

**LEGAL NOTICE  
TOWN WARRANT  
SPECIAL TOWN MEETING  
Monday, the 4<sup>th</sup> day of December A.D., 2017**

RECEIVED  
TOWN CLERK  
2017 NOV -2 P 1:17  
FOXBOROUGH, MA 02035

**COMMONWEALTH OF MASSACHUSETTS**

**NORFOLK S.S.**

To either of the Constables of the Town of Foxborough:

Greetings:

In the name of the Commonwealth of Massachusetts and in accordance with the provisions of the BY-LAWS of said Town, and Amendments thereof, you are hereby required to notify and warn the inhabitants of the Town of Foxborough, qualified to vote at elections and town affairs to assemble in the auditorium of Foxborough High School, on South St. at 7:30 o'clock in the afternoon on, Monday the 4<sup>th</sup> day of December, 2017 to act on the following articles:

**ARTICLE 1**

**(FY '18 Budget Adjustments)**

To see if the Town will vote to transfer from available funds to amend Articles 4 and 5 of the May 8, 2017, FY 2018 Annual Operating Capital Budgets in order to fund expenses associated with: 1) Increase Administration department expense budget to fund staffing level studies for both the Police and Fire departments; 2) Increase Public Works (Highway) department expense budget to fund the replacement costs of damaged sections of the Town Common fence; and 3) Increase Roads Capital Budget to fund updates to the Pavement Management System, as follows;

<u>Item #</u>	<u>Dept. #</u>	<u>Department</u>	<u>Budget</u>	<u>Adjust</u>	<u>Revised FY '18 Budget</u>	<u>Funding Source</u>
1)	123	Administration Expenses	85,578	30,000	115,578	Free Cash
2)	410	Public Works Expenses	414,238	35,400	439,638	Free Cash
3)	410	Roads Capital Budget	340,402	24,000	364,402	Road Openings Surplus

Or take any other action related thereto.

**Board of Selectmen**

**ARTICLE 2**

**(Municipal Charges Lien)**

To see if the Town will vote to establish, as per Chapter 40 Section 58 of Massachusetts General Law (M.G.L.), the right to impose a lien on real property located within Foxborough for the nonpayment of noncriminal dispositions pursuant to the provisions of M.G.L. Chapter 40 Section 21D and as provided for in the Code of the Town of Foxborough: Chapter 275 – Zoning, Section 10.1 Zoning Enforcement and Section 10.1.5 - Noncriminal disposition; Chapter 175 Article II Section 175-5 Prohibited Parking and Section 175-7 - Noncriminal disposition; Chapter 210 – Sewers, Section 210.6 Violations and Penalties and Section 210.7 Enforcement.

Or take any other action related thereto.

**Board of Selectmen**

**ARTICLE 3**

**(Fire Contract)**

To see if the Town will vote to transfer from available funds a sum of money deemed necessary to fund the cost items for Fiscal Years 2017, 2018, and 2019, in a collective bargaining contract between the Town of Foxborough (represented by the Board of Selectmen) and Foxborough Permanent Firefighters Association Local 2252, in accordance with Chapter 150E of the General Laws of the Commonwealth.

Or take any other action related thereto.

**Board of Selectmen**

**ARTICLE 4**

**(Middle Managers, Department Heads, & Clerical Employees Contract)**

To see if the Town will vote to transfer from available funds a sum of money deemed necessary to fund the cost items for Fiscal Years 2017, 2018 and 2019, in a collective bargaining contract between the Town of Foxborough (represented by the Board of Selectmen) and the Middle Managers, Department Heads, and Clerical Employees of the Town of Foxborough, United Steel Workers AFL-CIO CLC, in accordance with Chapter 150E of the General Laws of the Commonwealth.

Or take any other action related thereto.

**Board of Selectmen**

**ARTICLE 5**

**(Special Legislation-Charter School Reimbursement)**

To see if the Town will vote to authorize the Board of Selectmen to file Special Legislation to require a 100 percent charter school reimbursement to the Town of Foxborough.

