



September 30, 2009

Christopher C. Johnson, Esq.
Agawam Law Department
36 Main St.
Agawam, MA 01001

Re: Revocation of Acceptance of Community Preservation Act
Our File No. 2009-872

Dear Mr. Johnson:

You inquired about the procedure for revoking acceptance of the Community Preservation Act (hereafter "Act"). You stated that the Town of Agawam had accepted the Act by majority vote of its town council on September 4, 2001, and by majority vote of the voters on November 6, 2001. You indicated that the Board of Registrars had received a petition signed by over 5% of the registered voters requesting that a vote to repeal the community preservation surcharge be placed on the November 2009 ballot. You asked what effect should be given to this petition.

As you know, five years after a city or town accepts the Act, it may revoke its acceptance. The Elections Division of the Office of the Secretary of State has concluded that a city or town that accepted the Act may revoke its acceptance in the same manner as it was accepted. To that end, the Elections Division recently revised its guide "How to Accept the Community Preservation Act," which can be found on-line. In the "Revocation of Acceptance" section, it states:

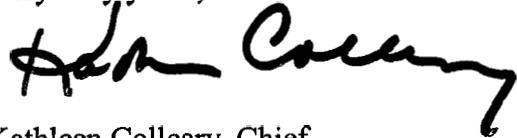
At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged. G.L. c. 44B, § 16(b). Therefore, if acceptance of the Act was done by petition for the ballot question, it can only be revoked by petition for a ballot question. Similarly, if acceptance was done by approval of the local legislative body and ballot question, it can only be revoked by vote of the local legislative body and ballot question. [emphasis added]

We concur with the Elections Division's interpretation of the language of G.L. c. 44B, §16(b). Therefore, the only effect of the petition is to indicate to local officials that approximately

the registered voters *might* be interested in revoking the Act. The petition is akin to a non-binding resolution. Actual revocation of the Act, however, will require a vote of the local legislative body and a ballot question.

We hope that this information is helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/mcm