



# Meeting Agenda

The Provincetown Board of Selectmen will hold a public meeting on Monday, February 22, 2016, at 6:00 p.m. in Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657.

*Consent Agenda – Approval without objection required for the following items:*

- A. *Treasurer's Transfer – History Project Gift Fund – to pay invoice from GovConnection, Inc. for Large Bed Scanner, in the amount of \$2,425.00.*
- B. *Treasurer's Transfer – Library Gift Fund – pay invoices from Sir Speedy (\$545.02) and Matt Clark (\$19.83) totaling \$564.85.*
- C. *Treasurer's Transfer – Holiday Lights Gift Fund – to pay invoices from All In One Design (\$1,400) and Dunes 102 FM (\$500) totaling \$1,900.00.*

1. Public Hearings - Votes may be taken on the following items: None.
2. Public Statements – Three (3) minutes maximum. Selectmen do not respond to Public Statements.
3. Selectmen's Statements – Initial comments from the Selectmen. Discussion dependent-votes may be taken.
4. Joint meeting / Presentations - Votes may be taken on the following items: None.
5. Appointments - Votes may be taken on the following items: None.
6. Requests - Votes may be taken on the following items:
  - A. Requesting Approval of Board of Health Fee Schedule, as determined at a Public Hearing on Thursday, February 4, 2016 – Director of Health & Environment Morgan Clark.
  - B. Approval of a Contract Agreement in the Amount of \$240,000 for Engineering Services Associated with Phase III Reconstruction of Commercial Street – DPW Director Richard Waldo.
  - C. Police Report for the Month of January 2016 – Police Chief Jim Golden.
  - D. Review and Discussion of Existing Noise Bylaw.
  - E. Approval by the Board of Selectmen to Insert a Ballot Question on the May 3, 2016, Annual Town Election Ballot Regarding a Petition to Elect A Charter Commission to Revise the Charter of Provincetown – Town Clerk Doug Johnstone for the Provincetown Board of Registrars.
7. Town Manager / Assistant Town Manager - Votes may be taken on the following items:
  - A. Town Manager's Report – Administrative Updates.
    - i. Legislative Request for Clarification of the Definition of the Rental Housing Trust.
  - B. Discussion of Potential Town Meeting Articles.

- C. Other – Other matters that may legally come before the board not reasonably anticipated by the Chair 48 hours before the meeting. Votes may be taken.
- 8. Minutes – Approve minutes of previous meetings. Votes may be taken.
- 9. Closing Statements/Administrative Updates - Closing comments from the Selectmen. Discussion dependent; motions may be made; votes may be taken.

**Motion by the Board of Selectmen to vote to go into Executive Session pursuant to MGL c30A, Section 21(a), Clause 6 for the purpose of:**

**Clause 6** - To consider the purchase of, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body. Old Community Center (46 Bradford Street) & Winslow Farms (44-48 Winslow). Votes may be taken.

**Clause 6** - To consider the purchase of, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body. (Airport Lease). Votes may be taken.

Posted: [www.provincetown-ma.gov](http://www.provincetown-ma.gov) 2/18/16 4:15 pm dj



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

00

## CONSENT AGENDA

Approval required for the following items:

Requested by: BOS Chair Tom Donegan

Action Sought: Approval

### Proposed Motion(s)

**MOVE that the Board of Selectmen vote to approve items listed on the consent agenda as submitted.**

*Consent Agenda – Approval without objection required for the following items:*

- A. *Treasurer's Transfer – History Project Gift Fund – to pay invoice from GovConnection, Inc. for Large Bed Scanner, in the amount of \$2,425.00.*
- B. *Treasurer's Transfer – Library Gift Fund – pay invoices from Sir Speedy (\$545.02) and Matt Clark (\$19.83) totaling \$564.85.*
- C. *Treasurer's Transfer – Holiday Lights Gift Fund – to pay invoices from All In One Design (\$1,400) and Dunes 102 FM (\$500) totaling \$1,900.00.*

### Additional Information

*See attached documents.*

### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

00A

## TREASURER'S TRANSFERS

### History Project Gift Fund

Requested by: Treasurer Constance Boulos, 02/10/16

Action Sought: **Approval**

#### Proposed Motion(s)

**Move that the Board of Selectmen vote, as Commissioners of the Town of Provincetown Gift Funds, pursuant to MGL C44 § 53A, to approve the use of \$2,425.00 from the History Project Gift Fund to pay for the attached invoice(s).**

#### Additional Information

Attached are the authorized Voucher(s) to Pay this request totaling **\$2,425.00** from the History Project Gift Fund leaving a balance of **\$2,373.82**.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



# TOWN OF PROVINCETOWN

## REQUEST FOR TRANSFER OF FUNDS

Date: February 22, 2016  
To: Constance Boulos, Treasurer  
From: Board of Selectmen

As Commissioners of the Town of Provincetown Gift Funds, permission is hereby granted to you, the Treasurer of the Town of Provincetown, to approve the use of **\$2,425.00** from the History Project Gift Fund for the payment of the attached invoice(s):

\$ <u>2,425.00</u>	GovConnection.Inc 01/27/2016 - #53449428
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\$ 2,425.00	<b>TOTAL</b>
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The Honorable Board of Selectmen:

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Thomas N. Donegan, Chair

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Erik Yingling, Vice Chair

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Cheryl Andrews, Selectman

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Raphael Richter, Selectman

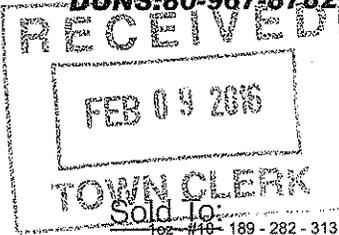
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Robert Anthony, Selectman



**GovConnection, Inc.**  
**7503 Standish Place**  
**Rockville MD 20855**

**DUNS:80-967-8782**



**REMIT TO ADDRESS:**  
**GOVCONNECTION, INC.**  
**PO Box 536477**  
**PITTSBURGH PA 15253-5906**

PLEASE ENCLOSE ATTACHED REMITTANCE  
 RECEIPT WITH YOUR PAYMENT.

Federal ID No.	Invoice No.	Invoice Date
52-1837891	53449428	01/27/2016

Company retains a purchase money security interest in  
 equipment until payment is made in full.

**Shipped To:**

**TOWN OF PROVINCETOWN**  
**260 COMMERCIAL ST**  
**TOWN HALL A/P**  
**PROVINCETOWN MA 02657**

**TOWN OF PROVINCETOWN**  
**TOWN HALL A/P**  
**260 COMMERCIAL ST**  
**PROVINCETOWN MA 02657-2213**



Corp. Sales (800)800-0019

Credit Dept (888)294-0268

Cust. Serv. (800)800-0019

Date of Order	Order No.	Customer Purchase Order No.	Account No.	Terms	Date Shipped	Shipped Via
01/27/2016	51356156	TC-01272016-01	287666	Net 30	01/27/2016	SMALL PKG
Quantity			Item No.	Description	Unit Price	Extension
Ordered	Back Ordered	Shipped				
1		1	15384588 15384588	Expression 11000XL Graphic Art Ser.#SQH0006899 Mfg# E11000XL-GA	2,425.0000	\$2,425.00
<p align="center">~~~~~PLEASE NOTE EFT INSTRUCTIONS~~~~~</p> <p>For electronic funds transfers, please remit to Citizens Bank:            - ACH Payments: ABA # 2110-70175, Account # 1310873272            - WIRE Payments: ABA # 0115-00120, Account # 1310873272            Please include invoice number(s) in the transmitted information.</p> <p>"We provide more timely and accurate information to the business community by            sharing our accounts receivable information with credit bureaus."</p>						

Backordered items will be shipped and  
 invoiced to you as soon as they are available.

Merchandise	Sales Tax	Shipping/Packaging
\$2,425.00		

Page 1 of 1



Invoice Total
<b>\$2,425.00</b>

Ordered by: **BEAU JACKETT**

Order No.	Company	Account No.	Invoice No.	Invoice Total
51356156	00005	287666	53449428	\$2,425.00

**GOVCONNECTION, INC.**  
**PO Box 536477**  
**PITTSBURGH PA 15253-5906**

PLEASE ENCLOSE THIS REMITTANCE  
 RECEIPT WITH YOUR PAYMENT.

00005 287666 534494280000242500



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

00B

## TREASURER'S TRANSFERS

### Library Gift Fund

Requested by: Treasurer Constance Boulos, 02/16/16

Action Sought: **Approval**

#### Proposed Motion(s)

**Move that the Board of Selectmen vote, as Commissioners of the Town of Provincetown Gift Funds, pursuant to MGL C44 § 53A, to approve the use of \$564.85 from the Library Gift Fund to pay for the attached invoice(s).**

#### Additional Information

Attached are the authorized Voucher(s) to pay this request totaling **\$564.85** from the Library Gift Fund, leaving a balance of **\$65,986.42**.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



# TOWN OF PROVINCETOWN

## REQUEST FOR TRANSFER OF FUNDS

Date: February 22, 2016  
To: Constance Boulos, Treasurer  
From: Board of Selectmen

As Commissioners of the Town of Provincetown Gift Funds, permission is hereby granted to you, the Treasurer of the Town of Provincetown, to approve the use of **\$564.85** from the Library Gift Fund for the payment of the attached invoice(s):

<u>\$ 545.02</u>	Sir Speedy 12/29/15; Invoice #65480
<u>\$ 19.83</u>	Matt Clark Reimbursement Stop & Shop, 01/19/16
<b>\$ 564.85</b>	<b>TOTAL</b>

The Honorable Board of Selectmen:

\_\_\_\_\_  
Thomas N. Donegan, Chair

\_\_\_\_\_  
Erik Yingling, Vice Chair

\_\_\_\_\_  
Cheryl Andrews, Selectman

\_\_\_\_\_  
Raphael Richter, Selectman

\_\_\_\_\_  
Robert Anthony, Selectman



**Board of Library Trustees  
Minutes of Public Meeting January 27, 2016**

**Provincetown Public Library**

**Members Present:** James Johnson, Stephen Desroches, Laura Shabott and Steve Borkowski.

**Members Absent:** None.

**Others Present:** Matt Clark (Library Director), Ellen C. Battaglini (Recording Secretary), Grace Ryder-O'Malley (Friends and Supporters of the Provincetown Public Library).

**Call to Order:** Mr. Johnson called the meeting to order at 6:03 P.M.

1. **Public Statements:** Grace Ryder-O'Malley reported that the Friends are excited about the Moby-Dick Marathon Reading event and want to support it by donating non-alcoholic beverages. They have agreed to continue to support outreach to the elder population in Town through the Council on Aging and Seashore Point, by expanding such services as assisted trips to the Library or delivery of books to seniors who are homebound. They have discussed writing a public letter, possibly for publication in the Banner, to clarify the proceeds from "Dead Silence" if the Board so requests.

2. **Agenda Order:** Mr. Johnson stated that the agenda would be followed in the order published.

3. **Approval of Minutes:** *Mr. Desroches made a motion to approve the November 18, 2015 minutes as written. Laura Shabott seconded the motion, and it was so voted, 3-0-1 (Steve Borkowski abstaining).*

4. **Director's Report:** Mr. Clark reviewed the highlights of the Report:

- Basch Subscriptions, Inc. will be managing the Library's periodicals from now on and the agreement was finalized on January 11<sup>th</sup>. The Library will be able to get more, higher quality magazines and pay \$500 less than what EBSCO, the previous vendor, charged;

- Brittany Taylor and Jennifer Moller were interviewed for the Library Tech and Member Services position on Monday, January 25<sup>th</sup>. Mr. Desroches was present at the interviews. A recommendation to the Town Manager will be made by the end of the week;

- Between November 18<sup>th</sup> and January 12<sup>th</sup>, \$4,065.32 has been collected and deposited into the Library Gift Fund. An additional \$258 has been deposited since January 12<sup>th</sup>;

- The Library's proposed FY17 budget was approved by the Board of Selectmen on January 12<sup>th</sup>;

- Nan Cinnater has been working on the Library catalog, subsequent to the MBLC course that she and Mr. Clark attended. 297 outdated items were removed in December of 2015; and

- As of January 13<sup>th</sup>, the Library Annual Appeal has received \$2000 in checks, \$50 in credit card payments and \$25 in matching gifts. An additional \$500 has been received since then. A gift of \$5500 in Time Warner Cable stock has also been received. Mr. Clark will speak with Town Treasurer Connie Boulos about liquidating the stock. The Board briefly discussed into which Library fund to deposit the money.

Mr. Clark pointed out some of the more popular events on the Programming Report:

- Tai Chi by the Ship continued to attract participants in December and January;
- The Writer's Voice Café has also continued to draw strong numbers; and
- The O'Neill 100, which started last week, drew 28 individuals on its first night;

Mr. Clark said that the schedule for February was robust, with 35 programs planned, including outreach events at the COA, Seashore Point and the School, the start of the Americorps Winter Speaker Series and the Writer's Voice Café Workshop Series, the March edition of which will be led by Allison Davies, a fellow at the Fine Arts Work Center. 100 individuals attended the January Family Night at the School.

Mr. Johnson noted that Tony Brackett sent a letter to Town Manager David Panagore congratulating Mr. Clark for the Library's programming efforts at the School. Mr. Johnson said that the Board appreciated his initiative in this regard.

The Board briefly discussed the Annual Appeal numbers and how to increase opportunities for the public to contribute to the Library. Ideas included promoting and offering individual sponsorships of subscriptions. Also discussed was the importance of donor follow-up, such as sending a postcard listing Library programs and accomplishments, intermittently during the year. A suggestion was made to solicit contributions and hold fundraisers during the summer months when more people are in Town.

Mr. Johnson inquired about book orders financed by the Flores Fund. Mr. Clark said that Ms. Cinnater would be ordering about 3,000 books from Ingram per month from January through March. He will return to the Board to authorize the purchases. Mr. Johnson added that each book purchased was required to have a bookplate identifying the Flores Fund.

Mr. Johnson informed the Board that the Library was left a bequest by Andrew Aull, a former Library volunteer, of close to \$100,000. He has been in touch with a local attorney handling the estate who informed him that an out of town firm would be taking over. The Board discussed how to distribute the funds and how to publicize the gift, possibly in the context of a larger Library donor recognition statement. Mr. Johnson will call the local attorney who handled the estate for an update.

5. **Appointment of New Trustee:** Mr. Johnson said that Mr. Borkowski is the new Trustee taking over for Bruce de Ste. Croix. He was confirmed by the BOS on Monday and sworn in on Tuesday of this week. He noted that there was still a vacant seat on the

Board. The Board discussed whether to temporarily appoint a Trustee or wait until the election in May. The Board decided to continue to conduct business with four Board members until the May election.

6. **Strategic Plan Review:** Ms. Shabott reviewed the third draft of the Library's proposed strategic plan. She noted the goals for the Building in Year One. Mr. Clark said that the Board could send comments and suggestions to him and he will update the plan. Ms. Shabott wanted to add to the plan a survey of Library patrons that is done twice a year, once in January and once in July. Mr. Clark said that it was in the proposed Year Two section, but he would move it to Year One. He would like a vote of the Board next month to ratify the plan. Mr. Johnson encouraged Board members to submit comments to Mr. Clark right up until the week of the next meeting when the revised plan will be reviewed.

7. **Library Online Store Proposal and Review:** Mr. Clark reviewed the proposal. The store had a soft launch on December 15<sup>th</sup>. It was linked to a Provincetown checking account. Money is deposited into the account by the Square store and cannot be withdrawn without approval by both the Treasurer and Finance Director. There are no vendor, membership, inactivity or refund fees. No money is paid if no sales are made. The processing fee is 2.75% of each sale. The site provides real time inventory tracking. Mr. Clark and Ms. Taylor took pictures of the merchandise. He said a shipping fee would still need to be set and, based upon his experience, he recommended a \$10 flat fee. The Board agreed to the recommendation. Mr. Borkowski recommended including in the store the remaining copies of The Wild West of the East by Norman Mailer, and the Edward Hopper postcard images that the Library has been selling. He also mentioned a website called Zazzle that has, amongst other products, copyright-free images, including whales, which could have product potential for the Moby-Dick Marathon. Mr. Clark will email the Board the whale image suggested by Mr. Borkowski.

*Mr. Borkowski made a motion to approve the launch of the Library's online store, Ms. Shabott seconded and it was so voted, 4-0.*

8. **Moby-Dick Marathon Update:** Mr. Clark reviewed topics related to the Moby-Dick Marathon Reading:

- There are 72 registered readers to date, including Library Trustees and staff, however based upon input from Philip Hoare and Dennis Minsky, he has decided to increase that number. Each reader would read 5 pages, in which case a total of 116 readers would be needed;

- The artwork by Justine Ives has arrived on January 14<sup>th</sup>;

- Performance components will be inserted into the Marathon to break up the monotony of the reading and Mr. Clark will meet with the Provincetown Theater to discuss ideas on February 2<sup>nd</sup>;

- Stuard Derrick will organize a group-reading segment with 5 or 6 people;

- He will be meeting with Berta Walker regarding an opening reception at her gallery and a Moby-Dick-themed exhibit. 25% of the sales from the exhibit will be donated to the Library; and

- Cape Air will feature the event in Bird's Eye View magazine, which is available on all of their airplanes, and a photo shoot for the article is scheduled for February 3<sup>rd</sup>. In addition, Cape Air is donating a minimum of \$500 to the event.

Mr. Clark reviewed the existing event expenses and asked the Board what expenses it would agree to incur, as he would like to investigate those expenses and report back to the Board at its next meeting. He reviewed some potential expenses, such as merchandising, banners for display inside and outside the Library, print material, the purchase of a backdrop of Ms. Ives' artwork to place behind readers and food and drink options. The Board discussed the expenses. Mr. Clark will get a price on the expenses he had listed on the handout. The Board decided it was not necessary to serve alcoholic beverages. Mr. Desroches suggested a projection of an image of some sort on the Library building the night of the reading or for the entire weekend. Mr. Clark will look into the idea. He noted the attachment of two forms to the event handout for the Board's solicitation of sponsors for the event. The Board discussed ideas for the Moby-Dick Marathon logo. Ms. Shabott volunteered to be the Board's liaison for the Berta Walker Gallery event.

**9. 2016 Event Scheduling and Planning (Heritage Day, Rose Dorothea Award Ceremony):** Mr. Clark asked the Board for suggested dates for Heritage Day in June. Wednesday, June 15<sup>th</sup> was mentioned. Mr. Borkowski proposed a theme related to the celebration of the summer of 1916 in Provincetown, a period written about by the painter Marsden Hartley in a short literary piece entitled, "The Great Provincetown Summer". The essay appeared as part of his autobiography and described a summer when there was a confluence of theater, art and literary activity in Provincetown that mirrored similar intellectual and creative activity in Europe at that time. He added that the Pilgrim Monument would be mounting a show celebrating the summer of 1916 and he suggested a tie-in with Heritage Day. The Board discussed the idea. Mr. Clark will check the date for conflicts with Tony Fuccillo of the Tourism Office. Mr. Borkowski will give Mr. Clark the names of potential speakers for the event.

The Board discussed a date and a recipient for the Rose Dorothea Award. Mr. Clark will check the dates of September 10, 17 and 24 with Mr. Fuccillo. The Board briefly discussed potential recipients. Board members were encouraged to think about suggestions for the next meeting.

**10. Payment of Sir Speedy Invoice:** Mr. Clark said that there was an outstanding invoice from Sir Speedy for \$545.02.

*Ms. Shabott made a motion to approve the payment of \$545.02 to Sir Speedy, Mr. Desroches seconded and it was so voted, 4-0.*

**11. Other Business:** Mr. Clark said that he spent \$19.83 for food for Stuard Derrick's event.

*Ms. Shabott made a motion to approve the reimbursement of \$19.83 to Mr. Clark for food for Stuard Derrick's event, Mr. Desroches seconded and it was so voted, 4-0.*

Mr. Clark mentioned that Frontiers Media magazine had rated the Library as the third coolest in the world.

Mr. Clark is looking for a Trustee to sit in on interviews for one circulation employee for 16 hours per week and one on-call circulation employee. Mr. Borkowski volunteered.

Ms. Shabott called attention to the handout regarding the donation of books to the College of Fine Arts at the University of Baghdad, which lost its collection to fire by looters in the 2003 bombing of Baghdad.

