

***SPECIAL TOWN MEETING WARRANT***

*of the*

***TOWN OF SOUTHBOROUGH***

***MASSACHUSETTS***



**For the Special Town Meeting  
on**

***Thursday, October 13, 2022***  
***7:00PM***

**P. Brent Trottier Middle School  
49 Parkerville Road**

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## ***Town Finance Terminology***

The following terms are frequently used in the Advisory Committee Report and at Town Meeting. For your convenience, we provide the following definitions:

***Surplus Revenue:*** (Often referred to as “Excess and Deficiency”)

*The fund represents the amount by which the Cash, Accounts Receivable and other floating assets exceed the liabilities and reserves.*

***Available Funds:*** (Often referred to as “Free Cash”)

*The amount of the Unreserved Fund Balance (Surplus Revenue) account over and above uncollected taxes of prior years constitutes “free cash” or “available funds”.*

***Overlay:***

The Overlay is the amount raised by the Assessors in excess of appropriations and other charges for the purpose of creating a fund to cover abatements and exemptions as granted.

***Overlay Reserve:***

This is the accumulated amount of the Overlay for various years not used or required to be held in the specific Overlay account for a given year, and may be used by vote of the town for extraordinary or unforeseen purposes or voted into the Reserve Fund.

***Stabilization Fund:***

An outside section of Chapter 138 of the Acts of 1991 (the FY92 State budget) modifies limitations on the Stabilization Fund appropriation process by enabling communities to appropriate from this fund for any non-capital, lawful purpose without Emergency Finance Board approval (section 333). Beginning in FY92, the Stabilization Fund will thus become a source of revenue for general operating expenses for communities.

The Stabilization Fund is a mechanism for setting aside money for capital projects. It equalizes the effect of capital expenditures over time, as capital appropriations can change considerably from year to year. The balance in the fund will build up during years when expenditures for capital items are low. During years with high capital expenditures, the community will transfer money from the fund to reduce the project’s impact on the tax rate or the amount of borrowing required for the project.

A community may appropriate up to 10% of its tax levy each year, as long as the balance in the Stabilization Fund does not exceed 10% of the community’s equalized valuation. Interest earned on any fund balance is retained as part of the fund.

Appropriations into a Stabilization Fund can be made at either an annual or special town or district meeting. Chapter 94 of the Acts of 1985 permits appropriations to be made from a Stabilization fund at a special town or district meeting, not just at the annual meeting. Regardless of the timing, appropriations from the Stabilization Fund require a two-thirds vote by the appropriating authority. Until the FY92 state budget, a community could only appropriate from the Stabilization Fund for a none-capital purpose with the approval of the Emergency Finance Board.

***Reserve Fund:***

This fund is established by the voters at the Annual Town Meeting only and may be composed of (a) an appropriation (not exceeding 5% of the tax levy of the preceding year), (b) money transferred from Overlay Reserve, or (c) both. Transfers from the Reserve fund may be made only by the Advisory Committee and are for “extraordinary or unforeseen expenditures” only.

***Conservation Fund:***

For land purchases and any other conservation use.

## ***Introduction to the Rules of Town Meeting***

Southborough's Town Meeting is an open town meeting in which all registered voters may participate. Town Meeting is a deliberative assembly, conducted via a defined process, charged with considering a maximum number of questions of varying complexity in a minimum amount of time and with full regard to the rights of the majority, strong minority, individuals, absentees and all of these together. In other words, we gather for the purpose of conducting the Town's business thoughtfully and efficiently.

### **AUTHORITY**

The three elements of authority at Town Meeting are a quorum of one hundred (100) registered voters or more, the Clerk and the Moderator. Of these three, the quorum is the most important.

The Town Clerk is responsible for voter registration, certification of a quorum, setting up the hall and keeping the record of the proceedings. He may also officiate Town Meeting in the absence of a Moderator.

The Moderator presides at and regulates the proceedings, decides all questions of order, and makes declarations of all votes. No one may speak on an issue without being recognized by the Moderator. It is the Moderator's responsibility to approve the distribution of materials, and persons wishing to do so must seek his permission. The Moderator appoints Tellers and alternates for the purpose of counting votes of the meeting.

### **THE WARRANT**

All matters to be considered at Town Meeting must be published in the Town Meeting Warrant, which is the responsibility of the Board of Selectmen. The primary and most important purpose of the Warrant is to notify voters in advance the nature of the business to be taken up at Town Meeting. By state law, Town by-law or custom, several business articles (such as budget appropriations) must be presented in the Town Warrant each year for consideration. Other items are added by warrant articles proposed by Town officials, committees, boards, or groups of ten or more registered voters. The Advisory Committee reviews the Warrant, making recommendations on all the items of business to be presented. In accordance with the Town by-laws, all articles in the Warrant are considered in the order in which they appear in the Warrant, unless the Town Meeting votes to change the order for reasons that reasonable people would entertain.

### **PARTICIPATION**

Any voter wishing to participate in Town Meeting must go to one of the floor microphones and wait to be recognized by the Moderator. Upon recognition by the Moderator, first state your name and address, and then state your business.

Anyone whose name is not on the list of registered voters requires the approval of either the Moderator or a majority of the Meeting to sit in the voting area.

All remarks shall be limited to the subject then under discussion. It is improper to indulge in references to personalities, and all expressions of approval or disapproval, such as applause or booing, are out of order. The Moderator may request any person to keep silent. If after warning from the Moderator, a person refuses to be silent or persists in other disorderly behavior, the Moderator may order a person to withdraw and if he fails to withdraw, may order a police officer to remove such person from Town Meeting.

Individuals who have a personal or financial interest with respect to a matter may speak or vote thereon but should frankly disclose their interest. However, no Town Meeting voter should accept compensation for participating without disclosing that fact.

There is no fixed time limit to the debate of any question. However, out of consideration for the others in attendance and the need to give adequate time to all matters coming before Town Meeting, each individual who speaks should make an effort to be as brief as possible and avoid repeating facts, views or opinions already expressed by others.

