

**Draft Warrant Article Language:**

To see whether the Town will vote to amend Article 70 of the Town of Natick By-Laws as follows:

1. Remove the second, third and fourth paragraph of Section 6
2. Insert new Section 8 with the wording:

“Section 8            Private Ways

*Snow and Ice Removal.* The Town may remove snow and ice from such private ways for emergency vehicle access in accordance with Massachusetts General Laws and Board of Selectmen regulations and policies.

*Barriers.* Barricades, obstacles, or vehicles on private ways that are a barrier to prompt and appropriate emergency access shall be removed on order of the Police or Fire Chief, at the expense of the owner or owners of the private way. However, if the barrier is a vehicle, it shall be removed on order of the Police or Fire Chief and at the expense of the owner of the vehicle.

*Temporary Repairs.* The Town may perform temporary repairs to private ways that have been open to the public for a period of at least six (6) years. The Town may only perform temporary repairs in accordance with regulations and policies issued by the Board of Selectmen and that are determined by the Director of Public Works to be required for public necessity.

Said temporary repairs shall be considered necessary if they abate an immediate hazard. They shall not be considered as maintenance of the private way nor shall the way be considered a public way. Cash deposits or payments shall not be required and betterment charges shall not be assessed for said temporary repairs.

The Town shall not be liable for any damage to private property caused by such repairs, except as otherwise provided by law. The Town shall not incur any liability whatsoever on account of action or inaction resulting pursuant to this By-Law.”

### Article 70 Public Works Regulations

#### Section 6 Betterments

Whenever betterments are assessed in connection with a public way, the entire cost of the construction of streets on said ways shall be assessed to the abutters and one-half (1/2) of the costs of construction of sidewalks shall be assessed to the abutters, provided, however, that this section shall not apply to a subdivision of land under Section 81 of Chapter 41 of the General Laws as amended.

~~The Director of Public Works may make repairs to private ways providing that an Annual or Special Town Meeting determines that the repairs are required by public necessity and convenience and a majority of the abutters petition for such repairs to be made and that the way has been open to public use for a period of six (6) years. Such repairs shall include the installation and construction of drainage if necessary, and the filling of holes in the sub-surface of such ways and repairs to the surface materials thereof. Materials for such repairs shall, where practical, be the same as or similar to those used for existing surfaces of such ways but may include surfacing the ways with bituminous materials including but not limited to bituminous concrete.~~

~~The Town Administrator shall assess betterment's upon the owners of estates which derive particular advantage from the making of such repairs on any such private way. Such assessment shall be a sum equal, in the aggregate, to the total cost of such repairs and, in the case of each such estate, in proportion to the frontage thereof on such way. Except as otherwise provided, the provisions of Chapter 80 of the General Laws, as amended, relating to public improvements and assessments thereof shall apply to repairs to private ways ordered to be made under this section; provided that no assessment amounting to less than five hundred dollars (\$500.00) shall be apportioned and no assessment may be apportioned into more than twenty (20) portions.~~

~~The Town shall not be liable on account of any damage caused by such repairs.~~

..... (Retain Section 7) .....

#### Section 8 Private Ways

*Snow and Ice Removal.* The Town may remove snow and ice from such private ways for emergency vehicle access in accordance with Massachusetts General Laws and Board of Selectmen regulations and policies.

*Barriers.* Barricades, obstacles, or vehicles on private ways that are a barrier to prompt and appropriate emergency access shall be removed on order of the Police or Fire Chief, at the expense of the owner or owners of the private way. However, if the barrier is a vehicle, it shall be removed on order of the Police or Fire Chief and at the expense of the owner of the vehicle.

*Temporary Repairs.* The Town may perform temporary repairs to private ways that have been open to the public for a period of at least six (6) years. The Town may only perform temporary repairs in accordance with regulations and policies issued by the Board of Selectmen and that are determined by the Director of Public Works to be required for public necessity.

Said temporary repairs shall be considered necessary if they abate an immediate hazard. They shall not be considered as maintenance of the private way nor shall the way be considered a public way. Cash deposits or payments shall not be required and betterment charges shall not be assessed for said temporary repairs.

