



Town of Lexington
Town Clerk's Office

Mary de Alderete, Town Clerk
mdealderete@lexingtonma.gov

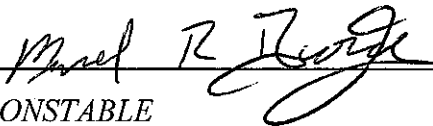
Tel: (781) 862-0500 x84558
Fax: (781) 861-2754

June 14, 2022

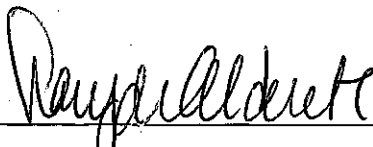
MIDDLESEX, SS:

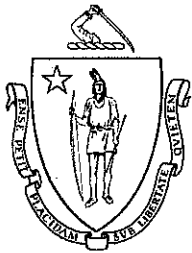
On the above date, I posted the attested "TOWN BULLETIN" in which copies of the Amendments to the General Bylaw, Article 10, was approved at the Special Town Meeting convened on November 8, 2021. The Article mentioned for the General Bylaws was approved by Maura Healey, Attorney General, on June 10, 2022, and is posted in the following locations in the Town of Lexington:

LEXINGTON TOWN HALL POSTING BOARD, TOWN WEBSITE, AND IN A PUBLIC PLACE IN EACH OF THE NINE PRECINCTS OF THE TOWN.


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 (90) DAYS PER CHAPTER 40, SECTION 32, OF THE GENERAL LAWS OF THE COMMONWEALTH.


MARY DE ALDERETE
TOWN CLERK



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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

RECEIVED

2022 13 Jun, 8:21 am

TOWN CLERK

LEXINGTON MA

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

June 10, 2022

Mary de Alderete, Town Clerk
Town of Lexington
1625 Massachusetts Avenue
Lexington, MA 02420

**Re: Lexington Special Town Meeting of November 8, 2021 -- Case # 10474
Warrant Article # 10 (General)**

Dear Ms. de Alderete:

Article 10 - Under Article 10, the Town voted to amend the general by-laws, Chapter 80, "Noise Control," to add several provisions regulating the operation of landscape maintenance equipment, including prohibiting the use of leaf blowers beginning on March 15, 2025.¹ As further explained below, we approve these amendments except for certain text in Section 80-4.H (5) regarding the by-law's effective date because it conflicts with G.L. c. 40, § 32.

In this decision, we summarize the by-law amendment adopted under Article 10 and the Attorney General's standard of review of town by-laws, and then explain why, based on our standard of review, we largely approve Article 10 except for the "effective date" provision in Section 80-4.H (5).

I. Summary of Article 10

Under Article 10 the Town amended several sections of Chapter 80, Noise Control, to regulate the use of landscape maintenance equipment including a phased in prohibition on the use of leaf blowers. Section 80-3, "Definitions," is amended to add definitions for the terms "commercial landscaper" and "landscape maintenance equipment." Landscape maintenance equipment is defined as:

Gas or electric powered lawn mowers, hedge trimmers, weed whackers, leaf blowers, and other equipment used in landscaping or lawn care.

¹ The amendments adopted under Article 10 were the subject of a referendum vote on March 7, 2022 authorized by the Town's Special Act, Chapter 215 of the Acts of 1929, Section 8. The results of the ballot question were 3,363 in favor of the by-law and 2,750 opposed. As such, the ballot vote upheld the by-law amendments voted under Article 10.

Under Article 10, Section 80-4.H, "Prohibition on Excessive or Unwarranted Noise," is amended to delete the existing section and insert new text that establishes the hours and days when the outdoor use of landscape maintenance equipment is allowed. Under Section 80-4.H, the use of landscape maintenance equipment by commercial landscapers is allowed Monday through Friday, 7:00 AM to 6:00 PM and Saturdays, 9:00 AM to 5:00 PM. Section 80-4.H (1). The use of landscape maintenance equipment by persons other than commercial landscapers is allowed Monday through Friday, 7:00 AM to 8:00 PM and Saturdays, Sundays and Legal Holidays, 9:00 AM to 5:00 PM. Section 80-4.H (2). And the use of landscape maintenance equipment by the Town or Town contractors on Town property is allowed Monday through Friday, 7:00 AM to 8:00 PM and Saturdays, 9:00 AM to 5:00 PM. Section 80-4.H (3).

Section 80.4-H further restricts the use of gas-powered leaf blowers to the periods of March 15 to May 31 and September 15 to December 30, until such time as their use becomes prohibited under the by-law as provided in subsections (6) and (7). Section 80.4-H (5). Section 80.4-H (6) provides that effective March 15, 2025, the use of all gas-powered leaf blowers by commercial landscapers in the Town shall be prohibited. And effective the following year, on March 15, 2026, the use of all gas-powered leaf blowers by residents on their own property in the Town shall be prohibited. Section 80.4-H (7). The by-law exempts the use of "wheeled leaf blowers powered by four-stroke engines on properties larger than one acre" from the prohibitions in subsections (6) and (7). Lastly, under Article 10, the Town amended Section 80-7.B regarding penalty provisions for violations of the by-law.

