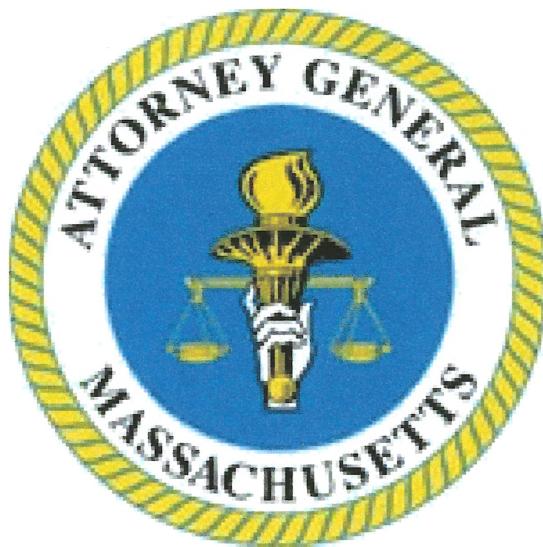


GUIDEBOOK FOR ADOPTING ZONING BY-LAWS



TOM REILLY
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS

October 2001

INTRODUCTION

The Attorney General's Office is required by statute to review many legislative actions taken by over 300 towns throughout the Commonwealth, consisting mostly of general, zoning, and historic by-laws. Under G.L. c. 40, § 32, the Attorney General exercises a limited power to disapprove local legislative action if found to be inconsistent with the laws and the Constitution of the Commonwealth.

Zoning by-laws strike a lawful balance between a property owner's right to use and enjoy private property and a municipality's exercise of police power to regulate uses of land for the common good.

While more than 95% of the 3000+- general and zoning by-laws submitted by towns each year are approved, the Attorney General has no choice but to disapprove some zoning by-laws each year. The reasons for this disapproval usually relate to procedural errors that occur during the course of a by-law's adoption.

This guidebook is divided into four parts and highlights the most common procedural errors that occur during the process of adopting a zoning by-law. The first part deals with problems that occur in connection with the Planning Board's public hearing. The second part covers the most common problems that occur after the Planning Board's public hearing. The third part is an appendix of the statutes governing zoning by-law adoptions. Lastly, we have included a section of forms that we think would be helpful.

ADOPTING ZONING BY-LAWS

Table of Contents

Part One: The Planning Board Hearing

Wording of the Legal Notice.....	1
Posting the Legal Notice at Town Hall.....	2
Advertising the Legal Notice in the Newspaper.....	3
Advertising the Legal Notice for Two Successive Weeks.....	4
Mailing the Notice of the Planning Board Hearing.....	5

Part Two: Other Problem Areas

Posting the Warrant.....	6
The Six-Month Rule.....	7
Taking a Vote Count.....	8
Planning Board Report.....	9

Part Three: Appendix

Warrant Contents and Issuance	
G.L. c. 39, § 10.....	10
Procedure for the Validation of By-Laws	
G.L. c. 40, § 32.....	11
Adoption and Amendment of Zoning Ordinances and By-Laws	
G.L. c. 40A, § 5.....	13

Part Four: Forms

Notice of Planning Board Hearing (Blank).....	16
Notice of Planning Board Hearing (Filled Out).....	17

PART ONE

THE PLANNING BOARD HEARING

WORDING OF THE LEGAL NOTICE

The subject matter of the proposed zoning changes must be described in a manner which is “sufficient for identification.” A notice that refers to a “variety of zoning amendments” or “changes to the zoning by-law” is not adequate. It is necessary to provide a description which gives the public and property owners enough information to make an informed decision on whether to attend the Planning Board hearing. Be sure to make reference to where and when a copy of the text/map may be inspected--usually the town clerk’s office.

----EXAMPLE----

TOWN OF OZ
PUBLIC HEARING NOTICE
OZ PLANNING BOARD

The Oz Planning Board will hold a public hearing on Friday, April 27, 2001 at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA, to consider amending the Oz Zoning By-law, Section 13: Flying Monkeys Overlay District, to see if the town will restrict the hours of monkey business to “7 AM to 11 PM” and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected during normal business hours.

