

SPECIAL TOWN MEETING

MONDAY, NOVEMBER 13, 2006 AT 6:00 P.M.

Commonwealth of Massachusetts

Barnstable, ss.

To either of the Constables of the Town of Provincetown, Greetings:

In the name of the Commonwealth of Massachusetts and in the manner prescribed in the Charter and By-laws of said Town, you are hereby directed to notify the inhabitants of the Town qualified by law to vote in Town affairs to meet and assemble at **Provincetown Town Hall on Monday, the Thirteenth day of November, A.D. 2006 at 6:00 o'clock in the evening**, then and there to act on the following articles, to wit:

Article 1. *Wastewater Optimization and Expansion - Borrowing Authorization.* To see if the Town will vote to appropriate and borrow the sum of \$6,200,000, to be expended under the direction of the Town Manager and the Board of Selectmen for the development of plans and specifications for optimization and expansion to the Town's sewerage systems, and including without limitation all costs defined under C.29C,§1 of the General Laws; and to raise said appropriation the Town Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum of money under and pursuant to C.44,§7(1) and/or C.29C of the General Laws, or any other enabling authority, and to issue bonds or notes of the Town therefor; and that to the extent that any State, Federal or other funds are or become available for the purposes set forth above, the Board of Selectmen is authorized to apply for and accept such funds; and, further, the Town votes to authorize the Water and Sewer Board to assess one hundred percent of the project cost to the Town upon those who benefit from the project, such assessments to be made by the Uniform Unit method as provided by General Laws Chapter 83, Section 15; or to take any other action relative thereto.

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

Article 2. *Zoning By-Law Amendment: Growth Management Surplus Gallonage Pool.* To see if the Town will vote to amend the Zoning By-laws, Section 6600(3) to add an initial amount to the Surplus Gallonage Pool available for allotment to Category 5 (Economic Development pursuant to an Economic Development Permit), by adding the italicized language so that said section reads as follows: "3. *Initially, 5,000 gpd shall be allotted for assignment for General Use Category 5.* Gallonage in the Surplus Gallonage Pool shall be allocated to General Use Category 5 as such gallonage accrues." or to take any other action relative thereto.

[Requested by the Board of Selectmen and the Economic Development Council]

Article 3. *Endorsement of the U.S. Mayors' Climate Protection Agreement.* To see if the Town will vote to approve this endorsement recognizing the importance of confronting the growing threat of global warming and join an alliance of towns, municipal (state, federal and local) agencies, and private entities that support the following U.S. Mayors Climate Protection Agreement.

WHEREAS, the U.S. Conference of Mayors has previously adopted strong policy resolutions calling for cities, communities and the federal government to take actions to reduce global warming pollution; and

WHEREAS, the Inter-Governmental Panel on Climate Change (IPCC), the international community's most respected assemblage of scientists, has found that climate disruption is a reality and that human activities are largely responsible for increasing concentrations of global warming pollution; and

WHEREAS, recent, well-documented impacts of climate disruption include average global sea level increases of four to eight inches during the 20th century; a 40 percent decline in Arctic sea-ice thickness; and nine of the ten hottest years on record occurring in the past decade; and

WHEREAS, climate disruption of the magnitude now predicted by the scientific community will cause extremely costly disruption of human and natural systems throughout the world including: increased risk of floods or droughts; sea-level rises that interact with coastal storms to erode beaches, inundate land, and damage structures; more frequent and extreme heat waves; more frequent and greater concentrations of smog; and

WHEREAS, on February 16, 2005, the Kyoto Protocol, an international agreement to address climate disruption, went into effect in the 141 countries that have ratified it to date; 38 of those countries are now legally required to reduce greenhouse gas emissions on average 5.2 percent below 1990 levels by 2012; and

WHEREAS, the United States of America, with less than five percent of the world's population, is responsible for producing approximately 25 percent of the world's global warming pollutants; and

WHEREAS, the Kyoto Protocol emissions reduction target for the U.S. would have been 7 percent below 1990 levels by 2012; and

