

Submitted by Jonathan Davis, Town Meeting Member, Precinct 10
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To see if the Town will amend the Town General By-Laws by amending Article 8.29 (Nuisance Control) Sections 8.29.2, 8.29.3 and 8.29.4 as follows (deletions are marked with strike-throughs, additions are underscored):

8.29.1 Purpose

In order to protect the health, safety and welfare of the public, this bylaw shall permit the Town to impose liability on Property Owners and other responsible persons for the nuisances and harm caused by loud and unruly Gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such Gatherings.

Section 8.29.2 Definitions

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 or event, where two or more persons have assembled or are assembled for a social occasion or social activity (including but not limited to being present on a Premises as defined below in this Section 8.29.2).

Premises means any residence or other private property, place, or location, including any commercial or business property, and also means a location in or on a public way that any commercial or business enterprise has been authorized or permitted to use or occupy, whether temporarily or permanently, by a Board, Commission, Committee, Department or other instrumentality of the Town.

Property Owner means the legal owner of record of a Premises as listed by the tax assessor's records, and also means the commercial or business enterprise authorized or permitted to use or occupy a public way by any Board, Commission, Committee, Department, or other instrumentality of the Town.

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 neighborhood. Behavior constituting a Public Nuisance includes, but is not limited to excessive noise and excessive pedestrian and vehicular traffic related thereto, obstruction of public ways by crowds or vehicles, illegal parking, public urination, the service of alcohol to underage persons, fights, disturbances of the peace, and littering.

Response Costs are the costs associated with responses by law enforcement, fire, and other emergency response providers to a ~~gathering~~ Gathering which has resulted in a Public Nuisance as set forth in a schedule of costs established by the Select Board.

Section 8.29.3

Mailing of Notice to Property Owner and Others

In the event police or other local officials have responded to a Gathering constituting a Public Nuisance, a notice of response shall be made within ten (10) days of the Gathering as follows:

- (a) **Property Owners:** The Chief of Police shall mail a notice of response by Certified Mail to the Property Owner of the Premises where the Gathering occurred as listed on the Town of Brookline property tax assessment records or as identified in the authorization, permit, license or lease to use or occupy a public way and shall advise the Property Owner that the second 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 for all penalties and Response Costs associated with such response as more particularly described in sections 8.29.4 and 8.29.4.1 below. **In its discretion the Chief of Police may determine to not mail a notice of response, or to mail a modified notice of response, to a commercial or business enterprise described in the PROVISIO in section 8.29.4, below, or in the PROVISIO in section 8.29.4.1, below.**
- (b) **Educational Institutions:** The Chief of Police shall send a notice of response to the president/head ~~headmaster~~ or their designee of an educational institution if the persons who are liable in Section 8.29.4 and 8.29.4.1 are students at such educational institution. Such notice shall be sent by mail or other appropriate means.
- (c) **Persons Cited:** The Chief of Police shall send a notice of response to any person who was personally cited at the time of the offense. Such notice shall be sent by mail or other appropriate means to the address stated on the individuals' government issued identification.

Section 8.29.4

Liability for a First Response to a Gathering
Constituting a Public Nuisance on a Premises

If the police department or other local officials have responded to a Gathering constituting a Public Nuisance on a Premises, the following persons shall be jointly and severally liable for fines as set forth below, provided that no previous Gathering constituting a Public Nuisance has occurred at the Premises within the previous one year period. Response Costs may also be assessed at the discretion of the Chief of

Police. In lieu of issuing a fine(s) a police officer may issue a written warning if the response to the complaint occurs prior to 10:00 p.m.

- (a) The person or persons residing on or otherwise in control of the ~~premises~~ Premises where such Gathering took place whether present or not.
- (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.

PROVIDED, HOWEVER, that in the case of a location in or on a public way that a commercial or business enterprise has been authorized or permitted to use or occupy by a Board, Commission, Committee, Department or other instrumentality of the Town, if the permitted enterprise was not serving customers in both such public way location and also its location on private property at the time of the response, then, solely for purposes of liability under (a) of this Section, the enterprise shall not be considered in control of the Premises located in or on a public way; an example thereof being if, at the time of the response, the authorized or permitted enterprise was closed to the public until its next business day.

Section 8.29.4.1 Liability for a Second 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 once 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 also be assessed.

- (a) The person or persons residing on or otherwise in control of the Premises where such Gathering took place whether present or not.
- (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.
- (d) The person, persons or business entity which at the time of the Gathering owned the Premises where the Gathering constituting the Public Nuisance took place, provided that notice of the first and subsequent responses has been mailed to the Property Owner of the Premises as set forth herein and the Gathering occurs at least fourteen (14) days after the mailing of the first such notice. The Property Owner of the Premises shall not be held responsible for any violation and penalties if the Property Owner is actively pursuing Eviction from the

Premises of a tenant who controlled, organized, sponsored or attended the Gathering. The one year time period for violations for a Premises shall pertain only to the same residents occupying the Premises who have had the prior violation(s). New residents shall start a new time cycle of one year should they violate the bylaw.