*Mr. Borkowski made a motion to donate books to the College of Fine Arts at the University of Baghdad, at Mr. Clark's discretion, with a maximum cash expenditure of \$50 if necessary to purchase a new book in addition to what will be sent from the Library's cart, Mr. Desroches seconded and it was so voted, 4-0.*

The next meeting will be on Wednesday, February 17, 2016.

**Motion to Adjourn:** Ms. Shabott made a motion to adjourn the meeting at 7:45 P.M.

Respectfully submitted,

Ellen C. Battaglini

Sir Speedy #81650  
 180 Rte 6A \* Hilltop Plaza  
 Orleans MA 02653  
 (508) 240-0882 Fax: (508) 240-0884

**Matt Clark**  
**Provincetown Library**  
**356 Commercial Street**  
**Provincetown MA 02657-2322**

Invoice	
<b>No: 65480</b>	<b>Date: 12/29/15</b>

SHIP TO:  
 < Same as Bill To >  
 Pickup

Acct.No	Ordered by	Phone	P.O. No	Prepared by	Sales Rep	Ship By
3238	Matt Clark	508.816.6373		Tom		Pickup
Quantity	Description					Price
325	<b>2015 Year in Review Letter (4/0) 1 Original</b> Offset: 60# Williamsburg white 11 x 8.5 White (1 Original) Front: Color 8.5x11, 80-105gsm Cut: to fin sz (1 Cuts/Sheet) Fold: Auto Letter fold-head OUT					101.88
320	<b>#10 regular envelope (1/0) 1 Original</b> Plate: Digital plate Env: Business: 24#Reg # 10 White (1 Original) Front: Black Press: One color press					60.42
320	<b># 6.75 reg envelope (1/0) 1 Original</b> Plate: Digital plate Env: Business: 24#Reg # 6 3/4 White (1 Original) Front: Black Press: One color press					59.05
311	<b>Mailing Services 1 Original</b> ByEach: Mail: 1.list conversion ByEach: Mail: 2b.Move Update cert. ByEach: Mail: 3a.Zip+4 encoding ByEach: Mail: 4a.automation sort ByEach: Mail: 5a2.imprint label & indicia on #10 envelope ByEach: Mail: 6c.insert 3 pieces ByEach: Mail: 7a.USPS report(s) prep ByEach: Mail: 8.delivery to PO ByEach: Mail: 9a. nfp use of mail permit					233.80

continued...

Sir Speedy #81650  
 180 Rte 6A \* Hilltop Plaza  
 Orleans MA 02653  
 (508) 240-0882 Fax: (508) 240-0884

**Matt Clark**  
**Provincetown Library**  
**356 Commercial Street**  
**Provincetown MA 02657-2322**

Invoice	
<b>No: 65480</b>	<b>Date: 12/29/15</b>

SHIP TO: Page 2  
 < Same as Bill To >  
 Pickup

Acct.No	Ordered by	Phone	P.O. No	Prepared by	Sales Rep	Ship By	
3238	Matt Clark	508.816.6373		Tom		Pickup	
Quantity	Description					Price	
	ByEach: Mail: 9c.seal	...continued					
					Subtotal	455.15	
					Shipping	0.00	
					Postage	89.87	
					Tax	0.00	
					<b>TOTAL</b>	<b>545.02</b>	
					Paid	0.00	
					<b>BALANCE</b>	<b>545.02</b>	
Received by _____ Date _____					Terms	Net 10 Days	

**We accept Visa, MC, Discover, Amex**

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**Board of Library Trustees**  
**Minutes of Public Meeting January 27, 2016**

**Provincetown Public Library**

**Members Present:** James Johnson, Stephen Desroches, Laura Shabott and Steve Borkowski.

**Members Absent:** None.

**Others Present:** Matt Clark (Library Director), Ellen C. Battaglini (Recording Secretary), Grace Ryder-O'Malley (Friends and Supporters of the Provincetown Public Library).

**Call to Order:** Mr. Johnson called the meeting to order at 6:03 P.M.

1. **Public Statements:** Grace Ryder-O'Malley reported that the Friends are excited about the Moby-Dick Marathon Reading event and want to support it by donating non-alcoholic beverages. They have agreed to continue to support outreach to the elder population in Town through the Council on Aging and Seashore Point, by expanding such services as assisted trips to the Library or delivery of books to seniors who are homebound. They have discussed writing a public letter, possibly for publication in the Banner, to clarify the proceeds from "Dead Silence" if the Board so requests.

2. **Agenda Order:** Mr. Johnson stated that the agenda would be followed in the order published.

3. **Approval of Minutes:** *Mr. Desroches made a motion to approve the November 18, 2015 minutes as written. Laura Shabott seconded the motion, and it was so voted, 3-0-1 (Steve Borkowski abstaining).*

4. **Director's Report:** Mr. Clark reviewed the highlights of the Report:

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- Nan Cinnater has been working on the Library catalog, subsequent to the MBLC course that she and Mr. Clark attended. 297 outdated items were removed in December of 2015; and

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Mr. Johnson inquired about book orders financed by the Flores Fund. Mr. Clark said that Ms. Cinnater would be ordering about 3,000 books from Ingram per month from January through March. He will return to the Board to authorize the purchases. Mr. Johnson added that each book purchased was required to have a bookplate identifying the Flores Fund.

Mr. Johnson informed the Board that the Library was left a bequest by Andrew Aull, a former Library volunteer, of close to \$100,000. He has been in touch with a local attorney handling the estate who informed him that an out of town firm would be taking over. The Board discussed how to distribute the funds and how to publicize the gift, possibly in the context of a larger Library donor recognition statement. Mr. Johnson will call the local attorney who handled the estate for an update.

5. **Appointment of New Trustee:** Mr. Johnson said that Mr. Borkowski is the new Trustee taking over for Bruce de Ste. Croix. He was confirmed by the BOS on Monday and sworn in on Tuesday of this week. He noted that there was still a vacant seat on the

Board. The Board discussed whether to temporarily appoint a Trustee or wait until the election in May. The Board decided to continue to conduct business with four Board members until the May election.

6. **Strategic Plan Review:** Ms. Shabott reviewed the third draft of the Library's proposed strategic plan. She noted the goals for the Building in Year One. Mr. Clark said that the Board could send comments and suggestions to him and he will update the plan. Ms. Shabott wanted to add to the plan a survey of Library patrons that is done twice a year, once in January and once in July. Mr. Clark said that it was in the proposed Year Two section, but he would move it to Year One. He would like a vote of the Board next month to ratify the plan. Mr. Johnson encouraged Board members to submit comments to Mr. Clark right up until the week of the next meeting when the revised plan will be reviewed.

7. **Library Online Store Proposal and Review:** Mr. Clark reviewed the proposal. The store had a soft launch on December 15<sup>th</sup>. It was linked to a Provincetown checking account. Money is deposited into the account by the Square store and cannot be withdrawn without approval by both the Treasurer and Finance Director. There are no vendor, membership, inactivity or refund fees. No money is paid if no sales are made. The processing fee is 2.75% of each sale. The site provides real time inventory tracking. Mr. Clark and Ms. Taylor took pictures of the merchandise. He said a shipping fee would still need to be set and, based upon his experience, he recommended a \$10 flat fee. The Board agreed to the recommendation. Mr. Borkowski recommended including in the store the remaining copies of The Wild West of the East by Norman Mailer, and the Edward Hopper postcard images that the Library has been selling. He also mentioned a website called Zazzle that has, amongst other products, copyright-free images, including whales, which could have product potential for the Moby-Dick Marathon. Mr. Clark will email the Board the whale image suggested by Mr. Borkowski.

*Mr. Borkowski made a motion to approve the launch of the Library's online store, Ms. Shabott seconded and it was so voted, 4-0.*

8. **Moby-Dick Marathon Update:** Mr. Clark reviewed topics related to the Moby-Dick Marathon Reading:

- There are 72 registered readers to date, including Library Trustees and staff, however based upon input from Philip Hoare and Dennis Minsky, he has decided to increase that number. Each reader would read 5 pages, in which case a total of 116 readers would be needed;
- The artwork by Justine Ives has arrived on January 14<sup>th</sup>;
- Performance components will be inserted into the Marathon to break up the monotony of the reading and Mr. Clark will meet with the Provincetown Theater to discuss ideas on February 2<sup>nd</sup>;
- Stuard Derrick will organize a group-reading segment with 5 or 6 people;
- He will be meeting with Berta Walker regarding an opening reception at her gallery and a Moby-Dick-themed exhibit. 25% of the sales from the exhibit will be donated to the Library; and

- Cape Air will feature the event in Bird's Eye View magazine, which is available on all of their airplanes, and a photo shoot for the article is scheduled for February 3<sup>rd</sup>. In addition, Cape Air is donating a minimum of \$500 to the event.

Mr. Clark reviewed the existing event expenses and asked the Board what expenses it would agree to incur, as he would like to investigate those expenses and report back to the Board at its next meeting. He reviewed some potential expenses, such as merchandising, banners for display inside and outside the Library, print material, the purchase of a backdrop of Ms. Ives' artwork to place behind readers and food and drink options. The Board discussed the expenses. Mr. Clark will get a price on the expenses he had listed on the handout. The Board decided it was not necessary to serve alcoholic beverages. Mr. Desroches suggested a projection of an image of some sort on the Library building the night of the reading or for the entire weekend. Mr. Clark will look into the idea. He noted the attachment of two forms to the event handout for the Board's solicitation of sponsors for the event. The Board discussed ideas for the Moby-Dick Marathon logo. Ms. Shabott volunteered to be the Board's liaison for the Berta Walker Gallery event.

**9. 2016 Event Scheduling and Planning (Heritage Day, Rose Dorothea Award Ceremony):** Mr. Clark asked the Board for suggested dates for Heritage Day in June. Wednesday, June 15<sup>th</sup> was mentioned. Mr. Borkowski proposed a theme related to the celebration of the summer of 1916 in Provincetown, a period written about by the painter Marsden Hartley in a short literary piece entitled, "The Great Provincetown Summer". The essay appeared as part of his autobiography and described a summer when there was a confluence of theater, art and literary activity in Provincetown that mirrored similar intellectual and creative activity in Europe at that time. He added that the Pilgrim Monument would be mounting a show celebrating the summer of 1916 and he suggested a tie-in with Heritage Day. The Board discussed the idea. Mr. Clark will check the date for conflicts with Tony Fuccillo of the Tourism Office. Mr. Borkowski will give Mr. Clark the names of potential speakers for the event.

The Board discussed a date and a recipient for the Rose Dorothea Award. Mr. Clark will check the dates of September 10, 17 and 24 with Mr. Fuccillo. The Board briefly discussed potential recipients. Board members were encouraged to think about suggestions for the next meeting.

**10. Payment of Sir Speedy Invoice:** Mr. Clark said that there was an outstanding invoice from Sir Speedy for \$545.02.

*Ms. Shabott made a motion to approve the payment of \$545.02 to Sir Speedy, Mr. Desroches seconded and it was so voted, 4-0.*

**11. Other Business:** Mr. Clark said that he spent \$19.83 for food for Stuard Derrick's event.

*Ms. Shabott made a motion to approve the reimbursement of \$19.83 to Mr. Clark for food for Stuard Derrick's event, Mr. Desroches seconded and it was so voted, 4-0.*

Mr. Clark mentioned that Frontiers Media magazine had rated the Library as the third coolest in the world.

Mr. Clark is looking for a Trustee to sit in on interviews for one circulation employee for 16 hours per week and one on-call circulation employee. Mr. Borkowski volunteered.

Ms. Shabott called attention to the handout regarding the donation of books to the College of Fine Arts at the University of Baghdad, which lost its collection to fire by looters in the 2003 bombing of Baghdad.

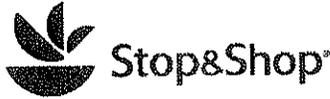
*Mr. Borkowski made a motion to donate books to the College of Fine Arts at the University of Baghdad, at Mr. Clark's discretion, with a maximum cash expenditure of \$50 if necessary to purchase a new book in addition to what will be sent from the Library's cart, Mr. Desroches seconded and it was so voted, 4-0.*

The next meeting will be on Wednesday, February 17, 2016.

**Motion to Adjourn:** Ms. Shabott made a motion to adjourn the meeting at 7:45 P.M.

Respectfully submitted,

Ellen C. Battaglini



56 SHANK PAINTER ROAD  
PROVINCETOWN, MA 02657

Store Telephone: (508) 487-4903  
Pharmacy Telephone: (508) 487-3738

Store #2403 01/19/16 04:45pm

GROCERY

	CD GINGER ALE 2L	1.99 F
DP	BTL/CAN DEPOSIT	0.05 F
	COCA COLA 2LTR	1.99 F
DP	BTL/CAN DEPOSIT	0.05 F
	PLR VNL SLTZ33.8	1.09 F
DP	BTL/CAN DEPOSIT	0.05 F
	PLR MAND SLTZ 1L	1.09 F
DP	BTL/CAN DEPOSIT	0.05 F
	SAN PELLEGRINO	1.79 F
DP	BTL/CAN DEPOSIT	0.05 F
	SAN PELLEGRINO	1.79 F
DP	BTL/CAN DEPOSIT	0.05 F
	NAB TRSCTS BLKPP	3.49 F
DP	BONUS BUY SAVINGS	0.49-F
	PRICE YOU PAY	3.00
	DESTROP BTR CRSP	3.79 F
	LU ECOLIER X DRK	3.29 F
	BONUS BUY SAVINGS	0.29-F
	PRICE YOU PAY	3.00

Total Before Savings	20.61
Your Savings	0.78
Total After Savings	19.83
TAX	0.00
**** BALANCE	19.83

\*\*\*\*\*  
Payment Type: DEBIT CARD 00  
Card \*\*\*\*\*3022  
Payment Amt: \$19.83  
Cashback Amt: \$0.00  
BALANCE: \$  
AUTH# 814888 01/19/16 04:46pm  
\*\*\*\*\*

DEBIT CARD	19.83
CHANGE	0.00

\*\*\*\*\* SAVINGS SUMMARY \*\*\*\*\*  
Card Savings: 0.78  
Your Total Savings: 0.78



56 SHANK PAINTER ROAD  
PROVINCETOWN, MA 02657

Store Telephone: (508) 487-4903  
Pharmacy Telephone: (508) 487-3738

Store #2403 01/19/16 04:45pm

GROCERY

	CD GINGER ALE 2L	1.99 F
DP	BTL/CAN DEPOSIT	0.05 F
	COCA COLA 2LTR	1.99 F
DP	BTL/CAN DEPOSIT	0.05 F
	PLR VNL SLTZ33.8	1.09 F
DP	BTL/CAN DEPOSIT	0.05 F
	PLR MAND SLTZ 1L	1.09 F
DP	BTL/CAN DEPOSIT	0.05 F
	SAN PELLEGRINO	1.79 F
DP	BTL/CAN DEPOSIT	0.05 F
	SAN PELLEGRINO	1.79 F
DP	BTL/CAN DEPOSIT	0.05 F
	NAB TRSCTS BLKPP	3.49 F
DP	BONUS BUY SAVINGS	0.49-F
	PRICE YOU PAY	3.00
	DESTROP BTR CRSP	3.79 F
	LU ECOLIER X DRK	3.29 F
	BONUS BUY SAVINGS	0.29-F
	PRICE YOU PAY	3.00

Total Before Savings	20.61
Your Savings	0.78
Total After Savings	19.83
TAX	0.00
**** BALANCE	19.83

\*\*\*\*\*  
Payment Type: DEBIT CARD 00  
Card \*\*\*\*\*3022  
Payment Amt: \$19.83  
Cashback Amt: \$0.00  
BALANCE: \$  
AUTH# 814888 01/19/16 04:46pm  
\*\*\*\*\*

DEBIT CARD	19.83
CHANGE	0.00

\*\*\*\*\* SAVINGS SUMMARY \*\*\*\*\*  
Card Savings: 0.78  
Your Total Savings: 0.78



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

00C

## TREASURER'S TRANSFERS

### Holiday Lights Gift Fund

Requested by: Treasurer Constance Boulos, 02/16/2016

Action Sought: **Approval**

#### Proposed Motion(s)

**Move that the Board of Selectmen vote, as Commissioners of the Town of Provincetown Gift Funds, pursuant to MGL C44 § 53A, to approve the use of \$1,900.00 from the Holiday Lights Gift Fund to pay for the attached invoice(s).**

#### Additional Information

Attached are the authorized Voucher(s) to Pay this request totaling **\$1,900.00** from the Holiday Lights Gift Fund leaving a balance of **\$50.70**.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



# TOWN OF PROVINCETOWN

## REQUEST FOR TRANSFER OF FUNDS

Date: February 22, 2016  
To: Constance Boulos, Treasurer  
From: Board of Selectmen

As Commissioners of the Town of Provincetown Gift Funds, permission is hereby granted to you, the Treasurer of the Town of Provincetown, to approve the use of **\$1,900.00** from the Holiday Lights Gift Fund for the payment of the attached invoice(s):

<u>\$ 1,400.00</u>	All In One Design Invoice #69, 12/30/15
<u>\$ 500.00</u>	Dunes102 FM LLC Invoice #2443, 01/31/2016
<b>\$ 1,900.00</b>	<b>TOTAL</b>

The Honorable Board of Selectmen:

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Thomas N. Donegan, Chair

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Erik Yingling, Vice Chair

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Cheryl Andrews, Selectman

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Raphael Richter, Selectman

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Robert Anthony, Selectman



# Invoice

All In One Design  
 19 Abbott Road  
 North Reading, MA 01864

Date	Invoice #
12/30/2015	69

Bill To

Proviencetown Town Hall  
 First Light Lighting

P.O. Number	Order Date	Due Date	Ship	Via	Terms
		12/30/2015	12/30/2015		
Quantity	Item Code	Description	Price Each	Amount	
1	Lighting	Lighting rentals( 2 likos for Patterns of Snowflakes) 4 Color Washes Setup and run lighting from December 30, 2015 to January 3, 2016	900.00	900.00	
1	Labor		500.00	500.00	

617-947-6972	Kris.Talarico@Gmail.com
<b>Thank You For Your Business</b>	

<b>Total</b>	\$1,400.00
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Please make checks payable to All in One Design

<b>Customer Total Balance Due</b>	\$1,400.00
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**102.3 The Dunes**  
 WGTX-FM  
 PO Box 508  
 Provincetown MA 02657

# Invoice

Date	Invoice #
1/31/2016	2443

Bill To

Provincetown Tourism Office  
 Anthony Fucillo  
 330 Commercial St  
 Provincetown MA 02657

			Terms
			Due on receipt
Quantity	Description	Rate	Amount
	January Advertising	500.00	500.00
		<b>Total</b>	\$500.00
		<b>Payments/Credits</b>	\$0.00
		<b>Balance Due</b>	\$500.00



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

1

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## PUBLIC HEARING

Requested by: Board of Selectmen

Action Sought: Public Hearing/Discussion

Proposed Motion(s)

None

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

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## PUBLIC STATEMENTS

Requested by: Board of Selectmen

Action Sought: Open

Proposed Motion(s)

Three (3) minutes maximum. Selectmen do not respond during Public Statements.

