

Article 19 Motion Language Changes Proposed by Coalition of Amherst Neighborhoods

Article 19 is a proposed revision to the 2008 Nuisance House Bylaw.

The only amendment to be proposed from the floor to Article 19 as it appears in the 2012 Fall Special Town Warrant, is the substitution of "**by the Police Department**" for "by the Town Manager's Office," as the department designated for "Mailing of Notice to Property Owner" (para 4)

Aside from this revision, Article 19 would change the 2008 Nuisance House Bylaw in the following ways:

1. by providing a definition of Rental Property Manager or Management Organization (last item in para 1, Definitions)
2. by establishing the Town department responsible for mailing notice of violations to property owners
3. by adding "**and the rental housing manager or management organization**" to the parties **responsible for violations**
4. by substitution of the more stringent verb, "**shall**" for the verb "may," in paragraphs 5, 6, & 7

The purpose of these emendations are the following:

1. To achieve a publicly understood mechanism for the mailing of notice to property owners. (The Town Manager and the Chief of Police agree with this addition.)
2. To broaden the responsibility for fines and response costs, beyond the owners (who may not always be identifiable or accessible) to include local rental managers and management companies.
3. The use of "may" throughout the 2008 Amherst Nuisance House Bylaw has never been enforced. Our purpose with this strengthening of the language "shall" rather than "may," is to give owners, managers, or management companies two violations in which to achieve compliance. At the third violation, they shall be assessed the response costs that would hitherto have been borne by the taxpayers of Amherst. Since there are many ways in which commercial rental agents can avoid violations (for example, through mediation meetings with neighbors and tenants, or by hiring private security firms, as neighbors have had to do recently), we consider this a cost of doing business (commercial rentals) in residential neighborhoods, rather than passing those costs along to the taxpayer.
4. We have found examples of "response costs" from other towns on the Website and forwarded them to the Town Manager and the Chief of Police, who agree that it will be possible to develop a schedule of response costs for Amherst. This schedule was required in the 2008 legislation but has not as yet been developed.

MOTION: I move the Town to amend its "Nuisance House" General Bylaw by adding the language in **boldface and that shown in RED**, deleting the ~~striktthrough language~~, and including that language **highlighted in yellow** below which exists in the Nuisance House Bylaw and was inadvertently omitted from the petitioned article:

Purpose. In accordance with the Town of Amherst's Home Rule Authority, and to protect the health, safety, and welfare of the inhabitants of the Town, this bylaw shall permit the Town to impose liability on owners, **rental property managers** and other responsible persons for the nuisances and harm caused by loud and unruly gatherings on private property and shall discourage the consumption of alcoholic beverages by underage persons at such gatherings.

§1. Definitions

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage means all liquids intended for human consumption as a beverage which contain one half of one percent or more of alcohol by volume at sixty degree Fahrenheit, including malt beverages.

Eviction means actively trying to evict a tenant from a premise by delivery of a notice to quit and subsequent court proceedings, if a tenant fails to vacate the premises.

Gathering is a party, gathering, or event, where a group of persons have assembled or are assembling for a social occasion or social activity.

Legal Guardian means (1) a person who, by court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.

Underage Person means any person under twenty-one years of age.

Parent means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

Premises means any residence or other private property, place, or location, including any commercial or business property.

Property owner means the legal owner of record as listed by the tax assessors records.

Public Nuisance means a gathering of persons on any premises in a manner which constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property ~~in a significant segment of a neighborhood~~. Unlawful conduct includes, but is not limited to excessive noise, excessive pedestrian and vehicular traffic, obstruction of public streets by crowds or vehicles, illegal parking, public urination, the service of alcohol to underage persons, fights, disturbances of the peace, and litter.

Response costs are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering as set forth in a schedule of costs established by the Board of Selectmen.

Rental Property Manager or Management organization.

Any person or organization acting on behalf of a rental housing owner or owners to screen and place tenants, collect rent, security deposits and other fees, maintain and secure rental housing property, or any or all of the above.

§2. Consumption of Alcohol by Underage Persons Prohibited in Public Place, Place Open to Public, or Place Not Open to Public

Except as permitted by state law, it is unlawful for any underage person to:

- (a) consume at any public place or any place open to the public any alcoholic beverage; or
- (b) consume at any place not open to the public any alcoholic beverage, unless in connection with the consumption of the alcoholic beverage the underage person is being supervised by his or her parent or legal guardian.

