

TOWN OF BARNSTABLE

TEMPORARY REPAIR PROGRAM FOR CERTAIN PRIVATE WAYS

(Revised October 11, 1995, February 13, 2006, September 8, 2014)

ADMINISTRATIVE PROCEDURES

I. Program authority

The program for temporary repairs to certain private ways as set forth herein shall be conducted pursuant to Chapter 206, Section 8 of the General Ordinances of the Code of the Town of Barnstable.

II Program Purpose

The private road temporary repair program is intended as the means to implement the Ordinance by prescribing the methods for property owners to petition for temporary repairs, the appropriation and expenditure of Town funds for repairs, financing the program and assessing and collecting the cost of the repairs in order to reimburse the Town so that the program can continue on a rotating basis. The Ordinance is meant to cover private roads open to public use for more than five (5) years that require road surface and drainage repairs of a temporary nature in order to extend the service life of these roads for a period of up to 15 years. It is not a program to build new roads or for the Town to accept any private roads as public roads.

III Abutter of Private Roads

As used herein, the term “abutter” and “abutters” means all or any of the owners of real property which has an existing connection by boundary or other part to the private way under repair unless so severed as to be impractical for re-establishment at the time of the repairs or within a reasonable time thereafter. If a property is bounded or connected to one or more other ways, private or public, any cost of the repairs under the program may be apportioned or exempted accordingly.

IV Private Road Temporary Repair Fund

The repair fund serves both as a source against which contracts for materials and work associated with repair projects are funded and as a source from which expenses associated with engineering and administration of the program are paid. Since the fund is a “revolving fund”, all costs charged to the fund must be recovered as part of the project costs. Accordingly, engineering design, permitting, administration and construction contract repair costs for labor and materials used to accomplish a project must be included in the cost of each of the individual repair projects. Certain engineering design and permitting costs may need to be expended in the development phase of the projects. All monies collected regardless of the method of payment are re-deposited to the fund.

V. Private Road Temporary Repair Fund Financing

Special legislation authorizes the Town to borrow from time to time by a 2/3 vote of the Council such sums of money as may be necessary, not to exceed an aggregate amount of \$15,000,000, to perform repairs to private ways within the Town. This was passed as Order 2014-134 by the Town Council on May 1, 2014 and took effect as House Bill HH4409 HH4410. Appropriation and Loan Order must be passed periodically by the Town Council to provide sufficient funds to carry out the program and are held in the Private Road Temporary Repair Fund for expenditure. The debt service for the sums borrowed must be repaid by abutters through betterment assessments.

VI. Recovery of Repair and Financing Costs

In order for the program to be available from time to time for as many repairs as practicable, the program policy is to recover 100% of the entire cost of the repairs, including without limitation design, permitting, bidding and financing, by assessing betterments to the abutters based on the presumption that abutters benefit from the repairs to that extent or more.

Betterments are assessed by the official(s) signing the contract unless otherwise specifically assigned. The process occurs in two steps. The first step consists of recording an estimate of the betterments to each abutter along with a plan of the abutting properties in the registry of deeds within ninety (90) days of signing the contract for the repairs including a contingency for change orders and other unanticipated events which may occur during the course of the project. The second step consists of a series of actions, beginning with notifying the Town Council of the final project costs, recording final betterments, and certifying final betterments to the assessors followed by commitment to the tax collector.

Betterments are paid in either one installment within thirty (30) days of notice from the tax collector or in equal installments determined at the option of the property owner(s) up to twenty (20) years unless otherwise fixed by the Board of Assessors (St. 1992 c. 174). Applications for abatement of betterment assessments under the program are processed by the same official(s) who record the estimate and final betterment.

Where the total cost of the repair divided by the number of abutters results in a cost of \$499 or less per abutter, the total cost of the repair must be paid to the Town before any work is undertaken. Where the total cost of the repair divided by the number of abutters results in a cost of \$500 or greater per abutter, betterments will be assessed.

VII. Officials Administering the Program

The Town Council is the appropriating authority for the program and authorizes assessment of betterments. The Town Manager submits program appropriation orders at the request of the Public Works Director once the petition process is complete based on the available balance of the fund, the work schedule of the Department, the level of need for the repairs, and the pendency of any other petitions.

Both the Town Manager and the Public Works Director may seek the advice of other officials, boards and committees in determining to advance a project to the next step.

