



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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November 13, 2023

Elizabeth Cunniff, Town Clerk
Town of Groveland
183 Main Street
Groveland, MA 01834

Re: Groveland Annual Town Meeting of April 24, 2023 -- Case # 10948
Warrant Articles # 17, 18, 19 and 20 (Zoning)
Warrant Articles # 9, 10, 11, 13, 15 and 16 (General) ¹

Dear Ms. Cunniff:

Article 16 - We approve Article 16 from the April 24, 2023 Groveland Annual Town Meeting. ²

Under Article 16, the Town recodified its general by-laws by voting to:

accept and amend the renumbering and revision of the various general bylaws of the Town from their original numbering or their numbering in the prior General Bylaws Compilation, as amended through May 23, 2022, to the

¹ In a decision issued August 4, 2023 we approved Articles 9, 10, 11, 13, 17, 18, 19 and 20, and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended our deadline for review of Articles 15 and 16 for an additional 45-days until September 29, 2023. In a decision issued September 29, 2023, we approved Article 15, and by agreement with Town Counsel, we extended our deadline for review of Article 16 for an additional 45-days until November 13, 2023.

² We take no action on the changes to Chapter 142, "Personnel Bylaw," adopted under G.L. c. 41, §§ 108A and 108C because personnel By-laws are not subject to the Attorney General's review and approval under G.L. c. 40 § 32. See G.L. c. 41, § 108A (the Legislature authorized towns to adopt by-laws to establish employment classification plans but exempted such by-laws from the Attorney General's review and approval); and G.L. c. 41, § 108C (the Legislature authorized towns to adopt consolidated personnel by-laws, including compensation provisions, but exempted such by-laws from Attorney General review and approval). The Town should consult with Town Counsel with any questions on this issue.

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numbering or codification, arrangement, sequence and captions and the comprehensive revisions to the text of the General Bylaws as set forth in the Final Draft of the Code of the Town of Groveland, dated 03/2023, and which is on file with the Town Clerk and has been distributed at the Town Meeting all as set forth in Article 16 of the Warrant.

The Town provided us with documents showing the amendments adopted under Article 16 including the revisions with new text shown in underline and deleted text shown in strikethrough. We approve the amendments adopted under Article 16. However, our approval of the recodified general by-laws is limited solely to those changes that were identified in the documents submitted to this Office and does not include any other changes.

In addition, because the Town made only the identified substantive changes to the General By-laws, much of the existing text is not before the Attorney General for review and approval under G.L. c. 40, § 32. However, we offer the following comments for the Town's consideration related to certain existing text in Chapter 235 regarding an earth removal "special permit" and in Chapter 240 requiring a private landowner's permission to hunt on their property. Further, we encourage the Town to discuss with Town Counsel whether this existing text should be amended at a future Town Meeting, as discussed in more detail below.

1. Chapter 235 – Earth Removal

Under Article 16 the Town made only minor revisions including amendments related to fees and penalty provisions. However, we note that throughout Chapter 235, the existing text refers to the required permit for the removal of any soil, loam, sand or gravel as a "written special permit" issued by the Board of Selectmen. See e.g., Section 235-2, "Permit Required;" Section 235-3, "Public Hearing, plans required;" and Section 235-4, "Withdrawal of petition for permit."

The Town's *general by-laws* cannot require the applicant to obtain a "special permit" as that term is used in the zoning context of G.L. c. 40A, § 9, because the term "special permit" has a specific meaning in the context of zoning by-laws. General Laws Chapter 40A, Section 9 authorizes towns to adopt zoning by-laws requiring special permits for various zoning uses, but towns are not authorized to impose a special permit requirement by way of a general by-law. The Town's general by-laws may require the applicant to obtain a permit from the Board of Selectmen prior to removing any soil, loam, sand or gravel, but the Town's general by-laws cannot require the applicant to obtain a "special permit" as that term is used in the zoning context under G.L. c. 40A, § 9. The Town should consult with Town Counsel to determine if a future amendment to the existing Chapter 235 is needed to address this issue.

2. Chapter 259 – Hunting and Firearms

Under Article 16 the Town amended Chapter 259, "Hunting and Firearms" to make certain identified changes (new text in bold and deleted text in strikethrough), as follows:

§ 259-1 ~~Permitted~~ **Consent of owner required for activity** on private property
~~with consent of owner.~~ **[Amended at time of adoption of Code]**

No person shall hunt or fire or discharge any firearms on any private property except with the written consent of the owner or the legal occupant thereof, and such consent shall be carried at all times by any person hunting and upon request shall be shown to any police officer or officer of the Department of Conservation and Recreation, or the property owner or his agent.

§ 259 – 2 Exceptions

This ~~section~~ bylaw shall not be applied to the lawful defense of life or property or to any law enforcement officer in the defense of his duties.

