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September 14, 2026

Marsha L. Silvia, Town Clerk
Town of Raynham
558 South Main Street
Raynham, MA 02767

Re: Raynham Annual Town Meeting of May 18, 2026 – Case # 12400
Warrant Article # 25 (Zoning)
Warrant Articles # 23 and 24 (General)

Dear Ms. Silvia:

Articles 23 and 24 - We approve Articles 23 and 24 from the Raynham May 18, 2026 Annual Town Meeting.

Article 25 - Under Article 25, the Town voted to make two amendments to its zoning by-laws related to definitions and Accessory Dwelling Units ("ADUs"). We partially approve Article 25 because the approved provisions are consistent with state law. However, we disapprove the following provisions: (1) a portion of Section 350-6.16 (B) that allows an ADU only on a lot with a "residential family home" and (2) a portion of Section 350-6.16 (E) that measures the size of the ADU in relation only to an "existing" dwelling, because these provisions conflict 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] 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).

I. Summary of Article 25

Under Article 25, the Town voted to make two amendments to its zoning by-laws. One change deletes Section 350-6.16 in its entirety and inserts a new Section 350-6.16, "Accessory

[1] The Regulations can be found here: https://www.mass.gov/doc/760-cmr-7100-protected-use-adus-final-version/download. However we note that EOHLC has just announced its intention to update the Regulations. The draft updated Regulations are available at www.mass.gov/adu. In addition, EOHLC has announced that the draft updated Regulations are open for public comment, beginning on September 11, 2026 through 11:59PM on October 9, 2026. The Town should monitor future amendments to the Regulations and consult with Town Counsel on such amendments.

dwelling unit (ADU)" by-law. It appears that the adoption of the new Section 350-6.16 was intended in response to the Attorney General's decision in Case # 11701, issued on August 12, 2025, partially approving the Town's ADU by-law adopted at the January 14, 2025 Special Town Meeting.[2] The other change amends Section 350-10.1, "Definitions," to delete the definition of "Manufactured Home" in its entirety and insert a new definition.[3]

II. Attorney General's Standard of Review of Zoning By-laws and Summary of the Legislative Changes Regarding ADUs

A. Standard of Review

Our review of Article 25 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 25, 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 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.

[2] A copy of the August 12, 2025 decision can be found at www.mass.gov/ago/munilaw (decision lookup link).

[3] As part of this amendment, the Town removed text from the definition of "Manufactured Home" that was previously disapproved and deleted by the Attorney General in its decision dated August 12, 2025 in Case # 11701.

B. Legislative Changes Regarding ADUs

In partially approving Article 25, we incorporate by reference our extensive comments to the Town summarizing the statutory and regulatory changes regarding ADUs, from our decision to the Town issued on August 12, 2025 in Case # 11701. See footnote # 2. Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 25.

III. Certain Text is Disproved Because it Conflicts with G.L. c. 40A, Section 3

A. Section 350-6.16 (B) – Residential Family Home

Section 350-6.16 (B) requires that a lot with an ADU must contain a "residential family home" as the principal structure, as follows (with emphasis added):

> Not more than one ADU may be established on a lot. The lot must contain a **residential family home as the** principal structure and use.

Although the term "residential family home" is not defined in the Town's zoning by-laws (see Section 350-6.16, Section 10.1, "Definitions,") the use of this term in the ADU by-law (rather than principal dwelling), implies that an ADU is only allowed on a lot with a single-family home.[4] Because the requirement that an ADU may only be located on a lot with a "residential family home" as opposed to a "principal dwelling," conflicts with G.L. c. 40A, § 3 and the Regulations that allow ADUs as of right on the same lot as *any* type of "Principal Dwelling," we disapprove the text "residential family home as the" (as shown above in bold and underline).

General Laws Chapter 40A, Section 3 and the Regulations allow Protected Use ADUs as of right on the same lot as any type of "Principal Dwelling," not just a single-family dwelling. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining an ADU as "[a] self-contained housing unit, inclusive of sleeping, cooking, and sanitary facilities on the same Lot as a Principal Dwelling . . .") and "Protected Use ADU" (defining a "Protected Use ADU" as "[a]n attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District."). The Regulations define "Principal Dwelling" as a structure that contains at least one dwelling unit as follows (with emphasis added):

> A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, *that contains at least one Dwelling Unit* and is, or will be, located on the same Lot as a Protected Use ADU.

The Regulations' definition of "Principal Dwelling" contemplates Protected Use ADUs on

[4] We note that in the Town's first ADU by-law adopted at the January 14, 2025 Special Town Meeting, Section 350-6.16 limited ADUs only on lots with a "single-family use." In addition, Section 350-6.16 (A) prohibited an ADU in a multi-family structure. The Attorney General disapproved both of these provisions in the decision issued to the Town on August 12, 2025 in Case # 11701. Although the Attorney General's disapproval clearly stated to the Town that an ADU must be allowed on any lot with a "principal dwelling," under Article 25 the Town choose to use the term "residential family home" instead of "principal dwelling."

lots that include more than one dwelling unit. For example, Protected Use ADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. Therefore, restricting ADUs to only those lots with a "residential family home," as opposed to the principal dwelling, conflicts with G.L. c. 40A, § 3 and the Regulations. See West Street Associates, LLC v. Planning Board of Mansfield, 488 Mass. 319, 324 (2021) (citing with approval trial judge's ruling that ""By limiting medical marijuana facilities to nonprofit entities, the bylaw[,] while not prohibit[ing] those facilities, does restrict them in a way that the [S]tate explicitly determined they should not be limited" and "[a]ccordingly, the town's bylaw is preempted by State law to the extent it requires all medical marijuana dispensaries to be nonprofit organizations."). For this reason, we disapprove the text shown above in bold and underline. The Town should consult with Town Counsel with any questions.