The Department of Public Works administers the program. Within the department, staff is assigned to receive citizen inquiries about the program, send correspondence and distribute and receive petitions and consent and acknowledgment forms. Each project is assigned to a project manager who prepares a plan of the area of the project, preliminary and final design and cost estimates, based on acceptance by the designated representative of the abutters, and manages the project (conducts the bidding process and oversees construction).

As previously noted, the official who signs the contract to expend the appropriation for the repair work, and not the project manager, is the “officer ordering the repair” for betterment purposes and as such assesses the betterments and processes abatement applications. The duties to assess and abate are not delegable but the responsible official may also seek the advice of other officials, board and committees. After signing the contract, the officer so ordering the repairs is responsible for preparing and recording, or causing preparation and recording, of the order, plan of the area and the estimated betterments within ninety (90) days, and following completion of the project recording the final betterment and certification to the assessors.

VIII. Petitioning Process

A temporary repair project for a private road under this program is formally commenced by petition. Petitions shall be submitted to the Department of Public Works by using the petition form shown in Attachment 1 to these procedures. The forms may be obtained in the Department of Public Works office, 382 Falmouth Road, Hyannis 02601.

The petition shall be signed by at least Fifty-one (51%) percent of the abutters. The name and contact information of the person who will act as the “Petition Contact Person” and the name of the abutters’ representative if different, must be entered on the form.¹ A nonrefundable fee of one hundred dollars (\$100.00) must accompany each petition to cover the costs of preliminary research, inspection, and the development of rough cost estimates.

IX. Evaluation of Repairs and Cost Estimates

Upon receipt of the petition from 51% or more of the abutters and payment of the \$100 fee, the Director of Public Works shall appoint a Project Manager. The Project Manager shall conduct an on-site inspection of the road’s condition and develop alternative repair scenarios with rough cost estimates. The on-site inspection of the road shall be conducted in the presence of the representative of the abutters, who may be the same or different from the contact person. The Project Manager shall schedule one or more meetings with the representative at a mutually convenient time to provide the representative with a full report on his findings along with a range of alternative repair scenarios, if such is possible. The scenarios provided will be detailed as to physical improvements and each will be assigned a rough range of costs so that the representative can determine the level of repairs to recommend to the abutters. Should there be a consensus between the project manager and the representative on a specific repair and cost scenario, the Project Manager will proceed with the development and presentation of a detailed cost estimate to the representative. If consensus is achieved by the project manager and the

¹ “Representative” refers to both a single person or any number of persons representing the abutters.

representative on a detailed repair and cost estimate, the representative shall present same to all of the abutters in order to complete the petition process under article XI.

X. Detailed Cost Estimates

The preparation of detailed cost estimates will be based on the repair approach chosen by the project manager and representative. It is possible that more than one cost estimate or several repair projects including possible progressive multi-year plans that would address several expensive repairs over time will be required in order to achieve consensus.

The cost estimates will be calculated using the most recent unit bid prices derived from similar Temporary Repair Program projects or other Department of Public Works road repair contracts obtained by the Project Manager. No cost estimate can be guaranteed. The cost estimate shall, in addition to the actual cost of repair, include all administrative, design, engineering, and permitting expenses associated with the repair to ensure full recovery of all expenses directly associated with the repair and to preserve the soundness of the repair fund.

XI. Completion of Petition and Appropriation Processes

After preparation of the detailed repair and cost estimate by the project manager and representative, the representative shall notify each abutter by letter of both the total cost and per abutter cost of the repair and the approximate time when the repairs will be undertaken. One hundred twenty (120) days preceding the date of the scheduled repair, a Consent and Acknowledgment Agreement (referred to hereinafter as the "Agreement"), either Attachment 2 for Betterment Assessment or Attachment 3 for Advance Cash Payment to these procedures, will be mailed to each abutter of the road under cover of an explanatory letter by and from the representative. The Agreement shall list the specific repairs to be made, the estimated costs of the repair items, an estimate of the life expectancy of the repairs, the approximate date repairs will be made, the estimated cost to each abutter and the submission deadline. Fifty-one (51%) percent or more of the abutters, whether original petitioners or not, must agree to the repairs by signing the Agreements and returning them to the Project Manager via the representative not less than 60 days prior to the approximate date repairs will commence. Upon timely return of a sufficient number of the signed agreement forms, the project will be considered fully petitioned and submitted to the DPW Director for review and submission to the Town Manager (see Article VII).

If the representative cannot develop the required consensus within the allotted time period the project will not receive further attention unless and until the requirements under these procedures are fully met.

