



THE COMMONWEALTH OF MASSACHUSETTS  
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March 14, 2023

Lucille Dalton, Town Clerk  
Town of Southampton  
210 College Highway, Suite 2  
Southampton, MA 01073

**Re: Southampton Special Town Meeting of December 13, 2022 -- Case # 10833  
Warrant Articles # 9, 10, 11, 12, 13, 14 and 15 (General)**

Dear Ms. Dalton:

**Articles 9, 10, 11, 12, 13, 14 and 15** - We approve Articles 9, 10, 11, 12, 13, 14 and 15 from the December 13, 2022 Southampton Special Town Meeting.<sup>1</sup> Our comments regarding Articles 9, 11, 12 and 15 are provided below.

**Article 9** – Under Article 9 the Town deleted Article XII, “Matter on Public Ways or Places” and Article XX, “Littering,” and inserted a new Article XII, “Littering and Dumping Materials on Public Ways or Places.” The new by-law prohibits littering on public highways, streets, roads and other town owned or controlled properties. Section 1. The by-law also prohibits certain items, such yard debris, from being placed in a walkway or vehicle passageway that creates a safety hazard (Section 2) or placing garbage and other rubbish in certain areas such as streets or parks (Section 3). In addition, the by-law regulates the removal of animal waste, prohibits discarding unwanted items such as furniture or construction material along public ways or wooded areas, and requires items left curbside for taking or donation to not remain more than seven days. Sections 4-6.

Section 7 of the by-law authorizes enforcement through G.L. c. 40, § 21D (non-criminal disposition) and designates the Police Chief or his designee as the enforcing authority. Further, Section 7 provides that in addition to fines, a violation of the by-law “may incur possible criminal charges per MGL CH 270, Sec. 16.”

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<sup>1</sup> We take no action on the portion of Article 14 voting to accept the provisions of G.L. c. 44, § 55C to establish a trust known as the “Southampton Affordable Housing Trust” because this portion of the vote is not a by-law amendment subject to the Attorney General’s review and approval under G.L. c. 40, § 32. However, votes to accept local option statutes should be filed with the Secretary of State’s office and the Department of Revenue/Division of Local Services. The Town should consult with Town Counsel with any questions on this issue.

We approve Section 7. However, the Town cannot use the provisions of G.L. c. 270, § 16 to enforce a by-law violation. Instead, G.L. c. 270, § 16 authorizes enforcement by the local police department for violations of that statute (not of the by-law), and provides in relevant part as follows:

Whoever places, throws, deposits or discharges or whoever causes to be placed, thrown, deposited or discharged, trash, bottles or cans, refuse, rubbish, garbage, debris, scrap, waste or other material of any kind on a public highway or within 20 yards of a public highway, or on any other public land, or in or upon coastal or inland waters, as defined in section 1 of chapter 131, or within 20 yards of such waters, or on property of another, or on lands dedicated for open space purposes, including lands subject to conservation restrictions and agricultural preservation restrictions as defined in chapter 184, shall be punished by a fine of not more than \$5,500 for the first offense and a fine not to exceed \$15,000 for each subsequent offense; provided, however, that 50 per cent of the fine imposed shall be deposited in the conservation trust established in section 1 of chapter 132A and the court may also require that the violator remove, at his own expense, the trash, refuse, rubbish, debris or materials.

When the local police enforce G.L. c. 270, § 16 (as opposed to enforcing the by-law), penalties, including criminal charges, are allowed as provided in G.L. c 270, § 16. However, G.L. c. 270, § 16's enforcement provisions cannot be used to enforce a by-law violation. The Town should consult with Town Counsel with any questions on this issue.

**Article 11** - Under Article 11 the Town deleted Article IX, "Dog Kennels" and Article XVI, "Dogs" and inserted a new Article XVI, "Dogs: Licenses, Kennels and Complaints." The by-law imposes requirements for dog licensing and kennel licensing and provides for enforcement and penalty provisions for violations of these requirements. Section 2 (i), "Enforcement," authorizes fines for violations of Section 1, "Dogs" and Section 2, Dog Licenses," as follows: "first offense, \$50; second offense, \$100; third offense, \$300; fourth and subsequent offenses, \$500." Section 3 (g), "Enforcement," authorizes fines for a violation of Section 3, "Dog Kennels," as follows: "first offense, \$500; second and subsequent offenses, \$750."