§ 259-3 ~~Penalty~~ Violations and penalties

[Amended at time of adoption of Code]

Any person violating any provision of this ~~section~~ bylaw shall be punished by a fine of not more than \$50 for each offense, **punishable by criminal complaint or by noncriminal disposition in accordance with MGL c. 40, § 21D and § 100-2 of the Town Code.**

The existing by-law text in Section 259-1 prohibits hunting “on any private property except with the written consent of the owner or legal occupant thereof.”³ If this text was before the Attorney General’s Office today, we would disapprove it because the Town is preempted from imposing requirements on hunters that conflict with and are preempted by G.L. c. 131.⁴

General Laws Chapter 131 preempts towns from imposing requirements on hunters by placing the regulation of hunting solely within the regulatory power of the state’s Department of Fish and Game/Division of Fisheries and Wildlife (DFW). While Chapter 131 does not expressly preempt local regulation of hunting, its broad scope and the extensive powers granted to the Director of the DFW to regulate hunting indicate that Chapter 131 occupies the field of hunting regulation, and that the Legislature intended that towns be preempted from local regulation of hunting except as expressly provided in Chapter 131. See Boston Edison Co. v. Town of Bedford, 444 Mass. 775 (2005) (town by-law imposing fines for failure to remove utility poles preempted by the comprehensive, uniform state regulation of utilities in G.L. c. 164); Wendell v. Attorney General, 394 Mass. 518 (1985) (town by-law regulating the use of pesticides in town frustrates the statutory purpose of centralized regulation of pesticide use).

³ It appears that the Town may have adopted this text years ago because the only reference in the general by-laws to its adoption is “[a]dopted by the Town Meeting...as Ch. 8, § 8-16, of the General Bylaws.” The Town should refrain from applying this portion of Section 259-1 and delete this text at a future Town Meeting.

⁴ The Attorney General has issued similar to decisions on other hunting by-laws from the towns of Wakefield (Case # 9216, issued April 18, 2019); Merrimac (Case # 9132, decision issued January 15, 2019); Millville (Case # 7916, decision issued September 7, 2016); Westport (Case # 7566, decision issued November 18, 2015); Needham (Case # 7232, decision issued August 20, 2014); Norfolk (Case # 6596, decision issued April 17 2013); Canton (Case # 6383, decision issued November 30, 2012); Hampden (Case # 6457, decision issued November 26, 2012); and Sherborn (Case # 6321, decision issued October 22, 2012). These decisions can be accessed on the Attorney General’s Municipal Law Unit website (decision lookup link) at www.mass.gov/ago/munilaw.

Chapter 131 imposes “carefully guarded conditions by which one may hunt in the Commonwealth safely, provisions by which one is licensed, and provisions designed to preserve and maintain the wildlife and natural resources of the Commonwealth.” Amherst v. Attorney General, 398 Mass. 793, 797 (1986). Chapter 131 grants the Director of DFW wide-ranging authority over hunting in the Commonwealth (see generally G.L. c. 131, § 4, and 321 CMR 3.01 *et seq.*), and further grants the DFW authority to adopt comprehensive regulations governing hunting, which are embodied in 321 CMR 3.00 *et seq.* Under G.L. c. 131, § 5, “Except as provided in rules and regulations made under authority of this section, and except as otherwise provided in [Chapter 131], a person shall not fish, hunt, ...”.

The Director has the authority to: establish classes of hunting licenses and the time period for which they will be valid (Section 11); issue hunting licenses and require that they be carried on the person (Section 12); establish the time period of the hunting season and what type of weapon may be used for each time period (Section 13); and establish the content of hunter education courses required for the issuance of licenses. (Section 14). It is also important that Chapter 131, § 45, grants to certain categories of cities and towns the right to make rules and regulations regarding hunting on great ponds not exceeding five hundred acres, but such rules and regulations must be approved by the Director. See Pearson v. Plymouth, 44 Mass. App. Ct. 741, 744 (1998) (“All such [great pond] rules and regulations are subject to the approvals of various State administrative agencies having special competence and responsibility in the particular subject, e.g., ... rules and regulations authorizing hunting and fishing are subject to the approval of the director of fisheries and wildlife.”)

These comprehensive grants of authority to the Director indicate that, except in the limited circumstances involving great ponds delineated by G.L. c. 131, § 45, and municipally owned lands as provided in G.L. c. 131, § 59, towns are pre-empted from adopting by-laws regulating hunting. See St. George Greek Orthodox Cathedral, 462 Mass. at 127 (“A conclusion that the Legislature intended to preempt a subject may also be inferred if the Legislature has explicitly limited the manner in which cities and towns may act on that subject.”).

The existing text referencing hunting on private land without the consent of the landowner directly conflicts with G.L. c. 131, § 36, which states:

A person shall not fish, hunt or trap on private land without permission of the owner or tenant thereof, after such owner or tenant has conspicuously posted thereon notices which bear the name of such owner or tenant and which state that fishing, hunting or trapping on such land, as the case may be, is prohibited.

Chapter 131 (and the DFW regulations) presume that private land is open to hunting and trapping, by requiring that a private landowner must first post a notice prohibiting hunting and trapping to prompt the requirement that a hunter/trapper obtain permission to hunt/trap on the land. The existing by-law text would reverse this presumption, by prohibiting anyone from hunting on private land without the written consent of the owner. Contrary to G.L. c. 131, § 36, the existing by-law text would apply even if the landowner has not posted notice on his land.

Because G.L. c. 131's broad and comprehensive grant of authority to the DFW, it is the exclusive, state-wide regulator of hunting in the Commonwealth. For this reason, towns are preempted from imposing by-law requirements which are inconsistent with G.L. c. 131. The Town's existing text in Section 259-1 conflicts with G.L. c. 131 by requiring that hunters obtain permission to hunt on private land. We encourage the Town to discuss with Town Counsel a future amendment to delete this text.

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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