



Town of Concord
Office of the Town Clerk
22 Monument Square
Concord, Massachusetts 01742-0535

PUBLIC NOTICE

The attached General and Zoning Bylaw Amendments approved at the April 30th and May 1st 2023 Annual Town Meeting have been approved by the Office of the Attorney General and will be in effect in the Town of Concord on Thursday, August 10, 2023.

Claims of invalidity by reason of any defect in the procedure of adoption or amendment of zoning bylaws may only be made within ninety days of the posting date indicated below. Copies of the attached bylaw(s) may be obtained from the Town Clerk's Office, located at 22 Monument Square.

Kaari Mai Tari
Town Clerk

2023 Annual Town Meeting:

General Bylaws:

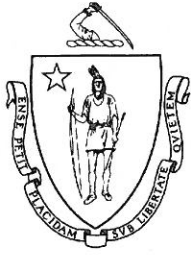
- **Article 23** – Adopt Specialized Stretch Energy Code
- **Article 32** – Demolition Review Bylaw amendment
- **Article 37** – Noise Bylaw Amendment: Prohibition of Gas-powered Leaf Blowers

Zoning Bylaws:

- **Article 33** – Zoning Bylaw Amendment – Restaurant – prohibited uses – Parking
- **Article 34** – Zoning Bylaw Amendment – Mobile Food Establishment

Constable Signature: _____

Date of Posting: _____



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

August 2, 2023

Kaari Mai Tari, Town Clerk
Town of Concord
22 Monument Square
Concord, MA 01742

Re: Concord Annual Town Meeting of April 30, 2023 -- Case # 10962
Warrant Articles # 33 and 34 (Zoning)
Warrant Articles # 23, 32, and 37 (General)

Dear Ms. Tari:

Article 23, 32, 33, 34, and 37 - We approve Article 23, 32, 33, 34, and 37 from the Concord April 30, 2023 Annual Town Meeting. Our comments on Article 37 are provided below.

Article 37 – Under Article 37 the Town voted to amend its Noise Bylaw, Section X, “Landscaping Equipment,” to limit the use of gas-powered hand-held leaf blowers (leaf blowers) on residential property and extend the expiration date of certain existing prohibitions. We approve Article 37 because we determine that the by-law amendments do not conflict with the Constitution or laws of the Commonwealth. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of the by-law amendments. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst, 398 Mass. at 795-96, 798-99.

This decision describes the by-law amendments; discusses the Attorney General’s limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we approve the by-law amendments.

I. Summary of Article 37

Under Article 37, a citizen petition article, the Town amended Section X, “Landscaping Requirements” of the Town’s Noise Bylaw to limit the use of leaf blowers on residential properties

of less than 1.5 acres; to extend the expiration date of the existing prohibition on commercial landscapers' use of leaf blowers until March of 2028; and extend the expiration date of the existing prohibition on Town residents' use of leaf blowers until March of 2030.

II. Attorney General's Standard of Review.

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, 398 Mass. at 795-96. 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, the Attorney General must cite an inconsistency between the by-law and the *state Constitution or laws* (emphasis added). 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. Article 37's Consistency with State Law

During our review of Article 37, we received correspondence urging this Office to disapprove Article 37 on grounds that the by-law amendments were proposed by one resident, were arbitrary, and were passed by a small number of the Town's population. The opposition also asserts that it should be a personal choice how one addresses climate change rather than a requirement imposed by town government. We appreciate this correspondence. However, none of the arguments raised in the opposition provide grounds for our disapproval of the by-law amendments. Because the amendments adopted under Article 37 do not conflict with the Constitution or laws of the Commonwealth, we approve them. See Amherst, 398 Mass. at 795-96, 798-99.

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,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600

cc: Town Counsel Mina S. Makarious



Town of Concord
Office of the Town Clerk
22 Monument Square
Concord, Massachusetts 01742-0535

ANNUAL TOWN MEETING
April 30 and May 1, 2023

ADOPT SPECIALIZED STRETCH ENERGY CODE

ARTICLE 23.

Upon a **MOTION** made by Mr. Hubbard-Nelson and duly seconded, it was **VOTED**:

That the Town take affirmative action on Article 23 as printed in the Handout.

