

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Warrant Article 18 by a vote of 25-0-0.

Executive Summary:	Article 18 seeks to increase fines, allowed by law, associated with Solid Waste Regulations relating to food establishments and owners of single, two and three-residences. The request is intended to incentivize compliance with sanitary trash storage requirements as part of a multi-pronged approach to reduce rodent food sources in Brookline. The Warrant Article proposes to amend Town By-Law Article 10.3 Non-Criminal Disposition in Article 8.8 Food Establishments Handling of Refuse and Health Department Regulations governing the Handling, Storage, Collection and Disposal of Waste section 2.
Voting Yes will . . .	Increase Fines in Article 10.3 and 8.8
Voting No will . . .	Leave the fines as they are
Financial Impact	No major impact
Legal Implication	None

Introduction:

As part of a multi-pronged strategy to reduce rodent food sources, this warrant article seeks to increase fines for illegal waste storage for both food establishments and single, two and three family residences. The petitioners hope that the increase in fines will help improve compliance with by-laws and regulations enforced by the DPW and Health Departments.

Town By-Law Article 8.8 (Food Establishments Handling of Refuse) describes the proper storage and removal of food waste at food establishments. This amendment brings the fine schedule into alignment with violations and penalties for owners of commercial businesses, corporations and buildings containing more than three dwelling units as defined in Article 10.3.

In addition, for commercial food establishments, the FDA regulates food waste handling and has procedures for hearings, license suspensions and closures. These procedures, if necessary, are administered by the DPW who work hard with any violators to reach compliance.

Enforcement, by both the DPW and the Health Department, is complaint driven and relies greatly on educating the violators as to the applicable laws and regulations.

The DPW Commissioner believes that the increase in fines may be compelling for repeat offenders.

Discussion:

Committee members expressed support for the rodent control action plan being implemented by the DPW and the Health Department and were disposed to increase the fines as a part of that program. However, there were concerns over the non-transparency of existing Town By-laws and Health Department regulations. It was unclear to some members as to what violation exactly an individual might be committing, specifically whether it was part of the By-Laws or in a separate document, the Health Department regulations.

Both Commissioner Gallentine and Health Commissioner Reiss have sent a letter (attached below) to the Committee which clarifies many of the confusions that the members noted. The Committee welcomed the DPW Commissioner’s plan to provide increased education and an updated Sanitation Program Guide which will improve clarity.

Commissioner Gallentine was asked about warnings and fines issued in this year and last and provided the following information:

Year	Residential Warnings	Residential Tickets Issued	Commercial Warnings	Commercial Tickets Issued
CY 2022	175	93	14	4
CYTD 2023	71	20	7	8

Recommendation:

The Advisory Committee voted in favor of WA 18 by a vote of 25-0-0 on the motion below:

VOTED: That the Town amend Article 8.8 Section 8.8.1 and Section 8.8.2 of the Town’s By-Laws as follows (insertions in underline)

Article 8.8 Food Establishments Handling of Refuse

SECTION 8.8.1 STORAGE OF REFUSE

All establishments which prepare food for consumption on or off its premises shall provide and maintain a sufficient number of closed receptacles, such as dumpsters, for the storage of all refuse on the premises. All refuse on said premises shall be stored in covered receptacles, such as dumpsters. The covered receptacles shall be constructed and maintained so that refuse is kept within the receptacle and is not blown or otherwise removed therefrom by wind, animals or other cause, other than for removal by authorized persons.

Penalty - Fines may be levied daily until compliance:

<u>First Violation</u>	<u>\$100.00</u>
<u>Second Violation</u>	<u>\$200.00</u>
<u>Third & Subsequent Violations</u>	<u>\$300.00</u>

SECTION 8.8.2 REMOVAL OF REFUSE

All restaurants and commercial establishments which prepare food for consumption on or off its premises shall provide for the removal of all refuse from the premises during each day of operation. No refuse shall be allowed to remain on the premises for more than twenty-four hours. Religious and municipal organizations are exempt from this by-law provision.

Penalty - Fines may be levied daily until compliance:

<u>First Violation</u>	<u>\$100.00</u>
<u>Second Violation</u>	<u>\$200.00</u>
<u>Third & Subsequent Violations</u>	<u>\$300.00</u>

And amend Article 10.3 Health Department Regulations (insertions underlined, deletions ~~struck through~~):

HEALTH DEPARTMENT REGULATIONS
Regulations Governing the Handling, Storage, Collection and
Disposal of Waste

1. Violations and Penalties for Owners of Commercial Businesses, Corporations and Buildings Containing More Than Three Dwelling Units

First Violation	\$100.00
Second Violation	\$200.00
Third & Subsequent Violations	\$300.00

2. Violations and Penalties for Owners of Single, Two and Three Unit Dwellings

First Violation	\$ 20 25.00
Second Violation	\$ 35 50.00
Third & Subsequent Violations	\$ 50 150.00

ARTICLE 18 ADVISORY COMMITTEE VOTES

Article Description	Increase fines for improper solid waste storage
AC recommendation (Favorable Action unless indicated)	25-0-0
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	Y
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Pam Lodish	
Joslin Murphy	Y
Donelle O’Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	Y
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	



TOWN OF BROOKLINE

MASSACHUSETTS

To: Capital Subcommittee of Advisory
From: Erin Chute Gallentine, Commissioner of Public Works
Sigalle Reiss, Director of Public Health & Human Services
Re: Warrant Article 18 Comments: Proposed increase in fines associated with violations regarding the storage, removal and handling of solid waste
Date: April 28, 2023

The petitioners of Warrant Article 18 (WA18) are proposing to increase fines associated with Solid Waste Regulations related to food establishments and owners of single, two and three-unit dwellings. The request is intended to incentivize compliance with sanitary trash storage requirements as part of a multi-pronged approach to reduce rodent food sources in Brookline. The fines correlate to Brookline [General By-law Article 8.8: Food Establishments Handing of Refuse](#) and [Town of Brookline Regulations Governing the Storage, Removal and Handling of Solid Waste](#).