XII. Repair Plan

The Project Manager shall maintain periodic contact with the representative before and after submission of an appropriation order.

XIII. Payment of Repair Costs In Lieu of Betterment

If the abutter cost is \$499 or less, if those abutters willing to pay are also willing to pay for those who are either unwilling or unable to pay their share that will be their decision. The Town's only requirement is that the full cost be on deposit with the Town 60 days in advance of the work being undertaken.

If the abutter cost is \$500 or greater, betterments may be assessed. Each and every abutter shall be assessed an equal share of the cost of the repair. This will be the case whether or not any one abutter is or is not a petitioner. Billing will be made as described in Article VI above.

XIV. Program Proviso

It is important the petitioners/abutters understand that:

- Other than the time of the group meeting(s) where the representative is chosen, the remainder of the process including subsequent questions should be directed through the representative.
- The Town is not responsible for the conduct of the petition contact person(s) or representative of the petitioning private road.
- Decisions made by the Town and Town officials are final.

Attachment 1 Petition

Attachment 2 Consent and Acknowledgement for Betterment Assessment

Attachment 3 Consent and Acknowledgement for Advance Cash Payment

TOWN OF BARNSTABLE
TEMPORARY REPAIR PROGRAM FOR PRIVATE ROADS
PETITION

(I (We), whose name(s), signature(s), street and email addresses appear below, are owners of property abutting*

_____, located in the Village of _____. As such, we hereby request that the following repairs be made to the above named private way.

Name (print)

Signature

Street Address

(Use additional sheets for additional names, signatures and addresses)

We hereby appoint _____, whose name appears above, as the **Petition Contract Person**.

We hereby appoint _____ to represent us in the project (if different from contact person) (if additional persons are appointed as representatives, please list their names here _____)

We understand that the **\$100 fee** accompanying the petition is **nonrefundable**.

Date received by the Department of Public Works: _____

TOWN OF BARNSTABLE

TEMPORARY REPAIR PROGRAM FOR PRIVATE ROADS

**CONSENT AND ACKNOWLEDGEMENT AGREEMENT
FOR REPAIRS AND BETTERMENT ASSESSMENT**

THIS AGREEMENT, made this _____ day of _____, is between the Town of Barnstable and _____, with a legal address of _____.

WHEREAS *fifty-one (51%) percent* of the abutters to _____ petitioned the Town to make temporary repairs to said road;

WHEREAS one or more repair scenarios and the associated rough costs were presented to the abutters' representative by the project manager;

WHEREAS based on the consensus of the representative and the project manager, the most appropriate of the rough estimates is submitted to all of the abutters as the following detailed repairs and detailed cost estimate:

<u>Type of Repair</u>	<u>Location of Repair</u>	<u>Cost</u>	<u>Est. Life Expectancy</u>
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NOW, THEREFORE:

1. Fifty-one (51%) percent of the abutters must sign and return a Consent and Acknowledgement Agreement on or before _____, in order for the Town to proceed with an appropriation, and contract for the repairs described above and record an estimate of the betterments to be assessed before the repairs followed by a final betterment after the repairs described above are complete, otherwise the repair project will be dropped from active consideration;
2. The actual contract price may be higher than the detailed estimate presented.
4. The life expectancy of the repairs noted above is strictly an estimate based on similar work performed in the past under similar conditions and that the Town makes no warranty. The repairs may be delayed due to weather and other work related considerations;

5. The abutters to said road may suffer temporary inconvenience in the use of the road during the time repairs are being made;
6. The Town shall not be liable for any damages caused by any activity associated with the repair;
7. Upon completion of the repairs, the Town shall may assess betterments to each and every abutter regardless of their participation in the petition process in an amount based on the final project costs which cannot exceed the estimate described in section 3.

I hereby agree to the above terms and that the Town may arrange for and implement the repairs described above at a time to be determined by the Town.

ABUTTER

RECEIVED BY

Name

Name

Address

Title
Town of Barnstable

Telephone

**TOWN OF BARNSTABLE
TEMPORARY REPAIR PROGRAM FOR PRIVATE ROADS
CONSENT AND ACKNOWLEDGEMENT AGREEMENT
FOR ADVANCE CASH PAYMENT**

THIS AGREEMENT, made this _____ day of _____, is between the Town of Barnstable and _____ with legal address of _____.