John B. Goodman, Chairman
Oz Planning Board

POSTING THE LEGAL NOTICE AT TOWN HALL

Notice of the Planning Board hearing must be posted in a conspicuous place in the Town Hall for a period of not less than fourteen (**14**) days before the day of the hearing.

----EXAMPLE----

**TOWN OF OZ
PUBLIC HEARING NOTICE
OZ PLANNING BOARD**

The Oz Planning Board will hold a public hearing on Friday, April 27, 2001 at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA, to consider amending the Oz Zoning By-laws, Section 13: Flying Monkeys Overlay District, to see if the town will restrict the hours of monkey business to "7 AM to 11 PM" and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected there during normal business hours.

John B. Goodman, Chairman
Oz Planning Board

Posted: April 13, 2001

ADVERTISING THE LEGAL NOTICE IN THE NEWSPAPER

Notice of the hearing must also be published in a newspaper of general circulation in the town once in each of two successive weeks. The first publication must be *“not less than fourteen (14) days before the day of the hearing.”* A common error is to include both the date of publication and the date of the hearing when counting the fourteen (14) days. This results in only thirteen (13) days notice. For example, if the hearing is scheduled for the 29th day of the month, the first notice must be published no later than the 15th day of the month.

THE OZ TIMES, April 13, 2001

TOWN OF OZ
PUBLIC HEARING NOTICE
OZ PLANNING BOARD

The Oz Planning Board will hold a public hearing on Friday, April 27, 2001 at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA, to consider amending the Oz Zoning By-law, Section 13: Flying Monkeys Overlay District, to see if the town will restrict the hours of monkey business to “7 AM to 11 PM” and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected during normal business hours.

John B. Goodman, Chairman
Oz Planning Board

4/13, 4/20

THE OZ TIMES, April 20, 2001

TOWN OF OZ
PUBLIC HEARING NOTICE
OZ PLANNING BOARD

The Oz Planning Board will hold a public hearing on Friday, April 27, 2001 at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA, to consider amending the Oz Zoning By-law, Section 13: Flying Monkeys Overlay District, to see if the town will restrict the hours of monkey business to “7AM to 11 PM” and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected during normal business hours.

John B. Goodman, Chairman
Oz Planning Board

4/13, 4/20

ADVERTISING THE LEGAL NOTICE FOR TWO SUCCESSIVE WEEKS

The legal notice must be published once in each of two successive weeks. For example, if you advertise Saturday of the second week and Monday of the fourth week of the month, we will be forced to disapprove the by-law even though you have advertised twice.

----EXAMPLE OF DEFECTIVE NOTICE----

THE OZ TIMES, April 5, 2001

TOWN OF OZ PUBLIC HEARING NOTICE OZ PLANNING BOARD

The Oz Planning Board will hold a public hearing on Friday, April 27, 2001 at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA, to consider amending the Oz Zoning By-law, Section 13: Flying Monkeys District, to see if the town will restrict the hours of monkey business to "7 AM to 11 PM" and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected during normal business hours.

John B. Goodman, Chairman
Oz Planning Board

⑧ 4/5, 4/19

THE OZ TIMES, April 19, 2001

TOWN OF OZ PUBLIC HEARING NOTICE OZ PLANNING BOARD

The Oz Planning Board will hold a public hearing on Friday, April 27, 2001 at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA to consider amending the Oz Zoning By-law, Section 13: Flying Monkeys District, to see if the town will restrict the hours of monkey business to 7 AM to 11 PM" and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected during normal business hours.

John B. Goodman, Chairman
Oz Planning Board

⑧ 4/5, 4/19

MAILING THE NOTICE OF THE PLANNING BOARD HEARING

Notice of the Planning Board hearing must be sent to:

- Planning Boards of all abutting cities and towns;
- Your Regional Planning Agency (if any);
- Department of Housing and Community Development
One Congress Street, 10th Floor
Boston, MA 02114
- Nonresident property owners who have filed an annual request for such notice

----EXAMPLE----

I certify that the public hearing notice for the proposed amendment to the Oz zoning by-law was sent by mail on April 20, 2001, postage prepaid to: a.) The Planning Boards of North Oz, South Oz, West Oz, and East Oz; b.) The Oz Area Regional Planning Collaboration; c.) DHCD; and d.) All non-resident property owners who have filed an annual request for notification with the Town Clerk.

