



TOWN CLERK

TOWN OF ACTON
472 MAIN STREET
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NOVEMBER 20, 2023

MIDDLESEX, SS:

ON THE ABOVE DATE, I POSTED ATTESTED COPIES OF THE AMENDMENT TO THE ZONING BYLAWS, ARTICLE 15, WHICH PASSED AT THE ANNUAL TOWN MEETING THAT CONVENE ON MAY 1, 2023.

THE ARTICLE MENTIONED FOR ZONING BYLAWS WAS APPROVED BY THE ATTORNEY GENERAL, ANDREA JOY CAMPBELL ON NOVEMBER 20, 2023 AND HAS BEEN POSTED AT THE FOLLOWING LOCATIONS IN THE TOWN OF ACTON:

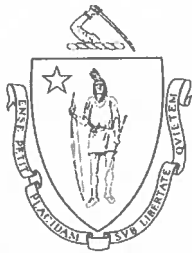
NAGOG WOODS POST OFFICE, TOWN HALL, WEST ACTON FIRE STATION, WEST ACTON LIBRARY, SENIOR CENTER, ACTON WOODS PLAZA, VETERANS FIELD, ACTON TV;

AS WELL AS THE TOWN WEB PAGE.

CONSTABLE

CLAIMS OF INVALIDITY BY REASON OF ANY DEFECT IN THE PROCEDURE OF ADOPTION OR AMENDMENTS OF THESE BYLAWS MAY ONLY BE MADE WITHIN NINETY DAYS (90) PER CHAPTER 40, SECTION 32, OF THE GENERAL LAWS OF THE COMMONWEALTH.

EVA K. SZKARADEK
TOWN CLERK



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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November 20, 2023

Eva K. Szkaradek, Town Clerk
Town of Acton
472 Main Street
Acton, MA 01720

Re: Acton Annual Town Meeting of May 1, 2023 --- Case # 10988
Warrant Articles # 15, 16, and 17 (Zoning)
Warrant Articles # 12, 13, 18, and 20 (General) ¹

Dear Ms. Szkaradek:

Article 15 - Under Article 15 the Town voted to amend its zoning by-laws to allow Firearm Businesses (as defined in the by-law) by special permit in two zoning districts but limit the number of allowed Firearm Businesses to no more than two at any given time. We approve Article 15 because it does not conflict with the Constitution or laws of the Commonwealth. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). We have also analyzed how such a limit on Firearms Businesses may be impacted by the U.S. Supreme Court's decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022) (overturning New York state gun licensing statute because of conflict with Second and Fourteenth Amendments). As explained below, we determine that Bruen does not preclude the Town from imposing Article 15's cap on Firearms Businesses.

In this decision we briefly describe the by-law amendments adopted under Article 15; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explain why, based on that standard, we approve Article 15. ²

¹ In a decision issued to the Town on August 21, 2023, we approved Articles 12, 16, 17, and 20; took no action on Article 18 because it was a personnel by-law amendment that is exempt from the Attorney General's review; by agreement with Town Counsel under G.L. c. 40, § 32, extended our deadline for a decision on Article 13 for an additional thirty days until September 20, 2023; and by agreement with Town Counsel under G.L. c. 40, § 32, we extended our deadline for a decision on Article 15 for an additional ninety days until November 19, 2023. In a decision issued on September 20, 2023, we approved Article 13.

² Although this is the first decision involving a limit on the number of special permits for firearm

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We emphasize that our decision implies no agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove the by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst, 398 Mass. at 795-96, 798-99.

I. Description of Article 15

Under Article 15 the Town amended Section 3.5, "Business Uses" to add a new subsection 3.5.26 that defines "Firearm Business" as follows:

3.5.26 Firearm Business - An indoor retail or wholesale operation involving the purchase or sale of Firearms and Ammunition. Accessory sale of Firearm Accessories including but not limited to bags, sighting systems, slings and scabbards, or maintenance kits; any retail or manufacturing operation involving the repairing, altering, cleaning, polishing, engraving, bluing or performing of any mechanical operation on any Firearm. Sale of conversion devices such as an auto sear, fuel filters or solvent filters, trigger switches or similar products that when combined create an illegal weapon are not allowed.

