

## Office of the Town Clerk

Town of Rowley  
139 Main St., P O Box 351  
Rowley, MA 01969  
Phone: 978-948-2081  
Fax: 978-948-2162

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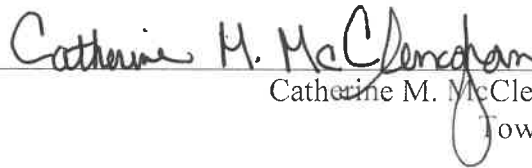
### NOTICE OF GENERAL BYLAW AMENDMENT APPROVAL POSTING

August 1, 2023

Re: Rowley Annual Town Meeting – May 1, 2023  
By Law Decision from the Attorney General Office  
Warrant Article #39, 40 and 41

The attached amendment to the General Bylaws (Warrant Articles #39, 40 and 41) passed at the Annual Town Meeting of May 1, 2023. The amendments have been approved by the Attorney General of the Commonwealth of Massachusetts. With this posting, the General Bylaw shall become effective the date they were posted. Certified copies of these amendments may be obtained at the office of the Town Clerk during regular business hours.

ATTEST:

  
Catherine M. McClenaghan

Catherine M. McClenaghan  
Town Clerk

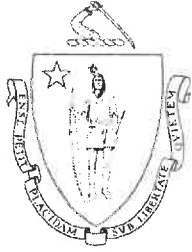


On the above date I posted the attached General Bylaw Amendments passed on May 1, 2023 and approved by the Attorney General of the Commonwealth on May 19, 2023 and July 28, 2023, at the following three public locations in the Town of Rowley:

Town Hall  
Town Hall Annex  
Public Library

  
William T. Wright

William T. Wright - Town Constable



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
10 MECHANIC STREET, SUITE 301  
WORCESTER, MA 01608

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

(508) 792-7600  
(508) 795-1991 fax  
www.mass.gov/ago

May 19, 2023

Catherine M. McCleneghan, Town Clerk  
Town of Rowley  
139 Main Street  
P.O. Box 351  
Rowley, MA 01969

**Re: Rowley Annual Town Meeting of May 1, 2023 -- Case # 10907  
Warrant Article # 10907 (General)**

Dear Ms. McCleneghan:

**Article 39** – We approve Article 39 from the May 1, 2023 Rowley Annual Town Meeting.

Under Article 39 the Town amended its general by-laws, “Board of Health Bylaw,” Section 1 to delete the existing text and insert new text that reduced the five member Board of Health to three members, each of whom are appointed by the Board of Selectmen for three year terms. Article 39 further provides that “the current Board of Health members shall not be affected by this amendment.” The Town originally voted to reduce the Board of Health from five members to three members under Article 26 at the May 1, 2003 Annual Town Meeting and according to the “explanatory note” in the Warrant, the Town has been operating under a three member Board of Health since that vote. However, because the Town did not submit Article 26 to the Attorney General under G.L. c. 40, § 32 until February 9, 2023, the Town voted to re-adopt the by-law change again at the 2023 Annual Town Meeting under Article 39.

**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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

*Nicole B. Caprioli*

By: Nicole B. Caprioli  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4418

cc: Town Counsel Thomas A. Mullen

*Proposed new wording of*  
**BOARD OF HEALTH BYLAW**

Section 1. The Board of Health shall consist of three (3) regular members who shall be appointed by the Board of Selectmen and shall serve without pay. All regular members shall be appointed for a term of three (3) years. The terms of current Board of Health members shall not be affected by this amendment.

