

# Special Town Meeting

## Monday, November 8, 2010

**Meeting Called to Order.** Town Moderator Irene Rabinowitz convened the Special Town Meeting at 6:00 p.m. on Monday, November 8, 2010 in the Veterans Memorial Elementary School.

### Preliminary motions:

Michele Couture moved that the Town vote to waive the reading of the warrant.

**Motion Passed.**

Michele Couture moved that the Town vote to grant permission to speak at the November 8, 2010 Special Town Meeting to the following persons who are not registered voters of the Town of Provincetown: Russell Braun, *Building Commissioner*; John W. Giorgio, Esq., and other attorneys of the firm of Kopelman & Paige, P.C., *Town Counsel*; Russell Braun, *Building Commissioner*; Brandon Motta, *Recreation Director*; Beau Jackett, *Information Systems Director*; Michelle Jarusiewicz, *Housing Specialist/Grant Administrator*; Maxine Notaro, *Permit Coordinator*; Jane Evans, *Health Agent*; Domenic Rosati, *Parking Administrator*; Beth Singer, *School Superintendent*; Kim Y. Pike, *District Principal*; Betty G. White, *Administrative Ass't to Supt. Of Schools for Business & Finance*.

**Motion Passed.**

Michele Couture moved that on all matters to come before the November 8, 2010 Special Town Meeting, requiring a two-thirds vote by statute, that a count need not be taken unless the vote so declared is immediately questioned by seven or more registered voters.

**Motion Passed.**

Astrid Berg moved to allow former Provincetown Interim Building Commissioner, Matthias J. Mulvey, Building and Zoning Consultant, to attend Town Meeting floor as a non-voter as my advisor in matters relevant to the Zoning articles being presented on tonight's warrant.

**Motion Does Not Pass.**

### **Article 1. Prior Year Bills**

To see what sum the Town will vote to raise and appropriate or transfer from available funds for the purpose of paying prior year unpaid bills; or take any other action relative thereto.

*[Requested by the Town Manager]*

**Board of Selectmen Recommends: 5-0-0**

**Finance Committee Recommends: 5-0-0**

***Nine-tenths Vote Required***

David Bedard moved that the Town vote to transfer from ATM01 Article 5-8 (DPW Highway Truck Storage) the sum of \$4,384.86 for the purpose of paying the following prior year bills:

White's Construction Company \$4,035.00; Lands End Marine Supply \$16.86; Buckler's Towing Service \$333.00. **Motion Passed Unanimously. (Nine-tenths Vote Declared)**

**Article 2. FY 2011 Enterprise Funds**

To see if the Town will vote to amend the Wastewater and Water Enterprise budgets for Fiscal Year 2011 as voted under Article 4 of the April 5, 2010, Annual Town Meeting by raising and appropriating or transferring from available funds the following amounts:

<b>440 Wastewater Enterprise Fund</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>10-11 %</b>
Enterprise Fund Costs	\$2,478,687	\$2,737,160	
General Fund Costs	157,027	80,434	
<b>TOTAL COSTS</b>	<b>\$2,635,714</b>	<b>\$2,817,594</b>	<b>6.9%</b>
<b>450 Water Enterprise Fund</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>10-11 %</b>
Enterprise Fund Costs	\$1,635,509	\$1,834,538	
General Fund Costs	269,361	269,361	
<b>TOTAL COSTS</b>	<b>\$1,904,870</b>	<b>\$2,103,899</b>	<b>10.4%</b>

or to take any other action relative thereto.

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

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Recommends: 5-0-0**

Austin Knight moved that the Town vote to amend the Fiscal Year 2011 Wastewater Enterprise Fund Budget as follows: that \$2,737,160 be appropriated therefor, \$2,257,870 to come from Wastewater Enterprise Fund revenues and \$479,290 from reserved for debt service, and further, \$80,434 to be appropriated in the general fund and funded from Wastewater Enterprise revenues. **Motion Passed.**

David Bedard moved that the Town vote to amend the Fiscal Year 2011 Water Enterprise Fund Budget as follows: that \$1,834,538 be appropriated therefor, \$1,733,042 to come from Water Enterprise Fund revenues and \$101,496 from Retained Earnings, and further, \$269,361 to be appropriated in the general fund and funded from Water Enterprise revenues. **Motion Passed.**

**Article 3. Use of Parking Funds to Purchase Automated Pay Stations**

To see if the Town will vote to expend \$51,000 from the Parking Fund for the purchase of three (3) automated pay station kiosks which will accept coins, paper currency, tokens and credit cards to be installed at the Alden Street Parking Lot, Johnson Street Parking Lot, and West End Parking Lot; or to take any other action thereto.

*[Requested by the Town Manager]*

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Recommends: 6-0-0**

Michele Couture moved that the Town vote to expend \$51,000 from the Parking Fund for the purchase of three (3) automated pay stations to be installed at the Alden Street Parking Lot, Johnson Street Parking Lot, and West End Parking Lot. **Motion Passed.**

**Article 4. Discharge the Regional School District Planning Committee**

To see if the Town will vote to discharge the Regional School District Planning Committee that was created under Article 4 of the April 6, 2009 Special Town Meeting to study the advisability of establishing a regional school district, or take any other action relative thereto.

