



## TOWN OF TEMPLETON

TOWN CLERK

CAROL A. HARRIS

Telephone (978) 894-2758

Fax (978) 894-2802

MAILING ADDRESS

P.O. BOX 620

E. TEMPLETON, MA 01438

OFFICE ADDRESS

160 PATRIOTS ROAD

E. TEMPLETON, MA 01438

DATE: August 26, 2019

TO: TOWN OF TEMPLETON CITIZENS

FROM: TOWN CLERK'S OFFICE

RE: TOWN BY-LAWS

The Attorney General has made her decision on Article 7, 8, 9, 10, 11, 12 and 15 (General) of the Annual Town Meeting which was held May 15, 2019. It is as follows:

**Articles 7, 9, 10, 11, 12, and 15** - We approve Articles 7, 9, 10, 11, 12, and 15 from the Templeton May 15, 2019, Annual Town Meeting. Our comments on Article 9 and 10 are provided below.

**Article 8** - Except for the by-law text imposing fines for violations of: (1) Chapter 272, "Wells"; (2) "Open Container of Alcohol"; and (3) "Open Container of Marijuana", we approve Article 8. [See page 2 for Disapproval # 1, # 2, and # 3 of 3]

Article 8 deletes Article XXXVII from the Town's general by-laws and inserts a new, Article XXXVII, "Non-Criminal Disposition of Bylaw, Rule or Regulations Violations." The new Article XXXVII lists the Town's by-laws that may be enforced through the non-criminal disposition method provided in G.L. c. 40, § 21. The Article XXXVII, Section 3, "Schedule of Civil Assessments," provides in pertinent part as follows:

1. Board of Health

\* \* \*

d. Wells (Chapter 272)

**Fine Allowed:** Not less than \$100 or more than \$300. Every day past 30 days' notice of violation shall be a separate violation.

**Enforcing Agent:** Board of Health or Designee

\* \* \*

7. Police Department

\* \* \*

m. Open Container of Alcohol

**Fine Allowed:** Not more than \$300 for each offense

**Enforcing Agent: Police Department or Designee**

**n. Open Container of Marijuana (§190-6)**

**Fine Allowed: Not more than \$300 for each offense**

**Enforcing Agent: Police Department or Designee**

We disapprove and delete Section 1 (d) pertaining to fines for Wells; Sections 7 (m) and (n) pertaining to open containers for alcohol; and marijuana, respectively as quoted above because they are inconsistent with G.L. c. 40, § 21D. [Disapproval # 1, # 2 and # 3 of 3] General Laws Chapter 40, Section 21D, authorizes towns to use the non-criminal disposition ticketing method to enforce town by-laws. However, Section 21D requires the by-law to provide the specific fine amount, which “shall not exceed \$300.” See G.L. c. 40, § 21D, ¶ 5. Fines “not less than \$100 or more than \$300” and “not more than \$300” are not a specific amount and are therefore inconsistent with G.L. c. 40, § 21D. For this reason, we disapprove and delete Section 1 (d) and Sections 7 (m) and (n) from the new Article XXVII.

**Articles 9 and 10** - Article 9 adds to Article XXV, a new Section 2, prohibiting open containers of alcohol in certain public places. Article 10 adds to Article XXI, a new Section 6, prohibiting open containers of marijuana in certain public places. Both Section 2 and Section 6 include a fine provision that provides as follows:

A person who violates this section shall be punished by a civil penalty of not more than \$300.

The new Section 2 and Section 6 provide that violations of the by-laws pertaining to open containers of alcohol and marijuana shall be punished by a civil fine of not more than \$300.<sup>1</sup> As provided in more detail above under Article 8, a fine of “not more than \$300” is not a specific penalty. Therefore, the Town cannot use the non-criminal disposition method to enforce these bylaws. We suggest that the Town discuss with Town Counsel whether it should amend Section 2 and Sections 6 to include a specific fine amount.

---

<sup>1</sup> General Laws Chapter 94G, Section 13 (c), places restrictions on the public consumption of marijuana and provides that violations of this “subsection shall be punished by a civil penalty of not more than \$100.” However, G.L. c. 40, § 21, provides in pertinent part that Towns may “affix penalties for breaches [of bylaws] not exceeding three hundred dollars for each offense.” Towns are authorized to impose fines of up to \$300 for *by-law* violations. For this reason, we approve the fine amount in the new Article XXI, Section 6 that authorizes a fine amount different than what is provided in G.L. c. 94G, § 13 (c). The Town may wish to discuss this issue in more detail with Town Counsel

**I have posted copies in each precinct; namely, at the Post Office in Templeton, the Post Office in E. Templeton, the Post Office in Baldwinville and at the Town Office Building at 160 Patriots Road in E. Templeton and on the Town’s website @ [www.templetonma.gov](http://www.templetonma.gov) Pursuant to G.L. c. 40, sec. 32.**

Sincerely,



Carol A. Harris, Templeton Town Clerk