*Five-member board established at STM of October 26, 1998 (Article 20) and amended to Three-member board at Special Town Meeting, May 12, 2003 (Article 26), approved by the Attorney General on*

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*Three-member board established at STM of October 31, 1988 (Article 33) and amended to Five-member board at Special Town Meeting, October 26, 1998 (Article 20), approved by the Attorney General on October 29, 1998.*

Section 2. The Board of Health shall have the power to establish fees for Innholder and Common Victuallers Licenses. Such fees shall not exceed the maximums established by Chapter 140, Section 2 of the Massachusetts General Laws. (ATM 5/2/88, Article 33)

*Bylaws adopted at the Town Meeting of May 1, 2023 were approved by the Attorney General on May 19, 2023 and posted according to law.*

*Bylaws adopted at the Town Meeting of October 31, 1988 were approved by the Attorney General on January 6, 1989 and posted according to law.*

*Bylaws was adopted at the Town Meeting of May 2, 1988 were approved by the Attorney General on September 12, 1988 and posted according to law.*



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
10 MECHANIC STREET, SUITE 301  
WORCESTER, MA 01608

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

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July 28, 2023

Catherine M. McCleneghan, Town Clerk  
Town of Rowley  
139 Main Street  
P.O. Box 351  
Rowley, MA 01969

2023 JUL 31 AM 8:50  
TOWN OF ROWLEY  
TOWN CLERK

Re: **Rowley Annual Town Meeting of May 1, 2023 -- Case # 10960**  
**Warrant Articles # 40 and 41 (General)**

Dear Ms. McCleneghan:

**Articles 40 and 41** – We approve Articles 40 and 41 from the May 1, 2023 Rowley Annual Town Meeting. Our comments on Article 40 are provided below.

**Article 40** - Under Article 40 the Town amended its Shellfish Bylaw. We approve Article 40. However, the Town must ensure that the Article 40 is applied consistent with G.L. c. 130, including §§ 52 and 54, and the Town’s authority to regulate solely within its borders.

**I. Summary of the By-law**

Under Article 40 the Town voted two amendments to its Shellfish Bylaw. First, the Town voted to amend Section 4.6, regarding shellfish harvesting to allow harvesting on a Sunday in certain cases as follows (new text in underline):

No shellfish shall be harvested on Sundays from May 1st to August 31st, inclusive, except that if a rainfall closure ends on a Saturday during that period, shellfish harvesting will be permitted on the following Sunday.

The Town also amended Section 5.0 to insert a new Section 5.1.B that allows the Shellfish Commission to raise and lower the daily harvest limits for commercial diggers as follows:

- b. Shellfish Commissioners shall have the authority and discretion to raise and lower the 180-pound daily harvest limit for commercial diggers from time to time,

provided that the same limit shall apply to all commercial diggers at any given time.

## **I. Article 40 must be Applied Consistent with the Town’s Authority to Regulate Shellfishing under G.L. c. 130, §§ 52 and 54**

General Laws Chapter 130 gives the Division of Marine Fisheries (DMF) broad authority to regulate and manage the Commonwealth’s marine fisheries. However, towns have authority to regulate certain species, e.g., river herring, eels, sea worms, and shellfish other than sea clams and ocean quahogs. See, e.g., G.L. c. 130, §§ 52 (granting towns the authority to control, regulate, or prohibit the taking of eels, shellfish and sea worms); 54 (granting towns the authority to regulate the cultivation, propagation and protection of shellfish); and 57 (granting towns the authority to issue licenses for shellfish aquaculture, with the approval of and subject to regulations by the Director of Department of Fisheries and Wildlife).

Section 1.0, “Definitions,” of the existing Shellfish Bylaw defines the word “Product” as follows (with emphasis added):

Product is all aquatic life that make the marsh and/or the flats its habitat. Common name Shellfish. Product includes the following lists of species: clams, conchs, mussels, oysters, periwinkles, quahogs, razor clams or razor fish, scallops, sea scallops, winkles and sea worms.