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

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**

Elaine Anderson moved that the Town vote to discharge the Regional School District Planning Committee that was created under Article 4 of the April 6, 2009 Special Town Meeting. **Motion Passed.**

**Article 5. Cemetery Improvements**

To see if the Town will vote to appropriate and transfer from available funds a sum of money for services related to expansion of the Provincetown Cemetery and purchase of equipment; or to take any other action relative thereto.

*[Requested by the Cemetery Commission]*

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Recommends: 6-0-0**

F. John Santos moved that the Town vote to transfer \$1,055 from the Sale of Cemetery Lots Special Revenue Fund to pay for costs related to the expansion of the cemetery land located at 24 Cemetery Road as recommended by the Board of Selectmen and the Cemetery Commission.

Richard Olson moved to amend the motion to transfer the sum of \$2,000 from the Sale of Cemetery Lots Special Revenue Fund.

**Motion to Amend Passed.**

**Motion As Amended Passed.**

**Motion Passed.**

**Article 6. Adoption of MGL Ch.138, §33B Sales of alcoholic beverages by on-premise licensees on Sundays and certain legal holidays; sales between 10:00 A.M. and 12:00 noon**

To see if the Town will vote to accept the provisions of Massachusetts General Law Chapter 138: Section 33B to authorize the Licensing Board to allow licensees under section twelve to sell alcoholic beverages between the hours of ten o'clock ante meridian and twelve o'clock noon on Sundays, the last Monday in May and on Christmas day or on the day following when said day occurs on Sunday, or to take any other action relative thereto.

*[Requested by the Board of Selectmen]*

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Recommends: 6-0-0**  
**Licensing Board Recommends: 3-0-0**  
**Visitor Services Board Recommends: 5-0-0**

F. John Santos moved that the Town vote to accept MGL Ch. 138, §33B in order to allow the Town to consider authorizing the sale of on-premises alcoholic beverages between the hours of 10:00 a.m. – 12:00 noon on Sundays, the last Monday in May and on Christmas Day or on the day following when said day occurs on Sunday.

**Motion Passed.**

**Article 7. General By-law Amendment: 8-16. Hours of Alcoholic Beverage Service**

To see if the Town will vote to amend the Provincetown General By-laws by adding §8-16 to read as follows:

**8-16. Hours of Alcoholic Beverage Service**

Unless otherwise restricted, no holder of an alcohol beverage license issued by the town of Provincetown pursuant to Massachusetts General Laws Chapter 138, shall permit activity licensed thereunder to be conducted between the hours of 1:00 a.m. and 8:00 a.m. weekdays and between 1:00 a.m. and 10:00 a.m. Sundays. Except the Licensing Board may vote to extend pouring licenses until 2:00 a.m on New Year' Eve. A non-criminal disposition penalty will be assessed on any holder of an alcohol license found to be selling alcohol between the hours of 1:00 a.m. and 8:00 a.m. in the amount of one hundred (\$100) for the first offense, two hundred (\$200) for the second offense and three hundred dollars (\$300) for the third offense. Each violation of the hours of entertainment or amusement operation shall be deemed to be a separate offense.

Or to take any other action relative thereto.

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

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Licensing Board Recommends: 3-0-0**

Michele Couture moved that the Town vote to approve Article 7 as printed in the warrant with the following changes: add the words “the last Monday in May and on Christmas Day or on the day following when said day occurs on Sunday” after the word “Sundays” in the fourth line and replace the words “found to be selling alcohol between the hours of 1:00 am and 8:00 am”, with the words “found in violation of this section”.

**Motion Passed.**

**Article 8. General By-law Amendment: Deletion Chapter 7**

To see if the Town will vote to amend the Provincetown General By-laws by deleting Chapter 7, Domestic Partnerships, in its entirety,  
Or to take any other action relative thereto.

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

**Board of Selectmen Recommends: 4-0-1**  
**Finance Committee Has No Recommendation**

Austin Knight moved to amend Chapter 7 of the General Bylaws by deleting the current text in its entirety and replacing it with the following:

7.1 Chapter 7, Domestic Partnership, is hereby deleted, provided, however, that the rights and benefits of domestic partnerships that existed under Chapter 7 of the General Bylaws that was in effect prior to November 8, 2010, shall continue for any individuals who filed a Domestic Partnership Registration as of the effective date of this bylaw.

**Motion Passed.**

**Article 9. General By-law Amendment: 13-2-7-8 Unlawful Restraint of Dogs**

To see if the Town will vote to amend the Provincetown General By-laws by adding §13-2-7-8 to read as follows:

**13-2-7-8 Unlawful Tethering Of Dogs**

(a) The following term shall have the following definition:

“Reasonable period” shall mean a period of time not to exceed a total of three hours in any 24-hour period, or a time that is otherwise approved by the animal control officer.

“Temporary task” shall mean a task that takes no longer than 30 minutes to complete.

“Tether” shall mean to fasten, chain, tie or otherwise restrain.

(b) No person shall tether, or cause a dog to be tethered, to a dog house, tree, fence, or any other stationary object.

(1) A dog shall not be tethered to any running line, pulley, or trolley system by means of a choke collar or pinch collar or prong collar or any other device that is not properly fitted to the dog or that is likely to cause injury to the dog.

(2) A dog shall not be tethered if the length of the tether is shorter than ten feet or five times the length of the dog as measured from the tip of the dog’s nose to the base of the dog’s tail, whichever is greater.

(3) A dog shall not be tethered in any manner that is likely to cause injury, strangulation or entanglement to the dog.

