

# Chapter 9

## Offenses — Miscellaneous

### Section

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- Sec. 9-15. Closing of retail establishments.
- Sec. 9-16. Littering on Town Property – Prohibited.

**Cross reference** - General penalty for code violation, Ch. 1, Sec. 1.4. Non-criminal disposition, Ch. 1, Sec. 1-4A.

### **Sec. 9-1. Alcoholic beverages—Drinking or possessing open container in public.**

No person shall drink any alcoholic beverages as defined in Chapter 138, Section 1 of the General Laws of Massachusetts or shall have in his possession any open container or containers whose seal has been broken and recapped of such beverage, while on, in or upon any public way or upon any way to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, park or playground, or private land or place without consent of the owner or person in control thereof. All alcoholic beverages being used in violation of this section shall be seized and safely held until final adjudication of the charge against the person arrested or summoned before the court, at which time they shall be returned to the person entitled to lawful possession. (10-29-73, Art.3)

**State law reference** - Arrest without warrant resulting from willful violation of bylaw, rule or regulation regarding use of street or public place, G.L. c. 272, sec. 59.

**Cross reference** - Alcohol Beverage Rules and Regulations, Ch. 16, Art. IV.

### **Sec. 9-2. Barriers, signs, protective covers, etc. Removing, altering, defacing, etc.**

No person shall, except as authorized or required by law, remove, alter the position of, deface or disturb, in any manner, any barrier, sign, protective cover or grating, placed or installed in the interests of safety or necessity.

Whoever violates this section may be arrested without a warrant by a police officer and detained in jail or otherwise until a complaint can be made against him for the offense. (3-16-53, Art. 27)

### **Sec. 9-3. Graffiti and defacement of property.**

(a) *Purpose.* The purpose of this bylaw is to help prevent graffiti and the defacement of property and the spread thereof. The Town finds that graffiti and the defacement of property are a public nuisance and destructive of the rights of property owners and all residents of the town. (5-5-97, Art. 5)

(b) *Definition – Graffiti.* Any unauthorized inscription, word, figure, painting, trade mark, advertisement, notice or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed by any graffiti implement to any surface of public or private property, including, but not limited to, any building, structure, fence, sign, rock or other man-made or natural object. (5-5-97, Art. 5)

(c) *Sale of Aerosol Container of Paint.* No person shall knowingly sell to any minor under the age of eighteen (18) years of age any aerosol container of paint capable of defacing property without the written consent of a parent or guardian of the minor and separate proof of identification. (5-5-97, Art. 5)

(d) *Graffiti and Defacement of Property - Prohibited Acts.* It shall be unlawful for any person to apply graffiti to any natural or man-made surface without the permission of the owner or occupant. (5-5-97, Art. 5)

(e) *Commercial Property - Owner and/or Property Manager.* It is unlawful for any person who is an owner of property used for business or commercial purposes and/or party responsible for control or maintenance of said property which has been defaced by graffiti for a period of fourteen (14) days or more to permit said property to remain defaced for an additional thirty (30) days after service by first class mail of notice of defacement by the town. The notice shall contain the following:

- (1) The street address or description of the property sufficient for identification;

- (2) A statement that the property is marked with graffiti and a brief description of the condition;
- (3) A statement that the graffiti must be removed within thirty (30) days after the date of notice by the town and that if the graffiti is not removed within that time the property will be deemed a public nuisance thereby subjecting the owner to fines and enforcement actions.

The removal requirements of subsection (1) above shall not apply if the respective property owner and/or party responsible for control or maintenance of said property can demonstrate to the satisfaction of the Town Administrator or his designee that:

- (1) They are not the owner of the property or party responsible for control or maintenance of said property;
- (2) The respective property owner or party responsible for control or maintenance of said property lacks the financial means to remove the graffiti;
- (3) The property owner and/or party responsible for control or maintenance of said property has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with the graffiti for a period of forty-five (45) days after the date of notice by the Town.
- (4) Other good cause as to why the respective property owner or party responsible for control or maintenance of said property should not be required to remove the graffiti in the required time period. The property owner or party responsible for control or maintenance of said property may request a hearing regarding the above-referenced exceptions before the town Administrator or his designee by submitting a letter to the Town Administrator's office no later than fourteen (14) days after receipt of the notice of defacement from the Town. Unless otherwise noted by the Town Administrator or his designee in the determination, the time period for removing the graffiti is not extended as a result of the requested hearing.