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**

Monday, February 22, 2016

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## SELECTMEN'S STATEMENTS

Requested by: Town Manager David Panagore

Action Sought: Discussion

### Proposed Motion(s)

*Motions may be made and votes may be taken.*

**Cheryl Andrews**

**Robert Anthony**

**Raphael Richter**

**Tom Donegan**

### Additional Information

### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**

Monday, February 22, 2016

4

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## JOINT MEETING

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

**None.**

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

5

## BOARD OF SELECTMEN APPOINTMENT

Requested by: Town Clerk Doug Johnstone

Action Sought: **Approval**

Proposed Motion(s)

**None.**

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

6A

## BOARD OF HEALTH FEE CHANGE APPROVAL

### Approve Changes to Board of Health Fees

Requested by: Board of Health

Action Sought: Approval

#### Proposed Motion(s)

**MOVE that the Board of Selectmen vote to approve changes to Board of Health fees Part VIII, Art. 1 – Fee Schedule, as presented.**

#### Additional Information

See attached documentation.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>

PART VIII

ARTICLE 1 – Fee Schedule

Revised: March 6, 2003, Effective: July 17, 2003

Revised: December 16, 2004

Revised: January 19, 2006

Revised: June 18, 2015, Effective July 23, 2015

DISPOSAL SYSTEM-RELATED FEES	
Test Hole Witness Fee	\$150.00
Disposal System Construction Permit (new construction)	\$300.00
Disposal System Construction Permit (upgrade/repair)	\$250.00
<b>Disposal System Construction Permit (abandonment)</b>	<b>No Fee</b>
Title 5 Variance Filing Fee	\$200.00
Title 5 Official Inspection Form Review Fee – Per Parcel	\$50.00
Septic System Installation Re-Inspection Fee	\$25.00
LICENSES, PERMITS, AND CERTIFICATES	
Septic System Installer License	\$225.00
Septage Hauler License	\$275.00
Septic System Inspector License	\$225.00
Sewer Connector License	\$225.00
Commercial Refuse Hauler License	\$275.00
Camps, Cabins & Motel License	\$55.00
Swimming Pool or Spa /Hot Tub Permit	\$205.00
Tobacco Sales Permit	\$200.00
Tanning Facility Permit	\$50.00
Underground Fuel Storage Tank	\$20.00
Funeral Director's License	\$200.00
Stable License	\$50.00
<b>Recreational Camp for Children</b>	<b>\$100.00</b>
Renter's Certificate (Certificate valid for three years)	<b>\$300 per unit</b>
<b>Body Art Licenses</b>	
Body Art Establishment	\$155.00
Body Art Technician	\$100.00
Guest Body Art Technician (Valid for two weeks)	\$25.00
<b>Body Art Technician Mentor</b>	<b>\$50.00</b>
<b>Body Art Technician Apprentice</b>	<b>\$50.00</b>
<b>Food Permits</b>	
Food Establishment – Institution	No Fee
Food Establishment	\$400.00
Food Establishment – Limited Facility	\$200.00
Food Establishment – Caterer or Mobile Food Operations	\$100.00
Residential Kitchen – Full Breakfast	\$100.00
Residential Kitchen – Continental Breakfast	\$50.00

Comment [MC1]: No change in fee, just clarification of existing process

Comment [MC2]: Setting a fee in case we get an application for a recreational camp for children

Comment [MC3]: Current fee is \$150/3 years

Comment [MC4]: These fees were newly created because the regulations state that there are fees for these licenses

Residential Kitchen – Retail Food Sales	\$50.00
Retail Food Sales	\$50.00
<b>Add-On Food Permits (May Only be Added to Food Establishment/Institution Permit)</b>	
Catering	\$100.00
Food Truck/Mobile Vendor	\$100.00
<b>Other Food Related Permits</b>	
Temporary Food Establishments	No Fee
<b>Paper Application Processing Fee</b>	<b>\$50.00</b>

**Comment [MC5]:** This is to incentivize licensees utilize the online permitting system. Would only be imposed once online permitting is up and running.



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

6B

## COMMERCIAL STREET ROAD RECONSTRUCTION

### Phase III Engineering Contract

Requested by: Richard J. Waldo, Public Works Director, 2/10/2016      Action Sought: Discussion & Approval

#### Proposed Motion(s)

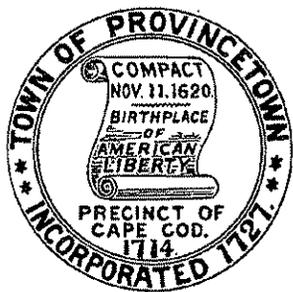
**MOVE that the Board of Selectmen vote to approve a contract agreement in the amount of \$240,000.00 between the Town of Provincetown and GHD, Inc., 1545 Ivannough Road, Hyannis, MA 02601 for engineering services associated with Phase III reconstruction of Commercial Street.**

#### Additional Information

The service agreement would include a final design, bidding and construction phase services. GHD, Inc. will also provide MassWork Grant reporting and deliverables.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>



## PROVINCETOWN DEPARTMENT OF PUBLIC WORKS

# Memo

**To:** David B. Panagore, Town Manager  
**From:** Richard J. Waldo, P.E., DPW Director  
**Cc:** Loretta Dougherty, Secretary to Board of Selectmen  
**Date:** February 12, 2016  
**Re:** Commercial Street Reconstruction Project – Phase III

---

The Town of Provincetown was a recipient to a \$1.96 million dollar grant through the MassWorks Infrastructure Program. This grant award along with \$600,000 in approved Town appropriation (ATM 14 Art 11-13) will provide sufficient funding to proceed with the final design and reconstruction of Commercial Street – Phase III. The scope of the project will include drainage replacement, new granite curbing, brick sidewalks, stone bed and trench topped with two (2) courses of porous pavement for approximately 2,300 linear feet along Commercial Street from Howland Street to Johnson Street.

It is recommended that the Town of Provincetown execute a professional service agreement with GHD Inc. for the final design, bidding, and construction phase services related to the Phase 3 reconstruction project. Design service contracts for a specific public works project, such as a road, bridge, sewer or landfill, are not subjected to either the designer selection law or M.G.L. c. 30B.

The contract includes attendance by GHD engineers to five (5) Public Hearings that will allow residents and business owner to learn of the project, voice their concerns, and to ask general questions pertaining to design and construction. We anticipate scheduling these public hearings: 1.) at the start of the project, approximately one month after contract execution, then 2.) at 90% design completion, then 3.) pre-bid meeting to review construction documents, then 4.) prior to construction, and 5.) a mid-construction update.

After contract execution, GHD engineers will return before the Board within 45 days to provide a project schedule, schedule of public outreach, information such as hours of construction, contact information, and instructions how to sign up for our public notification system "e-blast".

The Department of Public Works is excited by this opportunity and we look forward to bringing this project to fruition in the Fall.

1



**AGREEMENT**

**BETWEEN**

**Town of Provincetown**

**(OWNER)**

**AND**

**GHD INC.**

**FOR**

**SERVICES**

**FOR**

**Commercial Street Improvements Project - Phase 3**

**Final Design and Construction Phase Services**

**(PROJECT)**

**GHD Reference Number [     ]**

**January 2016**

2



**GHD – USA**  
**Services Agreement**

**General Details:**

Project Name	Commercial Street Improvements Project - Phase 3 Final Design and Construction Phase Services	
The Project is	Final design, bidding, and construction phase services for Commercial Street - Phase 3.	
"OWNER" and the "Client" means	Town of Provincetown 260 Commercial Street Provincetown, MA 02657	
OWNER's Designated Representative(s) is	Richard J. Waldo, P.E. Director of Public Works 508-487-7060 rwaldo@provincetown-ma.gov	
OWNER's Authorized Signer is	David B. Panagore Town Manager 508-487-7002 dpanagore@provincetown-ma.gov	
"GHD" means	GHD Inc. 1545 Iyannough Road Hyannis, MA 02601	
GHD's Designated Representative is	Russell Kleekamp Project Manager 774-470-1647 russell.kleekamp@ghd.com	Jessica Janney Project Engineer 774-470-1636 jessica.janney@ghd.com
GHD's Authorized Signer is	Marc Drainville, P.E., BCEE Associate 774-470-1630 marc.drainville@ghd.com	

**Services:**

Commercial Street Road Reconstruction - Phase 3 final design, bidding, and construction phase services, as further defined in Exhibit A.

**Fees: (by phase)**

OWNER shall pay ENGINEER Two Hundred Forty Thousand Dollars (\$240,000.00), as further defined in Exhibit A.

**Period of Service:**

Effective Date of this Agreement: TBD  
 [ ] phase(s) will be completed within [ ] calendar days of authorization by OWNER, as further defined in Exhibit A.

**Additional Exhibits:**

Exhibit B - Pricing



**GHD – USA**  
**Services Agreement**

Duly authorized representatives to execute this Agreement:

**On Behalf of GHD:**

<i>Marc R. Drainville</i>	Marc R. Drainville, P.E., BCEE	Associate	1/19/16
(Signature)	(Print name)	(Title)	(Date)

**On Behalf of OWNER:**

	David B. Panagore	Town Manager	
(Signature)	(Print name)	(Title)	(Date)

Certification of Appropriation under MGL c. 44 § 31 C.

Adequate funding in the amount sufficient to cover the total cost of this contract/change order is available.

**Additional Signatures, if required:**

	Dan Hoot	Finance Director	
(Signature)	(Print name)	(Title)	(Date)
	Thomas N. Donegan	Town Selectman-Chair	
(Signature)	(Print name)	(Title)	(Date)
	Erik P. Yingling	Town Selectman-Vice Chair	
(Signature)	(Print name)	(Title)	(Date)
	Robert Anthony	Town Selectman	
(Signature)	(Print name)	(Title)	(Date)
	Raphael Richter	Town Selectman	
(Signature)	(Print name)	(Title)	(Date)
	Cheryl Andrews	Town Selectman	
(Signature)	(Print name)	(Title)	(Date)

X



# GHD – USA

## Services Agreement

### Services

1. The standard of care for any professional services performed or furnished by GHD under this Agreement will be the care and skill ordinarily used by members of the profession practicing under similar circumstances at the same time and in the same locality. GHD makes no warranties, express or implied, under this Agreement or otherwise, in connection with GHD's services.
2. Any questions in relation to the services being provided by GHD can be directed to the Job Manager.
3. Change of Scope. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope should be changed. GHD will promptly inform OWNER in writing of such situations, and if the facts discovered constitute a material change in project assumptions, the parties shall renegotiate the amended scope of this Agreement as necessary.

### Information and Documents

4. OWNER shall designate and advise GHD of a person to act as OWNER's Representative who has complete authority with respect to the services. OWNER shall do the following in a timely manner:
  - (a) Provide all criteria and full information as to OWNER's requirements for the Project;
  - (b) Assist GHD by providing all available information pertinent to the Project (e.g. previous reports), all of which GHD may use and rely upon in performing the services; GHD will not be obligated to verify the accuracy of OWNER provided information unless verification is included in GHD's scope of work;
  - (c) Arrange for site and property access as required for GHD to perform the services;
  - (d) Give prompt written notice to GHD of any event that affects the scope or timing of GHD's services.

### Payment

5. Method of Payment. OWNER shall pay GHD the Fees as defined under the Exhibits.

Additionally, OWNER will pay for any additional approved services GHD undertakes, and any Liability, cost or expense GHD incurs, if:

  - (a) The general approved scope, schedule, extent or character of Services is changed materially. In this event, the amount of compensation provided for herein shall be subject to equitable adjustment in accordance with paragraph 3, Change of Scope;
  - (b) Any information OWNER (or OWNER's employees, agents or contractors) provides to GHD is not complete and accurate;

- (c) Part or all of the Services are delayed or suspended (other than as a result of GHD's breach of the Agreement);
  - (d) OWNER fails to pay an amount due under the Agreement; or
  - (e) OWNER ends the Agreement before GHD has completed the services.
6. GHD will submit monthly invoices for services rendered and payment will be made within 30 days of OWNER's receipt of such invoices. Interest at 1% per month will be charged on all past due amounts. When the Fees are on the basis of a lump sum, fixed fee, or a percentage of construction cost for the Project, GHD's invoices will be based upon GHD's estimate of the proportion of the services actually completed at the date of the invoice. If OWNER objects to any invoice submitted by GHD, OWNER shall so advise GHD in writing giving reasons therefore within fourteen (14) days of receipt of such invoice. If no such objection is made, the invoice will be considered acceptable by OWNER.

### Insurance

7. GHD shall maintain continuously during the life of this Agreement the following minimum insurance requirements:
  - (a) Workers' Compensation Insurance with statutory limits and Employer's Liability of at least \$1,000,000 per occurrence;
  - (b) Comprehensive General Liability Insurance with combined single limits of not less than \$1,000,000 in any one occurrence or in the aggregate, applicable to bodily injury, sickness, or death and for loss of or damage to property;
  - (c) Automobile Liability Insurance covering all owned, non-owned, or hired vehicles used by GHD with limits of not less than \$1,000,000 combined single limits applicable to bodily injury, sickness, or death of any one person per occurrence and for loss of or damage to property;
  - (d) Professional Liability Insurance in the amount of \$1,000,000 covering claims, damages and Liability arising out of, or resulting from, GHD's professional negligence in performance of the services.
8. The policies under 7(b) and 7(c) above shall: (1) name OWNER as an Additional Insured; (2) be endorsed to be primary and non-contributory to any other insurance maintained by OWNER.
9. GHD will provide OWNER with satisfactory evidence of the above insurances upon request.



# GHD – USA Services Agreement

## Total Liability for Damages

10. (a) Notwithstanding any other provisions of this Agreement, but subject to clause 10(b) below, to the maximum extent permitted by law, the total aggregate Liability of GHD to OWNER and/or anyone claiming by, through, or under OWNER shall be limited to the amounts set out in clause 7 for the relevant insurance policy or, if no insurance is applicable, to \$1,000,000.
- (b) With respect to professional errors or omissions only, notwithstanding any other provision of this Agreement, to the maximum extent permitted by law, the total aggregate Liability of GHD to OWNER and/or anyone claiming by, through, or under OWNER, for all Liabilities arising out of, or resulting from the professional errors or omissions of GHD in the performance or non-performance of the services shall be limited to \$1,000,000, or the total Fees actually paid to GHD under this Agreement, whichever is less.
- (c) Neither party to this Agreement shall be liable to the other for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of profits, arising in connection with the performance or non-performance of this Agreement.

## Intellectual Property

11. All Documents prepared or furnished by GHD are instruments of service in respect of the Project and GHD shall retain an ownership and property interest therein whether or not the Project is completed. Any reuse without written verification or adaptation by GHD for the specific purpose intended will be at OWNER's sole risk and without Liability or legal exposure to GHD, and OWNER shall indemnify and hold harmless GHD from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

## Confidentiality, documents and information

12. GHD agrees to keep confidential and not disclose to any person or entity, other than GHD's employees and subcontractors, without the prior written consent of OWNER (which consent shall not be unreasonably withheld, delayed, or conditioned), all data and Information not previously known to GHD and marked "CONFIDENTIAL" by OWNER and provided in the course of GHD's performance of the services. This provision shall not apply to data or Information which is in the public domain or which was acquired by GHD independently from third parties not under any obligation to OWNER to keep such data and Information confidential or which GHD is required to disclose under any law, rule, regulation, ordinance, code, standard, or court order.

## Termination

13. (a) The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Upon such termination, OWNER shall pay to GHD all amounts owing to GHD under the Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.
- (b) This Agreement may be terminated for convenience by OWNER upon thirty days prior written notice to GHD. In the event of termination for convenience by OWNER, GHD shall be entitled to receive all amounts owing to GHD under the Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

## Indemnification

14. To the maximum extent permitted by law, each party shall indemnify and hold harmless the other party, its appointed and elected officials, partners, officers, directors, employees, and agents; from and against any and all Liabilities arising from the negligent or wrongful acts, errors, or omissions, or breach of contract, by a party; but only to the extent of that party's relative degree of fault.
15. In furtherance of these obligations, and *only* with respect to OWNER, GHD waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit, or similar laws. GHD ACKNOWLEDGES THAT THIS WAIVER OF IMMUNITY WAS MUTUALLY NEGOTIATED.

## Dispute Resolution

16. Both parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this Agreement or the work to be performed hereunder. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator mutually selected by the parties. The mediator shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be submitted to the judicial system, in the courts of general jurisdiction where the Project is located, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.



# GHD – USA Services Agreement

## Independent Contractor

17. GHD shall act as an independent consultant and not as an agent or employee of OWNER, and will be solely responsible for the control and direct performance of the services provided by its employees and agents.

## Assignment

18. This Agreement may be assigned by either party with the prior written consent of the other party.

## Health and Safety

19. GHD shall only be responsible for the activities of its own employees and agents on the Project site with respect to safety.

## Compliance with Laws, Permits and Licenses

20. This Agreement shall be governed by the law of the state where the Project is located. GHD shall perform its Services in accordance with applicable laws, regulations, ordinances, permits, licenses, and other rules.

## Severability

21. The parties agree that, in the event one or more of the provisions of this Agreement should be declared void or illegal, the remaining provisions shall not be affected and shall continue in full force and effect.

## No Third-Party Beneficiaries

22. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or GHD to any third party. All duties and responsibilities undertaken under this Agreement shall be for the sole and exclusive benefit of OWNER and GHD. There are no intended third-party beneficiaries. Notwithstanding the foregoing, should a court find a third party to be a beneficiary of this Agreement, it is the intent of the parties that the judicially created third-party beneficiary be bound by and subject to all of the terms and conditions of this Agreement.

## Notification Period

23. Any applicable Statute of Limitation shall be deemed to commence running on the date which the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than the date of the final invoice for GHD's services under this Agreement. To the maximum extent permitted by law, as a condition precedent to commencing a judicial proceeding, a party shall give written notice of their claims, including all amounts claimed, and the factual basis for their claims, to the other party within two (2) years of when the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than two (2) years from the date of GHD's final invoice for Services under this Agreement.

## Complete Agreement

24. This Agreement represents the entire understanding between the OWNER and GHD, and supersedes all prior negotiations, representations, understandings or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the parties hereto.

25. All notices or other written communications required under this Agreement shall be given personally upon delivery or by certified mail, return receipt requested, upon deposit in a U.S. Mail receptacle to the appropriate parties at the addresses shown on the signature page.
26. This Agreement applies to all services undertaken by GHD for OWNER relative to this Project, including any services undertaken prior to the Effective Date hereof.

## Definitions

27. Unless the context otherwise requires, in the Agreement:

“**Additional Insured**” means that the interests of the client will be noted on the relevant policy, but does not mean that the client is an “Insured” under that policy.

“**Agreement**” means the agreement executed by the parties in connection with the services, including these terms and exhibits.

“**Designated Representative**” means specific individuals who act as Engineer's and OWNER's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of OWNER under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

“**Document**” or “**Documents**” includes a written or electronic document.

“**Fees**” means the amount set out in the agreement details including disbursements.

“**Information**” includes documents and information provided pertinent to the project.

“**Liability**” or “**Liabilities**” means any and all liabilities for actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise); claims (including, but not limited to, claims for bodily injury, death, property damage, (including bodily injury, death, or property damage to employees) or arising under environmental laws); and costs or damages of every nature without limitation (including, but not limited to, reasonable attorneys' fees and costs of defense).

“**Project**” means the project(s) that the services relate to.

“**Services**” means the services set out in the agreement details (or otherwise the services GHD undertakes).

“**OWNER**” means the person(s) set out in the agreement details (and if more than one person, “OWNER” means each of those persons severally and all of them jointly).

## **ENGINEER's Services**

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ENGINEER shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

ENGINEER shall provide the following Services for Commercial Street Improvements Project – Phase 3 Final Design and Construction Phase Services:

#### **Task 1. Kick-Off Meeting**

- Attend Kick-Off Meeting with Owner to discuss design considerations, approach, and timelines. Review preliminary design of Phase 3 as basis for development of final design.
- Includes the requirement to meet with the Board of Selectmen for the submission and approval of the project timeline and schedule.

#### **Task 2. Field Review of Existing Conditions**

- Review existing survey conditions from the intersection of Commercial Street and Howland Street to the intersection of Commercial Street and Johnson Street including:
  - Manhole identification (sewer, water, stormwater, etc.).
  - Invert elevations for stormwater structures.
  - Coordination with the Owner (Water and Sewer Departments) on missing information of structures installed after the initial survey was completed.
  - Project shall also include three (3) additional sites (completed during Phase 1 and 2) outside of Howland Street to Johnson Street including locations at Pepe's Restaurant, base of Franklin Street, and portions of Johnson Street.

#### **Task 3. Site Survey Updates**

- Update existing conditions survey based on field reconnaissance of the site to the project limits at the time of design.
- Update site survey with property boundaries (that are recorded by the Barnstable County Registry of Deeds) and monumentation within the project limits.

#### **Task 4. Abutting Property Owner Acknowledgement of Project**

- Develop a letter addressed to property owners which will describe the upcoming project and will request that existing property monumentation be identified to the Town in order to protect during construction. This letter will request a property owner signature and acknowledgement within a specified timeframe and will be sent certified return receipt mail. Owner will provide a certified abutter list for Engineer use and solicit Town review as necessary. Engineer shall pay for certified letters to residents.
- Detailed property survey for individual private properties (within the project limits) is not included as part of this project. Depending on extent of potential encroachment of proposed design, Engineer shall advise on impacts to the private property. Online research from the Barnstable County Registry of Deeds shall be utilized to the extent practical for potential property boundary conflicts. However if it is determined that detailed property survey for a property is needed, that will be authorized under separate amendment to this agreement.

