

REPAIR OF PRIVATE WAYS

This document is taken from Gloucester Code of Ordinances sections 21-80 through 21-86 and is intended to be used only as a tool when undertaking the process for permanent construction or repair of a private way; it is **NOT** meant to take the place of the Ordinance. If any item is unclear, please refer directly to the language of the Ordinance as cited above.

Step 1

Abutters to a private way shall begin the process of seeking permanent construction or repair to a private way by 1) obtaining an official petition form from the City Clerk's office and 2) submitting it, completed and signed, by not less than seventy-five (75%) percent of all abutting owners to the private way.

Step 2

Petitioners shall agree in writing that (1) the city may not accept the road as public as a result of the permanent repair process outlined in the Ordinance; (2) city employees shall be allowed on each abutting parcel in order to repair the private way; (3) any deviation from the current road layout of the existing travelled way as a result of the repair of the private way shall be done at the discretion of the DPW Director; and (4) a non-refundable fee shall be assessed with the petition of \$1.00 per linear foot of the private way at the discretion of the DPW Director. Petitioners shall include the name and contact information for no less than three (3) primary contact persons who shall also be abutting owners. In order to proceed, the City Clerk must certify all signatures on the petition as submitted.

Step 3

The City Clerk shall refer the petition to the Mayor's office with a request for a feasibility determination.

Step 4

The Mayor's office shall refer the petition to the DPW for a feasibility determination whereby the DPW shall (1) consult with the fire department, police department, conservation commission, chief financial officer/treasurer and the city engineer; (2) determine the parameters of the project; and (3) set a price range for the project.

Step 5

The DPW Director shall then respond to the primary contact persons with, among other things, a memorandum outlining the determinations made and an official abutters' list to be used in noticing a meeting of all abutters' as outlined in the Ordinance.

Step 6

Three (3) or more abutting owners shall call and hold a meeting of all abutting owners. Notice of such meeting shall include the date, time and location and shall be given at least seven (7) days in advance by posting the notice in the City Clerk's office and by mailing the notice to all

abutting owners by certified mail, return receipt requested. A receipt of the certified mailing shall be required as evidence that notice has been provided to all abutting owners.

Step 7

At the meeting, the abutting owners shall vote to determine whether certain repairs are to be sought according to (1) the project parameters and (2) the price range as provided by the DPW. Seventy-five percent (75%) of all abutting owners on the private way must be present at the meeting; sixty-six percent (66%) of all abutting owners on the private way must vote in favor in order to qualify for permanent repair under this article.

Any abutting owner may designate a proxy to represent them and cast the requisite vote(s). Such a designation shall be a notarized letter by the abutting owner that includes the following: 1) the name and address of the abutting owner, 2) the name and address of the proxy, 3) language from the abutting owner expressly granting permission to the proxy vote on the abutting owner's behalf, 4) a copy of the proxy's valid state or federal picture identification, and 5) a copy of the abutting owner's valid state or federal picture identification and 6) the abutting owner's signature. The designation documents must be 1) delivered to the City Clerk no later than 48 hours before the date and time set for the meeting at which votes will be cast, and 2) presented at the meeting prior to voting.

Step 8

An official record of the meeting, including the attendees' names, addresses and signatures, as well as evidence of the votes cast, shall be submitted to the City Clerk within seven (7) days of the meeting.

Step 9

The City Clerk shall file a copy of the official record with the Mayor's office.

Step 10

The Mayor's office may submit the petition and official record with a recommendation to the City Council for funding consideration.

Step 11

Upon the Mayor's submission of the petition, the City Council shall hold a public hearing within sixty (60) calendar days except that, by a two-thirds (2/3) vote thereof, the deadline for the hearing may be extended by no more than thirty (30) days. Review of the petition by the City Council shall include a vote on (1) a determination that the construction or repair is required by public necessity and (2) an authorization of funding for the project.

Any performance of permanent construction or repair of a private way shall be subject to the availability of funding and the authorization for such funding shall be made by a recommendation of the Mayor and a two-thirds (2/3) vote of the Council.