HANDOUT

ARTICLE 23: ADOPT SPECIALIZED STRETCH ENERGY CODE

MOTION:

Mr. Hubbard-Nelson moves that the Town take affirmative action on Article 22 to enact a Specialized Stretch Energy Code Bylaw pursuant to the entirety of 225 CMR 22 and 23, including Appendices RC and CC, and future editions, amendments or modifications in substantially the form below:

SPECIALIZED STRETCH ENERGY CODE

Purpose

The purpose of the Specialized Energy Code at 225 CMR 22.00 and 23.00, including Appendices RC and CC, is to provide a more energy efficient and low greenhouse gas emissions alternative to the Stretch Energy Code or the baseline Massachusetts Energy Code, applicable to the relevant sections of the building code for both new construction and existing buildings.

Definitions

Effective Date – January 1, 2024.

International Energy Conservation Code (IECC) – The International Energy Conservation Code (IECC), a building energy code created by the International Code Council. 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 and published in state regulations as part of 780 CMR.

Specialized Energy Code – The energy code codified by the entirety of 225 CMR 22 and 23 including Appendices RC and CC, including the residential and commercial appendices added to the Massachusetts Stretch Energy Code, based on amendments to the respective net-zero appendices of the IECC to incorporate the energy efficiency of the Stretch Energy Code.

Stretch Energy Code – The energy code codified by the combination of 225 CMR 22 and 23 not including Appendices RC and CC,

Specialized Energy Code

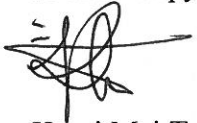
- A. The Specialized Energy Code is herein incorporated by reference and shall apply to residential and commercial buildings in the Town of Concord after the Effective Date.

- B. Notwithstanding the foregoing, if the Town is accepted into the Department of Energy Resources Fossil Fuel-Free Demonstration Project, residential and commercial buildings in the Town shall, to the extent not otherwise exempt under any bylaws of the Town of Concord, be subject to the Specialized Energy Code modified as follows:
 - 1. Low-rise Residential Code (225 CMR 22 Appendix RC): Sections RC102 and RC101 “Zero Energy Pathway” and “Mixed Fuel Pathway” shall not be permitted for use for new construction shall not install any new combustion equipment.
 - 2. Commercial and All Other (225 CMR 23 Appendix CC): Sections CC103 and CC105 “Zero Energy Pathway” and “Mixed-Fuel Pathway” shall not be permitted for new construction shall not install any new combustion equipment.

- C. The Specialized Code is enforceable by the Building Commissioner.

Passed by a substantial majority
April 30, 2023

A True Copy Attest:



Kaari Mai Tari
Town Clerk



Town of Concord
Office of the Town Clerk
22 Monument Square
Concord, Massachusetts 01742-0535

ANNUAL TOWN MEETING
April 30 and May 1, 2023

DEMOLITION REVIEW BYLAW

ARTICLE 32.

Upon a **MOTION** made by Ms. Briggs and duly seconded, it was **VOTED**:

That Town Meeting take affirmative action on Article 32 as printed in the Warrant.

WARRANT ARTICLE

ARTICLE 32. To determine whether the Town will vote to amend Sections 3.4 and 3.6 of the **Demolition Review Bylaw** so that the following sections read as follows (*changes are shown in bold italics and strikethrough for emphasis only*), or take any action relative thereto:

Section 3. Procedure

3.4 If a building is found to be Historically Significant and possibly Preferably Preserved, and following public notice as set forth below in section 3.7, the CHC shall hold a public hearing within **sixty (60)** ~~forty-five (45)~~ days of the submission date to determine whether the building or structure should be Preferably Preserved and therefore demolition delayed for up to one year. If the CHC by a majority vote finds that the proposed demolition would result in the loss of a historically significant building or structure which would be detrimental to the architectural or historical heritage of the Town of Concord, then the CHC shall find that the building or structure is Preferably Preserved.

3.6 Should the CHC fail to make any determination concerning preferable preservation within **sixty (60)** ~~forty-five (45)~~ days of the submission date of a Demolition Review Application, the Building Commissioner may grant a demolition permit for the subject building or structure.

Passed by unanimous vote under the Consent Calendar
May 1, 2023

A True Copy Attest:

Kaari Mai Tari
Town Clerk



Town of Concord

Office of the Town Clerk
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ANNUAL TOWN MEETING
April 30 and May 1, 2023

ZONING BYLAW AMENDMENT: RESTAURANT – PROHIBITED USES - PARKING

ARTICLE 33.