## ***Introduction to the Rules of Town Meeting (continued)***

Anyone wishing to make a presentation with respect to any article must, prior to Town Meeting, obtain the Moderator's approval.

In order to give all a fair opportunity to speak, no one who has addressed any particular motion shall speak again, except to answer questions, until all others wishing to speak to the motion have done so.

## **HOW ARE MOTIONS CLASSIFIED?**

### **Main Motions**

Motions of this group are for the bringing of questions, or propositions, before Town Meeting for consideration. Only one main motion can be considered at a given time, and once introduced such a motion excludes all other main motions until it has been disposed.

### **Subsidiary Motions**

Motions of this group have are for the modification or disposition of the main motion that is being considered. Their existence as motions depends entirely upon the principal motion to which they are subordinate. Since they relate to the question then under consideration, it is in order to propose them when a main motion is pending and to vote upon them before voting upon the main motion.

### **Privileged Motions**

Motions of this group have no connection whatsoever with any main motion, but are motions of such importance that they are entitled to immediate consideration. These motions have the privilege of temporarily setting aside the main business then before Town Meeting.

### **Incidental Motions**

Motions of this group have few characteristics in common, but for convenience have been grouped into one class. The name "incidental" applies because they arise only incidentally out of the business of Town Meeting.

## **RULES RELATIVE TO MOTIONS**

A motion is the means of bringing a proposal or question for consideration by Town Meeting. When first put forward it is a motion; after it is seconded and acknowledged by the Moderator, it becomes the question or proposal. Except for complimentary resolutions (the presentation of which must be approved in advance by the Moderator), no main motion shall be entertained unless its substance is contained within the scope of a Warrant article. Upon completion of debate, articles will be voted upon.

The Moderator shall determine whether a motion, or any discussion relative to a motion, is within the scope of the Warrant article under consideration. That is, the motion and the debate must be relevant to the article as written in the Warrant, since the purpose of the Warrant is to apprise voters of the actions to be taken at Town Meeting.

Articles only give notice to the voters and do not initiate action; motions do. Motions may be withdrawn; articles may not be withdrawn – articles must be acted upon by Town Meeting.

There are four types of amendments: striking out, inserting, striking out and inserting, and substitution. Motions to amend may be hostile as long as they are germane. An amendment to a motion is an amendment of the first rank; an amendment to an amendment is of the second rank; there can be no amendment beyond that of the second rank.

Some motions do not lead to a final determination by Town Meeting. A motion to commit or to refer sends the matter to an existing board or committee or one to be established. The motion to postpone indefinitely disposes of the question without bringing it to a direct vote. The motion to postpone indefinitely should not be confused with the motion to table which only temporarily delays a vote. As previously stated, articles may not be withdrawn; so when the Meeting does not wish to act on a particular article, the proper motion is to postpone consideration indefinitely.

***Introduction to the Rules of Town Meeting (continued)***

Motions to reconsider shall be entertained when new information is available that is materially different than was presented (or could have been presented) at the time of the original vote on the article. Articles may be reconsidered only once. If a motion to reconsider is passed by the necessary 2/3 vote, it brings the original article back to the floor (which requires a new motion and additional debate); if the motion to reconsider is defeated, then the original article stands as previously voted and may not be reconsidered again. Actions to reconsider can be taken at the same session or any subsequent session of Town Meeting. A notice of reconsideration may be filed in advance with the Town Clerk stating that, at a specific point during the current Town Meeting, a voter will move for reconsideration on a particular article, and the Moderator will inform the hall of said action. Note that such a motion so noticed in advance must still be in order (i.e., must comply with all conditions required of any reconsideration motion).

All motions other than purely procedural motions must be in writing and signed by the sponsor.

**CHART OF PRECEDENCE OF MOTIONS AND SUMMARY OF GOVERNING RULES**

	May interrupt <u>a speaker</u>	Req. a <u>sec.</u>	<u>Debatable</u>	<u>Vote Required</u>	<u>Motions that may apply</u>
<b><u>PRIVILEGED MOTIONS</u></b>					
1. To dissolve	no	yes	no	majority	none
2. To adjourn	no	yes	limited	majority	amend
3. Point of no quorum	no	no	no	none	none
4. Recess	no	yes	limited	majority	amend
5. Question of privilege	yes	no	no	chair rules	none
<b><u>SUBSIDIARY MOTIONS</u></b>					
6. To lay on the table	no	yes	no	2/3	none
7. Previous question	no	yes	no	2/3	none
8. Limit or extend debate	no	yes	no	2/3	amend, reconsider
9. To postpone to time certain	no	yes	limited	majority	amend, reconsider
10. To commit or refer	no	yes	limited	majority	amend, reconsider
11. To amend	no	yes	yes	majority	amend, reconsider
12. To postpone indefinitely	no	yes	yes	majority	reconsider
<b><u>MAIN MOTIONS</u></b>					
Main Motions	no	yes	yes	majority*	all
To reconsider or rescind	no	yes	yes	2/3	table previous question postpone definitely
To take from the table	no	yes	no	majority	none
To advance an article	no	yes	yes	majority	amend, reconsider
<b><u>INCIDENTAL MOTIONS</u></b>					
Point of order	yes	no	no	chair rules	none
Division of a question	no	yes	no	majority	none
Separate consideration	no	yes	no	majority	none
To withdraw a motion	no	no	no	majority	reconsider
To suspend rules	no	yes	no	2/3	none
Orders of the day	yes	no	no	none	none

\*The vote required to pass an affirmative main motion is a matter of substantive law, but is usually a majority.