**Task 5. Develop 95% Design**

- Incorporate design details from the Phase 2 road reconstruction into the Phase 3 design.
- Design to reflect use of updated porous technology using an Asphalt Treated Permeable Base course.
- Develop drainage replacement design.
- Develop 95% design plans and profiles and specifications for Town review and comment.
- Basis of sidewalk design shall extend 48-inches (including curb) from existing back edge of sidewalk and 2.0% maximum slope compliant with current ADA standards.
- Engineer to identify properties that may present a property boundary conflict based on proposed basis of design (between sidewalk and private property) prior to final design plans.
- Water main design and / or relocation are not part of this agreement. Any additional design services due to water main related design shall be authorized under separate amendment to this agreement.

**Task 6. Town Review of 95% Design**

- Provide two (2) sets of design drawings, technical specification, and front-end documents to the Town for review. A two-week review time is incorporated into the schedule.

**Task 7. Prepare 100% Design of the Phase 3 Area**

- Incorporation of Owner 95% review comments into design drawings and specifications.
- Engineer to file appropriate waivers for ADA compliance prior to construction.

**Task 8. Bidding Assistance**

- Assist the Owner in advertising the contract for public bidding in the Central Register and Provincetown Banner.
- Provide electronic Contract Bid Documents to prospective bidders and hardcopy sets where requested by prospective bidder.
- Facilitate, attend, and participate in a Pre-Bid Conference for the project.
- Issue additional information to bidders as required during the bidding period, including answers to questions and addenda to Bid Documents.
- Attend and assist at the Bid Opening. Assist the Owner in tabulating bids for the project. Review and analyze bid results and recommend the award of the contract.
- Prepare formal Contract Documents for execution.
- Facilitate attendance and participate in a Pre-Construction Conference for the project.

**Task 9. Construction Phase Services**

- Review shop drawings and samples.
- Develop responses to contractor-issued Requests for Information (RFIs).
- Review proposed Change Orders and preparation of Change Order paperwork.
- Review and approve payment requests.

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- Develop Record Drawings based on Record Drawing information received from the Contractor.
- Attend and participate in bi-weekly progress meetings as needed. Six (6) progress meetings are included in this scope.
- Six (6) site visits during construction.
- Provide porous construction quality control including:
  - maintaining photographic documentation of the construction;
  - documenting construction progress and construction quality assurance (CQA) activities in daily field reports;
  - reviewing Contractor's material submittals;
  - coordinating material sample collection (including asphalt coring) for testing at a geotechnical laboratory (Contractor to pay for material testing);
  - reviewing and evaluating laboratory test results to ensure compliance with the requirement of the project documents;
  - conducting field tests (three total of infiltration, thickness, and temperature) of the various porous layers (including filter course, reservoir course, choker course, ATBP and wearing course);

**Task 10. Resident Project Representative (RPR) Services**

- RPR services for non-porous related construction is provided by the Owner.

**Task 11. Project Management and Meeting Attendance**

- This task includes attendance at five (5) Board of Selectmen meetings to provide updates or support DPW as needed.

**Task 12. MassWORKs Grant Reporting and Deliverables**

- Develop and submit monthly invoice form to the MassWORKs Project Officer for cost reimbursement requests.
- Develop and submit quarterly reports to the MassWORKs Project Officer.
- Develop and submit project closeout documentation and photographs.

## **PART 2 – PAYMENTS TO ENGINEER FOR SERVICES**

### *A2.01 Compensation for Basic Services*

- A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A as follows:
1. OWNER shall pay ENGINEER Two Hundred and Forty Thousand Dollars (\$240,000.00).
  2. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.
  3. The Lump Sum includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- B. ENGINEER shall submit invoices on a monthly basis. Invoices shall be accompanied by a budget summary illustrating the current budget, previous expenditures, expenditures for current month, total expenditures to date, present budget to date, and budget remaining for each task item identified in Table 1.

### *A2.01 Period of Service*

- A. The compensation amount stipulated above is conditioned on a period of service not to extend beyond June 30, 2017. If such period of service is extended, the compensation amount for ENGINEER's services shall be appropriately adjusted.

**Exhibit B**  
**Proposed Budget for**  
**Commercial Street Improvements Project - Phase 3**  
**Town of Provincetown, Massachusetts**  
**January 19, 2016**

Task	Estimated Labor Hours						Total Hours	GHD Labor Cost	Expenses/Outside Tech Services	Total
	Project Director: Marc Drainville, P.E., BCEE	Project Manager Russell Kisekamp	Project Engineer Jessica P. Jamney	Managing Designer James D. Fosdick	Drafting / GIS Specialist James J. O'Brien	Word Processing Laura Muir				
Task 1. Kick-Off Meeting	0	8	8	8	0	4	28	\$3,622	\$249	\$3,870
Task 2. Field Verification of Existing Conditions and Inspection	0	16	8	32	16	0	72	\$9,526	\$599	\$10,124
Task 3. Site Survey Updates	0	2	4	8	0	0	14	\$1,913	\$8,488	\$10,402
Task 4. Abutting Property Owner Acknowledgement of Project	6	24	24	0	0	8	62	\$8,357	\$536	\$8,893
Task 5. Develop 95 Percent Design	6	40	80	120	80	0	326	\$41,744	\$5,204	\$46,948
Task 6. Town Review of 95 Percent Design	0	8	8	8	0	0	24	\$3,398	\$302	\$3,701
Task 7. Prepare 100 Percent Design of Phase 3 Area	6	8	24	60	20	16	134	\$16,277	\$8,194	\$24,472
Task 8. Bidding Assistance	2	8	40	0	0	8	58	\$7,144	\$365	\$7,510
Task 9. Construction Phase Services	24	86	176	120	40	0	446	\$60,327	\$16,607	\$76,934
Task 10. RPR Services (1)	0	0	0	0	0	0	0	\$0	\$0	\$0
Task 11. Project Management and Meeting Attendance	6	60	120	60	0	16	262	\$37,651	\$680	\$38,230
Task 12. MassWORKs Grant Reporting and Deliverables	0	4	60	0	0	4	68	\$8,489	\$428	\$8,917
<b>TOTAL TASK 1 -12</b>	<b>60</b>	<b>264</b>	<b>552</b>	<b>436</b>	<b>166</b>	<b>68</b>	<b>1,514</b>	<b>\$198,448</b>	<b>\$41,551</b>	<b>\$240,000</b>

Notes:

(1) RPR Inspection shall be provided by the Owner.

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Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

6C

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## MONTHLY POLICE REPORT FOR JANUARY 2016

Requested by: Police Chief Jim Golden

Action sought: Discussion and Approval

### Proposed Motion(s)

**Discussion Dependent. Votes may be taken.**

### Additional Information

See attached Police Report.

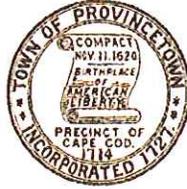
### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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# Town of Provincetown

James F. Golden  
Chief of Police  
jgolden@provincetown-ma.gov



# Police Department

26 Shank Painter Road  
Provincetown, MA 02657  
Phone: (508) 487-1213  
Fax: (508) 487-4077  
www.provincetown-ma.gov

To Provincetown Board of Selectmen

From Police Chief James Golden

Subject: Police Operational Report

Date: February 16, 2016 (January 2016)

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## Activity Synopsis

Police activity (daily call volume, arrest and dispatch logs) are maintained and published weekly and archived on our website.

The following outlines recent police activity in brief:

During the period of Friday, January 1<sup>st</sup> through Sunday, January 31<sup>st</sup>, 2016, the officers of the Provincetown Police Department handled 1,929 total calls for service.

Police responded to 2 domestic violence calls, 3 disturbances reported to police, 9 general complaints, 19 citizen assists, 67 service calls, 1 report of threats, 6 reports of suspicious activity, 2 reports of harassment, 1 noise complaint, 1 report of vandalism, 1 report of property being damaged and there was 1 larceny reported. There were 16 general hazard calls made to police.

There were 70 medical emergencies recorded this month.

Police officers also responded to 25 alarm calls and 9 reported fire alarms, and they found 2 open doors (1PL/1IBS) during 811 building/property checks. Police officers conducted 25 checks of licensed liquor establishments and 71 park, walk and talks. Our officers were also called to provide assistance to the Truro Police on 2 occasions and 2 times to assist personnel from US Coast Guard Station Provincetown.

20 items were reported lost or found to police this month which included personal items found such as keys, wallets, phones, phone chargers, bags, IDs and ATM and credit cards.

104 motorists were pulled over and 7 citations (1C/4W/2S) were issued (6.73%). There were 4 arrests this month as a result of motor vehicle stops. There were 13 miscellaneous motor vehicle related calls for the month. Police assisted with 8 disabled vehicles and 4 vehicles were reportedly damaged while parked.

On Friday, January 1<sup>st</sup>, your police officers assisted with the Provincetown Polar Plunge. This local tradition gained new life as part of the Provincetown First Light celebrations for New Year's Weekend 2016.

On Saturday, January 2<sup>nd</sup>, your police officers were on hand for the Provincetown Town Hall Open House from 2pm-5pm. Attendees were offered children's activities, including a puppet show, self-guided tours of Provincetown's art collection and enjoy cookies and hot cider.

Also on Saturday, January 2<sup>nd</sup>, your police officers staffed pre-event traffic control and celebratory crowd management for a successful Provincetown First Light.

As stated last month, New Year's Eve 2015 saw another successful Operation SAFERIDE this year offering sober rides from all towns on the outer cape. We thank everyone for being safe and responsible and either walking or having a designated driver. Operation Safe Ride provided 23 total taxi rides, transporting 74 people between Orleans, Eastham, Wellfleet, Truro and Provincetown. Growing in participation every year, this is just one example of the many collaborations between our public safety agencies and our communities as we work in partnership to keep everyone safe.

The Provincetown Police Department is interested in hosting a Community-Oriented Policing Citizens Police Academy. We are soliciting your input and asking for your participation in our fourth citizen's police academy to be held for town board members.

Some of the topics that will be covered include a history of the police department, our police officer's daily roles and responsibilities, principles of policing, an overview of Massachusetts General Laws, the court system, arrest procedures, a mock crime scene and a mock OUI. This course should run approximately 8 weeks in order to cover all of the material. At this point, the hours of the class and day of the week it is held, would all be done by consensus of the participants. If this academy sounds like something that you are interested in then please let us know! If anyone has any questions please contact Officer Kevan Spoor at 508-487-1212, Extension# 335. We hope to see you all in class!

On Friday, January 29<sup>th</sup> Police Officer Jen Nolette hosted our Coffee with a Cop event. Coffee with a Cop is an opportunity for members of the public to meet with the police officers in a comfortable environment and talk about any subject — all done in an informal setting to discuss community issues and build relationships. Unfortunately, the majority of law enforcement interactions within a community occur during emergencies or situations not conducive to just talking. Over 120 people took advantage of this offering.

The men and women of the Provincetown Police Department encourage those suffering the painful grip of addiction to come to us for assistance prior to the police having contact with them through an arrest or other means. When anyone walks into our station or approaches one of our officers on the street to ask for help in finding treatment, we will assist them in the process no questions asked.

We can encourage those suffering from addiction to seek out help, rather than allowing our children, parents, friends and other loved ones to continue to live in the shadows. All of the news article about substance abuse issues in our region have proven that it's time to eliminate the negative attitudes associated with addiction, educate people about substance abuse disorders and celebrate those who choose recovery.

Individuals struggling with the grueling battle of addiction need guidance and encouragement from those who have travelled the same dark and twisted roads.

There are a few methods we use in finding a treatment facility:

1. The Department of Public Health's Bureau of Substance Abuse Services has an online tool for locating drug treatment programs at [www.helpline-online.com](http://www.helpline-online.com) or you can call them at 800-327-5050.
2. Gosnold of Cape Cod can be reached at 800-444-1554 and will help in getting substance abuse treatment using their Cape based outreach plan.

For the rest of us, we should make an effort to learn about addiction and celebrate the gains made by those in recovery just as we would support people who have managed other health conditions. It is important to recognize and understand that treatment works and recovery is possible.

There were more than 34 animal-related calls including 6 calls pertaining to dogs, 2 calls involving domestic cats, 14 calls about foxes and 2 calls reporting injured birds. Our Animal Control Officer maintained contact with our partner agencies for animal welfare concerns and coordinated food donations for our on-going pet food pantry. This month there was one dog-to-human bite investigated and no animal-to-animal bites reported.

There were 10 arrests: NOTE

While 10 arrests were made this month, only 09 can be reported. The remaining information has been redacted from this report to comply with applicable state laws.

- Friday, January 1<sup>st</sup>, at 5:03 p.m., Frederic Biddle, 52, of Provincetown, MA was arrested and charged Operating a Motor Vehicle Under the Influence of Liquor and Operating a Motor Vehicle Negligently so as to Endanger.

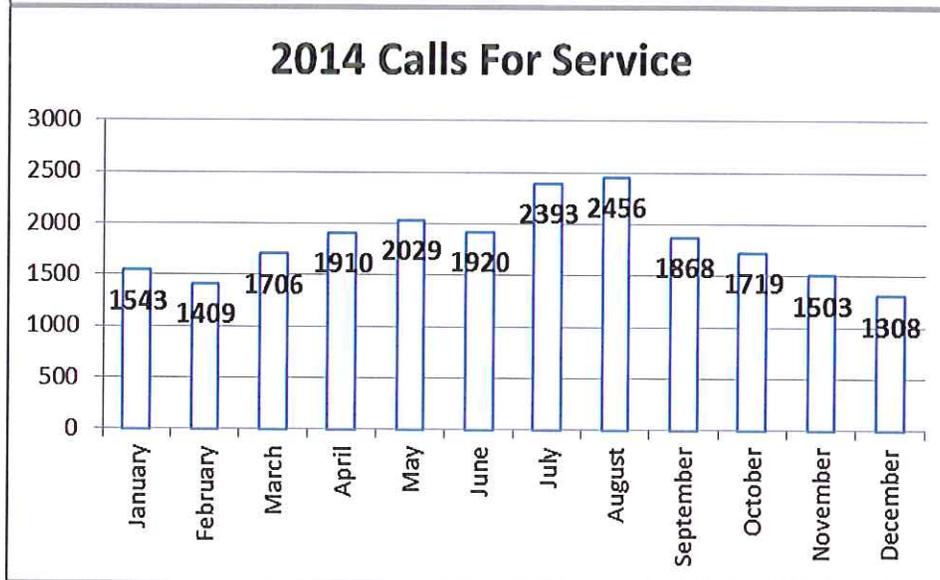
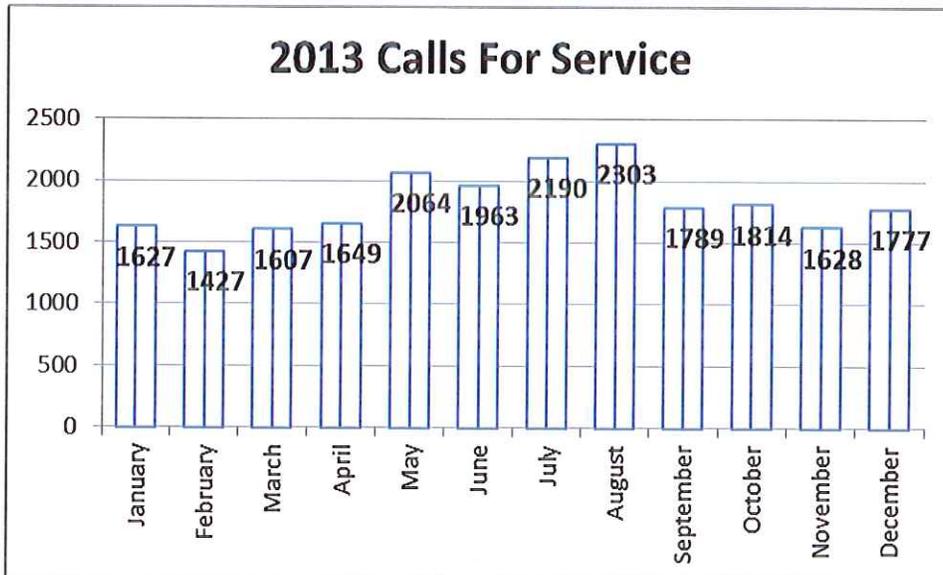
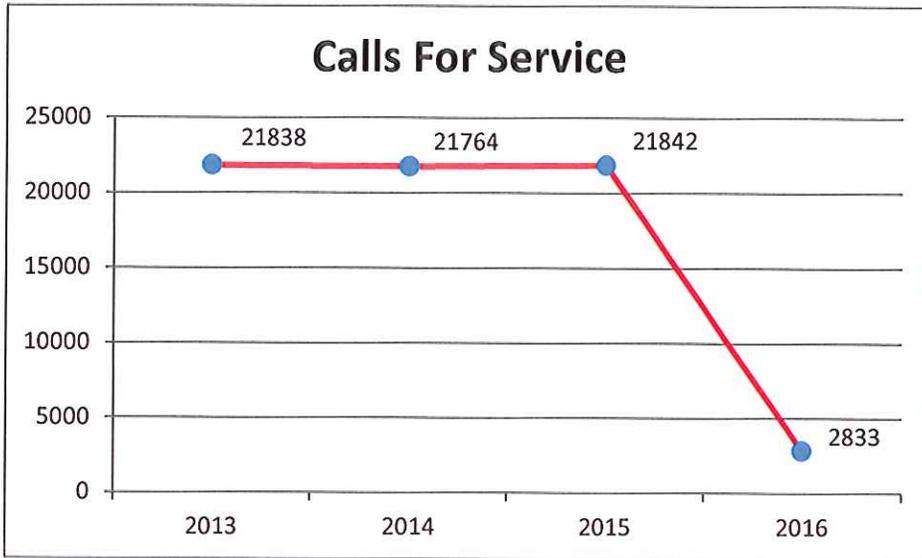
- Saturday, January 02<sup>nd</sup>, at 1:39 a.m., Scott Hathaway, 42, of Provincetown, MA was arrested and charged with Operating a Motor Vehicle Under the Influence of Liquor (2nd offense), Operating a Motor Vehicle Negligently so as to Endanger, Operating an Unregistered M/V, Furnishing a False Name, Revocation of License/Registration, No valid Inspection Sticker and Failure to Signal.
- Saturday, January 02<sup>nd</sup>, at 7:05 a.m., Robert Ciardi, 47, of Rehoboth, MA was arrested on a warrant issued by the Massachusetts Board of Probation.
- Sunday, January 10<sup>th</sup>, at 6:32 p.m., Kenneth Hollington, 51, of Eastham, MA was arrested and charged with Operating a Motor Vehicle Under the Influence of Liquor, Operating a Motor Vehicle Negligently so as to Endanger, and Marked Lane Violation.
- Wednesday, January 13<sup>th</sup>, at 7:39 p.m., Corey Chartier, 18, of Provincetown, MA was arrested on a warrant issued by the Massachusetts Trial Court.
- Wednesday, January 27<sup>th</sup>, at 10:02 p.m., Danville Brown, 35, of Provincetown, MA was arrested and charged with Distributing a Class B Substance (Cocaine).
- Thursday, January 28<sup>th</sup>, at 11:12 p.m., Whitney Hammons, 39, of Provincetown, MA was arrested on a default warrant issued by the Massachusetts Trial Court.
- Saturday, January 30<sup>th</sup>, at 2:23 p.m., Tenzin Gyadatsang, 29, of Provincetown, MA was arrested and charged with Destruction of Property over \$250, Vandalize Religious Symbols or Artifacts, Operating an Unregistered M/V and Operating M/V in violation of License Class.
- Saturday, January 30<sup>th</sup>, at 10:53 p.m., Jane Hee, 56, of Wellfleet, MA was arrested and charged with Operating a Motor Vehicle Under the Influence of Liquor, Operating a Motor Vehicle Negligently so as to Endanger, Speeding and Marked Lane Violation.