Step 12

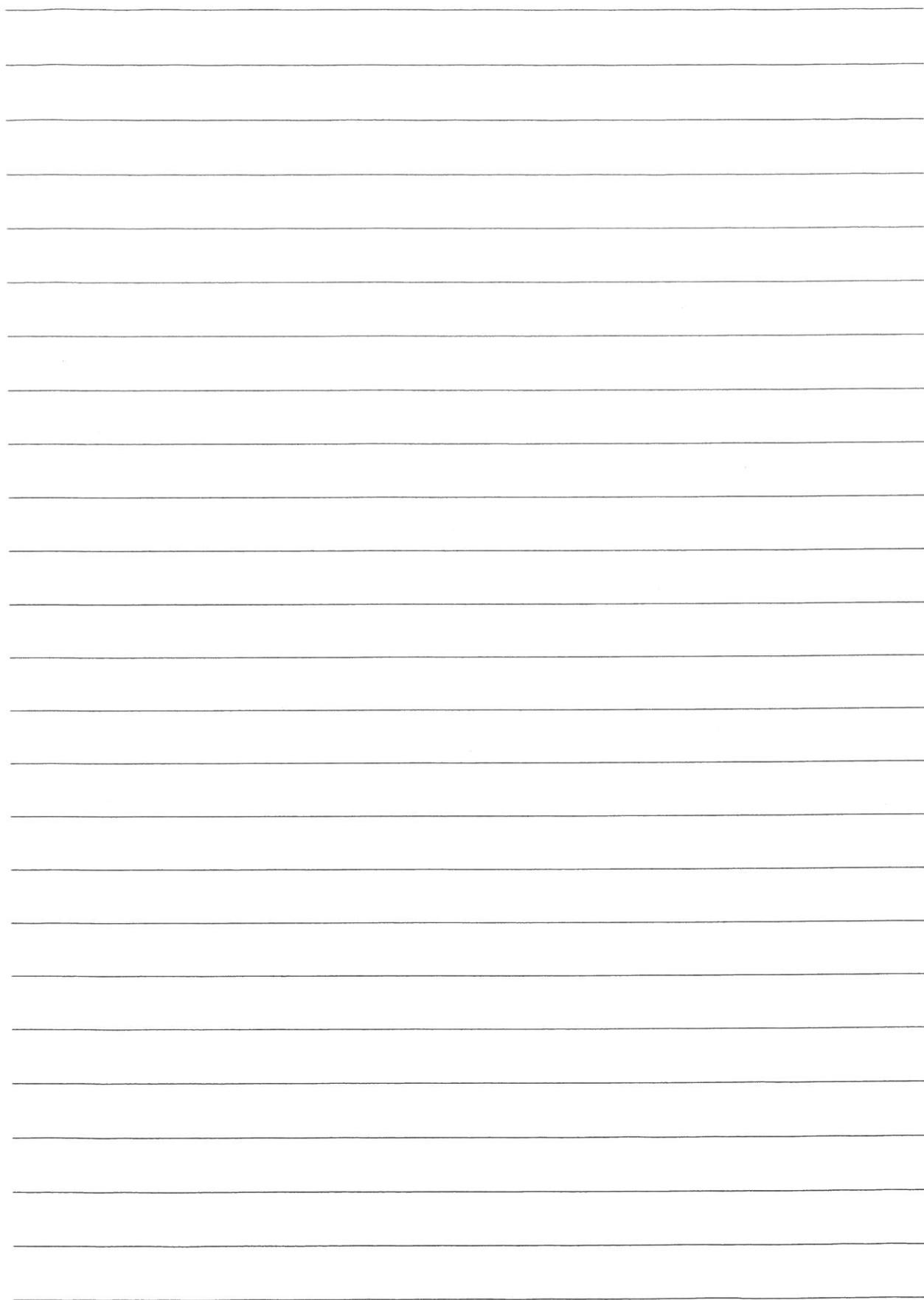
Notice of the City Council's decision shall be posted and a copy thereof shall be provided to all abutting owners.

NOTE

Should the city fail to complete a project in any given year, that project shall automatically be re-scheduled for the following year. However, should the abutters fail to secure the appropriate and necessary approval, the project shall be eligible for re-submission in no less than two (2) years.

