



THE COMMONWEALTH OF MASSACHUSETTS
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November 3, 2017

Sandra J. Burgess, Town Clerk
Town of Amherst
4 Boltwood Avenue
Amherst, MA 01002

Re: Amherst Annual Town Meeting of April 26, 2017 - Case # 8478
Warrant Articles # 32, 33, 35 (Zoning)
Warrant Articles # 24, 26, 28, 29 (General)
Warrant Article # 25 (Historic)

Dear Ms. Burgess:

Article 29 – We approve Article 29 (“Town of Amherst Sanctuary Community Bylaw”) from the Amherst Annual Town Meeting of April 26, 2017.¹

The Sanctuary Community Bylaw limits police investigatory authority based on immigration status, prohibits police detentions based on civil immigration detainer requests or ICE administrative warrants, and requires reports of the number of civil immigration detainer requests lodged with the Town and the Town’s response to the requests. We approve the by-law because it does not conflict with the Constitution or laws of the Commonwealth. Indeed, the Massachusetts Supreme Judicial Court recently affirmed that law enforcement officials lack authority under Massachusetts law to arrest an individual pursuant to a request contained in a Federal civil immigration detainer. Lunn v. Commonwealth, 477 Mass. 517 (2017). We explain our decision below.

I. Summary of the Sanctuary Community By-Law.

The by-law adopted under Article 29 “affirms that Amherst is a welcoming town and seeks to ensure public safety and trust between law enforcement and all members of [the Amherst] community.” The by-law imposes various requirements on local officials including:

- A law enforcement official shall not initiate an investigation or take law enforcement action (as defined in the by-law) on the basis of actual or perceived

¹ On August 31, 2017, we issued a decision on Articles 24, 25, 26, 28, 32, 33, 34, and 35.

immigration status, including the initiation of a stop, an apprehension, arrest or any other contact.

- A law enforcement official shall not detain an individual on the basis of a civil immigration detainer request or ICE administrative warrant after the individual is eligible for release from custody, unless ICE has a criminal warrant issued by a judicial officer, for the individual.
- A law enforcement officer shall not inquire about an individual's immigration status unless required by federal or state law.
- A law enforcement officer shall not communicate with ICE regarding the immigration status of a person in custody, except for any information required to be shared by 8 U.S.C. § 1373.²
- On petition by three registered voters, the Town Manager shall submit a report to the Select board detailing the number of civil immigration detainer requests lodged with Town law enforcement officials, the number of individuals so detailed, the number of individuals transferred to ICE custody, and information about requests for certification of U Visas.

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

Pursuant to 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 v. Attorney General, 398 Mass. 793, 796 (1986). 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.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "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) (emphasis added). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

III. Analysis and Conclusion.

We determine that the Amherst Sanctuary Community Bylaw does not conflict with the Constitution or laws of the Commonwealth. On the contrary, the by-law's central mandate – that Amherst law enforcement officials shall not detain individuals solely on the basis of a civil immigration detainer request or ICE administrative warrant - is in harmony with the Lunn court's conclusion that "Massachusetts law provides no authority for Massachusetts [law enforcement

² 8 U.S.C. § 1373, entitled Communication between government agencies and the Immigration and Naturalization Service, forbids a federal, state or local government from outlawing their officials' voluntary cooperation with INS. See City of New York v. United States, 179 F.3d 29, 37 (2d Cir. 1999).

officers] to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released from State custody.” Lunn v. Commonwealth, 477 Mass. 517, 537 (2017). We also conclude that the remaining requirements of the by-law (prohibiting investigations and law enforcement actions solely on the basis of immigration status; prohibiting inquiries about immigration status unless required by state or federal law; prohibiting sharing of immigration status information with ICE except as is required by 8 U.S.C. § 1373; requiring certain reporting of arrest/detention statistics, etc.) do not conflict with the Constitution or laws of the Commonwealth. Amherst, 398 Mass. at 796. On this basis, we approve the Amherst Sanctuary Community Bylaw.

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,

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