TOWN OF SOUTHBOROUGH

OFFICE OF THE TOWN CLERK

NOTICE OF ATTORNEY GENERAL REVIEW OF CHANGES TO SOUTHBOROUGH TOWN BY-LAWS

February 17, 2026

The Attorney General has *partially approved* Article 9, except for the text in section 174-2.B that prohibits a mobile home from being an Accessory Dwelling Unit because this provision conflicts with state regulations. The Attorney General's decision is attached to this notice.

This change to the zoning bylaws is effective as of October 27, 2025.

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of the posting of this notice.

Copies of the by-laws may be obtained and examined in the Town Clerk's office.

Pursuant to G.L. c. 40, § 32 this notice has been posted in the following places:

Town website
Mauro's Restaurant
Town House bulletin board
Southborough Library
Southborough Transfer Station

James F. Hegarty
Southborough Town Clerk

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February 15, 2026

James F. Hegarty, Town Clerk
Town of Southborough
17 Common Street
Southborough, MA 01772

Re: Southborough Special Town Meeting of October 27, 2025 – Case # 12107
Warrant Articles # 1 and 9 (Zoning)[1]

Dear Mr. Hegarty:

Article 9 - Under Article 9, the Town amended its zoning by-laws regarding Accessory Dwelling Units ("ADUs") to make specific changes to allow Protected Use ADUs as of right in the Residence A district in compliance 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").[2] In addition, under Article 9, the Town made a number of amendments related to Accessory Dwelling Units ("ADU"), including amending several sections of the zoning by-laws to allow ADUs greater than 900 square feet by special permit and adding a new definition for the term "Accessory Dwelling Units."

We partially approve the amendments adopted under Article 9 because the approved text does not conflict with state law. However, we disapprove and delete[3] a portion of Section 174-2.B's definition of Accessory Dwelling Unit that prohibits an ADU in a mobile home, because it

[1] In a decision issued February 13, 2026, we approved Article 1.

[2] The Town did not amend Sections 174-8.3, "Residence B (RB) District;" 174-8.4, "Business Village ("BV") District;" 174-8.5, "Highway Business ("BH") District;" 174-8.7, "Industrial ("ID") District;" 174-8.8, "Research, Scientific and Professional ("SP") District;" and 174-8.12, "Downtown ("D") District," to specifically include ADUs among the permitted uses in these districts. However, these districts allow all uses permitted in the Residence A District ("RA") or in a Residential District and ADUs are allowed by right in the RA District. Therefore, ADUs are also allowed by right in these identified districts. However, to avoid any confusion, the Town may wish to consult with Town Counsel to determine whether these Sections should be amended at a future Town Meeting to specifically provide that ADUs are allowed by right in these districts.

[3] The use of the term "disapprove" collectively means "disapprove and delete" such that any text disapproved by the Attorney General (shown in bold and underline) by virtue of such disapproval is also deleted from the Town's zoning by-law and does not take effect under G.L. c. 40 § 32.

conflicts with G.L. c. 40A, § 3 and the Regulations. 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).

In this decision we summarize the by-law amendments adopted under Article 9; discuss the Attorney General's standard of review of town by-laws and the recent statutory and regulatory changes that allow Protected Use ADUs as of right;[4] and then explain why, based on our standard of review, we partially approve the amendments adopted under Article 9. In addition, we offer comments for the Town's consideration regarding certain approved provisions, as well as existing text, to ensure that they are applied consistent with state law.

I. Summary of Article 9

Under Article 9, the Town made a number of specific amendments regarding ADUs. The first change amends Section 174-2.B to add a new definition for the term "Accessory Dwelling Unit." The next change amends Section 174-8.2, "Residence A District," Subsection A, to add a new paragraph 11 that allows by right an ADU "that is not larger in gross floor area than ½ the Gross Floor Area of the Principal Dwelling or 900 Sq. ft., whichever is smaller." The next series of changes amend a number of zoning sections to allow ADUs "whose gross floor area is greater than 900 sq. ft" by special permit.[5] In addition, under Article 9, the Town amended Section 174-9, "Special permit requirements," Subsection B, "Accessory Dwelling Units," to impose new special permit requirements for ADUs "exceeding state law dimensional standards." The last change amends Section 174-13.8, "Adaptive reuse of historic buildings," Subsection B, "Uses Permitted," to allow ADUs subject to site plan review.

II. Attorney General's Standard of Review of Zoning By-laws

Our review of Article 9 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).

[4] 760 CMR 71.02 defines the term "Protected Use ADU" as follows: "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, provided that only one ADU on a lot may qualify as a Protected Use ADU. An ADU that is nonconforming to Zoning shall still qualify as a Protected Use ADU if it otherwise meets this definition."