*Introduction to the Rules of Town Meeting (continued)*

**FORM USED IN MAKING MOTIONS**

- |                                       |  |
|---------------------------------------|--|
| 1. Main Motion                        | Mr. Moderator, I move that...(statement of the proposal)                 |
| 2. Adjourn                            | Mr. Moderator, I move to adjourn to...(state time)                       |
| 3. Amend                              | Mr. Moderator, I move to amend by adding...                              |
|                                       | Mr. Moderator, I move to amend by inserting...before...                  |
|                                       | Mr. Moderator, I move to amend by striking out...                        |
|                                       | Mr. Moderator, I move to amend by striking out...and inserting...        |
|                                       | Mr. Moderator, I move to substitute...for...                             |
| 4. Amend an Amendment                 | Mr. Moderator, I move to amend the pending amendment by (see above)      |
| 5. Amend Something Previously Adopted | Mr. Moderator, I move to amend the resolution under Article...by...      |
| 6. Commit or Refer                    | Mr. Moderator, I move that the proposal be referred to a committee of... |
| 8. Division of a Question             | Mr. Moderator, I move to divide the question.                            |
| 9. Lay on the Table                   | Mr. Moderator, I move that the proposal be laid on the table.            |
| 10. Point of Order                    | Mr. Moderator, I rise to a point of order.                               |
| 11. Postpone to a time certain        | Mr. Moderator, I move to postpone the question to...                     |
| 12. Postpone Indefinitely             | Mr. Moderator, I move that the question be postponed indefinitely.       |
| 13. Previous Question                 | Mr. Moderator, I move the previous question.                             |
| 14. Question of Privilege             | Mr. Moderator, I rise to a question of privilege.                        |
| 15. Recess                            | Mr. Moderator, I move to recess for...                                   |
| 16. Reconsider                        | Mr. Moderator, I move to reconsider the vote under Article...            |
|                                       | Mr. Moderator, I move to reconsider the vote on the amendment to...      |
| 17. Separate Consideration            | Mr. Moderator, I move for separate consideration.                        |
| 18. Suspend the Rules                 | Mr. Moderator, I move to suspend the rules which interfere with...       |
| 19. Take from the Table               | Mr. Moderator, I move to take from the table the motion relating to...   |

**INTERRUPTING A SPEAKER**

No one may interrupt a speaker except for a point of order or a question of privilege.

**POINT OF ORDER**

A point of order is a question of the Moderator about whether the speaker is entitled to be speaking, or whether the current subject under discussion (or what the speaker is saying) is irrelevant, illegal or contrary to proper procedure. No other "point of order" is proper.

**PREVIOUS QUESTION**

To call or move the question is a request to stop discussion and to take an immediate vote. This requires a 2/3 vote.

**VOTING**

Voting is by hand vote and the Moderator declares the result of such votes. If seven or more voters immediately question the declared result, the Moderator shall determine the result by a standing count of votes by the Tellers. After the vote counted by the Tellers is presented to the Moderator and announced to the floor, any further motions for recount are out of order.

**ADJOURNMENT AND DISSOLUTION**

Sessions of Town Meeting normally adjourn at eleven o'clock in the evening but may adjourn at such earlier or later time as vote of the majority may determine. Town Meeting shall not dissolve until all articles in the warrant have been properly considered.

**TOWN WARRANT  
COMMONWEALTH OF MASSACHUSETTS**

**SPECIAL TOWN MEETING**

Worcester, ss.

September 20, 2022

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the Inhabitants of the Town of Southborough qualified to vote in town affairs, to meet in the P. Brent Trotter Middle School, 49 Parkerville Road, in said Southborough, on

*Thursday, October 13, 2022*

at 7:00 p.m., then and there to take action on the following Articles:

**ARTICLE 1:** To see if the Town will vote to amend Chapter 153, entitled Trees, of the Town bylaws by adding § 153-5, Tree Protection Bylaw, as follows:

**§ 153-5. TREE PROTECTION BYLAW**

**A. PURPOSE.**

- (1) The Town of Southborough ("Town") is a designated Tree City. The residents of the Town recognize that the preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment, and aesthetics of the Town and its citizens. Trees serve a wide variety of functions, which promote the health, safety, and welfare of residents. These functions include:
  - (a) Conserving energy, by providing shade and evaporative cooling through transpiration;
  - (b) Improving local and global air quality by absorbing carbon dioxide and ozone, absorbing particulate matter, and producing oxygen;
  - (c) Reducing wind speed and directing air flow;
  - (d) Reducing noise pollution;
  - (e) Preserving ecosystems by providing habitat for birds, small mammals, insects and other wildlife;
  - (f) Filtering and screening, glare on roadways and increasing pavement life;
  - (g) Reducing storm runoff and the potential for soil erosion;
  - (h) Increasing real property values; and
  - (i) Enhancing visual and aesthetic qualities that attract visitors and businesses.
- (2) The purpose of this bylaw is to preserve and protect the Town's public shade trees in accordance with the provisions of Massachusetts General Law (MGL) Chapter 87 and Chapter 40, Section 15C. It is also intended to encourage the planting of more public shade trees than are removed to compensate for tree losses and the length of time required for a tree to reach maturity.

**B. DEFINITIONS.**

**DBH (Diameter at Breast Height)** is the diameter of the trunk of a tree 4 ½ feet above the average existing grade at the base of the tree.

**Drip line** means a vertical line running through the outermost portion of the crown (i.e., the outer branch tips) of a tree and extending to the ground.

**Excessive pruning** means the removal of more than one-third of the tree canopy or cutting back the limbs to a point that prevents the natural growth of the tree.

**Imminent hazard** means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment is likely to occur before a notice and hearing to abate the risk of harm can be completed.

**Public shade tree** is: (a) any tree within or on the boundaries of a public right-of-way, including scenic roads, except for a state highway; or (b) a tree that is not within or on the boundaries of a public right-of-way, but planted by the Tree Warden Designee upon adjoining land at a distance not exceeding 20 feet from the layout of such public way with the written consent of the owner of such adjoining land all in accordance with the provisions of MGL c. 87, §7.

If the highway boundaries are unclear because the boundaries between public and private land cannot be made certain by land records or monuments, the tree is presumed to be a public shade tree according to MGL c. 87, §1.

**Public right of way** is the portion of land controlled or owned by the Town within which an accepted public street or road lies. Typically, the public right-of-way is wider than the road surface and often includes curbs, sidewalks, utilities, public shade trees and grass strips.