(4) A dog shall not be tethered if the dog does not have access to water, shade and dry ground.

(5) A dog shall not be tethered if it is visibly sick or injured.

(6) A dog shall not be tethered in the case of extreme weather conditions, including conditions in which the actual or effective outdoor temperature is below 32 degrees Fahrenheit; a heat advisory has been issued by a local or state authority jurisdiction; or a hurricane, tropical storm or tornado warning has been issued within the Town by the National Weather Service.

(7) A dog shall not be tethered if the owner or party responsible for the dog is not in visual range of the dog.

(c) Notwithstanding subdivision (b), an owner or person responsible for the dog may do any of the following:

(1) Tether a dog for a reasonable period. If there are multiple dogs, each dog is tethered separately.

(2) Tether a dog pursuant to the requirements of a camping or recreational area.

(3) Tether a dog no longer than is necessary for the owner or person responsible for the dog to complete a temporary task that requires the dog to be restrained.

(d) Any person who violates this bylaw shall be subject to a fine of \$100 (one hundred dollars) for the first offense; \$200 (two hundred dollars) for the second offense; and

\$300 (three hundred dollars) for the third and subsequent offenses. Each violation of this by-law shall be deemed to be a separate offense.

Or to take any other action relative thereto.

*[Requested by Provincetown Animal Welfare Committee]*

**Board of Selectmen Recommends: 4-1-0**

**Finance Committee Has No Recommendation**

**Animal Welfare Committee Recommends: 4-0-0**

Candace Nagle moved that the Town vote to approve Article 9 as printed in the warrant.  
**Motion Passed.**

**Article 10. General By-law Amendment: 13-2-7-9. Provincetown Dog Park (Pilgrim Bark Park) Rules and Regulations**

To see if the Town will vote to amend the Provincetown General By-laws by adding §13-2-7-9 to read as follows:

**13-2-7-9. Provincetown Dog Park (Pilgrim Bark Park) Rules and Regulations**

The Dog Park which is located at the intersection of Shank Painter Road and Route 6 and is known as Pilgrim Bark Park is a designated off-leash area for dogs that is opened from Dawn to Dusk. The following list of rules and regulations shall apply to the use of the Dog Park:

(a) Dogs:

- (1) Must be licensed and vaccinated and wear tags at all times.
- (2) Must be spayed or neutered
- (3) Must be at least four months old
- (4) Must be within view or voice control of owner at all times
- (5) Must not be sick or suffering with parasites
- (6) Must be on leash when outside the gated enclosures
- (7) Must be 25 pounds or under in the small dog area

(b) Owners/Handlers/Responsible Party:

- (1) May not bring animals other than dogs into the Dog Park
- (2) May not bring more than three dogs into the park at one time
- (3) Must clean up after dog immediately
- (4) Must immediately remove a problem dog (displaying aggressive behavior, mounting, excessive barking) from the Dog Park
- (5) May not bring food, alcoholic beverages or glass containers into the Dog Park
- (6) May not smoke
- (7) Must immediately stop dogs from digging and must fill in any holes created by any dog under his or her control
- (8) Must keep the Dog Park gates closed at all times
- (9) Are solely responsible for injuries and damage caused by their dogs
- (10) Must provide supervision to children under age 16
- (11) May not bring strollers, bicycles or any children's toys into the Dog Park

(c) Any person who violates this bylaw shall be subject to a fine of \$25 for the first offense; \$50 for the second offense; and \$75 for the third and subsequent offenses.

Each violation of this by-law shall be deemed to be a separate offense. Repeated offenses could result in the loss of Dog Park privileges.

Or to take any other action relative thereto.

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

**Board of Selectmen Recommends: 5-0-0  
Finance Committee Has No Recommendation**

Elaine Anderson moved that the Town vote to approve Article 10 as printed in the warrant. **Motion Passed.**

**Article 11. General By-law Amendment: 13-2-7-12. Animals Left Unattended In Motor Vehicles**

To see if the Town will vote to amend the Provincetown General By-laws by renumbering §13-2-7.1 and §13-2-7.2 to §13-2-7-10 and §13-2-7-11 respectively and adding §13-2-7-12 to read as follows:

**13-2-7.1. 13-2-7-10. HORSES AND OTHER ANIMALS.** *Renumbering only no further changes to this section.*

**13-2-7.2. 13-2-7-11. Safe Transportation Of Animals.** *Renumbering only no further changes to this section.*

**13-2-7-12. Animals Left Unattended In Motor Vehicles**

(a) No person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

(b) Nothing in this section shall prevent a law enforcement officer and/or animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

(c) A law enforcement officer and/or animal control officer who removes an animal from a motor vehicle shall take it to an animal shelter or other place of safekeeping or, if the officer deems necessary, to a veterinary hospital for treatment.

(d) A law enforcement officer and/or animal control officer is authorized to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, after a reasonable effort to locate the owner or other person responsible, and the Town shall not be responsible for any damage to the motor vehicle resulting from such removal.

(e) A law enforcement officer and/or animal control officer who removes an animal from a motor vehicle shall, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. The animal may be claimed by the owner only after payment of all charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.

(f) Any person who violates this bylaw shall be subject to a fine of \$100 for the first offense; \$200 for the second offense; and \$300 for the third and subsequent offenses. Each violation of this bylaw shall be deemed to be a separate offense. If the animal

suffers great bodily injury, then criminal disposition is possible under MGL Chapter 272 Section 77 Cruelty to Animals.