Under Article 15 the Town also amended Section 3's "Table of Principal Uses," to insert a new line for "Firearm Business" that allows such businesses by special permit in the Town's SM and TD Districts and prohibit firearm businesses in all other districts.

Article 15 further amends Section 3 to add a new subsection 3.13, "Special Provisions for Firearm Business," that imposes special permit application requirements and various location, lighting, screening, and signage requirements. The new subsection 3.13 also imposes operational requirements on Firearm Businesses, including (1) imposing limits on the hours of operation (8 a.m. to 8 p.m.); (2) prohibiting subleases between firearm businesses; (3) imposing insurance requirements; (4) requiring security, operation, and management plans; and (5) limiting access to minors. See subsection 3.13.4.2.

Under the new subsection 3.13, the Special Permit Granting Authority (SPGA) may grant a special permit for a firearm business if the SPGA determines that the application meets the: 1) generally applicable special permit requirements in Section 10.3 of the Town's existing by-laws; and 2) additional requirements of subsection 3.13. Subsection 3.13.4.4, "Limitation and Termination of Special Permit," limits the number of special permits the SPGA may grant for firearm businesses as follows:

businesses, we have approved other firearm business zoning by-laws in decisions issued to the Towns of: Littleton on May 25, 2023 (Case # 10868); Plainville on November 16, 2022 (Case # 10669); Wellesley on October 27, 2022 (Case # 10496); Brookline on June 23, 2022 (Case # 10476); Westwood on November 23, 2021 (Case # 10145); and Dedham on June 15, 2020 (Case # 9741).

No more than two Firearm Businesses are allowed within the Town of Acton at any given time. A Special Permit for Firearm Business is not transferable upon a sale, transfer, or assignment of the Firearm Business. A special permit for a Firearm Business shall be terminated for violation M.G.L. c. 140 SS 122B, 130, 131N, or similar laws in other states. Upon expiration or cancellation of the policy of insurance as required by Section 3.13.4.2.c, and if no additional insurance is obtained, the special permit shall be terminated.

II. The Attorney General's Standard of Review of Zoning By-laws

Our review of Article 15 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "

Article 15, as an amendment to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Article 15 Does Not Conflict with the Supreme Court's Holding in New York State Rifle & Pistol Association v. Bruen

We have analyzed the question whether Article 15's validity is affected by the United States Supreme Court's decision in New York State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022). In Bruen, the Court held that New York's handgun licensing law requiring individuals to show "proper cause" before they could be licensed to carry a concealed weapon in most public places violated the Second and Fourteenth Amendments of the United States Constitution. Bruen, 142 S.Ct. at 2156. Justice Kavanaugh's concurring opinion, joined by Chief Justice Roberts, also reaffirmed the Court's prior holdings in District of Columbia v. Heller, 554 U.S. 570, 626-27 & n.26 (2008), and McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion), that certain gun regulations, including those that: (1) prohibit the possession of firearms by felons and the mentally ill; (2) forbid the carrying of firearms in sensitive places such as schools and government buildings; and (3) impose conditions and qualifications on the commercial sale of arms, are presumptively lawful. Id. at 2162. Because Bruen involved the

constitutionality of a handgun licensing law and did not limit a municipality's zoning power to regulate the siting and operation of a firearm business, the Bruen Court's holding does not provide grounds for this Office to disapprove Article 15. The Town should consult with Town Counsel with any questions on the scope of the Court's holding in Bruen.³

We have also considered the question whether the limit on the number of Firearm Businesses that can operate in Town poses any conflict with state or federal law and determine that it does not. The limitation does not amount to a complete ban on Firearm Businesses in the Town and thus cannot be said to constrain any resident's ability to purchase firearms in the Town. See Teixeira v. County of Alameda, 873 F.3d 670, 680 (9th Cir. 2017) ("Gun buyers have no right to have a gun store in a particular location, at least as long as their access is not meaningfully constrained.") see also Second Amendment Arms v. City of Chicago, 135 F. Supp.3d 743, 754 (N.D. Ill. 2015) ("[A] slight diversion off the beaten path is no affront to . . . Second Amendment rights."). Moreover, courts have consistently upheld municipalities' authority to impose traditional zoning restrictions on firearms-related land uses. See, e.g., Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011) (although a complete ban on firing ranges was unconstitutional, City retained power to adopt zoning and safety regulations governing operation of firing ranges); see also Teixeira, 873 F.3d 670 (upholding a 500-foot buffer restriction between gun store and various other uses because it was not a total ban on gun sales or purchases). Although we determine that the limitation on special permits for Firearm Businesses in the Town does not conflict with state or federal law, we encourage the Town to consult closely with Town Counsel during the special permit application process to ensure the by-law is applied in a lawful manner.

