



Town of Leicester, Massachusetts

Special Town Meeting Guide

Fall Town Meeting – October 30, 2018 – 7:00PM

“In the Hands of the Voters”

Meeting location:
Town Hall Gymnasium
3 Washburn Square
Leicester, MA 01524

Guide published October 25, 2018

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Town Rules & Procedures Review

Each Town Meeting is a formal legislative body. As such, we are governed by both Massachusetts General Laws and Chapter Two of Leicester's Town By-Laws. Our proceedings follow "Town Meeting Time, A Handbook of Parliamentary Law", and tradition.

The Town Moderator does not vote, except in cases of a tie vote on the floor.

Town Meetings in Leicester are open only to registered voters.

As members of the town meeting, voters have the right, if they so choose, to present opinions and to ask questions through the moderator in relation to the motion under discussion, and only to the motion under discussion. You have a right to be comfortable with the facts at hand in order to make an informed vote.

A voter wishing to address the meeting through the moderator should approach the microphone and must identify themselves and state their address each time they address the meeting. If it seems that the Moderator is not aware of your desire to speak, please give some signal so that you will be recognized. If you are not able to get to the microphone, please give a signal and a teller or volunteer will bring a microphone to you.

No one may speak to any motion more than twice, except to clarify a point or respond to a question through or from the moderator, and maximum time is ten minutes. Voters must stay on topic with the motion at hand, and personal attacks or slurs of any kind will not be tolerated.

If you have a question as to why something is done in a particular fashion, feel free to ask. Raise that question or issue with the statement, "Point of Order."

If a member of this meeting wishes to move the question, that motion must be made from the microphone. A motion to move the question will not be accepted from the floor. A motion to move the question simply indicates that at least the individual offering the motion to move the question and person making the second have heard all the debate they feel is needed. A seconded motion to move the question is not a debatable motion. At such time, all debate will cease and a vote is taken. A 2/3 majority is required for passage. If the motion to move the question passes, we will immediately vote on the motion which was under discussion in the hands of the meeting. If the motion to move the question is defeated, debate on the motion previously under discussion will resume. This procedure is often misunderstood but is allowed and governed under the By-Laws of the Town of Leicester.

Any motion undertaken by Town Meeting in Leicester may be reconsidered, meaning it can be brought up for a vote a second time. The motion to reconsider a motion must be made within one hour of the taking of the original vote on the motion in question. A motion cannot be brought forward for reconsideration more than once.

Any motion made must be within the scope of the articles posted in the warrant and presented to the moderator in writing.

Respectfully,

Donald A. Cherry, Jr. – Town Moderator

WORCESTER, SS.

To a Constable in the Town of Leicester,

GREETINGS:

In the name of the Commonwealth of Massachusetts, you are hereby directed to notify and warn the Inhabitants of the Town of Leicester qualified to vote in Town Elections and Town Affairs to meet at the Town Hall Gymnasium, 3 Washburn Square, Leicester, MA on Tuesday, the thirtieth day of October, 2018 at 7:00 PM, then and there to act on the following articles, namely:

ARTICLE 1: PRIOR YEAR BILLS

To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money in order to pay bills from prior fiscal years or take any action thereon.

PROPOSED MOTION: No motion; there are no prior year bills.

FINANCE ADVISORY BOARD RECOMMENDATION: No action taken.

SELECT BOARD RECOMMENDATION: No action taken.

DESCRIPTION: Prior year bills are bills from the previous fiscal year that are brought forward for town meeting approval as required by Massachusetts General Laws.

VOTE REQUIRED FOR PASSAGE: Requires a 9/10th's vote pursuant to MGL Chapter 44, Section 64.

ARTICLE 2: AMEND THE FY 2019 OPERATING BUDGET

To see if the Town will vote to raise and appropriate and/or transfer from available funds in the Treasury or transfer from other budget accounts or adjust budgets or borrow under the provisions of M.G.L. c. 44 as amended, such sums of money as may be necessary to defray the expenses of Town departments and Town accounts for the Fiscal Year beginning July 1, 2018, as listed in the May 1, 2018 Spring Annual Town Meeting Warrant or take any action thereon.

PROPOSED MOTION: Move that the Town amend the FY 2019 general fund budget, as approved on May 1, 2018, by including the budgetary adjustments included in the tables included as part of Article 2 of the October 30, 2018 Special Town Meeting; said adjustments totaling \$506,231 as listed in the tables of the Town Meeting Guide:

Sources	Reason	Amount
Raise and Appropriate	Increased overall receipts	\$160,935
Free Cash	One-time costs	\$170,000
Temporary Loan Interest	Surplus funds in Budget	\$5,296

Employee Benefits	Lowered cost of benefits/less participants than forecast	\$120,000
Bonding and Insurance	Reduced costs from new insurer	\$50,000
Total		\$506,231

Uses	Department	Reason	Amount
	Legal	Funds sought to address a contractor lawsuit filed against the Town on a recent building project, among other recent legal issues	\$150,000
	Select Board Expenses	Funds sought for increased consultant/professional services and for dues/memberships	\$2,599
	Reserve Fund	Funds borrowed for the Town Hall Accessibility project being returned	\$20,000
	Town Accountant Personnel	Salary changes due to updated Class and Comp Plan	\$1,494
	Assessors Personnel	Salary changes due to updated Class and Comp Plan	\$1,751
	Treasurer/Collector Personnel	Salary changes due to updated Class and Comp plan	\$2,233
	IT Expenses	Funds sought for additional equipment replacement and to fund the new IT maintenance contract	\$5,000
	Town Clerk Personnel	Salary changes due to updated Class and Comp plan	\$2,790
	DIS Personnel	Salary changes due to updated Class and Comp plan	\$4,234
	Town Hall Building Maintenance	Funding sought for additional building maintenance expenses	\$11,554
	Police Department Personnel	Funding sought to retain two new officers who just graduated from the Police Academy	\$78,746
	EMS Department Personnel	Salary changes due to updated Class and Comp plan	\$3,568
	Leicester Public Schools	Additional funding per agreement to implemented in FY 2019 to split receipts between Town and Schools.	\$205,475

	Highway Personnel	Salary changes due to updated Class and Comp plan	\$3,148
	Street Lights	Additional funding sought to cover streetlight costs based on FY18 total expenditures	\$5,000
	Council on Aging	Salary changes due to updated Class and Comp plan	\$8,639
	Total		\$506,231

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0). There is more than projected additional state revenue, one-time savings from health insurance, a one-time transfer to the reserve account for funds expended earlier this fiscal year and a one-time transfer for unusually high legal fees this fiscal year.

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This article seeks additional funding in the FY 2019 budget. These funds come from additional moneys identified in forecasted revenue and from savings in the insurance and debt accounts. The \$170,000 requested from Free Cash is for \$150,000 in anticipated legal expenses from a contractor’s suit filed against the Town in conjunction with a town building project, among other single item legal issues and \$20,000 is sought to replenish the Reserve Fund after a transfer granted earlier this year to fund the Town Hall accessibility project. Many of the transfers in the municipal budget fund the updated Classification and Compensation plan that the Town developed in 2016. The sum allocated to the Police Department fully funds the positions of two officers who just graduated from the Police Academy. There are additional funds allocated to the School Department, pursuant to our agreement to share revenues.

VOTE REQUIRED FOR PASSAGE: Requires a simple majority vote under M.G.L. c. 40, §5, unless funding is sought from the General Stabilization Account. Withdrawals from the General Stabilization Account require a 9/10ths vote per special legislation approved at the May 2, 2005 Annual Town Meeting, as is noted in Chapter 10 of the Town’s General Bylaws.

ARTICLE 3: HIGHWAY DEPARTMENT VEHICLES AND EQUIPMENT - DEBT EXCLUSION

To see if the Town will vote to raise and appropriate, transfer from available funds or borrow a sum of money under the provisions of M.G.L. c. 44 as amended, for the purpose of purchasing vehicles and equipment for the Highway Department and paying all other costs incidental and related thereto; and further to authorize the Select Board to enter into any and all contracts necessary to carry out such purchases; provided that said appropriation shall be contingent upon the passage of a so-called Proposition 2 ½ debt exclusion referendum in accordance with M.G.L. c. 59 §§21C(k) and 21D, or take any action relative thereto.

PROPOSED MOTION: Move that the article be voted as written.

FINANCE ADVISORY BOARD RECOMMENDATION: Favorable Action (4-0-1). This is a one-time replacement of aged out equipment to be replaced with new equipment, most of which will be able to be used for multiple tasks throughout the year.

