



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

December 1, 2025

Julie S. Smith, Town Clerk
Town of Chatham
549 Main Street
Chatham, MA 02633

Re: Chatham Annual Town Meeting of May 10, 2025 – Case # 11875
Warrant Articles # 51 and 53 (Zoning)
Warrant Articles # 37, 38, 58, and 59 (General)

Dear Ms. Smith:

Article 59 – Under Article 59, a citizen petition article, the Town voted to add to its general by-laws a new by-law prohibiting the landing of certain airplanes larger than Federal Aviation Administration (“FAA”) Airplane Design Groups (“ADG”) I at the Chatham Municipal Airport (“Airport”). As explained in more detail below, we disapprove Article 59 because it is preempted by G.L. c. 90, §§ 35-52, the Massachusetts Aeronautics statutes. 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).^{1, 2}

We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of the by-law amendments. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Id. at 795-96, 798-99.

During our review of these amendments, we received correspondence urging our approval of Article 59 asserting it does not conflict with federal and state law because the Town has authority to adopt by-laws regulating the size of aircraft using the Chatham Airport to address safety concerns. We also received correspondence urging our disapproval of Article 59 asserting that Town Meeting

¹ In a decision issued on August 29, 2025, we approved Articles 37, 38, 51, 53, and 58 and by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended our deadline for a decision on Article 59 for an additional 90-day.

² The Municipal Law Unit has disapproved other by-laws seeking to regulate or prohibit aircraft use because they are preempted by state law. See Decisions to the Towns of Rehoboth (Case # 11975 issued on October 1, 2024) and Essex (Case # 11275 issued on March 11, 2024).

does not have authority to adopt by-laws regulating what size aircraft can use the Airport. We appreciate these letters as they have aided our review of Article 59; however, the issues asserted by the proponents of the by-law do not overcome the preemption issues such that our office may approve Article 59.

I. Summary of Article 59

Under Article 59, the Town voted to add a new general by-law, “Limiting Use at Chatham Airport to Federal Aviation Administration (FAA) Airplane Design Group (ADG) I Aircraft,” that prohibits aircraft larger than ADG I Aircraft from landing at the Chatham Airport as follows:

No real property owned by the Town of Chatham at 240 George Ryder Road, at the site known as the Chatham Municipal Airport, may be used as a landing site for any airplane which is larger than a Federal Aviation Administration Airplane Design Group (ADG) I airplane. No airplane larger than a Federal Aviation Administration Airplane Design Group I airplane may land on or at the real property at Chatham Municipal Airport, except in the case of a declared emergency by the pilot in command.

Article 59, a citizen petition article, passed by a vote of 192 in favor and 166 opposed. Neither the Select Board nor the Finance Committee supported the Article at Town Meeting. The petitioner of the Article explained that over 500 airplanes with a wingspan of greater than 49 feet have used the Airport over the past four years. According to the petitioners, the Airport cannot meet the “physical dimensions” required for larger ADG II airplanes, and specifically, the Airport’s Runway Safety Areas (“RSA”) cannot meet the requirements for larger ADG II airplanes. According to the petitioners, because the Airport does not meet the safety standards required for ADG II use, the houses near the Airport’s runway are in increased danger. The petitioners also allege that the FAA has not addressed this safety concern and therefore the by-law is permissible and necessary. See Explanation of Article 59 provided in the 2025 Annual Town Meeting Warrant. In addition, Town Meeting was provided with legal opinions from Town Counsel and Legal Counsel for the Chatham Airport Commission opining that Article 59 is preempted by both federal and state law.

II. Attorney General’s Standard of Review of General By-laws and General Preemption Principles

Our review of Article 59 is governed by G.L. c. 40, § 32. Pursuant to 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.”) To disapprove a by-law (or any portion thereof), the Attorney General must cite to an inconsistency between the by-law and the state Constitution or laws. Id. at 796. This is because a municipality has no power to adopt a by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

In determining whether a by-law is inconsistent with a state statute, the “question is not whether the Legislature intended to grant authority to municipalities to act...but rather whether the

Legislature intended to deny [a municipality] the right to legislate on the subject [in question].” Town of Wendell, 394 Mass. at 524 (1985). “This intent can be either express or inferred.” St. George Greek Orthodox Cathedral of Western Mass. v. Springfield, 462 Mass. 120, 125-26 (2012). Local action is precluded in three instances: (1) where the “Legislature has made an explicit indication of its intention in this respect”; (2) where “the State legislative purpose can[not] be achieved in the face of a local by-law on the same subject”; and (3) where “legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field.” Town of Wendell, 394 Mass. at 524. “The existence of legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject[.]” Bloom v. Worcester, 363 Mass. 136, 156 (1973); see Town of Wendell, 394 Mass. at 527-28 (“It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.”).

III. Article 59’s Prohibition on the Use of Airplanes Larger than ADG I at the Airport is Preempted by G.L. c. 90, §§ 35-52

General Laws Chapter 90, Sections 35-52 comprehensively regulates aeronautics in the Commonwealth. “Aeronautics,” as defined in G.L. c. 90, § 35, includes aircraft operation and transportation, as well as the operation of airports, restricted landing areas or other air navigation facilities. Under G.L. c. 90, §§ 35-52, the Massachusetts Department of Transportation (“MassDOT”) has “general supervision and control over aeronautics” and “shall foster air commerce and private flying within the Commonwealth.” G.L. c. 90, §§ 39, 40; see also Roma v. Board of Appeals of Rockport, 478 Mass. 580, 598 (2018) (explaining extent of local zoning authority over aeronautics-related land uses).

