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September 20, 2017

Christine Mardirosian, Town Clerk
Town of Oakham
2 Coldbrook Road, Unit 4
Oakham, MA 01068

**Re: Oakham Annual Town Meeting of June 20, 2017 – Case # 8534
Warrant Articles # 19 and 20 (General)**

Dear Ms. Mardirosian:

Articles 19 and 20 - We approve Articles 19 and 20 from the June 20, 2017, Oakham Annual Town Meeting. Our comments on Articles 19 and 20 are provided below.

Article 19 - Article 19 amends the Town's general by-laws Chapter II, Section 3 pertaining to the notice of the Town Meeting to read as follows:

Notice of every Town Meeting shall be given by posting on the official Town website and on the Public Posting Board outside the Town Hall at 2 Coldbrook Road in said Town of Oakham, attested copies of the warrant for such meeting provided, however, that if, due to technological issues, the warrant is not posted on the Town's website, or is not posted continuously for the time period required by G.L c39, §10, such issues shall not affect the validity of the meeting called by such warrant.

As amended Section 3 provides that the Town Meeting Warrant shall be posted on the Public Posting Board outside of Town Hall and on the Town's website. In addition, Section 3, provides that if the warrant is not posted properly on the Town website, due to technical issues, such deficiency will not affect the validity of Town Meeting.

General Laws Chapter 39, Section 10, pertains to the Town Meeting Warrant notice requirements and provides as follows (with emphasis added):

Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given *at least seven days before the annual meeting . . . and at least fourteen days before any special town meeting.*

Nothing in Section 3 relieves the Town from the notice requirements of G.L. c. 39, §10. The Town may wish to discuss the application of Section 3 with Town Counsel to ensure that the Town Meeting notice requirements of G.L. c 39, § 10, are satisfied.

Article 20 - Article 20 amends the Town's general by-laws by inserting a new Chapter III, Section 23, "Revolving Funds." General Laws Chapter 44, Section 53E ½, requires revolving funds to be established by by-law. Section 53 E 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 53 E 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 created under Article 20. However, the Town should consult closely with Town Counsel to 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. In addition, the Town should consult closely with Town Counsel to 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.

Further, 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 20, 2017, apparently with the intention that these funds be used during Fiscal Year 2018 (beginning July 1,

2017). According to DOR/DLS, all receipts collected during Fiscal Year 2018 can be credited to the revolving funds created under Article 20. The Town should consult with Town Counsel and/or DOR/DLS with any questions 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 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,

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cc: Town Counsel Lauren F. Goldberg