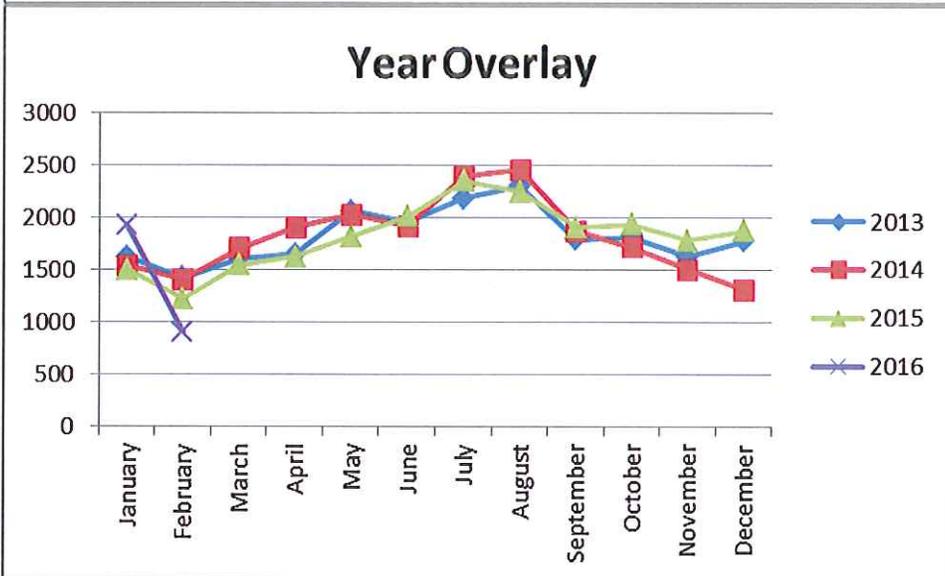
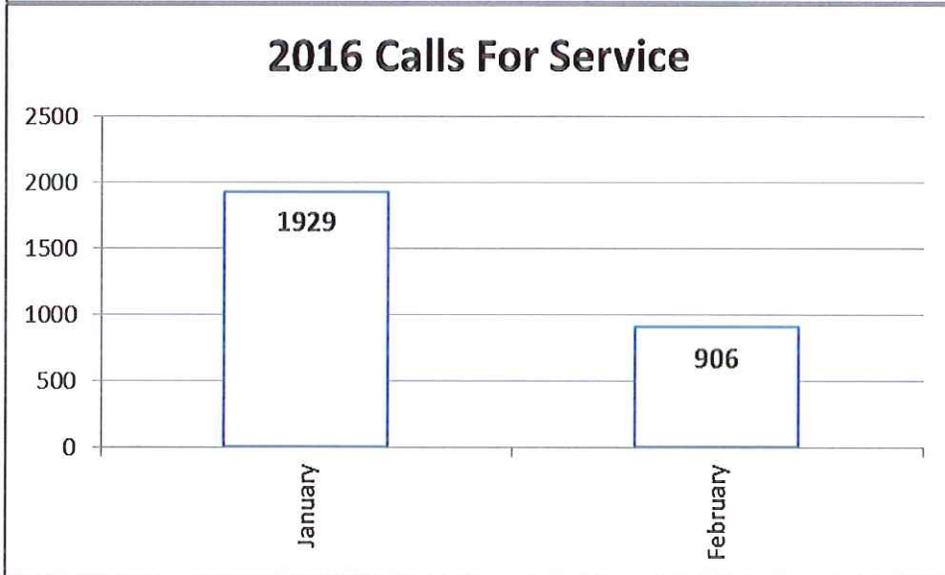
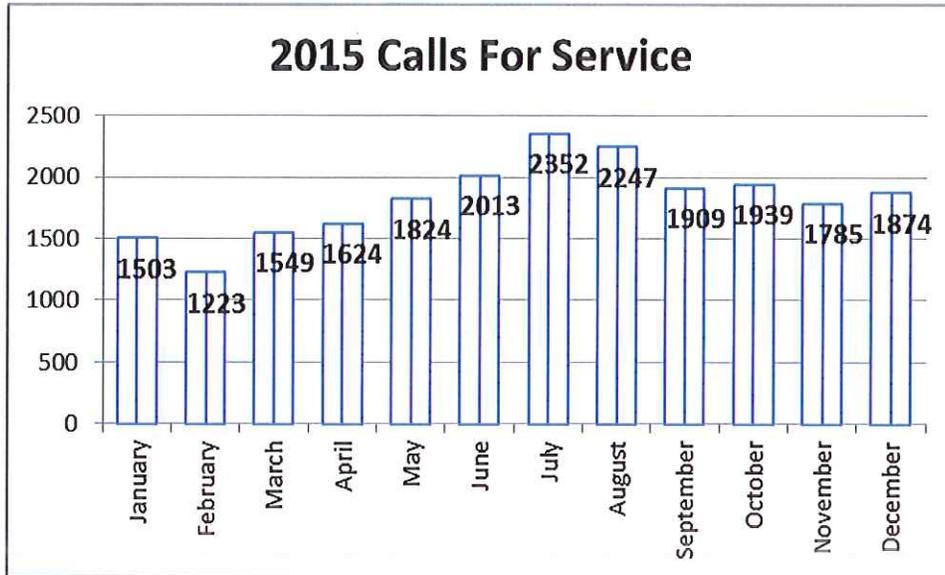
Please know that we received 3 reports of intoxicated persons and 3 persons were detained for being incapacitated from alcohol.

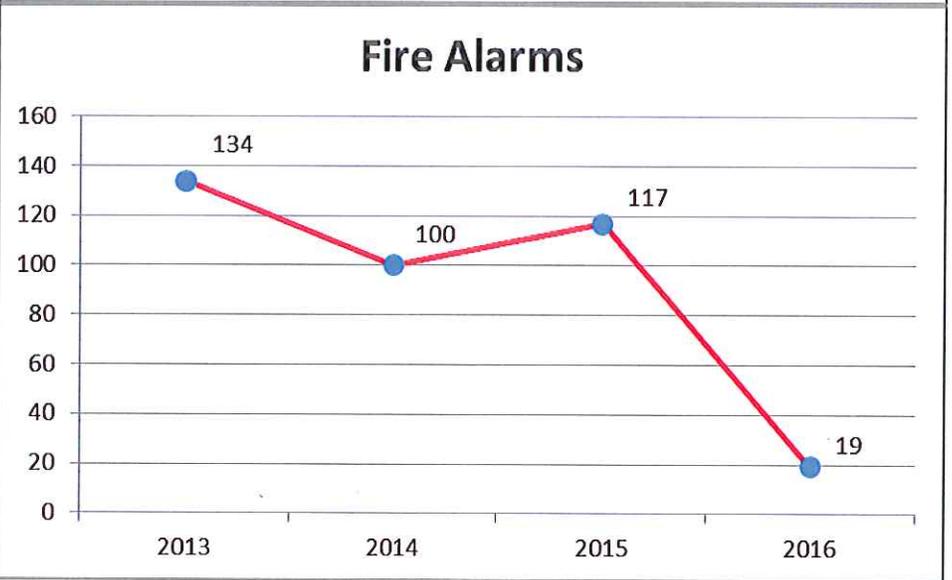
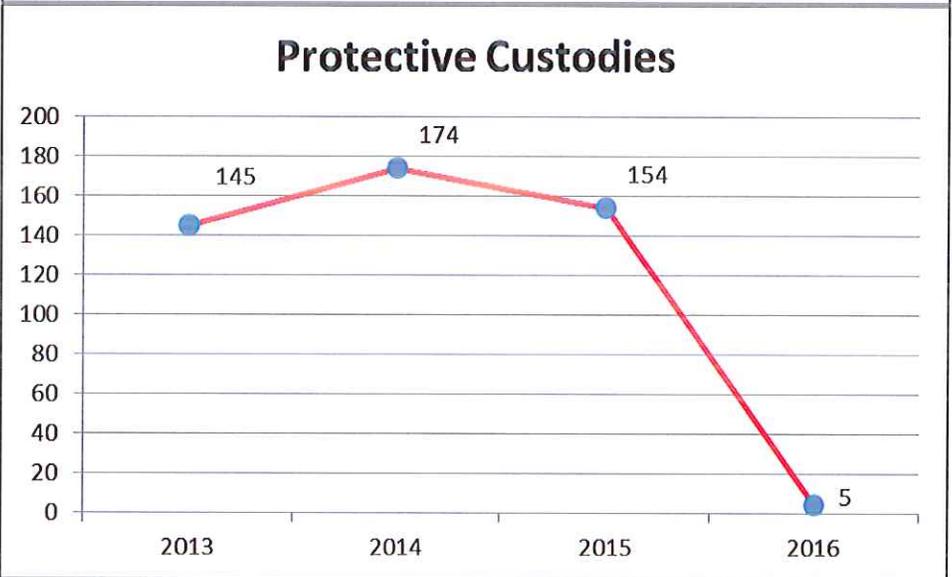
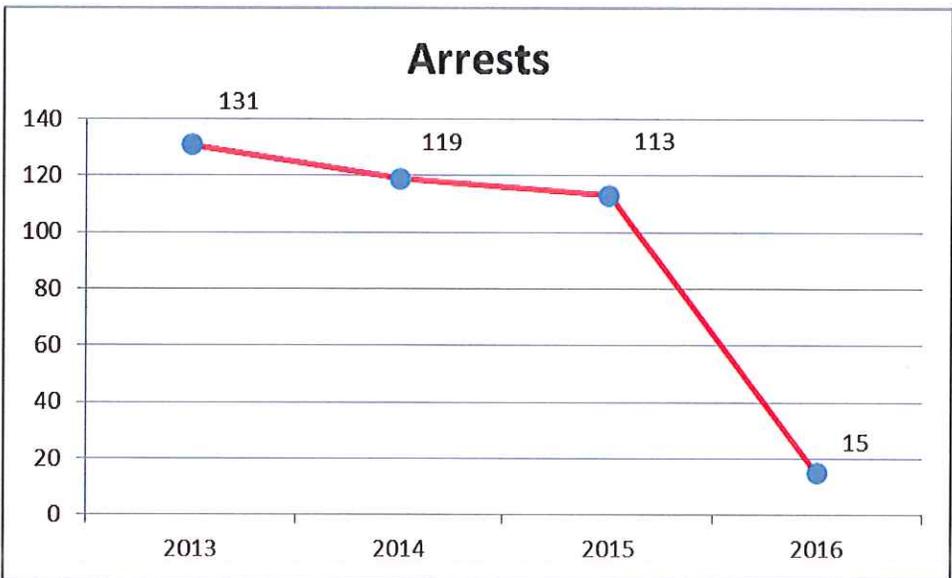
02 Male

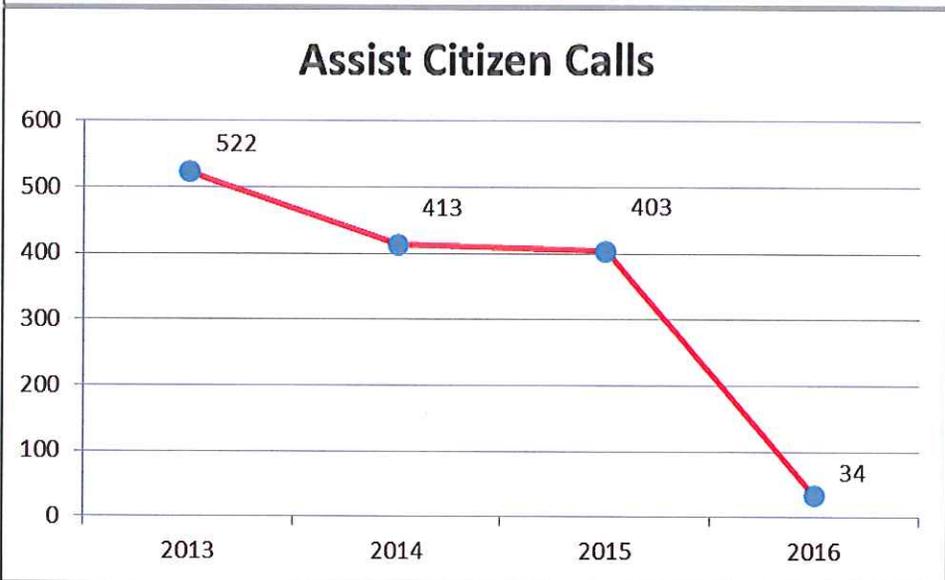
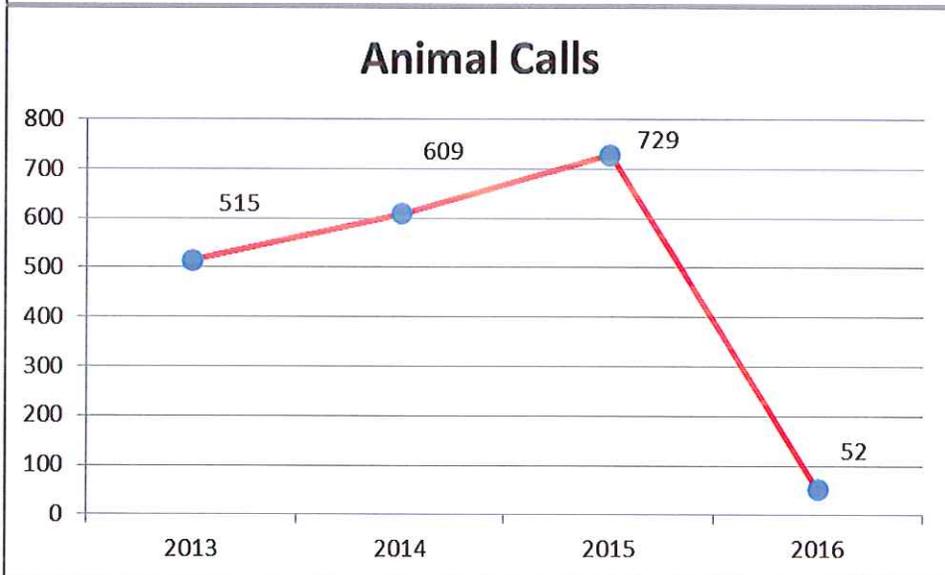
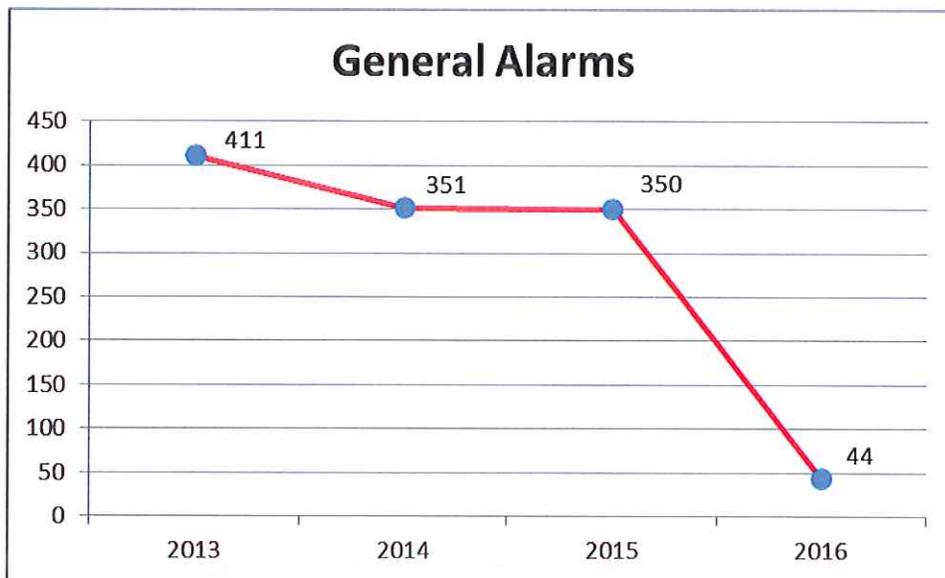
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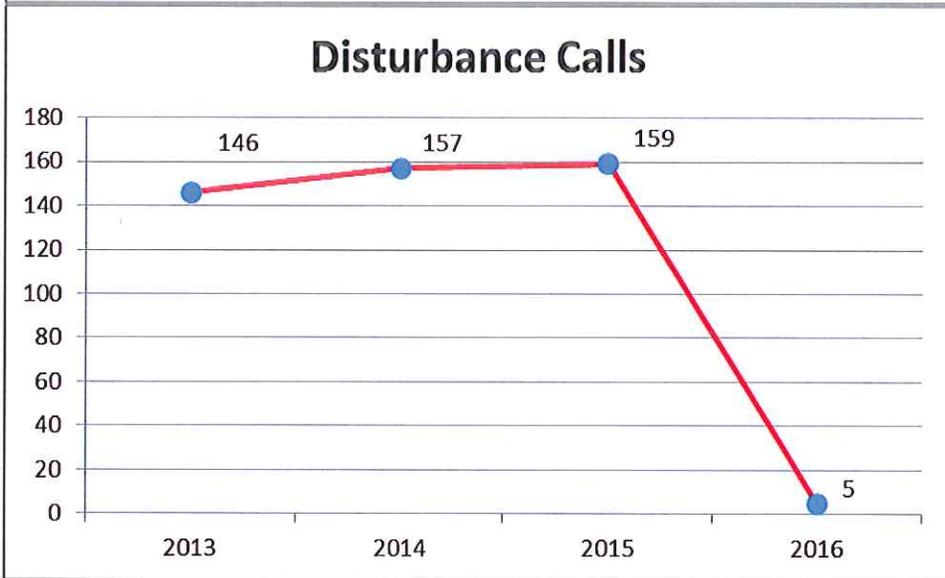
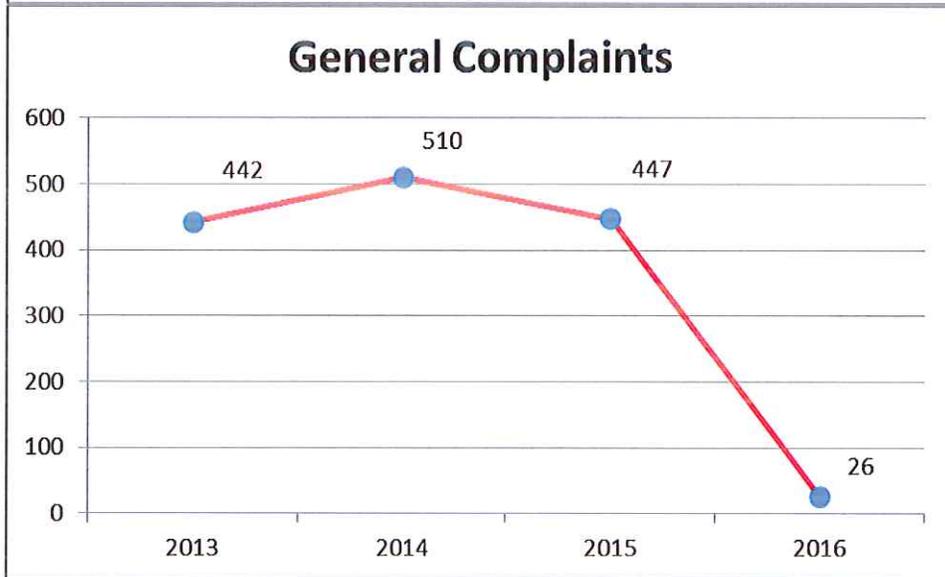
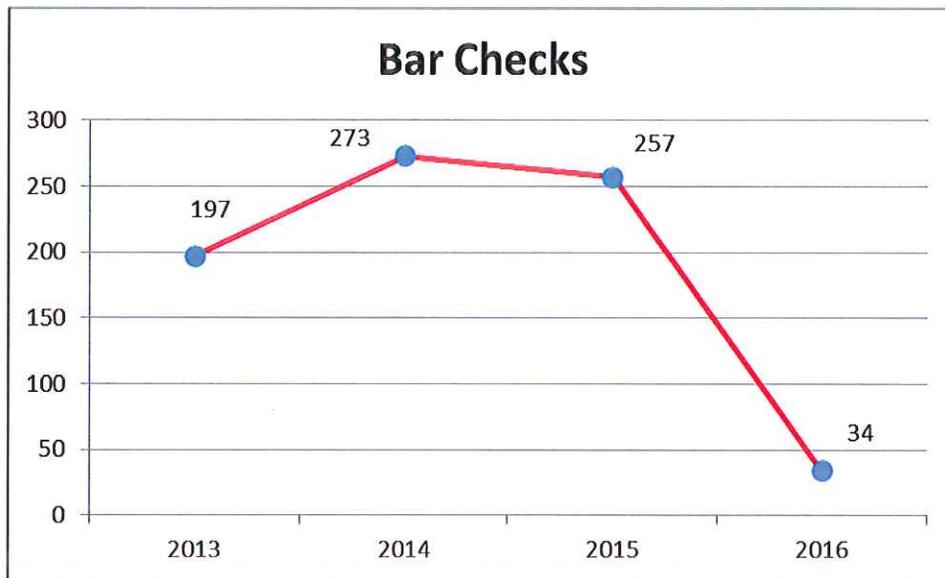
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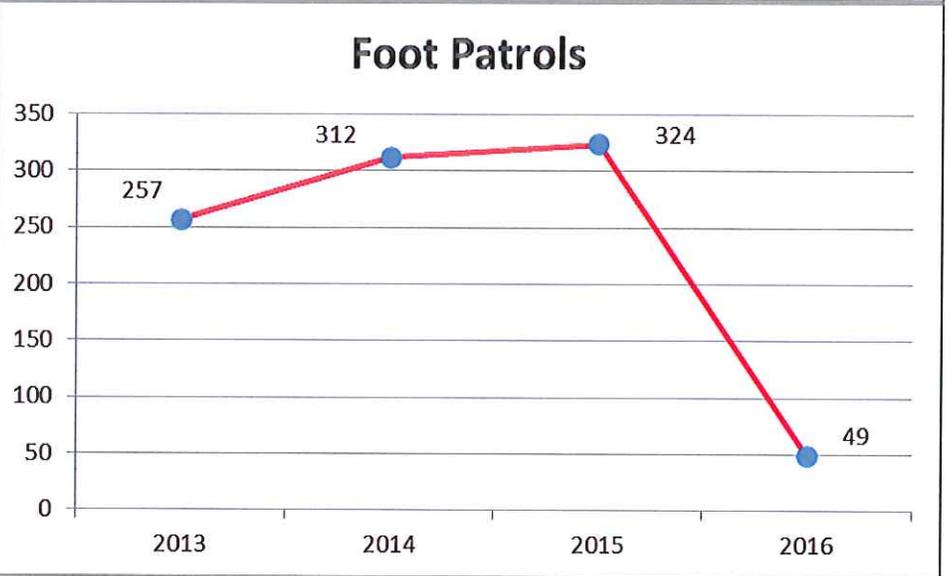
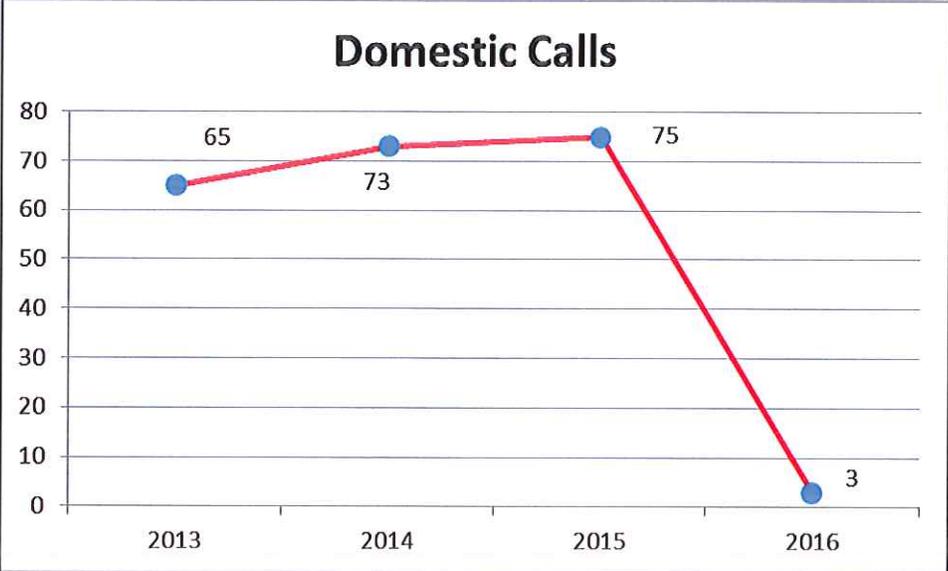