The Legislature empowered MassDOT with the ability to “make or amend such reasonable general rules and regulations as it deems necessary,” to fulfill its statutory purposes and functions so long as the rules and regulations are consistent with federal law. G.L. c. 90, § 39. MassDOT has promulgated regulations, including regulations that apply to airports, helicopters, and restricting landing areas. See 702 CMR 1-5. In addition, the Legislature has conferred upon towns only a limited ability to regulate aeronautical activity. See, e.g., G.L. c. 90, § 39B (authorizing towns to adopt regulations regarding the use and operation of aircraft on airport or restricted landing areas located within the Town subject to MassDOT approval) and §§ 40A-40I (authorizing towns to adopt by-law regulating approaches to publicly owned airports).

General Laws Chapter 90, Section 39B requires MassDOT review and approval of local by-laws that regulate the *use and operation of aircraft* on an airport located within the Town or restricted landing areas. However, local by-laws that regulate only the use of land and affect only private non-commercial restricted landing areas (PRLAs), do not require MassDOT approval. See Roma, 478 Mass. at 592 n. 9 (although by-laws regulating noncommercial private restricted landing areas are not preempted by G.L. c. 90, the notice and safety requirements for noncommercial private restricted landing areas under G. L. c. 90, § 39B, fourth par., still apply, as does “the continuing authority of the division under the aeronautics code over aircraft landing areas that do not fall within the narrow definition of a noncommercial private restricted landing area.”). A town’s independent

authority to regulate airports is narrow, extending only to private landing areas. See id. at 592 n.9 (“Nothing in this opinion is intended to disturb...the continuing authority of the division...over aircraft landing areas that do not fall within the narrow definition of a noncommercial private restricted landing area.”); Boch v. Tomassian, 23 LCR 175, 178-79 (Mass. Land Ct. 2015) (holding that MassDOT approval is necessary for airports and restricted landing areas other than those remaining private and non-commercial).

Article 59 was adopted as a general by-law and not a zoning by-law and does regulate a “noncommercial private restricted landing area.” Private restricted landing areas are aircraft landing areas “used solely for non-commercial, private use by the owner or lessee.” 702 CMR 2.01. The Chatham Airport, the sole landing area which Article 59 intends to regulate, is a public airport that permits commercial aircraft use. See Federal Aviation Administration, Airport Master Record: Chatham Municipal Airport (CQX) (Oct. 2, 2025), <https://www.airportiq5010.com/5010web/dashboard/general> Cf. Roma, 478 Mass. at 580-81 (addressing a personal heliport as a private restricted landing area). Accordingly, contrary to the arguments raised by the proponents of the Article, Article 59 does not fall within the narrow area of independent municipal aeronautics regulation. See G.L. c. 90, § 39B; Roma, 478 Mass. at 592 n.9.

Moreover, prohibiting certain aircraft from using the Airport “prevents the achievement of a clearly identifiable purpose,” namely, that the responsibility for supervision and control of aeronautics has been conferred upon MassDOT by the Legislature. See Town of Wendall, 394 Mass. at 524. If each town within the Commonwealth is able create its own flight restrictions, it would create a patchwork of potentially inconsistent regulatory and operational requirements that would be difficult, if not impossible, for an aircraft operator to comply with. See St. George Greek Orthodox Cathedral of Western Mass., Inc., 462 Mass. at 130 (invalidating the City’s fire suppression systems ordinance where, “[i]f all municipalities in the Commonwealth were allowed to enact similarly restrictive ordinances and bylaws, a patchwork of building regulations would ensue” and the legislative purpose of uniform statewide building construction regulations would be frustrated). For these reasons we disapprove Article 59.³

³ In addition to being in conflict with state law, Article 59 may also be preempted by federal law, including any Grant Assurances that the Town entered into with the FAA in order to receive federal funds for the Chatham Airport. “The United States Government has exclusive sovereignty of airspace of the United States.” 49 U.S.C. § 40103 (a). “The federal government has preempted the areas of airspace use and management, air traffic control, safety and the regulation of noise at its source.” FAA Airport Compliance Manual, Order 5190.6B, Section 13.2 (a) (1). See also Northwest Airlines v. State of Minnesota, 322 U.S. 292, 303 (1944) (J. Jackson) (“Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and inclusive.”); Burbank v. Lockheed Air Terminal, 411 U.S. 624, 639 (1973) (“The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground...The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.”) In addition, it is outside the scope of our review to determine whether any Grant Assurances the Town entered into with the FAA in order to receive federal funds, authorize the Town by way of a by-law adopted by Town Meeting to prohibit certain aircraft from landing at the Chatham Airport.

IV. Conclusion

We disapprove Article 59 because it conflicts with state law. Given the safety concerns raised by the proponents as the reason for the adoption of Article 59, the Town may wish to discuss with Town Counsel and Legal Counsel for the Chatham Airport Commission⁴ on what ways, if any, the Town can address these concerns.

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
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4406

cc: Town Counsel Jason R. Talerman

⁴ The Chatham Municipal Airport Commission has authority to establish rules for airport safety, commercial activity, and aeronautics operations in observance of federal and state law. See Chatham Airport Commission, Chatham Airport Minimum Standards 1 (Oct. 2023)
<https://www.chatham-ma.gov/DocumentCenter/View/6058/Chatham-Airport-Minimum-Standards-Approved-October-2023-PDF>