

## TOWN OF HINGHAM STREET ACCEPTANCE POLICY

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This Street Acceptance Policy contains the procedures required by Massachusetts law and the requirements of the Town of Hingham and must be followed by petitioners who wish to submit a subdivision road created under the Subdivision Control Law or a pre-existing private way for acceptance by the Town of Hingham as a public way. Compliance with this Street Acceptance Policy and adherence to deadlines will minimize confusion, costs, and delay for all parties.

**Compliance with the Street Acceptance Policy is the financial and legal responsibility of the petitioner. The Street Acceptance Policy is not intended to give legal advice. A petitioner should consult with his/her own attorney to ensure compliance with the Street Acceptance Policy.**

Final approval of a Subdivision Plan by the Planning Board does not constitute the laying out or acceptance by the Town of any street nor entitle the street to such acceptance. In addition, pursuant to Massachusetts law, submission of a petition for street acceptance does not entitle the street to acceptance by the Town.

All petitioners who wish to have a private way accepted as a public way must follow this Street Acceptance Policy, provide the required documents, and meet all deadlines. Due to the cost of the street acceptance process, residents of private ways who wish to have their street accepted as a public way are strongly encouraged, prior to incurring significant costs, to contact the Board of Selectmen's office to set up a meeting with Town staff to discuss potential issues that could create obstacles to street acceptance (such as the existing condition of the private way or prior subdivision approvals requiring the street to remain a private way), provided that the decision as to whether to file a petition shall be at the sole discretion and risk of the petitioner(s). As noted herein, the Town has no obligation under Massachusetts law to accept any street as a public way.

The petitioner is responsible for ensuring all documents are correct and that the Town boards, departments, and Town Counsel are satisfied with the supplied documentation. The petitioner is responsible for all fees incurred by the Town in ensuring compliance with the Street Acceptance Policy and completing the Street Acceptance Policy, including, but not limited to, engineering review fees, legal fees, and fees payable to the Plymouth Registry of Deeds to record any and all plans and applicable instruments.

Acceptance of a street as a public way involves three (3) steps: First, the Board of Selectmen must lay out the street as a public way in accordance with the requirements of G.L. c. 82, §§21-24, which includes a referral of the layout to the Planning Board for its recommendations. Second, Town Meeting must vote to accept a street as a public way. Third, the Board of Selectmen must vote to take by eminent domain the fee or an easement in the street and drainage, utility, access, slope and other related easements (the "appurtenant easements") within one hundred twenty (120) days from the close of the Town Meeting at which the street is accepted as a public way. **Compliance with all three (3) steps is necessary for a street to become a public way, however, there is no legal obligation of the Town to undertake or approve any of these steps.**

Petitioners will be required to examine the title to the street they wish the Town to accept as a public way and to any lots on which the Town will require appurtenant easements or fee title. As more particularly set forth in this Policy, all of the owners (and mortgagees) of the street and the lots subject to the appurtenant easements must sign a waiver of appraisal, damages, and relocation benefits. If the subdivision developer reserved the fee to the street and the appurtenant easements that need to be acquired by the Town, the developer may be able to satisfy the requirements of this Policy. However, if the developer did not reserve the fee to the street and/or the appurtenant easements or fee interests (or there is no developer, as in the case of an pre-existing private way), each and every person owning (and holding a mortgage interest in) the fee to the street and/or the lots on which the Town requires the appurtenant easements or fee title must execute a waiver.