Upon a **MOTION** made by Mr. Bosdet and duly seconded, it was **VOTED**:

That Town Meeting take affirmative action on Article 33 as printed in the Warrant.

WARRANT ARTICLE

ARTICLE 33. To determine whether the Town will vote to amend Zoning Bylaw Section 4.5.4, Restaurant, and Section 4.7.1, Prohibited Uses, to remove the prohibition on fast-food restaurants, and amend Table IV, Minimum Parking, to add a parking requirement for a fast-food restaurant that lacks seating, so that the Zoning Bylaw reads as follows (*changes shown in bold italics and strikethrough for emphasis only*); or take any other action relative thereto:

4.5.4. Restaurant: Restaurant, cafeteria, lunchroom or similar establishment whose principal business is the sale of prepared foods or beverages and whose principal method of operation includes either (1) service by a restaurant employee to a table or counter where the food or beverage is consumed, ~~or~~ (2) a cafeteria-type operation where foods and beverages are consumed within the restaurant building, **or (3) a fast-food operation whose principal method of food service includes the sale of foods and beverages in paper or other disposable containers for consumption off-premises.** Provided, however, in the West Concord Business District a restaurant shall not occupy more than 5,000 square feet of gross floor area; and, provided further, in the West Concord Village District a restaurant shall not occupy more than 4,000 square feet of gross floor area, unless a special permit is granted to allow a larger restaurant in the West Concord Village District by up to thirty percent (30%), in which case a maximum of 4,800 square feet may be located on the ground/first floor. A special permit shall be granted by the Planning Board only upon a written determination as provided in Section 11.6 and that the larger restaurant serves a public purpose or has a public benefit.

4.7.1 Prohibited uses: Salvage yard, junk yard, and all open-air storage of junk, waste products and salvage materials (including non-operable automobiles) are expressly prohibited in all zoning districts of the Town as are trailer without a valid registration, trailer used for habitation on the property, mobile home, trailer camp, mobile home park, trailer and mobile home sales and service, billboard, outdoor movie theater, commercial dump, slaughterhouse, rendering plant, fertilizer plant, race track, commercial extraction of sand, gravel or minerals and all other uses which would be obnoxious, hazardous or injurious to the neighborhood or to property in the vicinity are expressly prohibited in all zoning districts in the Town as are all uses not specifically permitted by this Bylaw.

Drive-in or *drive-through* fast food restaurants are expressly prohibited. A drive-in or *drive-through* fast food restaurant is defined as any establishment whose principal business is the sale of foods or beverages in a ready-to-consume state, for consumption within the building or off premises, and whose principal method of operation includes: (1) sale of foods and beverages in paper, plastic or other disposable containers; or (2) *includes the* service of food and beverages directly to a customer in a motor vehicle.

TABLE IV MINIMUM PARKING

Principal Use	Required Spaces
BUSINESS USES:	
Restaurant	One (1) space per three (3) seats rated capacity (excluding seasonal outdoor seating) <i>or one (1) space per three hundred (300) square feet of gross floor area, whichever is greater</i> , plus one (1) space per employee on the largest shift.

Passed by well more than two-thirds majority
May 1, 2023

A True Copy Attest:



Kaari Mai Tari
Town Clerk



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ANNUAL TOWN MEETING
April 30 and May 1, 2023

BYLAW AMENDMENT: MOBILE FOOD ESTABLISHMENT

ARTICLE 34.

Upon a **MOTION** made by Ms. Miller and duly seconded, it was **VOTED**:

That Town Meeting take affirmative action on Article 34 as printed in the Planning Board's Report to Town Meeting dated April 25, 2023.

PLANNING BOARD REPORT FOR ARTICLE 34

Ms. Miller moves that Town Meeting take affirmative action on Article 34 as printed in the Planning Board's Report to Town Meeting dated April 25, 2023.