Or to take any other action relative thereto.

*[Requested by Provincetown Animal Welfare Committee]*

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Animal Welfare Committee Recommends: 4-0-0**

Candace Nagle moved that the Town vote to approve Article 11 as printed in the warrant. **Motion Passed.**

**Article 12. Zoning By-law Amendment: Article 1, Definitions**

To see if the Town will vote to amend the Provincetown Zoning By-laws Article 1 to add the definition of “*Demolition*” and amend the definition of “*Palletized Patio*”, to read as follows:

**Demolition** Any act of destroying, elimination, pulling down, razing or removing a building or any portion thereof, or starting the work of any such act with the intention of completing the same.

**Palletized Patio** –A combination of materials assembled, constructed or erected which is not fixed to assembled materials, to a structure or to the ground and whose assembled components are no larger than 8 feet long by 4 feet wide by 6 inches high. Palletized patios shall be at or near grade more than 8” above grade.

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

**Two-Thirds Vote Required**

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Planning Board Recommends: 3-0-0**

John Golden moved the Town vote to approve Article 12 as printed in the warrant.

Astrid Berg moved to amend the motion to make no change to “Palletized Patio” as in the current by-law.

**Motion to Amend Does Not Pass.**

**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 13. Zoning By-law Amendment: Section 2360 Formula Business Regulated District and Section 2440 Permitted Use Chart**

To see if the Town will vote to amend the Provincetown Zoning By-laws by adding Section 2360 pursuant to Article 21 April 5, 2010 Annual Town Meeting and Section 2440 by adding the following use to the Permitted Use Chart, to read as follows:

**2360 Formula Business Regulated District.**

**2361 Definition:**

"Formula Business" means a type of retail sales establishment, restaurant, tavern, bar, or take-out food establishment which is under common ownership or control or is a

franchise, and is one of ten or more businesses or establishments worldwide maintaining three or more of the following features:

- (a) Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
- (b) Trademark or service mark, defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others, on products or as part of the store design, such as cups, napkins, bags, boxes, wrappers, straws, store signs or advertising devices.
- (c) Standardized signage and color scheme used throughout the interior or exterior of the establishment.
- (d) Standardized uniform, including but not limited to, aprons, pants, shirts, smocks or dresses, hat and pins (other than name tags).
- (e) Standardized facade and signage.

**2362 Purpose:**

The purpose and intent of the Formula Business Regulated District (FBRD) is to address the adverse social and economic impact of standardized businesses on Provincetown's historic residential community character. Formula Business uses are regulated in the FBRD in order to maintain a unique retail and dining experience. Formula Businesses frustrate this goal by detracting from Provincetown's overall historic experience and threatening its tourist economy. The proliferation of Formula Businesses will have a negative impact on the Town's economy, historical relevance, unique character and economic vitality.

(1) Location

The location of the Formula Business Regulated District (FBRD) shall encompass the Town of Provincetown.

(2) Permitted Uses

Any use permitted in the underlying zoning district shall be permitted, except for those specifically prohibited below in Section 3.

(3) Regulated Uses

~~Formula Business uses are regulated in the FBRD in order to maintain a unique retail and dining experience. Formula Businesses frustrate this goal by detracting from Provincetown's overall historic experience and threatening its tourist economy.~~ The proposed use of any building or structure for a Formula Business establishment shall require both a Special Permit from the Zoning Board of Appeals and a site plan approval of the Planning Board as well as the business license. The impact on the neighborhood and Town visual character ~~and the impact on surrounding businesses of~~ any Formula Business establishment shall be a criteria for approval.

*And adding the following use to the Permitted Use Chart, to read as follows:*

**2440 Permitted Principal Uses**

		Res 1	Res 2	Res 3 Res B	TCC	GC	S	M
<b>B11</b>	<b><u>Formula Regulated Businesses</u></b>	<b><u>No</u></b>	<b><u>No</u></b>	<b><u>BA</u></b>	<b><u>BA</u></b>	<b><u>BA</u></b>	<b><u>No</u></b>	<b><u>No</u></b>

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

***Two-Thirds Vote Required***

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Planning Board Recommends: 3-0-0**

Dorothy Palanza moved the Town vote to approve Article 13 as printed in the warrant with the following change: In section 2361, delete from the definition of "Formula Business" the words "ownership or" in the second line.

**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 14. Zoning By-law Amendment: Section 2550 Multiple Buildings Per Lot**

To see if the Town will vote to amend the Provincetown Zoning By-laws Section 2550 to read as follows:

**2550 ~~Two~~ Multiple Buildings Per Lot** More than one building may be erected or moved onto a single lot provided that they are not closer to each other than nine (9) feet or twelve (12) feet if either exceeds two stories in height. Lot area requirements must be met for each principal building without counting any lot area twice. For the purpose of this bylaw, buildings are considered separate unless they are connected by a minimum one-story structure that meets the definition of *Building* in Article 1.

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

***Two-Thirds Vote Required***

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Planning Board Recommends: 3-0-0**

Howard Burchman moved the Town vote to approve Article 14 as printed in the warrant.