Ms. Munchkin
Town Planner

PART TWO

OTHER PROBLEM AREAS

POSTING THE WARRANT

Warrants for annual town meetings must be posted at least seven (7) days before the town meeting. Warrants for special town meetings must be posted at least fourteen (14) days before the town meeting. A common error is to include both the date of posting and the date of town meeting when counting the fourteen (14) days. This results in only thirteen (13) days notice.

----EXAMPLE----

Constable's Return
Oz, MA 01234

Thursday, October 18, 2001--Annual Town Meeting

As required by the foregoing town meeting warrant,
I have notified and warned the inhabitants of the Town
of Oz, to meet at the time, place & for the purposes stated
by posting the warrant on the bulletin board in the town
hall at least seven (7) days before town meeting.

Posted : October 11, 2001

Cowardly Lion, Constable

Constable's Return
Oz, MA 01234

Thursday, October 18, 2001--Special Town Meeting

As required by the foregoing town meeting warrant,
I have notified and warned the inhabitants of the Town
of Oz, to meet at the time, place & for the purposes stated
by posting the warrant on the bulletin board in the town
hall at least fourteen (14) days before town meeting.

Posted : October 4, 2001

Cowardly Lion, Constable

THE SIX-MONTH RULE

Not more than six (6) months may pass between the date of the Planning Board hearing and the town meeting vote on a zoning change. If more than six (6) months have passed, the Planning Board must hold a new public hearing before town meeting may lawfully vote on the proposal.

----EXAMPLE OF DEFECT----

TOWN OF OZ
PUBLIC HEARING NOTICE
OZ PLANNING BOARD

The Oz Planning Board will hold a public hearing on *Tuesday, March 27, 2001* at 7:00 PM in the Oz Memorial Community Building, 1 Yellow Brick Road, Oz, MA, to consider amending the Oz Zoning By-law, Section 13: Flying Monkeys Overlay District, to see if the town will restrict the hours of monkey business to "7 AM to 11 PM" and to prohibit monkey flights over medical facilities. The text of the proposed amendment is on file with the Town Clerk and may be inspected during normal business hours.

Constable's Return
Oz, MA 01234

Thursday, October 18, 2001--Annual Town Meeting

As required by the foregoing town meeting warrant,
I have notified and warned the inhabitants of the Town
of Oz, to meet at the time, place & for the purposes stated
by posting the warrant on the bulletin board in the town hall
at least seven (7) days before town meeting.

Posted : October 11, 2001

Cowardly Lion, Constable

More than six months has passed since the planning board hearing. This proposal will have to be heard again at a new public hearing before it may be voted upon at town meeting.

TAKING THE VOTE COUNT

Zoning articles require at least a two-thirds vote for passage. The required two-thirds vote must be evidenced by certification of the actual vote count unless the vote is unanimous. However, if under the provisions of General Laws Chapter 39, Sec. 15, the town has decided by by-law, or by vote at this town meeting, not to take a count but to authorize the Moderator to declare the vote, then the clerk may certify that the Moderator declared the 2/3 vote.

----EXAMPLE OF BY-LAW----

Article 3

To see if the Town of Oz will vote to amend Article 3 of the General By-laws by adding the following new paragraph:

(b) Whenever a two-thirds vote is required by statute, such vote may be declared as such by the Moderator without a count and be recorded as such by the clerk upon such declaration; provided, however, that seven (7) or more members of a town meeting may challenge such declaration, at which time a count shall be held; and further, pursuant to Chapter 448 of the Acts of 1996, the governing procedure for this Town Meeting shall be that, whenever a two-thirds vote is required by statute, such vote may be declared as such by the Moderator without a count and be recorded as such by the clerk upon such declaration; provided, however, that seven (7) or more members of a town meeting may challenge such declaration, at which time a count shall be held.

Motion is adopted unanimously.

A True Copy Attest:

Glenda Goodwitch, Oz Town Clerk

----EXAMPLE OF VOTE AT THIS TOWN MEETING----

Annual Town Meeting of October 18, 2001

VOTED to, pursuant to MGL c. 39, § 15, that the Moderator be authorized for the duration of this annual town meeting to take all votes requiring a two-thirds majority in the same manner in which he conducts the taking of a vote when a majority vote is required.

