



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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August 2, 2016

Kelly Dumas, Town Clerk
Town of Uxbridge
21 South Main Street
Uxbridge, MA 01569

RE: Uxbridge Annual Town Meeting of May 10, 2016 - Case # 7932
Warrant Article # 20 (Zoning)
Warrant Articles # 17 and 18 (General)

Dear Ms. Dumas:

Articles 17 and 18 - We approve Articles 17 and 18 from the May 10, 2016 Uxbridge Annual Town Meeting. Our comments regarding Article 17 are provided below.

Article 20 - We retain Article 20 for further review and will issue our decision on or before our deadline of September 28, 2016.

Article 17 - Article 17 amends the Town’s general by-laws to add a new Chapter 122, “Dog Park Committee.” The Dog Park Committee “shall oversee and manage the activities of the Town owned dog parks...” and is also authorized, with the approval of the Board of Selectmen, to “design, plan, promote, acquire and/or designate Town owned land for the construction of such facilities.” See Section 122-3. As discussed in more detail below, the by-law identifies two separate accounts or funds to be created: (1) a separate account to hold grants, gifts or donations (See Section 122-4); and (2) a dog park revolving fund. (See Section 122-11).

1. Grants, Gifts or Donations.

Section 122-4 authorizes the Dog Park Committee to “accept grants or gifts from the state and federal government, from a charitable corporation, from a private corporation, or from an individual. Such funds as may be received shall be deposited with the Town Treasurer and held as a separate account.” This type of separate account for received grants, gifts or donations is authorized by G.L. c. 44, § 53A, which provides in relevant part as follows:

An officer or department of any...town... may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof...and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift...in towns with the approval of the board of

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Kelly A. Dumas
TOWN CLERK, UXBRIDGE

selectmen.... Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a...town...shall be deposited with the treasurer of such...town...and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation.

Grants, gifts and donations to the Dog Park Committee may go into a separate gift account and may be expended by the Dog Park Committee with the approval of the Board of Selectmen. However, other funds received by the Dog Park Committee (for example sums received in connection with the programs or activities of the Dog Fund Committee) cannot go into this separate gift account and must be applied consistent with G.L. c. 44, § 53, unless the Town has properly established a revolving fund in accordance with G.L. c. 44, § 53E ½, as discussed in more detail below.

2. Dog Park Revolving Fund.

Section 122-11 establishes an annual usage license fee and authorizes “[f]ees collected from this licensing procedure will be placed into the dog park revolving fund as set by the Town.” In addition, any violation fees established by the Dog Park rules will also be placed “into the dog park revolving account.” The establishment and use of a revolving fund can only be done in accordance with G.L.c. 44 § 53E ½, which provides in relevant part that:

Notwithstanding the provisions of section fifty-three, a...town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such...town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Revolving funds are authorized by the Legislature only for the deposit of “departmental receipts received in connection with the programs supported by such revolving fund.” Revolving funds need to be established and renewed annually by Town Meeting and may not be set up in the body of a Town by-law.¹ This procedure ensures that each Town Meeting has the power to decide whether or not to authorize a revolving fund for the upcoming fiscal year and, if so, what particular receipts will be credited to the fund and how the funds may be spent.

¹ It does not appear that the Town has yet established a “dog park revolving fund” as the Town Meeting minutes provided to our Office from the Town Clerk, include a commentary for Article 17, which states that “[r]evenues generated by the operation of such a park will be placed into a revolving fund *to be established at a future town meeting...*” (emphasis added).

Absent an annual Town Meeting vote, the reference to the “dog park revolving fund” in Section 122-11 cannot be construed as creating a G.L. c. 44, § 53E ½, revolving fund. If a revolving fund has not been annually established by the Town under G.L. c. 44, § 53E ½, then any sums received by the Dog Park Committee, including the “annual usage license fee” or “[v]iolation fees.” would become part of the Town’s general fund pursuant to G.L. c. 44, § 53, and cannot be spent without appropriation.² The Town should 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,

MAURA HEALEY
ATTORNEY GENERAL

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² General Laws Chapter 44, Section 53 provides that in the absence of any general or special law to the contrary, all funds must be deposited with the Town Treasurer and made part of the Town’s general fund.

ARTICLE 17: ADDITION OF CHAPTER TO UXBRIDGE GENERAL BYLAWS: DOG PARK COMMITTEE

To see if the Town will vote to amend the General Bylaws of the Town, by inserting a new general bylaw, Chapter 122; to be titled "Dog Park Committee" to read as follows:

Chapter 122

DOG PARK COMMITTEE

- § 122-1. Organization
- § 122-2. Composition and Appointment
- § 122-3. Duties and Responsibilities
- § 122-4. Authority to accept grants, gifts or donations
- § 122-5. Deposit of sums from programs and activities
- § 122-6. Financial procedures
- § 122-7. Expenditure of funds
- § 122-8. Park rules
- § 122-9. Compliance with Open Meeting Law
- § 122-10. Criminal Offender Records Inquiry
- § 122-11. Violations and fees

§ 122-1. Organization

The Dog Park Committee is hereby created pursuant to the Uxbridge Home Rule Charter, Article 5 Section 1.