[5] Specifically, the Town amended the following provisions to allow ADUs greater than 900 square feet by special permit: (1) Section 174-8.2 (B)(1), "Residence A District;" (2) Section 174-8.4 (D)(1), "Business Village District;" (3) Highway Business Distrct;" (4) Section 174-8.7 (C)(2), "Industrial Distrct;" (5) Section 174-8.8 (B)(1), "Research, Scientific and Professional District;" and (6) Section 174-8.12 (D)(1), "Downtown District."

Article 9, 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.

III. Summary of Legislative Changes Regarding ADUs

On August 6, 2024, Governor Healey signed into law the "Affordable Homes Act," Chapter 150 of the Acts of 2024 (the "Act"). The Act includes amendments to the State's Zoning Act, G.L. c. 40A, to establish ADUs as a protected use subject to limited local regulation including amending G.L. c. 40A, § 1A to add a new definition for the term "Accessory dwelling unit" and amending G.L. c. 40A, § 3 (regarding subjects that enjoy protections from local zoning requirements, referred to as the "Dover Amendment"), to add a new paragraph that restricts a zoning by-law from prohibiting, unreasonably regulating or requiring a special permit or other discretionary zoning approval for the use of land or structures for a single ADU. The amendment to G.L. c. 40A, § 3, to include ADUs means that ADUs are now entitled to statutory protections from local zoning requirements.

On January 31, 2025, the EOHLC promulgated regulations for the implementation of the legislative changes regarding ADUs. See 760 CMR 71.00, "Protected Use Accessory Dwelling Units."[6] The Regulations define key terms and prohibit certain "Use and Occupancy Restrictions" defined in Section 71.02 as follows:

> Use and Occupancy Restrictions. A Zoning restriction, Municipal regulation, covenant, agreement, or a condition in a deed, zoning approval or other requirement imposed by the Municipality that limits the current, or future, use or occupancy of a Protected Use ADU to individuals or households based upon the characteristics of, or relations between, the

[6] See the following resources for additional guidance on regulating ADUs: (1) EOHLC's ADU FAQ section (https://www.mass.gov/info-details/accessory-dwelling-unit-adu-faqs\) (2) Massachusetts Department of Environmental Protection's Guidance on Title 5 requirements for ADUs (https://www.mass.gov/doc/guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download); and https://www.mass.gov/doc/frequently-asked-questions-faq-related-to-guidance-on-title-5-310-cmr-15000-compliance-for-accessory-dwelling-units/download; and (3) MassGIS Addressing Guidance regarding address assignments for ADUs (https://www.mass.gov/info-details/massgis-addressing-guidance-for-accessory-dwelling-units-adus).

occupant, such as but not limited to, income, age, familial relationship, enrollment in an educational institution, or that limits the number of occupants beyond what is required by applicable state code.

While a municipality may reasonably regulate a Protected Use ADU in the manner authorized by 760 CMR 71.00, such regulation cannot prohibit, require a special permit or other discretionary zoning approval for, or impose a "Prohibited Regulation"[7] or an "Unreasonable Regulation" on, a Protected Use ADU. See 760 CMR 71.03, "Regulation of Protected Use ADUs in Single-Family Residential Zoning Districts."[8] Moreover, Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict Protected Use ADUs, certain restrictions or regulations "shall be unreasonable" in certain circumstances.[9] In addition, while municipalities may impose dimensional requirements related to setbacks, lot coverage, open space, bulk and height and number of stories (but not minimum lot size), such requirements may not be "more restrictive than is required for the Principal Dwelling, or a Single-Family Residential Dwelling or accessory structure in the Zoning District in which the Protected Use ADU is located, whichever results in more permissive regulation…" 760 CMR 71.03 (3)(b)(2). Towns may also impose site plan review of a Protected Use ADU, but the Regulations requires the site plan review to be clear and objective and prohibits the site plan review authority from imposing terms or conditions that "are unreasonable or inconsistent with an as-of-right process as defined in M.G.L. c. 40A, § 1A." 760 CMR 71.03 (3)(b)(5).

We incorporate by reference our more extensive comments regarding these recent statutory and regulatory changes related to ADUs in our decision to the Town of East Bridgewater, issued

[7] 760 CMR 71.03 prohibits a municipality from subjecting the use of land or structures on a lot for a Protected Use ADU to any of the following: (1) owner-occupancy requirements; (2) minimum parking requirements as provided in Section 71.03; (3) use and occupancy restrictions; (4) unit caps and density limitations; or (5) a requirement that the Protected Use ADU be attached or detached to the Principal Dwelling.

[8] For example, a design standard that is not applied to a Single-Family Residential Dwelling in the Single-Family Residential Zoning District in which the Protected Use ADU is located or is so "restrictive, excessively, burdensome, or arbitrary that it prohibits, renders infeasible, or unreasonably increases the costs of the use or construction of a Protected Use ADU" would be deemed an unreasonable regulation. See 760 CMR 71.03 (3)(b).

