

Citizen Petition Articles for 2019 Annual Town Meeting from the draft Warrant as proposed by "KAREN HANLON, et al"

Note: The following Article numbers are from the draft in the packet in the BOS Meeting packet for 1/29/19. Those numbers may change in the final Warrant.

ARTICLE 29: To see if the Town will vote to repeal Town Code section § 41-22.1 Electioneering prohibited. , or do or act anything in relation thereto.

***Summary:** This provision was added by the April 25, 2017 Town Meeting, Article 35. It prohibits candidates or their agents from standing within 150 feet of the entrance to Town Meeting for the purpose of electioneering or greeting citizens or voters, or for petitioning or soliciting signatures for any purpose. There is already a state law, G.L. c. 50 § 65, that prohibits electioneering within 150 feet of polling places on election day. but nothing in state law requires that this prohibition be applicable to Town Meetings. Per Secretary Galvin's Office, no other Town or City in Massachusetts is known to have any curb on distributing voter information at Town Meeting such as the existing Town Code section § 41-22.1 Electioneering prohibited. Southborough had no such restriction until the passage of this article in April 2017.*

ARTICLE 30: To see if the Town will vote to add the following to Chapter 41 of the Town Code: At the request of the Sponsor(s) of Warrant Articles or their authorized agents, the Town Clerk will prominently display the Sponsor's Warrant Article information for voters on tables located in close proximity to the tables at which voters check in to Town Meeting. Warrant article sponsors and their supporters may also hand out information to voters outside the entrance of the voting hall. , or do or act anything in relation thereto.

***Summary:** It is common practice for sponsors of warrant articles, including Town Boards and Committees, to prepare written materials concerning warrant article they have sponsored. The purpose of those materials is to explain the purpose and effect of the proposed warrant article, and to answer questions that the sponsor anticipates voters will have. Section 41.22.1, the repeal of which is proposed by the first article above, prohibited this common practice, at least as it applied to citizen sponsors of warrant articles. If passed, this proposed warrant article would codify the rights of Southborough citizens to have their written materials easily available to Town Meeting voters for their consideration.*

ARTICLE 33: To see if the Town will vote to repeal Town Code section § 9-12 Appointment of Chairman, Vice Chairman, and Secretary of the Advisory Committee, which reads as follows: "Said [Advisory] Committee shall choose from its membership a Chairman and a Secretary."
, or do or act anything in relation thereto.

ARTICLE 34: To see if the Town will vote to replace section 9-12 above with the following, new section 9-12: At the Annual Town Election, the voters shall vote to fill any expired term of the officers of the Advisory Committee that are elected, as follows: Elected Advisory Committee members are: a Chairman, a Vice-Chairman, and a Secretary. The term for each will be three years. The Vice Chairman shall

succeed the Chairman in the event that there is a vacancy in the seat of the Chairman due to disqualification due to absence (maximum of four consecutive absences), death, or resignation. Upon succession of the Chairmanship by the Vice Chairman, the Secretary shall become the Vice-Chairman. , or do or act anything in relation thereto.

Summary: *The Advisory Committee serves as the Town's Finance Committee and as such is the entity that undertakes the important function of presenting the proposed annual budget to the Town Meeting. Currently the Moderator appoints all members of the Advisory Committee. Enacting this provision would give voters a direct vote on who sits on this powerful board. DRAFT Annual Town Meeting 16 March 23, 2019*

ARTICLE 35: To see if the Town will vote to amend section 9-10, consistent with #2 above, to read: Initial terms of the elected members of Advisory shall be as follows: the Secretary shall be elected for a term of one year, the Vice-Chairman for a term of two years, and the Chairman for a term of three years. Thereafter, the terms for each officer will be three years, , or do or act anything in relation thereto.

ARTICLE 36: To see if the Town will vote to amend section 9-11, consistent with #2 above, to read: Any member of said Committee who shall be absent for four consecutive meetings or who ceases to be a Town resident shall cease to be a member of said Committee. The Moderator, upon receipt of notice of any event described in the previous sentence, may fill any vacancy for the unexpired term. , or do or act anything in relation thereto.

