

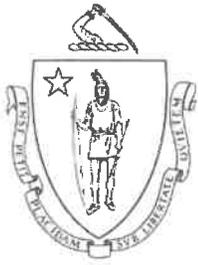
# TOWN OF NEWBURY



OFFICE OF THE TOWN CLERK  
12 KENT WAY  
NEWBURY, MA 01922  
(978-465-0862 Ext. 314/315)

APPROVAL OF A GENERAL BY-LAW BY THE  
MASSACHUSETTS ATTORNEY GENERAL'S OFFICE FROM THE  
ANNUAL TOWN MEETING OF JUNE 23, 2020

SEPTEMBER 22, 2020



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
10 MECHANIC STREET, SUITE 301  
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ATTORNEY GENERAL

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September 21, 2020

Leslie A. Haley, Town Clerk  
Town of Newbury  
12 Kent Way  
Newbury, MA 01922

**Re: Newbury Annual Town Meeting of June 23, 2020 -- Case # 9815**  
**Warrant Article 23 (Zoning)**  
**Warrant Articles # 19, 20, and 22 (General)**

Dear Ms. Haley:

Articles 19, 20, and 22 - We approve Articles 19, 20, and 22 from the Newbury June 23, 2020, Annual Town Meeting. Our comments on Article 22 are provided below.

Article 23 - Because Article 23 was not adopted in compliance with the procedures established by G.L. c. 40A, § 5, we must disapprove and delete it in its entirety. [**Disapproval # 1 of 1**].

General Law Chapter 40A, Section 5, establishes the specific procedure that the Town must follow when amending its zoning by-laws, as follows (with emphasis added):

*No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard....*Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town.

Based on the documents submitted by the Town Clerk and based on follow-up discussions with the Town Clerk and Town Counsel, we confirmed that the Town did not have a

planning board hearing on the zoning by-law amendments proposed under Article 23. Because the Town did not have a properly noticed planning board hearing on Article 23, as required by G.L. c. 40A, § 5, this Office must disapprove and delete it.

**Article 22** - Article 22 was a vote to: (1) authorize the Board of Selectmen to petition the General Court to amend Chapter 460 of the Acts of 2000 and (2) amend the Newbury General Bylaws, to replace all gendered references to “Board of Selectmen” with “Select Board.” We take no action on that portion of Article 22 that was a vote to petition the General Court to amend Chapter 460 of the Acts of 2000. This portion of Article 22’s is not a by-law amendment subject to the Attorney General’s review and approval pursuant to G.L. c. 40, § 32.

**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 that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

*Kelli E. Gunagan*  
by: Kelli E. Gunagan, Assistant Attorney General  
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508-792-7600

cc: Town Counsel Lisa Mead



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**Final Action Vote: Article 19  
Annual Town Meeting June 23, 2020**

**Chapter 89A  
STRETCH ENERGY CODE**

**§ 89A-1 Definitions**

**“International Energy Conservation Code (IECC)”** - The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. The baseline energy conservation requirements of the MA State Building Code are the IECC with Massachusetts amendments, as approved by the Board of Building Regulations and Standards.

**“Stretch Energy Code”** - Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the Massachusetts Building Code, the Stretch Energy Code is an appendix to the Massachusetts Building Code, based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

**§ 89A-2 Purpose**

The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the Base Energy Code applicable to the relevant sections of the building code for new buildings.

**§ 89A-3 Applicability**

This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 115.AA, as indicated.

**§ 89A-4 Stretch Code**

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Town of Newbury General Bylaws, Chapter 89A.

The Stretch Code is enforceable by the inspector of buildings or building commissioner and effective as of July 1, 2020.

**Final Action Vote: Article 20  
Annual Town Meeting June 23, 2020**

**Chapter 41, Alcoholic Beverages and Marijuana**

§ 41-1 Alcoholic beverages use restricted.

No person shall use or consume 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 in which the public has a right of access, or in any place where the public may be invitees or licensees, without first obtaining permission from the Board of Selectmen; nor shall any person use or consume any alcoholic beverage in any park or playground; nor shall any person use or consume any alcoholic beverage in or upon any private land, building or structure without the consent of the owner or person in control thereof. Any alcoholic beverage used in violation of this bylaw shall be seized and safely held until final adjudication against the person or persons using such beverage, at which time it shall be returned to the person entitled to lawful possession.

**Certificate of Vote: Article 22  
Annual Town Meeting June 23, 2020**

I, Leslie A. Haley, Town Clerk, Town of Newbury, hereby certify the vote of Article 22 at the Annual Town Meeting of June 23, 2020:

**ARTICLE 22.** To see if the Town will vote to authorize the Board of Selectmen to petition the general court of the Commonwealth of Massachusetts to amend Chapter 460 of the Acts of 2008; and to see if the Town will vote to amend the Newbury General Bylaws, to replace all gendered references to "Board of Selectmen" with "Select Board" or take any other action in relation thereto.  
Submitted By: Board of Selectmen

**MOTION:** I move that the Town vote to authorize the Board of Selectmen to petition the general court of the Commonwealth of Massachusetts to amend Chapter 460 of the Acts of 2008; and to see if the Town will vote to amend the Newbury General Bylaws, to replace all gendered references to "Board of Selectmen" with "Select Board".

Motion moved, seconded and approved by a vote of 80 in favor to 26 opposed.