

**Code
of the
Town of
Barnstable**

COUNTY OF BARNSTABLE
COMMONWEALTH OF MASSACHUSETTS

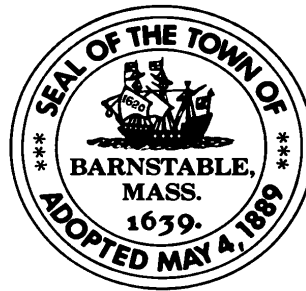
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2014

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PREFACE

The Town of Barnstable has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the Town, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more detailed legislation for the proper function and government of the Town. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the Town Council ordered the following codification of the Town's legislation.

Contents and Organization of Code

The various chapters of the Code contain all currently effective legislation of a general and permanent nature enacted by the Town Council, as well as rules and regulations adopted by various boards, officers and agencies, which were deemed to be general and permanent in nature and appropriate for inclusion in the volume. Each agency's regulations are included in a separate part of the Code: Part I, General Ordinances; Part II, Appendix to the General Ordinances; Part III, Board of Health Regulations; Part IV, Town Manager Regulations; Part V, Licensing Authority Regulations; Part VI, Marine and Environmental Affairs Division Regulations; Part VII, Conservation Commission Regulations; Part VIII, Planning Board Regulations; Part IX, Department of Public Works Regulations.

Table of Contents and Grouping of Legislation

The Table of Contents details the arrangement of material alphabetically by chapter as a means of identifying specific areas of legislation. Wherever two or more items of legislation have been combined by the editor into a single chapter, the use of article designations has preserved the identity of the individual enactments, and the titles of the articles are listed beneath the chapter title in order to facilitate location of the individual enactments.

Reserved Chapters

Unassigned chapter numbers do not appear in the Table of Contents but are available for assignment to new enactments. In this manner, new subject matter can be included alphabetically.

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Pagination

A unique page-numbering system has been used in which each chapter forms an autonomous unit. The first page of each chapter is the number of that chapter followed by a colon and the numeral "1." Thus, Chapter 6 would begin on page 6:1. By use of this system, it is possible to add or to change pages in any chapter, or add new chapters, without affecting the sequence of subsequent pages.

Numbering of Sections

A chapter-related section-numbering system is employed in which the section number indicates the number of the chapter and the location of the section within that chapter. Thus, the first section of Chapter 30 would be § 30-1, while the sixth section of Chapter 57 would be § 57-6.

Scheme

The Scheme is the list of section titles that precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the scheme titles are repeated as section headings in the text.

Histories

At the end of the Scheme (list of section titles) in each chapter is located the legislative history for that chapter. This History indicates the specific legislative source from which the chapter was derived and the date of adoption. In the case of chapters containing parts or articles derived from more than one item of legislation, the source of each part or article is indicated in the text, under its title. Amendments to individual sections or subsections are indicated by histories where appropriate in the text. In Part I, General Ordinances, the History indicates the adoption date of the original legislation whether it be adoption by the former Town Meeting or the current Town Council. The History further indicates in parentheses where the legislation appeared in the ordinance compilation as amended through July 7, 2003.

General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of General References is included to direct the reader's attention to such related chapters. Editor's Notes are used in the text to provide supplementary information and cross-references to related provisions in other chapters.

Code Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are

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germane to the conduct of municipal government. The Appendix of this publication is reserved for such legislation and for any other material that the community may wish to include.

Disposition List

The Disposition List is a chronological listing of legislation, indicating its inclusion in the publication or the reason for its exclusion. The Disposition List will be updated with each supplement to the Code to include the legislation reviewed with said supplement.

Derivation Tables

There are two Derivation Tables included at the end of the Code, one for the Town general ordinances and one for the Board of Health regulations. These tables show where the ordinances and regulations from the former compilations appear in the Code. Similar tables are not provided for the other regulations appearing in the Code as they were not formally codified or compiled or there were not enough of them to warrant such a table.

Index

The Index is a guide to information. Since it is likely that this publication will be used by persons without formal legal training, the Index has been formulated to enable such persons to locate a particular section quickly. Each section of each chapter has been indexed. The Index will be supplemented and revised from time to time as new legislation is added.

Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or additions, should be adopted as amendments to the Code. In doing so, existing material that is not being substantively altered should not be renumbered.

Adding new sections. Where new sections are to be added to a chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g., a new section between §§ 65-5 and 65-6 should be designated § 65-5.1).

Adding new chapters.

Parts I and II: New chapters should be added in the proper alphabetical sequence, utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the Table of Contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices, Coin-Operated" under "A" in the Table of Contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 166 and 167 should be designated Chapter 166A).

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Other Parts: New chapters can be added to Parts III through IX by adding them after the last existing chapter in the Part.

Adding new articles. New articles may be inserted between existing articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" articles (e.g., a new article to be included between Articles VII and VIII should be designated Article VIIA). The section numbers would be as indicated above (e.g., if the new Article VIIA contains six sections and existing Article VII ends with § 240-89 and Article VIII begins with § 240-90, Article VIIA should contain §§ 240-89.1 through 240-89.6).

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as possible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

Acknowledgment

The assistance of Linda Hutchenrider, Town Clerk, and Robert D. Smith, Esq., Town Attorney, is gratefully acknowledged by the editor. The codification of the legislation of the Town of Barnstable reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code that this publication will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

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TOWN OF BARNSTABLE

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[HISTORY: Adopted 4-11-1989. Amendments noted where applicable.]

PREAMBLE

The people of the Town of Barnstable, desiring to manage their affairs in an honest, forthright, and efficient manner, and wishing to participate most fully in exercising the rights and responsibilities of local government, and praying for the minimum of interference from the yet larger state, do adhere to this charter.

We assert our willingness to assume all responsibility for the conduct of matters pertaining to the town, and do by this document earnestly affirm our right as inhabitants of Barnstable, to live and grow in freedom, dignity, and tranquillity.

PART I**Incorporation, Short Title, Powers****Section 1-1. Incorporation Continued.**

The inhabitants of the Town of Barnstable, Massachusetts, within its territorial limits as now or may hereafter be established by law, shall continue to be a body politic and corporate, known as the "Town of Barnstable."

Section 1-2. Short Title.

This instrument may be cited and shall be known as the Barnstable Home Rule Charter.

Section 1-3. Division of Powers.

All legislative powers of the town shall be exercised by a town council. The administration of all town fiscal, business and municipal affairs shall be vested in the executive branch headed by the town manager.

Section 1-4. Powers of the Town.

The intent and purpose of this charter is to secure for the voters of the Town of Barnstable, through the adoption of this charter, all the powers possible to secure for their government under Article LXXXIX of the Amendments to the Constitution of the Commonwealth and laws of the Commonwealth, as fully and as though each such power were specifically and individually enumerated herein. The Town of Barnstable shall constitutionally have a city form of government.

Section 1-5. Interpretation of Powers.

The powers of the town under the charter shall be construed and interpreted liberally in favor of the town, and the specific mention of any particular power is not intended to limit in any way the general powers of the town as stated in section 1-4.

Section 1-6. Intergovernmental Relations.

The town may enter into agreements with any other unit of government to perform jointly or in cooperation, by contract or otherwise, any of its powers or functions.

Section 1-7. Town Seal.

The Town Seal in existence at the time this charter is adopted, unless the town council shall adopt another, shall continue to be the Town Seal and shall be kept in the custody of the town clerk. Papers or documents issued from any office or board of the town may be attested by use of said seal.

PART II
Legislative Branch

Section 2-1. Composition; Eligibility; Election and Term.

- (a) Composition. There shall be a town council which shall exercise the legislative powers of the town. One councillor shall be elected from each precinct. **[Amended by Town Council item 93-074A on 2/18/93; confirmed by a majority of voters on 5/18/93; amendment passed by Act of State Legislature June 1993]**
- (b) Eligibility. Only voters who at all times during their term of office shall be and remain residents of the town shall be eligible to hold the office of councillor. A member of the town council who shall remove from one precinct to another during the term for which such councillor was elected shall cease to be a member of the town council, provided however, a councillor with six months or less remaining on the term for which such councillor was elected, notwithstanding removal from one precinct to another, shall continue to serve and to perform all official duties during such term of office.
- (c) Election and Term. The term of office of all members of the Town Council shall be for four years beginning on the second Monday following election and continuing until their successors are qualified. Councilors shall serve four year overlapping terms so arranged that the terms of as nearly half of the councilors as may be shall expire at each biennial town election. **[Amended by Town Council item 93-074A on 2/18/93; confirmed by majority of voters 5/18/93; amendment passed by Act of State Legislature June 1993; further amended by Town Council vote in Dec. 1993 and passed by Act of State Legislature, May 31, 1994]**

Section 2-2. Council Organization.