The determination of the Town Administrator or his designee shall be final. (5-7-98, Art.3)

(f) Penalty for Violation. Violation of this bylaw may be enforced by any police officer pursuant to Section 1-4 or by non-criminal disposition in the manner provided by Section 1-4A and General Laws, Chapter 40, Section 21D. The specific non-criminal disposition penalty which shall apply to a violation of this bylaw shall be as follows:

First offense...(within a twenty-four month period) - \$50.00

Second offense (within a twenty-four month period) - \$100.00

Third offense (within a twenty-four month period) - \$200.00

Each day a violation shall continue constitutes a separate offense. (5-5-97, Art. 5; 5-7-98, Art. 3)

**Sec. 9-4. Closing of parks, playgrounds, commons, etc.**

All areas known as parks, playgrounds, playfields, commons, public grounds or recreation areas shall be closed between the hours of 10:00 P.M. and 6:00 A.M. on all days, except for functions or uses under the direct control of the Board of Selectmen or the board of public works, or with the specific permission of either body and except for the purpose of walking through such parks, playgrounds, playfields, commons, public grounds or recreation areas. (3-29-71, Art. 14)

**Sec. 9-5. Discharging firearm, air rifle, etc.**

No person shall, except as authorized or required by law, fire, discharge any gun, fowling piece, other firearms, air rifles, fireworks or other explosives in the town; provided that the provisions of this section shall not apply to the chief of police or other police officers or auxiliary police in the performance of their duties nor to the use of such weapons at any military exercise or at an established rifle range or in the lawful defense of the person, family or property of any citizen, nor to the rights and privileges of an owner or lessee of land as set forth in Chapter 131 of the General Laws of Massachusetts. (1932 Bylaws, Art. 12, Sec. 10; 11-21-55)

**State law reference**—Weapons, G.L. c. 269, secs. 10 to 12D.

**Sec. 9-6. Disorderly conduct.**

No person shall, upon any of the public streets, public grounds, parking lots, commons or vacant lands, whether public or private, conduct himself in a disorderly manner which in any way may disturb the quiet of any person. (3-29-71, Art. 14)

**State law reference** - Disorderly conduct, G.L. c. 272, sec. 53.

**Sec. 9-7. Fires—Kindling on highways or town lands.**

No person shall kindle any bonfire or other fire in the highways or lands belonging to the town, except by permission of the board or officer in charge of such areas. (1932 Bylaws, Art. 12, Sec. 9)

**Sec. 9-8. Handbills, circulars, programs or advertising slips—Distribution.**

No person shall distribute or cause to be distributed any handbill, circular, program or advertising slip in or upon any street in the town; except, that such handbill, circular, program or advertising slip may be placed within the doors of stores, offices and business houses and at the doors of residences. (1932 Bylaws, Art. 12, Sec. 16)

**Sec. 9-9. Interfering with hydrants, fire alarms, etc.**

No person shall interfere with any hydrant, gate, gate box, fire alarm box or water pipe placed or located within the limits of any public way in the town. (1932 Bylaws, Art. 12, Sec. 15)

**Sec. 9-9.1. Fire Lanes.**

Upon determination by the Fire Chief that fire lanes are necessary for the protection of the lives or property of the public in an area to which the public has access, the owner, or the person having control of such premises, shall provide, install and maintain "No Parking-Fire Lane" signs and striping in the locations designated by the Fire Chief. (2-18-79, Art. 8)

**Sec. 9-10. Loitering.**

No person shall be or remain upon any public way or sidewalk or upon any doorstep, portico or other projection of any house or other Animals and Fowl not his own to the annoyance or disturbance of any person. (1932 Bylaws, Art. 12, Sec. 6)

