



TOWN CLERK

**TOWN OF ACTON**  
472 MAIN STREET  
ACTON, MASSACHUSETTS, 01720  
TELEPHONE (978) 929-6620  
FAX (978) 264-9630  
clerk@acton-ma.gov

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OCTOBER 8, 2020

MIDDLESEX, SS:

ON THE ABOVE DATE, I POSTED ATTESTED COPIES OF THE AMENDMENT TO THE GENERAL BYLAWS ARTICLE 13 AS WELL AS ZONING BYLAWS ARTICLE 12, WHICH PASSED AT THE ANNUAL TOWN MEETING THAT CONVENED ON JUNE 29, 2020. THE ARTICLES MENTIONED FOR THE GENERAL BYLAWS AND ZONING BYLAWS WERE APPROVED BY THE ATTORNEY GENERAL, MAURA HEALY ON OCTOBER 6, 2020 AND ARE POSTED AT THE FOLLOWING PLACES IN THE TOWN OF ACTON:

NAGOG WOODS POST OFFICE, TOWN HALL, WEST ACTON POST OFFICE, CENTER POST OFFICE, CENTER LIBRARY AND PUBLIC SAFETY FACILITY;

AS WELL AS THE TOWN WEB PAGE.

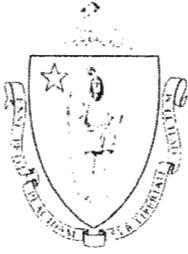
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CONSTABLE

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.

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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

MAURA HEALEY  
ATTORNEY GENERAL

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October 6, 2020

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

**Re: Acton Annual Town Meeting of June 29, 2020 -- Case # 9850**  
**Warrant Article # 12 (Zoning)**  
**Warrant Article # 13 (General)**

Dear Ms. Szkaradek:

**Articles 12 and 13** - We approve Articles 12 and 13, and map amendment related to Article 12, from the June 29, 2020 Acton Annual Town Meeting. We will return the approved map to you by mail. Our comments regarding Article 13 are provided below.

**Article 13** - Article 13 amends the general by-laws, Chapter E, "General Public Regulations," to delete the existing text of Section E41, "Alcoholic Beverage on Town Common," and insert a new Section E42, "Alcohol in Public."<sup>1</sup> The new Section E42 provides as follows, with emphasis added:

No person shall drink or possess an unsealed container of any alcoholic beverage as defined in Chapter 138, Section 1 of the Massachusetts General Laws while in or upon any public way or any way that the public has a right of access, whether in or upon a vehicle, or on foot, or while in or upon any public place or public building or playground, or while in or upon a private parking lot, or a private way to which the public has access as invitees or licensees unless they possess a valid one-day liquor license from the Board of Selectmen. A police officer may arrest without a warrant any person who commits a violation of this Bylaw in his presence and may seize the alcoholic beverages, which shall be kept by him and destroyed upon adjudication or returned to the person entitled to lawful possession.

The common law authority of a police officer to make a warrantless arrest for a misdemeanor, absent a statute, extends only to those misdemeanors that (1) constitute a breach of the peace, (2) are committed in the presence of the officer, and (3) are continuing at the time the arrest is made. Commonwealth v. Gorman, 288 Mass. 294, 297 (1934). General Laws Chapter

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<sup>1</sup> Article 13 also amends Section E45, "Non-Criminal Disposition" to delete reference to Section E41.

272, Section 59, authorizes a police officer to arrest without a warrant a person in willful violation of a by-law “the substance of which is the drinking or possession of [an] alcoholic beverage,” as follows, with emphasis added:

Whoever remains in a street or elsewhere in a town in willful violation of an ordinance or by-law of such town or of any rule or regulation for the government or use of any public reservation, parkway or boulevard made under authority of law by any department, officer or board in charge thereof, whoever is in a street or elsewhere in a town in willful violation of an ordinance or by-law of such town or of any rule or regulation for the government or use of any public reservation, parkway or boulevard made under authority of law by any department, officer or board in charge thereof, the substance of which is the drinking or possession of alcoholic beverage, and whoever in a street or other public place accosts or addresses another person with profane or obscene language, in willful violation of an ordinance or by-law of such town, may be arrested without a warrant by an officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court having jurisdiction of the offence.

