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October 7, 2026

Ann V. Fisk, Town Clerk
Town of Wrentham
79 South Street
Wrentham, MA 02093

Re: Wrentham Annual Town Meeting of June 1, 2026 – Case # 12439
Warrant Articles # 18 and 19 (Zoning)
Warrant Articles # 15, 16, and 17 (General)

Dear Ms. Fisk:

Articles 15, 17, and 18 - We approve Articles 15, 17, and 18 from the June 1, 2026 Wrentham Annual Town Meeting. Our comments regarding Article 17 are provided below.

Articles 16 and 19 – We partially approve Articles 16 and 19, as explained below.

Article 16 - Under Article 16, the Town voted to amend its general by-laws, Chapter 260, "Animal Control," to make specific identified changes. One change amends Section 260-7 (F) to require kennel inspections and another change amends Section 260-7 (G) related to penalties for operating a kennel after suspension or revocation of a license.

We approve Article 16, except for Section 260-7 (G) that authorizes certain fines for violations of the by-law related to operating a kennel after suspension or revocation of a license. 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). We also offer comments to the Town on certain approved provisions.

A. Section 260-7 (G) - Penalties

Section 260-7 (G) authorizes penalties for operating a kennel after revocation or suspension of a license as follows (with emphasis added):

> **A person maintaining a kennel after the license to maintain a kennel has been revoked or suspended shall be assessed a fine by the Town Clerk of $500 for a first offense, by a fine of not less than $500 but not more than $1,000 for any second or subsequent offense**.

We disapprove the text shown above in bold and underline that authorizes certain fines for maintaining a kennel after a license has been suspended or revoked because these fines conflict with G.L. c. 140, § 137C. General Laws Chapter 140, Section 137C authorizes fines for maintaining a kennel after a license has been revoked or suspended as follows:

> A person maintaining a kennel after the license to maintain a kennel has been revoked or suspended shall be assessed a fine by the licensing authority of not more than $250 for a first offense, by a fine of not less than $500 for a second offense and by a fine of not more than $1,500 for a third or subsequent offense.

Section 137C authorizes a fine amount of *"not more than $250 for a first offense, by a fine of not less than $500 for a second offense, and by fine of not more than $1,500 for a third or subsequent offense*."[1] Because the proposed fine amounts exceed the maximum penalty the Town may impose for maintaining a kennel after a kennel license has been revoked or suspended, we disapprove and delete the text above in bold and underline.

While we disapprove the fine amounts in Section 260-7 (G), should the Town wish to amend this provision at a future Town Meeting, we note that G.L. c. 140, § 137C expressly authorizes a town to impose certain fines, including fines greater than the otherwise applicable cap of $300 for by-law violations (as provided in G.L. c. 40, § 21). The Town should consult with Town Counsel with any questions.

B. Section 260-7 (F) - Annual Inspection

Section 260-7 (F) authorizes inspections as follows: "The Animal Control Officer shall inspect each new kennel prior to issuance of a kennel license and shall inspect every kennel in the Town of Wrentham at least once per year. If a licensee or a person applying for a license to maintain a kennel refuses to allow an inspector to enter and inspect a kennel, the refusal shall be grounds for denial, suspension or revocation of the license."

In applying Section 260-7 (F), the Town should be mindful that municipal officials do not have the authority to conduct non-emergency warrantless searches of private property without permission of the owner. Commonwealth v. John G. Grant & Sons Co., Inc., 403 Mass. 151, 159-60 (1988). The U.S. Supreme Court has held that warrants are required for non-emergency administrative inspections. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1966) (requiring warrant for health inspector non-emergency entry); See v. City of Seattle, 387 U.S. 541 (1966) (requiring warrant for nonemergency inspection by fire chief). "[A]dministrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure." See, 387 U.S. at 545. Massachusetts courts have similarly recognized that "statutes can no longer convey blanket powers of warrantless entries." Commonwealth v. Hurd, 51 Mass.

[1] It appears that the Town may have inserted the fine amounts provided in G.L. c. 140, § 137A, for violations related to obtaining a kennel license. See G.L. c. 140, § 137A (f) ("A person who violates this section shall be assessed a fine by the licensing authority of $500 for a first offense and a fine of not more than $1,000 for a second or subsequent offense.")

