

Office of the Town Clerk

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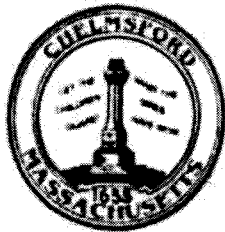
Elizabeth L. Delaney
Town Clerk

Raymonde R. LeGrand
Assistant Town Clerk

To Whom It May Concern:

The Annual Fall Meeting of October 20, 2008, was called to order at 7:35 PM at the Senior Center at 75 Groton Rd. The Moderator Dennis E. Mellugh recognized the presence of a quorum. There were 140 Town Meeting Representatives present. The following action took place:

UNDER ARTICLE 11 Dwight Hayward moved that the Moderator waive the reading of the motion. The Moderator asked for a vote by way of a show of hands, **motion carried.** The Town Manager explained that since the Spring Town Meeting considerable effort has been made by the Board of Selectmen and himself to get information and suspend the surcharge by National Grid for the Central Square Utility Conversion Project. Even after Town Counsel requested legal opinions and Legislative pressure there has been no response. The Town felt that the only choice left is to amend the current by-law and to submit a home rule petition to Legislator to get the program on track, receive information and interest earnings as well as suspend the surcharge by National Grid. The Manager asked Evan Belansky Community Development Director to come forward and give an update. Evan Belansky gave an update of the balances, National Grid: In 2007 National Grid collected \$742,043 and expenditures were \$70,000 (\$53,000 of this was for outside consultants). Since the program started the total amount collected is \$4,655,202 and the total expenditures were \$561,158 (\$292,000 of this was for outside consultants). Verizon: In 2007 Verizon collected \$141,609 and expenditures were \$22,293. Since the program started the total amount collected was \$1,054,157 and the total expenditures were \$651,736 (\$200,000 was for installation of new manholes and \$240,000 was for new conduits in Central Square). He then gave a progress report, beginning in June of 2008. He met with Town Counsel and decided that the article will consist of four items, Phasing, Accounting/Reporting, Suspension of surcharges, Petition for Special Legislation. Meetings were held from June to September with National Grid and Verizon. The purpose was the refinement of phasing plans and prepare documents and final plans. He also reported critical information that National Grid has now assigned a Project Manager who will be responsible with preparation of bid documents and final plans. He showed a map showing the phase one area to be worked on and future area of phase two and three. He went over the benefits of phasing in the project. He gave the final steps, finalize the construction plans. The Town does have verbal commitment from the utilities regarding this. Completion of construction and bid documents. In the winter of 2009 go out for bids and award the project. It is estimated that the contract will be \$1.2 million for each utility plus and minus 25%. In the Spring of 2009 will start construction. He reminded the Body that this will consist of three



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separate phases which will take place over a 12-18 month period. The first phase will be road disturbance of 4-6 months, for the purpose of installation of conduits. Next will be the installation of new wires within the conduits. And third will be the removal of old wires and poles. The Moderator asked for questions, hearing none, he asked for recommendations. The Finance Committee recommended the article. The Board of Selectmen recommended the article. The Moderator asked for debate, hearing none he asked for a vote by way of a show of hands. **Motion carried, unanimously.** The article reads as follows:

Town Manager Paul E. Cohen moved that the Town vote to amend Chapter 119, Poles and Wires, of the Chelmsford Town Code by adding the provisions underlined, as printed in the Warrant for this Annual Town Meeting. And further, to authorize the Board of Selectmen to petition the General Court for special legislation entitled, "An Act To Authorize the Town of Chelmsford to Regulate the Removal of Aboveground Utility Poles and Overhead Wires and other Associated Structures and to Regulate the Installation of Underground Wires and Associated Structures," as printed in the Warrant for this Annual Town Meeting, provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approve amendments to bill before enactment by the General Court; and provided further that the Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition.

For informational purposes the wording in the warrant article as mentioned above is as follows:

Chapter 119: POLES AND WIRES

[HISTORY: Adopted by the Annual Town Meeting of the Town of Chelmsford 4-26-99 by Art. 17. Amendments noted where applicable.]

§119-1. Definitions.