**Topping** means the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

**Tree City** the Tree City USA program was founded in 1976 to celebrate towns and cities committed to growing their urban canopy. Led by the Arbor Day Foundation, with partners at USDA Forest Service and National Association of State Foresters, it provides the foundational framework necessary for communities to manage and expand their tree cover.

**Tree removal** means the cutting down of any public shade tree and/or any other act that will likely cause such a tree to die within a three-year period, including but not limited to improper or excessive pruning and construction, demolition, and excavation activities.

**Utility** shall mean a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities; provided, however, that a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986.

### **C. TREE WARDEN AND TREE WARDEN DESIGNEE.**

- (1) The Tree Warden shall be the Select Board having primary enforcement responsibilities under this chapter and MGL c.87. The Tree Warden and Tree Warden Designee are called upon to balance the needs between protection of public trees and protection of the public from hazardous or obstructive trees. The Tree Warden (Select Board) shall have the right to review the conduct, acts and decisions of the Tree Warden Designee.
- (2) The Tree Warden Designee shall be appointed by the Tree Warden (Select Board) and pursuant to MGL c.41 §106, hold at least an Associate of Science Degree in Arboriculture / Urban Forestry or a related degree or demonstrated equivalent knowledge and experience; and although not required it is preferred that the Tree Warden Designee also hold a current arborist certification from either the Massachusetts Arborist Association or the International Association of Arboriculture; and have at least three (3) years supervisory experience in commercial or municipal tree care; and shall obtain a Massachusetts Pesticide License within 90 days of employment.
- (3) The Tree Warden (Select Board) may appoint a Deputy to the Tree Warden Designee to perform the roles and responsibilities of the Tree Warden Designee during vacation, sick time, and any paid or unpaid leave of absence. The deputy must have substantial experience and qualifications and shall comply with all rules and obligations of this bylaw.
- (4) The duties or responsibilities of the Tree Warden Designee shall conform to the MGL c. 87 and shall include, but not be limited to the following:
  - (a) Planting new public shade trees;
  - (b) Pruning of public shade trees for safety and health;
  - (c) Removal of public shade trees that are dead and dying;
  - (d) Maintaining a Public Shade Tree Inventory and Public Shade Tree Management Plan;
  - (e) Assessment of public shade trees for potential hazard;
  - (f) Oversight of utility arboriculture operations and of all contracted tree work on public shade trees;
  - (g) Submit trees for Public Tree Hearings;

- (h) Enforcement of the provisions of this bylaw, MGL c. 87 and c. 40, §15C;
- (i) Care, control and management of all trees within public rights-of-way, adjacent to public buildings on public land, and on public commons;
- (j) Expenditure of funds for public shade tree planting and maintenance consistent with this bylaw and MGL c.87;
- (k) Coordination with the Tree Warden (Select Board), Planning Board; Conservation Commission; Recreation Commission; and interested citizen groups on matters related to urban forestry and public tree management;
- (l) Promulgate regulations outlining the care and preservation of public shade trees and the establishment of fees and fines; all such regulations, fees, and fines subject to approval by the Tree Warden (Select Board) and Planning Board;
- (m) Maintain a list of all town roads designated as Scenic Roads; and
- (n) Other responsibilities consistent with this bylaw and Massachusetts General Laws.

#### **D. JURISDICTION.**

- (1) This bylaw applies to all public shade trees in the Town. The Tree Warden (Select Board) and Tree Warden Designee in conjunction with the Planning Board shall have jurisdiction over all trees to which this bylaw applies as set forth in MGL. c. 87 and c. 40, §15C.
- (2) This bylaw applies to all persons, agencies, departments, firms (including utility companies) and applicants either residing or conducting activities in the Town of Southborough.
- (3) If any public shade tree may be impacted by construction, demolition or excavation activities under the jurisdiction of the Town's Building Department, Planning Board, Zoning Board of Appeals, or other Town Department or Board: (1) the owner or applicant of the affected property and any person engaging in such activities shall be required to comply with the provisions of this bylaw; and (2) the owner or applicant shall notify the Tree Warden Designee of such activities.
- (4) A public shade tree may not be trimmed, pruned or removed by any person other than the Tree Warden Designee until and unless, after a public hearing if required or consultation with the Tree Warden and either the Town Planner or Planning Board, the Tree Warden Designee issues a written permit pursuant to this bylaw.
- (5) A permit from the Tree Warden Designee shall also be required of any person for: (1) planting a public shade tree, (2) engaging in construction or demolition activities within the drip line of a public shade tree and (3) engaging in excavation activities that may disturb a public shade tree, including but not limited to the installation of utility lines.
- (6) The Tree Warden Designee shall issue standards for planting public shade trees for which a permit is required under this chapter. Such standards shall include: (1) listing of trees acceptable for planting, (2) site selection, (3) priorities for tree planting locations, (4) spacing of street trees, and (5) planting guidelines.

#### **E. PLANTING NEW TREES WITHIN THE PUBLIC RIGHT OF WAY.**

- (1) Any property owner may petition the Tree Warden Designee to plant a tree within a public right of way. It is understood that some rights of way are not suitable for the planting of trees and that some species of trees are not suitable for public rights of way. For this reason, it is understood that the permit is discretionary on the part of the Tree Warden Designee and is not to be construed as a right.
- (2) The Tree Warden Designee may grant a petitioner permission for planting one or more trees within a public right of way, subject to the following:
  - (a) All work in a public right of way shall be conducted to the specifications of the Tree Warden Designee.
  - (b) All costs incurred in the course of planting the tree(s), including related work, regardless of contractor, shall be the responsibility of the petitioner.

- (c) The petitioner shall work with the Tree Warden Designee to select an appropriate native species tree and location that will not interfere with buried or above ground utilities and will minimize root damage to streets and sidewalks.
- (d) The petitioner shall execute a release in favor of the Town.

**F. PROHIBITED ACTIVITIES.**

- (1) It shall be unlawful for any person, firm, or town department to engage in any of the following activities relating to public shade trees:
  - (a) topping;
  - (b) excessive pruning;
  - (c) girdling tree trunks;
  - (d) cutting or poisoning tree roots;
  - (e) causing any other kind of injury;
  - (f) pollarding the top and branches of a tree;
  - (g) tree stapling, cutting, painting, marking, hanging any public messages on trees or tree trunks without a permit;
  - (h) tree removal without a permit.