**Sec. 9-11. Peeping into house or spying on others.**

No person, except an officer of the law in the performance of his duties, shall enter upon the premises of another with the intention of peeping into the windows of a house or of spying upon, in any manner, any persons therein. Whoever violates this section may be arrested without a warrant by a police officer and detained in jail or otherwise until a complaint can be made against him for the offense. (3-16-53, Art. 26)

**Sec. 9-12. Public addresses, sermons, sale of goods, etc., on public grounds.**

No person shall, in or upon any of the public grounds, streets, commons or vacant lands appurtenant to any public Animals and Fowl, make any public address, deliver a sermon, preach, discourse, give a concert, expose for sale any goods, wares or merchandise, erect or maintain any

booth, stand, tent or apparatus for the purpose of public amusement or show, in the town except by license of the Board of Selectmen. (3-18-35, Art. 47)

### **Sec. 9-13. Singing or playing musical instruments in public way.**

No person shall sing, play on or operate any musical instrument, in any public way, or solicit or receive compensation therefor from bystanders or the public without first having obtained a license therefor from the selectmen. The selectmen are hereby empowered to grant such licenses with such restrictions as they deem necessary. (3-18-35, Art. 45)

### **Sec. 9-14. Closing of restaurants.**

All restaurants in the town shall be closed to the public between the hours of 2:00 A.M. and 4:00 A.M. each day. For the purpose of this section, the term restaurant shall mean a business establishment whose principal business is the selling, or offering to sell, of food which has been prepared on the premises to the general public for consumption on or off the premises. (4-12-76, Article 15)

**State law reference**—Common victualers, generally, and licensing, G.L. c. 140, secs. 2-21.

### **Sec. 9-15. Closing of retail establishments.**

All retail business establishments of any kind, nature or description, including, but not limited to convenience stores, supermarkets and department stores, but excluding the restaurants and gasoline selling stations for the retail distribution of petroleum products only, in town shall be closed to the public between the hours of 12:00 A.M. and 6:00 A.M. each day. (8-14-89, Art. 2)

**Editor's Note**—Proposed repeal of this bylaw was defeated at subsequent Town Meeting. (5-9-91, Art. 7)

**Editor's Note**—Former Sec. 9-15 deleted - Bylaw that required gasoline filling station attendant to pump gasoline into the tanks of vehicles. (No self-service.) (10-21-85, Art. 6)

### **Sec. 9-16. Littering on town property – prohibited**

(a) *Purpose.* The purpose of this bylaw is to prevent littering on property owned or controlled by the Town of Stoneham so as to improve the beauty and quality of life in Stoneham.

(b) *Unlawful Acts.* It shall be unlawful for any person or persons to throw, dump, place, deposit, or leave litter, or to cause or permit the throwing, dumping, placing, depositing, throwing, or leaving of litter, in any manner, on any property owned or controlled by the Town of Stoneham, including, but not limited to any Town owned or controlled public way, sidewalk, park or playground, unless:

(i) The area is designated by the Town for the disposal of litter and the person is authorized by the proper Town authority to so use such area; or

(ii) The litter is placed into an authorized litter receptacle or container.

(c) *Definition of Litter.* For purposes of this bylaw, “litter” shall mean any discarded or abandoned garbage, refuse, rubbish, junk, bottle, can, paper product, or other material(s).

(d) *Rules and Regulations.* The Town Administrator may promulgate rules and regulations for the implementation of this bylaw.

(e) *Penalties.*

(i) Any person violating this bylaw shall be subject to a penalty pursuant to Section 1-4 of the Town of Stoneham Bylaws.

(ii) Violation of this bylaw may also be enforced by non-criminal disposition in the manner provided by Section 1-4A of the Town of Stoneham Bylaws by any Town police officer. The specific non-criminal disposition penalty which shall apply to a violation of this bylaw shall be as follows:

First Offense:	Warning
Second Offense:	\$200
Third Offense	\$300

The enforcement of this bylaw by non-criminal disposition as described herein shall be added to the list of bylaws so designated for such enforcement in Section 1-4A of these Bylaws.

(iii) Each day of violation shall constitute a separate offense.

(f) *Severability.* The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision hereof. (5-8-08, Art. 3)