 (A). The by-law requires all new construction for commercial buildings and residential buildings of three or more units to demonstrate that they are designed to meet the standards of one of the following Green Building Rating systems: (1) LEED (U.S. Green Building Council); (2) Passive House Institute, U.S. (PHIUS) or Passivhaus Institute (PHI); or (3) Enterprise Green Communities. Sections 410-6.5 (B) and (C). The by-law does not require certification by the rating agency, but the developer must provide an affidavit from a Green Building Professional that the standards selected are being meet.

II. Attorney General's Standard of Review and General Preemption Principles

Our review of Article 12 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted). "The legislative intent to preclude local action must be clear." Bloom, at 155.

Because Article 12 is an amendment to the Town's zoning by-laws Article 12 must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or

[2] If we were permitted to base our determination on policy considerations, we would approve the by-law. Much of the work of this Office reflects the Attorney General's commitment to reducing greenhouse gas emissions and promoting various energy efficiency initiatives in the Commonwealth. The Hull by-law is clearly consistent with this policy goal as the Town expressly states that the goal of the by-law is to "promote environmentally sustainable and energy-efficient design and development practices." Section 410-6.5 (A). However, the Attorney General is precluded from basing her by-law review decisions on policy considerations. Amherst, 398 Mass at 795-96.

constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (quoting Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). Nevertheless, where a zoning by-law conflicts with state or federal law or the Constitution, it is invalid. See Zuckerman v. Hadley, 442 Mass. 511, 520 (2004) (rate of development by-law of unlimited duration did not serve a permissible public purpose and was thus unconstitutional). In general, a municipality "is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders." Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]..." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

Legislative intent to preclude local action can be "either express or inferred." St. George, 462 Mass. at 125-26. Local action is precluded in essentially three instances, paralleling the three categories of federal preemption: (1) where the "Legislature has made an explicit indication of its intention in this respect"; (2) where "the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject"; or (3) where "legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field." Wendell v. Attorney General, 394 Mass. 518, 524 (1985). "The existence of legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject[.]" Bloom, 363 Mass. at 156; see Wendell, 394 Mass. at 527-28 ("It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.").

III. Article 12 Conflicts with the State Building Code

The Massachusetts Supreme Judicial Court has determined that, where the Massachusetts Code comprehensively regulates a topic, municipalities are preempted from adopting local requirements on the topic. St. George, 462 Mass. at 128.

Beginning with Chapter 802 of the Acts of 1972, as amended by Chapter 541 of the Acts of 1974, the Legislature eliminated local building codes in order to create a state-wide comprehensive Code to be applied uniformly throughout the Commonwealth. The stated purpose of the Code is to govern:

> the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of any building or structure and use or occupancy of all buildings and structures

> and parts thereof or classes of buildings and structures and parts thereof... including but not limited to provisions for safety, ingress and egress, energy conservation, and sanitary conditions.

The Code is comprehensive in nature, and with it the Legislature has clearly expressed an intention to create uniform, state-wide standards for construction and construction materials. Id. at 128 "Whether construing the Legislature's stated intention of ensuring uniformity in building regulations either as an explicit statement of its desire to foreclose local action, or as a statutory purpose that would be frustrated thereby, the ordinance cannot stand." Id. at 130. Thus, towns are precluded from having their own local building codes, including those that require energy efficient design standards in structures. [3]

During the course of our review of Article 12 we received a letter from the Division of Professional Licensure ("Division") and the Board of Building Regulation and Standards ("BBRS"). Both the Division and the BBRS agree with our determination that the energy efficient design standards in Article 12 are preempted by the Code. Pursuant to G.L. c. 143, § 94 (o), the BBRS is mandated to "adopt and fully integrate the latest International Energy Conservation Code ("IECC") and any more stringent amendments thereto as part of the Code, in consultation with the department of energy resources." The BBRS adopted the IECC and integrated it into the Code as regulations at 780 CMR §§13.00, 51.00, and 115.00. These provisions of the Code establish the efficiency standards for a structure's walls, floors, ceilings, lighting, windows, doors, duct leakage and air leakage. The energy efficiency provisions of the Code provide multiple compliance pathways, allowing a building owner or developer to choose the least cost method of compliance. [4]