**G. PROCESS TO REQUEST PUBLIC SHADE TREE PRUNING OR REMOVAL.**

- (1) Requests for Public Shade Tree pruning or removal must be made to the Tree Warden Designee.
- (2) The Tree Warden Designee shall log the requests including all information per the Tree Warden's regulations.
- (3) The Tree Warden Designee shall, and the Tree Warden, Planning Board and interested parties, may inspect the tree before the hearing. The Tree Warden Designee shall determine during the site visit if the public shade tree, that is subject to the removal or pruning request, meets one of the criteria per H (4) of this bylaw.
- (4) Public shade tree pruning or removal requests for public shade trees, where it has been determined either by the Tree Warden Designee during a site visit or at a public hearing, that the criteria per H (4) of this bylaw has not been met, the requestor shall pay a non-refundable per inch DBH fee, per the Tree Warden Designee's regulations and shall be subject to the requirements of H (5) of this bylaw.

**H. PUBLIC HEARING.**

- (1) Except as provided in Section K (Emergency Tree Removal) of this bylaw, the Tree Warden Designee shall not remove any public shade tree with a DBH greater than 1.5 inches or grant a permit for the tree removal for a public shade tree without first conducting a public hearing. Where a public hearing is required, the Tree Warden Designee shall, in accordance with the provisions of MGL c. 87, §3, issue a notice of the time and place of the hearing, which notice shall identify the size, type and location of each tree to be cut down or removed. The Tree Warden Designee shall also post the notice three or more public places in Southborough, including under Hearing Notices on the Town's website, under Tree Hearings on the DPW webpage, at the Town House and in public view upon the tree at least fourteen (14) days before such hearing and publish it in a newspaper of general circulation in Southborough once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, or if no such local newspaper exists then in accordance with the provisions of MGL c. 4, §6.
- (2) When a public hearing must be held under the provisions of this bylaw and the public shade tree is located on a designated Scenic Road, such hearings shall be consolidated into a single public hearing before Planning Board and the Tree Warden (Select Board).

- (3) When a public hearing must be held under the provisions of this bylaw and the public shade tree is located on conservation lands managed by, or resource areas or their buffer zones under the jurisdiction of the Southborough Conservation Commission, such hearings shall be consolidated into a single public hearing before Conservation Commission and the Tree Warden (Select Board).
- (4) The Tree Warden Designee following a public hearing per Section H, Public Hearing, (1), (2) or (3) of this bylaw, shall approve removal of a public shade tree upon a determination reached at a public hearing that at least one of the following criteria is satisfied:
  - (a) The tree is dead, diseased, terminally injured, in danger of falling, dangerously close to existing structures, causing disruption of public utility service, causing drainage or passage problems upon rights-of-way, or posing a threat to pedestrian or vehicular safety;
  - (b) The tree interferes with structures, utilities, streets, sidewalks or proposed necessary improvements for which there is no alternative;
  - (c) There is no alternative to removal of the tree.
- (5) Any person requesting the removal of a public shade tree that does not meet the criteria in H (4) above must demonstrate, at a public hearing, that the removal and replacement of a tree will be of greater benefit to the inhabitants of the Town of Southborough, pay a fee per G. (4) of this bylaw and is responsible for all expenses associated with the public hearing and removal, if approved, including the following:
  - (a) Cost of advertising a public hearing as specified in Section H (Public Hearing) of this bylaw and MGL c. 87, §3;
  - (b) Cost of removal of tree and stump, including hauling away of all debris, and proper filling of stump hole;
  - (c) Planting of sufficient replacement trees as described below;
  - (d) Cost of police traffic details, repair of street surface and road shoulder, protection and restoration of utility structures; and
  - (e) All other costs related to the removal and replanting.

#### **I. APPEALS.**

- (1) Any decision of the Tree Warden Designee under this bylaw may be appealed to the Select Board, except appeals of decisions made at consolidated hearings per Sections H, Public Hearing, (2) & (3) of this bylaw, or decisions made by the Tree Warden (Select Board) shall be made to a court of competent jurisdiction.
- (2) Appeals to the Select Board must be in writing and must be received by the Select Board within thirty (30) calendar days of the issuance of the Tree Warden Designee's decision, which shall be made publicly available on the Town website. The Select Board shall make a final decision within thirty (30) calendar days from the date of receipt of the appeal request and file a decision with the Town Clerk within fourteen (14) days thereafter.

#### **J. TREE REPLACEMENT.**

- (1) Public shade trees approved for removal by the Tree Warden (Select Board) at a consolidated hearing shall be replaced with one public shade tree for each public shade tree approved for removal.
- (2) Public shade trees shall not be removed if they do not meet the criteria outlined in H (4) of this bylaw without the planting of two (2) public shade trees for every one (1) public shade tree removed as replacements.
- (3) The replacement tree(s) shall be purchased from a certified tree nursery professional that stocks straight native species and is approved by the Tree Warden Designee. Such professional shall plant and ensure the health of the tree for three years.

- (4) The replacement tree(s) shall be a straight native species deemed advisable by the Tree Warden Designee and shall have the same or equivalent size as measured in DBH inches as that of the tree that was removed.
- (5) If a tree of equivalent size cannot be obtained or is not appropriate, the Tree Warden (Select Board) and the Planning Board shall determine a suitable alternative which may include:
  - (a) an inch-by-inch replacement basis. Replacements shall be at least three-inch diameter. For example, if an 18" diameter tree, measured four feet above grade is to be removed, the applicant must sufficiently reimburse the Town to provide for the purchase and planting of six, three-inch diameter replacements.
  - (b) payment to the Town of Southborough for the value of the tree that was removed, as determined by a certified arborist based on standards in the industry, in accordance with the Tree Warden Designee's regulations and Section M (Enforcement) of this bylaw.