After the councillors-elect have been sworn, the town council shall be called together by the town clerk for the purpose of conducting an election among council members for the office of town council president and vice-president to serve at the pleasure of the town council. The president shall preside at all meetings of the town council, and perform such other functions as may be assigned by the charter, by ordinance or by vote of the town council. The vice-president shall preside at meetings of the town council during the absence or disability of the president.

Section 2-3. General Powers and Duties.

Except as otherwise provided by law or by the charter, all powers of the town shall be vested in the town council which shall provide for their exercise and for the performance of all duties and obligation imposed on the town by law.

Section 2-4. Appointments of Multiple Member Bodies.

Unless provide otherwise by this charter or until provided otherwise by provisions of section 5-1 the town council shall appoint all boards, commissions, and committees. The town council shall adopt procedures to allow for orderly appointment of multiple member bodies.

Section 2-5. Filling of Vacancies.

If a vacancy occurs in the office of councillor occurs during the first forty-four months of a term, it shall be filled by a precinct election. If a regular town election is scheduled to be held within 120 days, but more than fifty days, after the date vacancy occurs, it shall be filled by a special election within that regular election; otherwise, the council shall schedule a special election to be held as soon as is practical to fill the vacancy for the balance of the unexpired term. The provisions of the charter governing regular elections shall, so far as they are apt, apply to said special election, provided no preliminary election shall be held. **[Amended by Town Council item 91-03-1902 on 6/20/91; amendment approved by voters 11/5/91]**

Section 2-6. Exercise of Powers; Quorum; Rules of Procedure.

- (a) Exercise of Powers. Except as otherwise provided by the laws of the Commonwealth or the charter, the legislative powers of the town council may be exercised in a manner determined by it.
- (b) Quorum. One-half of the total membership of the town council plus two shall constitute a quorum. The affirmative vote of a majority of the full town council shall be necessary to adopt any appropriation order. Except as otherwise provided by the laws of the Commonwealth or the charter, any other motion or measure may be adopted by a majority vote of those present. **[Amended by Town Council item 93-074A; confirmed by voters 5/18/93; amendment passed by Act of Legislature June 1993]**
- (c) Rules of Procedure. The town council shall from time to time establish written rules for its proceedings. Regular meetings of the town council shall be held at a time and place fixed by ordinance but which shall be not less frequent than once monthly. Special meetings may be held on the call of the president of the town council, or on the call of any four or more members, by written notice delivered at least forty-eight hours in advance of the time set. Except as otherwise authorized by the laws of the Commonwealth all sessions of the town council shall be open to the public and press. Every matter coming before the town council for action shall be put to a vote, the result of which shall be duly recorded. All council votes on ordinances, appropriation orders, or loan authorizations shall be taken by roll call vote, and shall be duly recorded by the town clerk. A full, accurate, and up-to-date record of the proceedings of the town council shall be kept and shall be open to inspection by the

public. Regular meetings of the town council shall provide for a period of public comment, provided however, the council may regulate such period of public comment as deemed appropriate. **[Changed by legislative action dated August 3, 1995]**

Section 2-7. Council Staff.

The town council may employ such staff and experts as is necessary to conduct the business of the town council. The town council shall set the salaries of such staff.

Section 2-8. Measures; Emergency Measures; Charter Objection.