[9] Section 71.03 (3)(a) provides that while a town may reasonably regulate and restrict Protected Use ADUs, a restriction or regulation imposed "shall be unreasonable" if the regulation or restriction, when applicable to a Protected Use ADU: (1) does not serve a legitimate Municipal interest sought to be achieved by local Zoning; (2) serves a legitimate Municipal interest sought to be achieved by local Zoning but its application to a Protected Use ADU does not rationally relate to the legitimate Municipal interest; or (3) serves a legitimate Municipal interest sought to be achieved by local Zoning and its application to a Protected Use ADU rationally relates to the interest, but compliance with the regulation or restriction will: (a) result in complete nullification of the use or development of a Protected Use ADU; (b) impose excessive costs on the use or development of a Protected Use ADU without significantly advancing the Municipality's legitimate interest; or (c) substantially diminish or interfere with the use or development of a Protected Use ADU without appreciably advancing the Municipality's legitimate interest.

on April 14, 2025 in Case # 11579.[10] Against the backdrop of these statutory and regulatory parameters regarding Protected Use ADUs, we review the zoning amendments adopted under Article 9.

IV. Text Disapproved from Article 9 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

Under Article 9, the Town amended Section 174-2.B, "Definitions," to add a new definition for the term "Accessory Dwelling Unit," that provides as follows (with emphasis added):

> A self-contained housing unit, inclusive of sleeping, cooking, and sanitary facilities on the same lot as a Principal Dwelling. An Accessory Dwelling unit shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the Principal Dwelling sufficient to meet the requirements of the state Building Code for safe egress. Accessory dwelling units shall not be located in a travel trailer[11] **or mobile home**.

We disapprove the portion of Section 174-2.B (shown above in bold and underline) that prohibits mobile homes from being an ADU because this provision conflicts with the Regulations, as explained below.

The Town's existing by-laws, Section 174-B.2, defines a "Mobile Home" as follows:

> A structure, transportable in one or more units, built on a permanent chassis, equipped with wheels for towing to its destination, provided with internal heating, plumbing and electrical systems and designed to be used as a dwelling when connected to the required utilities, with or without a foundation.

Because, as defined, the term "mobile home" (that is now referred to as a manufactured home[12]), may also include a modular dwelling unit under the Regulations, we conclude that the

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[10] This decision, as well as other recent ADU decisions, can be found on the Municipal Law Unit's website at www.mass.gov/ago/munilaw (decision look up link) and then search by the topic pull down menu for the topic "ADUS."

[11] The Town's existing by-laws, Section 174-2.B, do not define the term "travel trailer" but do define the term "trailer" as follows: "A wheeled vehicle designed to be towed and having no own motive power, including, without limitations, camping or travel trailers equipped to be used for business, for transportation of goods or for living or sleeping purposes, but not as a dwelling in a permanent location."

[12] "Mobile homes" are now generally referred to as "manufactured home." See The Attorney General's Guide to Manufactured Housing Community Law, pg. 6 at https://www.mass.gov/doc/attorney-generals-guide-to-manufactured-housing-may-2024/download (stating "Many manufactured housing residents have found that manufactured homes (sometimes called "mobile homes") offer the benefits of traditional site-built housing at a much lower cost.") The term "manufactured home" is defined in G.L. c. 140, § 32Q as follows: "As used in sections thirty-two A to thirty-two P, inclusive, the words "manufactured home" shall mean a structure, built in conformance to the National Manufactured Home Construction and Safety Standards which is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or

text shown above in bold and underline conflicts with the Regulations that allows modular dwelling units to be used as ADUs. Specifically, although the Regulations neither define or refer to a "mobile homes," or "manufactured homes," the Regulations, 760 CMR 71.02 define and refer to a "Modular Dwelling Unit," as follows:

> A pre-designed Dwelling Unit assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such Dwelling Unit is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a room, designed or used as a Dwelling Unit, transportable in one or more sections and affixed to a foundation an connected to external utilities.

Further, with regards to a "Modular Dwelling Unit," the Regulations 760 CMR 71.03 (3)(b)(7) provide that "[a]ny requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as a Protected Use ADU that is more restrictive than the Building Code" is an unreasonable regulation. As defined under the Regulations, Modular Dwelling Units may be transported in one or more sections, must be affixed to a foundation that meets the building code and connected to external utilities at the site. A Modular Dwelling Unit could therefore include a manufactured home, and thus could include a "mobile home" particularly given the Town's definition of "mobile home.