Article 12 conflicts with, and is preempted by, the Code because it purports to require efficiency standards for construction materials – a topic that is comprehensively covered by the Code. The by-law requires developers of new residential and commercial construction to demonstrate that a structure could be certified under one of three third party certification programs: (1) the LEED ("Leadership in Energy and Building Design") certification established by the U.S. Green Building Council ("USGBC"), (2) the passive house standards established by the Passive House Institute, U.S. ("PHIUS") or Passivhaus Institut ("PHI"), (3) or Enterprise Green Communities standards. The three certification programs referenced in the new Section

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[3] Towns can petition the state Board of Regulation and Standards ("BBRS") for approval of regulations more restrictive than those currently imposed under the Code. General Laws Chapter 143, Section 98, authorizes towns seeking to enforce regulations more restrictive than those currently imposed under the Code to request that the BBRS adopt such regulation. The BBRS will grant such a request only upon a finding, after conducting a public hearing, "that more restrictive standards are reasonably necessary because of special conditions prevailing within such city or town and that such standards conform with accepted national and local engineering and fire prevention practices, with public safety and with the general purposes of a statewide building code . . . ." G.L. c. 143, § 98.

[4] The Legislature has authorized the BBRS and the Department of Energy Resources (DOER) to develop more stringent energy codes, but only at the state level. BBRS has promulgated a "stretch energy code" that the majority of municipalities in the Commonwealth have adopted. DOER is in the process of promulgating a municipal opt-in specialized stretch energy code in accordance with Chapter 8 of the Acts of 2021.

410-6.5 all include provisions governing the energy efficiency of new buildings, as well as other construction techniques and materials that are explicitly regulated by the Code. For example, LEED certification requires compliance with "ANSI/ASHRAE/IESNA Standard 90.1 or an approved USGBC-equivalent standard." [5] The Code, in contrast, mandates commercial buildings meet one of five options, one of which is ANSI Standard 90.1, which has adopted into the Code with some modifications. 780 CMR § 13 (C401.2). The Code does not adopt LEED certification as an alternative pathway for compliance with energy efficiency requirements. As with the fire alarm box requirements at issue in St. George, the energy efficient requirements here would frustrate the purpose of the statewide regulation:

> The Legislature intended to occupy a field by promulgating comprehensive legislation and delegating further regulation to a State board. The board's regulation, in turn, set a Statewide standard as to what products and practices [are] permissible in a particular field, a process involving a discretionary weighing of relevant factors such as cost and safety.

St. George, 462 Mass. at 128. "To allow a locality to impose additional requirements and 'second-guess the determination of the State Board would frustrate the purpose of [the Building Code]." Id. (quoting Wendell v. Attorney General, 394 Mass. 518, 529 (1985).

Because the Code comprehensively regulates energy efficiency requirements the Town is precluded from adopting by-laws that impose such requirements. [6] Therefore, Article 12 is inconsistent with the Code and must be disapproved and deleted.

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.**

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[5] The American National Standards Institute ("ANSI") coordinates the U.S. voluntary standards and conformity assessment system. The American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") is an organization advocating for building systems, energy efficiency, indoor air quality, refrigeration, and sustainability within the industry. The Illuminating Engineering Society ("IES") is a lighting technical and educational authority.

[6] The Code also sets out a clear process for obtaining a building permit and for appealing the denial of a building permit by the local building official. By including building construction requirements in a zoning by-law, it becomes unclear whether an appeal from a decision regarding building construction requirements would go to the Town's zoning board of appeals rather than to the Building Code Appeals Board as required by G.L. c. 143, § 100. An appeal to the town's zoning board of appeals would conflict with, and be preempted by, the Code.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL
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By: Kelli E. Gunagan
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cc: Town Counsel James B. Lampke