The Shellfish Bylaw defines “Product” to mean “Shellfish,” which includes “clams” and “quahogs.” Under G.L. c. 130, §§ 52 and 54 towns are prohibited from regulating the commercial harvesting of sea clams and ocean quahogs. See G.L. c. 130, § 52 (“For purposes of this section and of section fifty-four, the term shellfish shall not include the commercial harvest of those species of shellfish known as sea clams (*spilosa solidissima*) and ocean quahogs (*artica islandica*)”). The Town should discuss the proper application of Article 40 and the existing Shellfish Bylaw with Town Counsel to ensure it is regulating only those types of shellfish allowed under G.L. c. 130.

## **II. Neither Article 40 Nor the Existing Shellfish Bylaw Can Regulate Beyond the Town’s Borders.**

A town’s regulatory authority does not extend to property outside the town’s borders. Beard v. Town of Salisbury, 378 Mass. 435, 441 (1979) (“Although the Home Rule Amendment confers broad powers on municipal governments, it does not appear to be so expansive as to permit local ordinances or by-laws that, as here, regulate areas outside a municipality’s geographical limits.”) See also Lapenas v. Zoning Bd. of Appeals of Brockton, 352 Mass. 530, 533 (1967) (“The [Brockton] ordinance could have no intent or purpose in respect of the Abington land.”); Kosla v. Bd. of Appeals of Holden, 55 Mass. App. Ct. 62, 65 (2002) (where parcel was bisected by the municipal boundary between Holden and Paxton, a paving requirement in the Holden by-law cannot apply to the Paxton parking lot).

Neither Article 40 nor the existing Shellfish Bylaw state that the by-law is limited to shellfishing within the Town’s borders. Any attempt to regulate shellfishing outside of the Town

boundaries would exceed the Town's authority and conflict with state law. <sup>1</sup> The Town should discuss the proper application of Article 40 and the existing Shellfish Bylaw with Town Counsel.

**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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

*Kelli E. Gunagan*

By: Kelli E. Gunagan  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600

cc: Town Counsel Thomas A. Mullen

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<sup>1</sup> See our recent decision to the Town of Cohasset issued on July 3, 2023 (Case # 10849) where we disapproved a by-law that sought to regulate outside of the Town's boundaries.

*Proposed new wording of*

**SHELLFISH BYLAW**

Revising § 4.6 to read:

“No shellfish shall be harvested on Sundays from May 1st to August 31st, inclusive, except that if a rainfall closure ends on a Saturday during that period, shellfish harvesting will be permitted on the following Sunday.”; and

Renumbering § 5.1 as § 5.1.A, and inserting a new § 5.1.B reading as follows:

“Shellfish Commissioners shall have the authority and discretion to raise and lower the 180-pound daily harvest limit for commercial diggers from time to time, provided that the same limit shall apply to all commercial diggers at any given time.”

or to take any other action relative thereto.

*Bylaw Amendments adopted at the Town Meeting of May 1, 2023 were approved the the Attorney General on July 28, 2023 and posted according to law.*

*Article 31 of Special Town Meeting of Nov. 5, 2001 deleted previous Shellfish Bylaw of May 10, 1990 (Article33) in its entirety and replaced it with the above wording. Approved by Attorney General’s office on January 24, 2002 and posted according to law on January 28, 2002.*

*Amendments to the wording of the Shellfish Bylaw recommended by Town Counsel were accepted at Annual Town Meeting of May 13, 2002, approved by the Attorney General on October 7, 2002 and posted according to law.*

*Amendments to the wording of the Shellfish Bylaw regarding residency requirements and increasing fees were accepted at Special Town Meeting of November 14, 2005 (Articles #15 and 16). Attorney General approval received on March 3, 2006 and posted as proscribed by law.*

*Amendment to the wording of the Shellfish Bylaw regarding creation of Resident Junior Commercial license accepted at 5/19-08 STM (Art #13), approved by the Attorney General on 7/8/08 and posted according to law.*

*Amendment adding section #2.5.1 adopted at May 1, 2017 Annual Town Meeting (Article #29) by Unanimous vote and approved by the Attorney General’s Office on July 20, 2017 and posted according to law.*