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This article seeks authorization to borrow up to \$950,000 for the purpose of purchasing seven (7) pieces of new equipment for the Highway Department, which will allow for the retirement of older equipment that have safety and/or condition issues. If equipment costs come in lower than estimated the borrowing will be reduced. The equipment to be replaced and the proposed new equipment are as follows:

Equipment to be replaced	Replacement equipment
Truck #10 – 1999 International	Mack six wheel dump/sander/plow
1997 MT Trackless	MT Trackless sweeper/mower/plow/sidewalk machine
1988 Caterpillar Loader	John Deere 544K front end loader plow/wing
1986 Smith Co. Air Compressor	Doosan D24 Air Compressor diesel
1994 Tiger Tractor	John Deere 5090M tractor roadside mower 22” w/boom attachment
Truck #20 2000 Ford F450	2019 Ford F550 w/dump with sander/wing /plow
	Power 10’ Angle Plow for backhoe

The Town would issue a five-year note for this borrowing. The effect of the debt would be .24 cents on the tax rate. The impact on the average single family home (valued at \$218,614) would be \$53.36 in Year One, and would decline to \$46.62 by Year 5.

Replacement of the listed equipment will result in reduced overall maintenance costs to the Highway fleet, while allowing for better service to residents. However, it should be noted that an equipment replacement program will have to be instituted whether or not the exclusion passes, as many other vehicles and equipment in the Highway Department need replacement.

VOTE REQUIRED FOR PASSAGE Requires a 2/3rds majority vote under M.G.L. c. 59 §§21C(k) and 21D, AND passage by majority of ballots cast at the State Election on November 6th.

ARTICLE 4: CAPITAL IMPROVEMENTS

To see if the Town will vote to raise and appropriate and/or transfer from available funds a sum of money to fund requested town capital improvements or take any action thereon.

PROPOSED MOTION: Move that the Town appropriate the sum of \$16,300 for expenditure by the Fire/EMS department to fund the purchase and installation of a replacement engine for Ambulance #3.

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (4-1-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This article seeks funding for a replacement engine for Ambulance #3, in order to prolong the useful life of the vehicle with a minimum investment. The last new ambulance lease purchase/appropriation totaled \$173,710 over a five year period.

VOTE REQUIRED FOR PASSAGE: Requires a simple majority vote, unless funding is sought from the General Stabilization Account. Transfers from the General Stabilization Account require a 9/10th's vote per special legislation approved at the May 2, 2005 Annual Town Meeting, which vote is noted in Chapter 10 of the Town's General Bylaws.

ARTICLE 5: ADDITION TO THE GENERAL BYLAWS - TEMPORARY REPAIRS TO PRIVATE WAYS)

To see if the Town will vote to adopt the following bylaw; in accordance with MGL Chapter 40, Section 6N; to allow the Town to make temporary repairs to private ways, said repairs to be describe as repairs or improvements of a duration of up to twenty years:

TEMPORARY REPAIRS TO PRIVATE WAYS BYLAW

Section 1. Authorization to make repairs.

The Town of Leicester may make temporary repairs on private ways when such repairs are deemed necessary or appropriate by the Highway Superintendent (the Superintendent) and are approved by the Select Board. The Superintendent shall make such determination based on the public convenience and necessity, the protection of the health and safety of the general public using such ways, and the protection of the environment adjacent to the way and in the surrounding area.

Section 2. Type and extent of repairs.

The repairs may include the patching and filling of holes; oiling and treatment of road surfaces; the repair of specific portions of the way; cleaning of catch basins and drainage structures; installation of guardrails or other infrastructure; and the reconstruction of a way, including the removal of roadway surface and the regrading and installation of fill and roadway surface materials, including asphalt and concrete.

Section 3. Drainage improvements.

As part of the repair of any private way, the Town may make such drainage repairs and improvements to the private way as are deemed necessary or appropriate by the Superintendent. The Town shall not perform any such drainage repairs or improvements on a private way unless the Superintendent has indicated that such repairs or improvements are required by public necessity or for the protection of the environment.

Section 4. Requests for Repairs.

The Town may only perform such repairs, reconstruction, or improvements on a private way upon the occurrence of any of the following events:

- a.) The request of the Planning Board to the Select Board;
- b.) The request of the Superintendent to the Select Board;
- c.) At least 80% of the owners of properties which abut the way to be repaired have signed a petition to the Select Board requesting that such repairs to the way be performed. Such petition must state that the public convenience and necessity require such repairs, reconstruction and improvements and shall request that the Superintendent make an investigation of the condition of the way and report the findings to the Select Board

Section 5. Easements.

If any easements are necessary for the completion of such repairs, reconstruction or improvements, the owners of the properties abutting the way and the owners of any land or interest in land upon which such easement would be required, shall be responsible for the cost of the preparation and the grant of such easements to the Town. Such easement shall include the grant of the right to the Town, its agents, contractors and employees, to enter upon the way for the performance of the work.

Section 6. Approval and method of payment.

Upon receipt of a request from the Superintendent, or from the Planning Board, or upon receipt of a petition from the owners of abutting properties, the Select Board shall review the report of the Superintendent, and determine whether such repairs, reconstruction or improvements are required for the public health or safety, the protection of the environment, and the public convenience and necessity, and, if it so determines, the Select Board may approve the project and determine whether such repairs, reconstruction or improvements:

- a.) shall be paid by a cash deposit representing the total estimated cost of the work;
- b.) shall be paid by the abutters by betterment charges which shall be assessed to the abutters;
- c.) shall be paid partly by the abutters and partly by the Town by the assessment of betterment charges for a portion of the work;
- d.) shall be paid by the Town.

In the event the Select Board determines that the project should be funded in whole or in part by the assessment of betterments or by a cash deposit from the abutters, the Select Board shall hold a public hearing on such determination within 30 days thereof. The Board of Selectmen shall notify the owners of the properties abutting the way by regular mail at least seven days prior to the date of the hearing, and shall cause notice of such hearing to be published in a newspaper of general circulation in the Town at least seven days prior to the date of the hearing. Such notices shall indicate that the Select Board is considering the assessment of betterments or a cash deposit to fund the project. The Select Board shall make the decision on the request and the method of payment therefor, within 60 days of the close of the public hearing. If the appropriation of funds or the assessment of betterments is necessary, the Select Board shall thereupon submit an article to the next ensuing Town Meeting for approval by the Town of the repairs, reconstruction or improvements to the way and the method of payment therefor.

Section 7. Select Board action.

If the appropriation of funds, the assessment of betterments or a cash deposit is not to be required in conjunction with the project, the Select Board shall review the request at a public meeting within 21 days of receipt of the request, and shall make a decision on the request within 45 days of its receipt.

Section 8. Liability of Town.

To the fullest extent permitted by law, the Town shall not be liable for any claim, damage, loss, cost, liability, or expense, of any name, nature or description, including attorney's fees and costs, arising out of or as a result of the repairs, reconstruction or improvements performed on any private way by the Town or any damage resulting therefrom, including that to third parties. The Select Board may in relation to any such project as it deems appropriate, require the owners of the properties abutting the way to execute an agreement pursuant to which all such owners agree to save, indemnify and hold harmless the Town from any and all such claims, damages, losses, costs, liabilities or expenses, including attorney's fees, arising out of or as a result of such repairs, reconstruction or improvements.

Section 9. Ways to be open to public use.

The ways upon which the Town may perform any such repair, reconstruction or improvement, must have been open to public use for no less than 10 years prior to the date of the vote of the Select Board which approves such project or which authorizes the submission of the article relating thereto to the Town Meeting.

Section 10. Standard of work.

All work to be performed by the Town on any such way pursuant hereto must be to the standards established by the Highway Department of the Town.

Section 11. Basis for assessment of betterments.

In the event the Town Meeting authorizes such repair, reconstruction or improvement to such way, and authorizes the assessment of betterments for all or a portion of the cost of such work, it shall determine the percentage of project cost to be assessed, and such assessments shall be made based upon either the fixed uniform rate method using the linear frontage of each lot on the street as the standard for computation, or the uniform unit method, pursuant to which each existing or potential lot abutting the way shall constitute unit.

Section 12. Town Meeting appropriation of funds.

No repair, reconstruction or improvement requiring an appropriation of funds shall be made to any way pursuant hereto unless and until the Town Meeting has appropriated any funds necessary for the project.

Section 13. Minor repairs.

Upon the request of the Superintendent, the Planning Board or the owners of properties abutting a way, the Select Board, based on the recommendation and report and the certification of the Superintendent that the funds necessary for the project are available, may authorize the Town to make minor repairs to private ways to a sum not to exceed \$1,000 in total on any way in any one fiscal year. Or take any action relating thereto.

