

Monterey Town Administrator

From: treasurer@montereyma.gov
Sent: Monday, December 13, 2021 7:39 AM
To: Monterey Assistant; Lisa Kelly
Subject: Carol Edelman

Good morning,

This email is regards to the overpayment of Carol Edelman on 7/25/2019.

It is my understanding that Baystate Municipal Accounting was supposed to rectify this over payment back in the summer of 2019. According to our records this never happened. On 12/11/2020 a letter was issued to Carol requesting her to pay back \$280.24, which included her direct deposit amount as well as her OBRA amount. Carol claimed she never received this letter. In March 2021 we worked with Harper's to see if we could pull the funds and do a negative check so we could recoup the money, and they informed us they cannot do this. On March 16, 2021 I left a message with Carol explaining the situation. Carol did return my phone call, I do not recall what date, and she asked that I send her the information again. I sent the information, and Carol called me after she reviewed it and said that she believes she is owed the money and will not be returning any money to the town.

At this time, in order to clear the deficit account, we can:

- 1) take Carol to small claims court, which will require additional costs (I do not have a cost estimate for this), and if we were to win, the cost to reverse the W-2 and resubmit withholdings to the state and IRS is \$250 payable to Harper's.
- 2) Put this on Town Meeting as a prior year bill.

Thank you,
Sara Hunter

December 14, 2021

To the Board of Selectmen,

Please consider liquidation of the following surplus equipment currently stored at the Highway Department. We have attached photographs for your reference.

- 2-3 yard Zwack Salt Sand Spreader:
Has not been moved in over 5 years. Un-known mechanical condition. We have two spares (one slide in and one frame mounted).
- Stripe Machine:
Has not moved in 5 years. Cost was very low to contract Town Hall and Library. Product was professional and timely.
- Road Grading Rakes x2:
This technique is no longer used by this department. Equipment has trees growing up through it.
- Storage Locker:
No longer meets NFPA standards for Storage of Flammable Liquids. New lockers were acquired via a MIIA grant and are in use.
- Fuel Oil Tank:
Removed from Highway Garage when propane heat was installed in 2019.
- Diesel Generator:
Removed from Highway Garage in 2017. Does not run. It is believed that repair costs exceeded replacement costs.
- Basketball Court Tiles:
Removed from service in 2018 due to tripping hazards. (was donated through a fundraising in memory of a resident.)

Thank you,

James Hunt
Director of Operations



THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

December 8, 2021

Ms. Terry Walker, Clerk
Town of Monterey
435 Main Road | P.O. Box 277
Monterey, MA 01245

Mr. Steve Weisz, Select Board Chair
Town of Monterey
435 Main Road | P.O. Box 308
Monterey, MA 01245

Re: Town of Monterey – Recall Election Home Rule Petition

Dear Madame Clerk and Mr. Chairman:

We write regarding Article 6 of the Report on the Special Town Meeting held on November 6, 2021, which would direct the Select Board of the Town of Monterey to petition the General Court for a special act to establish a recall election procedure for the Town of Monterey in the manner set forth therein.

As the state legislators representing the Town of Monterey, we write first to confirm that we are in receipt of this petition, which passed with a majority vote at your Special Town Meeting. However, it has since come to our attention that there are allegations of potential irregularities with the procedure by which this matter was placed on your Town Meeting Warrant, leaving the validity of the vote taken in question.

Given the recent developments surrounding this matter, and at the advice of both Senate and House Counsel, we unfortunately must delay filing this legislation until the vote is confirmed to be valid. While we always strive to introduce and advance home rule petitions in a timely manner, these unusual circumstances require us to defer to proper authorities to conduct any necessary investigations and to rule on the validity of the vote taken. In reaching this conclusion, we do so without taking a stance on the merits of the petition nor on any other matters currently occurring within the Town.

Of course, we stand ready to introduce and advance any valid home rule petition that we receive. We look forward to working with you on any such petition that we receive. Thank you for your understanding, and please be in touch with any questions or concerns.

