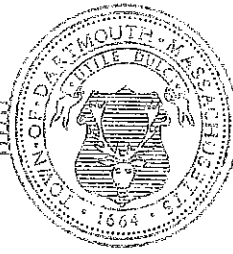


OFFICE OF THE TOWN CLERK

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TOWN CLERK

LYNN M. MEDEIROS

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June 17, 2014

To Whom It May Concern:

I, Lynn M. Medeiros, Town Clerk of the Town of Dartmouth, hereby certify that the following is a true and exact copy of the action taken on Article 31– General By-Law – Comprehensive Revisions to Earth and Soil Removal By-Law of the duly called June 3, 2014 Spring Annual Town Meeting, whereas it was:

MOVED and duly seconded:

ARTICLE 31: GENERAL BY-LAW COMPREHENSIVE REVISIONS TO EARTH AND SOIL
REMOVAL BY-LAW

That the Town amend the General By-Laws by deleting Article 67 in its entirety and replacing it with the following:

ARTICLE 67
EARTH AND SOIL REMOVAL

Section 67.1 Authority

This Article is promulgated pursuant to the provisions of Massachusetts General Laws, Chapter 40, Section 21(17).

Section 67.2 Purpose

No more than thirty (30) cubic yards of earth minerals or soils may be removed during any given calendar year from any parcel of land within the Town that is not in public use, except in accordance with the provisions of this Article.

Subsection 67.2.1 Exceptions

This Article shall not apply to the removal of any quantity of earth minerals or soils when any of the following apply:

(1) As provided in Massachusetts General Laws, Chapter 40, Section 21(17), when such removal is reasonably necessary in the course of operating pursuant to:

- (a) A building permit that has been issued by the Building Department;

- (b) A special permit, comprehensive permit or final subdivision plan approval that has been issued by the Planning Board or Zoning Board of Appeals;
- (c) A Title V subsurface sewage disposal construction permit that has been issued by the Board of Health; or
- (d) Any other permit or license that was issued by a board or commission of the Town.

These exceptions shall apply only for the improvements that are shown on the plans that have been approved by the Building Department, Planning Board, Zoning Board of Appeals, Board of Health or other Town permitting or licensing body. Removal of earth minerals or soils prior to, or in anticipation of, receiving such approval shall still be subject to the requirements of this Article.

(2) When such removal is undertaken as part of, and in accordance with, customary agricultural practices on established agricultural land, including, but not limited to, soil manipulation by harrowing or plowing; stone removal from harrowed or plowed fields; the harvesting of root crops; and nursery or orchard stock cultivation or removal; provided, however, that this exception shall not apply to the digging of ponds or cranberry bogs, or to any other alteration of the land in anticipation of its conversion to agricultural use.

(3) When such removal is reasonably necessary in order to complete any environmental remediation that is required by, and conducted in accordance with, the provisions of 310 CMR 40.00.

Subsection 67.2.2 Inapplicability of Volume Minimum

The thirty (30) cubic yards per calendar year allowance shall not apply to the removal of improperly disturbed earth minerals or soils. The removal of any quantity of the same shall be subject to the requirements of this Article.

Section 67.3 Definitions

As used in this Article, the terms below shall have the following definitions:

“Applicant” shall mean the person, corporation or other legal entity, including any agent of the same, that files an initial application or renewal application with the Board for a permit or determination of exemption pursuant to this Article.

“Board” shall mean the Soil Conservation Board of the Town, as provided in Article 34 of these General By-Laws.

“Determination of exemption” shall mean the written authorization of the Board to remove disturbed earth minerals or soils without the requirement of a permit.

“Disturbed earth minerals or soils” shall mean earth minerals or soils that have been removed from one location and are thereafter mechanically or artificially deposited in non-natural piles at another location, regardless of whether those different locations exist on the same parcel of land, and regardless of whether the earth minerals or soils have been manufactured or processed into other earth minerals, soils or soil aggregate product.

“Earth minerals or soils” shall include soil, loam, sand, gravel, clay, silt, stone, stone walls, rocks, boulders, bedrock, and any other minerals or soils that are normally found in or on the surface of the earth. This definition shall exclude composted yard waste, stumps, brush and other organic by-products or products, including the stockpiling of the same, as well as asphalt, brick, concrete and other non-natural by-products or products.