A True Copy Attest:

Glenda Goodwitch, Oz Town Clerk

PLANNING BOARD REPORT

The Planning Board must present a written or oral report with recommendations to the town meeting. If twenty-one (21) days have passed between the Planning Board hearing and the town meeting vote, then the town meeting may act on the article even in the absence of a report from the Planning Board.

---EXAMPLE---

TOWN OF OZ PLANNING BOARD

April 30, 2001

ARTICLE: FLYING MONKEYS OVERLAY DISTRICT

In accordance with M.G.L. c. 40A, § 5, the Planning Board conducted a public hearing on April 27, 2001 to review Article 1.

The Planning Board recommends approval of Article 1.

The Oz Planning Board

PART THREE

APPENDIX

GENERAL LAWS OF MASSACHUSETTS

Chapter 39: Section 10. Warrant; issuance; contents.

Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given at least seven days before the annual meeting or an annual or special election and at least fourteen days before any special town meeting. The warrant shall be directed to the constables or to some other persons, who shall forthwith give notice of such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town, or in a manner approved by the attorney general. The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat. The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein. Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. The selectmen shall call a special town meeting upon request in writing, of two hundred registered voters or of twenty per cent of the total number of registered voters of the town, whichever number is the lesser; such meeting to be held not later than forty-five days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition. No action shall be valid unless the subject matter thereof is contained in the warrant. Two or more distinct town meetings for distinct purposes may be called by the same warrant.

The written requests of registered voters for the insertion of subjects in town meeting warrants shall not be valid unless the required number of registered voters not only sign their names but also state their residence, with street and number, if any. The selectmen shall submit such written requests to the board of registrars of voters or the board of election commissioners who shall check and forthwith certify the number of signatures so checked which are names of voters in the town, and only names so checked and certified shall be counted. A greater number of names than are required in each case need not be certified.

GENERAL LAWS OF MASSACHUSETTS

Chapter 40: Section 32. Validation of by-laws; procedure.

Section 32. Except to the extent that a zoning by-law may take effect as provided in section five of chapter forty A, before a by-law takes effect it shall be approved by the attorney general or ninety days shall have elapsed without action by the attorney general after the clerk of the town in which a by-law has been adopted has submitted to the attorney general a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with. Such request and proof shall be submitted by the town clerk within thirty days after final adjournment of the town meeting at which such by-law was adopted. If the town clerk fails to so submit such request and proof within such thirty days, the selectmen, within fifteen days thereafter, may submit a certified copy of such by-law with a request for its approval, a statement explaining the proposed by-law, including maps and plans, if necessary, and adequate proof that all procedural requirements for the adoption of such by-law has been complied with. If the attorney general does not, within said ninety days, request of such town clerk in writing further proof of such compliance stating specifically wherein such proof is inadequate, it shall be presumed that the proof submitted was adequate. If the attorney general disapproved a by-law he shall give notice to the town clerk of the town in which the by-law was adopted of his disapproval, with his reasons therefor. If a by-law of a town takes effect by reason of the failure of the attorney general to seasonably act upon a request for its approval, the clerk of such town shall enter in his records a statement that the by-law has become effective by reason of such failure of the attorney general to act. Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town. The publication of a zoning by-law shall include a statement that claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of such posting or of the second publication and a statement indicating where copies of such by-law may be examined and obtained. The requirements of publishing in a town bulletin or pamphlet and posting, or publishing in one or more newspapers, as above, may be dispensed with if notice of the by-laws is given by delivering a copy thereof at every occupied dwelling or apartment in the town, and affidavits of the persons delivering the said copies, filed with the town clerk, shall be conclusive evidence of proper notice hereunder. This section shall not apply to cities.

Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph.

If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon

the running of the 90-day period provided for the attorney general's review pursuant to this section shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

GENERAL LAWS OF MASSACHUSETTS

Chapter 40A: Section 5. Adoption or change of zoning ordinances or by-laws; procedure.

