

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

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[www.mass.gov/ago](http://www.mass.gov/ago)

January 16, 2024

Laura J. Caruso, Town Clerk  
Town of Sutton  
4 Uxbridge Road  
Sutton, MA 01590

**Re: Sutton Annual Town Meeting of October 16, 2023 -- Case # 11184**  
**Warrant Articles # 13, 14, 15, 16, 17 and 18 (Zoning)**  
**Warrant Articles # 8 and 12 (General)**

Dear Ms. Caruso:

**Articles 8, 12, 13, 14, 15 and 16** - We approve Articles 8, 12, 13, 14, 15 and 16 from the October 16, 2023 Sutton Annual Town Meeting. Our comments regarding Article 8 are provided below.

**Articles 17 and 18** - The Attorney General's deadline for a decision on Articles 17 and 18 is extended for 45-days by agreement with Town Counsel as authorized under G.L. c. 40, § 32. The agreement with Town Counsel for a 45-day extension is attached. We will issue our decision on Articles 17 and 18 on or before March 2, 2024.

**Article 8** - Under Article 8 the Town voted to amend its general by-laws, Bylaw # 18, "Use of Public Right of Way," to add a new Section 18.3, "Prohibition on Use of Engine Compression Brakes." The new Section 18.3 prohibits the use of certain engine braking systems in the Town, except for those used in the case of an emergency or where required by G.L. c. 90, § 7 or other applicable law.<sup>1</sup>

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<sup>1</sup> General Laws Chapter 90 Section 7 requires engine or compression braking systems in certain heavy vehicles and provides in relevant part as follows:

Except in the case of a school bus or fire apparatus, every motor vehicle and every tractor which is designed and used for drawing another vehicle, having an unladen weight of more than ten thousand pounds, shall be equipped with full air brakes or hydraulic brakes with vacuum power assist or air power assist. All braking systems shall be constructed and designed to permit modulated control of brake application and release by the operator from the normal operating position. Every trailer or semi-trailer having an unladen weight of more than ten thousand pounds shall be equipped with air or electric brakes.

TOWN OF SUTTON  
24 JAN 17 AM 8:55

Posted:

We approve the by-law because we cannot conclude that the new Section 18.3 is inconsistent with the laws of the Commonwealth. Under G.L. c. 40, § 32, the Attorney General has a limited power of disapproval with every “presumption made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 796 (1986). To disapprove a by-law, the Attorney General must cite an inconsistency between the by-law adopted by the Town and the Constitution or laws of the Commonwealth. Id., 398 Mass. at 796. Because we cannot state that the new by-law is inconsistent with state law, we approve it.<sup>2</sup>

**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

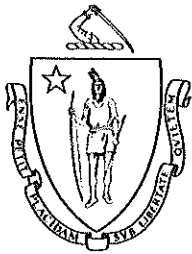
*Nicole B. Caprioli*

By: Nicole B. Caprioli  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4418

cc: Town Counsel Thomas W. McEnaney

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<sup>2</sup> The by-law is similar to by-laws adopted by the Towns of: Hudson (Case # 10975); Athol (Case # 10750); Berlin (Case # 10617); Sherborn (Case # 10127); Webster (Case # 9980); Longmeadow (Case # 9466); West Tisbury (Case # 8517); Lynnfield (Case # 5034); Ayer (Case # 3159); and Boxford (Case # 2966) that were approved with comments by this Office.



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January 11, 2024

Thomas McEnaney, Esq.  
KP Law  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**Re: Extension of 90-day review period of Articles 17 and 18  
Sutton Annual Town Meeting of October 16, 2023  
Case # 11184**

Dear Attorney McEnaney:

Pursuant to the requirements of G.L. c. 40, § 32, the Attorney General and Town Counsel are authorized to extend the 90-day period provided for the Attorney General's review of town by-laws for not more than an additional 90 days. This letter serves to satisfy the requirements of G.L. c. 40, § 32. In light of our need for time to further discuss the proposed by-laws' consistency with state law, we hereby jointly agree to extend the Attorney General's review period of Articles 17 and 18 for an additional 45 days. Our decision on Articles 17 and 18 will now be due on **March 2, 2024**.

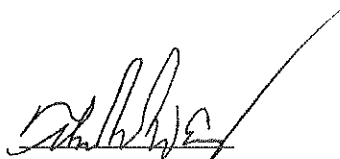
Please sign this letter to reflect your agreement and return the signed letter to us. We will then file the letter with the Town Clerk, with a copy to you. Thank you for your accommodation in this matter.

