

MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
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July 21, 2011

Elizabeth L. Delaney, Town Clerk
50 Billerica Road
Chelmsford, MA 01824

**RE: Chelmsford Annual Town Meeting of April 25, 2011 – Case # 5951
Warrant Articles # 16 and 19 (General)**

Dear Ms. Delaney:

Articles 16 and 19 - We approve the amendments to the Town by-laws adopted under these Articles on the warrant for the Chelmsford Annual Town Meeting that convened on April 25, 2011. Our comments on Article 16 are provided in more detail below.

Article 16 - The amendments adopted under Article 16 amend Section 154-12 of the Code of Chelmsford by deleting the current Section 154-12 in its entirety and replacing it with a new Section 154-12, "Voting." We approve the new Section 154-12, but offer the following comments.

Section 154-12 (E) of the proposed by-law authorizes the Board of Selectmen and Town Clerk to adopt rules and regulations to implement the proposed by-law. We approve Section 154-12 (E), but caution the Town that the Board of Selectmen and Town Clerk have no power to adopt rules or regulations that are inconsistent with state law. "A town may not promulgate a regulation that is inconsistent with State law." American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006). We suggest that the Board of Selectmen and Town Clerk discuss with Town Counsel any proposed rules or regulations to ensure that they comply with state law.

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.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted

and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

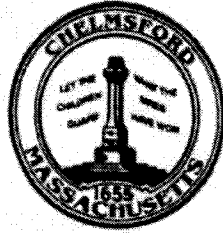
Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street
Springfield, MA 01103
(413) 784-1240

cc: Town Counsel (via email)



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Elizabeth L. Delaney
Town Clerk

Raymonde R. Legrand
Assistant Town Clerk

MAY 26 2011

To Whom It May Concern:

The Adjourned Annual Town Meeting of April 28, 2011, was called to order at 7:30 PM at the Senior Center at 75 Groton Rd. The Moderator Richard E. DeFreitas recognized the presence of a quorum. There were **149** Town Meeting Representatives present. The following action took place:

UNDER ARTICLE 16. The Moderator asked for a motion to waive the reading of the article. Dwight Hayward moved to waive the reading. The Moderator asked for vote by way of a show of hands, **motion carried, unanimously.**

The Town Manager explained that this would introduce an electronic tallying and display system. It will be visible to the Town Meeting members and those at home. Each Town Rep will receive a hand held device that will allow an electronic display on how each individual Rep votes. Screens will display the Town Reps name, address and precinct and their vote yes, no or abstain. It will show a total tally of the vote taken. The Town Clerk will make the voting history available in her office and on the web page. The Town Moderator will adopt regulations regarding when this method will be used. It will make Town Meeting Reps more transparent and accountable to the Town's citizens. It will be less disruptive and avoid delay. Dennis Ready questioned how will the devices be issued? The Manager explained upon checking in each Rep will receive a device with their name on it. They will be gathered up at the end of the night. How many devices will there be. The Town has 162 Town Meeting Representatives, so there will be 162 plus extra devices in case of malfunction, a possible total of 180. Paul Gleason questioned the staffing capability of the Town Clerk on making these votes available. It is a power point based program that will have an excel spread sheet tally sheet very basic. He didn't see any issues plus the Town's IT person would be available at the meetings in case there were problems. Joseph Ready questioned how many vendors were contracted regarding this system? The Manager said that with the assistance of Finance Member Donald VanDyne two creditable companies had been contacted. One company had just provided the Town of Wayland with the system. Is the figure shown a ballpark figure or is it the actual cost. It is the cost and it maybe less then that when the time comes for purchasing. Joanne Anderson questioned where does the money come from, was it a budget item? No it is a warrant article which is not part of the operational budget. Brian Latina asked if there was a savings in personnel savings. No there won't be any significant savings. Personnel will still be used for checking in. What is their rate of pay? \$8.00 an hour. James Comeau asked if the system will show all of those who don't