§ 122-2. Composition and appointment

The Dog Park Committee shall consist of five (5) members, to be appointed by the Town Manager for a term of office of three (3) years, said terms to be staggered in the Committee's first year to 2 three-year appointments, 2 two-year appointments and 1 one-year appointment.

§ 122-3. Duties and responsibilities

The Dog Park Committee shall oversee and manage the activities of the Town owned dog parks within the Town of Uxbridge in compliance with Massachusetts General Laws. Said Committee will also be authorized to, with the approval of the Board of Selectmen, design, plan, promote, acquire and/or designate Town owned land for the construction of such facilities.

§ 122-4. Authority to accept grants, gifts or donations

The Dog Park Committee is hereby authorized to accept grants or gifts from the state and federal government, from a charitable corporation, from a private corporation, or from an individual. Such funds as may be received shall be deposited with the Town Treasurer and held as a separate account.

§ 122-5. Deposit of sums from programs and activities

The Dog Park Committee is further authorized to deposit to said account all sums received in connection with the conduct of programs or activities it is authorized to conduct.

§ 122-6. Financial procedures

The Dog Park Committee shall account for all program-related revenues in accordance with procedures set by the Town Manager or his/her designee

§ 122-7. Expenditure of funds

The Dog Park Committee may, with approval through the warrant process, expend funds from said account for any purpose it is authorized to perform without further appropriation; said expenditures to be in compliance with all Massachusetts procurement laws and regulations.

§ 122-8. Dog Park Rules

The Dog Park Committee shall promulgate park rules to promote the health and safety of all visitors to the Uxbridge Dog Park.

§ 122-9. Compliance with Open Meeting Law

In compliance with the Open Meeting Law, meetings of the Dog Park Committee shall take place in a public place and shall be posted with the Town Clerk at least 48 hours in advance. Approved minutes of those meetings shall be filed with the Town Clerk in a timely manner.

§ 122-10. Criminal Offender Records Inquiry (CORI)

All individuals seeking membership to the Dog Park Committee shall be required to submit a signed CORI request form.

§ 122-11. Licenses and fees

The Dog Park Committee will require an annual usage license fee, which will be issued by the Town of Uxbridge. Fees collected from this licensing procedure will be placed into the dog park revolving fund as set by the Town. Violations of established Dog Park rules and regulations will be enforced by a fee schedule as approved by the Board of Selectmen. Violation Fees will be placed into the dog park revolving account; Or take any other action related thereto.

SPONSOR: Town Manager

Commentary: This proposed addition to the general bylaws would create a committee to manage a dog park. No such parks yet exist, but the Town has applied for a grant from the Stanton Foundation to fund the design and construction of a dog park in the near future. Revenues generated by the operation of such a park will be placed into a revolving fund to be established at a future town meeting, assuming that this article is passed and the park is constructed.

MOTION: Move that the article be accepted as written

RECOMMENDATION OF THE FINANCE COMMITTEE: Favorable (4-2-0). This article would create an area for residents to walk their dogs with no cost to the town.

RECOMMENDATION OF THE BOARD OF SELECTMEN: Favorable action (4-1-0)

VOTE NEEDED: Amendments to the Uxbridge General Bylaws requires a 2/3rds Majority.

The motion is seconded

Moderator declares a 2/3rds majority vote, motion carries

ARTICLE 18: AMENDMENT TO THE UXBRIDGE GENERAL BYLAWS SECTION 125-2
DATE OF ADJOURNED ANNUAL TOWN MEETINGS

To see if the Town will vote to amend Section 125-2 of the General Bylaws of the Town of Uxbridge by removing "The fall session of the Annual Town Meeting shall be held at 7:00 p.m. on the second Tuesday of November, unless the date coincides with Veteran's Day and then the meeting will be held on the third Tuesday in November." And inserting "The fall session of the Annual Town Meeting shall be held at 7:00 p.m. on the fourth Tuesday of October."

Or take any other action relating thereto.

SPONSOR: Town Manager

Commentary: There are several calendar events that can interfere with the scheduling of the Fall Annual Town Meeting, such as Veteran's Day, Thanksgiving week, and Election Day. Moving it to the fourth Tuesday in October will eliminate the prospect of rescheduling it. There is no chance that October 31st will fall on a Tuesday...the closest that it comes to that date is October 30 in the year 2040.

MOTION: *Move that the article be accepted as written*

RECOMMENDATION OF THE FINANCE COMMITTEE: **Favorable action (6-0-0).** This change would make sure that the Fall Town Meeting would never fall on Veteran's Day or interfere with the Thanksgiving Holiday.

RECOMMENDATION OF THE BOARD OF SELECTMEN: **Favorable action (5-0-0)**

VOTE NEEDED: Amendments to the Uxbridge General Bylaws requires a 2/3rds Majority.

The motion is seconded

Moderator declares a unanimous vote, motion carries