WHEREAS, Massachusetts General Laws, c.71, §89 provides a funding formula for students attending charter schools in the Commonwealth of Massachusetts; and

WHEREAS, in the past, the Commonwealth reimbursed districts for the full amount of each student placed in a charter school based on the charter reimbursement formula; and

WHEREAS, in recent years however, the Commonwealth has not reimbursed districts for a 100 percent of the charter school tuition as determined by the funding formula; and

WHEREAS, it is the desire of the Town of Foxborough to receive a 100 percent charter school reimbursement as determined by the statutory formula; and

WHEREAS, it is necessary for the Town of Foxborough to authorize the filing of Special Legislation in order to enact a 100 percent local reimbursement requirement; and

WHEREAS, a majority vote of the Foxborough Board of Selectmen is required for the filing of such petition and the Board of Selectmen, by a majority vote, voted to authorize and approve the filing of special legislation and authorizes the Legislature to make such editorial changes to the proposed language of the Act as it may deem necessary while maintaining the spirit and purpose of the Act, said special legislation to read as follows:

AN ACT AMENDING CHAPTER 7L, SECTION 89, OF THE GENERAL LAWS AS IT APPLIES TO THE TOWN OF FOXBOROUGH

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 71, section 89 is hereby amended as it applies to the Town of Foxborough by adding the following requirement: That the town of Foxborough shall receive a 100 percent charter school reimbursement based on the funding formula.

SECTION 2. This act shall take effect upon its passage.

Or take any other action related thereto.

**Board of Selectmen**

**ARTICLE 6**

**(Accept Annette Road as a Public Way)**

To see if the Town will accept as a public way Annette Road located within the "Foxboro Industrial Park" subdivision, which has been constructed pursuant to the Planning Board Subdivision Control Regulations as follows;

Annette Road – an approximately 1,526' long roadway located in a "T" configuration at the terminus of Lincoln Road.

Or take any other action related thereto.

**Planning**

**ARTICLE 7**

**(Amend Zoning Bylaws)**

To see if the Town will vote to amend Table 3-1, Table of Uses of Chapter 275 of the Code of the Town of Foxborough by changing the following uses to Not Permitted ("N") in the GB (General Business) zoning district column of the Table of Uses.

<b>Table 3-1, Table of Uses</b>		
<b>Section</b>	<b>Use</b>	<b>GB</b>
B.3.	Parking lots constructed to the standards found in Section 6.1	N
C.6.	Commercial storage garages and motor vehicle repair shops	N
D.7.	Self-storage mini-warehouse, rail storage or switching yards	N
D.8.	Truck terminal/general commodity/public warehouse	N
D.9.	Automobile storage or automobile auction facilities	N
L.6.	Outdoor storage or overnight parking of buses, trucks or other vehicles whose Gross Vehicle Weight (GVW) as determined by Mass Registry of Motor Vehicles exceeds 10,000 pounds	N

Or take any other action related thereto.

**Planning**



**ARTICLE 8**

**(Acceptance of Statute)**

To see if the Town will vote to accept the provisions of Massachusetts General Laws, Chapter 138, Section 33B, sales of alcoholic beverages by on-premise licenses on Sundays and certain legal holidays; sales between 10:00 A.M. and 12:00 P.M.

Or take any other action related thereto.

**Board of Selectmen**

**ARTICLE 9**

**(Stormwater Management Bylaw)**

To see if the Town will vote to amend the Stormwater Management Bylaw approved at the Annual Town Meeting on May 8, 2017 (Article 19) by deleting the term Chapter 275 of the Code of the Town of Foxborough and replacing it with Chapter 232;

And by amending Section 6 Enforcement of Article II – Discharges to the Municipal Separate Storm System by adding a new Section 6.B.(4) to read as follows:

(4) Costs incurred by the Town to abate or remediate violations of this Bylaw shall constitute liens on the subject property for purposes of G.L. c. 40, §58 or have a Town Meeting vote authorizing the use of G.L. c. 40, §58;

And by amending Section 7.D of Article III Enforcement of the Stormwater Management and Land Disturbance by adding a new sentence to the end of that section to read as follows:

“Costs incurred by the Town to abate or remediate violations of the Bylaw shall constitute liens for purposes of G.L. c. 40 §58.”

Or take any other action related thereto.

**DPW/Planning/Conservation**

**ARTICLE 10**

**(Commercial/Recreational Marijuana Prohibition)**

To see if the Town will vote to amend Chapter 275 of the Code of the Town of Foxborough (Zoning Bylaws) to include the following provision relative to the prohibition of commercial and recreational marijuana establishments in the Town, by adding Section 7.5.8, the following;

**Commercial/ Recreational Marijuana Establishments Forbidden**

“The operation of any commercial or recreational marijuana establishment, as defined in G.L. c. 94G, § 1, including, without limitation, a marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business within the Town is prohibited. This prohibition shall not apply to the sale, distribution or cultivation of marijuana for medical purposes licensed under Chapter 369 of the Acts of 2012.”

Or take any other action related thereto.