“Improperly disturbed earth minerals or soils” shall mean disturbed earth minerals or soils that were originally removed from land within the Town in violation of: 1) this Article, or any prior iteration of the same, however codified; 2) any provision of the Zoning By-Laws of the Town; 3) any other statute, by-law, rule or regulation governing such removal; or 4) the terms of any permit or other written allowance that was issued by the Town, including by the Board, for said removal.

“Inspector” shall mean the individual or individuals who are appointed by that Board pursuant to Section 34.5 of these General By-Laws.

“Native earth minerals or soils” shall mean earth minerals or soils that: 1) are naturally occurring; 2) have been intentionally reintegrated into the native geologic landscape; or 3) have otherwise been reintegrated into the native geologic landscape as determined by Subsection 67.5.4.

“Operator” shall mean an applicant that has been granted a permit or determination of exemption by the Board pursuant to this Article.

“Project Parcel” shall mean the parcel at which removal occurs, whether or not in accordance with the provisions of this Article or the terms or conditions of a permit or determination of exemption that is issued pursuant to the same.

“Permit” shall mean the written authorization of the Board to remove either native earth minerals or soils, or improperly disturbed earth minerals or soils.

“Removal area” shall mean the specific portion of a project parcel at which removal occurs, whether or not in accordance with the provisions of this Article or the terms or conditions of a permit or determination of exemption that is issued pursuant to the same.

“Remove (d) and/or removal” shall mean the activity of excavating, moving, blasting, stripping or digging earth minerals or soils on a property.

“Town” shall mean the Town of Dartmouth, Massachusetts.

Any terms that have not been defined specifically herein shall have their normal English meanings, unless the context indicates otherwise.

Section 67.4 Permits

The removal of more than thirty (30) cubic yards of native earth minerals or soils in any given calendar year or of any quantity of improperly disturbed earth minerals or soils, from land that is not in public use in the Town shall require a permit from the Board.

Subsection 67.4.1 Limitations on Issuance of Permit

No permit shall be issued by the Board if it determines that the requested removal will endanger the general health or safety of the public. Furthermore, no permit shall be issued by the Board until and unless the applicant either obtains from the Dartmouth Zoning Enforcement Officer a finding and statement that the requested removal will not violate the Zoning By-Laws of the Town, or otherwise obtains zoning relief to allow said removal from the Zoning Board of Appeals pursuant to Chapter 40A and said Zoning By-Laws. Finally, no permit shall be issued by the Board until and unless the applicant provides the Board with the performance guarantee that is required by Section 67.8.

Subsection 67.4.2 Initial Application for a Permit

The initial application for a permit shall include the following:

- (1) A completed application form and filing fee, as established by the Rules and Regulations of the Board.

(2) A form showing resource area delineation of the proposed project parcel(s). The contents of this form must have been previously approved for such purposes both pursuant to the Wetlands Protection Act (Massachusetts General Laws, Chapter 131, Section 40) and its associated regulations (310 CMR 10.00), and pursuant to the Town's Wetlands By-Law (Article 66 of the General By-Laws).

(3) A scaled site plan, which has been prepared by a registered land surveyor or professional engineer that is licensed in the Commonwealth of Massachusetts, and that shows: a) the proposed project parcel(s); b) the proposed and existing contours of the land of each such parcel, at intervals of not more than two (2) feet; c) the boundary lines for each such parcel; d) the Assessor's map and lot information for all lots for which information is provided pursuant to Paragraph (4) below; e) all wetlands that are within one hundred (100) feet, all dwellings that are within two hundred (200) feet, and all road layouts that are within three hundred (300) feet of the proposed removal area(s); and f) satisfaction of the setback and grading requirements of Section 67.7.

(4) The names of owners, addresses, and Assessor's map and lot information for all lots that are within one hundred (100) feet - including across any street, body of water or municipal boundary - of the proposed project parcel(s), as taken from the most recent tax list that has been certified by the Board of Assessors. The name and business address of the owner(s) of the project parcel(s) also shall be provided, if different than the applicant.

(5) The quantity of earth minerals or soils that the applicant is requesting authorization to remove, as shown on the submitted scaled plan, and which must be calculated by a professional engineer or registered land surveyor that has been licensed in the Commonwealth of Massachusetts.