ARTICLE 37: To see if the Town will vote to amend certain sections of Chapter 27 relative to the Town Counsel, to read as follows:

§ 27-4 Appointment; removal; compensation; additional counsel. The Board of Selectmen shall each year after the annual Town Meeting, and whenever a vacancy shall exist, choose some competent lawyer to act as Town Counsel. The Board of Selectmen may remove him at pleasure. His term of office shall continue until the appointment and acceptance of his successor. In case of a vacancy in the office, the Selectmen shall fill the same by a new appointment. He shall be paid such compensation as the Town shall determine. He shall receive, as his salary, such compensation as is provided in Article VIII A hereof,

[1] together with such additional sums as may be appropriated for such services as may be performed in addition to those rendered as legal adviser to the Town. [1] Editor's Note: "Article VIII A" refers to the Salary Administration Plan, on file in the office of the Town Clerk.

§ 27-5 Duties and responsibilities. Such Town Counsel shall act as the legal adviser of the Town. It shall be his duty to:

- a. examine, or cause to be examined, all titles to property in which the Town may be interested;
- b. draw, supervise the drawing, or review all deeds, obligations, contracts, bonds, leases, conveyances, agreements and other legal instruments, of whatever nature, which may be required by any bylaw, vote or action of the Town, or by any board or official, or to which the

Town or its agent may be a party, and which by law, usage or agreement the Town is obligated to draw;

c. commence and prosecute all actions and other legal proceedings and suits by or on behalf of the Town or any board or official, upon vote duly taken by such board or the written direction of such official and after the Selectmen have been notified of and approved such vote; except that approval by the Selectmen shall not be required if Town Counsel deems the situation to be of an emergency nature or in those instances when such board or official is vested by statute with the authority to commence and prosecute legal proceedings;

d. defend all actions and suits brought against the Town in any Court or other tribunal in this Commonwealth or elsewhere;

e. appear as counsel, when directed by the Selectmen, in any other action, suit, or prosecution which may involve the rights and interests of the Town:

f. appear as Counsel before the Legislature of the Commonwealth or any committee thereof, whenever the Selectmen determine that the interests or welfare of the Town may be directly or indirectly concerned, or when requested to do so by a vote of the Town;

g. consult with, advise or attend meetings of any board, officer or official, either upon the request of the Chair thereof or the officer or official involved, or when in the Selectmen's opinion any matter before such board, officer or official has significant legal implications to the Town, and in either instance to furnish a legal opinion upon any subject respecting the official duties of the board, officer or official;

h. prepare, when requested, any article for the Warrant for any Town Meeting and to review all articles and motions for form and legal sufficiency.

i. defend the actions taken by the Town Meeting. In the event that Town Counsel is unable for any reason to defend such actions, including without limitation that Town Counsel has or appears to have a conflict of interest, or has in good faith expressed a written opinion that such action is illegal with citation to legal authority, the Board of Selectmen in a public meeting may take such actions by majority vote as it deems necessary in order to present such defense;

j. make a monthly report to the Selectmen on all actions taken during the preceding month and to other Town boards, officers and officials on legal matters which occurred during the preceding month and specifically relate to such board, officer or official; and

k. to make an annual report of the work done during the preceding year. Said report shall contain a statement of each case or claim which has been tried, settled or otherwise disposed of by him during the year, and also a statement of each case which is still pending and the status of the same insofar as the facts may be properly published, together with such other information and recommendations as he may deem advisable. , or do or act anything in relation thereto.

ARTICLE 38: Add the following to Chapter 27 of the Town Code to read as follows: Special Counsel. Unless expressly authorized by statute, a vote of Town Meeting, or vote of the Selectmen, no board,

officer or official of the Town shall engage, whether or not for remuneration, any attorney, other than Town Counsel, with regard to its or his official duties, or any Town business, or the business of any of the departments thereof. The Selectmen may, whenever they deem necessary, employ special counsel to assist or act in place of Town Counsel. , or do or act anything in relation thereto.

