



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION
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MARTHA COAKLEY
ATTORNEY GENERAL

July 20, 2009

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

**RE: Sudbury Annual Town Meeting of April 6, 2009 --- Case # 5214
Warrant Articles # 14, 15, 18, and 19 (General)
Warrant Article # 20 (Zoning)**

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Dear Ms. Harvell:

Articles 14, 15, 18, 19, and 20 - We return with the approval of this Office the amendments to the Town by-laws adopted under these Articles on the warrant for the Sudbury Annual Town Meeting that convened on April 6, 2009. Our comments on Articles 15, 19, and 20 are provided below.

Article 15 - The amendments adopted under Article 15 amend Section 3, "Regulation of Dogs," Section 308, "Registration, Licenses, and Fees," by deleting paragraph (B) and inserting a new paragraph (B). The new paragraph (B) provides as follows (with emphasis added):

(B) the fee for every license shall be: (Effective May 1, 2009)	
Neutered male dogs and spayed female dogs	\$15.00
Unneutered male dogs and unspayed female dogs	\$20.00

The new paragraph (B) provides that the new dog license fees will be effective May 1, 2009. We approve the new paragraph (B) but caution the Town that the proposed by-law was not in effect on May 1, 2009, and will not take effect until it is approved by the Attorney General and posted or published by the Town Clerk. See G.L. c. 40, § 32. We suggest the Town discuss this issue in more detail with Town Counsel.

Article 19 - The amendments adopted under Article 19 add to the Town's general by-laws a new Stormwater Management by-law. Section 4.0 (B) of the proposed by-law authorizes the Planning Board to adopt rules and regulations relating to the "terms, conditions, definitions, enforcement, fees, procedures and administration" of the proposed by-law. Section 6.0 of the proposed by-law provides that the permit procedures and requirement shall be included in the "Rules and Regulations" promulgated under Section 4.0 of the proposed by-law. We



approve Sections 4.0 and 6.0 but caution the Town that it has no power to adopt rules and regulations, which are inconsistent with state law. "A town may not promulgate a regulation that is inconsistent with State law." American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006). We suggest that the Planning Board discuss with Town Counsel any proposed rules or regulations to ensure they comply with state law.

Article 20 - The amendments adopted under Article 20 add to the Town's zoning by-laws a new Accessory Dwelling Units. Section 5580 of the proposed by-law provides that the Board of Appeals may adopt rules and regulations to implement of the proposed by-law. We approve Section 5580 but again caution the Town that it has no power to adopt rules and regulations, which are inconsistent with state law. "A town may not promulgate a regulation that is inconsistent with State law." American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006). We suggest that the Board of Appeals discuss with Town Counsel any proposed rules or regulations to ensure they comply with state law.

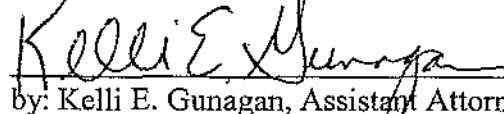
Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements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

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL


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Municipal Law Unit
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cc: Town Counsel