Subsection 67.4.3 Hearing Notice

After receipt of an initial application for a permit, the Inspector shall confirm that it is complete and satisfies the requirements of Subsection 67.4.2, and shall thereafter provide the applicant with the time, date and location of the public hearing for said application. The applicant then shall provide written notice of this hearing to all of the abutters whose information was provided pursuant to Paragraph (4) of Subsection 67.4.2. This notice shall list the time, date and location of the hearing, shall reference the reason for the hearing, including any waivers that have been requested pursuant to Subsection 67.4.6, shall provide the applicant's contact information, and shall have attached to it the completed application. The applicant is responsible for mailing this notice to all abutters by certified mail at least ten (10) days in advance of the public hearing. If, at or before the scheduled hearing, the applicant fails to provide the Board with the timely certified mail confirmation of the receipt or attempted delivery of all such required notices, then the hearing shall be rescheduled, with the applicant again responsible for providing notice of the same pursuant to this Subsection.

Subsection 67.4.4 Permit Expiration

A permit issued under this Article shall expire one (1) year from the date of issuance, or upon completion of the removal of earth minerals or soils that was authorized thereby, whichever occurs sooner.

Subsection 67.4.5 Permit Renewal

Permits may be renewed annually; provided, that the failure to obtain the renewal of a permit prior to the completion of all authorized removal activities shall require the

operator to undertake the restoration of the removal areas in accordance with Subsection 67.10.1. The Board shall establish through its rules and regulations the procedures for submitting a permit renewal application, the form of said application, the filing fee for said application, and any documentation that should accompany this submission; provided, that any change in the location or scope of the removal area(s), the quantity or type of earth minerals or soils to be removed, the final grade of the removal area, the operator of the removal operation, or any other substantive change to the removal operation, shall require the submission of a new initial permit application pursuant to Subsections 67.4.2 and 67.4.3. The operator may submit a permit renewal application for the original removal project concurrently with the submission of a new initial permit application for said substantive change. The Board will act first upon the new initial permit application, and if and only if that application is denied, the Board thereafter will act upon the permit renewal application.

Completed permit renewal applications, including the renewal fee, should be received thirty (30) days prior to the expiration of the permit. The Inspector shall confirm that a permit renewal application is complete and satisfies the requirements of the rules and regulations of the Board, and shall thereafter provide the applicant with the time, date and location of the public hearing for said application. The Board will then take action upon the permit renewal application at its next meeting. If the completed permit renewal application is received by this deadline, then the current permit shall be valid until the Board meets to take action upon the renewal application, notwithstanding the standard annual expiration date that is provided in Subsection 67.4.4. If the completed permit renewal application is not received by this thirty (30) day deadline, then the current permit shall be subject to said annual expiration date; provided, that a permit renewal application, rather than a new initial application, may still be submitted up to six (6) months after the expiration of the permit; further provided, that all soil removal operations must be suspended after said expiration until such time as a renewal permit has been issued.

As provided in Subsection 67.8.3, the performance guarantee that was required for the approval of the initial permit application must remain valid in order for the permit to be renewed.

Subsection 67.4.6 Waivers

As part of the approval of an initial permit application, the enforcement of the provisions of Paragraphs (3) and (5) of Subsection 67.4.2, and of Section 67.7, may be waived at the Board's discretion with respect to any particular case when:

- (1) The applicant requesting the waiver has established that enforcement of any of said provisions would be manifestly unjust, considering all the relevant facts and circumstances of the individual case;
- (2) The applicant has established a level of protection that is equivalent to the requirements of the provision for which a waiver is being sought, such that the health, safety, convenience, welfare, beautification, economic status of the neighborhood, Town and the inhabitants will not be impaired by said waiver; and

(3) With respect to the requirements of Section 67.7 in particular, the proposed removal of earth minerals or soil would result in a final height of the removal area(s) that is no lower than the abutting property or improved road layout; provided, that no such waiver may be granted if the proposed finished grading of the removal area(s) would alter the flow of storm water runoff.

Every waiver request shall be noted on the initial permit application and must make specific reference to the provision from which relief is being sought. Waivers may not be granted for a renewal application. If waivers are sought during an ongoing project a new initial permit application must be filed.