IV. The Town Must Apply Article 15 Consistent with State Laws Applicable to Firearm Dealers

In applying the by-law, the Town should also be mindful of the various state laws and regulations governing the safety of firearm businesses and the licensing requirements for gun dealers. Those laws include (but are not limited to) the requirements in G.L. c. 140, § 122 (licenses to sell firearms), § 122B (licenses to sell ammunition), § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122), and 940 CMR 16.00 *et seq.* (imposing conditions on the sale of handguns in Massachusetts).⁴

General Laws Chapter 140, Section 122 requires a license to sell firearms and Section 122B requires a license to sell ammunition. A license issued under Section 122 and 122B must "specify the street and number of the building where the business is to be carried on." It is not clear whether

³ The Town may also wish to consult the advisory issued by the AGO and the Executive Office of Public Safety and Security that includes guidance on how to apply the state's firearms licensing laws in light of the Bruen decision. The advisory may be found here: <https://www.mass.gov/doc/ago-eopss-ltc-guidance/download>. Town should consult with Town Counsel with any questions on this advisory.

⁴ There is also pending legislation regarding firearms and firearm businesses that the Town should discuss with Town Counsel. See, e.g., HB 4135 <https://malegislature.gov/Bills/193/H4135/Amendments/House>

the denial of a special permit or the revocation of a special permit previously granted might have the unintended effect of invalidating a dealer's license if the dealer no longer has the right to operate at the address included on their license. The Town should discuss this issue in more detail with Town Counsel and should consult closely with Town Counsel when it applies subsection 3.13's special permit requirements.⁵

V. Subsection 3.13.4.4's Provisions Regarding the Termination of Special Permits Must be Applied Consistent with the Special Permit Granting Authority's Authority to Revoke Special Permits

Subsection 3.13.4.4 authorizes a firearm business' special permit to "terminate" in two instances: (1) if there are violations of G.L. c. 140, §§ 122B, 130, or 131N or similar laws in other states or (2) if the required insurance is cancelled or expires. See subsection 3.13.4.4.

A special permit granting authority does have the power to revoke a special permit. See, e.g., Copeland v. Town of Nantucket, 24 Mass. L. Rptr. 268, * 4 (2008) (Planning Board could revoke special permit for failure to comply with intensity regulations); White Sands Beach Club, Inc. v. Board of Appeal for the Town of Truro, 18 Mass. L. Rptr. 621, * 3 (2004) (Board of Appeals had inherent authority to revoke 1996 special permit); and Hinchliffe v. Koning, 3 Mass. L. Rptr. 229, * 3 n.1 (1994) (Board of Appeals and not the Building Commissioner had power to revoke special permit). However, a by-law cannot require the "termination" or revocation of a special permit in the absence of a vote to do so by the SPGA. In addition, the by-law is silent as to any notice and hearing process prior to revoking a special permit or otherwise rendering a special permit "terminated." The Town should consult with Town Counsel regarding the proper application of subsection 3.13.4.4.

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.

⁵ Existing firearm businesses may also have zoning protections under G.L. c. 40A, § 6. General Laws Chapter 40A, Section 6 provides that a zoning by-law "shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing" for the by-law change. In light of the Section 6's protections for existing uses and structures, the Town should consult closely with Town Counsel regarding the application of Article 15.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan
By: Kelli E. Gunagan
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Nina Pickering-Cook



TOWN CLERK

A TRUE COPY, ATTEST:

Gar K. Sykora

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EXCERPT OF THE ANNUAL TOWN MEETING HELD
MONDAY, MAY 1, 2023, 7:00 P.M.
AUDITORIUM AND UPPER GYMNASIUM (ALL-INDOOR SEATING)
WITH ADJOURNED SESSION HELD MAY 2, 2023

