

# Bulletin

## March 18, 2022

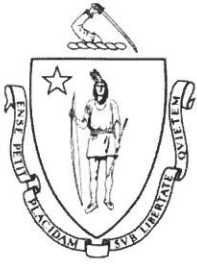
RE: Special Town Meeting of December 14, 2021, Article 9.

Approved by the Attorney General

From the Office of the Town Clerk

Kathleen M. Spofford

On March 17, 2022 the Attorney General approved to amend Chapter 1 of the Town's General Bylaws, entitled "General Provision," Article II entitled "Noncriminal Disposition of Violations," Section 1-1, entitled "Fine schedule and enforcing officers," Subsection D, entitled "Unregistered Motor Vehicles Bylaw,"



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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March 17, 2022

Kathleen M. Spofford, Town Clerk  
Town of Townsend  
272 Main Street  
Townsend, MA 01469

**Re: Townsend Special Town Meeting of December 14, 2021 -- Case # 10453  
Warrant Article # 9 (General)**

Dear Ms. Spofford:

**Article 9** - We approve Article 9 from the December 14, 2021 Townsend Special Town Meeting.

Under Article 9 the Town amended the general by-laws to amend Chapter 1, "General Provisions," Article II, "Noncriminal Disposition of Violations," Section 1-1, "Fine schedule and enforcing officers," Subsection D, "Unregistered Motor Vehicles Bylaw," to add a fine schedule for violations of the Town's Unregistered Motor Vehicles Bylaw and to designate the Townsend Police and the Building Inspector as the enforcing officers. In addition, under Article 9 the Town deleted from Chapter 112, "Streets and Sidewalks," Section 112-14, "Unregistered motor vehicles" in its entirety and added a new Chapter 128, "Unregistered Motor Vehicles." We offer comments for the Town's consideration regarding the new Chapter 128.

Chapter 128 (A) authorizes the keeping of one unregistered motor vehicle (assembled or disassembled) outdoors subject to certain setback requirements. Chapter 128 (A) does not apply to an unregistered motor vehicle that is kept "within an enclosed building." Chapter 128 (B) authorizes the Board of Selectmen to issue a permit "to keep more than one unregistered vehicle on any premises not within an enclosed building" and requires the Selectmen to hold a public hearing, with notice to abutters, and make certain findings, prior to the granting of the permit.

In addition, Chapter 128 (B) authorizes the Board of Selectmen to charge an "applicable fee" as part of the application for a permit. Any fee established by the Board of Selectmen must be consistent with state law. A municipality may impose fees, but it "has no independent power of taxation." *Silva v. City of Attleboro*, 454 Mass. 165, 169 (2009). In distinguishing valid fees from impermissible taxes, the Supreme Judicial Court has noted that fees tend to share the following common traits: (1) fees, unlike taxes, are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other

members of society; (2) user fees (although not necessarily regulatory fees) are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. See Silva, 454 Mass. at 168 (citing Emerson College v. City of Boston, 391 Mass. 415, 424-25 3 (1984)). The Town should consult with Town Counsel to ensure that any permit fee constitutes a valid fee rather than impermissible tax.

Lastly, Chapter 128 (E) provides that upon receipt of a written complaint, the Police Chief, the Building Inspector or their designees "shall perform a site inspection and investigation and shall report their findings to the Board of Selectmen in writing." In applying this provision, 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. 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 this Section is applied in a manner that is consistent with state law and applicable constitutional requirements.

**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  
ATTORNEY GENERAL

*Nicole B. Caprioli*

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cc: Town Counsel Adam J. Costa

**TOWN OF TOWNSEND**  
**SPECIAL TOWN MEETING**  
**December 14, 2021**

**ARTICLE 9**

**Chapter 1      General Provisions**

**Article II      Noncriminal Disposition of Violations**

**Section 1-1      Fine schedule and enforcing officers**

**D.      Unregistered Motor Vehicles Bylaw**

- (1) Enforcing Officers:
  - (a) Townsend Police.
  - (b) Building Inspector.
- (2) Fine schedule:
  - (a) First offense: written warning.
  - (b) Second offense: \$100 per day.

**Delete from Chapter 112 of the General Bylaws, entitled Streets and Sidewalks, Section 112-14, entitled Unregistered motor vehicles in its entirety.**

**Chapter 128 Unregistered Motor Vehicles**

- A. No person or entity shall keep or permit to be kept on any premises within the Town of Townsend more than one unregistered motor vehicle assembled or disassembled unless said vehicles are stored within an enclosed building. The one unregistered motor vehicle shall be no closer than 15 feet to a public way, and no closer to the property line of another than the minimum setback for a new primary building or dwelling, whichever setback is greater, in the applicable zoning district..
- B. For good cause shown, and upon application on a form approved for such purpose and the payment of any applicable fee, the Board of Selectmen may issue a permit to keep more than one unregistered motor vehicle on any premises not within an enclosed building. Issuance of a permit hereunder shall occur only after a duly called public hearing, of which all abutters to the premises have received at least five (5) days advance notice, and only upon a finding by the Board of Selectmen that such keeping:
  - (1) Will not adversely affect the neighborhood;
  - (2) Will not be a nuisance; and
  - (3) The keeping of such vehicles will not be in conjunction with a use that is:
    - (a) Otherwise not permissible in the zoning district; or
    - (b) Is permissible by a special permit from the Zoning Board of Appeals but no permit has been granted.

- C. All permits granted shall limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time to be determined by the Board of Selectmen.
- D. The provision of Sections **A** through **F**, inclusive, of this Bylaw, shall not apply to motor vehicles designed and used for farming purposes, nor to persons or entities in the lawful exercise of licenses granted under MGL c. 140, §§ 58 and 59.
- E. The Police Chief, the Building Inspector or their respective designees shall enforce this Bylaw. Upon receipt of a written complaint ~~to the Board of Selectmen~~ the Police Chief, the Building Inspector or their designees shall perform a site inspection and investigation and shall report their findings to the Board of Selectmen in writing. The report shall contain the property address at which the vehicle(s) are located, as well as the make, model, year and color of the vehicle(s), if known, and their approximate location on the site.
- F. This Bylaw may be enforced by the designated enforcing officers and/or by the Board of Selectmen, through any lawful means in law or in equity, including but not limited to noncriminal disposition in accordance with the provision of MGL c. 40 § 21D and § 1-1 of the Townsend Code, Article II, including the fine schedule incorporated therein. Each violation and each day that such violation occurs or continues to occur shall constitute a separate offense.