



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

October 22, 2024

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

Re: Southampton Annual Town Meeting of May 7, 2024 -- Case # 11551
Warrant Article # 20 (Zoning)
Warrant Articles # 17 and 18 (General)

Dear Ms. Dalton:

Article 17 - We approve Article 17 from the May 7, 2024 Southampton Annual Town Meeting. Our comments regarding Article 17 are provided below.

Article 18 - The Attorney General's deadline for a decision on Article 18 is extended for 45 days under the authority conferred by G.L. c. 40, § 32. The agreement with Town Counsel for a 45-day extension is attached. We will issue our decision on this Article on or before **December 6, 2024**.

Article 20 - We are placing Article 20 on **HOLD** because the materials submitted by the Town did not include all the information necessary for our review as required by G.L. c. 40, § 32 and G.L. c. 40A, § 5. We require the following:

Form 7 – Article 20 amends the Town's zoning by-laws. We therefore require a completed copy of our Form 7 along with the required attachments including a copy of the Planning Board hearing notice that was published in a newspaper of general circulation in the Town and posted in the Town Hall (Form 7, Attachments 2-4).

Once we receive the requested documents, our 90-day review period for Article 20 will continue. Please feel free to contact me with any questions.

Article 17 - Under Article 17 the Town voted to amend the general by-laws to add a new by-law, "Nuisance/Peace and Quiet," in order to protect, preserve and promote "the safety, health, welfare, peace and quiet of the citizens...through the reduction, control, and prevention of loud and excessive noise." We approve Article 17 because it is not in conflict with state law. See 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). However, we offer comments on certain portions of the new by-law for the Town's consideration.

The by-law prohibits "[e]xcessive noise" between the hours of 9:00 p.m. and 6:00 a.m. Section 1, "Purpose." Section 2, "Definitions," defines "Excessive Noise" as "[a]ny noise which emanates from any building, boat, structure, vehicle, premises or any sound amplification system which has a volume that is 'plainly audible' [as also defined in Section 2] from aforementioned locations in which or from which it originates is considered to be loud, disturbing, injurious, unnecessary and unlawful." Section 3 provides a list of prohibited acts under the by-law, including:

Continuous shouting, singing or other loud noises on the public streets or with volume at any time or place as to annoy or disturb the reasonable quiet, comfort or repose of any persons in any type of residen[ce] or in any office or of any persons in the vicinity...

The Town must ensure that Section 3's prohibition against "[c]ontinuous, shouting, singing or other loud noises on the public streets," is not applied in a manner that restricts protected speech. We note that Section 4, "Exceptions," excepts from the by-law the "reasonable use of amplifiers or loudspeakers for public address is (*sic*) noncommercial in nature and for the purposes of providing important information to the public. This includes systems used at sanctioned sporting events, fairs, parades, music festivals, concerts or other public events as authorized by the Select Board." However, Section 4's exception relates to the use of amplifiers and loudspeakers for public address that is non-commercial in nature, but does not specifically address non-amplified non-commercial speech, such as at a rally, protest or other public gathering. The Town must ensure that the by-law is not applied in a manner that would prevent protected speech. The Town should consult with Town Counsel to ensure the by-law's proper application. In addition, the Town should consult with Town Counsel to determine whether the by-law should be amended at a future Town Meeting to address this issue.

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

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4418

cc: Town Counsel Michele E. Randazzo