PROPOSED MOTION: Move that the article be voted as written

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: The Town has a history of providing road repair and grading services to private roads. However, in order to legally provide these services, the Town must adopt a private road maintenance bylaw according in accordance with MGL Chapter 40, Section 6N. This bylaw is presented to Town Meeting for that purpose. The bylaw, as written, allows for a number of options to be considered by the Select Board when looking at private road maintenance. We anticipate that the Highway Supervisor will present the Board with a plan each spring, whether to grade as necessary, or to add other improvements. The bylaw allows for residents to petition the Board for repairs as well and gives the Board the option of determining how best to pay for improvements. The goal of the bylaw and the policy is to slowly improve the private roads to reduce the grading that is required after severe weather events.

VOTE REQUIRED FOR PASSAGE: Requires a 2/3rds majority vote. pursuant to the current General Bylaws, Chapter 1, Section 5.

ARTICLE 6: ADDITION TO THE GENERAL BYLAWS - REVOLVING FUND FOR BURNCOAT PARK

To see if the Town will vote to establish a revolving fund, for the purpose of collecting and expending funds associated with the use of Burncoat Park; said fund to be added to the Town’s Revolving Fund bylaw as annotated below:

Revolving Fund	Department, Board, Committee, Agency or Office Authorized to Spend from Fund	Fee, Charges or Other Receipts Credited to Fund	Program or Activity Expenses Payable from Fund	Restrictions or Conditions on Expenses Payable from Fund	Other Requirements/ Reports	Fiscal Years
Burncoat Park	Town Administrator’s office	Donations, Fees charged for use of the park	Expenses associated with maintenance or expansion of Burncoat Park	None	None	Fiscal Year 2019 and subsequent years

Or take any action relating thereto.

PROPOSED MOTION: Move that the Article be voted as written.

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to not approve (5-0-0).
Recommendation that any funds raised be placed in the Parks and Recreation Revolving Fund.

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This article seeks to add a new revolving fund specific to activities at Burncoat Park. The creation of a revolving fund would allow the Town to take in fees for future activities and expend funds on the park and those activities.

VOTE REQUIRED FOR PASSAGE - Requires a two-thirds majority vote pursuant to M.G.L. c. 44, § 53 ½ and the current General Bylaws, Chapter 1, Section 5.

ARTICLE 7: AMEND CHAPTER 1, SECTION 5 OF THE GENERAL BYLAWS

To see if the Town will vote to amend Chapter 1, Section 5 of the general bylaws of the Town of Leicester by inserting the following (Please note that all proposed changes are listed in bold italic):

“Any or all of these By-Laws may be repealed or amended or other By-Laws may be adopted at any Town Meeting by a ~~2/3~~ ***majority*** vote of the voters present and voting, an article or articles for that purpose having been inserted in the warrant for such meeting by the Selectmen. All proposed By-Laws and changes in By-Laws must be submitted, in writing, to the By-Law Committee not less than ~~forty-five~~ ***sixty*** days prior to the business session of the Annual Town Meeting. ***Citizen’s petitions received in advance of a Special Town Meeting must follow the procedures set in G.L. Chapter 39, Section 10.*** ~~or sixty days prior to a Special Town Meeting at which they shall be considered.~~ The Moderator shall solicit recommendations from the By-Law Committee at the Town Meeting when said By-Laws or By-Law changes are considered or take any action thereon.

PROPOSED MOTION: Move that the article be voted as written

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This article seeks to amend the Town’s general bylaws to conform to State law.

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority vote pursuant to the current General Bylaws, Chapter 1, Section 5.

ARTICLE 8: DISPOSITION OF TEMPORARY LOCATION OF LEICESTER TOWN LIBRARY AT 1 PAXTON STREET

To see if the Town will vote to dispose of the fee or any lesser interest in the real property and the improvements thereon used as the temporary location of the Leicester Town Library, located at 1 Paxton Street, Leicester as shown on Assessor’s Map 19B, Block E90, containing about 0.824 acres of land, more or less, with building thereon by

auction or solicitation of proposals in accordance with M.G.L. c. 30B, any such disposition to be on such terms and conditions that the Select Board shall deem appropriate, which may include the reservation of easements and restrictions and the grant of rights of access or easements appurtenant to the property; and to authorize the Select Board to take all related actions necessary or appropriate to carry out the purposes of this article; or take any action thereon.

PROPOSED MOTION: Motion, if any, to be made at Town Meeting.

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: The library expansion and renovation project will be complete within the next few months, leaving the temporary library building at 1 Paxton Street vacant. Passage of this article would give the Select Board the authority to seek a purchaser for the building using an auction process with a minimum bid and recorded preservation restrictions if the sale of the building is determined to be in the best interest of the Town. Should that process fail, the Town could issue an RFP for the property which would allow the Board to have the quality of a proposal, not the price offered, be the primary determinant when selling the building. While the building is historic and unique, it is expensive to maintain and needs significant restoration.

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority per M.G.L. c. 40, § 15.

ARTICLE 9: EASEMENT FOR THREE-PHASE POWER AT TOWN HALL

To see if the Town will vote to authorize the Select Board to grant, with quitclaim covenants, the perpetual right and easement to install, construct, reconstruct, repair, replace, add to, maintain and operate for the transmission of high and voltage electric current; all necessary appurtenances and equipment on or over Town property located at 3 Washburn Square, assessor's map 20A B13 0, for the furnishing of electrical service to the Town Hall for handicap accessibility and emergency power backup services; or take any other action relative thereto.

PROPOSED MOTION: Move the article be accepted as written

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This is a property easement that will allow the Town Hall elevator to be serviced by three-phase power brought on site via Paxton Street. It is anticipated that the same service will also allow for the connection of an emergency generator.

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority per M.G.L. c. 40, § 15.

ARTICLE 10: EASEMENT FOR UTILITY POLES AT BURNCOAT PARK

To see if the Town will vote to authorize the Select Board to grant, with quitclaim covenants, the perpetual right and easement to install, construct, reconstruct, repair, replace, add to, maintain and operate for the transmission of high

and voltage electric current; all necessary appurtenances and equipment on or over Town property located at 12 Town Beach Road, assessor's parcel 18 A 20, for the furnishing of electrical service to Burncoat Park for lighting and supply services; or take any other action relative thereto.

PROPOSED MOTION: Move that the article be voted as written

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: This is a property easement that will give National Grid the ability to replace the utility poles and wires that currently extend into Burncoat Park with a functional service that will bring accessible power and lighting into the park for the purpose of public safety and preservation of the park. This is the first step in revitalizing the park will include a renovated ball field, improved parking areas and a more accessible roadway.

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority vote per M.G.L. c. 40, § 15.

**ARTICLE 11: ACCEPTANCE OF MASSACHUSETTS GENERAL LAWS CHAPTER 53, SECTION 18B
INFORMATION RELATING TO QUESTIONS ON TOWN BALLOT; CONTENTS; WRITTEN
ARGUMENTS BY PROPONANTS AND OPPONENTS**

To see if the Town will vote to accept MGL Chapter 53, Section 18B, which will allow information on town ballot questions to be addressed via written arguments from question proponents and opponents, be vetted by Town Counsel, and made available to the voters of the Town.

PROPOSED MOTION: Move that the article be accepted as written.

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

DESCRIPTION: Acceptance of this section will allow the Town to provide general information to residents regarding the purpose of local ballot questions along with both pro and con arguments. This will be useful to ensure that all residents are notified and given important information on future local ballot issues.

VOTE REQUIRED FOR PASSAGE: Requires a simple majority per M.G.L. c. 53, § 18B

ARTICLE 12: AMENDMENT OF ZONING BYLAWS (POULTRY AND LIVESTOCK)

To see if the Town will vote to Amend Section 1.3 (Definitions), Section 3 (Use Regulations), and insert a new Section 5.17 into the zoning bylaws of the Town by inserting the following text to regulate the keeping of chickens, clarify regulation of other livestock, and update language related to agricultural uses to be consistent with state law.

Zoning Bylaw Amendment: Chickens

Explanation: The purpose of these amendments is to allow limited numbers of chickens accessory to single-family or two-family dwellings by-right (without a special permit), to clarify regulation of livestock, and to update language related to agricultural uses to be consistent with state law.