The city shall not be liable for any damage whatsoever caused by construction or repair performed pursuant to this article.

No term or provision of this article shall be interpreted or construed to constitute the acceptance by the city of any duty, responsibility or liability for the enforcement of any private right of any petitioner or abutting owner including, without limitation, any right to improve or maintain a private way or to keep a private way free from encroachment.



Designation of proxy for the purpose of voting for the paving of _____
Gloucester, through the betterment process at the meeting scheduled for
_____:

I, Name _____

Address _____

Hereby appoint: Name: _____

Address: _____

As my proxy to vote on my behalf in the matter of the betterment of _____

Signed _____

Date: _____

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. _____

On this ____ day of _____, before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public _____

My Commission expires: _____

Attached to this document are a copy of the valid state or federal picture ID of both the abutting owner and the proxy

ORDINANCE RE-DRAFT
JULY 6, 2017

Gloucester Code of Ordinances
Article IV. – REPAIR OF PRIVATE WAYS

Sec. 21 – 80. – Purpose; definitions; exclusions; city not required to maintain.

- (a) Purpose. The purpose of this article is to provide for the permanent or temporary construction or repair of private ways in the interest of public safety.
- (b) Definitions. The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this subsection except where the context clearly indicates a different meaning.

Abutter and abutting owner means all persons holding ownership rights in property abutting a private way and all persons holding ownership rights in any property the access to which, by necessity, requires travel over such private way.

Abutting parcel means any property actually abutting the private way regulated by this article and any property the access to which, by necessity, requires travel over such private way.

Private way.

- (1) The term "private way" includes, within the scope of this article, statutory private ways and dedicated private ways.
 - a. The term "statutory private ways" means those ways which have been laid out pursuant to M.G.L. c. 82, § 21 and are subject to M.G.L. c. 84, §§ 23, 24. Such ways are open to the same type and extent of use as public ways.
 - b. The term "dedicated private ways" are those ways that were not laid out under statutory authority but are open to free public use of a nature and extent sufficient to constitute evidence of the permanent intention of abutting property owners to abandon private rights in the ways.
- (2) The term "private ways" within the scope of this article does not include permissive private ways or unconstructed (paper) ways.
 - a. The term "permissive private ways" means those ways that have not been laid out by a public authority or dedicated to public use and are wholly the subject of private ownership. A permissive private way is open to public use solely by the continuing permission or license of the owner or abutter where such owner or

abutter displays a continuing intent to exercise dominion over the way and may, for example, post the way with signs limiting or prohibiting public use.

b. The term "unconstructed" or "paper ways" means those ways or portions thereof that have been created on paper by a deed, easement, plan or other instrument or by subdivision or approval not required (ANR) plan under the Subdivision Control Act, but have not yet been paved, improved or otherwise constructed on the ground.

c. Pursuant to chapter 325 of the Acts of 2002 and M.G.L. c. 84, § 12 and c. 40, § 6N, this article is intended to establish the process by which temporary and permanent repairs may be made to private ways.

d. In order to qualify for permanent or temporary construction or repair under this article, all private ways otherwise eligible must have been open to the public for six or more years and must abut four or more occupied residences or operating businesses.

e. None of the ways described in this section are of the type of which the city has an existing duty of maintenance or repair for which the city is liable in damages for defects. Abutters to private ways are responsible for the maintenance of such ways. Constructed private ways must be maintained so that there are no defects to impede the safe passage of emergency vehicles. Nothing in this article is intended to create any duty to maintain or repair such private ways or to subject the city to any liability for defects therein.

Sec. 21 – 81. – Permanent construction or repair.

- (a) Permanent construction or repair may be performed by the city in accordance with the procedures set forth in section 21-84.

Sec. 21 – 82. – Temporary repair.

- (a) Temporary repair shall include the filling of potholes in the subsurface of private ways and repairs to the surface materials, but shall not include significant excavation, regrading, drainage work, or the resurfacing thereof.
- (b) Temporary repair may be performed by the city upon a determination by the director of public works that the condition of a way adversely affects the safety of the inhabitants and that repair of a permanent nature is unnecessary to cure the condition, or upon a determination that the condition of the way constitutes an emergency which requires immediate repair in order to protect the health or safety of the inhabitants of the city.

