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June 27, 2014

Patricia Bessette, Town Clerk
Town of Avon
65 East Main Street
Avon, MA 02322

**RE: Avon Annual Town Meeting of May 6, 2014 - Case # 7111
Warrant Article # 22 (Zoning)
Warrant Articles # 9, 18 and 26 (General)**

Dear Ms. Bessette:

Articles 9, 18, 22 and 26 - We approve the amendments to the Avon by-laws adopted under Articles 9, 18, 22 and 26 at the May 6, 2014 Annual Town Meeting. Our comments regarding Articles 9, 18 and 26 are provided below.

Article 9 - Article 9 amends Article VII, "Police Regulation," Section 2, "Fund Raising," Sub-Section D, "Registration Fee" to increase the registration fee from \$5.00 to \$25.00. We approve this amendment.

The underlying by-law pertains to door-to-door solicitations, and sets forth its purpose as "establish[ing] registration requirements and specific operation requirements for all persons intending to engage in door-to-door canvassing or solicitation in the Town of Avon" Although the underlying by-law is not before us for review and approval, we suggest that the Town consult with Town Counsel regarding the provisions of the underlying by-law to ensure that they are consistent with the applicable law, particularly in light of our recent decisions regarding door-to-door solicitations. See e.g. Decision issued to Town of Bellingham, dated January 7, 2014, Case # 6936, which may be found on the Municipal Law Unit's Decision Look-Up website, at:

<http://www.mlu.ago.state.ma.us/Search.aspx?section=1>

Article 18 - Article 18 adds to Article VII a new Section 23, "Scrap Metals Recycler/Junk Dealer License."

The by-law addresses a variety of second hand items, including, scrap metal, salvage yard

items, and “junk.” There are several General Laws that relate to these various items. General Laws Chapter 140, Sections 54-56 and 202-205 pertain to “dealers in or keepers of shops for the purchase, sale or barter of junk, old metals or second hand articles...;” and G.L. c 140, § 59A pertains to “motor vehicle junkyards.” The Town should consult with Town Counsel to ensure that the by-law is applied consistent with these General Laws.

In addition, the by-law includes the term “ordinance.” It is customary to refer to the legislative acts of towns as “by-laws” not “ordinances.” The Town may wish to amend these references at a future Town Meeting.

Article 26 - Article 26 adds to Article VII a new Section 25, “Pawnbrokers.” General Laws Chapter 140, Sections 70-85 and 202-205 pertain to pawnbrokers. The Town should consult with Town Counsel to ensure that the by-law is applied consistent with these General Laws. We offer comments on certain specific sub-sections of the by-law.

1. Fees.

Section 25.4 provides that “The fee for a license as a pawnbroker shall be established by ordinance.” However, the by-law does not establish the amount of the license fee. When establishing the license fee, the Town must ensure that it complies with G.L. c. 140, § 77 which limits the fee to no “greater than one hundred dollars.”

2. Revocation of License.

Section 25.13 provides that “[t]he violation of any provision of this ordinance or the making of any false statements on the application for a license shall be cause for revocation of the license.” The revocation provisions in Section 25.13 are silent as to the notice and hearing process regarding revocation of a license. To avoid any due process challenge, the Town may wish to consult with Town Counsel regarding a future amendment to establish a hearing process for a license revocation.

3. Sale, Rental or Lease of Firearms.

Section 25.15 provides as follows:

No pawnbroker shall sell, rent, or lease firearms, rifles, shotguns or machine guns. A pawnbroker, who loans money secured by deposit or pledge or (sic) a firearm, rifle, shotgun, or machine gun, shall be punished, in accordance with the provisions of General Laws, Chapter 140, Section 131B, by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than one (1) years or by both.

Firearm sales are governed by a separate license procedure under G.L. c. 140, § 122. The Town should consult with Town Counsel regarding the proper application of this section of by-law in light of the separate license procedure of G.L. c. 140, § 122. In addition, pursuant to G.L. c. 40, § 21, any penalty for a by-law violation may not exceed \$300.00. A by-law violation

may not be penalized by a fine of \$500.00 or imprisonment. Those penalties are only available for a violation of the statute (G.L. c. 140, § 131B) as opposed to a by-law violation. We suggest the Town consult with Town Counsel with any questions on this issue.

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 Joseph Lalli