ARTICLE 39: Add the following to Chapter 27 of the Town Code to read as follows: Professional Responsibility Town Counsel must hold himself to the highest ethical standards, and make every effort to earn the trust and respect of those advised and of the community served. The Town Counsel must acknowledge that he represents the Town of Southborough, not any particular Board or Official, and that when the interests of the Town and any particular Board or Official diverge, he will endeavor always to serve the interests of the Town. The Town Counsel must acknowledge that he occupies a position of responsibility and trust, and is therefore bound by the standards of conduct set forth herein.

1. Town Counsel will conduct himself in a manner that avoids the appearance that legal advice is based solely upon political alignment or partisanship, because such advice undermines public trust. When asked for advice, Town Counsel will give candid and balanced legal advice based upon principles of law. In rendering advice, Town Counsel may refer not only to the law, but to other considerations, such as moral, economic, social and political factors that may be relevant to the Town's decision making process. However, Town Counsel should not be deterred from giving candid advice by the prospect that the advice may be unpalatable to any Town official.

2. Town Counsel will encourage and contribute to understanding of municipal government functions and operations by local officials and Boards by holding regular trainings on the Open Meeting Law, the Ethics Law, and the Public Records Law, and any other subject matter as requested by the Board of Selectmen. , or do or act anything in relation thereto.

ARTICLE 41: To see if the Town will vote to add the following "Prohibited Conduct Policy" to Chapter 27 of the Town Code:

TOWN OF SOUTHBOROUGH ,MA PROHIBITED CONDUCT POLICY

1. POLICY STATEMENT

The Board of Selectmen and School Committee for the Town of Southborough adopt this policy for the Town of Southborough and the Public Schools of Southborough (together, the "Town") to protect public assets against fraudulent activity, misappropriation and corruption by Town employees, agents, elected and appointed officials, Board and Committee members, and third parties. The Town has a zero tolerance policy for such conduct and will take prompt, appropriate corrective action to address fraudulent activity, misappropriation and corruption in the event it occurs, including, but not limited to, disciplining employees up to and including termination, removing appointed officials from their respective Boards and Committees, and reporting such conduct to state enforcement agencies (e.g. State Ethics Commission and the Attorney General's Office) and law enforcement agencies for possible criminal investigation and prosecution, as appropriate.

This policy is intended to establish procedures to prevent whenever possible, fraud, misappropriation and corruption, to ensure for its prompt reporting and investigation, and to ensure a coordinated approach for addressing any such misconduct. It is intended to safeguard the assets of the Town and the business and financial activities conducted on behalf of the Town by its employees, agents and citizens.

a. PROHIBITED CONDUCT

This policy prohibits the use of a Town job, position or contract for personal enrichment or the enrichment of another person through deliberate misuse or misapplication of the Town's assets, as further detailed below. "Assets," as used in this policy, means Town funds, securities, supplies, inventory, vehicles, furniture, fixtures, equipment, and anything else of value. Prohibited conduct includes, but is not limited to, the following deliberate activities:

Fraudulent Statements or Financial Misconduct. The inclusion of false information within, or forgery of, Town financial statements or other documents belonging or submitted to the Town bearing on the Town's finances (e.g., checks, time sheets, expense reports, contractor agreements, purchase orders, vendor invoices and supporting documentation) is prohibited.

Asset Misappropriation. No person or entity may misappropriate or misuse of Town assets, whether by larceny (the stealing of cash or other Town property after it has been recorded in the Town's records), "skimming" (the stealing of cash or other Town property before it is recorded in the Town's records), embezzlement (the fraudulent misappropriation of Town funds for one's use), causing fraudulent disbursements (the unauthorized disbursement of Town funds, e.g., forgoods not received or for services not performed, through a trick or device such as false time sheets or expense reports or falsification of invoice dates), or unauthorized use or disposal of Town property (including, but not limited to, supplies, office equipment, cell phones and vehicles) whether or not in violation of existing policies pertaining to personal use or gain.

Corruption. This policy prohibits the wrongful use of influence a person may have by virtue of a person's job or position with the Town in order to procure a benefit for the person or another person, including, but not limited to bribery, forgery, asset misappropriation, economic extortion, the unlawful receipt of gratuities, conflicts of interest, and any other violation of the Massachusetts Ethics Law, Massachusetts General Laws Chapter 268A.