For purposes of this chapter, the definitions of "person," poles and overhead wires and associated overhead structures and "utility" shall be the same definitions as those set forth in MGL c. 166, §22A.

§119-2. Prohibiting installation of new poles and overhead wires.

- A. No utility shall install or construct, except by way of replacement or upgrading of existing facilities, any poles and overhead wires and associated overhead structures upon, along or across



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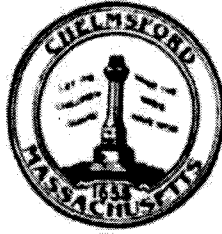
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any public way within the parts of the town listed in §§119-2B and 119-3A of this chapter. Any poles and overhead wires and associated overhead structures upon, along overhead wires and associated overhead structures installed or constructed in violation of this chapter shall be immediately removed by the utility responsible therefore.

- B. This chapter applies to the following parts of town:
1. Any public way approved by the Planning Board after the effective date of this chapter unless waived by the Planning Board pursuant to the Subdivision Rules and Regulations. Editor's Note: See Ch. 202, Subdivision of Land.
 2. Any way in which the wires and utility facilities are underground as of the effective date of this chapter.
- C. Any person who installs or constructs any poles and overhead wires and associated overhead structures which are in violation of this chapter shall be punished by a fine of not less than \$1,000 and not more than \$5,000 for each consecutive fifteen-day period during which the failure continues.
- D. This chapter implements MGL c. 166, §22C and shall be construed in a manner consistent with the definitions in MGL c. 166, §22A.

§119-3. Removal of existing poles and overhead wires.

- A. Any utility presently owning or operating poles or overhead wires and associated overhead structures within the Town of Chelmsford shall remove said poles or overhead wires and associated overhead structures. Said removal shall occur in the area known as Chelmsford Center extending from Larcom Square through the Center, around the Common and north to the intersection of Chelmsford and Fletcher Streets as shown on a plan on file with the Town Clerk entitled "Chelmsford Center Utility Depression Area," dated March 15, 1999.
- B. Any utility that fails to remove any poles or overhead wires and associated overhead structures required to be removed pursuant to §119-3A of this chapter shall be punished by a fine of not less than \$1,000 and not more than \$5,000 for each fifteen-day period during which such failure continues, provided, however, that no utility shall have been deemed to have violated this chapter, provided that:
1. If replacement facilities for poles or overhead wires and associated overhead structures required to be removed will be needed in order for a utility to continue its service, the



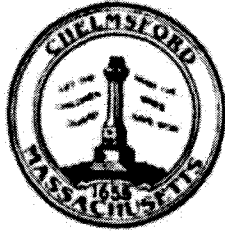
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- utility shall, within 60 days of the effective date of this chapter, petition the Board of Selectmen of the Town of Chelmsford, pursuant to MG. c. 166, §22, for permission to install, erect or construct under the public ways of the Town of Chelmsford replacement facilities for such poles or overhead wires and associated structures; and
2. The utility shall file with the Board of Selectmen of the Town of Chelmsford a plan (which shall be consistent with §119-3A of this chapter), for removal of poles or overhead wires and associated overhead structures and, if needed, for their replacement with underground facilities. The removal described on the plan may be implemented in phases, as may from time-to-time be determined by the Board of Selectmen. In determining if the plan shall be implemented in phases, the Board of Selectmen shall consider the following factors, among other relevant factors: the total cost of completing the work under the plan; the amount of funds collected by the utility from its customers in the Town of Chelmsford in relation to the total cost of completing the work under the plan; and the progress the utility is making towards completing the work under the plan. Any phasing of the implementation of the plan shall not constitute an amendment of the plan. In determining whether to undertake the removal shown on the plan in phases, the Board of Selectmen shall consult with the utility. The decision regarding phasing shall be in the sole discretion of the Board of Selectmen; and
 3. In each calendar year beginning with the calendar year next following the effective date of this chapter and until all such poles or overhead wires and associated overhead structures shall have been removed, any utility shall, in carrying out its plan, allocate and expend for the direct cost of demolition and construction (over and above the reasonable value of salvage) an amount which shall not be less than 2% of its gross revenues derived during the next preceding calendar year from its customers in the Town of Chelmsford; and
 4. The utility shall, on or before the last day of March in each year, file with the Board of Selectmen of the Town of Chelmsford a statement signed under the penalties of perjury, by its Treasurer, setting forth in detail the amounts spent by the utility during the immediately preceding calendar year in carrying out its plan; the purposes for which such expenditures were made; the gross revenues derived from its customers in the Town of Chelmsford during the immediately preceding calendar year; provided, however, that no utility which enters a cooperative agreement under MGL c. 166, §22 shall be deemed to have violated this chapter during the term such payments are to be made, so long as said utility shall not be in default of said cooperative agreement.