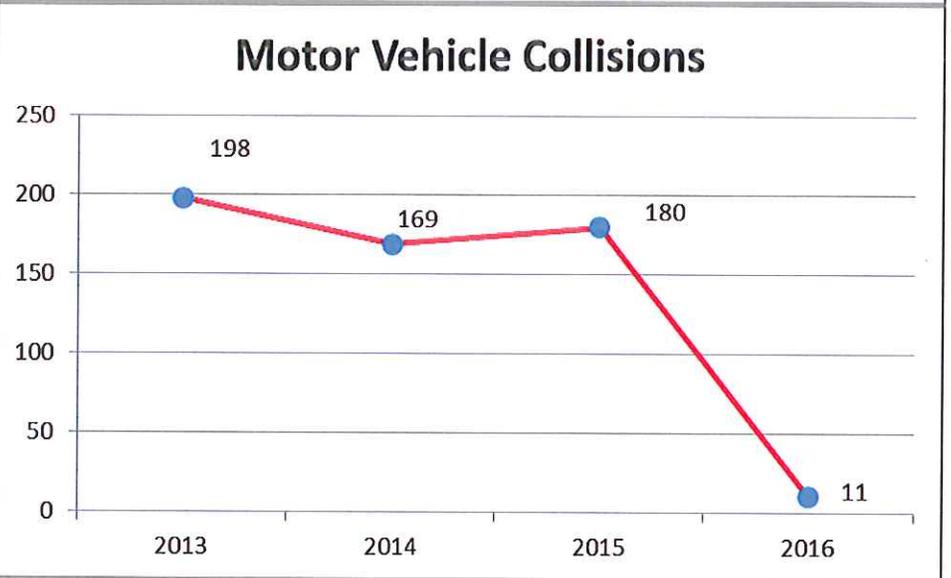
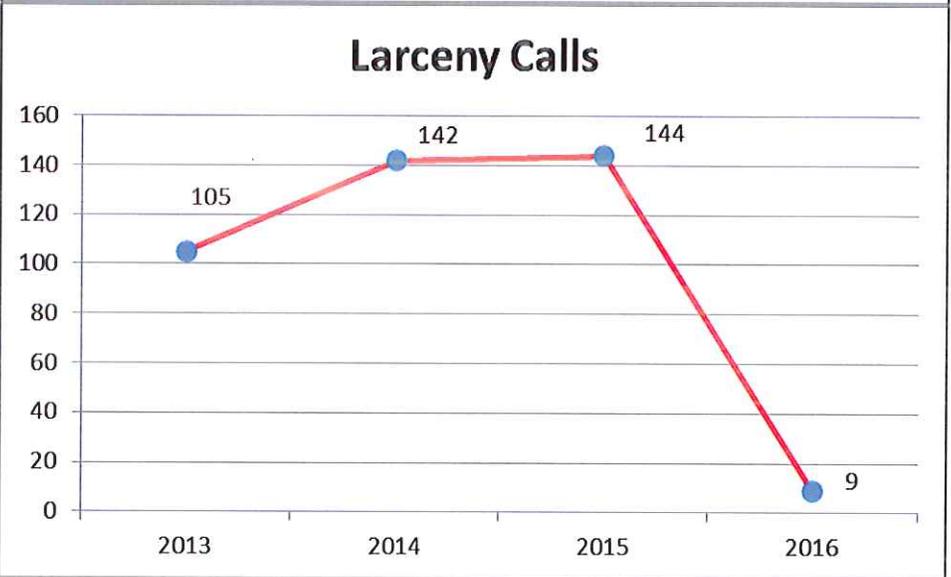
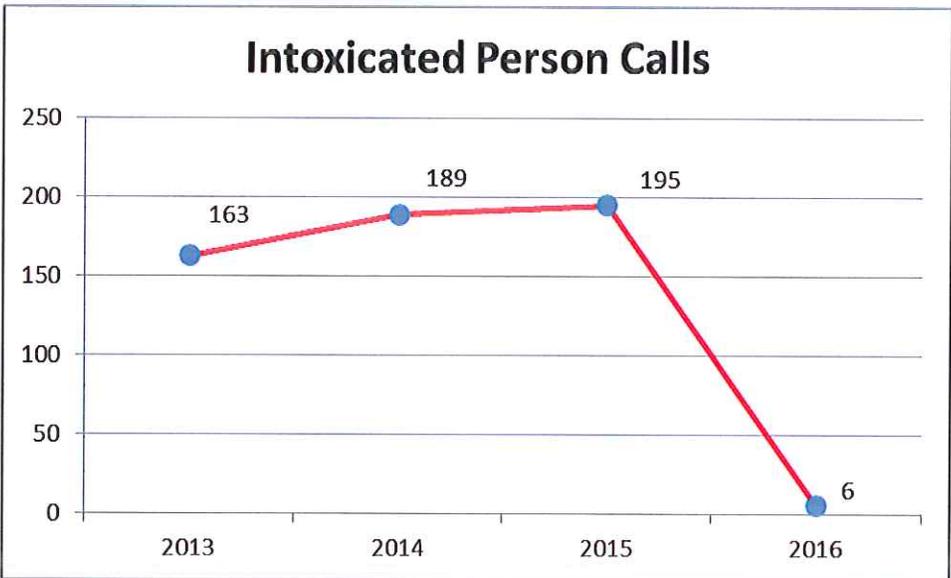


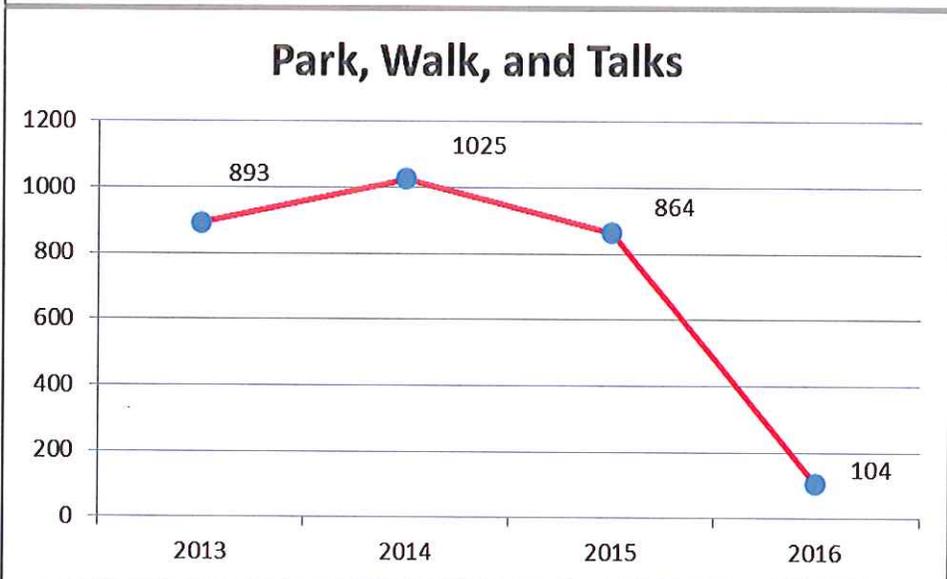
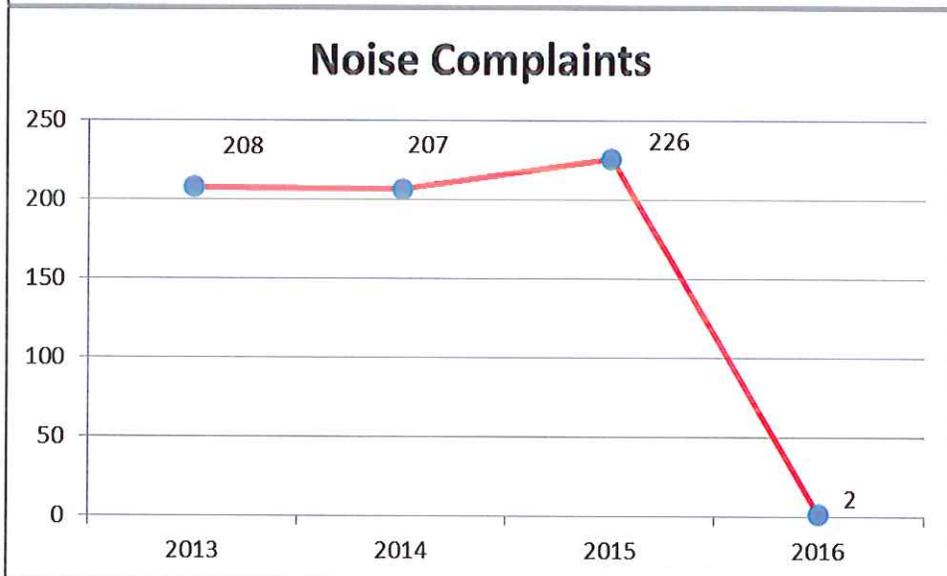
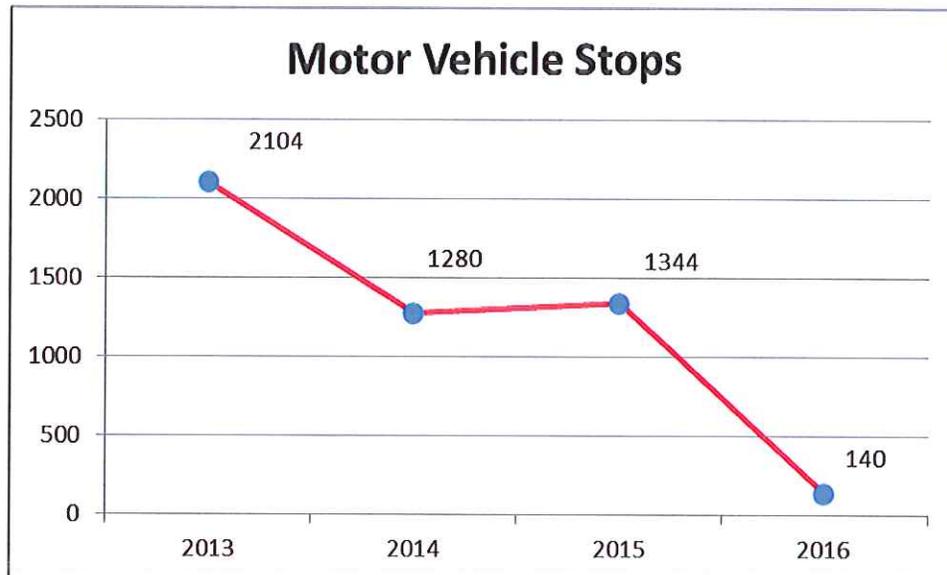
















Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, November 23, 2015

6D

## NOISE BYLAW

### Review & Discussion

Requested by: Board of Selectmen

Action Sought: Discussion

#### Proposed Motion(s)

**Discussion dependent. Votes may be taken.**

#### Additional Information

See attached documents.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>

LEONARD KOPELMAN  
DONALD G. PAIGE  
ELIZABETH A. LANE  
JOYCE FRANK  
JOHN W. GIORGIO  
BARBARA J. SAINT ANDRE  
JOEL B. BARD  
JOSEPH L. TEHAN, JR.  
THERESA M. DOWDY  
DEBORAH A. ELIASON  
RICHARD BOWEN  
DAVID J. DONESKI  
JUDITH C. CUTLER  
KATHLEEN E. CONNOLLY  
DAVID C. JENKINS  
MARK R. REICH  
BRIAN W. RILEY  
DARREN R. KLEIN  
JONATHAN M. SILVERSTEIN  
ANNE-MARIE M. HYLAND  
JASON R. TALERMAN  
GEORGE X. PUCCI

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THOMAS W. MCENANEY  
KATHARINE GOREE DOYLE  
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JEFFREY A. HONG  
GREGG J. CORBO  
RICHARD T. HOLLAND  
ELIZABETH R. CORBO  
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JOHN J. GOLDBROSEN  
SHIRIN EVERETT  
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JACKIE COWIN  
SARAH N. TURNER  
JEFFREY T. BLAKE  
BRIAN M. MASER  
CAROLYN KELLY MACWILLIAM  
ANNE C. ROSENBERG  
PETER L. MELLO

September 30, 2005

BY FACSIMILE - (508)487-9560  
AND BY FIRST CLASS MAIL

Mr. Keith Bergman,  
Town Manager  
Provincetown Town Hall  
260 Commercial Street  
Provincetown, MA 02657

Re: Proposed Amendments to Street Performance and Noise Control Bylaws

Dear Mr. Bergman:

You have asked that we review proposed revisions to the Town's Street Performance Bylaw, Section 9-4 of the General Bylaws, as well as related proposed revisions to the Town's Noise Control Bylaw, Section 13-2-6 of the General Bylaws. In the context of this review, you have also asked that we comment on correspondence from Attorney David E. Cole, dated September 15, 2005, whom I understand represents one of the street performers in Provincetown. In that correspondence, Attorney Cole questions the legitimacy of certain provisions of the current Street Performance Bylaw as well some of the proposed revisions. In this letter, I will provide comments and suggestions with respect to the proposed revisions, as well as address the positions taken by Attorney Cole in his September 15<sup>th</sup> correspondence, as appropriate. I have attached a copy of Attorney Cole's correspondence to this letter, for your ease of reference.<sup>1</sup> For purposes of this analysis, I note that I am commenting on the version of the proposed revisions dated August 31, 2005.

<sup>1</sup> Attorney Cole has enclosed with his September 15<sup>th</sup> correspondence a proposed draft Street Performance Bylaw. In this letter, I do not comment on the provisions of that proposed bylaw.

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General Comments

I begin my analysis with some general principles. As you know, the government's ability to regulate the public's exercise of free speech and free expression in public fora is somewhat limited, due to the protections of the First Amendment. Public streets and sidewalks have traditionally been considered public fora. *See, e.g., Frisby v. Schultz*, 487 U.S. 474 (1988). Furthermore, music and other forms of "expression" are covered by the First Amendment. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989); *Casey v. City of Newport, R.I.*, 308 F.3d 106, 110 -111 (1<sup>st</sup> Cir. 2002). Despite the broad constitutional protections afforded to speech activities in public fora, the courts have allowed the government to require licenses or permits for the exercise of speech or other First Amendment protected activities on public fora in order to regulate competing uses of said fora. *See, e.g., Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992). A permit scheme regulating the time, place, and manner of speech is permissible, so long as it (1) does not "delegate overly broad licensing discretion to a government official," (2) is content-neutral, (3) is narrowly tailored to serve a significant government interest, and (4) leaves open ample alternatives for communication. *Id.*; *New Eng. Reg'l Council of Carpenters v. Kinton*, 284 F.3d 9, 20 (1st Cir. 2002); *see also Ward*, 491 U.S. at 791. In light of these requirements, in my opinion, it would be difficult to justify an outright ban on street performers, demonstrators, political activists and the like, on Town sidewalks and streets, absent some very compelling argument of public safety, such as the threats posed to the public health, welfare, and safety of the citizens of New Orleans in the aftermath of Hurricane Katrina, as an example.

Obviously, the current Street Performance Bylaw does not attempt to ban performances on Town streets and sidewalks, but instead, seeks to "encourage" street performances, as they contribute to the character of the Town, while at the same time balancing the rights of residents to the enjoyment of peace and quiet in their homes and the rights of local business owners to have adequate public access to their businesses. I understand that there have been some complaints by local residents, including business owners, about the frequency and duration of street performances, including the use of sound amplification by street performers. In an effort to maintain the balance identified above, in light of escalating citizen complaints, revisions have been proposed to the Street Performance Bylaw that would permit some restrictions on the time, place, and manner of street performances. Courts have determined that a municipality has "a substantial interest in protecting its citizens from unwelcome noise." *Ward*, 491 U.S. at 796 (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806 (1984)). This interest is not limited to protecting the "well-being, tranquility, and privacy of the home," but also extends to traditionally public fora such as municipal streets and parks. *Id.* Furthermore, the ability of the government to regulate street performances so as to limit annoyance to residents

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and to avoid both pedestrian and motor vehicle traffic congestion has been upheld by various courts. See, e.g., *Friedrich v. City of Chicago*, 619 F. Supp. 1129 (N.D. Ill. 1985) (ordinance which limited street performances to certain streets and during certain times of the day was supported by government's compelling interest to reduce large crowds around street performers which had diverted pedestrians into the street, thus further congesting already congested areas).

Against this backdrop, I now address several questions that have been raised regarding the Street Performance Bylaw, including the proposed revisions.

Is the Street Performance Bylaw Inconsistent with the Town's Powers Under the Home Rule Amendment?