A. Insert the following definitions in Section 1.3, Definitions:

- CHICKEN** – A type of domesticated fowl, a subspecies of red junglefowl
- BACKYARD CHICKENS** - Raising and keeping of up to fifteen (15) hens per lot depending on lot size in accordance with Section 5.17 and accessory to a one-family or two-family dwelling for personal consumption and enjoyment.
- HEN** – An egg-bearing chicken or female chicken beyond 16 weeks of age
- LIVESTOCK** - animals raised for domestic use including horses, cattle, goats, sheep, llamas, donkeys, chickens, geese, ducks, turkeys, rabbits, and other similar animals kept for food or labor excluding swine and fur-bearing animals.
- ROOSTER** – A male chicken over the age of 16 weeks

B. Amend the Zoning Bylaw, Section 3.2, Schedule of Use, Subsection 3.2.01, Agriculture, as shown below:

3.2.01 AGRICULTURE ¹		SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
1.	Farm, part-time farm or nursery, including the display and sale of natural products raised in the town, and raising of livestock the exception of swine as regulated in Section 3.2.01.3	Y	N	N	N	N	N	N	Y
2.	Raising of livestock for domestic use (<u>See Section 5.17</u>)	SP	Y SP						
3.	Raising of swine and fur-bearing animals	SP	N	N	N	N	N	N	N
4.	Greenhouse	SP	N	N	N	N	N	SP	Y
5.	<u>Backyard Chickens</u> (<u>See Section 5.17</u>)	<u>Y</u>							

¹The use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture, or viticulture as described under MGL Ch 40A, Section 3, on parcels over ~~5~~ 2 acres, is permitted (Y).

C. Amend Section 3.30, Business Residential-1 (BR-1) Zone, by adding subsection mm, as follows:

- mm. Backyard Chickens

D. Amend Section 3.32, Residential Industrial Business (RIB) Zone, subsection B.4., by item n as follows:

- n. Backyard Chickens

E. Insert a new Section 5.17, as follows:

5.17 LIVESTOCK AND BACKYARD CHICKENS

5.17.01 Livestock

- A. The Special Permit Granting Authority for Livestock shall be the Zoning Board of Appeals (ZBA) in all Zoning Districts.
- B. The ZBA may limit the total number of livestock allowed per lot. The keeping of chickens on a lot less than 7,000 square feet is prohibited.
- C. Coops, hutches or other such buildings used to house poultry, rabbits, or other small livestock animals shall be situated not less than twenty-five (25) feet from any inhabited dwelling.
- D. The keeping of chickens requiring a special permit shall meet the requirements of Section 5.17.02, subsections E – H, below.

5.17.02 Backyard Chickens

- A. Purpose & Intent: To allow the raising of backyard chickens for the personal consumption of eggs and meat for residents, to protect the rights of abutters, and preserve natural water resources
- B. The keeping of backyard chickens shall comply with Board of Health Regulations and shall require an annual license from the Town Clerk. Backyard chickens that are not licensed shall be subject to a fine. The Zoning Enforcement Officer may delegate enforcement under this section to the Animal Control Officer.
- C. The number of backyard chickens allowed is as follows:

Lot Size	Maximum # of Chickens
Less than 7,000 square ft.	0
Equal or greater than 7,000 square ft. but less than .5 acre (21,780 square ft.)	6
Equal or greater than .5 acre (21,780 square ft.) but less than 1 acre (43,560 square ft.)	10
Equal or greater than 1 acre (43,560 sq. ft.) but less than 1.5 acres (65,340 sq. ft.)	12
Equal or greater than 1.5 acres (65,340 sq. ft.)	15

- C. Keeping of a higher density of chickens per square foot or keeping of roosters shall be considered keeping of livestock and would require a special permit from the Zoning Board of Appeals. The keeping of chickens on a lot less than 7,000 square feet is prohibited.

- D. Poultry and eggs produced under this section shall be for personal consumption only (not for sale).
- E. The keeping of Backyard Chickens shall comply with applicable local, state and Federal wetlands regulations and stormwater management regulations. There shall be no construction of any structure or alteration of land within a protected resource area, and or any unlawful discharges of pollution (i.e. fecal waste) into the wetland or buffer zone area. Coops shall not be constructed within 50 ft. of wells.
- F. Chickens shall be confined to the permit holder's property at all times to prevent wandering and straying onto other properties.
- G. Coops will be considered an accessory structure for the purpose of this by-law and shall adhere to all dimensional requirements for accessory structures and shall be situated not less than twenty-five (25) feet from any inhabited dwelling. All coops shall be of durable construction. Such structures shall be elevated to a height that allows for adequate cleaning and be designed so as to prevent the harborage of rodents and insects. The owner shall provide for tightly covered and vermin-proof storage of dry domesticated animal feed.
- H. Poultry runs shall be situated not less than fifteen (15) feet from adjoining property lines.

5.17.03 Exempt Agricultural Use

Nothing in this section is intended to regulate the keeping, raising, or breeding of livestock as part of a commercial agricultural enterprise on two (2) or more acres meeting the requirements of MGL Chapter 40A, Section 3;

Or take any action relative thereto.

PROPOSED MOTION: Move that the article be accepted as written

PLANNING BOARD RECOMMENDATION: Favorable Action (5-0-0)

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority vote per M.G.L. c. 40A, §5.

ARTICLE 13 AMENDMENT OF ZONING BYLAWS - TEMPORARY MORATORIUM ON GROUND-MOUNTED SOLAR ENERGY SYSTEMS

To see if the Town will vote to amend Section 5.14 of the Town's zoning bylaws (Ground-Mounted Solar Energy Systems) to enact a temporary moratorium on Medium and Large-Scale Ground-Mounted Solar Energy Systems.

Moratorium on Medium-Scale or Large-Scale Ground-Mounted

Explanation: The purpose of this amendment is to temporarily halt the development of new Medium-Scale and Large-Scale Ground-Mounted Solar Energy Systems to provide the Town of Leicester time to develop improved Zoning Bylaws to regulate the installation of solar photovoltaic panels and arrays, commonly referred to as “solar farms”.

A. Amend Section 5.14, Ground-Mounted Solar Energy Systems, by inserting a new subsection 7.0, as follows:

7.0 Temporary Moratorium on the Construction of Medium and Large-Scale Ground-Mounted Solar Energy Systems

7.1 Background

The Town of Leicester (“Town”) currently has 9 approved Large-Scale Ground-Mounted Solar Energy Systems completed or under construction, and another 2 under review. Many of these projects have involved large-scale clear-cutting of trees and ground vegetation, and several have been located in close proximity to abutting residential neighborhoods. Although the Zoning Bylaw adopted pursuant to the vote under Articles 5, 6, 7, 8, and 9 of the November 8, 2011 Special Town Meeting was improved by amendments adopted by the vote under Article 24 of the May 2, 2017 Annual Town meeting, the Town needs further changes to the Zoning Bylaw to protect environmental resources and residential neighborhoods. Therefore, there is an immediate, identified need to protect the interests of the Town and its citizens by establishing long-term land use standards and provisions to ensure that such uses and development will be consistent with the Town's long-term planning interests and Master Plan.

7.2 Temporary Moratorium

The purpose of this moratorium is to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

Because the regulation of Medium-Scale or Large-Scale Ground-Mounted Solar Energy Systems, commonly referred to as “solar farms” raises novel legal, planning, and public safety issues, the Town needs time to undertake a planning process to make appropriate amendments to the Zoning Bylaw regarding regulation of Medium-Scale or Large-Scale Ground-Mounted Solar Energy Systems.

Accordingly, the Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medium-Scale or Large-Scale Ground-Mounted Solar Energy Systems until adjournment of the business portion of the May 2019 Annual Town Meeting to allow sufficient time to address the effects of such structures and uses in the Town and to enact appropriate Zoning Bylaws in a consistent manner.

Notwithstanding any other provision in the Town of Leicester Zoning Bylaw to the contrary, no building permit may be issued for the construction of any Medium-Scale or Large-Scale Ground-Mounted Solar Energy System, and to the extent legally permissible, the Planning Board shall not accept any further application for any Medium-Scale or Large-Scale Ground-Mounted Solar Energy System during the aforementioned moratorium period.

This moratorium shall not apply to Medium-Scale or Large-Scale Ground-Mounted Solar Energy System projects for which a Site Plan Review or Special Permit application was received by the Leicester Planning Board prior to August 7, 2018.

Any Medium-Scale or Large-Scale Ground-Mounted Solar Energy System proposed in an application submitted to the Planning Board prior to August 7, 2018 shall be governed by the provisions of the Town Leicester Zoning Bylaw in effect prior to the first publication of notice of the public hearing on this by-law required by M.G.L. c. 40A, § 5.

Or take any action relative thereto.

PROPOSED MOTION: Move that the article be accepted as written.

PLANNING BOARD RECOMMENDATION: Favorable Action (5-0-0)

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (4-1-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

VOTE REQUIRD FOR PASSAGE: Requires a two-thirds majority vote per M.G.L. c. 40A, §5.

ARTICLE 14 AMENDMENT OF ZONING BYLAWS - MODIFICATION OF DIMENSIONAL REQUIREMENTS IN THE SUBURBAN AGRICULTURE AND RESIDENTIAL 1 ZONING DISTRICTS

To see if the Town will amend Section 4.2 (Schedule of Dimensional Requirements – Table I) of the Town’s zoning bylaws to modify dimensional requirements in the Suburban Agriculture (SA) and Residential 1 (R1) Zoning Districts.