## **STREET ACCEPTANCE POLICY**

*No later than September 1<sup>st</sup>*

1. Submission of As-Built Plan: A copy of the definitive subdivision As-Built Plan or equivalent as-built plan, prepared and stamped by a Massachusetts Registered Professional Engineer and Professional Land Surveyor, showing the existing streetway and all utilities, public and private, above and below grade, and compliance with the other requirements of the Subdivision Rules and Regulations. The As-Built shall be submitted in the following forms, and may be subject to revision and resubmittal after review by the Town:

- (i) Six (6) Hard Paper Copies (minimum sheet size 22" X 34")
- (ii) PDF format
- (iii) AutoCAD (in accordance with the "Digital Submission Policy for As Designed and As-Built Documents")

Upon receipt, the As-Built Plan shall be distributed to the applicable Town departments for review as follows:

Inspection: An inspection(s) will be scheduled with the Director of Community Planning and the Department of Public Works (DPW) and other applicable departments as determined by the Town. The field inspection will evaluate the quality of work and conformance to the approved plans and specifications. As part of the conformity review all reports and test results will be also be reviewed for compliance. The Town may request additional tests to confirm the quality of work. The petitioner may be required to video drainage pipe(s) in the presence of Town officials and provide a copy of the video to the Town, which video will become the property of the Town. The Town is not responsible for the inspection or quality acceptance of utilities.

Punch List: Following the inspection(s) and reviews, the Director of Community Planning shall develop a punch list which will include all the collective Town department comments. The petitioner will then undertake the review of the punch list items and perform all the remedial actions necessary to address the outstanding items. The petitioner shall then reschedule an inspection repeating the process until acceptable.

**NOTE: While September 1<sup>st</sup> is the deadline, petitioners are encouraged to submit as-built plans and schedule an inspection as early as possible to afford sufficient time to address unresolved items that may be weather dependent or time consuming.**

*No later than October 1<sup>st</sup>\**

2. Submit Street Acceptance Petition to Board of Selectmen. The petitioner must petition the Board of Selectmen in writing to lay out a street as a public Town way (see Attachment A).

Fees: The petitioner shall reimburse the Town for fees incurred by the Town during the layout and acceptance process. The Town may require the petitioner to provide a check in an amount sufficient in the Selectmen's discretion to cover the Town's engineering, legal, and related fees. The petitioner shall reimburse or supplement such fees from time to time, as and when requested,

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\* NOTE: The October 1 deadline is mandated by Section 28 of Article 10 of the Town of Hingham General By-Laws and may not be waived. Any petition received after October 1 of any year cannot be considered at the next scheduled Town Meeting but must wait until the subsequent Town Meeting. For example, a petition received after October 1, 2018 cannot be considered until the 2020 Town Meeting.

to ensure that the Town is fully reimbursed. All funds remaining in this account after the completion of the Street Acceptance Policy shall be returned to the petitioner.

3. Required Submissions. The petitioner must submit three (3) copies of the following with the Petition (or not later than thirty (30) after submission of the Petition):

a. *Title Certification*: A title certification prepared by an attorney licensed in Massachusetts, running to the benefit of the Town, listing the names and addresses of all persons currently owning the fee to the street (generally either the developer of the subdivision and/or the abutting lot owners) and the lots affected by drainage, water, sewer, utility, access, slope, and/or other related easements (the “appurtenant easements or lots”).

b. *Copies of Deeds and Other Instruments*: A copy of the deed into the petitioner. If none of the lots have been conveyed, deeds either granting or reserving easements to the developer, and any covenants, declarations or other instruments by which the developer retains or reserves the fee in the streetway and appurtenant easements. If any of the lots have been conveyed, the petitioner shall also submit copies of all of the deeds to lots abutting the way and lots upon which appurtenant easements will be required.

c. *Layout Plan*: A copy of the street layout, consistent with the As-Built Plans showing the metes and bounds of the street and any and all other easement areas, in recordable form, with a signature block provided for the Planning Board. This plan is referred to as the “Layout Plan.” Revisions to the layout plan may be required after review by Town staff and Town Counsel. The Layout Plan shall be submitted in the following forms:

- (i) Three (3) Hard Paper Copies (minimum sheet size 22” X 34”)
- (ii) PDF format
- (iii) AutoCAD (in accordance with the “Digital Submission Policy for As Designed and As-Built Documents”)
- (iv) Mylar (upon final approval)

d. *Legal Descriptions*: Legal description, with metes and bounds, of the right of way of the street to be accepted, and all other easement areas or drainage lots that are to be accepted by the Town.