Section 67.5 Determinations of Exemption

No permit shall be required for the removal of disturbed earth minerals or soils; provided, that if the disturbed earth minerals or soils have been stored in a manner that failed to ensure their proper separation from the surrounding native earth minerals or soils, then a determination of exemption from the permitting requirement nonetheless shall be required from the Board prior to the removal of more than thirty (30) cubic yards of said disturbed earth minerals or soils in any given calendar year. The existence of the lack of proper separation shall be determined in the discretion of the Board, but shall include, without limitation, the failure to utilize concrete, tarping or other non-natural materials as a barrier between the disturbed and native earth minerals or soils.

Subsection 67.5.1 Application Procedures for Determination of Exemption

The Board shall establish through its rules and regulations the procedures for submitting an application for a determination of exemption for a project parcel or parcels, including any renewal of the same, the form of said application, and the filing fee for said application.

Subsection 67.5.2 Soil Evaluator

The applicant for a determination of exemption must retain the services of a soil evaluator who has been licensed in accordance with 310 CMR 15.000, in order to determine the limits of the disturbed earth minerals or soils. The Board will not act on an application for a determination of exemption until a soil evaluation has been performed by said licensed soil evaluator, in the presence of the Inspector, and to the maximum depth to which the proposed removal of the disturbed earth minerals or imported soils will occur.

Subsection 67.5.3 Site Plans

At the discretion of the Board, plans showing the proposed removal site that have been prepared by a registered land surveyor or professional engineer shall accompany the determination of exemption application.

Subsection 67.5.4 Limitations on Issuance of Determinations of Exemption

No determination of exemption shall be granted in instances where the disturbed earth minerals or soils have become reintegrated into the native geologic landscape through the passage of time, as indicated by the presence of established woody vegetative growth over the originally artificial piles in a density of not less than one (1) woody plant per thousand

(1000) square feet of surface area of disturbed earth minerals or soils; provided, that no such woody plant shall be included in this determination unless the stem of the same has a diameter of at least three (3) inches at a height of four (4) feet from the surface of the disturbed earth minerals or soils. Such integrated piles shall be considered to have reverted to the status of native earth minerals or soils, just as if they had been intentionally incorporated into the geologic landscape, thereby requiring a permit in order to remove more than thirty (30) cubic yards of the same in any given calendar year.

Irrespective of whether proper separation exists, the removal of any quantity of improperly disturbed earth minerals or soils shall require a permit, as provided in Subsection 67.2.2 and Section 67.4

Subsection 67.5.5 Expiration of Determinations of Exemption

A determination of exemption expires upon removal of the disturbed earth minerals or imported soils that have been specified by the Board in said determination, or within one (1) year of the date of the issuance of said determination, whichever occurs sooner.

Section 67.6 Restrictions on the Use of Permits and Determinations of Exemption

The issuance of any permit or determination of exemption is subject to the following restrictions:

Subsection 67.6.1 Conditions

The Board may, in its discretion, impose such conditions on a permit or determination of exemption as it believes are necessary or prudent in order to protect the general health and safety of the public, prevent nuisances, protect native earth minerals or soils, protect native vegetation, and ensure compliance with the terms of said permit or determination of exemption and all of the Town's rules and regulations and General and Zoning By-Laws, including this Article. The Board may alter, delete or add new conditions to a permit or determination of exemption upon the submission of a renewal application.

Subsection 67.6.2 No Substitution for Other Town Approval

The issuance of a permit or determination of exemption by the Board shall not be construed as, or otherwise substitute for, the authorization, under any statute, regulation or other by-law, of any other local board, commission or officer, including, without limitation, the Director of Inspectional Services, Board of Health, Zoning Board of Appeals, Planning Board, Conservation Commission or Historic District Commission.

Subsection 67.6.3 No Authorization for Use of Land

The issuance of a permit or determination of exemption by the Board shall not constitute, or be construed as constituting, any affirmation by the Board in general, or the Town in particular, that the applicant is the owner of the project parcel(s) for which said permit or determination of exemption was issued, or has an easement interest or the permission of said owner to operate on said parcel(s) in accordance with said permit or determination of exemption. Such ownership, easement interest or permission is a prerequisite to the lawful use of any such permit or determination of exemption under this Article. By accepting a permit or determination of exemption, the applicant concurrently accepts

these restrictions and agrees to indemnify the Town and its boards, commissions, committees, officers, employees, officials, agents and attorney against any claims that are brought against them by the owner of said parcel(s), including with respect to trespass, in response to any removal activities that are conducted pursuant to said permit or determination of exemption.