Astrid Berg moved to amend the motion to amend Provincetown Zoning By-Laws Section 2550 to read as follows: **2550 ~~Two~~ Multiple Buildings Per Lot** More than one building may be erected or moved onto a single lot provided that they are not closer to each other than nine (9) feet or twelve (12) feet if either exceeds two stories in height. Lot area requirements must be met for each principal building without counting any lot area twice. For the purpose of this bylaw, buildings are considered separate unless they are connected by a minimum one-story structure that meets the definition of *Building* in Article 1, that is congruent with the full length of the adjacent buildings and shares a common foundation.

**Motion to Amend Does Not Pass.**

**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 15. Zoning By-law Amendment: Section 2600 Design Standards and Section 2560 Dimensional Schedule**

To see if the Town will vote to amend the Provincetown Zoning By-laws by moving Sections 3300 to Section 2600 with the following amendments and Section 2560 Dimensional Schedule to read as follows:

**~~3310-2610~~ Purpose**

~~Provincetown is a unique community: unique in its location, in the degree of its economic dependence on tourism, and in its architectural heritage. Few towns have so~~

~~much of their historic architecture still in existence and maintaining its visual character as a 19th century seaport is of vital importance to the Town since it forms the base of its economic survival as a place tourists want to visit. The design standards required by this Article are intended to ensure that all development or redevelopment occurs in a manner that preserves, restores and respects this the unique architectural heritage and community character that is Provincetown. Roof Configuration and Building Scale are important contributing elements to the experience of the streetscape and the character of the community. Specifically, ~~t~~The regulations in this Section of the Zoning By-Laws arise from the community character analysis and Goals, Objective and Policies contained in Chapter III of the Provincetown Master Plan the Local Comprehensive Plan.~~

### **3320 2620 Applicability**

All new construction and any development (~~new buildings or rehabilitation projects that add dwelling units, commercial guest units, commercially usable space or Equivalent Dwelling Units\*)~~ in the Town of Provincetown that alters the exterior façade or roof configuration of an existing structure not specifically excluded from these provisions, shall be required to submit a site plan, architectural floor plan and elevation drawings of the existing and proposed buildings or renovations, and other supporting documents. If such development meets the standards set forth in this Article, then it may be approved by the Zoning Enforcement Officer. If such development fails to meet any one of the standards, then it shall be referred to the Board of Appeals ~~for review~~ accompanying an application for a Special Permit. The Board of Appeals may ~~approve plans~~ grant a Special Permit for a proposed development that differs from the standards contained herein provided that it finds the design of the proposed development meets the requirements for granting a Special Permit to be in conformity with the objectives of the Town of Provincetown, as listed herein. The Board may attach conditions to a development approval to ensure that the objectives are met, or it may deny the development as inconsistent with the failing to meet the Town's objectives. (~~An Equivalent Dwelling Unit is based on the sewerage flow estimates for a three bedroom house as specified in Sec. 15.02 of 310 CMR 15.00: The State Environmental Code, Title 5.~~)

### **3330 2630 Roofs.**

A. Applicability: This section is applicable in all zoning districts.

B. Purpose: ~~Provincetown is a 19th Century seaport town which has a distinctive architectural character. Part of that character is attributed to roof pitches in the range of (6 in 12) and (14 in 12)--this means for every 12 units of horizontal distance, a roof shall rise from 6 to 14 units in height with the exception of a few Victorian buildings and recent structures, all of the town's buildings conform to this range in roof pitch. Since flat-roofed buildings of the same height as pitched-roof buildings would appear substantially more bulky, and would, therefore alter the traditional character of the town, they shall be avoid ed. The existing buildings in the town range from one and one-half to three stories. Although heights are often mixed, the maximum height to be permitted in different areas of town shall be consistent with Section 2560 of the Provincetown Zoning By-Laws.~~

The streetscape and community character that exist in Provincetown are the result of the compatible relationships among historic roof styles resulting from an architectural heritage that spans three centuries. Part of that community character is based on the large number of buildings of modest size and bulk, generally not more than 2 and 1/2 stories. The purpose of this regulation is to enhance community character by limiting the

bulk above the second story and to mitigate potential negative impacts on adjacent properties.

### C. Roof Pitch

~~1. Standards All new developments as specified in Section 6100 shall have roof pitches between (6 in 12) and (14 in 12) except a hip roof which shall have at least (4 in 12) and mansard and gambrel roofs which shall have no specific pitch requirement, unless a Special Permit is granted by the Board of Appeals as specified in Section 5300 in conformance with the requirements listed below.~~

~~2. Dormers: Dormers shall have a minimum pitch of 4:12. No part of a dormer shall extend above the ridge height of the roof from which it projects.~~

~~3. Board of Appeals Approval No approval for deviation from the above standard shall be granted unless the Board of Appeals finds that the deviation from the standard is in keeping with the standards for a Special Permit, the objectives of the Master Plan and is appropriate for one of the following reasons:~~

~~a. The function of the structure or the structure's importance to the community as a whole, justifies a different roof pitch. For example, a residential structure would not merit this sort of consideration, while a church or public building might. A supermarket or warehouse structure with a need to span large floor areas may also be exempted, however, the design of a shopping center that looks like normal shopping centers is contrary to the purpose of this By-Law. Thus, in granting a deviation, the Board of Appeals shall be looking for a design that breaks up the typical straight front of the center and creates internal pedestrian areas and spaces.~~

~~b. Other features of the proposed design are such that the deviation of the roof pitch is not disruptive to the character of the area. There may be other advantages of the design that can make up for the difference in roof pitch. For example, a lower pitch may allow buildings further inland to retain a view of the bay.~~

