



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
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May 17, 2017

Robert T. Craver, Town Clerk  
Town of Webster  
350 Main Street  
Webster, MA 01570

**Re: Webster Fall Annual Town Meeting of October 1, 2016 - Case # 8173  
Warrant Article # 15 (General)**

Dear Mr. Craver:

**Article 15** – Except where indicated below, we approve the amendments adopted under Article 15 from the Webster Fall Annual Town Meeting of October 1, 2016.

Article 15 proposes to amend the Town’s general by-laws to add a new Chapter 314, “Wildlife Feeding (Animals and Waterfowl).” The by-law prohibits the feeding of wildlife on public or private property within the Town of Webster, and is punishable through fines collected by way of non-criminal disposition. The stated purpose of the by-law is to prevent damage to public and private land and property as a result of feeding waterfowl and other animals, and to protect the welfare of wild animals and waterfowl.

**I. The Director of DFW Has Broad Statutory Authority to Regulate Wildlife.**

Chapter 131 grants the Director of the Division of Fisheries and Wildlife (“DFW”) wide-ranging authority over hunting, trapping and wildlife in the Commonwealth (*see generally* G.L. c. 131, § 4 and 321 CMR 3.01 *et seq.*), and further grants the DFW to adopt comprehensive regulations governing hunting, trapping, and wildlife which are embodied in 321 CMR 3.00 *et seq.* Pursuant to G.L. c. 131, § 5, “Except as provided in rules and regulations made under authority of this section, and except as otherwise provided in [Chapter 131], a person shall not fish, hunt, or trap...”.

Certain text in the Town’s by-law interferes with this broad statutory authority and we disapprove it on this basis. Section 314-4 of the by-law includes various exceptions including:

**B. Regardless of, the Director of the Division of Fisheries and Wildlife or his agent or designee may authorize the emergency feeding of waterfowl and other birds when, in his opinion, such action is necessary to alleviate undue losses and suffering of such birds due to unusual weather conditions and other circumstances. The Director may authorize such action by such means as he deems necessary and expedient, but such means shall include the immediate notification to the Selectmen thereof by first class mail.**

We disapprove and delete Section 314-4. B as indicated in underlined and bold above because the Town has no authority to authorize the Director of the DFW to act. Towns may only adopt by-laws that govern the towns' citizens. *See* G.L. c. 40 § 21 ("Towns may, for the purposes hereinafter named, make such ordinances and by-laws, not repugnant to law, as they may judge most conducive to their welfare, *which shall be binding upon all inhabitants thereof and all persons within their limits...*") (emphasis supplied). Towns do not generally have the power to require a state or federal agency to perform certain functions. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary District v. Town of North Andover, 439 Mass. 16, 21 (2003). In addition, Chapter 131 et. seq. and the implementing regulations grant to the Director the sole authority to determine whether an emergency situation creates the need to feed wildlife, and the Town has no authority to require the Director to notify the Town of that determination. On this basis, we disapprove and delete Section 314-4.B from the by-law.

Similarly, Section 314-2 defines the "Designated enforcement authority" to include "Environmental Police Officers, and other officers of the Division of Law Enforcement, and... the Deputy Environmental Police Officers." We approve this text because it apparently authorizes, but does not require, these state employees to enforce the by-law's provisions. The Town cannot *require* the Massachusetts Environmental Police (MEP) or the officers of the Division of Law Enforcement to enforce the by-law. As noted above, towns do not generally have the power to require a state or federal agency to perform certain functions. Because the by-law text allows, but does not require, the MEP and the Division of Law Enforcement to enforce the Town's by-law, we approve it. However, we caution the Town that it cannot *require* the MEP or the Division of Law Enforcement to enforce the Town's by-law. We recommend the Town consult with Town Counsel regarding any questions on this issue.

Finally, we caution the Town that the remaining portions of Chapter 314 "Wildlife Feeding (Animals and Waterfowl)" cannot be applied in such a way that would interfere with the enforcement authority of the DFW. The Town should consult closely with Town Counsel to ensure that its enforcement of the by-law does not encroach on the broad regulatory power of the DFW Director granted in Chapter 131, including the Director's sole authority to determine when wildlife is creating a nuisance.

**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

*Margaret J. Hurley*

By: Margaret J. Hurley  
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cc: Town Counsel William Hewig

This is to certify that the following article was acted on at the Annual Town Meeting held on October 17, 2016. The meeting started at 7:05 p.m. and there was a quorum present.

**COMMONWEALTH OF MASSACHUSETTS  
TOWN OF WEBSTER  
ANNUAL TOWN MEETING WARRANT  
October 17, 2016**

In the name of the Commonwealth of Massachusetts you are hereby required and directed to notify and warn the inhabitants of the Town of Webster aforesaid who are qualified to vote in elections and Town affairs to meet in the Bartlett High School Auditorium, 52 Lake Parkway, in said Webster on **Monday, October 17, 2016 at 7:00 PM** then and there to act on the following Articles to wit:

**ARTICLE 15: Chapter 314: Wildlife Feeding (Animals and Waterfowl)**

**§ 314-1 Purpose**

**§ 314-2 Definitions**

**§ 314-3 Prohibited activity**

**§ 314-4 Exceptions**

**§ 314-5 Penalties**

**§ 314-1 Purpose.** The intent of this bylaw is to protect the health, safety, and welfare of the community. It has been established that feeding waterfowl and other wild animals increases the potential for damage to public and private land and property. Feeding may elevate the potential for the spread of diseases in people. Feeding of gulls especially endangers water quality and drinking water supplies, according to the Massachusetts Department of Conservation and Recreation, Division of Water Supply Protection. In addition, it is the intent of this bylaw to protect the welfare of wild animals and waterfowl as feeding can interrupt their normal feeding patterns, can cause nutritional problems, threaten their health and promote the spread of diseases.