#### **K. EMERGENCY TREE REMOVAL.**

- (1) Pruning or removal shall be allowed without a permit or public hearing for any public shade tree that is determined by emergency response officials, including utilities and their agents, to be an imminent hazard. Such officials shall complete a written record of any such determination and submit it to the Tree Warden Designee within fourteen (14) calendar days of such determination.
- (2) The Tree Warden Designee may waive the provisions of this bylaw as an emergency response to a hurricane, windstorm, flood or other act of nature. The Tree Warden Designee shall complete a written record of the emergency response and submit it to the Tree Warden and the Planning Board.
- (3) The Tree Warden Designee may remove, without a public hearing, a tree that is determined, by the Tree Warden Designee, in consultation with the Town Administrator and the Town Planner, to be an imminent hazard to persons or property. The Tree Warden Designee making the hazard determination shall be qualified, as defined above, by training and experience in the field of Arboriculture. The hazard determination shall be made based on an objective risk tree rating system such as the USDA Forest Service 12-point Risk Tree Rating system or the International Society of Arboriculture Hazard Tree Evaluation system. Hazard trees shall be prioritized for pruning, removal, moving of the target or otherwise minimizing the risk based on those objectively presenting the most risk.

#### **L. UTILITY COMPANY TREE AND VEGETATION MANAGEMENT ACTIVITIES.**

- (1) The Tree Warden (Select Board) shall request and the utility shall submit, per MGL c. 87, §14, an annual "Hazard Tree Removal Plan" and a "Vegetation Management Plan", as applicable (separately, and together, an "Annual Plan").
- (2) Such Annual Plan(s) shall include: a map of the circuits where maintenance will occur; and a listing and location of any public shade tree(s) expected to be removed.
- (3) The Annual Plan(s) shall be submitted to the Tree Warden (Select Board) prior to December 31<sup>st</sup> each year for activities to be conducted during the following year.
- (4) Any public shade tree expected to be removed will be appropriately marked by the utility company, so that the public may be made aware of the proposed work. The Tree Warden Designee and the utility representative(s) will visit the proposed work site(s) to inspect the proposed work.
- (5) The Tree Warden (Select Board) shall hold a consolidated public meeting with the Planning Board to review the annual plan(s).
- (6) Annual Plan(s) may be approved upon the determination at the consolidated public meeting per section L (5) above, that the plan is in compliance with the requirements of this bylaw.
- (7) The Tree Warden Designee shall then notify the utility in writing within 60 days of receipt of an Annual Plan(s) whether or not the plan has been approved or approved with changes made as a result of a public review during a scheduled consolidated public meeting.

- (8) Approved Annual Plan(s) shall be posted on the Town website, DPW's webpage and sent to the Town Planner and the Town Administrator for distribution to their respective Boards and to the public.
- (9) No tree removal, trimming or vegetation management affecting a public shade tree shall be done by the utility company that is not part of an approved Annual Plan, or is not otherwise approved by this bylaw.
- (10) Notwithstanding the Town's approval of the Annual Plan(s), a utility shall provide at least 30 days advance written notice to the Tree Warden Designee before beginning tree trimming or tree removal work pursuant to the Annual Plan(s).

**M. ENFORCEMENT**

- (1) Any person who violates any provision of this bylaw or MGL c. 87, §§3-5, relating to the trimming, cutting or removal of public shades trees shall be subject to fines for each separate offense, as provided by the Tree Warden Designee's regulations.
- (2) Each act causing damage to a separate tree shall constitute a separate offense.
- (3) Fines shall be assessed and collected under MGL c. 40, §21D process.
- (4) These remedies shall not be in derogation of the Town's right to enforce the provisions of MGL c. 242, §7, against any person who without a permit willfully cuts down, girdles or otherwise destroys a public shade tree, or the Town's right to apply or enforce any other Massachusetts law or Town bylaw.
- (5) Fines and damages paid to the Town under this bylaw, MGL c. 87, or MGL c. 242, shall be paid to the Town of Southborough.

**N. SEVERABILITY**

- (1) If any part of this bylaw is for any reason declared invalid or unconstitutional by any court, every other part shall continue in full force and effect.

; or do or act anything in relation thereto.

**Proposed by: PLANNING BOARD**

**Select Board Recommendation:** At Town Meeting

**Advisory Committee Recommendation:** Support (5-1-0)

**Summary:** *The intent of the bylaw is to put in place a process for the maintenance of Public Shade Trees, including but not limited to, trimming, cutting, planting and the removal of dangerous or damaged trees within the public right of way, and to protect the town from unnecessary tree removal and to maintain the New England character and charm of the Town of Southborough.*

**ARTICLE 2:** To see if the Town will vote, pursuant to the recommendation of the Planning Board to designate the following Town roads not currently designated as "scenic roads", other than those specifically excluded by State Statute, as "scenic roads" under provisions of the Commonwealth of Massachusetts General Laws Chapter 40, Section 15C and to instruct the Planning Board, in exercising responsibilities thereunder, to take into consideration simplification of town administrative and logistical scenic road management, sound planning principles, aesthetics, and preservation of natural resources as well as public safety, or do or act anything in relation thereto.

<u>Street</u>	<u>TM Date</u>	<u>Street</u>	<u>TM Date</u>
Adams Circle	4/8/1996	Kidder Lane	4/14/2003
Alexandra Circle	9/12/1994	Killam Farm Lane	4/9/2001
Andrews Way	9/12/1994	Ledge Hill Road	4/10/2000
Angelica Lane	4/12/2004	Liberty Drive	4/8/1996
Asaree Drive	9/12/1994	Maple Street Ext.	4/16/2014
Ashley Road	4/12/1993	Metacomet Lane	4/8/2002
Austin Kelly Lane	4/8/2002	Metcalfe Lane	4/13/2015

