



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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July 21, 2022

Kandy L. Lavallee, Town Clerk  
Town of Grafton  
30 Providence Road  
Grafton, MA 01519

**Re: Grafton Annual Town Meeting of May 9, 2022 -- Case # 10531  
Warrant Articles # 33, 35 and 36 (General)**

Dear Ms. Lavallee:

**Articles 33, 35 and 36** - We approve Articles 33, 35 and 36 from the May 9, 2022 Grafton Annual Town Meeting. Our comments regarding Article 33 are provided below.

**Article 33** - Article 33 amends the Town's general by-laws by deleting the existing Article 12, Section 25 and inserting a new Article 12, Section 25, "Fingerprint Based Criminal Record Background Checks" ("Fingerprint By-law"). The by-law requires fingerprints for the following licenses: (1) hawking and peddling or other door-to-door salespeople; (2) manager of alcoholic beverage license; (3) owner or operator of public conveyance; (4) dealer of second-hand articles; (5) pawn dealers; (6) hackney drivers; (7) ice cream and food truck vendors; (8) bodyworks practitioner; and (9) motor vehicle dealers.

General Laws Chapter 6, Section 172 B ½ authorizes towns to obtain both state and national fingerprint-based criminal history, as follows:

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 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.<sup>1</sup> According to the EOPSS Bulletin, the Federal Bureau of Investigation (“FBI”) will not allow a municipality to access the national criminal history records database unless the municipality has a by-law in place which satisfies several requirements, including the following: (1) the by-law must reference the authorizing statute, G.L. c. 6, § 172B½; (2) the by-law must require fingerprinting of a licensing applicant; (3) the by-law must authorize the use of FBI records to conduct state and national criminal history records checks; (4) the by-law must identify specific categories of licensing applicants to be screened and may not be overly broad in its scope; and (5) the by-law must clearly state that the FBI criminal history will not be disseminated to unauthorized entities. See EOPSS Informational Bulletin, p. 2.<sup>2</sup> The Town’s by-law appears to meet these requirements.

We offer additional comments for the Town’s consideration on the new Fingerprint By-law.

1. Section 25 (A) – Purpose and Scope

Section 25 (A) authorizes the Board of Selectmen, in consultation with the Chief of Police, to promulgate regulations to implement the by-law. Any regulations promulgated by the Board of Selectmen must be consistent with state law. American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006). The Town should consult with Town Counsel regarding any proposed regulations to ensure they are consistent with state law, the statute and the FBI’s requirements for access to the national database.

2. Section 25 (C) - Use of Criminal Record by Licensing Authority

Section 25 (C) authorizes a Town licensing authority to deny an application based on the results of the fingerprint-based criminal record background check. In applying this provision, the Town should be mindful that the EOPSS Informational Bulletin provides that “[m]unicipal 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.” In addition, 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.” Although the by-law provides that the Board of Selectmen intend to promulgate regulations to implement the by-law, including procedures for correcting or amending a record, the by-law does not provide this information or notice to the applicant. The Town should consult with Town Counsel prior to denying an application for a license based upon information received pursuant to this by-law. In addition, the Town should consult with

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<sup>1</sup> The Informational Bulletin can be found here: [https://www.mass.gov/doc/municipal-civil-fingerprinting-bulletin/download?\\_ga=2.115691462.1588319617.1657896501-951842872.1621620055](https://www.mass.gov/doc/municipal-civil-fingerprinting-bulletin/download?_ga=2.115691462.1588319617.1657896501-951842872.1621620055)

<sup>2</sup> In addition, the EOPSS informational bulletin 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).

Town Counsel regarding this notice requirement to determine if the by-law should be amended at a future Town Meeting.

**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,

MAURA HEALEY  
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cc: Town Counsel Ginny Sinkel Kremer