



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
10 MECHANIC STREET, SUITE 301  
WORCESTER, MA 01608

MAURA HEALEY  
ATTORNEY GENERAL

(508) 792-7600  
(508) 795-1991 fax  
[www.mass.gov/ago](http://www.mass.gov/ago)

October 3, 2018

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

**Re: Monterey Special Town Meeting of June 29, 2018 -- Case # 9099  
Warrant Article # 4 (General)**

Dear Ms. Walker:

**Article 4** - We approve Article 4 from the June 29, 2018 Monterey Special Town Meeting. Our comments regarding Article 4 are provided below.

Article 4 amends the Town's general by-laws to add a new, unnumbered by-law, "Departmental Revolving Funds." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53E ½ authorizes municipalities to establish revolving funds for "any fees, charges or other receipts from the departmental programs or activities supported by the revolving fund," to be accounted for separately from other monies in the town, and authorizes expenditures from such fund without further appropriation, subject to the provisions of Section 53E ½. According to the Department of Revenue/Division of Local Services (DOR/DLS), the purpose of a departmental revolving fund is to enable the department to separately account for money received from a specific program or activity and to make expenditures from that separate account for that specific program or activity.

However, according to DOR/DLS, not all receipts may lawfully be deposited in a revolving fund. For example, property taxes, motor vehicle taxes, or revenues from general municipal activities, rather than those of a particular department, are not properly categorized as "fees, charges or other receipts from the departmental programs or activities supported by the revolving fund." *See* G.L. c 44, §§ 53 and 53E ½. In addition, receipts reserved by law (for example, betterment payments under G.L. c. 44, § 53J), or receipts authorized by law for expenditure for a particular purpose (for example, local acceptance of G.L. c. 44B, Community Preservation Act), are expressly prohibited from being included in a revolving fund under the statute.

The DOR/DLS has published several informational guidelines to provide information regarding municipal revenues and special funds. In particular, DOR/DLS has published Bulletin

2017-01B, “Authorization of Departmental Revolving Funds and Model By-law/Ordinance:” <http://www.mass.gov/dor/docs/dls/publ/bull/2017/2017-01b.pdf> and an “Overview of Statutory Treatment of Municipal Revenues:” <http://www.mass.gov/dor/docs/dls/training/overview.pdf>

We approve the by-law adopted under Article 4. However, the Town should ensure that receipts designated for each revolving fund are not already reserved under other funds or statutes, and are properly included in the designated revolving fund, and consult with Town Counsel with any questions. In addition, the Town should ensure that any deposits into a revolving fund are properly from “fees, charges or other receipts” associated with a specific departmental program or activity and that the funds are expended in connection with that specific program or activity, not for the general use of the department, and consult with Town Counsel with any questions.

Lastly, G.L. c. 44, § 53E ½, requires the establishment of any revolving fund to be “made not later than the beginning of the fiscal year in which the fund shall begin.” The Town established these revolving funds by by-law at a vote of Town Meeting on June 29, 2018, apparently with the intention that these funds be used during Fiscal Year 2019 (beginning July 1, 2018) and thereafter. According to DOR/DLS, all receipts collected during Fiscal Year 2019 can be credited to the revolving funds created under Article 4. The Town should consult with Town Counsel and/or DOR/DLS with any questions on this issue.

In light of the above, we offer specific comments on the “Building & Fire Inspection Education” Revolving Fund.

The Building & Fire Inspection Education revolving fund provides that the fees, charges or other receipts to be credited to the fund are the “fines received under MGL 248A” and the program or activity expenses payable from the fund are “[p]rogram and educational materials, signage and advertising related to taxpayer information and education.” The Officer authorized to spend from this fund is the Building Inspector.

There is no Chapter 248A in the Massachusetts General Laws. Therefore, it is unclear what type of fines will be deposited in this revolving fund. However, we note that G.L. c. 148A, entitled “Code Enforcement Officer,” authorizes the local code enforcement officer charged with enforcing violations of the state building code or the state fire code to issue fines, as provided for in that statute. General Laws Chapter 148A, Section 5, specifically provides that fines issued under G.L. c. 148A shall go to the Town’s general fund, as follows, with emphasis added:

All fines, penalties or assessments in actions under this chapter, brought by a local code enforcement officer, shall be paid to the general fund of the city or town in which the violation occurred. Such city or town shall earmark such fines, penalties or assessments collected for enforcement, training and education of fire prevention officers, building inspectors, and the stipend for municipal hearing officers, which shall be not less than \$2,500 a year. All fines, penalties or assessments in actions brought under this chapter by a state code enforcement officers shall be paid to the commonwealth and shall be forwarded to the department of fire services as revenue to the General Fund and shall be assigned to the department's retained revenue account

for the purposes of enforcement, training and education of state code enforcement officers.

The Town should consult with Town Counsel and the Department of Revenue/Division of Local Services to ensure that any receipts deposited in this revolving fund comply with the requirements of G.L. c. 44, § 53E ½ and G.L. c. 148A. The Town may also wish to discuss with Town Counsel whether a future amendment to the by-law is needed.

**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

*Nicole B. Caprioli*

By: Nicole B. Caprioli  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4418  
[nicole.caprioli@state.ma.us](mailto:nicole.caprioli@state.ma.us)

cc: Town Counsel Jeremia Pollard