Article 15 **Amend Zoning Bylaw – Firearm Business**
 (Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw as follows and to renumber or alphabetize as necessary:

A. Insert under Section 3.5, Business Uses, the following new subsection 3.5.26 as follows:

3.5.26 Firearm Business – An indoor retail or wholesale operation involving the purchase or sale of Firearms and Ammunition. Accessory sale of Firearm Accessories including but not limited to bags, siting systems, slings and scabbards, or maintenance kits; any retail or manufacturing operation involving the repairing, altering, cleaning, polishing, engraving, bluing or performing of any mechanical operation on any Firearm. Sale of conversion devices such as an auto sear, fuel filters or solvent filters, trigger switches or similar products that when combined create an illegal weapon are not allowed.

B. In Section 3, Table of Principal Uses, insert the following new lines and footnote:

		RESIDENTIAL DISTRICTS				VILLAGE DISTRICTS					OFFICE DISTRICTS	
PRINCIPAL USES		R-2 R-4 R-8 R-8/4 R-10 R-10/8	R-A	R-AA	VR	EAV	EAV-2	NAV	SAV	WAV	OP-1	OP-2
3.5 BUSINESS USES												
3.5.26	Firearm Business	N	N	N	N	N	N	N	N	N	N	N
		BUSINESS DISTRICTS			INDUSTRIAL DISTRICTS					SP. DIST.		
PRINCIPAL USES		KC	LB	PM	GI	LI	LI-1	SM(1)	TD	ARC	SITE PLAN	
3.5 BUSINESS USES												
3.5.26	Firearm Business (12)	N	N	N	N	N	N	SPS	SPS	N	R	

(12) Refer to Section 3.13 for specific standards, requirements, exemptions and special permit criteria for Firearm Businesses.

- C. Insert under Section 3, Principal Use Table, Principal Use Definitions and Accessory Use Regulations, a new subsection 3.13 as follows:

3.13 Special Provisions for Firearm Businesses –

3.13.1 Purpose – To provide reasonable regulations pertaining to the location, siting, design, placement, security, safety, monitoring, and modifications of Firearms Businesses within the Town of Acton to minimize the adverse impacts of Firearms Businesses on adjacent properties, residential neighborhoods, schools and other places where children congregate, and to protect and promote the quality of the Town of Acton's neighborhoods, commercial and business districts, and the general welfare, health and safety of the citizens of Acton.

3.13.2 Compatibility with State and Federal Laws and Regulations – The provisions of this bylaw are not intended to supersede federal or state laws or regulations except to the extent that any such laws or regulations allow a community to adopt standards more stringent than the minimum standards provided in such laws and regulations.

3.13.3 Applicability – This Section 3.13 shall apply to all Firearm Businesses including related BUILDINGS.

3.13.3.1 No Firearm Business use shall commence until the operator of such Firearm Business has obtained all necessary Federal, State and other required local approvals and licenses.

3.13.3.2 The establishment and continued operation of Firearms Businesses shall be subject to continued compliance with all special permits, including any conditions thereof, the provisions of this Bylaw, any other applicable requirements of the Zoning Bylaw, and all applicable Federal, State, and local laws and regulations.

3.13.4 Special Permit for Firearm Businesses – The Select Board may grant a Special Permit for a Firearm Business in the Technology District or Small Manufacturing District. When granting such special permit, the Select Board shall vote in the affirmative the Mandatory Findings for special permits required in Section 10.3 of this Bylaw, and in addition, find that the following standards and requirements are met:

3.13.4.1 Setbacks – No Firearm Business shall be located within 500 feet of a LOT which contains the following uses: Educational, Religious, Child Care Facility, Municipal buildings open to the public, and public parks and playgrounds; no Firearm Business shall be located within 125 feet of a LOT which contains a Residential Use.

