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ATTORNEY GENERAL

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April 28, 2014

Emily Johnson, Town Clerk  
Town of Monterey  
P.O. Box 277  
Monterey, MA 01245

**RE: Monterey Special Town Meeting of December 6, 2013 - Case # 7050**  
**Warrant Articles # 6 and 7 (Zoning) <sup>1</sup>**  
**Warrant Article # 2 (General)**

Dear Ms. Johnson:

**Article 2** – Article 2 proposes to remove currently serving members of the Volunteer Fire Department from the category of firefighters entitled to a real estate tax exemption. We disapprove and delete Article 2 because it conflicts with Special Legislation the Town obtained in 1993 to allow such exemptions, as explained below. However, the Town may consider first seeking an amendment to the Special Act, and then adopting future by-law amendments, in order to achieve the result it is seeking by way of Article 2.

Article 2 proposes to amend the Town's general by-laws, Article XVI, "Volunteer Fire Department Real Estate Tax Exemption," to delete currently serving members of the Volunteer Fire Department from those entitled to a real estate exemption, as follows (deletions in underline and new text in italics):

The Town shall provide a real estate tax exemption to *retired persons having served* persons serving as members of the Monterey Volunteer Fire Department, subject to the following provisions permitted by St. 1993, c. 110, section 342:

A. Said real estate shall be occupied and owned by said individual as his or her domicile, or occupied as his or her domicile but owned by a member of his

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<sup>1</sup> In a decision issued on March 27, 2014, we approved the amendments adopted under Articles 6 and 7.

or her immediate family (mother, father, sister, brother, husband, wife, son or daughter).

B. Each member shall be certified to be in good standing by the Chief of the Department to the Board of Assessors ninety (90) days prior to the start of the fiscal year. To be in good standing the following requirements must be met:

- 1) The individual shall be certified in CPR, First Responder first aid, and Haz-Mat.
- 2) The individual shall attend 75% of all training sessions.
- 3) The individual shall respond to 75% of all alarms.
- 4) The individual must be in the Department a minimum of twelve (12) months.

C. No more than eighteen (18) individuals shall be certified to be eligible for the exemption in any one fiscal year, exclusive of any exemption granted to a retired member under the provisions of this bylaw.

D. No exemption shall exceed the sum of \$1,500 in any fiscal year, with the exception that the maximum of \$1,500 may be raised annually based on the index approved by the Commissioner of Revenue.

E. Any retired member of the Monterey Volunteer Fire Department shall be eligible for at least 70% of such allowable exemption provided that said individual has reached his or her 60<sup>th</sup> birthday prior to the fiscal year for which an exemption is being sought, and has served as a member of the Department for not less than 15 years immediately preceding his or her retirement. If retiring after 20 years of service, the retiree shall receive 80% of such allowable exemption, and after 30 years, shall receive 90% of such allowable exemption.

F. Any individual receiving an exemption under this bylaw shall continue to receive such exemption regardless of any permanent disability, received in the line of duty, that bars him or her from (sic) participation in the Department.

The amendments proposed under Article 2 conflict with a Special Act the Town obtained, Chapter 110, Section 342 of the Acts of 1993 ("Special Act") that authorized the Town to "adopt a bylaw providing a real estate tax exemption to persons serving as members of the Volunteer Fire Department." The Special Act provides (emphasis added):

Notwithstanding the provisions of chapter 59 of the General Laws, the Town of Monterey may adopt a bylaw providing a real estate tax exemption *to persons serving as members* of the Volunteer Fire Department pursuant to this section.

*Said bylaw shall provide that not later than ninety days prior to the beginning of the fiscal year, the Chief of the Fire Department shall certify to the Board of Assessors*

*the names of each individual and the real estate for which an exemption is sought, provided that (a) said real estate shall be occupied and owned by said individual as his or her domicile, or occupied as his or her domicile but owned by a member of the immediate family; (b) no individual shall be certified if said individual has not been a member in good standing of the fire department for at least twelve months prior to such certification; (c) not more than twenty-four individuals shall be certified for any fiscal year, exclusive of any exemption granted to a retired member under the provisions of this section; and (d) no such exemption shall exceed the sum of one thousand five hundred dollars in any one fiscal year; provided, however, that said bylaw may provide for an annual increase of such amount based on an index approved by the commissioner of revenue.*

Said bylaw shall also provide that any retired members of the town's volunteer Fire Department shall be eligible for at least seventy percent of such allowable exemption, or such other greater amount, as determined by bylaw; provided, however, that such individual has reached his or her sixtieth birthday prior to the fiscal year for which an exemption is being sought, and has served as a member of the Fire Department for not less than fifteen years immediately preceding his or her sixtieth birthday. *Any individual receiving an exemption under the provisions of this act shall continue to receive such exemption regardless of any permanent disability which bars him from participation in the volunteer Fire Department.*

Article 2 proposes to provide the real estate tax exemption only for "retired persons having served" and not to "persons serving as members". Article 2 also proposes to eliminate from the by-law certain other provisions required by the Special Act as explained *infra*.

The Special Act makes the by-law optional ("the town...may adopt a bylaw). However, if the by-law is adopted, the Special Act requires the by-law to include certain provisions ("said bylaw shall provide"). First, the by-law must make the exemption available to both active and retired firefighters. Second, the by-law must require the Fire Chief to annually certify to the Board of Assessors, "the names of each individual and the real estate for which an exemption is sought," for those meeting the eligibility requirements specified. Third, the by-law must limit the exemptions to not more than 24 current firefighters ("[N]ot more than twenty-four individuals shall be certified for any fiscal year, exclusive of the exemption granted to a retired member under the provisions of this section"). Finally, the by-law must authorize the exemption for firefighters even if they cannot serve because of permanent disability. These provisions, required by the Special Act, would be deleted as a result of the amendments under Article 2.

Because the Town's Special Act has the same force as a general law of the Commonwealth (with the exception that it applies only to the Town), any amendments to the by-law adopted as a result of the Special Act must be consistent with the Special Act. *See* Home Rule Amendment, Mass. Const. amend. Art. 2, § 6. ("Any...town may, by adoption, amendment, or repeal of local...by-laws, exercise any power or function ...which is not inconsistent with the constitution or laws enacted by the general court[.]). *See also* Marino v. Town Council of Southbridge, 7 Mass. App. Ct. 461, 463 (1979) ("The general court shall have the power to act...by special laws enacted...on petition filed or approved by the voters of a...town...or the town meeting of a town, with respect to a law relating to that...town." ). Article 2 conflicts with

the Special Act and as such we must disapprove and delete it. See Bloom v. Worcester, 363 Mass. 136, 154 (1973) (by-law that conflicts with state law is invalid).

The Special Act constrains the Town regarding the content of the by-law. The Town may wish to consult with Town Counsel regarding a petition to amend the Special Act in order to accomplish the result that the Town cannot currently accomplish by by-law. We are happy to consult with Town Counsel 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,

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ATTORNEY GENERAL

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cc: Town Counsel Jeremia Pollard