~~c. The cost of replacing the roof of an existing building, where the roof would not otherwise be modified, is too high given the improvement in character that would result. For example, if a roof deck had been added that disrupts the character of the surrounding area, removal would be justifiable; requiring a small affordable housing unit to replace an entire roof would be justifiable.~~

~~D. C. Roof Configuration: Gable, Hip and Shed are the predominant roof forms in the Provincetown architectural tradition. Modifications of these roof configurations can transform the bulk of buildings. Therefore, above the second story of a building, limits are as follows:~~

~~1) dormers can not exceed coverage of 50% of the floor area directly below the contiguous roof in which the dormer will be located; and,~~

~~2) knee walls above the floor plates cannot exceed three feet in height.~~

~~Roof configurations that exceed these limits are prohibited. Other roof forms exist that by design enclose more volume on the upper floor and would be considered a full story: mansard, gambrel, and arched or dome roof forms therefore are prohibited above the second story. Flat roof form is also prohibited above the second story, except on dormers. Nothing shall prohibit modified roof configurations or combinations of roof forms provided that they comply with Section 2560, the Dimensional Schedule.~~

No existing gable roof shall be replaced with a different roof configuration without a Special Permit from the Board of Appeals, which shall specifically address, in addition to the requirements of Section 5330, the solar access available to neighboring structures (reference Chapter 637 of the Acts of 1985), and public safety including Fire Department facilities.

D. Building Height: The maximum height to be permitted in town shall be consistent with Section 2560 of the Provincetown Zoning By-Laws.

E. Relief under this Section: The Board of Appeals may grant a Special Permit deviating from the above standard if the ZBA finds that the deviation from the standard is in keeping with the standard criteria for granting a Special Permit, the objectives of the Local Comprehensive Plan and is appropriate for one of the following reasons:

1) The function of the structure or the structure's importance to the community as a whole, justifies a different roof configuration.

2) Other features of the proposed design are such that the deviation of the roof configuration is not disruptive to the character of the area.

**2560 Dimensional Schedule** (See Section 4100 for additional multi-family and commercial accommodation requirements)

Requirements	Residential			Commercial		Sea-shore	Public Use
	RES 1	RES2	RES3 RESB	TCC	GC <sup>(3)</sup>	S	M
Min. Lot Area (square feet)	8,000	5,000	5,000	5,000	7,000	120,000	--
Min. Lot Frontage (linear feet)	50	50	50	50	70	--	--
Min. Front Yard (feet)	30	20 <sup>(1)</sup>	20 <sup>(1)</sup>	10	30	50	--
Min. Side Yard (feet)	15	6	6	5 <sup>(2)</sup>	15	25	--
Min. Rear Yard (feet)	20	15 <sup>(1)</sup>	10 <sup>(1)</sup>	10	25	25	--
Max. Lot Coverage (%)	40	40	40	40	40	--	--
Max. Number of Stories <sup>(4)</sup> (Refer to Story in Definitions)	2 1/2	2 1/2	2 1/2	2 1/2	2 1/2	2 1/2	2 1/2
Max. Building Heights <sup>(5)</sup>							
Hip, gable and Shed roofs with a pitch of at least 4/12 (feet) <sup>(6)</sup>	33	33	33	33	33	33	33
Mansard, gambrel, arch, or dome roofs (feet)	28	28	28	28	28	28	28
All other roof types Flat roof defined as less than 3/12 pitch (feet)	23	23	23	23	23	23	23
Harborfront setback (see above 2540)							

1. Or, if smaller, the average of the setbacks of the buildings on the lots thereto on either side, a vacant lot being counted as though occupied by a building set back the minimum required distance.

2. May be reduced to zero with a party wall (jointly owned by owner or abutting properties) meeting the requirements of the State Building Code, provided that access to the rear of the property is maintained for emergency vehicles.

3. Residential uses shall comply with requirements of the Res3 District.

4. For the number of stories allowed in High Elevation District, see Section ~~3900~~ 2320 High Elevation District. Mansard, gambrel, arch, dome, and flat roofs shall not exceed two stories.

5. Height limitations shall not apply to chimneys, TV antennae with poles of ten (10) feet or less, or spires, cupolas and widow walks that do not enclose more than thirty-five (35) square feet of floor space or exceed ten (10) feet in height or occupy more than five (5) percent of the roof area. If the roof is composed of multiple forms, the maximum height for each type of roof shall apply to each respectively. For Building Height allowed in High Elevation District, see Section 2320 High Elevation District.

6. and all other roof forms that enclose a top story in accordance with the definition of a 1/2 story and footnote 5.