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vote. Yes. Patrick Hayes asked if this would be used for all votes in an article or just for the final vote. That would be the Moderator's decision. At a future date an amendment could be made to the by-law specifying the time to use the device. Walter Clevon questioned the cost of the display system. The Manager explained that there would be at least two displays screens and a projector. These would be minimum cost items. Kirk Marshall questioned if the School Department would have the availability to use the system. Yes. Brian Latina asked if it was compatible to the Americans with Disabilities Act. Yes it was. Michael McCall questioned the time involved. The Manager said instantly in a matter of seconds. The Moderator asked for further questions, seeing none he asked for recommendations. The Finance Committee recommended the article. The Board of Selectmen recommended the article. The Moderator asked for any discussion, seeing none he asked for a vote by way of a show of hands. The **motion carried**, and the article reads as follows:

Town Manager Paul E. Cohen moved that the Town vote to raise and appropriate \$10,000 to purchase an electronic tally and display system for voting at Town Meeting;

and

that the Town amend Section 154-12 of the Code of Chelmsford, in order to allow for electronic voting at Town Meeting, by deleting the current Section 154-12 in its entirety, which reads as follows:

Section 154-12 Voting

Voice votes will not be used. All votes will be taken by a raising of hands. The Moderator will visually judge the vote and, if in doubt, will ask for a specific count. In matters requiring a two-thirds vote by statute, the Moderator may declare the vote based upon raising of hands. If seven or more members of Town Meeting question the vote, the Moderator shall count the vote.

and replacing it with the following language:

Section 154-12 Voting

- A. Voting Process. Voice votes shall not be used. The Moderator shall take all votes by a raising of hands or use of an electronic tally and display system, except as may otherwise be voted by Town Meeting under Section 154-16.



Office of the Town Clerk

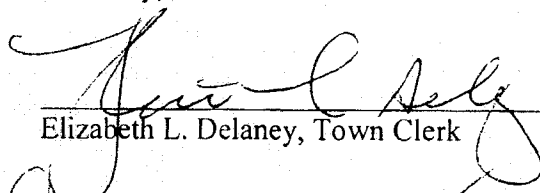
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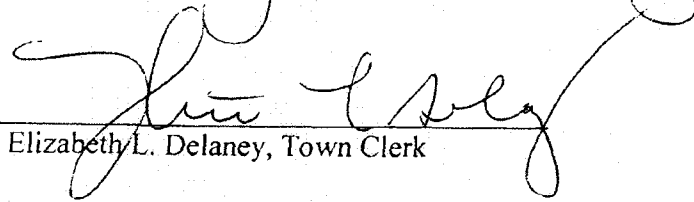
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- B. Electronic Tally and Display System. Votes taken by an electronic tally and display system shall be visible to the Town Meeting Members and any members of the public present at the meeting. The display shall show each Town Meeting Member's name; precinct; "yes", "no" or "abstain" vote; and a tally of all votes.
- C. Matters Requiring a 2/3 Vote by Statute. In matters requiring a two-thirds vote by statute, the Moderator may declare the vote based upon the raising of hands. If seven or more members of Town Meeting question the vote, the Moderator shall count the vote. If an electronic tally and display system is used, the tally shall constitute a counted vote; if such a vote is questioned by seven or more members of Town Meeting, the Moderator shall manually tally the electronically recorded votes.
- D. Record of Votes Taken by Electronic Tally. The Town Clerk shall make available in the Town Clerk's Office and on the Town's website within a reasonable time after a session in which a vote(s) was taken by the use of an electronic tally and display system a list, organized by precinct, which shall disclose how each Town Meeting member voted.
- E. Regulations. After a public hearing, the Moderator, in consultation with the Board of Selectmen and Town Clerk, shall be authorized to adopt regulations for the purpose of facilitating implementation of this bylaw and ensuring the security and integrity of the voting process.

Sincerely,


Elizabeth L. Delaney, Town Clerk

A True Copy Attest:


Elizabeth L. Delaney, Town Clerk