PUBLIC NOTICE

To: All Interested Parties

Date: April 29, 2021

RE: Georgetown Annual Town Meeting – November 16, 2020
By Law Decision from the Attorney General’s Office
Warrant Article #12 (general)

Attached please find the Massachusetts Attorney General’s decision approving the Bylaw adopted by the 2020 Annual Town Meeting, along with the certified vote of the article adopting the bylaw.

Pursuant to MGL Chapter 40, section 32, after the posting requirements are met, General bylaws are deemed effective as of the posting of this notice. With the posting of this notice, general bylaws article #12 will be effective April 29, 2021.

Claims of invalidity by reason of any defects in the procedure

Copies of the amendments to the Town Code and By-Laws may be examined and obtained from the Office of the Town Clerk Georgetown Town Offices, 1 Library Street, Georgetown, MA.

Kerri A. McManus
Town Clerk

VOTE CERTIFICATION

EXTRACT FROM THE MINUTES OF THE TOWN MEETING, HELD ON THE FIELD AT PERLEY SCHOOL, 51 NORTH STREET, IN THE TOWN OF GEORGETOWN, MA, ON MONDAY, NOVEMBER 16, 2020.

Article 12: Amendment to the Code of Georgetown, Part I, Town Bylaws, to add a new Chapter 142, Transfer Stations, as follows (STM21-11) (Note this is a provision proposed by petitioners as a new Town Bylaw)

The maximum daily capacity of any transfer station or waste facility located within the Town of Georgetown, or the sum of all such facilities, cannot exceed 50 tons.

VOTED: The Town Voted YES

MAJORITY VOTE

A True Copy,

Attest: [Signature]

Date: April 29, 2021

[Stamp]
April 15, 2021

Kerri A McManus, Town Clerk
Town of Georgetown
1 Library Street
Georgetown, MA 01833

Re: Georgetown Town Meeting of November 16, 2020 — Case # 9991
Warrant Article # 12 (General)

Dear Ms. McManus:

Under Article 12 the Town voted to limit the maximum daily capacity of any transfer station or solid waste facility located within the Town to fifty tons. We approve Article 12 because we find no clear conflict with state law. However, the Town may not apply the by-law to prohibit the construction or expansion of a solid waste disposal facility, as defined by G.L. c. 111, § 150A in the Town’s industrial zones, because such a prohibition would conflict with G.L. c. 40A, § 9. In addition, the Town may not apply the by-law in a manner that would otherwise interfere with the broad regulatory authority of the Massachusetts Department of Environmental Protection (DEP).

In this decision, we summarize the by-law amendment adopted under Article 12 and the Attorney General's standard of review of town by-laws, and then explain why, based on our standard of review, we approve Article 12, notwithstanding the arguments made to us that Article 12 should be disapproved.

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1 On March 1, 2021, by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended our deadline for Article 12 for an additional thirty days until March 30, 2021. On March 26, 2021, by agreement with Town Counsel, we again extended our deadline for Article 12 for an additional sixteen days until April 15, 2021.

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We emphasize that our approval of the by-law in no way implies any agreement or disagreement with the policy views that led to the passage of the by-law. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or the wisdom of the by-law. *Amherst v. Attorney General*, 398 Mass. 793, 795-96, 798-99 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

I. **Summary of Article 12**

Article 12, a citizen-petitioned article, proposes to add to the Town’s general by-laws a new Chapter 142, “Transfer Stations,” that limits the maximum daily capacity for transfer stations and waste facilities to fifty tons. The text of Article 12, as shown on the certified vote submitted to this Office, provides as follows:

The Maximum daily capacity of any transfer station or waste facility located within the Town of Georgetown, or the sum of all such facilities, cannot exceed 50 tons.