4. Notification of Private Utilities The applicant shall notify all private utility companies serving the street of the petitioner’s petition for street acceptance by mailing a copy of the petition and provide proof of notification to the Board of Selectmen. Such private utilities include, but may not be limited to:

- Aquarion Water Company
- National Grid (natural gas)
- Verizon or Comcast (telephone/cable)

After the street acceptance the respective utility companies will be solely responsible for maintaining their infrastructure in the public way.

### ***Within 30 Days after Submission of Petition***

5. Vote of Intent to Layout as a Public Way. The petition is placed on the Selectmen's agenda and the Selectmen vote their intention to lay out the street as a public way.
6. Referral to Planning Board and Recommendations of Town Engineer and Other Town Officials. The Selectmen refer the Petition and related plans to the Planning Board for its report within 45 days of such referral (per G.L. c. 41, §§81G and 81I). The vote to refer to the Planning Board may be taken at the same time the Selectmen vote their intention to lay out the street as a public way. In addition, the Selectmen shall solicit recommendations from the Town Engineer, Highway Superintendent, DPW Superintendent, the Police Chief, the Fire Chief, and/or other officers or boards. The petitioner shall meet with the Planning Board or its designee, if so requested, to review any outstanding issues related to the street and/or the easement areas. Town staff is requested to coordinate their review and, when possible, to submit comments to the Planning Board to be included with the Planning Board report, or otherwise to submit comments to the Board of Selectmen within such 45 day period, provided that the Board of Selectmen requests that review and comments by Town staff be provided as soon after its request as reasonably possible.

### ***No later than January 20<sup>th</sup>***

7. Warrant Article. A warrant article is prepared for each street for which the Selectmen vote an intent to lay out.

### ***Upon the earlier of receipt of the Planning Board Report or 45 days after Referral to the Planning Board<sup>†</sup>***

8. Notice to Owners. The Selectmen will notify owners and abutters by certified mail, at the petitioner's expense, of the public meeting at which the Selectmen will vote to adopt the layout of the street as a public way. Notice will be given to owners and abutters at least seven (7) days prior to the public meeting.
9. Adopt Order of Layout. Once the Planning Board has made its recommendations or 45 days lapse since the layout was referred to the Planning Board, whichever is earlier, the Selectmen hold a public meeting to determine if the street is ready for acceptance. The owners and abutters have the opportunity to provide input in this decision. At this meeting, the Selectmen may vote to lay out the street as a public Town way, or decline to lay out the street, or may continue the matter to a later meeting in order to obtain additional information, i.e. Planning Board report, site visit, among others. Abutters will not be formally notified of the continued public meeting. For those streets that the Selectmen vote to lay out, a formal vote will be taken and an Order of Layout will be signed.

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<sup>†</sup> Town Meeting cannot accept a way unless the Board of Selectmen has previously voted to adopt an Order of Layout. Therefore, whenever possible, the Board of Selectmen shall endeavor to schedule its vote as to whether to adopt the Order of Layout prior to its approval of the final Warrant and submittal of the Warrant to print in order that the Warrant may reflect that the Order has been approved.

### ***At Least 7 Days Prior to Town Meeting***

10. File Layout with Town Clerk: The original signed Order of Layout, the Layout Plan, and the legal descriptions are filed by the Board of Selectmen with the Town Clerk.

### ***Town Meeting***

11. Town Meeting Vote: Town Meeting must vote on whether to accept the street as a public Town way, and to authorize the Board of Selectmen to acquire the necessary interests in the street and appurtenances.