App. Ct. 12, 17 (2001) (holding that G.L. c. 129, § 7 does not authorize warrantless searches for animal inspection). The Town should consult with Town Counsel to ensure that the provisions of Section 260-7 (F) are applied in a manner that is consistent with state law and applicable constitutional requirements.

Article 19 - Under Article 19, the Town voted to amend specific portions of Section 390-4.11, "Accessory dwelling units" regarding as-of-right ADUs in compliance with G.L. c. 40A, § 3 and the implementing Regulations promulgated by the Executive Office of Housing and Livable Communities ("EOHLC"), 760 CMR 71.00, "Protected Use Accessory Dwelling Units" ("Regulations").

We approve the specific changes to Section 390-4.11 adopted under Article 19 in part because the approved text does not conflict with state law. However, we disapprove and delete[2] a portion of Section 390-4.11 (B)'s definition of Principal Dwelling Unit because this provision conflicts with G.L. c. 40A, § 3 and the Regulations. See Amherst, 398 Mass. at 795-96 (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). In approving Article 19, we incorporate by reference our more extensive comments regarding the statutory and regulatory changes related to ADUs in our decision to the Town issued on October 31, 2025 in Case # 11976.

In this decision we summarize the specific by-law amendments adopted under Article 19 and then explain why, based on our standard of review, we partially approve Article 19. In addition, we offer comments for the Town's consideration regarding certain approved provisions adopted under Article 19.

I. Summary of Amendments under Article 19

Under Article 19, the Town voted to make specific changes to Section 390-4.11, "Accessory dwelling units," by amending: (1) Section 390-4.11 (B) to include a definition for "Principal Dwelling Unit"; (2) Section 390-4.11 (C) (2) (b) and (c) to add "principal" and "principal dwelling" to additional requirements; and (3) amending Section 390-4.11 (E), "Relationship to non-conformities," to regulate ADUs on pre-existing, nonconforming lots and structures.

II. Attorney General's Standard of Review of Zoning By-laws

Our review of Article 19 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's

[2] The use of the term "disapprove" collectively means "disapprove and delete" such that any text disapproved by the Attorney General (shown in bold and underline) by virtue of such disapproval is also deleted from the Town's zoning by-law and does not take effect under G.L. c. 40 § 32.

by-law.") "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973).

Article 19, as an amendment to the Town's zoning by-laws, must be given deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning 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. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Text Disapproved from Article 19 Because it Conflicts with G.L. c. 40A, § 3 and the Regulations

Section 390-4.11 (B), "Definitions," was amended to add a definition of "Principal Dwelling Unit" as follows (with emphasis added):

> For the purpose of this section, Principal Dwelling Unit shall mean A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, that contains at least one **but not more than three** Dwelling Unit**s** and is, or will be, located on the same lot as an ADU.

We disapprove the text "but not more than three," as shown above in bold and underline, that defines a Principal Dwelling Unit as a structure containing not more than three dwelling units because this provision conflicts with G.L. c. 40A, § 3 and the Regulations that allow ADUs as of right on the same lot as any type of "Principal Dwelling," as explained below. See West Street Associates, LLC v. Planning Board of Mansfield, 488 Mass. 319, 324 (2021) (citing with approval trial judge's ruling that "By limiting medical marijuana facilities to nonprofit entities, the bylaw[,] while not prohibit[ing] those facilities, does restrict them in a way that the [S]tate explicitly determined they should not be limited" and "[a]ccordingly, the town's bylaw is preempted by State law to the extent it requires all medical marijuana dispensaries to be nonprofit organizations.").

General Laws Chapter 40A, Section 3 and the Regulations allow Protected Use ADUs as of right on the same lot as any type of "Principal Dwelling," with no limit on the number of dwelling units. See 760 CMR § 71.02's definitions of "Accessory Dwelling Unit (ADU)" (defining an ADU as "[a] self-contained housing unit, inclusive of sleeping, cooking, and sanitary facilities on the same Lot as a Principal Dwelling . . .") and "Protected Use ADU" (defining a "Protected

Use ADU" as "[a]n attached or detached ADU that is located, or is proposed to be located, on a Lot in a Single-Family Residential Zoning District."). The Regulations define "Principal Dwelling" as a structure that contains at least one dwelling unit as follows (with emphasis added):

> A structure, regardless of whether it, or the Lot it is situated on, conforms to Zoning, including use requirements and dimensional requirements, such as setbacks, bulk, and height, *that contains at least one Dwelling Unit* and is, or will be, located on the same Lot as a Protected Use ADU.