- (a) In General. No measure shall be passed finally on the date on which it is introduced, except in cases of special emergency involving the health or safety of the people or their property. Except as otherwise provided by the charter, every adopted measure shall become effective at the expiration of thirty days after adoption or at any later date specified therein. Measures not subject to referendum shall become effective upon adoption. No ordinance shall be amended or repealed except by another ordinance adopted in accordance with the charter, or as provided in the initiative and referendum procedures.
- (b) Emergency Measures. An emergency measure shall be introduced in the form and manner prescribed for measures generally except that it shall be plainly designated as an emergency measure and shall contain statements after the enacting clause declaring that an emergency exists and describing its scope and nature in clear and specific terms. A preamble which declares and defines the emergency shall be separately voted on and shall require the affirmative vote of two-thirds of the town council. An emergency measure may be passed with or without amendment or rejected at the meeting at which it is introduced. No measure making a grant, renewal or extension, whatever its kind or nature, or a franchise or special privilege shall be passed as an emergency measure, and except as provided by the laws of the Commonwealth, no such grant, renewal or extension shall be made otherwise than by ordinance. After its adoption, an emergency measure shall be published as prescribed for other adopted measures. An emergency measure shall become effective upon adoption or at such later time as it may specify.
- (c) Charter Objection. On the first occasion that the question on adoption of a measure is put to the town council, if a single member objects to the taking of the vote, the vote shall be postponed until the next meeting of the town council whether regular or special. If two members shall object, such postponement shall be until the next regular meeting; but for an emergency measure at least four members, in all, must object. This procedure shall not be used more than once for any matter bearing a single docket number notwithstanding any amendment to the original matter. **[Changed by legislative action dated August 3, 1995]**
- (d) Publication of Measures. Notice of every proposed ordinance, appropriation order, or loan authorization, except emergency ordinances provided in section 2-8(b), shall be published once in a local newspaper, and in any additional manner as may be provided by ordinance at least ten days before its final passage. Upon final passage, notice of every ordinance, appropriation order, or loan authorization shall be published in a newspaper of general circulation within the town and posted on the town bulletin board. Any such publication notice required shall state the summary of the proposed or finally enacted ordinance or

ordinances and the times and places at which copies of such ordinance or ordinances may be obtained or reviewed by the public.

Section 2-9. Delegation of Powers.

The town council may delegate to one or more town agencies, the powers vested in the town council by the laws of the Commonwealth to grant and issue licenses and permits, and may regulate the granting and issuing of licenses and permits by any such town agency, and may in its discretion, rescind any such delegation without prejudice to any prior action which has been taken.

Section 2-10. Inquiries and Investigations.

The town council may require any town officer or member of a board or commission to appear before it, and give such information as it may require in relation to an office held by such person, its function, and performance. The town council shall give at least forty-eight hours written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section.

The town council may make investigation into the affairs of the town and into the conduct of any town agency, and for this purpose may subpoena witnesses, administer oaths and require the production of evidence.

Section 2-11. Prohibitions.

No councillor shall, while a member of the town council, hold any other compensated town office or position. No former councillor shall hold any compensated appointive town office or town employment until one year after the expiration of his service on the town council. This provision shall not prevent a town officer or employee who has taken a leave of absence from such duties in order to serve as a member of the town council from returning to such office or employment following service as a member of the town council. No person elected to serve as a town councillor may serve more than three consecutive terms of office.

Section 2-12. Compensation; Expenses.

The town council shall by ordinance, establish an annual salary and expense allowance for its members.

No ordinance increasing such salary or expense allowance shall be effective, however, unless it shall have been adopted by a two-thirds vote of the full council during the first eighteen months following each regular town election. The new salary and expense schedule shall be effective the first of the year next following the next regular municipal election. **[Changed by legislative action dated August 3, 1995]**

PART III
Elected Town Offices

Section 3-1. Elective Offices in General.

In addition to the town council, the offices to be filled by the voters shall be a school committee, a town clerk, a town collector and a housing authority and such other regional authorities, districts, or committees as may be established by law or interlocal agreement.

Section 3-2. Eligibility.

Any voter shall be eligible to hold any elective town office provided that, no person shall simultaneously hold more than one elective town office.

Section 3-3. School Committee.

- (a) **Composition, Terms of Office.** There shall be a school committee composed of five members elected by and from the voters at large.
- (b) **Term of Office.** The terms of school committee members shall be four years beginning on the second Monday following election and continuing until a successor is qualified. Terms of office shall be so arranged that the terms of as nearly an equal number of members as is possible shall expire at each regular election. **[Amended by Town Council vote December 1993; approved by Act of Legislature May 31, 1994]**
- (c) **Powers and Duties.** The school committee shall have general charge and superintendence of the public schools of the town. The powers of the school committee shall include, but need not be limited to: appoint a superintendent of schools, and all other officers and employees associated with the school, fix their compensation, define their duties and discharge them; make all reasonable rules and regulations, consistent with law, for the administration and management of the public schools of the town. The school committee shall have all the powers and duties given to school committees by the laws of the Commonwealth, the charter, ordinance or other council vote.

