

Subject: Attorney General's First Decision - Monterey - Case # 9399 (app, extension & 299 hold)
From: "Caprioli, Nicole (AGO)" <nicole.caprioli@state.ma.us>
Date: Wed, Aug 14, 2019 1:03 pm
To: Monterey Town Clerk <clerk@montereyma.gov>, "Jpollard.hannonlerner@gmail.com" <jpollard.hannonlerner@gmail.com>
Attach: Monterey9399A_App, Ext and 299 hold.pdf
Monterey9399A_Form 299.pdf
Monterey9399A_Form 299.doc
Chapter 299 of the Acts of 2000.pdf
Extension Agreement.pdf

Hello Terry and Jeremia:

Attached is our first decision to the Town: (1) approving Articles 21 and 23 adopted at the May 4, 2019 Annual Town Meeting; (2) extending our deadline for our review of Article 25 for an additional 60 days until October 15, 2019; and (3) placing Article 22 on 299 hold due to procedural deficiencies in its adoption. Also attached are the 299 hold documents for Article 22 in both a pdf and word format (for easier publication) and a copy of the Chapter 299 of the Acts of 2000. Lastly, attached is the signed extension agreement for Article 25. Thank you for your courtesy.

If you have any questions about the 299 hold process, please do not hesitate to contact me.

Best,
Nicole

Nicole B. Caprioli

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August 14, 2019

Terry L. Walker, Town Clerk
Town of Monterey
P.O. Box 277
Monterey, MA 01245

Re: Monterey Annual Town Meeting of May 4, 2019 -- Case # 9399
Warrant Article # 22 (Zoning)
Warrant Articles # 21, 23 and 25 (General)

Dear Ms. Walker:

Articles 21 and 23 - We approve Article 21 and 23 from the May 4, 2019 Monterey Annual Town Meeting. Our comments regarding Articles 21 and 23 are provided below.

Article 25 - The Attorney General's deadline for a decision on Article 25 is extended for an additional 60 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 a 60-day extension is attached hereto. We will issue our decision on Article 25 on or before **October 15, 2019**.

Article 22 - Because of procedural defects in the adoption of Article 22, the Attorney General has elected to proceed under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, and place this Article on "hold."

In the materials submitted to this Office pursuant to G.L. c. 40, § 32, the Town Clerk has certified the following information: (1) the Planning Board hearing notice was not sent to the Department of Housing and Community Development or the Planning Boards of the abutting cities and towns; and (2) the Planning Board Hearing notice that was posted and published in the newspaper did not contain information as to the location where the text and maps could be inspected, all as required by G.L. c. 40A, § 5.

Therefore, the 90-day period prescribed for the Attorney General's review of Article 22 is suspended in accordance with G.L. c. 40, § 32.

A signed copy of Form 299 is enclosed. Once the procedures outlined in Form 299 are completed, and after the expiration of the 21-day period required by Chapter 299 of the Acts of 2000, please return a copy of Form 299 to us along with your certification that a true copy has been posted and published as required by Chapter 299. Please feel free to contact this Office with any questions about this procedure.

Article 21 - Article 21 amends the Town's general by-laws, to add a new Article XIX, entitled "Stretch Energy Code." Specifically, Article 21 provides as follows:

To see if the Town will vote to enact Article XIX of the Town Bylaws, entitled "Stretch Energy Code" for the purpose of regulating the design and construction of buildings for the effective use of energy, pursuant to Appendix 115.AA of the Massachusetts Building Code, 780 CMR, the Stretch Energy Code, including future editions, amendments or modifications thereto, with an effective date of January 1, 2020, a copy of which is on file with the Town Clerk...


While the Town intended to adopt the Stretch Energy Code as a by-law, it is unclear from the vote under Article 21 the text of the by-law that will appear in the Town's general by-laws. Specifically, it is unclear whether the by-law adopted under Article XIX, "Stretch Energy Code" will provide only as written above, or whether the Town intends Article XIX of its by-laws to also restate the text of Appendix 115.AA of the Massachusetts Building Code, 780 CMR, the Stretch Energy Code. While we approve Article 21, the Town should discuss this issue with Town Counsel to determine whether it needs to vote additional specific by-law text (i.e. the text of Appendix 115.AA of the Massachusetts Building Code) at a future town meeting.

Article 23 - Article 23 amends the general by-laws, Article II, Section 11, pertaining to the Council on Aging, to provide that the Council's membership shall consist of "five to seven members." The by-law does not establish a specific membership number. Notwithstanding the absence of a specific membership number in the by-law, the quorum requirement for the Council on Aging is determined by the number of members of the Committee. The general rule is that in the absence of a statutory restriction, the majority of a board is a quorum, and a majority of the quorum can act. Merrill v. Lowell, 236 Mass. 463, 467 (1920); *see also* Clark v. City Council of Waltham, 328 Mass. 40, 41 (1951). The majority is calculated from the total membership regardless of whether a member is present at a particular meeting. *See Gamache v. Town of Acushnet*, 14 Mass. App. Ct. 215, 219 (1982) (the resignation of one member from a five-member board does not convert the board to a "not more than four" member board.) The Town should consult with Town Counsel with any questions about the specific quorum requirements for Council on Aging.

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.

¹ The Town Clerk has indicated to this Office that a copy of the Stretch Energy Code was not on file with her office.

cc: Town Counsel Jeremia Pollard

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Very truly yours,