Very truly yours,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

*Nicole B. Caprioli*

By: Nicole B. Caprioli  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600 ext. 4418

  
Town Counsel

January 12, 2024  
Date

**ARTICLE 8**

**SPONSOR: Select Board**

Voted by a majority vote to amend Bylaw #18 of the General Bylaws, Use of Public Right of Way, by adding a new Section 18.3, Prohibition on Use of Engine Compression Brakes, as printed in the warrant.

**As printed in the warrant:**

**Section 18.3 – Prohibition on Use of Engine Compression Brakes**

**18.3.1** Except in the case of an emergency, and where required by G.L. c.90, §7 or any other applicable law, it shall be unlawful for the driver of any motor vehicle operating on a public right of way within the Town to use or operate, or cause to be used or operated, any compression brake, engine brake, dynamic brake, or mechanical exhaust device designed to assist in the deceleration or braking of any motor vehicle.

**18.3.2** Enforcement and Penalty.

In addition to those enforcements agents identified in Bylaw #19 of the General Bylaws, this Bylaw may be enforced by any Police Officer of the Town. The penalty for violation of this Bylaw shall be \$100.00 for the first offense and \$300.00 for the second and any subsequent offenses, which may be enforced by non-criminal disposition pursuant to G.L. c.40, §21D and Section 19.2.2 of the General Bylaws. For the purposes of this Bylaw, a second or subsequent offense is one that occurs within 12 months of the previous noticed offense

A True Copy Attest:

Laura J Caruso  
Town Clerk

**Town Meeting Action     Oct 16, 2023     Article 12     Town of Sutton**

**ARTICLE 12**

**SPONSOR: Planning Board**

Voted unanimously to amend the Bylaw #5 of the General Bylaws, Earth Disturbance and Removal, as printed in the warrant.

**As printed in the warrant:**

1. Capitalize the word "Earth" and the phrase "Earth Removal" throughout the Bylaw;
2. Amend Section 5.4 Paragraph 2 by adding underlined text as follows;  
The Board shall distribute copies of the application to the Conservation Commission, Police Chief, Highway Superintendent, Fire Chief, Building Commissioner, Select Board and local utilities if proposed work is within their districts. Such officials may, within twenty-one days of distribution of the application, provide such comments as they deem appropriate; provided, however, that failure to provide such comments within said period shall not prevent the Board from thereafter acting on the application.
3. Section 5.5 d. replace the word "petitioner" with "applicant";
4. Section 5.5 i. replace Section "5.7" with "5.8";
5. Section 5.9 replace Section "5.4.b." with "5.4".

A True Copy Attest:

Laura J Caruso  
Town Clerk

**Town Meeting Action      Oct 16, 2023      Article 13      Town of Sutton**

**ARTICLE 13**

**SPONSOR: Planning Board**

Voted unanimously to amend the Zoning Bylaw, Section I.B. – Definitions, by deleting the language shown in strike-through and adding the underlined text, as printed in the warrant.

**As printed in the warrant:**

~~**Earth Removal:** Removing any form of soil, including without limitation, sod, loam, sand, gravel, clay, peat, hardpan, rock, quarried stone, or mineral product.~~

~~**Earth Removal, General:** Any earth removal not defined as subdivision or miscellaneous.~~

~~**Earth Removal, Miscellaneous:** That which is entirely incidental to construction for which a building permit has been issued, or that which is less than three hundred (300) cubic yards.~~

~~**Earth Removal, Subdivision:** That which is entirely incidental to road construction for an approved subdivision.~~

Earth: All forms of soil including, without limitation, sod, loam, sand, gravel, clay, peat, hardpan, rock, quarried stone, or mineral products.

Earth Removal: Removing and/or disturbing earth via any number of means including but not limited to excavating, grading, digging, or blasting, whether or not the earth is removed from the subject lot.

Earth Removal Class 1: Commercial and High Volume: Any earth removal which is more than 3,000 cubic yards within a 12-month period, that is not otherwise defined as Class 2 or Class 3.

Earth Removal Class 2: Subdivision/Site Plan/Special Permit: Earth Removal which is entirely incidental, in the opinion of the Planning Board, to an approved subdivision, site plan, or special permit.

Earth Removal Class 3: Residential, Agricultural, and Low Volume: Earth removal which is entirely incidental, in the opinion of the Building Commissioner, to construction that is subject to an approved building permit for a single family home or agricultural building/operation; or that which is 3,000 cubic yards or less within a 12-month period. Earth removal or the placement of fill associated with the installation of septic systems, which shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.00).

A True Copy Attest:

Laura J Caruso  
Town Clerk

**Town Meeting Action     Oct 16, 2023     Article 14     Town of Sutton**

**ARTICLE 14**

**SPONSOR: Planning Board**

Voted unanimously to amend the Zoning Bylaw Section III.A. 4. Table 1, Section G. by deleting items 6. and 7. and replacing them as printed in the warrant.