Residential Dimensional Requirements

Explanation: The purpose of these amendments is to reduce minimum dimensional requirements for the development of single-family homes in the Suburban Agriculture (SA) and Residential 1 (R1) Zoning Districts.

Amend the Zoning Bylaw, Section 4.2, Schedule of Dimensional Requirements, Table I, as shown below:

4.2, SCHEDULE OF DIMENSIONAL REQUIREMENTS – TABLE I

District	Minimum Area (SQ. FT)	Frontage (FT)	Front (FT)	Side (FT)	Rear (FT)	Max height of building in feet	No. of stories	Maximum Building Coverage (%)
R1	50,000 ²	450 <u>125</u>	25	15	25	35	2½	30

District	Minimum Area (SQ. FT)	Frontage (FT)	Front (FT)	Side (FT)	Rear (FT)	Max height of building in feet	No. of stories	Maximum Building Coverage (%)
SA	80,000 <u>50,000</u>	200	40	40	40	35	2½	30

² The minimum lot size in the R1 district shall be ~~40,000~~ 20,000 square feet for lots served by public water and sewer. Or take any action relative thereto.

PROPOSED MOTION: Move that the article be accepted as written, except to change the required side setback in the SA district from 40 feet to 20 feet.

PLANNING BOARD RECOMMENDATION: Favorable Action (5-0-0)

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to Approve (4-1-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority vote per M.G.L. c. 40A, §5.

ARTICLE 15 AMENDMENT OF ZONING BYLAWS - AMENDMENT OF DEFINITIONS AND USE REGULATIONS FOR VEHICLE RELATED USES

To see if the Town will vote to Amend Section 1.3 (Definitions), and Section 3 (Use Regulations) of the Town’s zoning bylaws to improve regulation of vehicle related uses.

Vehicle-Related Uses

Explanation: The purpose of these amendments is to define and clarify regulation of vehicle-related uses.

A. Insert the following definitions in Section 1.3, Definitions:

GASOLINE STATION – a commercial gas station providing fuel to primarily passenger vehicles, not to include vehicle service or repair.

TAXI OR LIMOUSINE SERVICE – A for-profit transportation service providing a taxi cab or limousine for hire that is used in the business of transporting passengers for compensation. Such service is not allowed as a home occupation. Not to include a private vehicle used for ridesharing services.

TRUCKING DEPOT – a facility for parking and service of or tractor-trailer trucks or buses, which may include fuel services.

VEHICLE SERVICE OR REPAIR FACILITY – an establishment providing services to primarily passenger vehicles. Not to include a junk yard or open storage of abandoned vehicles.

VEHICLE STORAGE YARD: site for open storage of abandoned or unregistered vehicles

B. Amend the Zoning Bylaw, Section 3.2, Schedule of Use, Subsection 3.2.03, Business, by modifying use #7, and adding uses #22 – 27, as shown below:

3.2.03 BUSINESS		SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
7.	Gasoline or service station (<u>prohibited in Watershed Overlay District</u>)	N	N	N	SP	N	N	N	SP
22.	Vehicle Service or Repair Facility (prohibited in Watershed Overlay District)	N	N	N	SP	N	SP	SP	SP
23.	Vehicle Sales or Rental, up to 30 vehicles ²	N	N	N	SP	N	Y	Y	Y
24.	Vehicle Sales or Rental/Auto Dealership, 30 or more vehicles ²	N	N	N	N	N	SP	SP	SP
25.	Land and water recreational vehicle (including boats) sales, rental, service, and storage yards.	N	N	N	SP	N	SP	SP	SP
26.	Towing Company	N	N	N	SP	N	SP	SP	SP
27.	Vehicle Salvage Yard	N	N	N	N	N	N	N	N

² Display/parking of vehicles for sale is prohibited in the right-of-way of any roadway (public or private) and in any required landscaped buffer areas for the applicable zoning district. Where the number of vehicles for sale combined with parking spaces exceeds twenty (20), Site Plan Review is required in accordance with Section 5.2 (Site Plan Review).

C. Amend the Zoning Bylaw, Section 3.2, Schedule of Use, Subsection 3.2.05, Transportation, Communication, Utility, by modifying use #3, and adding use #10, as shown below:

3.2.05 TRANSPORTATION, COMMUNICATION, UTILITY		SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
3.	Trucking depot	N	N	N	SP	N	SP	∅	SP
10.	Taxi or Limousine Service	N	N	N	SP	N	Y	Y	Y

D. Amend Section 3.30, Business Residential-1 (BR-1) Zone, by modifying subsection z., as follows:

- z. ~~Auto Sales Vehicle~~ Sales or Rental, up to 30 vehicles (30 or more by special permit).

E. Amend Section 3.32, Residential-Industrial-Business (RIB) by inserting uses n. – p., as follows:

- n. Vehicle Sales or Rental, up to 30 vehicles (30 more by special permit)
o. Taxi or Limousine Service

F. Amend Section 3.33 [ADDITIONAL USE REGULATIONS SPECIFIC TO THE HIGHWAY BUSINESS-INDUSTRIAL DISTRICT-1 (HB-1)], Subsection 3.33.2, as follows:

3.33.2 Additional Uses allowed by Special Permit (SP)

- ~~1. Automobile Dealerships~~
~~2. Automobile Service/Repair Facilities~~
~~3. 1. Movie Theaters~~
~~4. 2. Veterinary Hospitals~~

G. Amend the Zoning Bylaw, Section 5.6, Greenville Village Neighborhood Business District (NB), Subsection 5.6.04, Prohibited Uses, as shown below:

5.6.04 Prohibited Uses:

- 5.6.04.1 Any use not expressly permitted above.
5.6.04.2 Vehicle-related uses (sales, service and repair of all vehicle types including but not limited to trucks, boats and recreational vehicles, towing companies, taxi or limousine service, etc.).

Or take any action relative thereto

PROPOSED MOTION: Move that the article be accepted as written

PLANNING BOARD RECOMMENDATION: Favorable Action (5-0-0)

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

VOTE REQUIRED FOR PASSAGE: Requires a two-thirds majority vote per M.G.L. c. 40A, §5.

ARTICLE 16 AMENDMENT OF ZONING BYLAWS - AMENDMENT OF DEFINITIONS AND USE REGULATIONS REGULATING BREWERIES AND RELATED USES

To see if the Town will vote to amend the Town's Zoning Bylaws as follows:

Amend Section 1.3 (Definitions) and Section 3 (Use Regulations) to regulate breweries and related uses.

Breweries and Related Uses

Explanation: The purpose of these amendments is to address regulation of breweries, distilleries, and wineries.

A. Insert the following definitions in Section 1.3, Definitions:

BREWERY, DISTILLERY, WINERY - Establishment primarily engaged in the on-site manufacture, blending, fermentation, processing, and packaging of alcoholic beverages including beer, wine, hard cider and distilled beverages, for wholesale or retail distribution, as allowed by state law. The establishment may include accessory uses such as: tasting room for on-site consumption of the product produced on-site, retail sales of the product produced on-site and related goods, and/or tours of the production facility, provided that all production, processing, distribution, and storage activities are to be conducted within an enclosed building. Within the Suburban Agricultural (SA) district this shall mean an establishment that produces less than 15,000 barrels annually (a barrel being equivalent to 31 gallons). Such use in the SA district shall only be permitted on parcels containing a minimum of five (5) acres.

BREW PUB: Restaurants, licensed under the relevant state and federal statutes, to produce and sell beer, ale and/or hard cider at the location and whose primary business is the sale and preparation of food to be consumed on the premises. Malt beverages including beer, ales and hard ciders produced on the premises may be sold to other establishments but shall not exceed 25 percent of the establishment’s production capacity.

B. Amend the Zoning Bylaw, Section 3.2, Schedule of Use, Subsection 3.2.03, Business, by adding use #28, as shown below:

	3.2.03 BUSINESS	SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
28.	Brewery, Distillery, Winery	SP	N	N	SP	SP	Y	Y	Y
29.	Brew Pub	SP	N	N	Y	SP	Y	Y	Y

C. Amend Section 3.30, Business Residential-1 (BR-1) Zone, by amending subsection cc, and adding subsection nn., as follows:

- cc. Establishments serving alcoholic beverages, including brew pubs, by special permit
- nn. Brewery, Distillery, Winery by special permit

Or take any action relative thereto.

PROPOSED MOTION: Move that the article be accepted as written.

PLANNING BOARD RECOMMENDATION: Favorable Action (5-0-0)

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to approve (5-0-0)

SELECTBOARD RECOMMENDATION: Favorable Action (5-0-0)

VOTE REQUIRED FOR PASSAGE: Requires a two thirds majority vote per M.G.L. c. 40A, §5.