B. Section 350-6.16 (E) – Existing Dwelling

Section 350-6.16 (E) imposes size limitations on an ADU in relation to the "existing dwelling," as follows (with emphasis added):

> An ADU shall be no bigger than 50% of the gross floor area of the **existing** dwelling or 900 square feet, whichever is less.

We disapprove the requirement that the dwelling that is used for an ADU be "existing," because this provision also conflicts with G.L. c. 40A, § 3 and the Regulations, as explained below.

General Laws Chapter 40A, Section 3 provides in relevant part that:

> No zoning ordinance or by-law shall prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district; provided, that the use of land or structures for such accessory dwelling unit under this paragraph may be subject to reasonable regulations…

General Laws Chapter 40A, Section 3 protects ADUs by providing that zoning by-laws shall not prohibit, unreasonably regulate or require the special permit or other discretionary zoning approval for the use of land or structures for a single ADU in a single-family residential zoning district but authorizes municipalities to impose reasonable regulations on the creation and use of ADUs, if it so chooses. The Regulations, 760 CMR 71.02 defines a "Protected Use ADU" in relevant part (with emphasis added) as: "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…."

Neither G.L. c. 40A, § 3 nor the Regulations limit an ADU to only an existing dwelling, but instead allow an ADU to be located "or proposed to be located" on the same lot as a Principal Dwelling. Therefore, an ADU could be constructed at the same time as a new principal dwelling or new accessory structure is constructed. Therefore, limiting an ADU to only an existing dwelling conflicts with the statute and Regulations. For this reason, we disapprove the text "existing," shown above in bold and underline.

IV. Additional Comments on Certain Approved Provisions Adopted Under Article 25

A. Sections 350-6.16 (K) and (N)

Sections 350-6.16 (K) provides: "The ADU may not be sold or transferred separate and apart from the principal dwelling. The principal dwelling and the ADU shall remain in common ownership." And Section 350-6.16 (N) provides: "An ADU shall not be allowed to be converted to a condominium."

We approve this text because although the Regulations prohibit a municipality from imposing "owner-occupancy" requirements on either the ADU or the principal dwelling, the Regulations are silent on the issue of whether the ADU and the principal dwelling must remain in single ownership. In addition, both the statute and 760 CMR 71.02's definition of ADU authorize a municipality to impose "additional restrictions" on an ADU. Moreover, it appears that these ownership requirements are not intended to restrict who can own the ADU but are instead targeted at ensuring that the ADU remains an accessory use to the principal dwelling. Use, but not ownership, may be regulated through zoning. Goldman v. Town of Dennis, 375 Mass. 197, 199 (1978).

Therefore, based upon our standard of review, we cannot conclude that Sections 350-6.16 (K) and (N) conflict with state law. In approving these provisions, we incorporate by reference our more extensive comments to the Town in our decision dated August 12, 2025 in Case # 11701 (see Section V on page 12).

B. Section 305-6.16 (O) – Permanent Frontage

Section 350-6.16 (O) provides as follows: "No ADU is allowed permanent frontage." It is not clear what the Town means by Section 350-6.16 (O) and whether this provision is intended to require the ADU to be located behind or towards the side of the principal dwelling as opposed to in front of it. Based on our standard of review, we cannot conclude that this requirement regarding the location of the ADU is unreasonable and therefore prohibited under 760 CMR 71.00, and for that reason we approve it.

However, in applying Section 305-6.16 (O), because a Protected Use ADU is a Dover Amendment protected use, the Town can only impose "reasonable regulations" on the use. Therefore, if this requirement is used in a manner to prohibit or unreasonably restrict a Protected Use ADU, such application would run afoul to the Dover amendment protections given to a Protected Use ADU under G.L. c. 40A § 3 and the Regulations. Moreover, the Town must ensure that this provision is analyzed on a case by case basis as it relates to a particular property because in some circumstances the provision could be unreasonable as applied to a particular property. In addition, the Town must ensure that the application of this requirement serves, and is rationally related to, a legitimate municipal interest and will not, as applied, result in a nullification, impose an excessive cost or substantially diminish or interfere with the use or development of a Protected Use ADU. See 760 CMR 71.03 (3)(a). If the Town cannot satisfy this standard, the regulation may

be deemed to be unreasonable. The Town should consult with Town Counsel to ensure the proper application of this provision to a Protected Use ADU.

V. Conclusion

We partially approve Article 25, except for (1) a portion of Section 350-6.16 (B) that requires an ADU to be on a lot with a "residential family home" as the principal dwelling and (2) a portion of Section 350-6.16 (E) that measure the size of the ADU in relation only to an "existing" dwelling, that we disapprove because these provisions conflict with G.L. c. 40A, § 3 and the Regulations, as explained above. We approve the remaining provisions adopted under Article 25 because these provisions do not conflict with state law. See Amherst, at 795-96. However, the Town should consult closely with Town Counsel when applying the approved provisions to ensure they are applied consistent with G.L. c. 40A, §3 and 760 CMR 71.00. If the approved provisions adopted under Article 25, or any of the Town's existing zoning provisions, 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. The Town should consult with Town Counsel and EOHLC to ensure that the approved by-law provisions are applied consistent with G.L. c. 40A, § 3 and the Regulations, as discussed herein.

Finally, we remind the Town of the requirements of 760 CMR 71.04, "Data Collection," that requires municipalities to maintain certain records related to ADU permits. 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 Edward W. Pietnik, Jr.