Section 5. Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting cities and towns. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or

regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or

amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

PART FOUR
FORMS

**Notice of Planning Board Hearing
Relative to
Proposed Zoning By-Law Amendments**

Pursuant to G.L. c. 40A, § 5

The Planning Board of the Town of [] will hold a public hearing to discuss proposed amendments to the town's zoning by-laws. The public hearing will be held as follows:

Place: []
Date: []
Time: []

The subject matter of the proposed amendments is/are as indicated below. The complete text and maps relative to the proposed amendments are available for inspection during regular business hours at the following place(s):

[]
[]

[Note: the above information is strictly required by G.L. c. 40A, § 5.]

<i>Article Number</i>	<i>Subject Matter of Proposed Amendments Sufficient for Identification</i>
-----	-----

[Note: This notice (1) must be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication not less than 14 days before the day of the public hearing, and (2) must be posted in a conspicuous place in the town hall for a period of not less than 14 days before the day of the public hearing.]

Notice of Planning Board Hearing

Relative to

Proposed Zoning By-Law Amendments

Pursuant to G.L. c. 40A, § 5

The Planning Board of the Town of [OZ] will hold a public hearing to discuss proposed amendments to the town's zoning by-laws. The public hearing will be held as follows:

Place: [OZ Memorial Building - 1 Yellow Brick Road]
Date: [April 27, 2001]
Time: [7 P.M.]

The subject matter of the proposed amendments is/are as indicated below. The complete text and maps relative to the proposed amendments are available for inspection during regular business hours at the following place(s): . . .

[Town Clerk's Office (8:30 A.M. to 4 P.M.)]
[Planning Board Office (9 A.M. to 5 P.M.)]

[Note: the above information is strictly required by G.L. c. 40A, § 5.]

<i>Article Number</i>	<i>Subject Matter of Proposed Amendments Sufficient for Identification</i>
1	FLYING MONKEYS OVERLAY DISTRICT - To see if the town will restrict the hours of monkey business to "7 AM to 11 PM" and prohibit monkey flights over medical facilities.

[Note: This notice (1) must be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication not less than 14 days before the day of the public hearing, and (2) must be posted in a conspicuous place in the town hall for a period of not less than 14 days before the day of the public hearing.]

The General Laws of Massachusetts

Search the Laws

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

Go To:
[Next Section](#)
[Previous Section](#)
[Chapter Table of Contents](#)
[MGL Search Page](#)
[General Court Home](#)
[Mass.gov](#)

CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS

ORDINANCES, BY-LAWS AND REGULATIONS

Chapter 40: Section 32. Validation of by-laws; procedure

Section 32. Except to the extent that a zoning by-law may take effect as provided in section five of chapter forty A, before a by-law takes effect it shall be approved by the attorney general or ninety days shall have elapsed without action by the attorney general after the clerk of the town in which a by-law has been adopted has submitted to the attorney general a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with. Such request and proof shall be submitted by the town clerk within thirty days after final adjournment of the town meeting at which such by-law was adopted. If the town clerk fails to so submit such request and proof within such thirty days, the selectmen, within fifteen days thereafter, may submit a certified copy of such by-law with a request for its approval, a statement explaining the proposed by-law, including maps and plans, if necessary, and adequate proof that all procedural requirements for the adoption of such by-law has been complied with. If the attorney general does not, within said ninety days, request of such town clerk in writing further proof of such compliance stating specifically wherein such proof is inadequate, it shall be presumed that the proof submitted was adequate. If the attorney general disapproves a by-law he shall give notice to the town clerk of the town in which the by-law was adopted of his disapproval, with his reasons therefor. If a by-law of a town takes effect by reason of the failure of the attorney general to seasonably act upon a request for its approval, the clerk of such town shall enter in his records a statement that the by-law has become effective by reason of such failure of the attorney general to act. Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town. The publication of a zoning by-law shall include a statement that claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of such posting or of the second publication and a statement indicating where copies of such by-law may be examined and obtained. The requirements of publishing in a town bulletin or pamphlet and posting, or publishing in one or more newspapers, as above, may be dispensed with if notice of the by-laws is given by delivering a copy thereof at every occupied dwelling or apartment in the town, and affidavits of the persons delivering the said copies, filed with the town clerk, shall be conclusive evidence of proper notice hereunder. This section shall not apply to cities.

Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is filed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon the running of the 90-day period provided for the attorney general's review pursuant to this section

shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise

judicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

