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August 17, 2026

Lisa Stratford, Town Clerk
Town of Leverett
P.O. Box 300
Leverett, MA 01054

Re: Leverett Annual Town Meeting of May 2, 2026 - Case # 12275
Warrant Articles # 9, 10, 11, 12, and 13 (Zoning)

Dear Ms. Stratford:

Articles 9, 10, 11, and 12 - We approve Articles 9, 10, 11, and 12, from the May 2, 2026 Leverett Annual Town Meeting. Our comments on Article 12 are provided below.

Article 13 - Because of a procedural defect in the adoption of Article 13, the Attorney General has elected to proceed under the authority conferred by G.L. c. 40, § 32 and place this Article on "299 hold." In the materials submitted to us for review, the Town Clerk certified the following information pursuant to G.L. c. 40, § 32 and c. 40A, § 5: the Planning Board Hearing notice that was posted in the Town Hall did not include the subject matter of Article 13 (floodplain amendments).

For these reasons, the 90-day period prescribed for the Attorney General's review of Article 13 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 G.L. c. 40, § 32, 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 G.L. c. 40, § 32 and whether any claims have been filed.

Article 12 - Under Article 12, the Town voted to amend its zoning by-laws to make specific changes to allow Protected Use Accessory Dwelling Units ("PUADUs") as of right in compliance with G.L. c. 40A, § 3 and the implementing Regulations promulgated by the Executive Office of Housing and Livable Communities ("EOHLC"), 760 CMR 71.00, "Protected Use Accessory Dwelling Units" ("Regulations").[1]

[1] The Regulations can be found here: https://www.mass.gov/doc/760-cmr-7100-protected-use-adus-final-version/download

We approve Article 12 because the approved text does not conflict with G.L. c. 40A, § 3 and the Regulations. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law).

In this decision we summarize the by-law amendments adopted under Article 12; discuss the Attorney General's standard of review of town by-laws and the statutory and regulatory changes that allow PUADUs as of right;[2] and then explain why, based on our standard of review, we approve the zoning by-law amendments adopted under Article 12.

I. Summary of Article 12

Under Article 12, the Town voted to amend its zoning by-laws to make specific changes to allow Protected Use ADUs as of right in the Town's zoning districts where single-family dwelling units are allowed. One change deletes the existing text of Section 2400 and inserts a new Section 2400 that imposes requirements on ADUs, including dimensional, parking, and use requirements and allows ADUs as short-term rentals. Section 2400 also allows ADUs larger than 900 square feet up to 1,200 square feet and more than one ADU on a lot by special permit. Lastly, Article 12 amends Article VI, "Definitions" to add new definitions related to ADUs, including a definition for "Gross Flore Area;" "Local ADU;" "Protected Use ADU," and "Short-Term Rental."

II. Attorney General's Standard of Review of Zoning By-laws

Our review of Article 12 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "

Article 12, as an amendment to the Town's zoning by-laws, must be given deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand

[2] 760 CMR 71.02 defines the term "Protected Use ADU" as follows: "An attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-family Residential Zoning District and is protected by M.G.L. c. 40A, § 3, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition."

v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Summary of the Legislative Changes Regarding ADUs

On August 6, 2024, Governor Healey signed into law the "Affordable Homes Act," Chapter 150 of the Acts of 2024 (the "Act"). The Act includes amendments to the State's Zoning Act, G.L. c. 40A, to establish ADUs as a protected use subject to limited local regulation including amending G.L. c. 40A, § 1A to add a new definition for the term "Accessory dwelling unit" and amending G.L. c. 40A, § 3 (regarding subjects that enjoy protections from local zoning requirements, referred to as the "Dover Amendment"), to add a new paragraph that restricts a zoning by-law from prohibiting, unreasonably regulating or requiring a special permit or other discretionary zoning approval for the use of land or structures for a single ADU. The amendment to G.L. c. 40A, § 3, to include ADUs means that ADUs are now entitled to statutory protections from local zoning requirements.

On January 31, 2025, the EOHLC promulgated regulations for the implementation of the legislative changes regarding ADUs. See 760 CMR 71.00, "Protected Use Accessory Dwelling Units."[3] The Regulations define key terms and prohibit certain "Use and Occupancy Restrictions" defined in Section 71.02 as follows:

> Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of a Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the occupant, such as but not limited to, income, age, familial relationship, enrollment in an educational institution, or that limits the number of occupants beyond what is required by applicable state code.