Section 3-4. Town Clerk.

- (a) **Election.** A town clerk shall be elected by and from the voters at large.
- (b) **Term of Office.** The town clerk shall serve for a term of four years beginning on the second Monday following election and continuing until a successor is qualified. **[Amended by Town Council vote December 1993; approved by Act of Legislature May 31, 1994]**
- (c) **Powers and Duties.** The town clerk shall be the keeper of vital statistics of the town, the custodian of the town seal and of all records of the town, shall administer the oath of office to all town officers, shall issue licenses and permits as may be provided by law and shall be responsible for the conduct of elections and all matters relating thereto. The town clerk shall have the powers and duties provided that office by the laws of the Commonwealth, the charter, ordinance or other council vote.

- (d) Clerk of the Council. Unless otherwise provided by the town council the town clerk shall be the clerk of the council and shall give notice of all meetings of the town council to its members and to the public, keep a record of its proceedings and perform such duties as may be assigned by the charter, by ordinance, or by other council vote.

Section 3-5. Town Collector.

- (a) Election. A town collector shall be elected by and from the voters at large.
- (b) Term of Office. The town collector shall serve for a term of four years beginning on the second Monday following election and continuing until a successor is qualified. **[Amended by Town Council vote December 1993; approved by Act of Legislature May 31, 1994]**
- (c) Powers and Duties. The town collector shall be responsible for the collection of all accounts due and payable to the town. Town officials and town agencies, from time to time, shall commit to the town collector for collection all accounts due and payable to the town, listed against the parties obligated to assume and pay the same. The town collector shall pay over to the town treasurer all collections received with any sums received in interest. The town collector shall have the powers and duties provided that office by the laws of the Commonwealth, the charter, ordinance or other council vote.

Section 3-6. Housing Authority.

- (a) Composition, Election. There shall be a housing authority composed of five members. Four members shall be elected by and from the voters at large and the fifth member shall be appointed by the Secretary of Communities and Development of the Commonwealth.
- (b) Term of Office. The terms of the housing authority members shall be four years beginning on the second Monday following election and continuing until their successors are qualified. Terms of office shall be so arranged that the terms of two members shall expire at each regular town election. **[Amended by vote of Town Council December 1993; approved by Act of Legislature May 31, 1994]**
- (c) Powers and Duties. The housing authority shall make studies of the housing needs of the town and shall provide programs for housing. The authority shall have all the powers and duties given to housing authorities under the laws of the Commonwealth.

Section 3-7. Filling Vacancies.

If a vacancy occurs in the office of town clerk or town collector whether by failure to elect or otherwise, the town council shall, within thirty days following the date such vacancy is declared to exist, act to fill the said vacancy. The town council shall choose from among the voters, a person to serve for the balance of the unexpired term. Any person so chosen shall be sworn and commence to serve forthwith.

If a vacancy occurs in the membership of the school committee or housing authority whether by failure to elect or otherwise, the president of the town council shall, within thirty days

following the date such vacancy is declared to exist, call a joint meeting of the town council and the remaining membership of whichever agency in which a vacancy is declared to exist, to act to fill the said vacancy. At any such joint meeting a majority of those present and voting shall choose from among the voters, a person to serve for the balance of the unexpired term. Any person so chosen shall be sworn and commence to serve forthwith. Participants in such joint meeting to fill a vacancy in the school committee or housing authority shall give consideration to whichever of the defeated candidates for the seat in which the vacancy is declared to exist who received the highest number of votes at the last regular town election immediately preceding the date the vacancy is declared to exist.

PART IV Town Manager

Section 4-1. Appointment, Qualifications, Term of Office.

The town council shall appoint by a majority vote of the full council a town manager. The town manager shall be a person of proven administrative ability, especially qualified by education and training with prior experience as a city or town manager, or an assistant city or town manager or the equivalent public or private sector level experience. The town council may from time to time establish such additional qualifications as deemed necessary and appropriate.