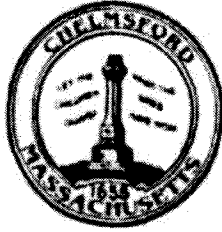
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5. Commencing with the calendar year beginning January 1, 2009, the funds collected by the utility from its customers in the Town of Chelmsford shall be placed by the utility in a separate interest-bearing account. The interest accrued on such funds shall remain with the account and shall be available for and used by the utility in furtherance of the completion of the plan described in §119-3.A and §119-3.B.2. All funds collected by utility as a surcharge prior to January 1, 2009 shall be transferred as of January 1, 2009 to the interest-bearing account. Commencing with the statement due for the calendar year 2008, the utility shall include in its statement under §119-3-B.4, the following information regarding the interest for the preceding calendar year: the number of customers in the Town of Chelmsford from whom the funds are collected; the name and address of the financial institution or other entity where the interest-bearing account is located; the amount of interest accrued to the account during the immediately preceding calendar year for which the statement is being provided.
6. The statement required under §119-3.B.4 shall not qualify as "setting forth in detail" the required information unless the statement includes the following information:
 - (a) the number of customers in the Town of Chelmsford from whom the surcharge has been collected during the immediately preceding calendar year;
 - (b) The amount of the surcharge collected from the customers in the Town of Chelmsford during the immediately preceding calendar year;
 - (c) The amount of the interest accrued on the surcharge collected from the customers in the Town of Chelmsford during the immediately preceding calendar year;
 - (d) The address of the financial institution or other entity where the interest-bearing account is located;
 - (e) The amount of interest accrued to the account during the immediately preceding calendar year for which the statement is being provided;
 - (f) The specific purpose and amount for each cost incurred or disbursement made over \$100 regarding implementation of the plan;
 - (g) The name, street mailing address and electronic mail address, if available, of each vendor or other entity to whom a payment over \$100 was made regarding implementation of the Plan; and
 - (h) The amount of funds remaining in the interest-bearing account as of December 31 of the preceding calendar year.
7. The Board of Selectmen may temporarily or permanently suspend the amount collected from the utility's customers in the Town of Chelmsford under §119-3.B.3 above, upon the following:



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- (a) The Board of Selectmen gives notice of and holds a public hearing regarding consideration of such suspension.
- (b) The notice of the public hearing is published in a newspaper of general circulation in the Town and posted on a Town bulletin board and on the Town's website at least fourteen days before the date of the hearing.
- (c) The notice of public hearing is sent by return receipt requested mail at least fourteen days before the date of the hearing to the utility for which the suspension is being considered.
- (d) After hearing, the Board of Selectmen finds that:
 - i. The utility has collected sufficient funds from the customers in the Town of Chelmsford to carry out the plan described in §119-3.A. and §119-3.B.2;
or
 - ii. The utility has collected sufficient funds from its customers in the Town of Chelmsford to fund the phase of the plan described in §119-3.A. and §119-3.B.2.

And further, to authorize the Board of Selectmen to petition the General Court for special legislation entitled, "An Act To Authorize the Town of Chelmsford to Regulate the Removal of Aboveground Utility Poles and Overhead Wires and other Associated Structures and to Regulate the Installation of Underground Wires and Associated Structures," as set forth below, provided, however, that the General Court may make clerical or editorial changes of form only to the bill, unless the Board of Selectmen approve amendments to bill before enactment by the General Court; and provided further that the Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition:

AN ACT TO AUTHORIZE THE TOWN OF CHELMSFORD TO REGULATE THE REMOVAL OF ABOVEGROUND UTILITY POLES AND OVERHEAD WIRES AND OTHER ASSOCIATED STRUCTURES AND TO REGULATE THE INSTALLATION OF UNDERGROUND WIRES AND ASSOCIATED STRUCTURES

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. Notwithstanding any general or special law or by-law or regulation to the contrary, the Town of Chelmsford is hereby authorized to take the following action regarding the removal of aboveground utility poles and overhead wires and other



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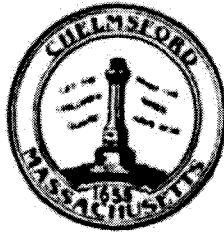
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associated structures and to regulate the installation of underground wires and associated structures.