*Amendments to Section 7, specifically 7.2 and 7.3.b and eliminating 7.3.c entirely, adopted at May 6, 2019 Special Town Meeting (Article #27) by Voice Unanimous Vote, approved by Attorney General on Sept. 9, 2019 and posted according to law on Sept. 10, 2019.*



*Proposed new wording of*

**CEMETERY BYLAW**

“Section 18. The owner of a cemetery lot may relinquish it to the Town by filing with the Town Clerk written notice of his/her request to do so on a form supplied and approved by the Town Clerk, signed by all persons having an interest in the lot and accompanied by the original lot deed. Following such filing, the Town Clerk will notify the Cemetery Commissioners of the request and inquire whether the lot contains any burials. Upon receiving confirmation that the lot does not contain any burials, the Town Clerk shall cancel the original lot deed and refund to the relinquishing *owner the original selling price paid for the lot. The lot will thereupon be available to the Cemetery Commissioners for resale at the current price through the Town Clerk. No lot containing any burials may be relinquished.*

“Section 19. The owner of a cemetery lot may transfer it to any other person by filing with the Town Clerk written notice of his/her request to do so on a form supplied and approved by the Town Clerk, signed by all persons having an interest in the lot and by the proposed transferee, and accompanied by the original lot deed. The Town Clerk shall cancel the original lot deed and issue a new lot deed to the “transferee” or to take any other action relative thereto.

*Bylaw amendment adopted at the Town Meeting of May 1, 2023 were approved by the Attorney General on July 28, 2023 and posted according to law.*

*Bylaw changes (amendments to the Rules and Regulations of the Burial Grounds adopted March 9, 1891, amended on March 2, 1964) were adopted at the Annual Town Meeting of March 5, 1973. (Article 32) by unanimous vote. They were approved by the Attorney General on July 5, 1973 and published by posting in five public places on July 17, 1973. Cemetery Bylaw was further amended by Special Town Meeting of April 19, 1977 (Articles 23,24, and 25), posted and subsequently approved by the Attorney General, all of which is on file with the Town Clerk.*

*Changes to Section 15 were adopted at the Town Meeting of May 2, 1988 and approved by the Attorney General on September 12, 1988 and posted according to law.*

*Changes to Sections 7, 15 and 16 were adopted by unanimous vote at the 4/30/12 ATM (Article 20) and approved by the Attorney General on June 27, 2012 and posted according to law.*

*Sections 7, 15 and 16 were again amended by unanimous vote at the 5/6/19 STM (Article #25), approved by the Attorney General on September 6, 2019 and posted according to law on Sept. 10, 2019.*

*Change to Section 12 was adopted at the 6/22/20 ATM, approved by the Attorney General on Dec. 8, 2020 and posted according to law.*

And you are hereby instructed to serve this warrant by posting copies thereof at Town Hall, Town Hall Annex and the Rowley Public Library and on the Town's website not less than fourteen days before the day fixed for such meeting, as directed by the laws of the Town and to make due return of the Warrant to the Town Clerk at least two days before said meeting. Given under our hands this 10<sup>th</sup> day of April in the year two thousand twenty-three.



*Robert Snow*

Robert Snow, Chairman

*Joseph Perry*

Joseph Perry, Vice Chairman

*Deana M. P. Ziev*

Deana M. P. Ziev, Clerk

*Clifford Pierce*

Clifford Pierce

Christine Kneeland

I have served this Warrant by posting at Town Hall, Town Hall Annex, and the Rowley Public Library not less than fourteen days before the day fixed for such meeting and have made the return of the Warrant to the Town Clerk at least two days before the time of said meeting.

Notices posted at Town Hall, Town Hall Annex, Rowley Public Library.

*Philip Calgan*

Constable of Rowley

4-12-23

Date

A true copy, ATTEST:

*Catherine M. McClenaghan*

Catherine M. McClenaghan, Town Clerk  
Rowley, MA 01969