The Town shall not be liable for any damage to private property caused by such repairs, except as otherwise provided by law. The Town shall not incur any liability whatsoever on account of action or inaction resulting pursuant to this By-Law

## **Sample By-Laws from Massachusetts Communities**

### **Needham**

#### **2.2.5.6 Private Ways**

**2.2.5.6.1 Snow and Ice Removal.** The Town may remove snow and ice from such private ways within its limits for emergency vehicle access in accordance with Massachusetts General Laws and in accordance with regulations or policies issued by the Board of Selectmen. Such snow and ice removal may be limited to those private ways maintained in an acceptable condition and in accordance with standards determined by the Director of Public Works.

**2.2.5.6.2 Barricades.** Barricades installed on private ways that serve to deter prompt and appropriate emergency access shall be removed on order of the Fire Chief.

**2.2.5.6.3 Temporary Repairs.** The Town may perform temporary repairs to private ways if such repairs are determined by the Director of Public Works to be required for public necessity, in accordance with regulations or policies issued by the Board of Selectmen.

Said repairs shall be considered necessary to abate the immediate hazard caused by the defect and shall not be considered as maintenance of the private way nor shall the way be considered a public way. Drainage shall not be included as part of any such repairs, and the private way need not have been open to public use prior to the repairs being made.

Abutters to the private way may petition the Town to perform temporary repairs. In such cases, fifty one percent of the abutters to the private way must petition the Director of Public Works for the repairs to be made by the Town. Upon receipt of a petition and a determination of the necessity of such repairs, the Town shall provide the petitioners with a statement of the cost of such repairs. Within seven (7) days of receipt of the statement of cost, the petitioners shall be entitled to withdraw the petition. Unless the petition is withdrawn, the Town shall promptly make the repairs and the petitioners shall thereafter reimburse the Town for the cost of the repairs, if the repairs exceed \$300. The reimbursement amount shall be equal to the petitioner's pro rata share of the cost of repairs based on the ratio that each petitioner's frontage bears to the total frontage of the petitioners on the private way. Betterment charges will not be assessed for such repairs.

If the cost of repairs does not exceed \$300, no reimbursement will be required.

The Town shall not be liable for any damage to private property caused by such repairs, except as otherwise provided by law.

## **Wellesley**

29.10. Temporary Minor Repairs to Private Ways. The Town may make temporary minor repairs to private ways which have been opened to public use for two years or more and provided that such repairs are required by public necessity as shall be determined solely by the Board of Public Works. Such repairs shall be made only if petitioned for by the majority of the abutters, except in the case of special emergency involving the health or safety of people or their property as determined by said Board in its sole discretion. Cash deposits or payments shall not be required and betterment charges shall not be assessed for said repairs. The extent and type of repairs shall be determined by the Board of Public Works and shall only include the filling in of holes or depressions with material to be the same as, or similar to, those materials existing on such ways; but shall not include drainage. The Town shall not incur any liability whatsoever on account of action or inaction resulting pursuant to this Bylaw.

## **Westford**

Chapter 149: Temporary Repairs to Private Ways [Added 10-15-12 STM Art 13]

§ 149.1 Purpose and applicability. A. Pursuant to Massachusetts General Laws Chapter 40, Section 6N, the Board of Selectmen is hereby is authorized to make temporary repairs to private ways, constructed prior to 1955, which have been open to the public for a period of at least six (6) years, out of funds appropriated for said purpose by Town Meeting. In all cases, the entire cost shall be assessed as betterment on those properties which benefit from the repairs. Repair does not mean new construction. B. The repairs shall be those required by public necessity, including but not limited to 1. The necessity of providing adequately drained ways so as to reduce ecologically harmful runoff into the Town's brooks and ponds; and 2. The necessity of providing adequate passable ways for public safety vehicles from public ways to residences, Town facilities and resources including access to Town conservation land. C. The Board of Selectmen shall make the determination of public necessity.

