

Process for Amending a Zoning Bylaw or Ordinance*

Prepared for the January 2023

MMA Annual Business Meeting and Trade Show

1. A proposal to adopt or amend a zoning bylaw or ordinance is submitted to the Board of Selectmen/Select Board or City/Town Council by one of the individuals or entities identified in G.L. c. 40A, §5.

NOTE: This requirement must be carefully followed. Recently, in Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398 (Mass. Land Ct. 2021), aff'd, 101 Mass. App. Ct. 1108 (2022)(unpublished decision), the Land Court held that strict compliance with the requirements for initiating a zoning bylaw amendment pursuant to G.L. c. 40A, §5 is required and invalidated a zoning bylaw amendment that was not initiated specifically as set forth therein.

2. Within 14 days of receipt, the Board of Selectmen/Select Board or City/Town Council must submit the proposal to the Planning Board for review.
3. Within 65 days after submittal to the Planning Board, the Planning Board and City/Town Council (if any) must each hold public hearing (may be separate or joint hearing(s)).
4. Notice of Hearing:
 - (a) published in newspaper of general circulation once in each of 2 successive weeks; 1st publication not less than 14 days before day of hearing. Case law states that “successive” weeks means calendar weeks,
 - (b) posted in conspicuous place in City/Town Hall for 14 days before day of hearing, and
 - (c) mailed to all the following:
 - (i) Department of Housing and Community Development (DHCD).
 - (ii) Regional Planning Agency.
 - (iii) Planning Boards of all abutting cities and towns.
 - (iv) if zoning bylaw or ordinance so requires, to all non-resident property owners who file proper request for such notice with municipal clerk.

NOTE: These notices may be waived prior to Town Meeting/Council action.

5. Content of notice must include:

- (a) date, time and place of hearing,
- (b) subject matter of hearing “sufficient for identification”, and
- (c) place where maps and texts of proposal may be inspected.

NOTE: All of these notice requirements must be carefully followed.

6. Town Meeting or City/Town Council may not vote on proposal until either:

- (a) Planning Board submits written or oral report with recommendations, or
- (b) 21 days have elapsed between Planning Board hearing and Town Meeting or City/Town Council vote.

7. Proposal must be voted:

- (a) By City/Town Council, within 90 days of City/Town Council hearing.
- (b) By Town Meeting, within 6 months of Planning Board hearing.

8. Quantum of Vote (depends on substance of the proposed Zoning Bylaw/Ordinance)

- (a) simple majority or 2/3 vote of Town Meeting or City/Town Council.
- (b) In a City or Town with a Council of less than 25 members all votes are 2/3 if a timely written protest is made by a qualifying number of property owners.

NOTE: Certain statutes, such as G.L. Chapter 40R, or certain amendments under the Housing Choice Act only require a simple majority vote.

9. A Zoning bylaw or ordinance “unfavorably” acted upon by Town Meeting or City/Town Council may not be reconsidered within 2 years unless the Planning Board makes a favorable recommendation on the original submission.

10. Towns Only: Within 30 days after final adjournment of Town Meeting, the Town Clerk submits all zoning and general bylaws to the Attorney General for approval. If the Town Clerk fails to comply within 30 days, the Board of Selectmen/Select Board may submit the bylaws to the Attorney General within 15 days following the Clerk’s failure. The submission to the Attorney General must include:

- (a) a certified copy of bylaws,
- (b) a request for approval,
- (c) a statement explaining bylaw,
- (d) explanatory maps and plan, if any, and
- (e) proof of compliance with procedural requirements.

11. Towns Only: Bylaws approved by the Attorney General (including those not acted on by the AG within 90 days, or time as extended by agreement) must be:
 - (a) published in a town bulletin/pamphlet made available in at least 5 public places, including 1 in each precinct (if applicable), or
 - (b) published at least twice in a newspaper of general circulation, at least one week apart, or
 - (c) delivered with notice to every occupied dwelling or apartment in the town, with the person delivering said notices filing an affidavit to that effect with the Town Clerk.
12. Cities Only: A copy of any zoning ordinance or amendment must be sent by the City/Town Clerk to the Attorney General.
13. A true copy of a zoning ordinance or bylaw with all amendments, must be kept on file in the City/Town Clerk's office.

Please contact Attorney [Lauren Goldberg](#) or Attorney [Robin Stein](#) at 617.556.0007 with any further questions.

*Each City or Town may have additional local requirements in addition to the statutory requirements noted herein.

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