<u>Street</u>	<u>TM Date</u>
Banfill Lane	4/12/2004
Barn Lane	10/7/2013
Beechwood Lane	11/13/2000
Blendon Woods Dr.	10/7/2013
Boswell Lane	4/13/1998
Brookside Road	4/12/2004
Burnett Road	4/14/1997
Candlewood Lane	9/11/2000
Constitution Drive	4/8/1996
Coslin Drive (portion)	2018
Country Lane	4/8/1996
Darlene Drive	2/13/1995
Davis Road	4/12/1993
Eastbrook Farm Lane	4/8/1996
Fiddleneck Lane	4/11/2005
Fitzgerald Lane	4/10/2000
Foxhill Drive	4/11/2016
Garrison Lane	4/13/1987
Glenwood Road	9/12/1994
Heather Lane	2/13/1995
Hidden Meadow Ln.	4/10/2000
High Ridge Road	4/14/1980
Hillside Avenue Ext.	4/14/2003
Hublely Lane	4/9/2001
Independence Drive	4/8/1996
Joslin Lane	4/11/2005
Kallander Drive	4/11/2005

<u>Street</u>	<u>TM Date</u>
Michael Circle	2/13/1995
Moore Road	4/11/1994
Nathan Stone Road	5/18/1999
Nipmuc Lane	10/7/2013
Orchard Road	4/14/92 & 4/14/08
Powder Mill Lane	4/13/1987
Presidential Drive	2/13/1995
Sadie Hutt Lane	4/23/1990
Sarsen Stone Way	4/8/1991
Schipper Farm Lane	4/8/2002
Skylar Drive	4/13/1987
Southwood Drive	9/11/2000
Stockwell Lane	4/10/2000
Stub Toe Lane	4/8/1996
Summit Road	4/13/1987
Sunrise Drive	4/8/1991
Thayer Lane	4/13/2015
Vale Terrace	4/9/2001
Vickery Hill Lane	4/14/2008
Wells Lane	4/13/2010
Wentworth Drive	4/8/1996
Whistler Lane	4/10/2000
Wildwood Drive	4/10/2000
William Colleary Ln	4/11/2016
William Onthank Ln.	4/14/2008
Witherbee Lane	4/11/2005
Wyeth Circle	2/13/1995

**Proposed by:** PLANNING BOARD

**Select Board Recommendation:** At Town Meeting

**Advisory Committee Recommendation:** Support (5-1-0)

**Summary:** *The intent of this article is to protect the scenic quality and character of certain public ways in the Town by regulating the cutting or removal of trees and the disturbance of stone walls within the right-of-way of scenic roads.*

**ARTICLE 3:** To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$152,000 for the purpose of addressing public shade trees that need to be removed to ensure public safety; or do or act anything in relation thereto.

**Proposed by:** SELECT BOARD

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (4-2-0)

**Summary:** *This article will fund a backlog of tree removals that in large part have been approved through joint hearings with Planning Board and the Select Board.*

**ARTICLE 4:** To see if the Town will vote to approve the sum of \$14,209 to fund the economic cost items under M.G.L. Chapter 150E, Section 7 for the Fire Union collective bargaining agreement; or do or act anything in relation thereto.

**Proposed by:** SELECT BOARD

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (6-0-0)

**Summary:** *This article will fund costs associated with the first year of the contract agreed upon with the Fire Union, retroactive to July 1, 2022.*

**ARTICLE 5:** To see if the Town will vote to raise and appropriate the sum of \$10,000 for the purpose of paying the Town's share of casualty and other losses incurred to Town property and equipment which are not covered by insurance policies; or do or act anything in relation thereto.

**Proposed by:** SELECT BOARD

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (6-0-0)

**Summary:** *This article will provide funds to be used to pay the deductible for property damage which is not covered by insurance.*

**ARTICLE 6:** To see if the Town will vote to allow the Select Board to grant easements to Massachusetts Electric Company d/b/a National Grid, said easements to facilitate the installation of EV charging stations for hybrid and electric vehicles at 32 Cordaville Road (Public Safety Building) and such other town-owned locations as the Select Board may determine for a similar purpose; or do or act anything in relation thereto.

**Proposed by:** SELECT BOARD

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** At Town Meeting

**Summary:** *The Police Department has begun augmenting its fleet with hybrid Police cruisers as vehicles come up for replacement. Part of the cost of these vehicles is offset by the Green Communities grants received by the Town. These charging stations will help to facilitate our inclusion of more hybrid and/or electric vehicles into the fleet. The Town's Energy Manager is working with our energy consultant to have these installed at no cost to the Town.*

**ARTICLE 7:** To see if the Town will vote to adopt as §41-4.1 of the Town Bylaws the following, or take any action related thereto:

**§ 41-4.1 Inclusion of Warrant Articles in a Warrant** All citizens' petitioned warrant articles submitted pursuant to M.G.L. c. 39, §10 for inclusion on any town meeting warrant must be delivered to the Select Board's office no later than thirty (30) calendar days prior to the date of such town meeting.

; or do or act anything in relation thereto

**Proposed by:** SELECT BOARD

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (6-0-0)

**Summary:** *This article will require reasonable advance notice for any new bylaw proposed through a citizens' petition to be considered by a Town Meeting. This advance notice will allow time for public notice and discussion of any such new bylaw in advance of a Town Meeting vote.*

**ARTICLE 8:** To see if the Town will vote to amend Chapter 41 of the Town Code entitled "Town Meetings" by adding a new section § 41-6.1 Voting Procedure as follows:

**§ 41-6.1 Voting Procedure**

Unless otherwise required by law, bylaw, regional agreement, or similar binding obligation, the Moderator shall determine the method of voting on each Article at Town Meeting, which method may vary from Article to Article, and which method may include, but not be limited to: a voice vote, a vote by voter card, a standing vote, a written ballot vote, or a vote by electronic technology.

; or do or act anything in relation thereto.

**Proposed by:** TOWN CLERK AND TOWN MODERATOR

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (6-0-0)

**Summary:** *This Article defines the methods of voting that the Moderator may determine to use at Town Meeting, including by electronic technology; such as individual vote tabulators ("clickers") provided at the Town Meeting.*

**ARTICLE 9:** To see if the Town will vote to raise and appropriate, or transfer from available funds a sum of money for General Government capital items for the following purposes:

	Description	Request	Levy	Other Funds
A.	Town Clerk - Clickers	\$ 5,000	\$ 5,000	
B.	Pavement Management System	\$29,000	\$29,000	

, or do or act anything in relation thereto.