WHEREAS *fifty-one (51%) percent* of the abutters to _____ petitioned the Town to make temporary repairs to said road;

WHEREAS one or more repair scenarios and the associated rough costs were presented to the abutters' representative by the project manager;

WHEREAS based on the consensus of the representative and the project manager, the most appropriate of the rough estimates is submitted to all of the abutters as the following detailed repairs and detailed cost estimate:

<u>Type of Repair</u>	<u>Location of Repair</u>	<u>Cost</u>	<u>Est. Life Expectancy</u>
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WHEREAS I understand that:

1. *Fifty-one (51%) percent* of the abutters must sign and return a Consent and Acknowledgement Agreement on or before _____, in order for the Town to proceed with the repairs described above, otherwise the repair project will be dropped from active consideration;
2. The life expectancy of the repairs noted above is strictly an estimate based on similar work performed in the past under similar conditions and that the Town makes no warranty The repairs may be delayed due to weather and other work related considerations;
3. The abutters to said road may suffer temporary inconvenience in the use of the road during the time repairs are being made;

The Town shall not be liable for any damages caused by any activity associated with the repair;

4. If the Petition Contact Person is unable to deliver a certified check to the Town Treasurer in an amount equal to the full cost of repair on or before _____, the repair project will be dropped from active consideration.

NOW THEREFORE I hereby agree that the Town may arrange for and implement the repairs described above at a time to be determined by the Town.

ABUTTER

RECEIVED BY

Name

Name

Address

Title
Town of Barnstable

Telephone

**TOWN ORDINANCE AND POLICIES GOVERNING
REPAIR, LAYOUT AND ACCEPTANCE OF PRIVATE WAYS AND
BETTERMENT ASSESSMENTS – PRIVATE AND PUBLIC WAYS**

Temporary Repairs for Certain Private Ways (Ch 3, Art. 31, Town Ordinance)

Upon petition of 50 percent or more of the abutters thereof, the town may in the discretion of the Town Manager, provide temporary repairs including drainage, the nature of which is not likely to have a service life expectancy greater than 15 years and is required by public necessity, on any private way which has been open to public use for more than five (5) years. The town shall not be liable for any damages caused by any activity herein provided. A one hundred dollar nonreturnable cash deposit shall be required with the submission of the petition to cover the cost of field inspection and initial cost estimates. Where all administrative, engineering and repair costs associated with the temporary repairs is less than \$500 per abutter, a cash sum shall be deposited with the Town Treasurer equal to the costs of repair prior to the work being commenced. Where the cost per abutter is \$500 or greater for repairs made under this Article, betterments will be assessed. Any abutter may, by paying the full amount of his share, avoid the assessment of the betterment of his land.

Town of Barnstable Policies Regarding Layout and Acceptance of Private Roads (Art L7, May, 1989 ATM)

As it is in the best interest of the town to acquire the right of passage over some of the private roads located within the town and to ensure their continued upkeep to facilitate the movement of traffic and to ensure public safety, and since the town is presently confronted with a disproportionate inventory of private roads, numbering some 1,060, whose combined length exceeds 198 miles and most abutters would like the town to lay out and accept said roads, it is essential that certain guidelines be followed. To this end, the following systematic management strategy for laying out and accepting many but not all private roads located within the town is instituted:

- A. A road committee shall be formed consisting of one member of the Town Manager, one member of the Department of Public Works Commission and one member of the Planning Board who shall make recommendations on all roads being considered for layout and acceptance.
- B. Roads to be considered for layout and acceptance by the Town Manager shall first be qualified by the Road Committee as to their relative importance within the town's overall hierarchy of roads providing for intratown traffic movements and public safety.
- C. Based on a recommendation of the Planning Board and with the concurrence of the Road Committee, the layout and acceptance of some new subdivision roads which meet all subdivision standards and are important within the town's hierarchy of roads should be accepted as a matter of policy within a prescribed period of time after completion.
- D. Based on a recommendation of the Planning Board and with the concurrence of the Road Committee, the layout and acceptance of some relatively new subdivision roads that meet most subdivision standards and would require no signification foreseeable cost to the town within the next five (5) year period and are important within the town's hierarchy of roads should be accepted as a matter of policy.