The town manager shall devote full time to the duties of the office and shall not hold any other elective or appointive office, nor shall the town manager engage in any other business unless such action is approved in advance in writing by the town council.

The town manager need not be a resident of the town or of the Commonwealth at the time of appointment but shall establish residence within the town within six months following appointment, unless the town council shall extend such time.

Section 4-2. Powers of Appointment.

Except as otherwise provided by this charter, the town manager shall appoint, based upon merit and fitness alone, all department heads, officers, subordinates, and employees for whom no other method of selection is provided in this charter except employees of the school department, airport commission and persons serving under officers elected directly by the voters of Barnstable.

All appointments made by the town manager are subject to the approval of the town council. In accordance with the procedures set forth in section 5-1, the town manager may be required, to consult with or engage in a joint recruitment and selection process with multiple member bodies, prior to the appointment of department heads or employees, who may provide policy advice, or support or receive direction from said multiple member bodies.

Section 4-3. Administrative Powers and Duties.

The town manager shall be the chief administrative officer of the town and shall be responsible to the town council for the proper operation of town affairs for which the town manager is

given responsibility under this charter. The powers, duties and responsibilities of the town manager shall include, but are not intended to be limited to, the following:

- (a) To supervise, direct and be responsible for the efficient administration of all officers appointed by the town manager and their respective departments and of all functions for which the town manager is given responsibility under this charter, by ordinance, or by vote of the town council.
- (b) To administer either directly or through a person or persons supervised by the town manager, in accordance with this charter, all provisions of general or special laws applicable to the town, all ordinances, and all regulations established by the town council.
- (c) To coordinate all activities of town departments or agencies.
- (d) To attend all regular and special meetings of the town council, unless excused, and to answer all questions addressed to the town manager which are related to matters under the general supervision of the town manager.
- (e) To keep the town council fully informed as to the needs of the town, and to recommend to the council for adoption such measures requiring action by them as the town manager deems necessary or expedient.
- (f) To insure that complete and full records of the financial and administrative activity of the town are maintained and to render reports to the town council as may be required.
- (g) To be responsible for the rental, use, maintenance and repair of all town facilities, except those under the jurisdiction of the school committee and the airport commission.
- (h) To be responsible for the purchase of all supplies, materials, and equipment, except books and other educational materials for schools and approve the award of all contracts, except contracts for educational materials.
- (i) To develop and maintain a full and complete inventory of all town owned real and personal property.
- (j) To administer personnel policies, practices, or rules and regulations, any compensation plan and any related matters for all town employees and to administer all collective bargaining agreements, except for school department agreements, entered into by the town.
- (k) To fix the compensation of all town employees and officers appointed by the town manager within the limits established by appropriation and any applicable compensation plan.
- (l) To be responsible for the negotiation of all contracts with town employees over wages, and other terms and conditions of employment, except employees of the school department and the airport commission. The town manager may employ special counsel to assist in the performance of these duties. Insofar as they require appropriations, contracts shall be subject to the approval of the town council. **[Amended by Town Council item 91-119 on 6/6/91; amendment approved by voters on 11/5/91]**
- (m) To prepare and submit an annual operating budget, capital improvement program and a long term financial forecast as provided in Part VI of this charter.

- (n) To keep the town council fully informed as to the financial condition of the town and to make recommendations to the town council as the town manager determines necessary or expedient.
- (o) To investigate or inquire into the affairs of any town department, agency or office.
- (p) To delegate, authorize or direct any subordinate or employee of the town to exercise any power, duty or responsibility which the office of town manager is authorized to exercise, provided, that all acts that are performed under such delegation shall be considered to be the acts of the town manager.
- (q) To perform such other duties as necessary or as may be assigned by this charter, by ordinance, or by vote of the town council.

Section 4-4. Compensation.

The town manager shall receive such compensation for services as the town council shall determine, but such compensation shall be within the limits of available appropriations.

Section 4-5. Vacancy in Office.

