



THE COMMONWEALTH OF MASSACHUSETTS
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October 30, 2020

Paul McLatchy, III, Temporary Town Clerk
Town of Clarksburg
111 River Road
Clarksburg, MA 01247

**Re: Clarksburg Annual Town Meeting of June 24, 2020 -- Case # 9879
Warrant Article # 18 (General)**

Dear Mr. McLatchy:

Article 18 - We approve Article 18 from the June 24, 2020 Clarksburg Annual Town Meeting. Article 18 amends the Town's general by-laws to add a new Section 27, "Dog Control Bylaw." We offer the following comments on the new Section 27 for the Town's consideration.

1. Section 27-1 – Definitions

Section 27-1 defines a number of terms related to the by-law. One term defined in Section 27-1 is "abusive conditions," as follows:

When a dog does not have access to shelter, or when a dog is restrained by a rope or chain that is less than 15 feet in length; or when a dog is living in an area that is contaminated, insect infested or littered by feces, broken glass, nails, sharp metal or wood objects, antifreeze or other harmful objects or poisonous substances; or when a dog does not have access to a property supply of clean water or food.

We approve this definition. In applying this term, we note that the Commonwealth's Animal Control Statute (G.L. c. 140, §§ 136A-174F) provides requirements pertaining to chaining, tethering and confinement of animals including specific factors that would constitute "cruel conditions." See G.L. c. 140, § 174E. Specifically, Section 174E provides detailed requirements related to time periods for chaining or tethering a dog; the type of chain or tether that can be used; the type of shelter or pen that a dog may be kept in; requirements for clean water and appropriate shelter; and conditions that would be considered cruel. The Town may wish to amend Section 27-1's definition of "abusive conditions" at a future Town Meeting to reference the additional requirements found in Section 174E.

Section 27-1 also includes a definition of "kennel" as follows, with emphasis added:

One pack or collection of animals on a single premises, whether maintained for breeding, boarding, sale, training, holding or other purpose, and including any shop where animals are on sale, and also including every pack or collection of more than three animals six months old or over owned or kept by a person on a single premises irrespective of the purposes from which they are maintained.

The Town must apply Section 27-1's definition of "kennel" consistent with the definitions pertaining to kennels set forth in G.L. c. 140, § 136A. Specifically, G.L. c. 140, § 136A, defines several types of kennels including: (1) commercial boarding and training kennel; (2) commercial breeder kennel; (3) domestic charitable corporation kennel; (4) kennel; (5) personal kennel; and (6) veterinary kennel.

The Town's definition of kennel includes a pack or collection of animals on a single premise "including any shop where animals are on sale." However, G.L. c. 140, § 136A specifically excludes from the definition of "commercial boarding or training kennel" a "pet shop licensed under section 39A of chapter 129." In addition, G.L. c. 140, § 141B specifically excludes any pet shop licensed under the provisions of G.L. c. 129, § 39A, from the requirements of G.L. c. 140, §§ 137-141. The Town should consult with Town Counsel regarding the proper application of Section 27-1 to a "shop where animals are on sale" or a pet shop to ensure that the by-law is applied consistent with G.L. c. 140, §§ 136A and 141B.

In addition, the definition of "kennel" in Section 27-1 applies to a "pack or collection of more than three animals six months old or over owned or kept by a person on a single premises irrespective of the purposes from which they are maintained." Although most of Section 136A's definitions pertaining to kennels do not include a minimum number of dogs, the definition of a "personal kennel" is limited to "more than 4 dogs." See G.L. c. 140, § 136A (a "pack or collection of more than 4 dogs, 3 months old or older, owned or kept under single ownership, for private personal use.") The Town should consult with Town Counsel regarding the proper application of Section 27-1 to a "personal kennel."

2. Section 27-7 – Impounding, Release and Disposition of Animals

Section 27-7 authorizes the Animal Control Officer to impound a dog for a number of reasons, including, if the dog bites or injures a person, or if the dog is dangerous or potentially dangerous. The Town must apply Section 27-7 consistent with G.L. c. 140, § 157, that sets forth: (1) the process for declaring a dog to be a dangerous dog; (2) the orders that a hearing authority may make upon such a declaration that a dog is a dangerous dog; and (3) the remedy for a violation of a hearing authority's order.

Specifically, G.L. c. 140, § 157, requires a complaint to the Hearing Authority, investigation, and a hearing before the Hearing Authority may make a finding that a dog is a nuisance dog or dangerous dog. After such a finding, the Hearing Authority may make orders consistent with G.L. c. 140, § 157, which include, but are not limited to, that the dog be restrained, confined, muzzled, or euthanized. Section 27-7 of the by-law authorizes the animal Control Officer to impound a dangerous dog but does not provide for an investigation and hearing first in accordance with G.L. c. 140, § 157. The Town should consult with Town

Counsel regarding the proper application of Section 27-7 to a “dangerous dog” to ensure compliance with G.L. c. 140, § 157.

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 Katharine Lord Klein