



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

July 8, 2016

C. Denise Samolchuk, Town Clerk
Town of Manchester-by-the-Sea
10 Central Street
Manchester-by-the-Sea, MA 01944

**RE: Manchester-by-the-Sea Annual Town Meeting of April 4, 2016 - Case # 7905
Warrant Articles # 18 and 20 (General)**

Dear Ms. Samolchuk:

Articles 18 and 20 - We approve Articles 18 and 20 from the Manchester-by-the-Sea April 4, 2016, Annual Town Meeting. Our comments on Articles 18 and 20 are provided below.

Article 18 - Article 18 was a vote to: (1) accept the provisions of G.L. c. 44, § 55C; (2) establish a trust to be known as the Manchester-by-the-Sea Affordable Housing Trust Fund; and (3) add to the Town's general by-laws a new Article XXI, pertaining to the Town's Affordable Housing Trust and its Board of Trustees.

We approve the vote adding the new Article XXI to the Town's general by-laws. However, we take no action on those portions of the vote under Article 18 to accept the provisions of G.L. c. 44, § 55C and to establish the Manchester-by-the-Sea Affordable Housing Trust Fund. Those votes are not by-law amendments and are not subject to review and approval by the Attorney General. See G.L. c. 40, § 32. We suggest that the Town discuss with Town Counsel whether state law requires those votes to be filed with the Secretary of State and the Department of Revenue, Division of Local Services.

Article 20 - Article 20 adds a new Article X, Section 20C, "Short Term Paying Guest in Homes," to the Town's general by-laws. The new Section 20C requires a license for owner-occupied residential premises rented to short term paying guests. Short term paying guests are defined in the by-law as "those who are staying in a dwelling unit for less than 6 consecutive nights." See Section 20C "Applicability." The purpose of the by-law is to license short term rentals *not otherwise licensed* by the Town or other entity, for example, the Commonwealth. See Section 20C, "Purpose." Based on materials submitted to this Office, the new by-law is apparently intended to address concerns over the increase in online home rental services for transient occupancy, such as "Airbnb."

The new by-law requires the license applicant to file an application with the Board of Selectmen. By submitting a completed application, the applicant warrants that the "property complies

with applicable Board of Health regulations and Fire Department safety measures (fire/smoke alarms and CO monitors).” The Town may wish to discuss with Town Counsel a possible future amendment to also require compliance with the State Sanitary Code, 105 C.M.R. § 410.00. The Town’s enforcement powers could be significantly strengthened if it also requires compliance with the State Sanitary Codes as a condition of the license.

Finally, the Massachusetts Department of Public Health (“DPH”) has issued a Memorandum that explains the licensing requirements for certain home rental services. The Memorandum can be found here:

<http://www.mass.gov/eohhs/docs/dph/environmental/sanitation/hsg-licensing-online-home-rental-services.pdf>

As provided in the Memorandum, DPH has determined that short term lodging offered for rent through online services is subject to local licensure and permitting in the same way that traditional lodging houses and bed and breakfast establishments are licensed and permitted. The Town may wish to discuss this Memorandum with Town Counsel as it may be helpful in ensuring that the by-law is applied consistent with existing state and local licensing requirements for short term residential rentals.

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 that 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 voted by 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 Michele E. Randazzo