Motion: Ms. Miller moves that the Town take affirmative action on Article with the following additions:

- (a) In Section 5.4.6(a): the phrase "for a private event for the property owner or tenant and their invitees" after the words "private property"
- (b) In Section 5.4.6(a): the phrase "or their designee" after the words "Select Board"; and
- (c) In Section 5.4.6(d): the phrase "or their designee" after the words "Select Board" so that the Zoning Bylaw reads as follows (**bold italics language** is being added to the existing Zoning Bylaw, **bold italics and underline language** added to language in Warrant for reference only):

- 1) Add a new Section 1.3.16 as follows:

Section 1.3.16 Mobile food establishment: A food establishment permitted under the State's Retail Food Code, 105 CMR 590, that is operated from a movable or portable structure that can change location.

- 2) Add a new Section 5.4.6 as follows:

5.4.6 Mobile Food Establishment: In all districts, mobile food establishments are permitted on a temporary basis subject to the following requirements:

(a) A mobile food establishment may conduct business on private property for a private event for the property owner or tenant and their invitees, on municipal property when previously authorized by the Town Manager, or on public roadways when previously authorized by the Select Board or their designee.

(b) A mobile food establishment shall have all required permits and licenses from the Health Division and the Police Department, and any other permit or license required by law.

(c) A property may have mobile food establishments in operation thereon for a maximum of 52 days per calendar year.

(d) No more than two mobile food establishments shall be located on a property at the same time. The Board may permit additional mobile food establishments on a private property provided the Board finds that the desired relief may be granted without substantial detriment to the neighborhood and without jeopardizing public safety. The Select Board or their designee may permit additional mobile food establishments on municipal property.

(e) A mobile food establishment that is an accessory use to a restaurant and has a valid Base of Operation License from the Health Division shall be exempt from Section 5.4.6(c) and permitted to park on the property on which the restaurant is located.

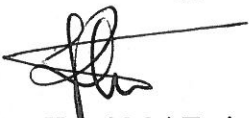
(f) An ice cream mobile food establishment that only sells, displays, or offers ice cream or other pre-packaged frozen dessert products shall be exempt from Sections 5.4.6(a) and (c) and shall be permitted to travel public roads vending said products but shall not park for extended periods of time on a public road except to the extent otherwise permitted by law.

3) Amend Section 4.5.4 as follows:

4.5.4 Restaurant: Restaurant, cafeteria, lunchroom or similar establishment whose principal business is the sale of prepared foods or beverages and whose principal method of operation includes either (1) service by a restaurant employee to a table or counter where the food or beverage is consumed, or (2) a cafeteria-type operation where foods and beverages are consumed within the restaurant building. Provided, however, in the West Concord Business District a restaurant shall not occupy more than 5,000 square feet of gross floor area; and, provided further, in the West Concord Village District a restaurant shall not occupy more than 4,000 square feet of gross floor area, unless a special permit is granted to allow a larger restaurant in the West Concord Village District by up to thirty percent (30%), in which case a maximum of 4,800 square feet may be located on the ground/first floor. A special permit shall be granted by the Planning Board only upon a written determination as provided in Section 11.6 and that the larger restaurant serves a public purpose or has a public benefit. *A mobile food establishment permitted pursuant to Section 5.4.6 shall be considered an accessory use to a restaurant.*

Passed by two-thirds counted vote with 228 in favor and 100 opposed
May 1, 2023

A True Copy Attest:



Kaari Mai Tari
Town Clerk



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ANNUAL TOWN MEETING
April 30 and May 1, 2023

BYLAW AMENDMENT: PROHIBITION OF GAS-POWERED LEAF BLOWERS

ARTICLE 37.

Upon a **MOTION** made by Mr. Weber and duly seconded, it was **VOTED**:

That the town take affirmative action on Article 37 to add the following Section to the Concord Noise Bylaw, with changes from the language as printed in the Warrant shown in ***bold italics*** and ~~strike-thru~~:

Section [X]. Landscaping Equipment.

The use of gas-powered hand-held leaf blowers ***on residential property of less than 1.5 acres in size*** is only allowed in the periods of March 15 to May 31 and September 15 to December 30 and is prohibited all other times.

Effective March 15, 2025~~28~~, the use of gas-powered hand-held leaf blowers by commercial landscapers shall be prohibited.

Effective March 15, 2026~~30~~, the use of gas-powered hand-held leaf blowers by residents on their own property shall be prohibited.

Definition: hand-held leaf blower shall mean any fully portable blower device designed for landscaping with a handheld nozzle.

Passed by majority counted vote with 184 in favor and 133 opposed
May 1, 2023

A True Copy Attest:

Kaari Mai Tari
Town Clerk