

ARTICLE 3

**BYLAW AMENDMENT/RESIDENTIAL
CONSTRUCTION, OPEN EXCAVATION, AND
DEMOLITION ACTIVITY REGULATIONS:
NOISE ABATEMENT**

VOTED: That Title V, Article 12, Section 3A be and hereby is amended by inserting a subpart “3,” which conditionally exempts Department of Public Works and public utilities’ work on and in public and private ways from the hours of restriction as follows:

Section 3. Daytime-Only Activities.

The following acts are specifically prohibited.

A. Prohibited Times. Operating, or permitting the operation of, any of the following devices or vehicles.

1. before 9:00 A.M. or after 5:00 p.m. on Saturday, Sunday or legal holiday

2. before 8:00 A.M. or after 6:00 p.m. on all other days:

a. Heavy equipment (as defined in Section 1), and

b. All electric motors or internal combustion engines, or other construction devices, tools or equipment, used in construction, drilling, demolition, maintenance, or earth moving, including but not limited to bulldozers, backhoes, concrete mixers, dump trucks, pneumatic tools, rollers, scrapers, air compressors, generators, jackhammers, cranes, pavement breakers, pile drivers, rock drills, and chainsaws.

3. Authorized Exemptions for Public and Private Way Projects

a. Arlington Department of Public Works, public utilities, and/or their contractors may perform non-emergency work in and/or on public and private ways within the Town of Arlington outside of the operating hours set forth in this Section with the permission of the Town Manager.

b. The exemptions enumerated above shall not extend to non-emergency work on any other type of public or private property by such entities.

COMMENT: Last year's successful amendment of the Town's Noise Abatement provisions to mitigate the impact of residential construction activities in Arlington presented a previously non-ripe ambiguity in the overall formulation of Title V, Article 12 of the Town Bylaws. While Title V sets forth "Regulations Upon the Use of Private Property," the contents of Article 12 of Title V make it ambiguous as to whether its restrictions should apply to public works and public utilities work on public and private streets (otherwise referred to as "ways").

In the past, the issue of whether Article 12's regulations applied or not was moot because DPW and public utilities' normal schedule for paving, servicing of gas, water, and sewer lines typically took place within the allowed time periods. However the 2017 Town Meeting reduction of construction hours for noise purposes conflicts with both DPW's needs and industry standards for roadway work. If these new hours of operation apply to DPW and public utilities, it will be substantially more difficult to improve roadways and the utilities contained therein in a cost-effective and efficient manner.

Moreover, the Board notes that whereas the crux of concern regarding noise in residential construction has been day and night noise at one, fixed location for the benefit of one developer or homeowner; DPW and the public utilities' work on and in the public and private ways serve the overall public good in a manner that is not usually affixed in one location. In order to reassure against an overly broad exemption, DPW and public utilities' non-emergency work would only be exempt with the authorization of the Town Manager. Accordingly, with these safeguards in place, we recommend this straightforward clarification to Town Meeting before DPW and utility improvements begin this coming Spring.