**As printed in the warrant:**

	<b>R-1</b>	<b>R-2</b>	<b>V</b>	<b>B-2</b>	<b>I</b>	<b>OLI</b>
6. Earth disturbance and removal – Class 1, in accordance with Bylaw 5 of the Sutton General Bylaws	-	-	-	S*	S*	S*
7. Earth disturbance and removal – Class 2 & 3, in accordance with Bylaw 5 of the Sutton General Bylaws	P	P	P	P	P	P

A True Copy Attest:

Laura J Caruso  
Town Clerk

**ARTICLE 15**

**SPONSOR: Planning Board**

Voted by a 2/3's vote to amend Section IV.C. of the Zoning Bylaw – Site Plan Review, by adding Sub-section 7, Low Impact Development (LID) Minimum Requirements and re-numbering the remainder of the section as necessary, as printed in the warrant.

**As printed in the warrant:**

**7.     Low Impact Development (LID) Minimum Requirements**

LID practices are those that use or mimic natural processes primarily with respect to stormwater management. The increase in impervious areas due to development results in an increased burden on drainage systems, which result in increased flooding risks, reduced ground water and river base flows, and degraded water quality.

The following minimum LID requirements are required on all new development sites and re-development sites that involve earth disturbance over 5,000 s.f.

- a. Topsoil may not be removed from a development site. It must be stockpiled and re-used on the site. If excess topsoil remains after the pervious portions of the site are finished, the applicant may remove the excess with the approval of the Planning Board and in compliance with the Town's Earth Disturbance and Removal Bylaw.
- b. Any top soil impacted/compacted during construction, must be rototilled prior to planting or other finish work.
- c. Roof drainage, generally considered clean, must be separated from parking lot and other drainage and used for irrigation, with the remainder being directly infiltrated back to the site.
- d. At least half of a site stormwater infrastructure must employ LID measures such as open drainage swales and basins, bio-filtration/rain gardens, permeable walkways, and green roofs. These elements may occupy up to 50% of yard setbacks. Applicants may claim a bonus for LID measures located outside of yard setbacks. The area of these elements may be multiplied by 2 when calculating the amount of open space and interior lot landscaping, as applicable, that has been provided.
- e. A minimum of 75% of plantings must be native. Plantings may not include any varieties considered invasive. If invasive species seed on site, they must be eradicated in a manner that does not threaten existing vegetation or water resources, nor risk transferring them to other sites.



- f. Underground infiltration or detention systems may not be used without demonstrating that they are the only feasible means of stormwater management.
- g. Pre-existing conditions for run-off including direction, volume, velocity, quality, and quantity must be documented and be mimicked as nearly as possible post development.
- h. For previously developed sites run-off direction, volumes, velocities, quality, and quantity shall be improved compared to existing conditions, and to the extent possible shall mimic a naturally vegetated pre-development site.

A True Copy Attest:

Laura J Caruso  
Town Clerk

**ARTICLE 16**

**SPONSOR: Planning Board**

Voted unanimously to amend Zoning Bylaw Section IV.B.5.c., Parking Regulations by deleting the language shown in strike-through and inserting the underlined text, as printed in the warrant.

**As printed in the warrant:**

**c. Landscaping in Interior Areas**

Landscaping areas shall be provided for interior parking areas so as to provide visual and climatic relief from broad expanses of pavement and to channelize and define logical areas for pedestrian and vehicle circulation.

1. Interior parking areas shall be deemed to be all parking areas and any adjacent potentially vegetated areas within 20', exclusive of ~~except~~ driveways providing access and egress to the development.
2. At least ~~five~~ ten percent (~~\$~~10%) of the parking area shall be landscaped. These landscaped areas shall include trees sufficient to provide ~~some~~ shading of parking areas.
3. Interior landscaped areas shall consist of a continuous landscaped island between rows of parking that abut each other, and shall consist of a continuous landscaped area along the length of a row of parking when it abuts a building or setback line. These landscaped islands/areas shall be at least ten (10) feet in width. Islands of at least 100 s.f. shall also be provided at the end of rows of parking to define the row and to deter cut-across traffic movements. ~~be dispersed so as to define aisles and limit unbroken rows of parking to a maximum of one hundred (100) feet. Landscaping between rows of parking shall be at least eight (8) feet in width.~~
4. Applicants may claim a bonus when providing landscaping that also serves as an active stormwater element such as a bio-swale/rain-garden. The area of these landscape elements may be multiplied by 2 when calculating the interior landscaping that has been provided.

A True Copy Attest:

Laura J Caruso  
Town Clerk