**Proposed by:** SELECT BOARD

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (6-0-0)

**Summary:**

*A. This Article provides funding to rent voting 'clickers' for electronic voting at the 2023 Annual Town Meeting to allow the voters to try the clickers before committing to purchase them. The total purchase price for 600 clickers is \$18,600 and the rental fee of \$5,000 will be applied towards the purchase price. The devices have a 10-year life expectancy.*

*B. The purpose of the management system will be to provide the Town with easily accessible inventory and management information for its pavement network. The system will serve as a tool in providing the basis for the development of both short and long term operational and capital funding outlays and projections. The system will allow the community to maintain its roadway facilities in the best condition possible through the effective spending of available dollars and help the Town prepare a multi-year capital improvement program.*

**ARTICLE 10:** To see if the Town will vote to transfer \$12,500 from overlay surplus account for the purpose of converting and upgrading the Assessors' real estate software utilized to develop annual real estate assessment, or do or act anything in relation thereto.

**Proposed by:** BOARD OF ASSESSORS

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (6-0-0)

**Summary:** *Real Estate software utilized by the Assessors, AssessPro, version 4.7.4 by Patriot, is a platform that is being phased out and will be no longer be supported. It is required that all Massachusetts users of this software convert to the new AssessPro AP-5.0 version over the next few years. This funding will cover the cost for the software conversion which is scheduled to begin in late fall of 2022.*

**ARTICLE 11:** To see if the Town will vote to transfer \$14,000 from overlay surplus account for the purpose of contracting professional appraisal services to conduct cyclical inspections of residential properties within the Town, or do or act anything in relation thereto.

**Proposed by:** BOARD OF ASSESSORS

**Select Board Recommendation:** Support (5-0-0)

**Advisory Committee Recommendation:** Support (4-2-0)

**Summary:** *The Department of Revenue's Bureau of Local Assessment requires that all local Board of Assessors conduct a cyclical re-inspection program to inspect all real estate within the community over a nine-year period. This article is intended to provide funding for the Board of Assessors to contract professional appraisal services to assist with 400 inspections and data collection necessary to complete this project.*

**ARTICLE 12:** To see if the Town of Southborough will vote to request that the Select Board restrict the placement of flags in the Old Burial Ground to the official flag of the United States of America, flown on the single existing permanent pole. In accordance with state and federal preservation guidelines, and out of respect for those buried within, all additional flags on raised flagpoles shall be removed. This policy shall not apply to individual grave markers.

; or do or act anything in relation thereto.

**Proposed by:** DEBORAH DEMURIA and REBECCA DEANS-ROWE

**Select Board Recommendation:** At Town Meeting

**Advisory Committee Recommendation:** Support (4-2-0)

**Summary:** *This citizen's petition seeks to limit the placement of flags in the Old Burial Ground to only the American flag, consistent with preservation guidelines for municipally owned burial grounds and cemeteries. This policy follows the recent unanimous U.S. Supreme Court decision regarding free speech rights under the First Amendment. The Court found that municipalities cannot selectively allow some private groups to fly flags on public property while denying other groups (Shurtleff v. City of Boston, 2022).*

**ARTICLE 13:** To see if the Town of Southborough will vote to acquire, by gift, a conveyance of land commonly known as "St. Mark's Triangle", Assessors Map 54 Lot 8, from the Trustees of St. Mark's School to the Town of Southborough and to authorize the Select Board to execute all documents and take all action necessary to accomplish said acquisition.

The land containing approximately 0.93 acres located on the westerly side of Marlborough Road, in the town of Southborough, is bounded and described as follows:

- SOUTHERLY:** by the land of the Town of Southborough, 121.9 feet (Library) and 108.5 feet (Old Burial Ground), more or less;
- WESTERLY:** by the easterly sidelines of St. Mark's Street, 310.6 feet more or less;
- NORTHERLY:** by the southerly sidelines of St. Mark's Street, 83.7 feet more or less; and
- EASTERLY:** by the westerly sidelines of Marlborough Road, 335.8 feet, more or less

The said parcel being shown as Parcel "B" on a plan titled, "Plan of Land in Southborough, Mass. Owned By: Trustees of St. Mark's School Scale: 1" = 40' March 18, 1977. Survey By; MacCarthy and Sullivan Engineering Inc., 81 Speen Street, Natick Mass." as filed in the Worcester Registry of Deeds plan book 453, page 43.

; or do or act anything in relation thereto.

**Proposed by:** DEBORAH DEMURIA and KEVIN FARRINGTON

**Select Board Recommendation:** At Town Meeting

**Advisory Committee Recommendation:** Support (4-2-0)

**Summary:** *This citizen's petition authorizes the Select Board to accept a gift of land from St. Mark's School commonly known as St. Mark's Triangle. The parcel is adjacent to the library parking lot and Old Burial Ground in Southborough's historic district.*

And you are to give notice hereby by posting true and attested copies of the Warrant on the Town website, the Southborough Town House, 17 Common Street, Southborough Senior Center, 9 Cordaville Road, Southborough Library, 25 Main Street, and Southborough Transfer Station, 147 Cordaville Road; fourteen (14) days at least before the time appointed for such meeting.

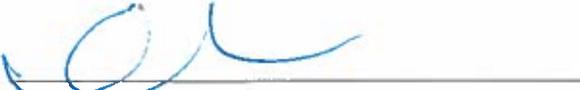
Given under our hand this twentieth (20th) day of September, 2022.

  
Kathryn M. Cook, Chair

  
Chelsea M. Malinowski, Vice-Chair

  
Lisa M. Braccio

  
Sam Stivers

  
Andrew R. Dennington

SELECT BOARD OF THE TOWN OF SOUTHBOROUGH

Attest:

  
Ryan Newell, Acting Chief of Police

SGT. TIM SIATKAVITZ  
ON BEHALF OF RYAN NEWELL

October 13, 2022