ARTICLE 17 AMENDMENT OF ZONING BYLAWS – INSERTION OF AN EARTH FILLING BYLAW

To see if the Town will vote to amend the Town’s Zoning Bylaws by inserting a new section, 5.16 to read as follows:

Earth Filling

<p>Explanation: The purpose of this bylaw is to create an oversight process via the Planning Board to implement regulations on commercial soil importation and removal in the Town.</p>
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Section 5.16 Earth Filling Bylaw

- A. **Authority:** This Zoning Bylaw is adopted under the authority contained in M.G.L. c. 40A, § 5.
- B. **Intent:** The importation, movement, transport, alteration, redistribution, or filling with any earth material in the aggregate volume that is greater than 1,000 cubic yards, or 1,500 tons and specifically associated with any property in the Town of Leicester shall require a Special Permit in accordance with this Earth Filling Bylaw.
- C. **Purpose:** The purpose of this Earth Filling Bylaw is to regulate earth filling operations to protect of public health, safety and welfare, and to protect the integrity of natural resources in the Town of Leicester.
- D. **Definitions Specific to this Section:**
1. **ABUTTERS:** The owners of property within 300 feet of the perimeter of the subject property.
 2. **APPLICANT:** The owner of land from which earth will be removed or fill to be placed, or the person of lawful standing in the stead of such owner. Any person, company, or agent, standing instead of the actual property owner must have the owner’s written permission to do so.
 3. **BOARD:** The Planning Board of the Town of Leicester, who shall act as the Special Permit Granting Authority (SPGA).
 4. **EARTH:** This term shall include soil, loam, sand, gravel, clay, peat, rock, or other earth material in solid form.
 5. **EARTH REMOVAL OPERATION:** Any commercial mining, stripping, quarrying, filling, digging or blasting of earth originating from the Town of Leicester and its transportation into or out of the Town of Leicester.
 6. **EROSION:** The process by which the ground surface is worn by forces such as wind, running water, ice, abrasion, gravity, transportation or by artificial means.
 7. **FILL MATERIAL:** Any geologic, man-made, recycled or processed material including in its entirety or as a proportion containing clay, rock, sand, gravel, peat and sediment. Material meeting the Federal and/or State definition of solid or hazardous waste or as toxic, infectious, radioactive, corrosive, or reactive material is specifically excluded.
 8. **FILLING OF LAND:** The importation, use, redistribution, alteration or movement of earth and or fill material on or within any land area or water body within the Town of Leicester.
 9. **GRAVEL:** Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.

10. **LOAM OR TOPSOIL:** A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter.
11. **SPGA:** The Special Permit Granting Authority, which will be the Planning Board for the purposes of this Bylaw.
12. **PROCESSING:** The sorting or separation of earth into distinct categories based on particle size or type usually through the use of a screening process, not including stone crushing.
13. **SILT:** Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter based on the Wentworth scale of measurement.
14. **SITE:** A distinct portion of one to three contiguous lots, under the same or different ownerships, on which an earth removal and/or fill operation is conducted, or is proposed to be conducted, under the Permit.
15. **SLOPE:** An area that is more or less steep, as measured by the vertical rise over the horizontal distance, expressed as a percentage or ratio. For example, a rise of one foot over three horizontal feet is a slope of 33% and is expressed as a ratio of 3:1 slope.
16. **STONE CRUSHING:** The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.
17. **SIGNIFICANTLY GREATER CONCENTRATION:** The concentration of a substance in earth or fill materials as measured by Federal or State-approved analytical methods, which is one order of magnitude or greater in concentration than the same substance measured in existing, pre-fill earth materials.

E. Regulated Activities and Uses:

1. A Special Permit shall be required for the filling of land that involves greater than 1,000 cubic yards or 1,500 tons of or more of earth and/or fill material per calendar year (January through December). Contiguous parcels under the same ownership or right of operation shall be considered one location for the purpose of this bylaw.
2. An earth filling operation that does not exceed any of the above thresholds shall not require a Permit, but shall be subject to the following requirements unless otherwise agreed to, in writing, by all abutting property owners that the operation shall not encroach closer than ten feet to a property line, and no greater than a 1:1 slope shall exist between the operation and the ten-foot buffer.

F. General Requirements

1. All earth removal and earth filling operations in the Town, whether or not exempted from the Special Permit Requirements set forth herein, shall provide the following information, in writing, to the Building Inspector within 90 days of the effective date of this Bylaw:
 - a. The assessors map and parcel number of the subject property;
 - b. An estimate of the amount of material left to be removed (if earth removal);
 - c. An estimate of the amount of fill material remaining to be placed (if fill):

- d. An estimate of the anticipated annual volume of activity;
- e. A description of completed and planned reclamation of the property;
- f. The date the operation began; and
- g. The anticipated date of completion or cessation of the operations.

G. **Exemptions from Special Permit Requirements:** In addition to the filling of land that involves less than 1,000 cubic yards or 1,500 tons of or more of earth and/or fill material per calendar year (January through December), the following are presumed exempt from the Special Permit requirements of this Bylaw:

- 1. Earth removal or placement of fill associated with the installation of septic systems, which shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.00).
- 2. Earth removal or the placement of fill associated with the installation of foundations for new buildings and/or building additions, which shall be governed by M.G.L. c. 143 and the Commonwealth of Massachusetts Building Code (780 CMR).
- 3. Earth removal from or the placement of fill upon any area of land that falls within the jurisdiction of the Conservation Commission under M.G.L. c. 131, §40 (the Massachusetts Wetlands Protection Act) and the bylaws and rules and regulations of the Town's Conservation Commission where such removal or placement of fill is authorized pursuant to an Order of Conditions.
- 4. Earth removal or the placement of fill that involves less than 1,000 cubic yards on a single lot.
- 5. Earth removal or the placement of fill, where the operation occurs entirely within an individual parcel and where a town-accepted public way is not used for the transportation of the material.
- 6. Earth removal or the placement of fill within the right-of-way for a new subdivision road that has been approved by the Planning Board, or by the Zoning Board of Appeals pursuant to M.G.L. c. 40B, where there is already a bond in place with the Town to ensure performance.

H. **Petition for Review of Exempt Operations.**

The SPGA may, upon petition by an abutter or by any Town Official or Town Board, conduct a public hearing to review an operation that would be otherwise be exempt from the Special Permit requirement. Should the SPGA find that the earth removal or fill operation includes activity that is not exempt from the provisions of this bylaw, the SPGA may either proceed with an enforcement action pursuant to Section S of this Bylaw or may require that the operator apply for a Special Permit pursuant to the Transition Rules in Section V of this Bylaw.

I. **Special Permit Criteria for Earth Removal & Fill Operations**

- 1. Permits for earth removal and/or fill operations shall be granted by the SPGA only upon its written determination that the proposed use shall not cause substantial detriment to the neighborhood, or the Town, taking into account the characteristics of the site and the proposal in relation to the site and surrounding environment. In addition to any specific factors that may be set forth elsewhere in this Bylaw and its

associated regulations adopted pursuant to the provisions of this bylaw, such determination shall include consideration of each of the following:

- a. Social, economic, or community needs which are served by the proposal;
- b. Traffic flow and safety, including loading and unloading;
- c. Neighborhood character;
- d. Impacts on the natural environment; and
- e. Potential fiscal impact, including impact on Town services, tax base and property values.

The SPGA's determination for each of the five criteria shall be set forth in the Special Permit Decision as Findings of Fact.

2. No Special Permit shall be issued for the removal of earth or the placement of fill in any location if such an operation will:
 - a. endanger the public safety, public health or constitute a nuisance; or
 - b. produce noise, dust, or other noxious effects observable at the lot lines of the property in amounts objectionable or detrimental to the normal use of adjacent properties; or
 - c. result in the transportation of materials in such manner as to cause traffic congestion, dust, spillage, noise, or other nuisances or hazards, particularly on residential streets; or
 - d. result in the transportation over ways which will be unduly injured thereby; or
 - e. result in a change of topography and cover which will be disadvantageous to the most appropriate final use of the land or to the use of lands adjacent to the site; or
 - f. cause irreparable harm to or loss of important wildlife, wildlife habitat or rare plant species indigenous to the area; or
 - g. result in stormwater damaging abutting properties.

Applicants are encouraged to submit a written statement regarding how each of the previous items will be addressed and/or mitigated.