Other Conduct Prohibited by This Policy. This policy prohibits any activity that places Town assets at risk of waste or abuse, including, but not limited to, improprieties in the handling of funds or the reporting of financial transactions. This policy also prohibits any improprieties (e.g. self-dealing, conflicts of interest, kick-backs) related to recommendations or referrals made to citizens or businesses of specific contractors (including professional service providers like attorneys, brokers, bankers or accountants); any willful destruction of Town property; failure to accurately complete with sufficient detail Conflict of Interest forms and Mullins Certifications; defrauding the Town of permits and/or approvals. Prohibited conduct also includes acting with gross negligence, bad faith, or malice.

A conflict of interest may exist if a committee or board member can reasonably expect that his or her official conduct will directly result in a financial benefit to the member, the member's family, business associates, employers, or any businesses that the member represents in private life. The Town shall not provide legal counsel or reimburse legal fees for any individual or entity that has engaged in conduct prohibited by this policy. This policy does not replace but is meant to supplement applicable conflict of interest laws, Massachusetts General Law, and other existing policies of the Town and School.

b. PROCEDURES AND RESPONSIBILITIES

i. Reporting Procedure

Any employee who believes that fraud, misappropriation, corruption, or other conduct prohibited by this policy has occurred shall promptly report any such suspected misconduct to any of the following Administrators. For the purposes of Town employees, an Administrator is a Supervisor, a Department or Division Head, the Comptroller, the Finance Director, or the Town Administrator. For purposes of School employees, an Administrator is a Supervisor, a Principal, a School Administrator, the Deputy Superintendent for Finance and Administration, the Superintendent of Schools, the Comptroller or the Finance Director. The Town strongly encourages non-employees to also report such suspected misconduct to these individuals. In the event the alleged fraud, misappropriation, or other conduct has been committed by an Administrator, the report shall be made to an Administrator other than the Administrator suspected of misconduct. Supervisors, Department/Division Heads, the Comptroller, the Finance Director, the Town Administrator, Principals, the Deputy Superintendent for Finance and Administration, the Superintendent of Schools and School Administrators must promptly report all suspected instances of fraud or other conduct prohibited by this policy to the Town Counsel's Office and to the Town Administrator or Superintendent of Schools. Town Counsel, the Town Administrator, the Superintendent of Schools shall, jointly or independently, forward such reports to the Board of Selectmen and /or the School Committee, as appropriate. Should these senior administrators and Town Counsel deem appropriate, it shall also be reported to the Southborough Police Department.

The Town prohibits retaliation against persons who have made reports in accordance with this policy of suspected fraud, misappropriation, corruption, or other conducts prohibited by this policy.

b. Responsibilities The following individuals are responsible for establishing and maintaining proper internal controls that provide security and accountability for the assets and resources entrusted to them: within the Town, the Town Administrator, and/or his or her designee(s), including Supervisors and Department/Division Heads; within the School Department, the Superintendent, and/or his or her designee(s), including Deputy Superintendents, Assistant Superintendents, Principals, Headmaster, and all other administrators. Such individuals should be familiar with the risks and exposure inherent in their areas of responsibility and be alert for any indications of fraud, misappropriation, and other prohibited conduct. If the situation warrants immediate action - for example, obvious theft has taken place, security of assets is at risk, or immediate recovery is possible - management and non-managerial staff receiving reports should immediately contact the Police.

As detailed above, all employees with information about violations of this policy shall do the following:

- Insure that notification promptly reaches the Town Administrator or the Superintendent of Schools and the office of Town Counsel.
- Do not contact the suspected individual to determine facts or demand restitution. Under no circumstances should there be any reference to "what you did", "the crime", "the fraud", "the forgery", "the misappropriation", etc.
- Administrators should consult with Town or School Human Resources departments and Town Counsel to determine whether any immediate personnel action is warranted (see section 5. Discipline, below).
- Do not discuss the case, facts, suspicions, or allegations with anyone, unless specifically directed to do so by the Town Administrator or the Superintendent of Schools and/or the office of Town Counsel.