3.13.4.2 Configuration and Operations – Firearm Businesses shall be conducted entirely within a BUILDING and comply with the following standards:

- a. Hours of operation shall be limited to 8AM to 8PM. The Special Permit Granting Authority may allow extended hours for non-retail operations, such as manufacturing, administration, and/or deliveries.
- b. Firearm Businesses shall not sub-lease space from a tenant of any BUILDING or STRUCTURE and is prohibited from sub-leasing the Firearms Business use space to another Firearm Business.
- c. The Firearm Business shall procure and at all times while in operation maintain insurance issued by an insurance company licensed to do business in the Commonwealth, insuring the Firearm Business against liability for damage to property and for injury to, or death

- of, any person as a result of the theft, sale, lease or transfer, or offering for sale, lease or transfer of a firearm or ammunition, or any other operation of the Firearm Business. The limits of liability shall not be less than \$ 1,000,000 for each incident of damage to property or incident of injury to death to a person; provided however, that increased limits of liability may be required by the Special Permit Granting Authority upon a finding that the size of the operation warrants greater liability. Notice of termination of any applicable insurance must be given to the Special Permit Granting Authority at least 30 days prior to the effective date of the cancellation.
- d. Firearm Businesses shall submit a security plan to the Acton Police Department for review and approval prior to applying for special permit. The plan must include, but is not limited to, the following:
 - 1. Names and phone number of all management staff and keyholders,
 - 2. Certification that no employees have past history of felony record,
 - 3. A plan showing exterior ground lighting,
 - 4. Description of security systems and alarms,
 - 5. 24-hour video surveillance system in parking lots, building entrances and exits and transaction or point-of-sale locations.
 - 6. Location of dumpsters shall be locked with screening,
 - 7. Floor plan showing layout of operation,
 - 8. Evidence of after-hours storage of all Firearms in locked containers or by otherwise securing the Firearms with tamper-resistant mechanical locks.
 - e. The Special Permit Granting Authority shall require that Firearm Business notify the Police Department of any changes to the name or phone numbers of all management staff and keyholders.
 - f. The Firearms Business shall be equipped with, and the operation of such Firearm Business shall maintain in working order at all times, security system to the satisfaction of the Town.
 - g. A video surveillance system shall be installed and maintained which shall monitor all parking lot areas, main building entrances and exits, storage areas, and any and all transition areas for sale of merchandise. Recordings shall be maintained for a minimum of six months. A sign no larger than 2 square feet shall be placed in a visible location on the building which notes that video surveillance is in use on the property.
 - h. The exterior grounds, including the parking lot and landscape areas, shall be lit in such a manner that all areas are clearly visible at all times during business hours; all lighting shall be full cut off with a temperature of no more than 3,000K.
 - i. No person under the age of eighteen (18) shall be permitted on the premises of the Firearms Business unless they are accompanied by a parent or legal guardian and notice of such limitation shall be posted outside the Business.

3.13.4.3 Signage – All signs associated with Firearm Businesses shall comply with Section 7 of the Zoning Bylaw unless further regulated herein.

- a. Temporary Signs as defined in Section 7.2.19 are prohibited.
- b. Window Signs as defined in Section 7.5.16 are prohibited.

3.13.4.4 Limitation and Termination of Special Permit— No more than two Firearm Businesses are allowed within the Town of Acton at any given time. A Special Permit for Firearm Business is not transferable upon a sale, transfer, or assignment of the Firearms Business. A special permit for a Firearm Business shall be terminated for violation M.G.L. c. 140 SS 122B, 130, 131N, or similar laws in other states. Upon expiration or cancellation of the policy of insurance as required by Section 3.13.4.3. C, and if no additional insurance is obtained, the special permit shall be terminated.

, or take any other action relative thereto.

MOTION:

Mr. Martin moves that the Town amend the Zoning Bylaw as set forth in the Article.

Motion to amend to reduce from 2 to 1 licenses and increase the insurance from 1 million to 5 million

Motion to amend fails

Motion to amend by deleting the first sentence of 3.13.4.4 to no limit to the number of gun dealers

Motion to amend fails

Clicker vote on original Motion

Yes 281 No 38

ORIGINAL MOTION CARRIES

Declared 2/3 by Moderator*

*Town of Acton has accepted MGL CH 39 Sec 15 at its Annual Town Meeting April 2001, Article 43 and the amended Bylaw 5A was approved by the Attorney General on Aug. 6, 2001. (The Town Meeting Moderator is not required to count a 2/3 required vote.)