§3. Hosting, Permitting, or Allowing a Public Nuisance or Party, Gathering, or Event Where Underage Persons Consuming Alcoholic Beverages Prohibited

- (a) It is the duty of any person having control of any premises who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages by any underage person at the gathering. Reasonable steps include, but are not limited to, controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of persons attending the gathering by inspecting driver's licenses or other government-

issued identification cards to ensure that underage persons do not consume alcoholic beverages while at the gathering; and supervising the activities of underage persons at the gathering.

(b) A gathering constituting a public nuisance may be abated by all reasonable means including, but not limited to, an order by the Police requiring the gathering to be disbanded and citation and/or arrest of any persons under any applicable provision of local or state law.

(c) It is unlawful for any person having control of any premises to knowingly host, permit or allow a gathering to take place at said premises where at least one underage person consumes an alcoholic beverage, provided that the person having control of the premises either knows an underage person has consumed an alcoholic beverage or reasonably should have known that an underage person consumed an alcoholic beverage and the person having control of said premises failed to take all reasonable steps to prevent the consumption of an alcoholic beverage by an underage person.

(d) This Section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between an underage person and his or her parent or legal guardian as set forth in G.L. c.138, §34.

(e) This Section shall not apply to any Massachusetts Alcoholic Beverages Control Commission licensee at any premises regulated by the Massachusetts Alcoholic Beverage Control Commission.

§4. Mailing of Notice to Property Owner.

Notice of response by police or other local officials to a gathering shall be mailed ~~by the Town Manager's office~~ **by the Amherst Police Department** to any property owner listed on the Town of Amherst property tax assessment records **and the rental housing manager or management organization, advising them** ~~property owner~~ that the third such response on the same premises within a one year period, as measured from the date of the first notice, shall result in liability of the property owner **and rental housing manager or management organization** for all penalties associated with such response as more particularly described below.

§5. Persons Liable for a First and Second Response to a Gathering Constituting a Public Nuisance.

If the police department is required to respond to a gathering constituting a public nuisance on the premises, the following persons shall be jointly and severally liable for fines as set forth below. Response costs ~~may~~ **shall** also be assessed.

(a) The person or persons residing on or otherwise in control of the property where such gathering took place.

(b) The person or persons who organized or sponsored such gathering.

(c) All persons attending such gatherings who engage in any activity resulting in the public nuisance.

§6. Persons Liable for a Third and Subsequent Response to a Gathering Constituting a Public Nuisance.

If the police department is required to respond to a gathering constituting a public nuisance on the premises more than twice in any one year period, as measured from the date of the first response, the following persons shall be jointly and severally liable for fines as set forth below. Response costs ~~may~~ **shall** also be assessed.

(a) The person or persons who own **and/or manage** the property where the gathering constituting the public nuisance took place, ~~provided that notice of the first and second responses has been mailed to the owner of the property as set forth herein and the gathering occurs at least fourteen (14) days after the mailing the second such notice. The owner of the property shall not be held responsible for any violation and penalties if~~

~~they are actively trying to evict a tenant from the property.~~ **The one year time period for violations for a property shall pertain only to the same residents occupying the property who have had the prior violation(s). New residents shall start a new time cycle of one year should they violate the bylaw.**

(b) The person or persons residing on or otherwise in control of the property where such gathering took place.

(c) The person or persons who organized or sponsored such gathering.

(d) All persons attending such gatherings who engage in any activity resulting in the public nuisance.

§7. Enforcement This bylaw shall be enforced by criminal complaint in the District Court. Violations shall be punishable by a fine of \$300.00. In the alternative it may be enforced by the noncriminal disposition process of M.G.L. c.40 Section 21D. For the purpose of noncriminal enforcement, the enforcing persons shall be any police officer of the Town of Amherst. If enforced pursuant to noncriminal disposition, the following fines shall apply:

First offense: \$300

Second offense: \$300

Third and subsequent offense: \$300

The Town of Amherst ~~may~~ **shall** additionally seek administrative costs and response costs associated with enforcement of Sections 2 and 3, through all remedies or procedures provided by state or local law

Sections 2 and 3 shall not limit the authority of police officers to make arrests for any criminal offense arising out of conduct regulated by Sections 2 and 3, nor shall they limit the Town of Amherst or the Commonwealth of Massachusetts' ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of Sections 2 and 3.

§8. Local Authority and Severability

No provision of this bylaw shall apply where prohibited or preempted by state or federal law.

If any provision of this ordinance, or the application thereof to any person or circumstances, is declared invalid, that invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application, to this end the provisions of this ordinance are severable.