Subsection 67.6.4 Non-transferability

Permits and determinations of exemption are not transferable, even to successors in interest to the operator.

Section 67.7 Requirements for Permitted Removals

In order to obtain a permit pursuant to Section 67.4, any proposed removal of earth minerals or soils must satisfy the following requirements:

Subsection 67.7.1 Minimum Setbacks

The removal project must satisfy the following minimum setbacks from the removal area(s), as shown on the scaled site plan that was submitted with the initial permit application:

- (1) One hundred and fifty (150) feet from all dwellings and commercial structures that are intended for occupation, and that are not in common ownership with the project parcel(s);
- (2) One hundred (100) feet from all improved public ways and improved private ways that are available for use by the public; and
- (3) Twenty five (25) feet from all property boundaries with parcels that are not in common ownership with the project parcel(s).

Subsection 67.7.2 Grading

The removal project must satisfy the following grading requirements for the removal area(s) after the completion of removal activities pursuant to the permit, as shown on the scaled site plan that was submitted with the initial permit application:

- (1) Grading within seventy five (75) feet of a property boundary with a parcel that is not in common ownership with the project parcel(s) must be no steeper than three (3) feet horizontal to one (1) foot vertical slope;
- (2) Grading within one hundred and fifty (150) feet of an improved public way, or an improved private way that is available for use by the public, must be no steeper than three (3) feet horizontal to one (1) foot vertical slope; and
- (3) All other grading must be no steeper than two (2) feet horizontal to one (1) foot vertical slope, unless the applicant utilizes either stone reinforced slopes or terraced

grading with retaining walls. Such methods must be designed by a professional engineer that has been licensed in the Commonwealth of Massachusetts;

The grading provisions of this Subsection shall not apply to bedrock that protrudes from the ground surface, pond banks that are below the high water level, or any aspects of cranberry bog construction.

Section 67.8 Performance Guarantee

In order to receive a permit for the removal of earth minerals and soils, the applicant shall provide a performance guarantee, whether in the form of a bond, a deposit of money or negotiable securities, a letter of credit from a lending institution, or some other form of security that is approved in advance by the Board. The Board shall be listed on said performance guarantee as a party to be notified in the event of any change in the status of the same.

Subsection 67.8.1 Calculating Performance Guarantee

Such performance guarantee shall be calculated by the Board as follows:

- (1) The amount of the performance guarantee for a project shall be based upon the permitted removal area(s), with said area being rounded to the nearest one half (1/2) of an acre; and
- (2) The amount per acre shall be established by the Board on a case by case basis, based upon the impact of the removal activities upon the project parcel, the extent of restoration work that will be needed at the conclusion of removal activities in order to meet the restoration requirements of Subsection 67.10.1, and the mitigation of any safety hazards that may arise during such restoration.

Subsection 67.8.2 Release of Performance Guarantee

Performance guarantees can only be released upon completion of restoration as required by Subsection 67.10.1, as determined by a majority vote of the Board at any meeting at which a quorum is present; provided, that when stone reinforced slopes or retaining walls were utilized in constructing the grading of the removal area, any such release additionally shall first require that a professional engineer that has been licensed by the Commonwealth of Massachusetts certify in writing that said slope or wall construction has met the minimum design standards that were approved for such construction by the Board in issuing the permit.

Any request by the operator for the release of the performance guarantee must be in writing along with supporting documentation; provided, that an operator may request a partial release of the performance guarantee in response to the completion of removal activities at, and subsequent restoration of, only a portion of the removal area(s). In the situation of a partial release, the operator must submit an as-built plan of the removal area(s) that will remain open in order to demonstrate that the remaining performance guarantee amount is adequate to cover the remaining restoration costs.

Subsection 67.8.3 Continued Validity of Performance Guarantee

For a permit to be valid, a performance guarantee must be provided in the amount that is specified in the permit, must be given in the name of the applicant and made payable to "the Town of Dartmouth Soil Conservation Board", and must remain valid for twelve (12) months after the conclusion of the term of said permit, including any renewal terms, unless a longer period is required pursuant to Subsection 67.10.1.