- J. **Prohibited Activities and Uses:** The following activities and uses are prohibited in the Town of Leicester:
 1. Use or importation of earth or fill materials whose quality would either meet Federal or State criteria for definition as being toxic, reactive, radioactive, corrosive, explosive, hazardous, infectious, oil-impacted, or as a hazardous or solid waste
 2. Use or importation of earth or fill containing toxic, reactive, corrosive, hazardous, infectious, or solid waste at individual concentrations, or presence by weight or volume, which would render such material a regulated substance or material subject to M.G.L. c 21E or as a Solid Waste as defined in the regulations promulgated by the Massachusetts Department of Environmental Protection as 310 Code of Massachusetts Regulations (CMR) 19.00.

3. Use or importation of earth or fill at any location not otherwise regulated or permitted for acceptance of earth materials containing toxic, reactive, radioactive, corrosive, hazardous, infectious, oil, solid waste, or metals when such fill materials contain concentrations of these substances less than regulatory criteria established for reporting or special handling purposes but with one or more significantly greater concentrations by weight or volume than existing, pre-fill concentrations.
4. Use or importation of earth or fill material at aggregate quantities greater than 1,000 cubic yards or equivalent of 1,500 tons without a Special Permit pursuant to this Regulation.
5. Transport of earth or fill materials in a manner which is prone to release the same during transport.
6. Use of earth or fill materials in a manner which renders the fill area structurally unstable, produces uncontrolled leachate or off-gases, creates nuisance conditions, creates uncontrolled storm water run-off, siltation, or visually apparent erosion of fill materials, or where finished fill grading slopes are greater than 15 percent, or greater than 5 feet in elevation above surrounding and undisturbed maximum grade elevations as shown on the Soil Management Plan. An exception to the grading of slopes greater than 15 percent, or fill slopes greater than 5 feet in elevation shall be made if the limit of work associated with a permitted permanent structure as approved by the Planning Board includes the area of fill and provided the application is accompanied with the following:
 - a. a soil structural stability report by a registered and professional engineer (P.E.)
 - b. engineering details specifying the construction of the proposed structures, parking areas, roadways, stormwater control, retaining walls, site cross-sections at every 50 feet intervals, engineered slopes and any other details associated with the proposed development.
 - c. a stormwater management plan, showing structural Best Management Practices (BMP) to be employed on the project site, and runoff from impervious surfaces shall be recharged on the site by stormwater infiltration basins, vegetated swales, constructed wetlands or similar systems covered with natural vegetation, provided that runoff shall not be discharged directly to rivers, streams, or other surface water bodies.
 - d. an erosion and sedimentation control plan at a scale of 1" = 40'. This plan shall include BMPs for erosion and sediment control (vegetative and/or structural) to prevent surface water from eroding cut and fill side slopes, road shoulders and other areas and measures to avoid sedimentation of nearby wetlands, ponds, rivers, streams, or other surface water bodies, and
 - e. a plan showing finished grade elevation such that it is no more than three (3) feet above the undisturbed average grade elevation along the frontage of the property and within the front yard setback.
7. Filling operations or transport of earth and/or fill materials subject to this regulation without the prior written consent of the SPGA and Police Department for acceptable hours of operation, truck transport, routes of travel, road safety and site security procedures.
8. Construction of permanent structures over or adjacent to areas of fill unless the fill material is structurally stable and free of emissions or other hazardous criteria relative to permanent building construction and use.
9. Use of fill material which may cause chemical or physical impact to off-site ground water, surface water, or wetland resource areas without specific Soil Management Plan and field procedures designed to prevent degradation of these natural resources. This prohibited use specifically includes, but is not limited to, fill materials containing nutrient or salt concentrations at significantly greater concentrations than existing pre-organic carbon

K. Power to Promulgate Regulations

The SPGA may adopt and periodically amend its Special Permit Regulations for the implementation of this Bylaw, by majority vote. Such Regulations may set forth performance standards for earth removal and fill operations, impose filing and consultant fees, define additional terms not inconsistent with the Bylaw, and establish administrative procedures. Failure by the SPGA to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

L. Special Permit Procedures

1. Any person wishing to obtain a Special Permit to remove earth or fill material from, or to place fill material upon, any property in the Town, or to use any public way within the Town for transporting such earth or fill material, shall file a completed application for a Special Permit together with any required supporting data and maps with the SPGA and the filing fee, as established in the regulations of the SPGA.
2. Any Permit issued is non-transferable and shall automatically expire upon completion of the earth removal or fill project for which it was issued or at such time as may be specified in said Special Permit. In no case shall a Special Permit be issued initially for a period longer than three years. A Special Permit may be renewed for up to two years or lesser time as determined by the SPGA after evidence is presented that all conditions of the expiring Special Permit have been complied with and the work has been performed in good faith. There is no limit on the number of Permit renewals an Applicant can apply for. A public hearing may be required by the SPGA, at its discretion, for renewal of Special Permits.

M. Special Permit Application Requirements:

1. Written application for a Special Permit shall be made to the SPGA in accordance with the Planning Board's Special Permit Regulations. Such application shall include a written statement describing the proposed regulated activity, together with the following information:
 - a. A Soil Management Plan signed and stamped by a Massachusetts Licensed Site Professional ("LSP"). The LSP shall specifically state that "The subject plan has been designed to meet the requirements of Leicester's Earth Filling Regulation, and any other applicable Federal or State regulation pertaining to the transport and use of earth materials for fill. It is my professional opinion that this plan and the proposed regulated activity, once executed and completed, will be substantially protective of human health, public safety, welfare and the environment". The Soil Management Plan shall contain sufficient detail to document that requirements of this Earth Filling Regulation will be met. The plan shall specifically require that Massachusetts Contingency Plan Bill of Lading ("BOL") documents and procedures (310 CMR 40.0030) will be exclusively used for the transport and acceptance of earth materials for fill. The Soil Management Plan shall specifically include the following, at a minimum:
 - i. Summary of environmental pre-fill characterization findings and sample locations;
 - ii. Verification of Fill Material Origin and Acceptance Procedures;
 - iii. Record Keeping Practices;
 - iv. Site Security, Fill Operation Inspection, and Site Control;
 - v. Transport Routes, Times, and Duration of Anticipated Fill Activities;
 - vi. Qualifications of Applicant Personnel Responsible for adhering to the Soil

- vii. Management Plan and Leicester's Earth Filling Regulation;
 - viii. Erosion, Dust, and Storm Water Controls, Inspection and Maintenance;
 - ix. Quality Assurance/Quality Control Procedures;
 - x. Emergency Response and Notification Procedures, including pertinent telephone numbers and contact individuals/firms;
 - xi. Total proposed Fill Material volume;
 - xii. Daily Personnel Responsibilities and Operation Management Procedures;
 - xiii. Environmental monitoring plan to maintain protection of human health, public safety, welfare and the environment during the fill operations;
- b. Revegetation, Erosion and Leachate Control, Monitoring and Maintenance Plan;
- c. A list of Federal, State or local permits, approvals, licenses, or regulations to which proposed fill activities are also governed or controlled by. Such list shall specify which permits, approvals or licenses have been obtained or will be obtained as a condition of proposed filling activities.
- d. Maps depicting:
- i. Existing grades, elevations, property boundaries, abutters, access points, natural resource features, sensitive receptors, and environmental pre-characterization sample locations.
 - ii. Process diagrams indicating fill sequence, transport routes, and security measures.
 - iii. Storm water and erosion control structures and features to be utilized during filling operations.
 - iv. Final grade plans depicting proposed finish elevations, slopes, storm water and erosion control structures and features.

Map scales should be no more than one hundred (100) feet to the inch and elevation contour intervals should not exceed two (2) feet. Depiction of elevation contours are only required for the area(s) of fill, a 100-foot setback around fill areas, and along abutting property lines which are within 300 feet of fill areas. The permanent bench marks with elevations marked thereon and referenced to the National Geodetic Vertical Datum (NGVD) shall be placed in the field and maintained until a final inspection of filling operations has been completed by the Town of Leicester.

Final Fill Material grades shall conform in contour, slope and elevation to the natural topography of the surrounding area or pre-existing contours as evidenced by historical maps or photographs. Final grading shall incorporate stabilization measures and slopes of no more than fifteen (15) percent to limit erosion, structural failure of Fill Materials, ponding of water, or excessive storm water drainage onto abutting properties.

N. **Conditions of Special Permit:** In addition to any conditions which may be included in the Special Permit, the following requirements shall be Conditions of any Special Permit granted pursuant to this Bylaw:

- 1. Bills of Lading (BOL): Each BOL document shall be accompanied by a signed and dated letter from an LSP which specifies: 1.) the point of earth material origin and receiving location for fill material; 2.) that the earth material is not otherwise prohibited from use as fill material in accordance with Leicester's Earth Filling Regulation or other applicable Federal and State standards, regulations, and guidelines; and, 3.) that the LSP

has compared analytical results of earth materials to existing, pre-fill conditions specific to the location and determined that the concentrations of substances in the earth materials intended for use as fill do not contain significantly greater concentrations than existing, pre-fill conditions for that location. Copies of Bill of Lading documents and required LSP letters are to be provided to Leicester's Planning Board by the end of each week of active operation. Failure to provide these records on a weekly basis will result in suspension of fill operations.