**NOTE: streets do not automatically become public ways upon Town Meeting acceptance. In order to complete the Street Acceptance Policy, the Town must record a taking instrument within the timeframes required by applicable law.**

### ***Within 30 Days of Close of Town Meeting at Which Street Is Accepted***

12. Updated Title Certification. Promptly after Town Meeting, the applicant's attorney must submit to the Town an updated certification listing the names and addresses of persons then owning the fee to the road and all easement areas.

### ***Within 120 Days of Close of Town Meeting at Which Street Is Accepted***

13. Acquisition of Land and Easements. The Board of Selectmen must vote to execute and/or accept, as applicable the necessary taking instrument, deeds and/or easements, and record the instruments and Layout Plan within one hundred twenty (120) days of the close of the Town Meeting at which the street is accepted as a public way.
14. Acquisition by Eminent Domain:
  - a. *Waiver of Appraisal, Damages, and Relocation Benefits*: Before the Town will exercise its powers of eminent domain, all persons owning the fee to the street and the lots that will be subject to the Town's easements must sign a Waiver of Appraisal, Damages, and Relocation Benefits. The Selectmen may, in their sole and absolute discretion, decide not to proceed with the Streetway Acceptance until all owners have signed the Waiver. The forms of Waiver are attached (See Attachment B and Attachment C);
  - b. *Indemnification*: If the street and/or the lots are subject to mortgages (including lines of credit, whether used or not) or other liens and the developer and/or lot owners has not obtained Subordination of Mortgages from the mortgagees, the Selectmen may, in their sole and absolute discretion, decide not to proceed with the Streetway Acceptance, or to accept indemnifications from the petitioner and/or the lot owners, in form acceptable to the Board of Selectmen, in its sole discretion, protecting the Town from liability if the mortgagees bring a claim against the Town. Such indemnification, if required, shall last for the period of time within which mortgagees may bring claims against the Town for the taking;

- c. *Order of Taking*: The Selectmen sign an Order of Taking, taking a fee interest and/or easements by eminent domain. A certified copy of the Town Meeting vote authorizing the taking is attached to and recorded with the Order of Taking;
- d. *Recording*: The Order of Taking, the Layout Plan, and certified Town Meeting vote are recorded with the Plymouth Registry of Deeds within the aforesaid one hundred twenty (120) day period, and within thirty (30) days of the Selectmen's execution of the Order of Taking, at the petitioner's cost; and
- e. *Notice of Taking*: The Town will send notice of the taking by certified mail to the owners and mortgagees affected by the taking.

Waiver. The Selectmen may waive any of the Street Acceptance Policy requirements that are not mandated by statute or by the General Bylaws of the Town if, in their sole and absolute discretion, they find that circumstances warrant a waiver.

**ATTACHMENT A**  
**Form of Street Acceptance Petition**

Board of Selectmen  
Hingham, MA

We, the undersigned, being of the opinion that public convenience and necessity will be served thereby, respectfully petition that \_\_\_\_\_ extending over land of \_\_\_\_\_ beginning at a point at the intersection of \_\_\_\_\_ extending approximately \_\_\_\_\_ feet ± in a \_\_\_\_\_ direction as shown on a plan entitled:

" \_\_\_\_\_ " made by \_\_\_\_\_ Engineer, dated \_\_\_\_\_ and approved by the Planning Board of Hingham, be laid out and accepted as a public way in the Town of Hingham.

We hereby acknowledge receipt of the Town of Hingham Street Acceptance Policy. The following submission requirements have been heretofore submitted, or are submitted herewith, in accordance with said Policy:

- |                                        |                                                                                       |
|----------------------------------------|---------------------------------------------------------------------------------------|
| As-Built Plan:                         | Submitted on _____, 20__                                                              |
| Title Certification:                   | Submitted: <input type="checkbox"/> herewith; <input type="checkbox"/> on _____, 20__ |
| Copies of Deeds and Other Instruments: | Submitted: <input type="checkbox"/> herewith; <input type="checkbox"/> on _____, 20__ |
| Draft Layout Plan:                     | Submitted: <input type="checkbox"/> herewith; <input type="checkbox"/> on _____, 20__ |
| Draft Legal Descriptions:              | Submitted: <input type="checkbox"/> herewith; <input type="checkbox"/> on _____, 20__ |
| Review Fee                             | Submitted: <input type="checkbox"/> herewith; <input type="checkbox"/> on _____, 20__ |