- (c) Such temporary repair shall not be considered as maintenance of the private way nor shall the way be considered a public way as the result of any repair.

Sec. 21 – 83. – Funding for approved construction or repair.

- (a) The total cost of the approved permanent construction or repair work shall be paid by the abutting owners, the amount to be paid will be divided by the number of abutting parcels and assessed to the owners thereof.
- (b) Betterments shall be assessed and collected for such work in accordance with the provisions of M.G.L. c. 80, § 1 et. seq. and other applicable laws.
- (c) In the case of temporary repairs, the city shall pay the total cost.

Sec. 21 – 84. – Permanent construction or repair.

- (a) Any performance of permanent construction or repair to a private way as set forth in this article is subject to the availability of funding and the authorization for said funding must be made by recommendation of the mayor and a two-thirds vote of the city council.
- (b) Abutters to a private way shall begin the process of seeking permanent repair to the private way by submitting a petition to the city clerk signed by not less than seventy-five percent of all abutting owners to the private way. Petitioners shall use only official petition forms, available from the city clerk's office upon request. Petitioners shall agree in writing that (1) the city may not accept the road as public as a result of the permanent repair process outlined herein; (2) city employees shall be allowed on each abutting parcel in order to repair the private way; (3) any deviation from the current road layout of the existing travelled way as a result of the repair of the private way shall be done at the discretion of the director of public works; and (4) a non-refundable fee shall be assessed with the petition of \$1.00 per linear foot of the private way at the discretion of the director of public works. Petitioners shall include the name and contact information for no less than three primary contact persons who shall also be abutting owners. In order to proceed, the city clerk must certify all signatures on the petition as submitted.
- (c) The city clerk shall refer the petition to the mayor's office with a request for a feasibility determination.
- (d) The mayor's office shall refer the petition to the department of public works for a feasibility determination whereby the department of public works shall (1) consult with the fire department, police department, conservation commission, chief financial officer/treasurer, and the city engineer; (2) determine the parameters of the project; and (3) set a price range for the project. The director of public works shall then

respond to the primary contact persons with, among other things, a memorandum outlining the determinations and an official abutters' list to be used in noticing a meeting of all abutters' as outlined in section 21-84(e).

- (e) Three or more abutting owners shall call and hold a meeting of abutting owners. Notice of such meeting shall include the date, time and location thereof and shall be given at least seven days in advance by posting the notice in the city clerk's office and by mailing the notice to all abutting owners by certified mail, return receipt requested. A receipt of the certified mailing shall be required as evidence that notice has been provided to all abutting owners.
- (f) At the meeting as outlined in section 21-84(e), the abutting owners shall vote to determine whether certain repairs are to be sought according to (1) the project parameters and (2) the price range as provided by the director of public works. Seventy-five percent of all abutting owners on the private way must be present at the meeting; sixty-six percent of all abutting owners on the private way must vote in favor in order to qualify for permanent repair under this article. No proxy votes shall be allowed.
- (g) An official record of the meeting as outlined in section 21-84(f), including the attendees' names, addresses and signatures, as well as evidence of the votes cast shall be submitted to the city clerk within seven days of the meeting.
- (h) The city clerk shall file a copy of the official record with the mayor's office.
- (i) The mayor's office may submit the petition and official record with a recommendation to the city council for funding consideration.
- (j) Upon the Mayor's submission of the petition, the city council shall hold a public hearing within sixty calendar days except that, by a two-thirds vote thereof, the deadline for the hearing may be extended by no more than thirty days. Review of the petition by the city council shall include a vote on (1) a determination that the construction or repair is required by public necessity and (2) an authorization of funding for the project.
- (k) Notice of the city council's decision shall be posted and a copy thereof shall be provided to all abutting owners.

Sec. 21 - 85. - Petition submission schedule.

- (a) All petitions requesting permanent construction or repair pursuant to section 21-84 shall be submitted annually to the city clerk no later than December 31st in order to be scheduled for completion the following year.