- E. A road brought to the attention of the town for layout and acceptance via the petition process shall be evaluated for the application of standards and guidelines of the town's subdivision control bylaw and as to its placement within town's overall hierarchy of roads by the Road Committee. Should the road qualify for layout and acceptance, the road should be reconstructed or repaired to meet the standards established under the then current subdivision control regulations as a condition of acceptance.
- F. Certain private roads which are not covered under the three categories outlined in paragraphs C, D, and E above but are of significance to the town for public safety or traffic movement, as determined by the Road Committee, may upon recommendation by the Planning Board or the Department of Public Works be placed before the Town Council in an appropriation order for acceptance after having been laid out by the Town Manager.
- G. The cost of necessary repairs to roads being considered for layout and acceptance shall be borne by the benefiting property owners under the provision of the town's betterment policy.

Town of Barnstable Policies Regarding Assessment of Road Betterments (Art L8, May 89 ATM)

In consideration of the town's need to repair and rebuild many of the roads located within the town and the benefits to be derived by its citizens and recognizing its financial constraints, the town shall endeavor to meet these needs through the assessment of betterments as provided under the general laws to owners of properties so benefiting from such improvements. The cost of such improvements shall be apportioned in a manner which is both equitable to the beneficiaries and assures maximum cost recovery to the town as follows:

A. Private Ways

1. It will be the intent of the town to finance improvements made to its private roads through long-term debt. All long-term debt and interest charges along with all direct and indirect costs associated with the road improvement project including layout costs, when applicable, shall be apportioned by the Selectmen with the assistance of the Department of Public Works to the owners of properties abutting the road as well as the town and other benefiting owners of properties and the total assessed costs shall not exceed the total estimated costs calculated in accordance with the formula described in paragraph B hereof.
2. In instances where the total cost of temporary repairs made to private roads under Article XXXI of the town's Bylaws (Temporary Repairs for Certain Private Ways) qualify for assessments, 100 percent of the total cost shall be apportioned to the owners of properties abutting the private road.
3. All repairs, reconstruction or upgrading associated with qualifying a private road for layout and acceptance by the town shall be paid for by owners of properties benefiting from the improvements who shall either be assessed up-front cash deposits or when the cost is sufficiently large be assessed betterments for 100 percent of the total costs as described in paragraph a.1 hereof.
4. In some rare instances where a private road has been in public use for an extended period of time (greater than 10 years) and where there is a significant benefit to the town to maintain intratown

traffic flows and/or ensure public safety, the Selectmen may choose to alter the net cost amount used to calculate betterment assessments. The reductions shall be based on the ratio of through traffic flow carried by the roadway as compared to abutter generated traffic. In no case however, will the net cost be reduced by a factor greater than 50 percent. This reduction will result in an adjusted net cost.

B Public Roads

Under the general direction of the Town Manager, 100 percent of the net cost of all major repairs or reconstruction performed on public roads, where the improvement has an expected useful life of 15 years or more and where a direct benefit can be assigned to adjacent property owners shall be apportioned to said property owners and betterments assessed on accordance with the formula described in paragraph C hereof.

A regional traffic factor shall be applied to reduce the net cost and shall be directly associated to the level of betterment derived by the benefiting property owners when calculated on the traffic generated by the benefiting road. This reduction will result in an adjusted net cost. The betterment to be assessed by the Selectmen shall be 100 percent of the adjusted net cost.

C. Betterment Calculation

Betterments shall be apportioned by the Town Manager through the following formula:

1. Determine the total cost to the town of the road work.
2. Where appropriate deduct all state or federal grants to determine total net cost.
3. Where appropriate deduct a percentage of the project cost assigned to general community traffic movement to obtain an adjusted net cost.
4. To determine the assessable portion of the project cost: Multiply the adjusted net cost of the project by the appropriate percentage of assessment.
5. Determine the number of existing and potential single family units or equivalent thereof based on automobile trip generation and divide the assessable project cost by the number of units; this will provide a cost per single family unit or the equivalent thereof. Hereafter, for purposes of calculations, to be called units.
6. Total cost to each benefiting property: multiply the number of units as calculated based on automobile trip generation by the cost per unit.

D. Special Situations

1. Where traffic generation calculations are required, they will be performed by the Department of Public Works and shall be based on generally accepted traffic engineering trip generation reference sources and when appropriate on-site traffic counts.

2. Where public entity property abuts the way receiving an improvement, the public entity should pay its fair share of costs and shall be included in the formula for a share of the betterment charges.
3. An abatement strategy will be available to any property owner who does not have access nor is likely to ever have access to the improved road. The abatement process will be administered by the Department of Public Works with appeals of decision being made to the Town Manager.

DPW COMMENT: Relevant sections of Ordinance to be revised based upon revisions adopted in the Administrative Procedures Document and Legal input.