We approve Section 2 (i) and Section 3 (g) because G.L. c 140, §§ 137A and 173A expressly authorizes a town to impose these fine amounts for violations of the animal control laws. Section 137A provides in relevant part: "A person who violates this section shall be assessed a fine of \$500 for a first offense and a fine of not more than \$1,000 for a second or subsequent offense." And Section 173A provides as follows:

Whenever a complaint is sought in a district court for a violation of an ordinance or bylaw, made under the provisions of section one hundred and seventy-three, the clerk shall send a written notice to the person complained against stating that such a complaint has been sought and will issue unless such person appears before such clerk and confesses the offense either personally or through an agent duly authorized in writing, or by mailing to such clerk, with the notice the fine provided herein. The fine for the first offense committed by

a person shall be \$50. The fine for a second offense shall be \$100. The fine for a third offense shall be \$300. For a fourth or subsequent offense, the fine shall be \$500 and the municipality may order the animal spayed or neutered. Payment shall be made only by money order or check. Notwithstanding the foregoing procedure and schedule of fines, but subject to all other provisions of this section, a city or town may, by ordinance or by-law, provide for an alternative procedure and a different schedule of fines; provided, however, that the fines shall not be lower than those stated in this section.

Because G.L. c. 140, §§ 137A and 173A authorize fines greater than the otherwise applicable cap of \$300 for by-law violations (as provided in G.L. c. 40, § 21), we approve the by-law.

**Article 12** – Under Article 12 the Town amended Article XXVI, “Curb Cuts,” to insert new text requiring a permit for a curb cut that provides in relevant part as follows:

No person shall make a curb cut unless a permit is issued by the Highway Superintendent in the case of Town ways or by the Department of Public Works of the Commonwealth of Massachusetts in the case of state highway layouts.

The by-law provides that curb cuts onto state highways require a permit from the “Department of Public Works of the Commonwealth of Massachusetts.” The Massachusetts Department of Transportation Division of Highways (Division of Highways) has authority over curb cuts and driveway openings onto state highways. See G.L. c. 81, § 21. The Town may wish to consult with Town Counsel about a future clarifying amendment.

**Article 15** – Under Article 15 the Town amended the general by-laws to add a new Article XVI.A, “Humane Care and Treatment of Domesticated Animals.” The new by-law requires owners and keepers of domesticated animals to provide certain care including sufficient potable water, food, and proper shelter and other requirements consistent with G.L. c. 140, §§ 174E (relating to chaining and tethering) and 174F (related to confinement of an animal in a motor vehicle). Sections 3 and 4. In addition, Section 5 of the by-law prohibits abandonment of a domesticated animal as follows:

No owner or keeper shall abandon any animal. For the purpose of this section, “abandonment” shall be defined as the willful desertion of an animal, which shall include, but not be limited to, the failure to claim an impounded animal upon receipt of notice that the period of impoundment has ended.

Section 5 of the by-law must be applied consistent with the State’s laws regarding cruelty to animals. General Laws Chapter 272, Section 77 establishes penalties for cruelty to animals, including the willful abandonment of an animal, and provides in relevant part as follows (with emphasis added):

...whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon...shall be punished by imprisonment in the state prison for not more than 7 years in state prison or imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$5,000 or by both fine and imprisonment...

Before the Town imposes any penalties for a violation of Section 5 of the by-law, the Town should discuss with Town Counsel the principles of double jeopardy established under federal and state law because enforcement of a by-law violation – a lesser offense – might foreclose prosecution of a more serious offense brought by the District Attorney against a person.

**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. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

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ATTORNEY GENERAL

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cc: Town Counsel Michele Randazzo