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

**Two-Thirds Vote Required**

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Planning Board Recommends: 3-0-0**

Peter Page moved the Town vote to approve Article 15 as printed in the warrant.  
**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 16. Zoning By-law Amendment: Section 2640 Building Scale**

To see if the Town will vote to amend the Provincetown Zoning By-laws by moving Sections 3340 to Section 2640 with the following amendments to read as follows:

**Section 3340 2640 Building Scale**

**A. Applicability.** This Section is applicable to all new buildings and all additions in all zoning districts in Provincetown; this Section does not apply to remodeling where the total volume of the building is to be reduced. This section does not apply to structures destroyed by fire or other similar casualty which may be rebuilt so long as the scale, volume and capacity is not increased and so long as it conforms to all other provisions of these By-laws including Growth Management, Height and Roof Pitch Regulations or where the proposed addition to an existing structure is less than three hundred twenty-four (324) cubic feet of space. ~~interior space or one and a half (1.5) scale units.~~

**B. Purpose.** Provincetown is characterized by buildings that have ~~a very modest scale~~ relatively consistent and harmonious scale within neighborhoods. ~~The only historical e~~Exceptions are include the Pilgrim Monument, the Town Hall, churches, and some old industrial buildings. Newer buildings, where the ~~historical~~ appropriate scale has not been maintained, have ~~severely~~ disrupted the character of the neighborhoods. ~~in which they are located; a situation that is intolerable to the residents and to the economic health of tourist-dependent Provincetown.~~ Preservation of the ~~historic~~ appropriate building scale has also been identified as critically important by the Town's residents. Thus, ~~the scale of buildings is an important part of the Town's well being, and a similar scale for a~~ All new buildings or additions shall be observed. comply with appropriate scale to their neighborhood.

**C. Procedure.** Each application for a building permit, except where the total volume is reduced, shall contain information on the building volume ~~scale~~ of all structures that fall wholly or partially ~~except for stand-alone accessory use structures of 10 scale units or less~~ within two hundred fifty (250) feet of the center of the proposed renovation if a structure exists, and within two hundred fifty (250) feet of the center of the parcel for a proposed new building, ~~as identified by the Assessor's office,~~ except for stand-alone non-residential accessory use structures of 2160 cubic feet or less.

~~The scale and neighborhood average shall be determined.~~ Determination of existing and proposed building volume and neighborhood average shall be directed by the Zoning Enforcement Officer based on the established methodology ~~Assessor's Office~~ by calculating the volume in cubic feet of the building that is above grade, including roofs and porches. ~~The volume is then divided by two hundred sixteen (216) to place it in scale units.~~ The mean neighborhood average scale unit shall be calculated after removing the ~~two largest and smallest~~ structures with the highest and lowest number of ~~scale units~~ and after removing stand-alone non-residential accessory use structures of ~~10 scale units~~ 2160 cubic feet or less.

~~All m~~Municipal buildings shall not be included in calculating the neighborhood average scale units. For a new structure, the calculation shall not include the ~~scale units~~ volume of the proposed development; for a renovation project, the calculations shall contain the ~~scale units~~ volume of the structure prior to renovation.

**D. Standards.** All new development shall have buildings that may vary from the neighborhood average scale of buildings within a radius of 250 feet by an increase of no more than fifteen (15) percent, within the designated National Register Provincetown Historic District or by an increase of no more than twenty-five (25) percent in other areas, unless a Special Permit is granted by the Board of Appeals as specified in Article 5 Section 5230 in conformance with the requirements listed below.

**E. Board of Appeals Approval.** ~~No Discretionary~~ approval for a deviation in building scale shall may be granted ~~unless~~ if the Board of Appeals finds that the deviation meets the standards for a Special Permit, under Article 5, Section 5300 and that the applicant demonstrates that the deviation is either in keeping with the objectives of the Local Comprehensive Plan or is appropriate and meets for at least one or more of the following criteria:

1. The proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan.
4. ~~2.~~ The building is an important structure to the community as a whole. Public buildings are logical candidates for this type of conditional approval. For example, the Pilgrim Monument is out of scale with everything in town, yet its value as a monument to the town's history and in giving identity to the town, makes it acceptable.
2. ~~3.~~ The proposed building or addition by necessity must be large and that the location is suited for that larger scale use. For example, churches may be permitted uses in a residential district and their larger scale is often dictated by traditional architectural forms. Their location, however, should be limited to streets that can handle potential traffic volumes.
3. ~~4.~~ The building scale deviation is warranted due to the size of the parcel of land involved so as to discourage subdivision into smaller parcels and the proposed building or addition will not result in a structure that will disrupt the character of the neighborhood in which it is located.
5. The proposed building or addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures.
6. The property is located in the Provincetown Historic District and the addition is consistent with the Historic District Guidelines and approval of the deviation would further the purpose and intent of the bylaw.

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

### ***Two-Thirds Vote Required***

**Board of Selectmen Recommends: 5-0-0**  
**Finance Committee Has No Recommendation**  
**Planning Board Recommends: 3-0-0**

Howard Burchman moved the Town vote to approve Article 16 as printed in the warrant.

Richard Murray moved to amend the motion by eliminating the words "or views" in number 5 in E, and removing number 6 in E in it's entirety.

Amy Germaine moved to divide the amended motion in two sections: Remove “or views”, then, to remove number 6 in it’s entirety.

**Motion to Divide the Amended Motion Passed.**

**Motion to eliminate the words “or views” from number 5 Does Not Pass.**

**Motion to remove number 6 in it’s entirety Does Not Pass**

**Motion to Amend Does Not Pass.**

**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 17. Zoning By-law Amendment: Section 3115 Demolition and Reconstruction**

To see if the Town will vote to amend the Provincetown Zoning By-laws Section 3110 by adding Section 3115 to read as follows:

**3115 Demolition and Reconstruction** – A nonconforming structure and/or use may be demolished and reconstructed, and/or reestablished by Special Permit and in accordance with the following provisions:

1. Reconstruction of said premises shall commence within two years after such demolition.
2. Structures(s) as reconstructed shall be located within the same footprint as the original nonconforming structure and shall be only as great in building scale or area as the original nonconforming structure, unless as approved under Section 3110.
3. The use of said premises shall be reestablished within one year of the issuance of the certificate of occupancy.