While a municipality may reasonably regulate a PUADU in the manner authorized by 760 CMR 71.00, such regulation cannot prohibit, require a special permit or other discretionary zoning approval for, or impose a "Prohibited Regulation"[4] or an "Unreasonable Regulation" on, a

[3] See the following resources for additional guidance on regulating ADUs: (1) EOHLC's ADU FAQ section (https://www.mass.gov/info-details/accessory-dwelling-unit-adu-faqs\) (2) Massachusetts Department of Environmental Protection's Guidance on Title 5 requirements for ADUs (https://www.mass.gov/doc/guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download); and https://www.mass.gov/doc/frequently-asked-questions-faq-related-to-guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download; and (3) MassGIS Addressing Guidance regarding address assignments for ADUs (https://www.mass.gov/info-details/massgis-addressing-guidance-for-accessory-dwelling-units-adus).

[4] 760 CMR 71.03 prohibits a municipality from subjecting the use of land or structures on a lot for a Protected Use ADU to any of the following: (1) owner-occupancy requirements; (2) minimum parking

PUADU. See 760 CMR 71.03, "Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts."[5] Moreover, Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict PUADUs, certain restrictions or regulations "shall be unreasonable" in certain circumstances.[6] In addition, while municipalities may impose dimensional requirements related to setbacks, lot coverage, open space, bulk and height and number of stories (but not minimum lot size), such requirements may not be "more restrictive than is required for the Principal Dwelling, or a Single-Family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation…" 760 CMR 71.03 (3)(b)(2). Towns may also impose site plan review of a PUADU, but the Regulations requires the site plan review to be clear and objective and prohibits the site plan review authority from imposing terms or conditions that "are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A." 760 CMR 71.03 (3)(b)(5).

We incorporate by reference our more extensive comments regarding these recent statutory and regulatory changes related to PUADUs in our decision to the Town of East Bridgewater, issued on April 14, 2025 in Case # 11579.[7]

Against the backdrop of these statutory and regulatory parameters regarding PUADUs, we approve Article 12 because it does not conflict with state law. In approving Article 12, it appears that the Town adopted the provision of the "Model Zoning for Accessory Dwelling Units" dated June 11, 2025 prepared by the Metropolitan Area Planning Council (MAPC) on behalf of the EOHLC and the Massachusetts Housing Partnership (MHP). See https://www.mass.gov/doc/accessory-dwelling-units-model-zoning-v12/download

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requirements as provided in Section 71.03; (3) use and occupancy restrictions; (4) unit caps and density limitations; or (5) a requirement that the Protected Use ADU be attached or detached to the Principal Dwelling.

[5] For example, a design standard that is not applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the PUADU is located or is so "restrictive, excessively, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU" would be deemed an unreasonable regulation. See 760 CMR 71.03 (3)(b).

[6] Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict PUADUs, a restriction or regulation imposed "shall be unreasonable" if the regulation or restriction, when applicable to a PUADU: (1) does not serve a legitimate Municipal interest sought to be achieved by local Zoning; (2) serves a legitimate Municipal interest sought to be achieved by local Zoning but its application to a PUADU does not rationally relate to the legitimate Municipal interest; or (3) serves a legitimate Municipal interest sought to be achieved by local Zoning and its application to a PUADU rationally relates to the interest, but compliance with the regulation or restriction will: (a) result in complete nullification of the use or development of a PUADU; (b) impose excessive costs on the use or development of a PUADU without significantly advancing the Municipality's legitimate interest; or (c) substantially diminish or interfere with the use or development of a PUADU without appreciably advancing the Municipality's legitimate interest.

[7] This decision, as well as other recent ADU decisions, can be found on the Municipal Law Unit's website at www.mass.gov/ago/munilaw (decision look up link) and then search by the topic pull down menu for the topic "ADUS."

V. Conclusion

We approve Article 12 because it does not conflict with state law. However, the Town should consult closely with Town Counsel when applying the approved text to ensure they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under Article 12 or the existing text are used to deny a Protected Use ADU or otherwise applied in ways that constitute an unreasonable regulation in conflict with 760 CMR 71.03 (3), such application would violate G.L. c. 40A, § 3 and the Regulations.

Finally, we remind the Town of the requirements of 760 CMR 71.04, "Data Collection," that requires municipalities to maintain certain records, as follows:

> Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.

The Town should consult with Town Counsel or EOHLC with any questions about complying with Section 71.04.

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.

Very truly yours,

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cc: Town Counsel Donna L. MacNicol