Sincerely,

ADAM G. HINDS, *State Senator*
Berkshire, Hampshire, Franklin & Hampden

SMITTY PIGNATELLI, *State Representative*
Fourth Berkshire District

cc: District Attorney Harrington

Monterey Town Administrator

From: Brian Riley <BRiley@k-plaw.com>
Sent: Tuesday, December 14, 2021 2:01 PM
To: 'Monterey Town Administrator'
Cc: 'Steven Weisz'
Subject: FW: Hinds/Pignatelli - Monterey Home Rule Response
Attachments: 12.08.2021 Hinds Pignatelli - Monterey.pdf

Importance: High

Hi, Melissa. I assume this means that someone contacted Representative Pignatelli and Senator Hinds and complained about the manner that this citizen petition article came before the Board. I will give you the opinion I gave to the Moderator as to the validity of the article being on the warrant, and please feel free to share it with your legislative delegation.

I do not have any specific information as to the signature certification process once the petitions were filed with the Town Clerk. There was a question that I answered as to how many signatures were required on a citizen petition – 10 signatures for an Annual Town Meeting, while a Special Town Meeting requires 100 or 10% of the registered voters, whichever is less (I recall that the 10% figure is around 73). It was my understanding that the article was submitted to the Select Board as having a sufficient number of certified signatures, although some questioned that. Nonetheless, however, a quorum of the Select Board approved the November 6, 2021 Special Town Meeting warrant with that article on it and I understand that the warrant was timely posted by a constable. In my opinion, once that posting occurred, all articles were eligible to be acted upon by the voters. Had the petition not had sufficient signatures pursuant to G.L. c.39, §10, the Board would have had the discretion to ignore it (a sufficient and certified petitioned article is required to be included). To the extent any Board member only approved including the recall election article on the belief that he was required to do so, I understand that as a practical concern, but again it was my opinion that the warrant being approved by the Board and posted meant that all articles on it were legally before the voters on November 6.

In addition, you recall that the petitioned article proposed a recall election bylaw, when in fact this can only be established by special act (or Town Charter); there are dozens of these special acts on the books. I discussed this with the Moderator, however, and advised him that if he was comfortable ruling that a motion to authorize the SB to submit a petition for a special act, with the same proposed substantive language, was “within the scope” of the article, he could do so (and he did allow it). This is a Moderator’s discretionary call, but in my opinion, state case law supported his decision. The Supreme Judicial Court has stated:

“[T]he warrant ‘shall state * * * the subjects to be acted upon’ at the meeting and that ‘no action shall be valid unless the subject matter thereof is contained in the warrant.’ This means only that the subjects to be acted upon must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action which the meeting will take upon those subjects.” Town of Burlington v. Dunn, 318 Mass. 216, 219 (1945).

In this case, the warrant apprised the voters that one article proposed to establish a mechanism for a petition process to recall an elected official. After brief discussion that such process requires a special act rather than a bylaw, the voters deliberated over the substantive text and then approved the motion. In my opinion, the Moderator reasonably found the motion for a special act to be within the scope of the article.

If further questions arise, please let me know.

Brian

Brian W. Riley, Esq.
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From: Monterey Town Administrator <admin@montereyma.gov>
Sent: Monday, December 13, 2021 3:10 PM
To: Brian Riley <BRiley@k-plaw.com>
Cc: Steve Weisz <steve@montereyma.gov>
Subject: FW: Hinds/Pignatelli - Monterey Home Rule Response
Importance: High

Hi Brian,

The Chair asked me to forward this to you and request comment/advice from you on the steps the Board needs to take to confirm that there aren't any issues with the validity of the vote and that our legislators should proceed as such. Can you please provide us your comments and the steps they need to take before their meeting this Wed evening?

Respectfully,

Melissa Noe

Town Administrator
Town of Monterey
413-528-1443 x111

Don't let the ugly in others kill the beauty in you! ☺

From: Hinds, Adam (SEN) [<mailto:Adam.Hinds@masenate.gov>]
Sent: Thursday, December 9, 2021 12:40 PM
To: admin@montereyma.gov
Cc: Harrington, Andrea (BER) <Andrea.Harrington@MassMail.State.MA.US>; Pignatelli, Smitty - Rep. (HOU) <Smitty.Pignatelli@mahouse.gov>; Murphy, Julia (HOU) <Julia.Murphy@mahouse.gov>; Jason, Kathryn (SEN) <Kathryn.Jason@masenate.gov>; Kelly, Christian (SEN) <Christian.Kelly@masenate.gov>
Subject: Hinds/Pignatelli - Monterey Home Rule Response

Dear all,

On behalf of myself and Representative Pignatelli, please accept the attached in response to the request for a home rule petition we received from the Town of Monterey.