**Board of Selectmen**

**Explanation:** Town Meeting voted in the spring of 2017 to adopt general Bylaw prohibiting commercial/recreational marijuana. In July 2017 the Governor signed House Bill No. 3818 (“the Compromise Legislation”) which changed certain of the provisions of the original legislation. Since that time the Attorney General has opined that the definition of “marijuana establishment” is broadly defined in the statute and includes many of the uses that may be more appropriately regulated by a zoning amendment and therefore recommends that town that adopted general prohibition bylaws also consider adopting zoning prohibition bylaws. This Article would amend the Town’s Zoning Bylaws by adding a provision prohibiting all types of commercial marijuana establishments allowed by the petitioned ballot referendum question approved by the voters of the Commonwealth in November 2016. This Bylaw would not relate to medical marijuana facilities which are regulated by separate statutes, regulations and Bylaws. Section 3 of the General Law Chapter 94G, the new statute regulating the use and distribution of marijuana by commercial establishments, allows a town to limit the number of such marijuana establishments in the town, or to prohibit such establishments altogether, by “a vote of the voters of the town.” It is not anticipated that applicants for approvals for such marijuana establishments would be seeking approvals from the Cannabis Control Commission until April 1, 2018, but it is recommended that towns have bylaws restricting or prohibiting commercial marijuana if so desired in place by that date.

**ARTICLE 11**

**(Public Nuisance Bylaw)**

To see if the Town will vote to amend Chapter 180 Peace and Good Order of the Code of the Town of Foxborough by adding 180-20 Public Nuisance to read as follows:

This section permits the Town to impose liability on owners and other responsible persons for properties that have become a public nuisance by exhibiting an atmosphere of criminal and/or other disturbing activity so as to unreasonably interfere with the common good and welfare of a specific neighborhood or the Town in general.

**Definitions**

For purposes of this section, the following definitions shall apply:

**EVICTION:** actively trying to evict a tenant from a premise by delivery of a notice to quit and subsequent court proceedings, if a tenant fails to vacate the premises.

**GATHERING:** an event where two or more persons have assembled or are assembled.

**PREMISES:** any residence or other private property, place, or location, including any commercial or business property.

**PROPERTY OWNER:** the legal owner of record of premises as listed by the tax assessor's records.

**PUBLIC NUISANCE:** a gathering of persons on any premises in a manner which constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property in a neighborhood. Behavior constituting a public nuisance includes, but is not limited to use of such premise for the purposes of prostitution; lewdness; the service of alcohol to underage persons or person who are intoxicated; public consumption of alcohol; illegal keeping, sale or manufacture of controlled substances or other drug-related activities; fighting; disturbances of the peace; excessive noise in violation of Chapter 167 and excessive pedestrian and vehicular traffic related thereto, obstruction of public ways or sidewalk; illegal parking; trespassing; and/or other pervasive criminal activity.

**RESPONSE COSTS:** the costs associated with the response by law enforcement will be equivalent to a minimum of one hour's pay for any responding officer.

## **Mailing of Notice to Property Owners and Others**

In the event the police department, the Building Commissioner, the Board of Health or its agents has responded to a public nuisance, a notice of response shall be mailed within ten (10) days of the incident to the property owner of the premises as listed in the Town of Foxborough tax assessment records. Said notice shall advise the property owner of this by-law, state whether it's a first response, and notify that the second or any subsequent response on the same premises within a one year period, as measured from the date of the first notice, shall result in liability of the property owner for all penalties and costs associated with such response as more particularly described below.

### **Notice Requirements for First Offense**

If the police department or other duly authorized local official has responded to a public nuisance as defined herein, the following persons shall be jointly and severally liable and shall receive the same written notice as specified in Section 2:

1. The person or persons acting in a manner that causes the public nuisance.
2. the person or persons residing on or otherwise in control of the premises whether present or not; and,
3. The person or persons who organized or sponsored a gathering resulting in the public nuisance.
4. The person, or persons or business entity which at the time of the public nuisance owned the premises where the nuisance took place, provided that notice of the first response has been mailed to the property owner of the premises as set forth herein and the nuisance occurs at least five (5) days after the mailing or serving of the first such notice. The property owner shall not be held responsible for any violation and penalties if they are actively pursuing an eviction of the tenant who controlled, organized, or is responsible for the nuisance. The one year time period for violations of a premise shall pertain only to the same residents occupying the premises who have had the prior violation(s). New residents shall start a new time cycle of one year should they violate the provisions of this by-law.

## **Notice Requirement for 2nd Offense and Liability for 3rd and Subsequent Offenses**

If the police department, the Building Commissioner and the Board of Health or its agents has responded to a public nuisance as defined herein more than twice in any one year period, as measured from the date of the first response, the following persons shall be jointly and severally liable for fines as set forth below. Response costs may also be assessed.

