



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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August 7, 2015

Received
Town of South Hadley

Carlene C. Hamlin, Town Clerk
Town of South Hadley
116 Main Street
South Hadley, MA 01075

AUG 10 2015

Town Clerk

WJH
10:30 AM

**RE: South Hadley Annual Town Meeting of May 9, 2015 - Case # 7529
Warrant Article # 9 (Zoning)
Warrant Articles # 10, 11, 12, 13 and 14 (General)**

Dear Ms. Hamlin:

Articles 9, 10, 11, 12, 13 and 14 - We approve Articles 9, 10, 11, 12, 13 and 14 from the May 9, 2015 South Hadley Annual Town Meeting. Our comments regarding Articles 10 and 13 are provided below.

Article 10 - Article 10 adds to the Town's general by-laws a new subsection 1007.3, "Property Care" which provides:

All property owners will be responsible to keep their property in a reasonable state of repair. Grass will be kept no higher than six (6) inches, leaves, excessive grass clippings will be removed, composted or otherwise disposed of, damaged branches will be addressed and other debris or litter will be eliminated from the property. Violation of this by-law may result in a fine of \$100 per day, enforcement authority of this bylaw, South Hadley Police Department or South Hadley Health Department.

A. Attorney General's Standard of Review

During the course of our review, we received several oppositions urging us to disapprove the by-law, citing, among other reasons, that the by-law is unfair to the elderly or disabled residents of the Town; the fine is excessive and unreasonable; and the by-law risks arbitrary or inconsistent enforcement. We appreciate these letters as they have aided our review of the by-law. However, as discussed below in more detail, under our standard of review, we must approve Article 10.

Pursuant to G.L. c. 40, § 32, the Attorney General has a limited power of disapproval of town by-laws with every “presumption made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 796 (1986). In order to disapprove any portion of a proposed by-law, the Attorney General must cite an inconsistency between the by-law and the Constitution or laws of the Commonwealth. Id. When reviewing by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court performing a facial review. Because the adoption of a by-law by the voters at Town Meeting is both the exercise of the Town’s police power and a legislative act, the vote carries a “strong presumption of validity.” See Durand v. IDC Bellingham, LLC, 440 Mass. 45, 51 (2003). If the reasonableness of a by-law is fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained. Id. quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)).

B. Comments on Specific Provisions in Subsection 1007.3

1. Undefined terms

The by-law requires that property owners keep their property in a “reasonable state” of repair, that “excessive” grass clippings be removed, and that “other debris or litter” be eliminated. However, none of these terms are defined. Although we approve Subsection 1007.3 based upon our limited standard of review of town by-laws, the by-law may be challenged in court as impermissibly vague. A law that requires that people “of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.” Connally v. General Constr. Co., 269 U.S. 385 (1926). “[P]erhaps the most meaningful aspect of the vagueness doctrine is not actual notice, but the other principle element of the doctrine - the requirement that the legislature establish minimal guidelines to govern law enforcement.” Smith v. Goguen, 415 U.S. 566, 574 (1974). Legislative bodies must “set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.” Id. at 573. The Town may wish to amend the by-law at a future Town Meeting to insert definitions for these terms in order to avoid a void for vagueness challenge. The Town should consult with Town Counsel on this issue.

2. Notice and Hearing

We also note that the by-law does not provide an exemption for those people that may be unable to care for their property due to age, disability, sickness or absence. The by-law is also silent as to any notice or opportunity for a hearing if someone one is found to be in violation of the by-law. The Town should discuss these issues with Town Counsel.

Article 13 - Article 13 amends the general by-laws, Section 302.2, “Delivery of Warrants,” to:

allow electronic transmission of warrants, revision, updates and necessary material to an electronic email address to each Town Meeting member.

The vote on Article 13 does not state where in Section 302.2 the amended text will be added. In addition, the vote on Article 13 did not appear to delete any portion of the existing Section 302.2, which provides:

Attested copies of warrants for all Town Meetings shall, at least seven (7) days before the Annual Town Meeting and fourteen (14) days before a Special Town Meeting, be (i) mailed by first class mail, postage prepaid, to each Voting Member (as hereafter defined) at his or her residence as set forth in the office of the Town Clerk, and (ii) directed to a constable or a police officer of the Town for posting in at least one public location in each precinct. The Town Clerk shall also request any provider of local cable television access to provide notice of any Annual or Special Town Meeting. Nothing herein shall preclude the Selectboard from employing any additional methods of communicating the contents of the warrant.

The Town may wish to consult with Town Counsel regarding the proper construction of the new text in light of the existing text in Section 302.2, and consider a future clarifying amendment if needed.

Finally, the new text in Section 302.2 cannot be used as a substitute for the warrant posting requirements in G.L. c. 39, § 10. The Town should consult with Town Counsel to ensure it is complying with the statutory requirements.

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.

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