§149.2 Types of Repairs. A. The repairs must be temporary in nature, such as filling, grading, patching and surface coating, and may include such repairs to drainage swales, conduits and structures as are necessary to preserve the integrity of surface repairs to the roadway, and shall not be such as to constitute a reconstruction of the roadway. B. The temporary repair shall have a minimum expected life equal to twenty (20) years. C. Temporary repairs may be undertaken on a way subject to this bylaw, or to a continuous portion of such way, which portion begins and ends at an intersection or conjunction with another way.

§ 149.3 Petition. A minimum of seventy five percent (75%) of the owners of property abutting the portion of the way proposed to be repaired must petition for the repair, with each ownership entity counting as one. The Board of Selectmen are authorized to waive this requirement.

§ 149.4 Betterment charges. A. The owners of land abutting such way who derive benefit from said repairs shall be assessed betterment charges by the Board of Selectmen. Betterment charges, in an amount of one hundred (100%) of the aggregate cost to plan, prepare and repair the private way shall be assessed on a per lot basis or on the proportion of the lot frontage on the way or portion of the way to be repaired to the frontage of said repaired way or other proportional method as may be required by the Board of Selectmen. General Bylaws of the Town of Westford, Massachusetts 2016 91 B. The Town may be considered an abutter if property under the care, custody and control of the Town abuts said way to be repaired. C. A cash deposit shall not be required.

§149.5 Status of way. A. This bylaw does not confer any obligation or duty on the Town or its agents to either initially place or to thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or want of repair. B. The making of such temporary repairs to private ways, no matter how often or to what extent, does not constitute an acceptance by the Town of such private ways as public ways, nor does it constitute a way being "maintained and used as a public way" under the Massachusetts Subdivision Control Law. C. Any private way repaired under the provisions of this bylaw need not be brought up to full Town standards and may continue to remain a private way. Repaired private ways may be brought to Town Meeting for acceptance as a public way by completing the steps outlined in the Town's Street Acceptance procedure, if any, adopted by the Board of Selectmen which may be amended from time to time, or otherwise as allowed by law.

§149.6 Liability. The Town, in making repairs under this section shall not be liable for any damages to persons or property caused by negligent repair or maintenance of the private way.

§ 149.7 Indemnity Agreement. No repair of a private way shall be undertaken until the Board of Selectmen has in its possession agreements executed by at least eighty five percent (85%) of abutting owners on the portion of the way to be repaired holding the Town harmless from any additional damage arising from any negligent repair, and which includes the following provisions: A. That the Town assumes no liability to such owners by making the repairs; B. Jointly and severally, to indemnify and hold harmless the Town with respect to such statutory liability and any and all other liability for claims of injury, death or property damage to such owners or third parties caused by alleged defects in the way, including attorneys' fees and other costs of defense; C. That should the Town decide not to continue to provide temporary repairs to such way, the owners will themselves keep such way in good repair so as to minimize the liability of the Town for having undertaken such repairs; D. That such repair shall not constitute "maintenance" of such way, so as to give the way the status of a way "maintained and used as a public way" under the Massachusetts Subdivision Control Law; and E. That if assessed for repairs, the owners will not appeal the amount of the assessment and agree that the assessment may be apportioned over the number of years of the expected lifetime of the repair to be determined by the Board of Selectmen. General Bylaws of the Town of Westford, Massachusetts 2016 92

§ 149.8 Continually Open to Public Use. Repairs or maintenance under this section shall not be performed on private ways that do not remain open to public use for at least twenty years.

## **Dedham**

### **§ 250-7 Temporary repairs to private ways.**

[Amended 5-19-2014 ATM by Art. 33]

The Director of Public Works may, at his discretion, undertake such action as may be necessary to keep private ways which have been open to public use for a period in excess of 10 years passable for emergency vehicles.

This by-law shall not be construed so as to allow complete repaving or rebuilding projects for any private way, nor shall any such repairs exceed in cost the amount of \$1,500 for any given private way in any given fiscal year.

The liability limit of the Town for any claim arising from any such work on any private way shall be \$5,000.