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January 7, 2003

Melvin A. Kleckner
Town Administrator
Office of the Board of Selectmen
455 Concord Avenue
Belmont, MA 02478-2573

Re: Dog and Kennel Noise Regulation Committee

Dear Mel:

I am responding to the inquiry presented by the Dog and Kennel Noise Regulation Committee regarding the interpretation of the existing General By-laws.

The first question is whether the Exterior Noise Standards defined in Section 23.4 of the General By-laws apply to noise created by barking dogs. Section 23.1 states that the policy of the Town is to prohibit excessive and annoying noise "generated from or by *all sources*". [Emphasis added]. Accordingly, unless dogs are specifically exempted or separately regulated by alternate noise standards, dogs are subject to the Exterior Noise Standards of Section 23.4.

It was next asked whether Section 20.10.5 "preempts" the applicability of Section 23.4. I am not aware of any provision of the General By-laws which would create such a preemption. Thus, for the reasons stated above, Section 23.4 applies to barking dogs.

In terms of amending the existing By-laws, any changes proposed will require Town Meeting approval and must not be inconsistent with state law. Whatever actual changes or additions are presented to Town Meeting are policy decisions best left to the Committee and the Selectmen.

I assume that the Committee is aware that M.G.L. Chapter 140 distinguishes between regulation of dogs and regulation of kennels and sets forth specific requirements for such regulations in each instance. It may therefore be advisable to include changes to the regulation of dogs within Article 20 and create a new Article or subsection specific to the regulation of kennels.

Assuming that any such kennel regulation is consistent with state law, I see no reason why the Petcetera kennel would be grandfathered or otherwise exempt therefrom. In addition, it is my understanding that Petcetera expects to be regulated by the new by-law and has requested to be included in the process by which it is created.

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Please feel free to let me know if I may be of further assistance on this matter.

Sincerely,



Town Counsel

RJM/lss