- Direct to Town Counsel all inquiries from any suspected individual, his or her representative, or his or her attorney. Direct all inquiries from the media to the Town Administrator or School Superintendent's office.

With the approval and instruction of the BOS, Town Counsel and/or Special Counsel shall investigate suspected violations of this Policy. In doing so, with the approval and instruction of BOS, Town Counsel may seek the collaboration and/or assistance of internal or external departments, such as the Finance Director, Deputy Superintendent for Finance and Administration, Comptroller, Town and School Human Resources Departments, Police Department, and/or other federal, state, or local agencies as circumstances may warrant.

With the approval of BOS, Town Counsel and/or Special Counsel shall have full, free and unrestricted access to all records and personnel of the Town for such purpose. All investigations will be conducted in conformity with applicable state and federal laws and regulations and School and/or Town system policies and procedures, as well as applicable contractual and collective bargaining requirements. The Town Finance Director and/or Comptroller's Office shall, after consultation with Town Counsel, coordinate the notification of insurers and filing of claims with the Chief Procurement Officer, and, if federal funds, are involved, determine the required federal reporting requirements and take the steps necessary to comply with them.

The Treasurer shall be responsible for notifying the bonding companies and filing bonding claims. All employees shall be vigilant to possible fraud, misappropriation and other misconduct prohibited by this policy and shall provide their full cooperation as may be necessary for the implementation of this Policy and for reporting, and investigation of such misconduct and, as may be appropriate, the prosecution of offenders.

All parties shall maintain the confidentiality of reports and investigations into suspected or substantiated reports of fraud, misappropriation, corruption or other conduct prohibited by this Policy, except as may be necessary to make a report under this policy, to conduct an investigation, to take any necessary corrective action, and to respond to or conduct any legal and/or administrative proceedings related to the alleged misconduct, or as may otherwise be specified by the Superintendent of Schools, Town Administrator, Finance Director, the Controller, or Town Counsel.

No employee shall knowingly make a false accusation, alert suspected individuals that an investigation is under way, or knowingly make statements that could lead to claims of false accusation. Every effort should be made to effect recovery of Town losses from responsible parties or through Town insurance coverage.

In the event the alleged prohibited conduct is alleged to have been committed by Town Counsel or anyone in the Town Counsel staff, Town Counsel's responsibilities under this section shall be performed by the Town Administrator or his designee.

4. NON-FRAUD IRREGULARITIES

Identification or allegations of acts outside the scope of this policy, such as personal improprieties or irregularities (whether moral, ethical, or behavioral), other safety or work-related conduct, or complaints of discrimination or sexual harassment, should be resolved by the respective area management in conjunction with Human Resources and/or with reference to any other existing Town or School policies, guidance or resources. Examples of such policies include Anti Discrimination, Sexual

Harassment, and Retaliation (this list is not allinclusive). The Town Counsel's Office may be consulted with any questions concerning this policy.

5. DISCIPLINE

The Town maintains a zero tolerance policy with respect to Fraud. Violations of this policy will result in appropriate discipline, up to and including termination. When the Town determines there is a violation of this policy, the Town will act promptly to eliminate the conduct and impose any necessary corrective action. Such corrective action may include, but is not limited to counseling, verbal or written warning, suspension, demotion, transfer, termination or removal from an appointed position.

Any discipline will be taken in accordance with applicable labor contracts and bylaws as applicable.

Employees found to have knowingly made false accusations or given knowingly false statements regarding this policy will be disciplined up to and including termination.

Any employee, vendor, or Town agent who has engaged in prohibited conduct as described in this Policy, will be disciplined and/or prosecuted by the Town Administrator or Superintendent of Schools, or by the Board of Selectmen or School Committee as appropriate.

6. OTHER ACTIONS

Consistent with the Town's Zero Tolerance Policy, in addition to disciplinary action, the Town shall pursue appropriate corrective action to the fullest extent under federal and state laws.

, or do or act anything in relation thereto.