2. Massachusetts Licensed Site Professional (LSP): The LSP shall perform site inspections during the course of the project to ensure compliance to the Soil Management Plan and shall upon completion of work provide written certification signed and stamped stating that all earth materials used for fill comply with Leicester's Earth Filling Regulation and applicable Federal and State Regulations. Unless a changed is approved in writing by the SPGA the applicant's original LSP is to be maintained for the duration of filling and closure activities.
3. Soils Management Plan: The original signed and stamped copy of the Soil Management Plan shall be provided to Leicester's Planning Board prior to initiation of fill operations. No fill operations are to commence until a letter indicating receipt and acceptance of the Soil Management Plan has been issued to the applicant by the Planning Board. The Planning Board will seek comment on the plan from appropriate issuance of the Soil Management Plan acceptance letter. Acceptance of the Plan will not constitute endorsement by the Planning Board, the Town of Leicester, or its' agents and the applicant will remain fully responsible for ensuring that requirements of this Earth Filling Regulation, the Soil Management Plan, and any other applicable Federal and State standards, regulations or guidelines are satisfied
4. Access: The applicant shall allow unrestricted access to the Town of Leicester, its agents, and to any Federal or State employee or their respective agents for the purpose of inspection of records or field conditions, and enforcement of this Bylaw. The applicant will facilitate one or more off-site inspections at points of origin for earth materials if so requested by the Town, Federal or State agencies, or their agents.

O. Financial Security; Inspection of Conditions

1. The applicant shall provide financial surety in the form of a cash deposit or bond, or similar financial surety acceptable to the SPGA, to insure faithful performance of the work to be undertaken pursuant to the conditions of approval or approval with modifications, and conditioned upon completion of the regulated activity in accordance with the conditions established by the Planning Board at the time of granting of the Special Permit or any subsequent changes of such conditions.
2. The SPGA may waive or reduce the financial surety requirements, but no such financial surety shall be released, nor shall the applicant be deemed to have complied with the conditions provided for herein, until the applicant has filed with the SPGA a written certification from the LSP who approved the original Soil Management Plan that said conditions and the Soil Management Plan have been complied with and the SPGA issues a letter authorizing release of the financial surety. The SPGA shall act on a requested release of the financial surety within sixty-five (65) days of submission of the applicant for such release.

P. Administrative Consent Order:

Should an applicant or Special Permit holder seeking an Administrative Consent Order (ACO) from the Massachusetts Department of Environmental Protection to use or deposit earth or fill materials in the Town, the Town reserves all rights to impose additional requirements upon the applicant or Special Permit holder to assure mitigation of all impacts or effects of the activities undertaken pursuant to such ACO.

1. Fee for Independent Inspection of Compliance with Special Permit or Administrative Consent Order: For the purpose of allowing for independent inspection to assess adherence to the SPGA permit conditions, the applicant will pay over to the Town of Leicester or its designated agent, as directed by the SPGA, a per ton fee of no less than twenty percent (20%) of the dollar or dollar equivalent equity amount paid for each ton of Fill Material received by the applicant within one week of receiving Fill Material regardless of whether payment has been received by the Applicant. Said fee shall be deposited into a Revolving Funds Account pursuant to M.G.L. c. 40, §53G.
2. In no instance, including non-payment to Applicant, shall payment to the Town of Leicester or its agent be less than two dollars (\$2.00) per ton of Fill Material received at the Special Permit fill location(s). Failure to maintain timely payments for independent inspection shall be sufficient grounds for suspension of the Special Permit. Applicant agrees to maintain and provide access to a complete and up-to-date set of records at the fill site, and to provide unrestricted access to the fill site by the Town or its agents.

Q. Violations and Enforcement

1. The SPGA or its authorized agent shall enforce this Bylaw, its regulations, and the requirements and conditions of Permits issued thereunder, and may pursue civil and criminal remedies for violations of the same.
2. The Building Inspector or other authorized agent of the SPGA is authorized to conduct inspections on behalf of the SPGA. To the extent permitted by law, or if authorized by the owner, operator, or other person in control of the site, the Building Inspector or other agent of the SPGA may enter on the site to conduct inspections.
3. The Building Inspector or other authorized agent of the SPGA may issue such orders as are deemed necessary to stop violations and ensure compliance with this Bylaw, its regulations, and Permits, including an order to cease and desist operations. Such orders may be issued by certified mail, return receipt requested, or by delivery, to the property owner, Permit holder, or person responsible for operations at the site.
4. The SPGA may order that any person in violation of this bylaw shall cease and desist from violations of this bylaw and may further seek injunctive relief to restrain violations or to compel abatement or remediation of violations.
5. Any person who violates any provision of this Bylaw, or regulations, Permits, and orders issued thereunder may be punished by a fine of not more than \$300 per offense. Each day that such violation occurs or continues shall constitute a separate offense.
6. As an alternative to a criminal fine, the Town may utilize the non-criminal disposition procedures of M.G.L. c. 40, §21D, in which case the Building Inspector shall be the enforcing person. The penalty for the first offense shall be \$100. The penalty for the second offense shall be \$200. The penalty for the third and subsequent offense shall be \$300.
7. If the violator holds a Special Permit issued under this Bylaw, the SPGA may without prior hearing order that the violator cease and desist from violations of this bylaw and/or conditions of the Special Permit, or may suspend or revoke the Special Permit after a public hearing, at which point all operations shall cease until such time as the necessary measures are taken to assure compliance with this Bylaw and a new Permit is issued.

S. Change of Conditions:

1. The holder of a Special Permit may seek amendment to, or modification of the Special Permit upon application to the SPGA, and the SPGA may vary or alter any condition provided for in this Earth Filling Bylaw, if in its opinion such variance or alteration is in harmony with the purpose and intent of this Earth Filling Bylaw.
2. Any change in the activities subject to the Soil Management Plan not included in, or contemplated by, the Special Permit application or approved pursuant to a modification to a Special Permit shall be brought to the attention of the SPGA or its agents prior to, or immediately following, such change in activities.
3. This notice shall be in writing and include specific actions recommended by the applicant to correct or to demonstrate compliance with the Special Permit and Earth Filling Bylaw. All fill material operations shall be suspended within one operation day following such occurrence and remain suspended until the SPGA or its agents have reviewed and amended the Special Permit with the applicants recommended change(s). Nothing herewith shall be interpreted to require acceptance of changed conditions or recommended corrective actions by the SPGA.

T. Other laws or regulations.

This Bylaw shall not be construed to authorize the use of any land or structure for any purpose that is prohibited by any other provision of the General Laws or by any other bylaw, rule or regulation of the Town, nor shall compliance with any such provision authorize the use of any land in any manner inconsistent with this bylaw, except as required by the General Laws.

U. Validity and severability.

The provisions of this Bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Bylaw shall not affect the validity or effectiveness of the remainder of the Bylaw.

V. Transition Rules; Continuance of Existing Operations;

1. An existing earth removal and/or fill operation not required to obtain a permit prior to the first publication of the notice of public hearing for this Earth Filling Bylaw, but which exceeds the thresholds for exemption specified in this Bylaw, may continue to operate provided however that the owner or operator of said operation shall submit the documentation required under the General Requirements in Section G of this Bylaw. The ability to continue such existing earth removal and/or fill activity shall expire if the operation is discontinued. An operation shall be deemed to have been discontinued if no earth removal or fill activity occurs at the site for a period of six (6) consecutive months.
2. If the SPGA determines that such a person whose earth filling activities are subject to this Earth Filling Bylaw has commenced earth removal or earth filling operations without having filed a required application for a Special Permit within 90 days of the effective date of this Bylaw, the SPGA shall issue a temporary order to suspend or limit such operations, which temporary order shall remain in effect until a complete Special Permit application is received by the SPGA.
3. Any fill material placed in the Town pending the grant of a Special Permit under this bylaw shall be subject to the documentation requirements of this Earth Filling Bylaw and to the fees provided hereunder.

Or take any action relative thereto.

PROPOSED MOTION: Move that the article be accepted as written

PLANNING BOARD RECOMMENDATION: Recommendation to be made on Town Meeting floor

FINANCE ADVISORY BOARD RECOMMENDATION: Recommendation to be made on Town Meeting floor

SELECTBOARD RECOMMENDATION: Favorable Action (4-1-0)

VOTE REQUIRD FOR PASSAGE: Requires a two-thirds majority vote per M.G.L. c. 40A, §5.