

## Possible Barnstable Home Rule Petition

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“AN ACT AUTHORIZING THE MAINTENANCE OF PRIVATE ROADS IN THE TOWN OF BARNSTABLE”

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

SECTION 1. Notwithstanding the provisions of section six “N” of chapter forty of the General Laws or any other general law or special law to the contrary, but subject to the provisions of section six “C” of chapter forty as accepted by the Town of Barnstable on April 10, 1979, the Town of Barnstable may from time to time enter without request or petition and make expenditures without assessing betterments for the purpose of undertaking any and all work upon, over and under one or more private ways within the Town upon a declaration by a vote of the Town Counsel of the common usage of such private way by the general public and an appropriation in accordance with the provisions of the Charter of the Town of Barnstable. No such declaration, appropriation, expenditure and maintenance pursuant to the provisions of this act shall constitute layout, acceptance and establishment of such private way as a town way nor constitute repairs for purposes of section twenty-five of chapter eighty-four, provided such rights on behalf of the public as are necessary for the safety of the public using such road and to ensure the investment of public funds in such private roads are obtained by the Town, whether by grant, taking by eminent domain or other acquisition . \*\*\*

SECTION 2. For purposes of this act, the following words shall have the following meanings.

"Maintenance" works upon, over or under a private way of the type which the Town may undertake with respect to town ways.

“Common usage” shall mean the use of a private way by the general public for a period of at least 20 consecutive years travel directly from one public road or area to another public road or area .

SECTION 3. This act shall take effect upon its passage.

### EXPLANATIONS:

I’m not sure I understand why you would have the language regarding chapter 40C in the bill. It would seem to me that if your concern is public usage and safety, you would certainly want to be plowing the road even if the town elected not to plow private roads in the future.

I have eliminated references to “requests” from residents along the road because, as you have experienced from residents along Mary Dunn Road, some of the residents may not want repairs to the road for whatever reasons.

I eliminated the requirement for betterments because, in the case of Mary Dunn Road especially, it seems grossly unfair to assess betterments for the improvement of a road that the general public uses more than the residents along the road use.

RE-DRAFT

I added 20 consecutive years because I believe that the roads you are concerned with have been used for at least that long and I think that also will satisfy legislators looking at the legislation regarding the fairness of managing the repairs of a road that has been “public” for so long.

I added the term, “for the safety of the public using the road”, because I believe that is the major issue and because I believe some issues are easier for legislators to accept or understand if “safety” is an issue.

\*\*\* Finally, though I did not add language to this effect, I think language that says something like, “Should a determination be made by any court that the declaration that the road is public by usage and maintenance by the town of such road is a public taking, then the continued maintenance costs and the safety to the public and the residents along the road shall be deemed sufficient compensation for such taking.” I think addressing that issue in the legislation will quiet some who would argue a constitutional issue. I also believe that the “taking” issue will be diminished if the work done by the town is as limited as possible and doesn’t delve significantly onto private property. (That might suggest you consider the language “over and under” more closely.