WHEREAS, many leading US companies that have adopted greenhouse gas reduction programs to demonstrate corporate social responsibility have also publicly expressed preference for the US to adopt precise and mandatory emissions targets and timetables as a means by which to remain competitive in the international marketplace, to mitigate financial risk and to promote sound investment decisions; and

WHEREAS, state and local governments throughout the United States are adopting emission reduction targets and programs and that this leadership is bipartisan, coming from Republican and Democratic governors and mayors alike; and

WHEREAS, many cities throughout the nation, both large and small, are reducing global warming pollutants through programs that provide economic and quality of life benefits such as reduced energy bills, green space preservation, air quality improvements, reduced traffic congestion, improved transportation choices, and economic development and job creation through energy conservation and new energy technologies; and

WHEREAS, mayors from around the nation have signed the U.S. Mayors Climate Protection Agreement which, as amended at the 73rd Annual U.S. Conference of Mayors meeting, reads:

The U.S. Mayors Climate Protection Agreement

- A. We urge the federal government and state governments to enact policies and programs to meet or beat the target of reducing global warming pollution levels to 7 percent below 1990 levels by 2012, including efforts to: reduce the United States' dependence on fossil fuels and accelerate the development of clean, economical energy resources and fuel-efficient technologies such as conservation, methane recovery for energy generation, waste to energy, wind and solar energy, fuel cells, efficient motor vehicles, and biofuels;
- B. We urge the U.S. Congress to pass bipartisan greenhouse gas reduction legislation that includes 1) clear timetables and emissions limits and 2) a flexible, market-based system of tradable allowances among emitting industries; and

- C. We will strive to meet or exceed Kyoto Protocol targets for reducing global warming pollution by taking actions in our own operations and communities such as:
1. Inventory global warming emissions in Town operations and in the community, set reduction targets and create an action plan.
 2. Adopt and enforce land-use policies that reduce sprawl, preserve open space, and create compact, walkable urban communities;
 3. Promote transportation options such as bicycle trails, commute trip reduction programs, incentives for car pooling and public transit;
 4. Increase the use of clean, alternative energy by, for example, investing in “green tags”, advocating for the development of renewable energy resources, recovering landfill methane for energy production, and supporting the use of waste to energy technology;
 5. Make energy efficiency a priority through building code improvements, retrofitting Town facilities with energy efficient lighting and urging employees to conserve energy and save money;
 6. Purchase only Energy Star equipment and appliances for Town use;
 7. Practice and promote sustainable building practices using the U.S. Green Building Council's LEED program or a similar system;
 8. Increase the average fuel efficiency of municipal fleet vehicles; reduce the number of vehicles; launch an employee education program including anti-idling messages; convert diesel vehicles to bio-diesel;
 9. Evaluate opportunities to increase pump efficiency in water and wastewater systems; recover wastewater treatment methane for energy production;
 10. Increase recycling rates in Town operations and in the community;
 11. Maintain healthy urban forests; promote tree planting to increase shading and to absorb CO₂; and
 12. Help educate the public, schools, other jurisdictions, professional associations, business and industry about reducing global warming pollution.

or to take any other action relative thereto.

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

Article 4. Cape Cod Renewable Fuels Partnership Declaration of Support. To see if the Town will vote to approve this endorsement recognizing the importance of confronting the growing threat of global warming and join an alliance of towns, municipal (state, federal and local) agencies, and private entities that support the following U.S. Mayors Climate Protection Agreement.

1.0 BACKGROUND

WHEREAS, petroleum fuel and its combustion by-products are made up of many toxic components that directly threaten the health and welfare of Cape Cod; and

WHEREAS, dependence on oil and petroleum fuels for our energy needs not only endangers human health, but also threatens national security, the economy, and the environment with significant impacts to flora, fauna, air, water, and natural habitat due to leaks, spills, emissions, and discharges of petroleum-related toxins; and

WHEREAS, Cape Cod's economy and its citizens have been suffering the effects of over-dependence on oil, enduring significant fluctuations in gas prices, supply availability, and now direct threats to our safety due to the volatile nature of the international oil economy; and

WHEREAS, biofuels, such as biodiesel and ethanol, can be produced from United States grown agricultural products such as; soy, corn, and sugarcane, or extracted from waste products like used cooking oil or wood wastes; and