As a starting point, I note that Attorney Cole, in his September 15<sup>th</sup> correspondence, suggests that the \$50 fine imposed under Section 9-4-8 is inconsistent with the provisions of G.L. c. 85, §10, and thus the fine is in excess of the Town's authority under the Home Rule Amendment. Under G.L. c.43B and Amend. Article 89 of the Massachusetts Constitution, a municipality may adopt local ordinances and by-laws for the exercise of its general corporate and police powers "...which [are] not inconsistent with the constitution or laws enacted by the [state legislature]..." In addition, a municipality may adopt and impose non-criminal fines of violations under G.L. c.40, §21D and pursue enforcement of such fines in state district court.

It is established beyond question that municipalities have broad authority when enacting local regulations and that a local by-law will not be struck down as in excess of a municipality's home rule authority unless there exists a sharp conflict between the local by-law and a provision of State law or the Constitution. *Bloom v. Worcester*, 363 Mass. 136, 154 (1973).

In arguing that the fine provision of the Street Performance Bylaw is in conflict with state law, Attorney Cole cites G.L. c. 85, §10, which states as follows:

Towns may make ordinances and by-laws to prevent the pasturing of cattle or other animals, either with or without a keeper; relative to the passage and driving of sheep, swine and neat cattle; prohibiting persons from riding or driving beasts of burden, carriage or draught, at a rate of speed inconsistent with public safety or convenience; regulating the passage of street cars, or other vehicles, or the use of sleds for coasting; regulating and controlling persons who frequent public places playing on hand organs, drums, trumpets or other musical instruments, upon or through any public way, and may affix penalties of not more than twenty dollars for each violation thereof. They may, by ordinance or by-law, regulate the transportation of the offal of slaughtered animals upon or through any public way and affix a penalty of not more than one hundred dollars for

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each violation thereof [emphasis added].

If Section 10 applies to persons such as those covered by the Street Performance Bylaw, then the \$50 fine would potentially be in excess of the Town's Home Rule authority, since the statute limits the fine to \$20. While the highlighted language in Section 10 appears on its face to apply to certain street performers covered under the Street Performance Bylaw, namely, those who play musical instruments, closer scrutiny needs to be applied to the statute's purpose, in my opinion. It appears that the statute serves as a codification of a previous common-law prohibition against obstructions in public ways. See *Commonwealth v. Surridge*, 265 Mass. 425, 482 (1929). The statute is entitled "Regulation of use of ways; penalties," supporting the view that the activities sought to be regulated are those activities occurring in, and thus obstructing travel along, public ways. Finally, the specific language in the statute that arguably applies to street performers is expressly limited to activities occurring "upon or through" a public way.

Thus, the question becomes whether the Town actually permits street performers to perform within the boundaries of public ways. If it does, then the Town's ability to impose fines for those activities may be governed by the language of G.L. c. 85, §10. Section 9-4-2-3 of the Street Performance Bylaw defines "public areas" in which street performances are permitted to include "all public ways in Provincetown." This language suggests that street performances are, in fact, allowed within at least some of the public ways in Town. Although the Street Performance Bylaw, including the \$50 fine, has been previously approved by the Attorney General's Office, this approval does not insulate the Town from a court challenge to the fine, or from further scrutiny of the fine by the Attorney General's Office if the Bylaw is amended.

There are several possible options to address this potential issue. First, the Town could not take any action to adjust or revise the fine provisions, and wait to see if the revised Bylaw passes Attorney General scrutiny, or is otherwise challenged in court. Because of the "severability" language of Section 9-4-11, in my opinion, if the fine amount is in conflict with G.L. c. 85, §10, the entire Bylaw should not be invalidated. Alternatively, the Town could choose to lower the fine to \$20 for only those activities that occur "upon or through" a public way which are in violation of the Bylaw. The \$50 fine would remain for all other activities in violation of the Bylaw. One variation of this option is to simply lower the fine for all violations of the Bylaw to \$20. Finally, the Town could simply delete from Section 9-4-2-3 the reference to "all public ways in Provincetown," thus making clear that the activities covered under the Street Performance Bylaw are not activities occurring "upon or through public ways," as no street performances would be permitted on public ways, although this alternative may have its own First Amendment implications given that public streets are considered traditional public fora.

X

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#### Limiting Street Performances Outside Town Hall

The August 31, 2005 version of the proposed revisions to the Street Performance Bylaw does not include an earlier proposed prohibition on street performances within 100 feet of Town Hall. Therefore, I do not address Attorney Cole's challenges in this regard. However, if the Town is still considering some limitation on performances outside Town Hall, I note that the Second Circuit Court of Appeals has upheld the City of New York's ability to limit the use of amplification in connection with the exercise of First Amendment-protected activities occurring on City Hall Plaza. See *Housing Works, Inc. v. Kerik*, 283 F.3d 471 (2d Cir. 2002). In that case, the court found that the government had a valid interest in banning sound amplification so near City Hall as it would be a distraction to City Hall employees as well as to the members of the public having business to transact at City Hall.

To the extent that the Town is contemplating some type of prohibition on street performances outside of Town Hall, I would caution that the Town closely examine what other activities it allows to occur at Town Hall generally (i.e., fund raisers for non-profit organizations, political or religious rallies, etc.). Limiting street performances while not establishing similar limitations on other forms of First Amendment activity may give rise to a constitutional challenge that the Street Performance Bylaw is not content-neutral, in my opinion. There may be some basis for limiting the use of amplification during, or the length of, performances occurring outside Town Hall, as in the *Housing Works, Inc. v. Kerik* case, so long as the Town can demonstrate that street performances cause a different (i.e. more egregious) level of sound, obstruction to pedestrian traffic, and the like than other forms of First Amendment-protected activities that occur outside Town Hall.

#### What is the Appropriate Noise Limit

The United States Supreme Court has ruled that the opportunity to gain the public's ears by objectionably amplified sound on public streets is "no more assured" than the unlimited opportunity to address gatherings on the streets. *Kovacs v. Cooper*, 336 U.S. 77 (1949). Accordingly, several courts have upheld a municipality's ability to impose limitations or even complete bans on the use of sound amplification in association with First Amendment-protected activity in public areas. See, e.g., *Stokes v. City of Madison*, 930 F.2d 1163 (7<sup>th</sup> Cir. 1991) (limits on use of sound amplification); *Croman v. City of Kansas City, MO*, 29 F. Supp. 587 (W.D. Mo. 1997), *aff'd* 168 F.3d 492 (8<sup>th</sup> Cir. 1998) (no sound amplification in certain area between 11 pm and 6 am). In my opinion, however, the biggest problem the Town will face when considering how to amend either the Street Performance Bylaw or the Noise Control Bylaw is not whether

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some limits can legitimately be placed on the use of amplification, but how to define the prohibited noise limits.

The proposed revisions to the Street Performance Bylaw provide that the "total limit for sound...remains near the mean of 70dB at 25 feet or total excess over ambient noise at 50'." See Section 9-4-2-1; see also Section 9-4-6-6. Ordinances and bylaws that impose sound limitations on First Amendment-protected activities have been upheld when they contain specific decibel limitations, for example. See, e.g., *Dupres v. City of Newport, RI*, 978 F. Supp. 429 (D.R.I. 1997) (ordinance set decibel limits of 65 dBA from 7 am to 10 pm and 55 dBA from 10 pm to 7 am in a residential area); *Jim Crockett Promotion, Inc. v. City of Charlotte*, 706 F.2d 486 (4<sup>th</sup> Cir. 1983) (sound amplification equipment prohibited beyond certain decibel limits, in particular areas at specific times of day, to be measured according to American National Standards Institute [ANSI] standards).

However, the language of the proposed revisions is somewhat unclear, to the extent that it refers to a "mean" decibel level. Over what period of time is the "mean" intended to cover? Who determines what is "near the mean"? Left undefined, it will be difficult for street performers and police alike to know precisely what is prohibited. Also, I do not understand the phrase "or total excess over ambient noise at 50'." Is it the intent that the revised Bylaw will prohibit sound emanations measured as exceeding 70dB over the ambient noise decibel level at 50 feet? The language of proposed Section 9-4-6-6 does not clarify these issues. Moreover, the proposed language in the Street Performance Bylaw does not appear consistent with the proposed language of the Noise Control Bylaw governing decibel limits and how such limits are measured.

Governmental regulations impacting upon First Amendment-protected activities must be clear and provide adequate notice to the public at large as to the specific conduct prohibited thereunder. See, e.g., *Trinkler v. Alabama*, 414 U.S. 955, 956-957 (1973) ("laws [must] give the person of ordinary intelligence a reasonable opportunity to know what it prohibited, so that he may act accordingly.") While it appears that the use of "mean" and "near the mean" is an attempt to provide some allowance for street performances that occasionally spike above the threshold decibel limit, in my opinion, the language is both unclear and vague, and may not survive a constitutional challenge. In order to avoid this problem, I suggest that language be included to identify precisely: 1) the point at which the measurement is to be taken (i.e. "50 feet from the source of the sound"); 2) how long the sound is to be measured (i.e. "measured for thirty seconds"); and 3) if a "mean" is to be utilized, how many measurements must be taken to establish the mean (i.e., "the mean of three measurements, each measurement thirty seconds in duration, taken within a total span of three minutes"). While I do not suggest that the language

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quoted above should in fact be used, I wanted to illustrate the level of precision that I think is required to survive a constitutional challenge based on vagueness.

When determining what decibel limits are to be imposed, please be aware that a court's scrutiny of a particular decibel level restriction will likely involve consideration of factors such as the character of location to be regulated (i.e. commercial v. residential) and the pre-existing ambient noise levels. In other words, just because one court may have upheld a 65 dBa limitation in one circumstance does not necessarily mean that the same limitation would be upheld in another, different, circumstance.

#### Duration of Performances

Governmental regulation of First Amendment-protected activities may not be overly broad or unduly restrictive. As noted above, courts will look to see whether the limitations imposed by the regulation are narrowly tailored to address the significant governmental interest(s) at issue. In proposed Section 9-4-6-4, there is a limitation on street performances at Town Hall to two hours per performer per day. A somewhat similar restriction is contained in proposed Section 9-4-6-5, which limits performers to two hours per performance per day at any specific location. My interpretation of these sections is that performers are free to move to another approved location every two hours (provided they do not return to a previously-utilized location).

There appear to be four governmental interests served by the proposed Sections 9-4-6-4 and 9-4-6-5: 1) the need to reduce obstructions to pedestrian and possibly motor vehicle traffic that arise from lengthier street performances, which may cause greater crowds to amass around the street performer; 2) the reduction of unwanted noise of a long duration at any one particular location, for the benefit of residents, local businesses, and pedestrians; 3) providing opportunity for all street performers to have access to what may be considered more desirable or "prime" locations for performances; and 4) with respect to Town Hall, ensuring that persons wishing to do business at Town Hall are not unduly hindered in their access to Town Hall, and that Town Hall employees' abilities to do their jobs are not unreasonably interfered with by unwanted noise of excessive duration in time.

On their face, in my opinion, these provision leaves open "ample alternatives" for communication.<sup>2</sup> If challenged, however, the Town will need to demonstrate that the restrictions

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<sup>2</sup> I do not know how many total "public areas" are available to street performers, however, and how many street performers are seeking to utilize these areas, on average. The fewer locations where street performances may occur,

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imposed by these sections is in furtherance of one or more of the government interests stated above, with documentable evidence of the need for such restrictions.

A different but related issue arises in terms of where performers are required to relocate once they have exhausted the two hour time limit in a single location. It is foreseeable that one or more street performers may take the position that they can move 1 foot away from the previous location, for example, and satisfy the Bylaw's requirements. I would recommend including more specific direction in terms of the relocation requirement.

#### Can the Town Limit CD Sales by Street Performers?

Under proposed Section 9-4-6-7, street performers would not be able to sell CDs "or other reproductions," but may accept donations. In my opinion, this proposed section is inconsistent in its treatment of street performers as compared to "artists" under Section 8-11-2 of the Town's General Bylaws. If the Town permits other "artists" to sell their work on a public street or sidewalk, then it may be viewed as a First Amendment violation to prohibit street performers from doing the same, because the restriction could be viewed as an improper content-based restriction. As an alternative to the proposed Section 9-4-6-7, the Town could simply include street performers within the language of Section 8-11-2, causing street performers to come under the same requirements as other artists who sell their work.

#### Permit Fees

In order to impose a fee for a permit relative the exercise of First Amendment-protected activity, that fee must be reasonably related to the actual administrative costs associated with the processing of the permit. This is a very fact specific inquiry. Thus, some courts have upheld such fees where the government can demonstrate that the fee is in line with the administrative costs of permit processing (*see, e.g., U.S. Labor Party v. Codd*, 527 F.2d 118 (2d Cir. 1975)) while other courts have struck down such fees where the government has not demonstrated such a relationship (*see, e.g., Chester Branch, Nat'l Ass'n for Advancement of Colored People v. City of Chester*, 253 F. Supp. 707 (E.D. Pa. 1966)). In my opinion, a reasonable fee for permit processing is acceptable. However, it is also my opinion that it would not be acceptable to charge a fee where the costs to be recovered by the permit fee are the costs of the purchase of sound monitoring equipment, as is contemplated by proposed Section 9-4-4-1. I am also uncertain as to the justification for an additional "amplifier permit" and the associated additional fee.

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the harder it will be to demonstrate to a court that the proposed sections leave open "ample alternatives" for communication, in my opinion.

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Specific Comments and Recommendations on Proposed Revisions to Street Performance Bylaw

**Section 9-4-2:** You may wish to incorporate into this section a definition for “amplifiers” to include such items as public address systems, portable stereos, traditional amplifiers, and the like.

**Section 9-4-2-1:** See above comments regarding decibel levels.

**Section 9-4-4-1:** For the reasons discussed above, I would delete in the first sentence the phrase “and purchase of noise measuring devices” as well as the requirement of an additional permit (and an additional fee) for amplifier usage.

I would also include the word “offense” after the phrase “...7 days for second...”

In addition, I note that the “season” is not defined in the Bylaw. The use of the term “season” in this section may be misleading, where the permit term, as defined by Section 9-4-4-3, is the date of issuance through the end of the calendar year.

**Section 9-4-5:** If the requirement for separate performance and amplifier permits is deleted, then the pluralization of “permits” throughout this section is unnecessary.

**Section 9-4-6-1:** You may wish to clarify from what point the 100 feet “buffer zone” is measured. For example, I would recommend rewriting Section 9-4-6-1 as follows:

“Location: Performances may take place in public areas except:

1. Within one hundred (100) feet of an elementary and/or secondary school, measured either from the exterior walls of the building or the outermost boundaries of any playgrounds and parking lots, whichever distance is further;
2. Within one hundred (100) feet of a library, measured either from the exterior walls of the building or the outermost boundaries of any parking lots, whichever distance is further;
3. Within one hundred (100) feet of a religious facility while in session, measured either from the exterior walls of the building or the outermost boundaries of any parking lots, whichever distance is further; and
4. Public areas from which all performances have been excluded by vote of the Board of Selectmen, after public hearing and notice thereon. Such

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notice shall be advertised at least once in a local newspaper not less than fourteen (14) days prior to the hearing.”

I note that Attorney Cole challenges the adequacy of proposed Section 9-4-6-1(4). In my opinion, the Board is not required to adhere to the provisions of Section 5-12 of the General Bylaws when determining whether a public area is to be excluded from those areas where street performances may occur. The Town may, however, wish to impose the same requirements as contained in Section 5-12, if there is a concern about the adequacy of notice and opportunity for public comment on any proposed changes to the public areas in which street performances may occur, or if it is the Town’s preferred practice to hold public hearings on these types of determinations (which seems to be the intent of Section 5-12). If this is the case, you could revise proposed Section 9-4-6-1(4) to simply state “Public areas from which all performances have been excluded by vote of the Board of Selectmen, said determination made in accordance with the procedural requirements of Section 5-12 of the General Bylaws.”

**Section 9-4-6-4:** See above comments regarding duration of performances. I would include the phrase “per calendar day” after the phrase “...limit appearances to two hours...” in the first sentence. I would also add the following phrase at the end of the last sentence: “...seeking access to Town Hall.”

**Section 9-4-6-5:** I believe that the second sentence should read “At the end of the two hours...” rather than “At the end of the hour...”.

Also, I recommend deleting the second sentence of this Section, regarding performers “sharing space.”

**Section 9-4-6-6:** This sentence is unclear (see above comments regarding the setting of noise limits), and it should be clarified.

**Section 9-4-6-7:** See above comments regarding sales activities.

**Section 9-4-6-8:** In my opinion, it is acceptable for the Town to create an internal appeals process for instances where a street performer has been found to be in violation of the Bylaw. While Section 9-4-8 does allow for citations or “tickets” to be issued in accordance with G.L. c. 40, §21D and Section 2-3 of the General Bylaws, it does not require that they be issued. If it is the intent of the Town to allow a non-criminal disposition ticket issued under Section 9-4-8 to be appealed as provided under Section 9-

Mr. Keith Bergman,  
Town Manager  
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4-6-8, then in my opinion this would conflict with the provisions of G.L. c. 40, §21D and Section 2-3, which contain explicit appeal processes. You may wish to clarify that Section 9-4-6-8 is meant to apply only to those determinations that the Bylaw has been violated that do not result in the issuance of a non-criminal disposition ticket.

At the end of the first sentence of this section, I would include the word "section" or the symbol "§" before the number "21D." I would also rewrite the fourth sentence as follows: "Any individual performing without first having applied for and received the necessary permit shall be given one written warning..."

**Section 9-4-7:** Attorney Cole suggests that this section is vague and thus unenforceable. Respectfully, I do not agree. As the United States Supreme Court has noted, the mere fact that a regulation requires interpretation does not make it vague. *McConnell v. FEC*, 540 U.S. 93, 169 n. 64 (2003); *Rose v. Locke*, 423 U.S. 48, 49-50 (1975). In my opinion, the remainder of the section provides sufficient definition of what constitutes an "undue interference," namely, crowds of sufficient size to obstruct the public way or sidewalks, or blocking space so that there is no easy passage by pedestrians.

As a typographical note, I believe that the word "dispenses" should be "disperses" throughout this section.

**Section 9-4-10:** See above comments regarding the establishment of noise limitations. Any reference to decibel limits needs to be consistent with proposed Sections 9-4-2-1 and 9-4-6-6. I also concur with Attorney Cole's suggestion that the requirement that performers display "elements of courtesy and cooperation" is vague and ambiguous, and I would recommend deletion of this language.

Specific Comments and Recommendations on Proposed Revisions to Noise Control Bylaw

**Section 13-2-6-1:** I find the added language regarding decibel levels to be confusing.

The following comments apply to the current version of the Noise Control Bylaw.

**Section 13-2-6-4:** I would revise the second sentence to read "Events allowed under this section may not extend beyond midnight nor begin prior to 10 A.M."

KOPELMAN AND PAIGE, P.C.

Mr. Keith Bergman,  
Town Manager  
September 30, 2005  
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In the fifth sentence, I would add the word "sections" or the symbols "§§" before the numbers "13-1-2 and 13-2-6."

Conclusion

As you know, drafting local bylaws that regulate First Amendment-protected activities is a complicated task, and it is not always possible to balance the various competing interests at stake in a manner that satisfies all concerned. While the government may, "within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise," (*City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994) (citations omitted)), for example, care must be taken to ensure that the restrictions imposed by such regulation meet the court-defined tests for constitutionality. I hope this letter provides you with sufficient guidance in crafting workable – and enforceable – provisions for the Street Performance and/or Noise Control Bylaws. I am happy to answer any further questions that you or the Board of Selectmen may have, so please do not hesitate to contact me.

Very truly yours,



Michele E. Randazzo

MER/tap  
Enc.  
cc: Chief of Police  
261830/PROV/0253

**Existing Bylaw**

**General Bylaw 13-2-6.**

**Excessive musical and other noise.**

**13-2-6-1. Noise permitted by person in charge.** No person occupying or having charge of any building, premises, mobile or stationary vehicle, or any part thereof shall cause, suffer or allow unnecessary loud, excessive or unusual noise (regardless of its nature, source or manner of production or reproduction) to be audible at a distance of fifty (50) feet or more from the point of origin.