II. Attorney General's Standard of Review of General By-law Amendments

Our review of Article 10 is governed by G.L. c. 40, § 32. 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, 795-96 (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, 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). "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). General Laws Chapter 40, Section 21 supplements a town's Home Rule authority through its specific grant of authority to municipalities to adopt certain categories of local legislation, including "[f]or directing and managing their prudential affairs, preserving peace and good order...". G.L. c. 40, § 21 (1). However, a municipality has no power to adopt a 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 10's Consistency with State Law

Because we find no conflict with state law or the Constitution, we approve the amendments adopted under Article 10, except for certain text in Section 80.4-H regarding the effective date of certain gas-powered leaf blower provisions, as discussed in more detail below.

Section 80-4.H (5) provides as follows (emphasis added):

Effective May 31, 2022, the use of gas-powered leaf blowers is restricted to the periods of March 15 to May 31 and September 15 to December 30.

We disapprove and delete the text "Effective May 31, 2022" as shown above in bold and underline because this text conflicts with G.L. c. 40, § 32. General Laws Chapter 40, Section 32 establishes that a by-law approved by the Attorney General must be posted or published before it goes into effect:

Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town.

This by-law was adopted at the November 8, 2021 Special Town Meeting and was submitted to the Attorney General for review and approval on March 16, 2022, following the March 7, 2022 referendum vote (see footnote # 1). Section 80-4.H (5) proposes an effective date of May 31, 2022 for certain leaf-blower provisions. However, the May 31, 2022 proposed effective date has now passed. Because the by-law amendments adopted under Article 10 will not take effect until all of the requirements of G.L. c. 40, § 32 have been satisfied, it is inconsistent with state law for Section 80-4.H (5) to provide that its provisions take effect on "May 31, 2022." For this reason, we disapprove and delete the text in bold and underline above ("**Effective May 31, 2022,**"). The Town should consult with Town Counsel with any questions regarding the bylaw's effective date.

IV. Conclusion

The by-law's prohibition on the use of landscape maintenance equipment outside of the days, hours and months provided in the by-law and the by-law's eventual prohibition on the use of gas-powered leaf blowers beginning on March 15, 2025, are within the Town's Home Rule and statutory authority. For this reason, we approve the by-law amendments adopted under Article 10, except for the portion of Section 80-4 (H) (5) set forth above in bold and underline.

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 Counsel Mina Makarios

I, Mary de Alderete, Clerk of the Town of Lexington, Massachusetts, hereby certify that at the adjourned session of the Special Town Meeting held on November 8, 2021, the following motion was adopted under **ARTICLE 10**.

That Chapter 80 of the Code of the Town of Lexington, Noise Control, be amended as follows, and further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Lexington:

1. Add the following definitions to § 80-3:

COMMERCIAL LANDSCAPER

A person or entity that receives compensation to utilize landscape maintenance equipment on another's property.

LANDSCAPE MAINTENANCE EQUIPMENT

Gas- or electric-powered lawn mowers, hedge trimmers, weed whackers, leaf blowers, and other equipment used in landscaping or lawn care.

2. Replace § 80-4.H with the following:

1. The outdoor use of Landscape Maintenance Equipment by commercial landscapers shall be limited to the following days and hours:

- i. Monday – Friday: 7:00 AM to 6:00 PM

- ii. Saturdays: 9:00 AM to 5:00 PM

2. The outdoor use of Landscape Maintenance Equipment by persons other than commercial landscapers shall be limited to the following days and hours:

- i. Monday – Friday: 7:00 AM to 8:00 PM

- ii. Saturdays, Sundays, and Legal Holidays: 9:00 AM to 5:00 PM

3. The outdoor use of Landscape Maintenance Equipment by the Town or Town contractors on Town property shall be limited to the following hours:

- i. Monday – Friday: 7:00 AM to 8:00 PM

- ii. Saturdays: 9:00 AM to 5:00 PM

4. Landscape construction work shall be governed by §80-4.A, rather than this § 80-4.H.

~~5. *Effective May 31, 2022, the use of gas-powered leaf blowers is restricted to the periods of March 15 to May 31 and September 15 to December 30.~~

Town of Lexington

Motion

Special Town Meeting 2021-1

6. Effective March 15, 2025, the use of all gas-powered leaf blowers by commercial landscapers in the Town of Lexington shall be prohibited.
 7. Effective March 15, 2026, the use of all gas-powered leaf blowers by residents on their own property in the Town of Lexington shall be prohibited.
 8. The use of wheeled leaf blowers powered by four-stroke engines on properties larger than one acre is not subject to the prohibitions in paragraphs 6 and 7.
3. Amend § 80-7.B to read as follows where ~~struck through~~ text is to be removed and underlined text is to be added:

Any person who violates any provision of this by-law, or who is the owner of property on which such violation occurs, shall be fined an amount not to exceed \$50 per first violation, \$100 for the second violation, and \$200 for the third and each subsequent violation. Additionally, any person violating this by law is also subject to the penalties under Fines issued hereunder shall be issued in accordance with Chapter 1, § 1-6 of the General By-Laws. The imposition of a penalty for any violation shall not excuse the violation or permit it to continue. Each day that such violation continues shall be considered a separate offense.

Declared Adopted by a vote of 135 in the affirmative, twenty-four in the negative.

**On June 10, 2022, the Attorney General disapproved section 5 (Effective date).*