WHEREAS, biofuels are highly compatible with today's vehicle technologies, requiring few or no modifications to the vehicles; and

WHEREAS, biomass fuels include emissions of carbon dioxide which is largely offset by the carbon dioxide captured in its own creation so the net carbon dioxide emissions produced by using biofuels, in lieu of the use of fossil fuel emissions, could significantly reduce greenhouse gas emissions that contribute to global warming; and

WHEREAS, The Cape Cod Renewable Fuels Partnership (Partnership) was established to explore the viability of renewable fuels for Cape Cod, and the Partnership is committed to expanding the use of renewable fuels by: providing a forum to educate potential users and support opportunities for funding and collaboration, identifying potential renewable fuel markets and infrastructure needs for Cape Cod, developing recommendations and steps required to make the use of renewable fuels viable and maximize economic benefits through the development of cooperative efforts.

NOW, THEREFORE, the parties to this declaration support the following objective: To develop and support an alliance of government agencies (municipal, county, state, and federal) and private entities (businesses, non-profits, and interested individuals) in order to establish a critical mass of renewable fuel vehicles and infrastructure to make the use of renewable fuels viable and maximize economic benefits through the development of cooperative efforts.

2.0 PARTIES TO THIS DECLARATION AGREE TO:

FIRST – BE IT RESOLVED that the parties to this agreement will participate in and support the Cape Cod Renewable Fuels Partnership Strategic Implementation Plan (Appendix A).

SECOND - BE IT RESOLVED that the parties to this agreement will support the use and development of renewable fuels on Cape Cod by:

When appropriate, replacing existing vehicles appropriate for ethanol fuels with "Flex Fuel" vehicles, of similar size and class, capable of operating with 85% ethanol fuel blends as they are retired. These vehicles will be operated on E85 when fuel is available and doing so is viable based on economic and ecologic considerations

Agreeing to use biodiesel blends, where appropriate and viable based on economic and ecologic considerations. The biodiesel fuel applications to be considered should include: On and off-road vehicles and equipment, Marine vessels, Heating oil equipment, Direct and standby generators and other potential substitutes for standard diesel applications.

Considering other low emission, efficient, and or renewable transportation technologies. or to take any other action relative thereto.

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

Article 5. Fourth Town Landing – Disposition of Former Fire House No. 2. To see if the Town will vote to accept the alteration of the layout of the Fourth Landing as shown on the plan on file with the Town Clerk and to transfer the care, custody, management and control of the entire Fourth Landing from the Board of Selectmen for the purpose of a town landing to the Board of Selectmen for the purposes of a town landing and for conveyance or lease, and to authorize the Board of Selectmen to convey a portion of the Fourth Landing, on such terms and conditions, and for such consideration, as the Board of Selectmen deems appropriate, provided that, in the case of conveyance, the Board of Selectmen reserve the fee or a permanent easement

to use, and allow the public at large to use, the land within the altered layout as a town landing, and, in the case of lease, the Board of Selectmen; exclude from the lease the land within the altered layout, for continued use as a town landing; and to authorize the Board of Selectmen to petition the General Court for a special act as set forth below; provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approve amendments to the bill before enactment by the General Court. The Board of Selectmen is hereby authorized to approve amendments that shall be within the scope of the general public objectives of this petition:

An Act Relative to Non-Applicability of Certain Provisions of the Zoning Act and Bylaw and Subdivision Control Act and Regulations to Firehouse #2 in Provincetown

SECTION ONE. Notwithstanding the provisions of sections 81K through 81GG of general laws chapter 41 and the regulations adopted thereunder by the Provincetown Planning Board, the Barnstable County Registry of Deeds shall accept for filing or recording a plan prepared by a licensed surveyor that divides the area known as the fourth town landing, shown on Provincetown's assessors map 11, block 1 as lot 009 and 009A, into a lot containing 2,028 square feet, more or less, to contain the building known as Firehouse No. 2 (defined herein as the "Firehouse Lot"), and a parcel containing 5,731 square feet, more or less, to be retained by the town of Provincetown as a town landing (defined herein as the "Altered Landing"), whether or not such plan is endorsed "subdivision approval not required" by the Provincetown Planning Board.