The Regulations' definition of "Principal Dwelling" contemplates Protected Use ADUs on lots that include more than one dwelling unit. For example, Protected Use ADUs are allowed on lots containing a two-family dwelling or a multi-family dwelling. Therefore, allowing an ADU only in the context of no more than three dwelling units conflicts with G.L. c. 40A, § 3 and the Regulations. For this reason, we disapprove the text shown above in bold and underline. The Town should consult with Town Counsel with any questions.

IV. The Remaining Approved ADU Requirements Must be Applied Consistent with G.L. c. 40A, § 3 and 760 CMR 71.00

We offer comments for the Town's consideration regarding certain approved provisions adopted under Article 19 to ensure that the Town applies these provisions consistent with G.L. c. 40A, § 3 and the Regulations.

A. Amendments to Section 390-4.11 (E) - Relationship to Nonconformities

Under Article 19, the Town voted to amend Section 390-4.11 (E), "Relationship to nonconformities." We incorporate our more extensive comments to the Town from the decision issued on October 31, 2025 in Case # 11976 (pp.11-12) and reiterate that, to the extent Section 390-4.11 (E) intends to require a finding, the Town must ensure Section 390-4.11 (E) is applied consistent with the Regulations.

V. Conclusion

We partially approve the specific amendments adopted under Article 19, except for the words "but not more than three" from Section 390-4.11 (B), that we disapprove and delete as shown above in Section III in bold and underline. The Town should consult closely with Town Counsel when applying the remaining approved ADU provisions to ensure that they are applied consistent with G.L. c. 40A, § 3 and 760 CMR 71.00. If the approved provisions in Article 19 are used to deny a Protected Use ADU, or otherwise applied in ways that constitute an unreasonable regulation in conflict with 760 CMR 71.03 (3), such application would violate G.L. c. 40A, § 3 and the Regulations. The Town should consult with Town Counsel and EOHLC to ensure that the approved by-law provisions are applied consistent with G.L. c. 40A, § 3 and the Regulations, as discussed herein.

Article 17 - Under Article 17, the Town voted to make specific changes to Chapter 155 regarding its General Bylaw Review Committee ("Committee") as follows (new text shown in bold and deleted text in strikethrough):

> The members of the Committee will be appointed by the Moderator, and shall be comprised of the following voting members: a member of the Select Board, a Finance Committee member, a Planning Board member, Town Clerk, and ~~three~~ **four** citizens-at-large, preferably one from each precinct. Ex-officio, nonvoting members shall be: Building Inspector, Police Chief, Fire Chief, and DPW Superintendent.
>
> A quorum shall be ~~three~~ **five** present voting members.

We approve the amendments adopted under Article 17. Although the existing text was not amended under Article 17 and is therefore not subject to review by the Attorney General under G.L. c. 40, § 32, we offer the following comments for the Town's consideration.

The quorum requirement for the Committee is determined by *present* voting members of the Committee. The general rule is that in the absence of a statutory restriction, the majority of a board is a quorum, and a majority of the quorum can act. Merrill v. Lowell, 236 Mass. 463, 467 (1920); See also Clark v. City Council of Waltham, 328 Mass. 40, 41 (1951). The majority is calculated from the total membership regardless of whether a member is present at a particular meeting. See Gamache v. Town of Acushnet, 14 Mass. App. Ct. 215, 219 (1982) (the resignation of one member from a five-member board does not convert the board to a "not more than four" member board.) The Town should consult with Town Counsel with any questions about the specific quorum requirements for the Committee and whether the existing text should be amended at a future Town Meeting.[3]

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,

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[3] In addition, we remind the Town that G.L. c. 43B, § 20 (c) requires multiple member bodies to consist of an odd number of members. The Town may wish to discuss this issue in more detail with Town Counsel.