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

**Two-Thirds Vote Required**

**Board of Selectmen Recommends: 5-0-0**

**Finance Committee Has No Recommendation**

**Planning Board Recommends: 3-0-0**

Peter Page moved the Town vote to approve Article 17 as printed in the warrant.

**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 18. Zoning By-law Amendment: Section 3260 "Open For Business"**

To see if the Town will vote to amend the Provincetown Zoning By-laws Section 3260 to read as follows:

**Section 3260 "Open For Business"** To encourage commerce in the Town of Provincetown during the offseason, any licensed business recognized by the Town of Provincetown operating between ~~November 1 and May 1~~ October 1 and June 30 is permitted to display (1) one “Open For Business” or “Welcome” flag, not to exceed 3' x 5'. ~~which shall be in addition to any and all previously approved signage as defined by Zoning By-law 3200 Sign Regulations in compliance with standards set by the Community Development Department.~~ of Regulatory Management. All must be approved by the Department of Regulatory Management, Placement shall not impede the flow of public traffic. ~~and no fee shall be charged for registering such flags.~~ Flags

~~falling under this provision shall not be displayed under this article between May 2 and October 31 of any given year.~~

Or to take any other action relative thereto.

*[Requested by Provincetown Planning Board]*

### ***Two-Thirds Vote Required***

**Board of Selectmen Recommends: 3-0-2**

**Finance Committee Has No Recommendation**

**Licensing Board Recommends: 3-0-0**

**Visitor Services Board Recommends: 5-0-0**

**Planning Board Recommends: 2-1-0**

John Golden moved the Town vote to approve Article 18 as printed in the warrant.

Rob Tosner moved to amend the motion by deleting the words “during the offseason” and “operating between October 1 and June 30”.

**Motion to Amend Passed.**

**Motion As Amended Passed. (2/3<sup>rd</sup>'s Vote Declared)**

#### ***Article 19. 0.5% Real Estate Transfer Fee - A Home Rule Petition Bylaw***

**Whereas:** Provincetown is a unique community with a Summer population ten times the year round population, requiring us to provide water, garbage disposal, police, ambulance, restroom facilities health and building inspections, etc. for 40,000 to 50,000 people rather than 4,000 to 5,000 people.

**Whereas:** We have reached our 2½% tax limit and to forestall overrides we need more revenue each year to PAVE OUR STREETS, maintain our buildings, and meet our contractual obligations to Town employees.

**Whereas:** Real Estate Transfer Fees are widely used in states from Alabama to Vermont in counties and in cities. In New York State, the fee is 1% on over a million-dollar sales. Nantucket assesses 2%. Most are under 1%.

**Section I:** Therefore, I move to see if the Town will vote to instruct its Senator and Representative in the General Court to file a Home Rule Petition Bylaw for a Real Estate Transfer Fee equal to 0.5% (half percent, ½%) paid for by the purchaser on the sale of all real property, payable to the Town of Provincetown General Fund.

**Section II:** The following transfers shall be exempt from the Real Estate Transfer Fee:

**A.** First time home buyers who live in it for 5 years. A lien shall accompany the deed stating that “There is running with the land a lien equal to the amount of fee exempted, plus accumulated interest and penalties until such time as all conditions of this sub-section are met.”

**B.** Transfers to the Government of the U.S., The Commonwealth, the Town of Provincetown and any of their instrumentalities, agencies or sub-divisions, such as the Provincetown Housing Authority.

**C.** Transfers made without additional consideration to confirm, correct, modify or supplement a transfer previously made.

**D.** Transfers of convenience with consideration under \$100.00 which include: name change, into trusts, out of trust, etc.

**E.** Transfers to any charitable organization as defined in Clause Third of Section Five of Chapter 59 of the General Laws or any religious organization providing that the real property interests so transferred will be held solely for public charitable or religious purposes.

**F.** Transfers between family members, marriage partners, parents and children, grandchildren, step-parents and step-children, brothers and sisters.

**Section III: A:** The fee imposed shall be due at the time of the transfer of the real property interest.

**B:** The buyer shall pay interest on any unpaid amount of the fee at the rate the Town collects on unpaid Real Estate Tax(es).

**C:** The Town shall notify a buyer by Registered or Certified Mail of any failure to discharge the amount in full of fee due.

**D:** All fees and interest required to be paid under this Act shall constitute a personal debt of the buyer and may be recovered in an Action of Contract.

The General Court may only make clerical or editorial changes of form to the Bill unless the Board of Selectmen approves amendments to the Bill before enactment by the General Court. The Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition or take any action relative thereto.

*[Submitted by Barbara Rushmore and others]*

**Board of Selectmen Recommends: 4-1-0**

**Finance Committee Does Not Recommend: 5-0-0**

Barbara Rushmore moved that the Town vote to approve Article 19 as printed in the warrant with the following change to Section I: add as the last sentence: "The first \$250,000/yr to be put into the Capital Improvement Stabilization Fund, the rest in to the General Fund."

**Motion Passed. (60 For 52)**

Town Moderator Irene Rabinowitz motioned to dissolve the November 8, 2010 Special Town Meeting at 9:10 p.m. **Motion Passed.**

**November 8, 2010 Special Town Meeting dissolved at 9:10 p.m.**