SECTION TWO. Notwithstanding the provisions of chapter 40A of the general laws or of any zoning bylaw enacted thereunder by the town of Provincetown, the building located upon the Firehouse Lot and known as Firehouse No. 2 may be structurally changed or altered, but not extended, subject to such approvals as may be required from the Provincetown Historical Commission or Massachusetts Historical Commission, to provide for its use as a single-family residence or any other use permitted now or hereafter within the district in which said building is located, notwithstanding that the Firehouse Lot may not comply with the area, frontage, width and depth requirements of the Provincetown zoning bylaw and notwithstanding that said building may not comply with the yard, lot coverage or other dimensional requirements of the Provincetown zoning bylaw, and after being so structurally changed or altered, said building shall enjoy the exemption provided under the first sentence of section 6 of said chapter 40A as to further alteration, reconstruction, extension or structural change of single or two-family residential structures that do not increase the nonconforming nature of said structure.

SECTION THREE. The town of Provincetown may transfer the care, custody, management and control of the Firehouse Lot from the board of selectmen for the purpose of a public landing to the board of selectmen for the purpose of conveyance and may convey the fee or any lesser interest in said Lot or may enter into a lease for any number of years with respect to said Lot, and may convey an easement for access and utilities appurtenant to said Lot, or include in said lease a right of access over, the Altered Landing, said transfer and conveyance being hereby approved under Article 97 of the Amendments to the Massachusetts Constitution.

SECTION FOUR. This act shall take effect upon its passage.
or take any other action relative thereto.

[Requested by the Board of Selectmen]

Article 6. *Fireworks Expenses.* To see if the Town will to raise and appropriate or transfer from available funds the sum of \$14,751 for fireworks expenses; or to take any other action relative thereto.

[Requested by the Board of Selectmen]

Article 7. *Fund Collective Bargaining Agreements.* To see what sums the Town will vote to raise and appropriate or transfer from available funds to fund collective bargaining agreements; or to take any other action relative thereto.

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

Article 8. *FY 2007 Budget Adjustments.* To see what amendments the Town will vote to make to the Fiscal Year 2007 operating budgets and enterprise funds established under the April 3, 2006 Annual Town Meeting and what sums the Town will vote to raise and appropriate or transfer from available funds therefor; or to take any other action relative thereto.

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

Article 9. *Massachusetts Highway Department Chapter 90 Funds for Road and Sidewalk Construction and Repairs.* To see if the Town will vote to appropriate funds available from the Massachusetts Highway Department in the amounts of \$82,051 and \$37,856, for a total of \$119,907, for the undertaking of road and sidewalk construction and repairs under the provisions of Section 34(2)(a) of Chapter 90 of the General Laws, or to take any other action relative thereto.

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

Article 10. *Accept MGL C.39,§23D Town Board Quorums at Adjudicatory Hearings.* To see if the Town will vote to accept, for all boards, committees, or commissions holding adjudicatory hearings in the Town, the provisions of Section 23D of Chapter 39 of the General Laws, which provide that a member of a board, committee, or commission holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to the member's absence from one session of such hearing, provided that certain conditions are met; or to take any other action relative thereto.

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

Article 11. *Accept C.137 of the Acts of 2003, as amended: Military Leaves of Absence.* To see if the Town will vote to accept section 1 of chapter 137 of the Acts of 2003, as amended by section 1 of chapter 77 of the Acts of 2005, to require the Town to pay employees of the Town who have been granted a military leave of absence because the employee is a member of the army national guard, the air national guard or a reserve component of the armed forces of the United States called to active service in the armed forces of the United States after September 11, 2001, the employee's regular base salary reduced by any amount received from the United States as base pay for military service performed during the same pay period, as further described in said chapter 137 of the Acts of 2003 and chapter 77 of the Acts of 2005; or to take any other action relative thereto.