SECTION 2. The Town of Chelmsford may adopt a plan for the removal of aboveground utility poles and overhead wires and the installation of underground wires and associated structures and conduits ("the Plan"). After the Plan is adopted, it may be implemented in phases, as may from time-to-time be determined by the Board of Selectmen. In determining if the Plan shall be implemented in phases, the Board of Selectmen shall consider the following factors, among other relevant factors: the total cost of completing the work under the Plan; the amount of funds collected by the utility from its customers in the Town of Chelmsford in relation to the total cost of completing the work under the Plan; and the progress the utility is making towards completing the work under the Plan. Any phasing of implementing the Plan shall not constitute an amendment of the Plan. In determining whether to undertake the removal shown on the Plan in phases, the Board of Selectmen shall consult with the utility. The decision regarding phasing shall be in the sole discretion of the Board of Selectmen.

SECTION 3. The utility may charge its customers in the Town of Chelmsford a surcharge as provided for in General Laws, c.166, §22D, or successor statute, to pay for the work provided for in the Plan ("the Surcharge"). Commencing with the calendar year beginning January 1, 2009, the Surcharge collected by the utility from its customers in the Town of Chelmsford in accordance with a Plan shall be placed by the utility in a separate interest-bearing account. The interest accrued on such funds shall remain with the account and shall be available for and used by the utility in furtherance of completion of the Plan. All funds collected by the utility from its customers in the Town of Chelmsford as a surcharge prior to January 1, 2009 pursuant to a Town By-law prohibiting the installation of new poles and overhead wires and regulating the installation of underground wires shall be transferred as of January 1, 2009 to the separate interest-bearing account required under this section.

SECTION 4. Commencing with the calendar year 2009, on or before March 31 of each year, the utility shall prepare a detailed report to the Chelmsford Board of Selectmen regarding the actions taken to implement the Plan. The report shall include, but not be limited to the following information: the number of customers in the Town of Chelmsford from whom the Surcharge has been collected during the immediately preceding calendar year; the amount of the Surcharge collected from the customers in the Town of Chelmsford; the name and address of the financial institution or other entity where the interest-bearing account is located; the amount of interest accrued to the account during the immediately preceding calendar year for which the report is being



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provided; the specific purpose and amount for each cost incurred or disbursement made over \$100 regarding implementation of the Plan; the name, street mailing address and electronic mail address, if available, of each vendor or other entity to whom a payment over \$100 was made regarding implementation of the Plan; and the amount of funds remaining in the interest-bearing account as of December 31 of the preceding calendar year.

SECTION 5. The Board of Selectmen may temporarily or permanently suspend the collection of the Surcharge from the utility's customers in the Town of Chelmsford upon the following: (a) The Board of Selectmen gives notice of and holds a public hearing regarding consideration of such suspension; (b) The notice of the public hearing is published in a newspaper of general circulation in the Town and posted on a Town bulletin board and on the Town's website at least fourteen days before the date of the hearing; (c) The notice of public hearing is sent by return receipt requested mail at least fourteen days before the date of the hearing to the utility for which the suspension is being considered; (d) After hearing, the Board of Selectmen finds: (i) the utility has collected sufficient funds through the Surcharge from the customers in the Town of Chelmsford to carry out the Plan; or (ii) the utility has collected sufficient funds from its customers in the Town of Chelmsford through the Surcharge to fund a phase of the Plan.

SECTION 6. This act shall take effect upon its passage.

Or act in relation thereto.

Sincerely,

Elizabeth L. Delaney
Town Clerk

A True Copy Attest:

Elizabeth L. Delaney, Town Clerk