



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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May 26, 2015

Laurence R. Pizer, Town Clerk
Town of Plymouth
11 Lincoln Street
Plymouth, MA 02360

**RE: Plymouth Annual Town Meeting of April 11, 2015 - Case # 7508
Warrant Article # 32 (Zoning)
Warrant Articles # 20 and 22 (General)**

Dear Mr. Pizer:

Articles 20, 22 and 32 - We approve Articles 20, 22 and 32, and the map amendments related to Article 32, from the April 11, 2015 Plymouth Annual Town Meeting. We will return the approved map to you by regular mail. Our comments regarding Articles 22 and 32 are provided below.

Article 22 - Article 22 adds to the Town's general by-laws a new Chapter 72, "Civil Fingerprinting By-law - Town License or Permit." Section 72-4A requires fingerprints from applicants to engage in the following activities: hawking and peddling or other door-to-door salespeople; manager of alcoholic beverages licensed establishment; dealer of second-hand articles (including junk dealers and collectors); pawn dealers; hackney and livery drivers and owners or operators of other conveyors of passengers; and ice cream truck vendors. The by-law is specifically authorized by Chapter 256 of the Acts of 2010, incorporated into the Massachusetts General Laws as Chapter 6, Section 172B ½. This statute allows cities and towns to obtain both state and national fingerprint-based criminal history. Section 172B ½ states in part as follows:

Section 172B 1/2. Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant The new Section 51 is authorized pursuant to G.L. c. 6, § 172B ½ which to sections 168 and 172 and 28 U.S.C. § 534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

The Executive Office of Public Safety and Security (“EOPSS”) has issued an Informational Bulletin which explains the requirements for town by-laws and the procedures for obtaining criminal history information.¹ The EOPSS information explains the requirement that the by-law must be forwarded to the State Identification Section of the Massachusetts State Police (SIS) and copied to the Massachusetts Department of Criminal Justice Information Services Office of the General Counsel to coordinate approval by the FBI Access Integrity Unit (AIU). We urge the Town to review and comply with these requirements.

Section 72-2 authorizes the Board of Selectmen, in consultation with the Chief of Police “to promulgate regulations to implement this By-law.” We suggest that the Town discuss any proposed rules and regulations with Town Counsel to ensure they are consistent with the statute and the FBI’s requirements for access to the national database.

Section 72-3 provides in relevant part:

B. A Licensing Authority may, at its sole discretion, deny a license application on the basis of the results of a fingerprint-based Criminal History Check if it determines that the results of the check render the subject unsuitable for the proposed licensed activity. The Licensing Authority shall consider all applicable laws, regulations and Town policies bearing on an applicant’s suitability in making this determination.

C. A Licensing Authority is hereby authorized to deny an application for any license specified herein, including renewals and transfers of said licenses, from any person who is determined to be unsuitable for the license due to information obtained pursuant to this By-law.

According to the EOPSS Informational Bulletin, “[i]f the applicant wants to challenge the accuracy or completeness of the record, municipal officials must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28 CFR 16.34.” The by-law does not provide this Notice to the applicant. The Town may wish to consult with Town Counsel regarding this notice requirement.

In addition, the EOPSS Informational Bulletin provides that “Municipal officials should not deny an applicant the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.” The Town may wish to consult with Town Counsel prior to denying an application for a license based upon information received pursuant to this by-law.

Article 32 – Under Article 32 the Town voted to (with emphasis added):

Amend the Zoning Bylaw, Official Zoning Map of the Town of Plymouth, by changing the zoning designation of land on Commerce Way shown as Lots 44, 14K-39C and 14K-40B on Plymouth Assessors Map 103 from Light Industrial

¹ The Informational Bulletin can be found here: <http://www.mass.gov/eopss/docs/chsb/civil-fingerprint-june-2011.pdf>

(LI) to Mixed Commerce (MC), as well as to amend associated sections, provisions, definitions, tables, charts and procedures pertaining thereto.

The Town Clerk has confirmed to us that despite the language of the motion, there were no amendments to any other sections, provisions, definitions, tables, charts and procedures in the Town's zoning by-laws. Further, the Town Clerk has confirmed to us that the only amendment under Article 32 was a re-zone of the property on Commerce Way, shown as Lots 44, 14K-39C and 14K-40B on Plymouth Assessors Map 103 from Light Industrial (LI) to Mixed Commerce (MC), on the map adopted by Town Meeting and provided to us under Article 32. Therefore, our approval of Article 32 is limited only to the map amendment and the re-zoning of the property identified in Article 32 and does not include any additional related amendments to any other section, provision, definition, table, chart or procedure of the Town's zoning by-laws.

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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cc: Town Counsel Elizabeth Lane