(b) Should the city fail to complete a project in any given year, the project shall automatically be re-scheduled for the following year.

(c) Should the abutters fail to secure the appropriate and necessary approval, the project shall be eligible for re-submission in no less than two years.

Sec. 21 – 86. – Municipal liability for construction or repair.

(a) The city shall not be liable for any damage whatsoever caused by construction or repair performed pursuant to this article.

(b) No term or provision of this article shall be interpreted or construed to constitute the acceptance by the city of any duty, responsibility or liability for the enforcement of any private right of any petitioner or abutting owner, including without limitation any right to improve or maintain a private way or to keep a private way free from encroachment.

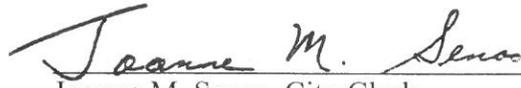


Gloucester City Council
CERTIFICATE OF VOTE
Certificate Number: 2017-167

The Gloucester City Council, at a meeting held on **Tuesday, August 22, 2017** at 7:00 p.m. in the Kyrouz Auditorium, City Hall, voted to approve the following:

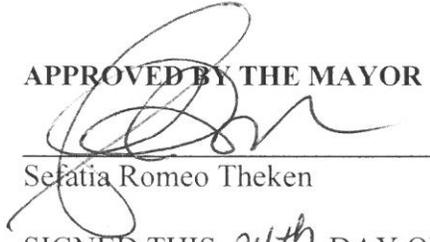
IN CITY COUNCIL:

MOTION: On motion by Councilor LeBlanc, seconded by Councilor Nolan, the City Council voted 9 in favor, 0 opposed to AMEND GCO Article IV, Sections 21-80 through 21-86 "Repair of Private Ways" by STRIKING Sections 21-80 through 21-86 and ADDING new Sections 21-80 through 21-86 as presented by General Counsel in a memorandum dated July 6, 2017.


Joanne M. Senos, City Clerk

Date: **August 24, 2017**

APPROVED BY THE MAYOR


Sefatia Romeo Theken

VETOED BY THE MAYOR

Sefatia Romeo Theken

SIGNED THIS 24th DAY OF AUGUST, 2017

All Ordinances shall become effective 31 days after passage except
Emergency Orders and Zoning Amendments shall become effective the next day.



**Gloucester City Council
CERTIFICATE OF VOTE
Certificate Number: 2019-033**

The Gloucester City Council, at a meeting held on **Wednesday, February 13, 2019** at 7:00 p.m. in the Kyrouz Auditorium, City Hall, voted to approve the following:

IN CITY COUNCIL:

MOTION: On a motion by Councilor LeBlanc, seconded by Councilor Nolan, the City Council voted 9 in favor, 0 opposed, to Amend GCO Ch. 21 "Streets, Sidewalks and Other Public Places", Article IV "Repair of Private Ways, Sec. 21-84 "Permanent construction or repair as follows:

by **DELETING** the last sentence in subsection (f), "No proxy votes shall be allowed."

by **ADDING** a new subsection (g) as follows: "Any abutting owner may designate a proxy to represent them and cast the requisite vote(s) on matters required by this section. Such a designation shall be a notarized letter by the abutting owner that includes the following: 1) the name and address of the abutting owner, 2) the name and address of the proxy, 3) language from the abutting owner expressly granting permission to the proxy to vote on the abutting owner's behalf, 4) a copy of the proxy's valid state or federal picture identification, and 5) a copy of the abutting owner's valid state or federal picture identification and 6) the abutting owner's signature. The designation documents must be 1) delivered to the City Clerk no later than 48 hours before the date and time set for the meeting at which votes will be cast, and 2) presented at the meeting under section 21-84(e) prior to voting."

and alphabetize the remaining subsections accordingly.

Joanne M. Senos, City Clerk

Date: February 15, 2019

APPROVED BY THE MAYOR

Sefatia Romeo Theken

VETOED BY THE MAYOR

Sefatia Romeo Theken

SIGNED THIS 15 DAY OF FEBRUARY, 2019

All Ordinances shall become effective 31 days after passage except
Emergency Orders and Zoning Amendments shall become effective the next day