**13-2-6-2. Noise caused or suffered by persons on premises.** No person present in or about any building, dwelling, premises, shelter, stationary vehicle<sup>3</sup>, boat or conveyance (or any part thereof), other than that section of any establishment licensed under M.G.L. c. 138, shall cause, suffer, or countenance any loud, unnecessary, excessive, or unusual noise, regardless of its nature, source, or manner or production or reproduction, to be audible at a distance of fifty (50) feet or more from the point of origin. A non-criminal disposition penalty will be assessed of fifty dollars (\$50) to the owner, sponsor and/or responsible party for each offense.<sup>4</sup>

**13-2-6-3.** In addition to the **non-criminal disposition penalty stated above, any 'stationary vehicle' or 'vessel'** who violates 13-2-6-1 for a period of sixty (60) minutes or more, or whose vehicle is determined to be mal-functioning by an officer of the Provincetown Police Department, shall have said vehicle or vessel removed to a location where the source of the noise can be extinguished. The cost of removal and extinguishing of the source of the offending noise shall be paid by the owner or claimant of the offending vehicle.<sup>5</sup>

**13-2-6-4.** The Licensing Board may waive any part of this noise Control bylaw for a temporary licensed public event if, in the judgment and discretion of the Licensing Board, the noise that the event will create in excess of the noise level limits established under the Noise Control bylaw is offset by the benefits of the event to the participants or the public and the noise of the event will not cause undue hardship or disturbance to the surrounding area. Events covered by this bylaw will not extend beyond midnight nor begin prior to 10 AM. The Licensing Board can stipulate any time it deems appropriate within this time frame depending on the expected noise level and impact on surrounding area. Residential private parties limited to invitation only are not affected by this bylaw as they are not licensed by the Licensing Board. They are still governed as to noise or nuisance stipulations of these bylaws under 13-1-2 and 13-2-6. The Licensing Board may impose, on the grant of a temporary waiver, terms and conditions appropriate to reduce the impact of the noise level exception. An application for a temporary waiver shall be filed with the Town Clerk. The applicant shall certify that notice of such temporary waiver application has been provided to all properties contiguous, or likely to be affected by the event, to the property where the event will occur. The applicant must also place a notice in the local media advising of the request for waiver at least two weeks prior to any hearing on the waiver by the Licensing Board. The applicant shall further certify that the Police Department has been consulted with respect to the event and has approved as to form the application for a waiver with the understanding that once the event is in process, complaints could arise necessitating action on the part of the Police, i.e., immediate consultation with the applicant to ameliorate the sound conditions if the complaints are numerous and clearly justified in the discretionary opinion of the responding Police. The application

for a temporary waiver affects all public events likely to produce sound levels that will affect the average person in a negative manner and in no instance will a waiver application be considered by the Licensing Board less than 60 days preceding any event. Applicants may receive more than one waiver in a year but the Licensing Board may recall any applications during the event year if complaints exceed the benefit to the public as determined by the Licensing Board as advised by the Police Department. The Licensing Board may suspend, modify or revoke any temporary waiver if it determines that an applicant has violated the terms or conditions of the waiver.

***Failed bylaw article - FALL STM 2007 Article 8: Noise By-law***

To see if the Town will vote to amend section 13-2-6 of the General Bylaws, by deleting the current text of section 13-2-6 in its entirety and replacing it with the following:

**13-2-6 EXCESSIVE MUSICAL AND OTHER NOISE.**

Recognizing that people have a right to and should be ensured an environment free from excessive sound and vibration capable of jeopardizing their health, safety, or welfare, or of degrading their quality of life, this section is enacted to protect, preserve and promote the health, safety, welfare, and quality of life of the citizens of Provincetown.

The following definitions shall apply to Section 13-2-6:

dBa: A-weighted sound level in decibels, as measured by a general purpose sound level meter complying with the provisions of the American National Standards Institute, "Specifications for Sound Level Meters (ANSI s1.4 1971)", or the latest approved revision thereof, properly calibrated, and operated on the "A" weighting network.

Amplification devices or similar equipment, includes, but is not limited to: phonograph, radio, television, stereo, record player, tape player, cassette player, compact disk player, digital music player, "boom box", loud speaker, or other sound amplification device.

**13-2-6-1. Noise Permitted By Person In Charge.** No person occupying or having charge of any building, premises (including public places), mobile or stationary vehicle, or any part thereof, shall cause, suffer or allow unnecessarily loud, excessive or unusual noise in Town, regardless of its nature, source or manner of production or reproduction, including but not limited to amplification devices or similar equipment, which cause or result in a noise level measured as follows:

- a) In any residential district, as defined by the Zoning By-law, in excess of 45 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 55 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise; and
- b) In any commercial district, as defined by the Zoning By-law, in excess of 65 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 80 dBA at all other hours, measured at a distance from fifty (50) from the point of origin of the noise.

**13-2-6-2. Noise caused or suffered by persons on premises.** No person present in or about any building, dwelling, premises (including public places and property), shelter, mobile or stationary vehicle, boat or conveyance (or any part thereof), other than that section of any establishment licensed under G.L. c.138, shall cause, suffer, or countenance any loud, unnecessary, excessive, or unusual noise, regardless of its

nature, source, or manner of production or reproduction, including but not limited to amplification devices or similar equipment, which causes or results in a noise level measured as follows:

- a) In any residential district, as defined by the Zoning By-law , in excess of 45 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 55 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise; and
- b) In any commercial district, as defined by the Zoning By-law, in excess of 70 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 80 dBA at all other hours, measured at a distance from fifty (50) from the point of origin of the noise.

**13-2-6-3. Construction and manufacturing activities.** No person shall operate or permit the operation of any tools or equipment in construction, drilling, blasting, mining, manufacturing or demolition work, or in preventive maintenance work for public service utilities between the hours of 9:00 p.m. and 7:00 a.m. the following day. The terms of this section shall not apply to emergency work or repair work performed by or for governmental entities or public service utilities, for public safety and welfare.

**13-2-6-4. Domestic Power Tools.** No person shall operate or permit the operation of any saw, drill, sander, grinder, lawn or garden tool, lawn mower, or similar device used outdoors in residential areas between the hours of 9:00 p.m. and 7:00 a.m. the following day.

**13-2-6-5. Penalty.** A non-criminal disposition penalty will be assessed of fifty (\$50) dollars to the owner, sponsor and/or responsible party for each offense under sections 13-2-6-1 through 13-2-6-4, above.

**13-2-6-6.** In addition to the non-criminal disposition penalty stated above, any 'stationary vehicle' or 'vessel' which violates 13-2-6-2 for a period of sixty (60) minutes or more, or whose vehicle is determined to be malfunctioning by an officer of the Provincetown Police Department, shall have said vehicle or vessel removed to a location where the source of the noise can be extinguished. The cost of removal and extinguishing of the source of the offending noise shall be paid by the owner or claimant of the offending vehicle.

**13-2-6-7. Waiver.** The Licensing Board may waive any part of this Noise Control bylaw for a temporary licensed public event if, in the judgment and discretion of the Licensing Board, the noise that the event will create in excess of the noise level limits established under the Noise Control bylaw is offset by the benefits of the event to the participants or the public and the noise of the event will not cause undue hardship or disturbance to the surrounding area. Events covered by this bylaw will not extend beyond midnight nor begin prior to 10 A.M. The Licensing Board can stipulate any time it deems appropriate within this time frame depending on the expected noise level and impact on surrounding area. Residential private parties limited to invitation only are not affected by this bylaw as they are not licensed by the Licensing Board. They are still governed as to noise or

nuisance stipulations of these bylaws under 13-1-2 and 13-2-6. The Licensing Board may impose, on the grant of a temporary waiver, terms and conditions appropriate to reduce the impact of the noise level exception. An application for a temporary waiver shall be filed with the Town Clerk. The applicant shall certify that notice of such temporary waiver application has been provided to all properties contiguous, or likely to be affected by the event, to the property where the event will occur. The applicant must also place a notice in the local media advising of the request for waiver at least two weeks prior to any hearing on the waiver by the Licensing Board.

The applicant shall further certify that the Police Department has been consulted with respect to the event and has approved as to form the application for a waiver with the understanding that once the event is in process, complaints could arise necessitating action on the part of the Police, i.e., immediate consultation with the applicant to ameliorate the sound conditions if the complaints are numerous and clearly justified in the discretionary opinion of the responding Police. The application for a temporary waiver affects all public events likely to produce sound levels that will affect the average person in a negative manner and in no instance will a waiver application be considered by the Licensing Board less than 60 days preceding any event. Applicants may receive more than one waiver in a year but the Licensing Board may recall any applications during the event year if complaints exceed the benefit to the public as determined by the Licensing Board as advised by the Police Department. The Licensing Board may suspend, modify or revoke any temporary waiver if it determines that an applicant has violated the terms or conditions of the waiver.

**13-2-6-8. Disturbing The Peace/Nuisances.** Nothing herein shall be construed as permitting conduct that would otherwise constitute a disturbance of the peace under G.L. c. 269, §1, G.L. c. 272, §53, or other applicable provision of state law. Nothing herein shall be construed as permitting conduct that would otherwise violate the provisions of General By-laws Section 13-1-2, relative to nuisances of noises.

**13-2-6-9. Exemptions.** The following are exempted from the provisions of Section 13-2-6 and shall not be considered unnecessarily loud, excessive or unusual noise for purposes of this section:

1. Noise from law enforcement motor vehicles;
2. Noise from emergency vehicles or emergency equipment which is audible during an actual emergency;
3. Noise from Town-sponsored events or activities;
4. Nonamplified crowd noises from organized activities such as at school sporting events; and resulting
5. Ferry whistles.

**13-2-6-10. Severability.** If any provision or subsection of this Section shall be held to be invalid by a court of competent jurisdiction, then such provision or subsection shall be considered separately and apart from the remaining provisions or subsections of this section, which shall remain in full force and effect.

Or to take any other action relative thereto.

***[Requested by the Board of Selectmen and the Town Manager]***

**BOARD OF SELECTMEN RECOMMENDS: 3-1-1  
FINANCE COMMITTEE HAS NO RECOMMENDATION**

Pam Parmakian moved that the Town vote to approve Article 8 as printed in the warrant, with the following amendment: by amending Section 13-2-6-1 (b) to read as follows: In any commercial district, as defined by the Zoning By-law, in excess of 65 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 75 dBA at all other hours, measured at a distance from fifty (50) from the point of origin of the noise and; By amending Section 13-2-6-2 (b) to read as follows: In any commercial district, as defined by the Zoning By-law, in excess of 65 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 75 dBA at all other hours, measured at a distance from fifty (50) from the point of origin of the noise.

Kathleen Fitzgerald moved to amend the motion as follows: Under proposed Article 13-2-6-9 – Exemptions, subparagraph 3. Noise from Town-sponsored events or activities; insert the following language: “with the exception of the Town Hall Clock bell which shall be adjusted so as not to chime or to chime in a muted fashion between the hours of 11:00 p.m. and 7:00 a.m.”

**Motion to Amend Does Not Pass. Motion Does Not Pass.**



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

6E

## INSERT BALLOT QUESTION

### Petition to Elect a Charter Commission

Requested by: Provincetown Board of Registrars, 2/16/2016

Action Sought: Approval

#### Proposed Motion(s)

**Move that the Board of Selectmen, in accordance with MGL C. 43B, vote to insert the following ballot question on the May 3, 2016 Annual Town election ballot: "Shall a commission be elected to revise the Charter of Provincetown?"**

#### Additional Information

The revision of any Charter shall be initiated by filing with the Provincetown Board of Registrars a petition signed by at least fifteen percent of the number of registered voters residing in Provincetown at the preceding state election. A petition certification statement by the Board of Registrars is attached. There were a total of 2,897 eligible voters in the November 4, 2014 State Election, which equals 435 signatures required to meet the 15% threshold as required by MGL C. 43B.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>

*Town of Provincetown*  
*Office of the Town Clerk*

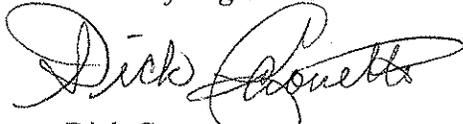


Town Hall, 260 Commercial Street  
Provincetown, Massachusetts 02657  
Facsimile (508) 487-9560  
Telephone (508) 487-7013

February 16, 2016

In accordance with MGL C. 43B, the Provincetown Board of Registrars has certified a total of 440 signatures of registered voters in the Town of Provincetown to a petition to revise the Charter of Provincetown.

*Board of Registrars:*

  
Dick Caouette

  
Tom Coen

  
Doug Johnstone



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**

Monday, February 22, 2016

7A

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## TOWN MANAGER'S REPORT

### Administrative Updates

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

**Discussion dependent – votes may be taken.**

### Additional Information

- i. Legislative request for clarification of the definition of the Rental Housing Trust.  
(Document forthcoming.)

### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

7B

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## POTENTIAL TOWN MEETING ARTICLES

### Discussion

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

**Discussion Dependent – votes may be taken.**

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016

7C

## OTHER

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

**Discussion Dependent – votes may be taken.**

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



Provincetown Board of Selectmen

**AGENDA ACTION REQUEST**

Monday, February 22, 2016

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## MINUTES OF BOARD OF SELECTMEN'S MEETINGS

Requested by: BOS Secretary

Action Sought: Approval

### Proposed Motion(s)

**Move that the Board of Selectmen approve the minutes of:**

**April 27, 2015 (Special)**

**[ ] as printed [ ] with changes so noted**

### Additional Information

See attached minutes.

### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

**TOWN OF PROVINCETOWN - BOARD OF SELECTMEN  
SPECIAL MEETING MINUTES  
MONDAY, APRIL 27, 2015 5:00 PM  
TOWN HALL – JUDGE WELSH ROOM**

**DRAFT**

Chairman Donegan convened the open meeting at 5:00PM noting the following:

Board of Selectmen attending: Tom Donegan, Erik Yingling, Robert Anthony, Cheryl Andrews, and Raphael Richter.

Other attendees: Acting Town Manager David Gardner, Acting Assistant Town Manager Michelle Jarusiewicz, Assembly Delegate Dr. Brian O'Malley, and Commissioner Sheila Lyons.

Recorder: Loretta Dougherty

Tom introduced our speakers.

**1. Presentations by County Officials – Votes may be taken on the following items:**

**A. Annual Report from Commissioner Sheila Lyons.**

Tom asked Commissioner Lyons to give an overview of the organization; how it is funded and its purpose.

Commissioner Lyons gave a brief overview of the workings within county government. County government helps the Town in keeping up with issues that are too large for the Town to handle, such as reporting requirements, wastewater issues, and regional area networking to reduce their IT costs. The County helps with environmental issues, and building consensus and town collaboration on a regular basis which allows them to harness grants. Funding comes from approximately 10% of town assessments. We have a cost of living going up 3% and we are restricted to 2.5%. As populations change and diminish, towns are strapped. People are looking at the County more and more for assistance. The County has just come out of their budget period with a shortfall; the exact amount is not known as yet.

The Board thanked Commissioner Lyons for the update.

**No action was taken.**

**B. Annual Report from Assembly Delegate Dr. Brian O'Malley.**

Dr. O'Malley stated that this is the first opportunity he has had to report to the Board since he has only served as our delegate for four months. He gave a brief overall view of the role of County government. He noted that a huge part is dedicated to public health issues along with wastewater, extension services, the Human Arts Commission, regulatory planning (IT), the Children's Cove and many more.

Tom asked about the 911 answering center; he is disappointed that it is in Bourne so far away from Provincetown. Putting it in Bourne is not a practical option for us.

Commissioner Lyons stated that it was voted against this round, and that she was not involved in these discussions. Commissioner Flynn was more involved. She agrees the need for local control and jobs to stay here.

Dr. O'Malley stated that there is a tendency for the County to be mid-Cape centered. An observation on his part is that everything is in Barnstable.

Tom would like to see them working on homeless services. To get a Provincetown person in need to Hyannis is long and tortuous. Human Services is important and the state will be cutting much of their support for these services.

Commissioner Lyons wants to support a consolidated effort of services. They are working on the homeless situation very hard. There is a HUD grant (community action) that has been given over to them. They signed up to take on that grant; making sure the money would stay on the Cape. It includes housing, placement, and rapid rehousing. They need 1 ½ grant writers, which did not pass

the Assembly, but they will keep trying to do this. She recently met with the Board of Selectmen in Mashpee and was told there is a huge drug problem there. The County has issued a report on what it is costing the Cape in terms of police, hospitals, employment, families, emotional, and mental health. It is a much bigger problem than just the addiction itself; it is affecting an entire society on the Cape, and will be addressed.

Dr. O'Malley stated that the significance of alcohol abuse is an equal burden in the community. It is responsible for a lot of the costs even though alcohol use is relatively flat and the drug use is sky rocketing. This is an epidemic.

Tom's final question was geared to how we track, keep involved, and understand the management of our water. There was a conference held a couple of months ago regarding this; the 208 Plan. Commissioner Lyons suggested that we ask Paul Niedzwiecki from the Cape Cod Commission to come and speak with the Board about the 208 Plan. The conference was just a day where they let the County know what has been done so far, where they are going, and show what progress has been made by holding different sessions throughout the Cape where people have come together over a year's process and are coming to some consensus on how to plan forward. We have to have that plan forward for the state and federal dollars. We have to show that we are speaking as one voice. It has been a tremendous effort. We are advocating for a natural "Cape" way; one where we will not have to put costly sewers everywhere, especially in the outer areas where we can use Title 5 septic systems.

Cheryl asked if the Board could get a report showing a number for all the stabilization accounts and any other accounts unencumbered right now.

Commissioner Lyons will make sure that the Board gets a report.

Tom stated that right now the County is funded, in part, by a real estate transfer fee and that our Town Meetings have been asking for this special legislation for many years; like Nantucket, to have a real estate transfer fee. As the County begins to look at ways to modify their legislation think about having an opt-in option for the towns to be able to add on an adder. The County would have a base level like we do for the meals tax and the towns would opt-in by adding 1% on top of it. It would be very helpful to the towns and at each Town Meeting they could decide if they wanted to do it or not. Commissioner Lyons stated that these will be ongoing discussions through the year. She will be meeting with a group of elected officials and this is exactly what they will be talking about because they are looking at way for new revenues and how to restructure. She will bring this forward as part of the discussions.

Cheryl stated that this would have to go back before the Legislature.

Commissioner Lyons stated that it would have to be a part of the discussion as there would need to be a Charter change. She stated that their revenue stream is set but they could advocate for the towns to have something similar that would help them. She stated she would not mind increasing our percentage; we have not even taxed as much as we can.

Tom stated that they already have the collection function which is part of the advantage. He commented that if they had a 1% and we added a ½% to it, the collection mechanism would be in place and we could pay a fee for that.

Commissioner Lyons will pass on discussions had with different Commissioners and Departments. She did speak with Billy Travers the IT Director, and he is putting together a packet for the Town to review with some pricing in it. Wellfleet and Truro are using some the County's services. Sheila will pass on this discussion.

**No action was taken.**

**2. Other:** None.

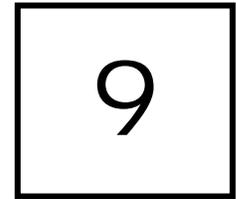
Without objection the meeting was adjourned at 6:01pm.

Minutes transcribed by: Loretta Dougherty



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**

Monday, February 22, 2016



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## CLOSING SELECTMEN'S STATEMENTS

### Administrative Updates

Requested by: Town Manager David Panagore

Action Sought: Discussion

#### Proposed Motion(s)

*Motions may be made and votes may be taken.*

**Cheryl Andrews**

**Robert Anthony**

**Raphael Richter**

**Tom Donegan**

#### Additional Information

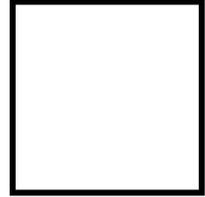
#### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Monday, February 22, 2016



## EXECUTIVE SESSION MOTION

MGL c30A, Sec. 21(a), Clause 6

Requested by: Town Manager David Panagore

Action Sought: Discussion

Proposed Motion(s)

**MOVE that the Board of Selectmen vote to go into Executive Session pursuant to MGL c30A, Section 21(a), Clause 6 for the purpose of:**

**Clause 6** - To consider the purchase of, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body. Old Community Center (46 Bradford Street) & Winslow Farm (44-48 Winslow). Votes may be taken.

**Clause 6** - To consider the purchase of, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body. (Airport Lease) Votes may be taken.

and not to convene in open session thereafter.

**Roll Call Vote:**  
Tom Donegan:  
Cheryl Andrews:  
Raphael Richter:  
Robert Anthony:

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>