Sincerely,
Senator Adam Hinds
Representative Smitty Pignatelli



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

Smitty Pignatelli
24 Beacon St
Room 473F
Boston, MA 02133

Re: *Recall Election Home Rule Petition*

December 15, 2021

Dear Representative Pignatelli,

This letter is in response to your letter dated December 8, 2021 with regard to the *Recall Election Home Rule Petition*. We are of the understanding that you are waiting to move forward with the legislation until the vote taken at the Special Town Meeting on November 6, 2021 is confirmed to be valid. We want to offer you the context of the special act from our perspective and provide you with resources and contacts that might help in your investigation of the matter.

Our Town Counsel, Brian Riley, of KP Law, has confirmed that the article submitted to the Select Board had a sufficient number of signatures certified by the Town Clerk and Board of Registrars. Any signatures in question were not certified by the Town Clerk. At the October 20, 2021 meeting of the Select Board, a quorum of the Select Board approved the November 6, 2021 Special Town Meeting warrant with the recall article on it. The approved minutes of that meeting are enclosed and the video recording of that meeting can be found here (<https://www.youtube.com/watch?v=sKEWnuFCHzg&t=1739s>). The signatures were subsequently certified by the Clerk and Registrars, certifying a total of 83 signatures which falls above the 73 required to reach 10% of our registered voters which force a Select Board to insert a citizen petition into a Special Town Meeting Warrant. Had the petition not had sufficient signatures pursuant to G.L. c.39, §10, the Board would have had the discretion to ignore it (a sufficient and certified petitioned article is required to be included). The warrant was properly posted by a constable. Counsel has advised that once that posting occurred, all articles were eligible to be acted upon by the voters.

The petitioned article proposed a recall election bylaw, but Town Counsel, Brian Riley, advised that a recall provision can only be established by special act in Monterey. Counsel discussed this potential amendment with the Moderator, however, and advised him that whether such an amendment was "within the scope" of the article was a discretionary decision to be made by the Moderator. The Supreme Judicial Court has stated:

"[T]he warrant 'shall state * * * the subjects to be acted upon' at the meeting and that 'no action shall be valid unless the subject matter thereof is contained in the warrant.' This means only that the subjects to be acted upon must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meeting is authorized to deal. It does not require that the warrant contain an accurate forecast of the precise action which the meeting will take upon those subjects." *Town of Burlington v. Dunn*, 318 Mass. 216, 219 (1945).

In this case, the warrant included a recall bylaw but was amended on the floor of the Special Town Meeting to call for the Select Board to petition the legislature for a recall special act. After discussion that such process requires a special act rather than a bylaw, the voters deliberated over the substantive text of the recall provision, amended it, and then approved the motion.

We thank you in advance for your thorough processing of this matter. Please do not hesitate to contact us should you need anything further.

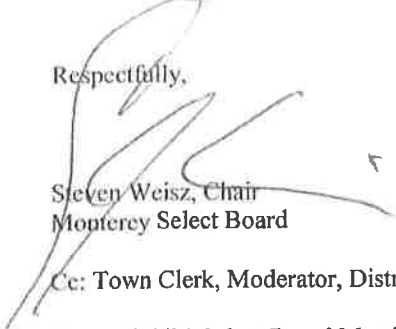
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admin@montereyma.gov
www.montereyma.gov



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

Respectfully,


Steven Weisz, Chair
Monterey Select Board

John Weingold


Justin Makuc

Cc: Town Clerk, Moderator, District Attorney Harrington

Enc: 10/20/21 Select Board Meeting Minutes, signed citizen petition certified by Town Clerk, Town Counsel's email opinion, town meeting warrant and minutes