II. **Attorney General’s Standard of Review of General By-laws**

Our review of Articles 12 is governed by G.L. c. 40, § 32. Pursuant to 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 an enactment. *Id.* at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. *Id.* at 796. Where the Legislature intended to preempt the field on a topic, a municipal by-law on that topic is invalid and must be disapproved. *Wendell v. Attorney General*, 394 Mass. 518, 524 (1985). It is under this standard of review that we conclude Article 12 is not in conflict with state law.

During our review of Article 12, we received correspondence urging our Office to disapprove Article 12 on the basis that the siting, construction and operation of solid waste facilities is assertedly comprehensively regulated by G.L. c. 40A, § 9 and c. 111, §§ 150 and 150A and the regulations promulgated under those statutes. We appreciate this input as it has informed our review of the by-law and emphasized the importance of the issues at stake. As explained in more detail below, based on our standard of review we have determined that the arguments in opposition do not provide grounds for us to disapprove Article 12. However, we strongly encourage the Town to consult closely with Town Counsel regarding the application of the by-law in light of the issues outlined below.
III. Statutory Limitations on the Application of the Article 12's Maximum Daily Capacity at Transfer Stations and Solid Waste Facilities

Pursuant to G.L. c. 40A, § 9, the state DEP has broad authority over solid waste facilities pursuant to G.L. c. 21A, § 8, G.L. c. 40A, § 9, and G.L. c. 111, § 150A, and the Solid Waste Management Facility regulations found at 310 C.M.R. § 19.000 et seq. See, e.g., Buckley v. Wilmington, 68 Mass. App. Ct. 1113 (2007) (unpub.) (invalidating a landfill height limitation by-law because it interferes with and frustrates DEP’s authority under G.L. c. 111, § 150A to properly close and cap a landfill.).

General Laws Chapter 111, Section 150A grants broad authority to the DEP to regulate solid waste facilities. Through its implementing regulations found at 310 C.M.R. § 19.000 et seq, DEP imposes operating conditions on solid waste facilities. Towns may also impose reasonable requirements on solid waste facilities. See, e.g., G.L. c. 40A, § 9. However, Towns cannot apply such requirements in a manner that interferes with DEP’s authority over solid waste facilities pursuant to G.L. c. 111, § 150A, and 310 C.M.R. § 19.000 et seq. Buckley, 68 Mass. App. Ct. 1113.

Together, these statutes (and the regulations promulgated at 310 C.M.R. § 19.000 et seq.) establish that, in a town’s industrial zones, a solid waste disposal facility is allowed by right provided it has received a site assignment pursuant to G.L. c. 111, § 150A. Therefore, the Town may not apply the by-law in a manner that would prohibit such statutorily protected facilities. The Town should consult with Town Counsel and the DEP with any questions regarding this issue.

Similarly, the Town may not apply the by-law in a way that interferes with the DEP’s broad regulatory authority over solid waste facilities. The DEP has been granted the federal delegation of authority to license landfills under the terms and conditions of the Resource Conservation and Recovery Act ("RCRA") law and its solid waste regulations at 42 CFR part 239 et seq. (the so-called “Subpart D authority”). The authority delegated from the United States Environmental Protection Agency (EPA) includes landfill design criteria, landfill operating criteria, closure criteria and post-closure use criteria. 42 CFR § 239.6. The Town may not apply the by-law in a way that would interfere with the DEP’s broad authority over solid waste facilities as delegated from the EPA pursuant to the terms and conditions of RCRA, Subpart D.

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2 As stated in 42 CFR 239.1: Purpose:

This part specifies the requirements that state permit programs must meet to be determined adequate by the EPA under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA or the Act) and the procedures EPA will follow in determining the adequacy of state Subtitle D permit programs or other systems of prior approval and conditions required to be adopted and implemented by states under RCRA section 4005(c)(1)(B).
IV. Conclusion.

Although we approve the by-law adopted under Article 12, we strongly encourage the Town to consult closely with Town Counsel and the DEP to ensure that the by-law is properly applied, as detailed herein.

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 Thomas W. McEnaney