And we further agree that we will deliver to the Town any and all such further documents, plans, deeds, easements, agreements and other instruments in writing as you may consider necessary or proper in connection with this petition.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

PETITIONER(S):

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

<p>RECEIVED BY BOARD OF SELECTMEN*</p>          <p style="text-align: center;">DATE STAMP HERE</p>
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\*Pursuant to Section 28 of Article 10 of the Town of Hingham General Bylaws: "Each petition for the acceptance of a way to be acted on at any annual town meeting shall be presented to the board of selectmen not later than the first day of October next preceding such meeting."

**ATTACHMENT B**

Waiver of Appraisal, Damages, and Relocation Benefits  
(Owner)

\_\_\_\_\_ (the "Owner"), having an address of \_\_\_\_\_, is the owner of property located at \_\_\_\_\_ in Hingham, Massachusetts, and described in a deed recorded with the Plymouth Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Property"). The Owner, in consideration of the sum of \$1.00 paid, hereby acknowledges such consideration to be full compensation for all damages sustained by the Owner on account of an eminent domain taking to be made by the Town of Hingham (the "Town"), by and through its Board of Selectmen, pursuant to an Order of Taking to be recorded forthwith, of a permanent public way easement in, on, under, and along the streetway shown as " \_\_\_\_\_ " on a plan entitled " \_\_\_\_\_ " dated \_\_\_\_\_, prepared by \_\_\_\_\_, to be recorded with said Deeds [*if applicable*: and an easement on a portion or portions of the Property, as shown on said plan], and, for himself/herself/themselves and his/her/their successors and assigns, hereby waives, releases and forever discharges the Town and its successors and assigns from all debts, demands, actions, reckonings, bonds, covenants, contracts, agreements, promises, damages, liabilities, and any and all other claims of every kind, nature and description whatsoever, both in law and equity, from or in consequences of said taking, consents to said taking, waives an appraisal of damages, waives all rights to damages for said taking, and further waives all relocation benefits under G.L. c. 79A.

Executed under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Name:

**ATTACHMENT C**

Waiver of Appraisal, Damages, and Relocation Benefits  
(Mortgagee)

\_\_\_\_\_ (the "Mortgagee"), having an address of \_\_\_\_\_, is the holder of a mortgage interest encumbering the property located at \_\_\_\_\_ in Hingham, Massachusetts, (the "Property"), which mortgage is recorded with the Plymouth County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_. The Mortgagee, in consideration of the sum of \$1.00 paid, hereby acknowledges such consideration to be full compensation for all damages sustained by the Mortgagee on account of an eminent domain taking to be made by the Town of Hingham (the "Town"), by and through its Board of Selectmen, pursuant to an Order of Taking to be recorded forthwith, of a permanent public way easement in, on, under, and along the streetway shown as "-" on a plan entitled "\_\_\_\_\_" dated \_\_\_\_\_, prepared by \_\_\_\_\_, to be recorded with said Deeds [*if applicable*: and an easement on a portion or portions of the Property, as shown on said plan], and, for himself/herself/themselves and his/her/their successors and assigns, hereby waives, releases and forever discharges the Town and its successors and assigns from all debts, demands, actions, reckonings, bonds, covenants, contracts, agreements, promises, damages, liabilities, and any and all other claims of every kind, nature and description whatsoever, both in law and equity, from or in consequences of said taking, consents to said taking, waives an appraisal of damages, waives all rights to damages for said taking.

Executed under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[name]

By: \_\_\_\_\_  
Name:  
Title: