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September 17, 2012

Ms. Diane Crory, Town Clerk
Town of Littleton
P.O. Box 1305
37 Shattuck Street, Room 207
Littleton, MA 01460

Re: **Littleton Annual Town Meeting of May, 7, 2012 --Case # 6431**
Warrant Article 20 (Zoning)
Warrant Articles 21, 22, 23, 24, and 25 (General)

Articles 20 through 25 - We approve the amendments to these Articles adopted under the warrant for the Littleton Annual Town Meeting that convened on May 7, 2012, and the map pertaining to Article 20. Our comments on Article 25 are provided in more detail below.

Article 25 - The amendments adopted under Article 25 add a new Chapter 74, "Civil Fingerprinting" to the Town's General By-laws. Section 74-2 of the by-law requires applicants for the following licenses to submit to fingerprinting by the Police Department so that a State and Federal fingerprint based criminal history check can be performed:

Manager of Alcoholic Beverage License

Hawkers, Peddlers, and Solicitors

Ice Cream Truck Vendor

Junk Dealers

Owner or Operator of a Public Conveyance

This by-law is specifically authorized by G.L. c. 6, § 172B ½. This statute allows Towns to obtain both state and national fingerprint-based criminal histories. The new Section 172B ½ states in part as follows:

Section 172B1/2. Municipalities may, by local ordinance, require applicants for licenses in specified

occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 and 28 U.S.C. § 534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

The Executive Office of Public Safety and Security (“EOPSS”) has issued an Informational Bulletin which explains the requirements for town by-laws and the procedures for obtaining criminal history information. The Informational Bulletin can be found here:

<http://www.mass.gov/eopss/docs/chsb/civil-fingerprint-june-2011.pdf>

According to the EOPSS Bulletin, the Federal Bureau of Investigation (“FBI”) will not allow a municipality to access the national criminal history records database unless the municipality has a by-law in place which satisfies several requirements, including the following: (1) the by-law must reference the authorizing statute, G.L. c. 6, § 172B ½; (2) the by-law must require fingerprinting of a licensing applicant; (3) the by-law must authorize the use of FBI records to conduct state and national criminal history records checks; (4) the by-law must identify specific categories of licensing applicants to be screened and may not be overly broad in its scope; and (5) the by-law must clearly state that the FBI criminal history will not be disseminated to unauthorized entities. *See* EOPSS Informational Bulletin, p. 2. The Town’s by-law appears to meet these requirements.

In addition, the EOPSS Informational Bulletin contains detailed information about other requirements the Town must comply with in order to implement the criminal history check system. These include the requirement that the by-law must be forwarded to the State Identification Section of the Massachusetts State Police (SIS) and copied to the Massachusetts Department of Criminal Justice Information Services Office of the General Counsel (DCJIS OGC) to coordinate approval by the FBI Access Integrity Unit (AIU). We urge the Town to review and comply with these requirements before implementing the by-law adopted under Article 25.

Finally, we recognize that the statute and Town Meeting (see Section 74-6 of the by-law) has authorized the Town to retain a portion of the fee for costs associated with the administration of the fingerprinting system. However, we suggest that the Town consult with Town Counsel and the Department of Revenue, Division of Local Services regarding the proper municipal accounting of those fees.

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 that 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 voted by the Town Meeting, unless a later effective date is

prescribed in the by-law.

Very truly yours,

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