Because G.L. c. 272, § 59, authorizes a person who is in willful violation of a by-law prohibiting the drinking or possession of an alcoholic beverage to be arrested without a warrant, we approve the amendments adopted under Article 13. However, the Town must ensure that Section E42, is applied in a manner consistent with G.L. c. 272, § 59. The Town should consult with Town Counsel with any questions on this issue.

**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,

MAURA HEALEY  
ATTORNEY GENERAL

*Nicole B. Caprioli*

By: Nicole B. Caprioli  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4418

cc: Town Counsels Stephen D. Anderson and Nina Pickering-Cook



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**EXCERPT OF THE ANNUAL TOWN MEETING HELD  
MONDAY, JUNE 29, 2020, 6:00 P.M.  
ACTON-BOXBOROUGH REGIONAL HIGH SCHOOL UPPER GYMNASIUM  
(INDOOR, SOCIALLY-DISTANCED SEATING)  
AND THE ADJACENT PARKING LOT (OUTDOOR, SOCIALLY-DISTANCED SEATING)**

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**Article 12 # Amend Zoning Map – 525 Main Street**  
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw, Map Number 1, by changing the zoning district designation for Town Atlas parcel E4-86-1 (525 Main Street) from Residence 8/4 (R-8/4) to Light Industrial 1 (LI-1), or take any other action relative thereto.

**MOTION:** Mr. Chernin moves that the Town amend the Zoning Bylaw Map as set forth in the Article.

**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.)



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**Article 13 \*            Amend General Bylaws – Consumption of Alcoholic Beverages**  
(Majority vote)

To see if the Town will vote to amend Chapter E, General Public Regulations, of the General Bylaws of the Town as follows:

- A. Delete Section E41, Alcoholic Beverage on Town Common.
- B. In Section E45, Non-Criminal Disposition, delete the reference to Section E41
- C. Replace Section E42, Alcohol in Public, in its entirety to read as follows:  
No person shall drink or possess an unsealed container of any alcoholic beverage as defined in Chapter 138, Section 1 of the Massachusetts General Laws while in or upon any public way or any way that the public has a right of access, whether in or upon a vehicle, or on foot, or while in or upon any public place or public building or playground, or while in or upon a private parking lot, or a private way to which the public has access as invitees or licensees unless they possess a valid one-day liquor license from the Board of Selectmen. A police officer may arrest without a warrant any person who commits a violation of this Bylaw in his presence and may seize the alcoholic beverages, which shall be kept by him and destroyed upon adjudication or returned to the person entitled to lawful possession.

*[Note: Relevant sections of this Chapter are copied below for reference:]*

E41. Alcoholic Beverage on Town Common

*No person shall, at any time, consume any alcoholic beverage on the Town Common.*

E42. Alcohol in Public

*No person shall drink or possess an unsealed container of any alcoholic beverage as defined in Chapter 138, Section 1 of the Massachusetts General Laws while in or upon any public way or any way which the public has a right of access, whether in or upon a vehicle, or on foot, or while in or upon any public place or public building or playground (except that the Board of Selectmen may, if they deem it appropriate, issue a special one-day liquor license for events at the Senior Center and NARA Park), or while in or upon a*

*private parking lot, or a private way to which the public has access as invitees or licensees, or in or upon any private land or place without the written consent of the owner or authorized person in control thereof. A police officer may arrest without a warrant any person who commits a violation of this Bylaw in his presence and may seize the alcoholic beverages, which shall be kept by him and destroyed upon adjudication or returned to the person entitled to lawful possession.*

E45. Non-Criminal Disposition

*Chapter E - Sections E35, 36, 37, 38, 39, 40, 41, 42 – Miscellaneous Prohibitions Bylaw; enforcing person - regular police officer - Fine \$25.00. ]*

**MOTION:** Mrs. Gardner moves that the Town adopt the General Bylaws amendments as set forth in the Article.

**CONSENT MOTION CARRIES**