Section 67.9 Inspections

The Board or the Inspector shall inspect any removal area(s) that are subject to a permit or determination of exemption not less than two (2) times per calendar year. No prior notice of such inspections needs to be given; provided, that such inspection shall take place only during business hours. An inspection fee, in an amount to be set by the Board's rules and regulations, shall be collected annually. In the case of removal operations that are subject to a permit, said fee shall be collected until such time as restoration of the removal area(s) has been completed in accordance with Subsection 67.10.1 and the performance guarantee has been released, as provided in Subsection 67.8.2. In the case of removal operations that are subject to a determination of exemption, said fee shall be collected for so long as said determination is renewed. In applying for, and accepting, a permit or determination of exemption pursuant to this Article, the applicant concurrently accepts and agrees to the requirements of this Section.

Section 67.10 Operational Performance Standards

The removal of earth minerals or soils shall be subject to the following performance standards:

Subsection 67.10.1 Restoration of Removal Areas

Within six (6) months of the removal of all of the earth minerals or soils that are specified in a permit, or prior to completion of said removal once six (6) months have elapsed since said permit has expired without filing a renewal application, or upon the denial by the Board of a renewal application where said denial occurred after said six (6) months had elapsed, or immediately upon an order from the Board to cease and desist any removal of earth minerals or soils that is either unpermitted or in violation of the terms of an issued permit, the operator shall be obligated to commence the restoration of the project parcel(s). Such restoration shall be completed within twelve (12) months of the conclusion of the expiration of the last valid permit that was issued to the operator for the project parcel(s); provided, that if restoration is required as a result of a cease and desist order, then such restoration shall be completed within twelve (12) months of the issuance of said order; further provided, that this restoration period may be extended by the Board in its sole discretion, and then only if the operator submits documentation that the timeframe during which the required performance guarantee is valid has been extended to coincide with the length of the requested extension of the restoration period. Restoration of the project parcel(s) shall be considered complete upon the return of the removal area(s) to a functional use that will not create nuisance conditions, whether on the project parcel or another parcel, through exposed earth minerals or soils. Furthermore, whenever the Board concludes, whether before or after removal, that it is necessary in order to secure exposed excavated slopes, such restoration shall include the

covering of such slopes with soil that is capable of supporting plant growth, and that is applied with a perennial ground cover seed. Restoration additionally shall include the planting of trees or shrubs for such slope stabilization purposes only if the Board so states in conditioning the permit pursuant to Subsection 67.6.1. The seeded area will not be considered to be in a restored state until such time that established plant growth covers the majority of the seeded surface area, with at least one growing season having elapsed.

This Subsection shall not apply to removal operations that are subject to a determination of exemption.

Subsection 67.10.2 Daily Securing of Removal Areas

Excavated faces shall be knocked down and sloped at the end of each day to the extent that it is necessary in order to prevent dangerous conditions that may arise due to collapsing soils from overhangs, vertical banks or straight faces.

Section 67.11 Enforcement and Revocation

Subsection 67.11.1 Fines

Every violation of this Article, and every violation of the terms and conditions of any permit or determination of exemption that is issued pursuant to the same, shall be subject to \$50 for the first offense, \$100 for the second offense and \$200 for any subsequent offense, or such other fines as may be specified in Massachusetts General Laws, Chapter 40, Section 21(17), as it may be amended from time to time. Each day during any portion of which such violation is allowed to continue shall be considered a separate offense. All such fines shall be subject to the non-criminal disposition procedures as provided in Article 111 of these General By-Laws and Massachusetts General Laws, Chapter 40, Section 21D, and all such fines shall be remitted to the General Fund of the Town.

Subsection 67.11.2 Judicial Relief

The Board may seek the enforcement of this Article and of the terms and conditions of any permit or determination of exemption that is issued pursuant to the same, through the issuance of injunctive or other equitable relief by the Superior Court.

Subsection 67.11.3 Suspension or Revocation

Failure of an operator to abide by the provisions of this Article, or the conditions on a permit or determination of exemption that is issued pursuant to the same, shall subject said permit or determination of exemption to suspension or revocation by the Board after a hearing. The operator shall be notified of said hearing in writing by certified mail at least five (5) business days in advance of the same.

Section 67.12 Severability

The provisions of this Article are severable. If any court of competent jurisdiction determines that any such provision is in violation of the laws, constitutions or regulations of the Commonwealth of Massachusetts or the United State of America, the remaining provisions shall not be affected thereby and shall continue in full force and effect.