**§ 314-2 Definitions.** As used in this and subsequent sections,

**Wildlife** shall mean any undomesticated and unrestrained animal or fowl, including but not limited to bears, coyotes, foxes, raccoons, skunks and other animals or fowl (including gulls and geese) causing public safety threats or nuisances.

**Feeding** shall mean the act of ground feeding, placing, exposing, depositing, distributing, or scattering, directly or indirectly, of any grain, shelled, shucked, or unshucked corn, seeds, wheat, bread or bakery products, salt, meat or parts, fish or parts, honey, molasses, or any other feed or nutritive substances, in any manner or form, so as to constitute for such wildlife

a lure, attraction, or enticement to, on, or over any such areas where such feed items have been placed, exposed, deposited, distributed, or scattered.

**Designated enforcement authority** shall mean Webster Animal Control Officer, Police Officers, Natural Resources Officers, agents of the Board of Health, Environmental Police Officers, and other enforcement officers of the Division of Law Enforcement, and by the Deputy Environmental Police Officers.

### § 314-3 Prohibited activity.

No person shall feed any wildlife on public or private property within the town of Webster. Whenever the Webster Animal Control Officer or any designated enforcement authority becomes aware that wildlife has been found feeding on any substance, as defined above, and the landowner or person committing the act has been notified of the occurrence by any person authorized to enforce this By-Law, and wildlife is thereafter found feeding on any such

substance after any act of the commission or omission by the landowner or other person, such feeding shall be prima facie evidence that the feeding was with the knowledge or consent of the landowner or other person.

### § 314-4 Exceptions.

- A. Nothing in this By-Law shall be construed to limit the feeding of domesticated waterfowl, as defined by the Division of Fisheries and Wildlife, by a farmer as defined in M.G.L. ch. 128 § 1A on property owned or leased by him, or the feeding of waterfowl or any other birds by propagators licensed under M.G.L. ch. 131 § 23 when such waterfowl or other birds are confined in such a manner as may be required pursuant to said Section 23 and any rules and regulations issued under authority thereof; or the feeding by any person or his agents, invitees or licensees or waterfowl lawfully kept as a pet by such person.
- B. Regardless of, the Director of the Division of Fisheries and Wildlife or his agent or designee may authorize the emergency feeding of waterfowl and other birds when, in his opinion, such action is necessary to alleviate undue losses and suffering of such birds due to unusual weather conditions and other circumstances. The Director may authorize such action by such means as he deems necessary and expedient, but such means shall include the immediate notification to the Selectmen thereof by first class mail.
- C. Any individual, company or corporation that is duly licensed by the Commonwealth of Massachusetts or entitled under law to possess wildlife of any kind.
- D. Any action that is officially sanctioned by the Commonwealth of Massachusetts that would require feeding, baiting, or luring of wildlife (i.e, capturing and tagging wildlife for scientific projects and study).
- E. Any individual, company, or corporation that is engaged in lawful agricultural pursuits, including but not limited to growing crops, crop-bearing plants or raising livestock.

- F. This section shall not be interpreted so as to prohibit bird feeders. However, if a bird feeder is determined to be the cause of a public safety threat or nuisance, the bird feeder(s) and seed debris will be required to be removed within 48 hours.
- G. This section shall not be interpreted so as to prohibit the feeding of pets, provided that if food intended for pets is determined to be the source of wildlife feeding, the landowner or person responsible for the premises will be required to take steps to render such pet food inaccessible to wildlife, including the requirement that pet food be removed. If any wildlife gains access to pet food, the condition allowing access must be corrected or the pet food removed within 48 hours.
- H. This section shall not be interpreted so as to prohibit or discourage the trap-neuter-return program, supported by the MSPCA, in the handling of feral cats.
- I. This section shall not be interpreted so as to prohibit the storage of refuse, food product, pet food, or other material or nutritive substance on any premises in a manner which does not constitute a lure, attraction or enticement of wildlife on property within the Town of Webster, provided that if such storage is determined to be the source of a wildlife feeding problem, the landowner or person responsible for the premises will be required to take steps to render such storage area inaccessible to wildlife and the area near the storage be kept free from such debris. If any wildlife gains access to a storage area, the condition allowing access must be corrected or the stored material removed within 48 hours.

#### § 314-5 Penalties.

Any violation of this section may be enforced by the Animal Control Officer or any designated enforcement authority through non-criminal disposition in accordance with the following schedule of fines:

First offense: warning

Second offense: \$50 fine

Third offense: \$100 fine

Fourth and subsequent offense: \$150 fine

#### **CITIZEN'S PETITION**

**Decision:** A motion was made to dispense with the reading of the whole article. The motion received a **POSITIVE VOTE** and the Moderator moved on to discussion of the article.

A second motion was to approve the article as read.

A third motion was made to allow a non-resident speaker to address the meeting. The motion passed the speaker was allow to address the meeting.

A fourth motion was made to pass over the article for more information. A vote was taken and this motion **FAILED**.

A fifth motion was made to move the question. The motion received a **UNANIMOUS VOTE** and the Moderator moved on to vote on the second motion which was to approve the article as written. The vote was a **POSITIVE VOTE** and the article was **APPROVED** as written.

A final motion was made to dissolve the meeting. The motion received a **Unanimous YES VOTE** and the meeting was dissolved at 9:10 p.m.

