



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION

1350 MAIN STREET

SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY
ATTORNEY GENERAL

(413) 784-1240
www.ago.state.ma.us

May 14, 2007

Rosemary B. Harvell, Town Clerk
322 Concord Road
Sudbury, MA 01776

**RE: Sudbury Annual Town Meeting of April 4, 2007 — Case # 4218
Warrant Article # 21 (Zoning)**

07 MAY 15 AM 11:50
TOWN CLERK
SUDBURY, MASS

Dear Ms. Harvell:

Article 21 - I return with the approval of this Office the amendments to the town by-laws adopted under this Article on the warrant for the Sudbury annual town meeting that convened on April 4, 2007.

The vote under Article 21 was a vote to do two things. First, the vote was a vote to delete from Article IX of the town's zoning by-laws Section 3259A, which pertains to temporary signs and replace it with a new Section 3259A, "Portable Signs." The second vote was a vote to establish a revolving fund for use by the Building Inspector for the portable sign program. We remind the town that we take no action on that portion of the vote that established the revolving fund. This portion of the vote is not a by-law amendment and, thus, does not require approval by the Attorney General.

In approving that portion of the vote adding a new Section 3259A, we call the town's attention to Section 3259A, which provides as follows:

- i. Signs which do not comply with any provision of this bylaw may be removed immediately and without notice by the Town.
- j. A permit for a Portable Sign shall be issued at the discretion of the Building Inspector for a period not to exceed one year and at a fee of \$250 annually.

(Emphasis added.)

In approving Section 3259A (i), we remind the town that this section does not include the right to enter upon private property to correct violations of the law or conduct warrantless searches of private property without permission of the owner. Commonwealth v. John G. Grant & Sons Co., Inc., 403 Mass. 151, 159-160 (1988). When entry upon private property is necessary or appropriate for the investigation of



an apparent or suspected violation of the by-law, including removing an unlawful sign, it would be necessary for the town to obtain an administrative search warrant to do so in the absence of express permission by the owner or other lawful means. The town may wish to discuss this issue in more detail with town counsel.

We next call the town's attention to Section 3259A (j), which requires a permit for portable signs. However, we point out that Section 3259A is included in Section 3250, "Signs Which Do Not Require a Sign Permit." Based on discussions with town counsel, a permit is required for portable signs. In approving Section 3259A (j), we suggest that the town amend its by-law in a way that resolves any confusion over whether a permit is or is not required. In the meantime, we suggest that the town apply Section 3259A in a uniform and consistent manner.

Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

TOWN CLERK
SUDBURY, MASS

07 MAY 15 AM 11:50

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL



by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 117

enc.
pc:

Town Counsel