[Requested by the Town Manager and the Veterans Agent]

Article 12. Zoning By-Law Amendment: Growth Management Change of Use: Affordable Housing Requirement. To see if the Town will vote to amend the Provincetown Zoning By-laws to allow a change of use from non-residential use to residential use through the issuance of a Special Permit by the Zoning Board of Appeals, contingent upon the lot complying with Title V of the State Sanitary Code and the requirement that the creation of 5 or more new dwelling units will include an affordable housing set-aside of 33%, by

(a) adding the italicized language so that said Section 4100 reads as follows:

“Section 4100 Dwelling Units and Commercial Accommodation The following requirements shall apply to new development for multi-family dwellings or commercial accommodations, or to conversion of existing premises through change in use (*see 4170*), occupancy, tenure or structure to result in use for more dwellings or guest units than as of July 1, 1978, or to construction or conversion resulting in three or more dwelling units on a lot. Where other provisions of this By-Law or other controls are more restrictive, those more restrictive requirements shall apply and take precedence.”;

(b) by changing the numbering sequence for Article 4 Sections 4170 and 4180, so that said Section 4170 shall be renumbered as Section 4164 and said Section 4180 shall be renumbered as Section 4165;

(c) and by adding the following Article 4 Section 4170:

“4170 Change of Use Any change of use on a lot from a non-residential use to a residential use, or a boarding, lodging or tourist homes use, to a residential use regardless whether other Special Permits or Variances are required, must comply with the following conditions:

i. Such change of use shall be authorized with a Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.

ii. Obtain a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, such compliance to be certified by a Registered Engineer.

iii. Such change of use resulting in the creation of five (5) or more dwelling units shall be required to set aside a minimum of 33% of the total number of dwelling units for affordable housing as defined in Article 1 of these By-laws.

iv. The project must comply with the provisions of Article 4, Section 4100.

v. None of the above shall relieve the applicant of complying with other provisions of these By-Laws.”;

or to take any other action relative thereto.

[Requested by the Provincetown Local Housing Partnership]

Article 13. General By-law Amendment: Noise Regulations for Street Performers. To see if the town will vote to remove the by-law exception stated below: 9-4-9, and 9-4-10, making street performers subject to the same noise regulations as everyone else.

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.

9-4-9. Exclusivity. The provisions of this bylaw shall take precedence over any other town bylaws applicable to street performances. To the extent that other town regulations or bylaws are applicable and are inconsistent with this bylaw, this bylaw shall govern.

9-4-10. Peace and quiet. A performance in accordance with this bylaw shall be presumed not to constitute a "noise nuisance," "disorderly conduct," or an "excessive musical or other noise" in violation of 13-1-2 or 13-2-6.

or to take any other action relative thereto.

[Requested by Tom Osterink and others]

Article 14. Abolish the Historic District Commission. To see if the Town will vote as follows: Whereas the Historic district commission has repeatedly made decisions with total disregard to public safety, the safety of emergency personnel and the safety of the community as a whole. Whereas the Historic District committee has repeatedly made decisions that are based on personal opinion and are subjective with no clear criteria or set standards. Whereas the Historic District Commission has repeatedly made decisions with total disregard to energy conservation and the maintenance costs of property owners, I move to see if the town will vote to abolish the Historic District Commission, or to take any other action relative thereto.

[Requested by Jonathan Sinaiko and others]

And you are directed to serve this Warrant by placing an advertisement in a newspaper of local circulation and posting up attested copies thereof at the Provincetown Town Hall, Provincetown Public Library, Grace Gouveia Town Office Building, Provincetown Community Center, Cape End Manor Nursing Home, Provincetown Police Station, Grand Union Supermarket, U.S. Post Office, Provincetown Gym, Mussel Beach Gym, and Michael Shay's Restaurant in said Town at least fourteen days before the time of holding said meeting.

THEREFORE FAIL NOT and make due return of this Warrant with your doings thereon, to the Town Clerk at the time and place of meeting as aforesaid.

A TRUE COPY, ATTEST:
Douglas Johnstone
Town Clerk

Date of Posting: October 26, 2006

**BOARD OF SELECTMEN
TOWN OF PROVINCETOWN**

Cheryl L. Andrews, Chair
Sarah K. Peake, Vice Chair
Michele G. Couture
Richard B. Olson
David M. Nicolau