

## Reviewing Proposed Amendments to Bylaws and Ordinances

Prepared for the Massachusetts Municipal Association Meeting, January 2020

Drafting local legislation is complicated. While it is always the goal to appropriately draft bylaws or ordinances to be legally enforceable, various issues can affect a municipality's ability to implement local legislation in a manner consistent with legislative intent. The potential ramifications of such legislation, whether due to form, style, or subject matter, must be fully considered at three critical stages prior to enactment – at the time the bylaw or ordinance is proposed, at the time it is reviewed or recommended, and then again prior to the adoption of the same by the Town Meeting or a Town or City Council. Questions similar to those set forth below may be considered as a municipality considers the potential benefits and detriments of proposed legislation.

(1) Review Charter – Does the Charter already address the subject of the Bylaw?<sup>1</sup>

- a. If yes, the local legislation must be consistent with Charter (see G.L. c.43B, §13)
- b. If no, the local legislation must be consistent with General Laws (see G.L. c.43B, §13):
  - i. Review General Laws to ensure “field” is not occupied (i.e., Wetlands Protection Act or election calendars)
  - ii. Review General Laws to determine whether proposed Bylaw would be inconsistent with existing statutory scheme (i.e., driving violations or Bylaw enforcement methods)

(2) Review Bylaws or Ordinances – Is this a subject that is already addressed?

- a. If YES:
  - i. Is this a new provision to be added? Is the new legislation being inserted in the proper place and is it consistent with the existing Bylaws or Ordinances?
  - ii. Is this to be inserted in place of an existing Bylaw or Ordinance? Does the proposed amendment provide for deletion of a specific portion of the bylaw and insertion of new language in its place?
  - iii. Is this an amendment to an existing Bylaw or Ordinance, and does the proposed amendment adequately “direct” the manner in which the existing legislation should be revised for such purposes?
- b. IF NO:
  - i. Where does the proposed amendment most appropriately “fit in” with the remainder of the Bylaws or Ordinances?

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<sup>1</sup> This question will apply only to cities and those towns with charters.

- ii. Is this something where particular “gaps” in the application of state law are being addressed? What are they and why do they matter?
- iii. Are there examples available of similar local laws from other cities, and particularly from other towns?<sup>2</sup>

(3) Analyze what the drafter of the amendment seeks to accomplish - Does the proposed amendment meet its intended goal?

- a. Is the goal achievable under existing state and local law?
- b. Does the goal, and the way it will be accomplished, make sense?
- c. Who will need to take or refrain from action under the proposed amendment?
- d. Does the legislative body have authority over such matters, i.e., is the proposed amendment inappropriately seeking to limit the manner in which the executive branch exercises statutory authority or authority under the Charter, or, in contrast, is it seeking to establish rules, where there are none, for the executive branch to carry out?
- e. Consider scope of change and possible range of unintended consequences.
- f. Is the proposed amendment too specific, making it likely that municipal officials and/or residents will not be able to comply with the same?
- g. Is there too much flexibility in the proposed amendment, meaning that there is no way to require or measure compliance?
- h. Does the matter affect individual rights? If so, does the proposed amendment provide appropriate due process mechanisms to allow for such individuals to have the opportunity for a hearing, or for an appeal?

(4) Basic legislative considerations may include:

- a. Does the matter need to be regulated through local legislation at all?
- b. Who appears to benefit from, or be harmed by, the proposed amendment?
- c. Do any boards or committees already have statutory authority, or authority under a Charter or special act, to carry out such matters?
- d. Is the subject matter of the proposed amendment already closely regulated by state law, and will adoption of the same, even if consistent with state law, make compliance more complicated?

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<sup>2</sup> The Attorney General, in accord with G.L. c.40, §32, reviews bylaws approved by towns, and does not review ordinances approved in municipalities with city forms of government.

- e. What financial resources will be required to implement and enforce such a provision? Is this a one-time expense, or will approval of such an amendment likely impose an expense from year to year?
  - f. What other resources - time, staff, supplies, equipment - will be required to implement and enforce such a provision?
  - g. Can the municipality enforce the provision consistently and effectively?
  - h. Is local legislation needed, or does the amendment appear to be addressing a problem that would be better addressed administratively, or even through the election process?
- (5) Does the proposed amendment “look and feel” like the municipality’s other bylaws or ordinances?
- a. Consider who drafted the proposed amendment and the context in which it was proposed.
  - b. Is the format consistent with the existing Bylaws or Ordinances?
  - c. Is the numbering/lettering/paragraphing consistent with the style used in other Bylaws or Ordinances?
  - d. Does the proposed amendment have a “purpose” section where other Bylaws or Ordinances do not, or vice versa?
  - e. Will regulations be needed to implement the proposed amendment, and are the same authorized?
  - f. Are there other sections of the Bylaws or Ordinances that need to be addressed, such as a non-criminal disposition sections, or cross-references?
  - g. If there are “transitional” provisions, consider whether they should appear in the proposed amendment (remember that the Bylaws or Ordinances will have to be amended later to remove them), or can they instead be addressed in the vote of the legislative body, i.e., in a warrant article or an order?
- (6) Consider the manner in which the Bylaw or Ordinance will be implemented.
- a. Should there be a “grace period” provided for any categories of entities/individuals currently engaged in an activity that will be regulated?
  - b. Should there be a “threshold” before a proposed Bylaw or Ordinance should apply?
  - c. Should there be a “waiver” provision to address hardship issues?
  - d. Does the proposed Bylaw impact a particular residential or business community, and has that residential or business community been consulted or provided any feedback?

- e. Should the effective date be delayed, or should it apply immediately upon approval of the Attorney General and posting of the Bylaw or amendment?

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