The Warrant Article proposes to amend Article 10.3 Non-Criminal Disposition.

Article 10.3 states:

A violation of any provision of these by-laws, the violation of which is subject to a specific penalty under Section 10.1 or in the specific provision which has been violated, except when otherwise provided by law, or any rule or regulation of any municipal officer, board or department may be dealt with as a non-criminal offense in accordance with the provisions of General Laws, Chapter 40, section 21d. If not subject to a specific penalty in the following table, each violation shall be subject to a specific penalty of fifty (\$50.00) dollars for each offense, unless a different penalty is provided in the specific by-law, rule or regulation provision being enforced. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense hereunder. Violations of this Article 10.3 may be enforced by any police officer of the town, by the department head or their designee as set forth with particular reference to specific articles in Article 10.2, above, and, when a violation involves a rule or regulation of any municipal officer, board or department, by that municipal officer or by that board or the head of that department, by their designee, and in all instances, in accordance with the requirements set forth in General Laws, Chapter 40, section 21d.

Article 8.8 Food Establishments Handing of Refuse describes the proper storage and removal of refuse at food establishments. In addition to this by-law, the Department of Public Health enforces the FDA food code, which also requires proper storage and disposal of refuse. The bylaw and fine schedule in Article 10.3 provide the framework to fine food establishments if they

are found in violation of the storage and removal of the refuse By-law or regulations. The current By-law 10.3 allows for \$100 fines per violation. The proposal would increase the fines based on first, second and third violation, \$100, \$200 and \$300, respectively. This amendment brings the fine schedule in alignment with violations and penalties for owners of commercial businesses, corporations and buildings containing more than three dwelling units as defined in Article 10.3. The Public Health Department may also fine food establishments under the FDA food code for any food safety violations. The FDA Food Code outlines enforcement procedures including, hearings, license suspensions and closures. Since food establishments are a licensed operation, the Public Health Department has many tools to reach compliance. The Department staff routinely inspect food establishments including solid waste management operations, and historically does not generally issue fines but works with establishments to achieve compliance. The larger threat to these food establishments is losing their license or customer base. There are, however, examples of egregious violations that result in fines, and at times immediate closure or license suspensions. Establishments that do not work to immediately remedy violations will be fined.

The second policy is the Department of Public Health's long-standing, ***Regulations Governing the Storage, Removal and Handling of Solid Waste***¹. These regulations were developed under the Public Health Commissioner's authority MGL 111, Sec 31² with portions of the regulation also involving the Select Board Authority under ARTICLE 8.16 COLLECTION AND RECYCLING OF WASTE MATERIALS SECTION and have been in place for over 48 years. The existing regulations cover a wide variety of operations related to solid waste management including commercial and residential waste collection and storage. The regulations provide the authority and framework for both the Departments of Public Health and Public Works to regulate and enforce improper storage, collection, transport and disposal of solid waste.

The Solid Waste Regulations were last revised in 1998. As part of the Rodent Control Action Plan, Commissioner Gallentine and Director Reiss are working to revise these regulations to provide greater clarity regarding the condition and placement of dumpsters, in particular, for large residential complexes and businesses. Dumpsters with holes, without tight fitting lids or overall in poor condition are a source of food for rodents. Information regarding the Town's Solid Waste Regulations is on the Town's website, was provided to all Town customers when the Hybrid Pay as You Throw program was rolled out, and is provided to Private Waste Haulers. A Sanitation Program Guide and website update are in process to provide improved resident and business access to simple educational material, relevant regulations and proper waste storage procedures.

Enforcement of the ***Regulations Governing the Storage, Removal and Handling of Solid Waste*** is primarily complaint-driven. The most frequent complaints include overflowing dumpsters, overflowing trash carts, and loose trash bags (non-purple overflow bags) piled on the sidewalk. When violations are noted, staff will inspect the area with first-time offenders and issue a warning. Staff explain the violation, discuss options on how to remedy the situation, and

¹ <https://www.brooklinema.gov/507/Sanitary-Codes-Regulations-Town-Bylaws>

² <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section31>

educate the property owner about proper storage. Staff will often provide guidance on storage, containers, frequency of collection (if on a private service), placement, and enclosures. The Town does not issue fines prior to educating residents/businesses about the violations and how to correct them. The violators are provided information on the regulations and an explanation as to why it is important to the health, safety and well-being of the community.

The Departments are not co-sponsors to the bylaw amendment, but do agree that the recommendation brings the food establishment fees into alignment with other commercial establishments and increases the 1-2 and 3-family residential dwelling fee structure. Most residential units remedy the problem after a warning. The increased fines may be compelling for those that are repeat offenders.