Based on the Regulations' definition of "Modular Dwelling Unit," many structures, including modular homes, manufactured homes, mobile homes, and other prefabricated homes meet the Regulations' definition of "Modular Dwelling Unit."[13] Given the Town's definition of the term "mobile home" we conclude that Section 174-2.B's prohibition on a mobile home being used as an ADU, conflicts with the Regulations' prohibition against any requirement that prohibits, regulates or restricts a Modular Dwelling Unit from being used as an ADU, and we therefore disapprove the portion of Section 174-2.B shown above in bold and underline.[14]

V. Additional Comments on Certain Approved Provisions

We approve the remaining specific ADU related amendments adopted under Article 9 and offer comments for the Town's consideration regarding the special permit requirement for an ADU greater than 900 square feet.

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more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein."

[13] As to manufactured homes, the EOHLC's draft regulations defined Modular Dwelling Unit to specifically exclude manufactured homes defined under G.L. c. 140, § 32Q; however, that exemption was not included in EOHLC's Final Regulations. The redline version of the draft regulations compared to the final regulations is available on the EOHLC website here: https://www.mass.gov/doc/adu-final-regulations-redlines/download.

[14] See also EOHLC's Frequently Asked Questions discussing whether an ADU be a modular home, manufactured housing, or other prefabricated home. https://www.mass.gov/info-details/accessory-dwelling-unit-adu-faqs

As amended under Article 9, the Town allows by special permit an ADU "whose gross floor area is greater than 900 sq. ft." in several of its zoning districts including the RA; BV; HB; I; SP; and D Districts. Under Article 9, the Town also amended Section 174-9, "Special Permit requirements," Subsection B, to impose special permit requirements on ADUS "exceeding state law dimensional standards." Section 174-9 (B) provides in relevant part that the ADU "shall comply with the following conditions and requirements..." including allowing an ADU greater than 900 square feet when "[t]here is no other accessory dwelling unit on the lot on which the accessory dwelling unit is proposed."

While we approve these amendments authorizing an ADU by special permit in excess of 900 square feet, it is not clear whether the larger ADU authorized by special permit constitutes the Protected Use ADU as authorized under G.L. c. 40A, § 3 or relates to a second ADU (in addition to the as-of-right ADU allowed under G.L. c. 40A, § 3.).[15] General Laws Chapter 40A, § 3A allows one ADU to be built as of right up to 900 square feet or ½ the gross floor area of the principal dwelling, whichever is smaller. In circumstances where a Town chooses to allow the Protected Use ADU to be built larger, it would likely be interpreted that the larger ADU constitutes the G.L. c. 40A, § 3 Protected Use ADU because Towns are authorized under 760 CMR 71.03 (7) to "adopt [ ] more permissive Zoning…than would be allowed under 760 CMR 71.03." However, here we note that Section 174-9 (B)(2) allows only one ADU on a lot, thus it is not clear whether the Town intends the larger ADU allowed by special permit as a substitute for the as-of-right ADU allowed under G.L. c. 40A, § 3 and the Regulations, or intends a second ADU in addition to the Protected Use ADU.

For this reason, we encourage the Town to consult with Town Counsel to ensure the proper application of any special permit requirement to an ADU that is larger than 900 square feet. In addition, to the extent that a larger ADU constructed by special permit constitutes the Protected Use ADU authorized by G.L. c. 40A, § 3, the Town must ensure that it does not impose any "Prohibited Regulations" or "Unreasonable Regulations," as part of the special permit process. See 760 CMR 71.03. Finally, the decision to seek a larger ADU by special permit must be a voluntary decision by the applicant and the applicant must be free to withdraw from the special permit process at any time and construct a Protected Use ADU as of right as authorized by G.L. c. 40A, § 3 if they so choose. The Town should consult with Town Counsel and EOHLC with any questions on these issues.

VI. Conclusion

We partially approve Article 9, except for the text in Section 174-2.B that prohibits a mobile home from being an ADU, that we disapprove as shown in Section IV above in bold and underline. As to the remaining approved provisions, the Town should consult closely with Town Counsel when applying these provisions to ensure they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the provisions adopted under Article 9, or any of the Town's existing zoning provisions not amended under Article 9 (for example dimensional or parking requirements)

[15] See 760 CMR 71.03 (5) ("if a Municipality chooses to allow additional ADUs on the same Lot as a Protected Use ADU in a Single-family Residential Zoning District, Zoning shall require a Special Permit for the use of land or structures for the additional ADUs.")

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, as follows:

> Municipalities shall keep a record of each ADU permit applied for, approved, denied, and issued a certificate of occupancy, with information about the address, square footage, type (attached, detached, or internal), estimated value of construction, and whether the unit required any variances or a Special Permit. Municipalities shall make this record available to EOHLC upon request.

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,

ANDREA JOY CAMPBELL
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cc: Town Counsels Jason Talerman and Elizabeth Lydon