PROVIDED, HOWEVER, that in the case of a location in or on a public way that a commercial or business enterprise has been authorized or permitted to use or occupy by a Board, Commission, Committee, Department or other instrumentality of the Town, if the permitted enterprise was not serving customers in both such public way location and its location on private property at the time of the response, then, solely for purposes of liability under (a) or (d) of this Section, the enterprise shall not be considered in control of, or owning, the Premises located in or on a public way; an example thereof being if, at the time of the response, the authorized or permitted enterprise was closed to the public until its next business day.

Section 8.29.5 Consumption of Alcohol by Underage Persons is 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 any alcoholic beverage at any public place or any place open to the public; or
- (b) Consume any alcoholic beverage at any place not open to the public.

Section 8.29.6 Hosting, Permitting, or Allowing a Public Nuisance or Party, Gathering, or Event where Underage Persons Consume Alcoholic Beverages is 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 their 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.

Section 8.29.7 Enforcement

This bylaw shall be enforced by the noncriminal disposition process of M.G.L. c.40 § 21D. For the purpose of noncriminal enforcement, the enforcing persons shall be any police officer of the Town of Brookline. If enforced pursuant to noncriminal disposition, the following fines shall apply per person cited under sections 8.29.4 and 8.29.4.1:

First response:	\$100
Second and subsequent response(s):	\$300

The Town of Brookline may additionally seek administrative costs and Response Costs associated with enforcement of this bylaw.

The provisions of this bylaw are enforceable without reference to the Brookline Noise Control Bylaw 8.15 and without reference to the fact that the police officer issuing a citation has not obtained a scientific noise measurement prior to issuing the citation. No such scientific noise measurement is required under this bylaw and the lack of a measurement shall not constitute a defense.

Sections 8.29.5 and 8.29.6 shall not limit the authority of police officers to make arrests for any criminal offense arising out of conduct regulated by Sections 8.29.5 and 8.29.6, nor shall they limit the Town of Brookline or the Commonwealth of Massachusetts' ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of Sections 8.29.5 and 8.29.6.

Section 8.29.8

Local Authority and Severability

Nothing in this bylaw shall be construed to conflict with anything in MGL Chapter 138 in regard to underage drinking.

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

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

Or act on anything relative thereto.

Petitioner's Explanation:

This is a housekeeping petition.

Bylaw Article 8.29 (consisting of eight Sections) was enacted by Town Meeting in the May 2010 regular Town Meeting. It was introduced as Article 12, and the main motion was an amendment by the Select Board, which was supported by the original petitioners and by the Advisory Committee.

Bylaw Article 8.29 was intended to give the police department a tool to control noisy and disruptive behavior, particularly at night and from parties inside apartments, that had been bothering neighborhoods near Boston University.

It's now more than eleven years since Article 8.29 was enacted and, not surprisingly, Article 29 has become somewhat out of date. It has become somewhat out of date because the Bylaw only applies when there is a "residence or other private property, place, or location" [in the Bylaw called a "Premises"]; and there is "a legal owner of record of a Premises as listed by the tax assessor's records".

Fast forward to 2021 and trying to emerge from the pandemic. The Town is permitting restaurants, bars and other businesses to occupy outdoor sidewalk and outdoor curbside roadway space. When that happens there is no "private property" in the sense of privately owned real estate, and there is no "legal owner of record ... listed on the tax assessor's records" because the real property is the sidewalk or roadway, both of which are "public ways" and owned by the Town.

As a result, if there should be a rowdy, loud or otherwise disruptive situation occurring at one of these outdoor venues – particularly late at night – the police do not have the same tool to address the situation, and act upon residents' complaints, as the police currently have if the same

behavior were occurring inside a privately owned apartment or house. A foretaste of this occurred the night of Saturday May 22nd until after 2 AM Sunday May 23rd when there was a loud outdoor gathering at Hamilton's curbside venue that elicited many complaints to the police from residents. The noise could be heard more than 1 and ½ football field-lengths from the partying.

The petitioned Article would address this new and inadvertent loophole by extending the reach of Article 8.29 to areas of the public way that the Town permits for business or commercial use, putting them on a par with privately owned real property (and particularly privately owned real property that is indoors). In doing this the petitioned Article leaves most of Bylaw Article 8.29 untouched.

Without this amendment residents disturbed by such disruptive outdoor gatherings may challenge renewal or extension of the business or commercial enterprise's public way permit, but that may be weeks or months later, and it will not abate the nuisance as it is happening; also, challenging renewal or extension of the permit may be overkill when all that is necessary is to give the police the tool to visit and talk to the manager of the permitted business or commercial enterprise while the nuisance is occurring,

(In addition to the substantive changes proposed by the Warrant Article, the Warrant Article also corrects two small typographic errors and one gendered noun).