1. The person or persons acting in a manner that causes the public nuisance.
2. The person or persons residing on or otherwise in control of the premises whether present or not;
3. the person or persons who organized or sponsored a gathering resulting in the public nuisance; and,
4. the person, or persons or business entity which at the time of the public nuisance owned the premises where the nuisance took place, provided that notice of the first and second responses has been mailed to the property owner of the premises as set forth herein and the third or any subsequent response occurs at least fourteen (14) days after the mailing of the first such notice. The property owner shall not be held responsible for any violation and penalties if they are actively pursuing an eviction of the tenant who controlled, organized, or is responsible for the nuisance. The one year time period for violations for premises shall pertain only to the same residents occupying the premises who have had
5. the prior violation(s). New residents shall start a new time cycle of one year should they violate the provisions of this by-law.

### **Enforcement**

This by-law may be enforced by the noncriminal disposition process of M.G.L. c.40, section 21D. For the purpose of noncriminal enforcement, the enforcing persons shall be any police officer or duly authorized official of the Town of Foxborough and the fine shall be \$300.00 for third and all subsequent offenses. Each day a violation occurs or continues is considered a separate offense. The Town may additionally seek response costs associated with enforcement of this by-law.

The provisions of this by-law shall not limit the authority of police officers to make arrests for any criminal offense arising out of conduct regulated herein, nor shall they limit the Town of

Foxborough or the Commonwealth of Massachusetts' ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of any provision of this by-law.

Further, if in the discretion of the Police Chief, it is necessary to post a police detail in order to enforce the provisions of this by-law, he/she may do so and add the cost of same to the response costs referred to in this by-law.

## **Appeal of Penalty**

Any person aggrieved by an enforcement order issued under this Bylaw may request, in writing, a hearing before the Board of Selectmen (or other specifically designated official named herein) to contest the issuance of a fine within 21 days of issuance.

Or take any other action related thereto.

**Board of Selectmen**

## **ARTICLE 12**

### **(Amend Marijuana Bylaw)**

To see if the Town will vote to amend Chapter 162 of the Code of the Town of Foxborough "Marijuana" by adding the following language to the second sentence of this chapter immediately following the word "tetrahydrocannabinol": "of any kind including for medical purposes"; and by deleting the fine amount of \$200.00 and replacing it with the amount of \$300.00".

Or take any other action related thereto.

**Board of Selectmen**

## **ARTICLE 13**

### **(Amend Zoning Bylaw)**

To see if the Town will vote to amend Section 7.5 of Chapter 275 of the Code of the Town of Foxborough (Zoning Bylaw) by replacing the words "Registered Marijuana Dispensaries" in every place where that term appears with the following language "Registered Medical Marijuana Dispensaries".

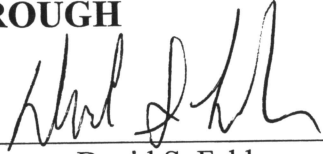
Or take any other action related thereto.

**Board of Selectmen**

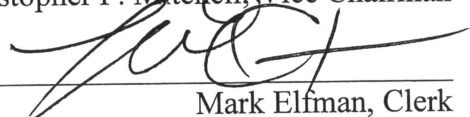
Hereof, fail not, and make due return of this warrant with your doings to the Town Clerk, at the time and place of said meeting.

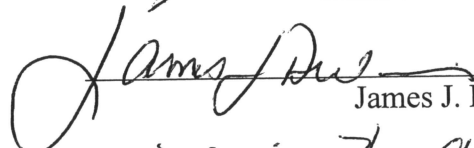
Given under our hands and the seal of said Town this 31st day of October in the year of our Lord two thousand and seventeen.

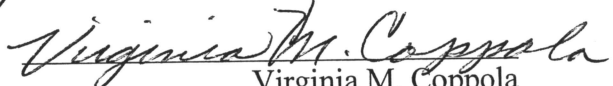
**BOARD OF SELECTMEN, TOWN OF FOXBOROUGH**

  
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David S. Feldman, Chairman

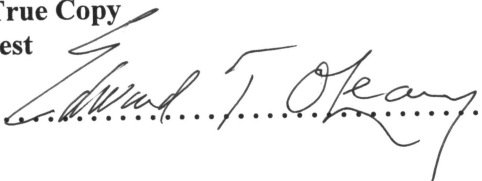
  
\_\_\_\_\_  
Christopher P. Mitchell, Vice Chairman

  
\_\_\_\_\_  
Mark Elfman, Clerk

  
\_\_\_\_\_  
James J. DeVellis

  
\_\_\_\_\_  
Virginia M. Coppola

A True Copy  
Attest

  
..... Constable, Town of Foxborough