Any vacancy in the office of town manager shall be filled as soon as possible by the town council. Pending appointment of the town manager or the filling of any vacancy, the council shall forthwith appoint some other qualified person to perform the duties of the town manager. The appointment of the acting town manager shall be for a term not to exceed three months, provided however, a renewal, not to exceed an additional three months may be provided.

Section 4-6. Temporary Absence.

The town manager may designate by letter filed with the town council and town clerk a qualified officer of the town to perform the duties of the town manager during a temporary absence or disability. The town council may not revoke such designation until at least fourteen days have elapsed whereupon it may appoint such other person to perform the duties of the town manager. In the event of failure of the town manager to make such designation or if the person so designated is for any reason unable to serve, or is deemed not qualified by the town council, the town council may designate some other qualified person to perform the duties of the town manager until the town manager shall return.

Section 4-7. Removal of Town Manager.

The town council by affirmative vote of a majority of the full council may vote to terminate, remove or suspend the town manager from office in accordance with the following procedure:

Prior to removal or termination the town council shall adopt a preliminary resolution of removal by the affirmative vote of a majority of the full council. The preliminary resolution may suspend the town manager for a period not to exceed thirty days. A copy of the resolution shall be delivered to the town manager forthwith.

If so requested by the town manager, town council shall provide a written statement setting forth the reasons for the removal or termination.

Within five days after the receipt of the preliminary resolution, the town manager may request a public hearing by filing a written request for such hearing with the town council. If such a hearing is requested, the hearing shall be held at a meeting of the town council not later than twenty days from the date of request. At such hearing the town manager shall be entitled to address the town council and make comments related to the preliminary resolution.

If a public hearing has not been requested by the town manager, the town council may adopt a final resolution of removal, which may be effective immediately, by the affirmative vote of a majority of the full council at any time after ten days following the date of delivery of a copy of the preliminary resolution to the town manager. If the town manager requests a public hearing, the town council may, at the conclusion of the hearing or within five days of the conclusion of the hearing, adopt a final resolution of removal by an affirmative vote of majority of the full council.

The town council may suspend by an affirmative vote of the majority of the full council, the town manager pending and during any public hearing as requested by the town manager. The town manager shall continue to receive a salary until the final date of removal shall become effective unless provided otherwise. The action of the town council in terminating, removing or suspending the town manager shall be final.

Section 4-8. Annual Review of the Town Manager.

Annually the town council shall prepare and deliver to the town manager a written evaluation of the town manager's performance.

PART V Administrative Organization

Section 5-1. Organization of Town Agencies.

- (a) **Methods of Organization.** The organization of town into operating agencies for the provision of services and the administration of government may, pursuant to charter powers granted in section twenty of chapter 43B of the General Laws, be accomplished through either of two methods provided in this part.
- (1) **Ordinance.** Subject only to the express prohibitions in laws of the Commonwealth or the provisions of this charter, the town council may by ordinance, reorganize, consolidate, create, merge, divide or abolish any town agency, in whole or in part, establish such new town agencies as it deems necessary or advisable, determine the manner of selection, the term of office and prescribe the functions of all such agencies.
 - (2) **Executive Reorganizations.** The town manager may from time to time prepare and submit to the town council plans of organization or reorganization which establish operating divisions for the orderly, efficient or convenient conduct of business of the town. Whenever the town manager prepares such plan, the town manager shall hold

one or more public hearings on the proposal giving notice by publication in a local newspaper, which notice shall describe the scope of the proposal and the time and place at which the public hearing will be held, not less than seven nor more than fourteen days following the date of said publication. Following such public hearing, the proposal, which may have been amended by the town manager subsequent to the public hearing, shall be submitted to the town council.

An organization or reorganization plan shall become effective at the expiration of the sixty days following the date of submission of such proposal to the town council unless the town council shall, by a majority vote, vote to disapprove the plan. The town council may vote only to approve or disapprove the plan and no vote to amend or alter it shall be deemed in order.

The town manager may propose reorganization plans and subject only to express prohibitions in the laws of the Commonwealth or this charter, reorganize, consolidate or abolish in whole or in part town agencies, or establish such new town agencies as is deemed necessary to the same extent as is provided in section 5-1(a)(1) above, for ordinances; and for such purpose may transfer the duties and powers and so far as is consistent with the use for which the funds were voted by the council, transfer the appropriation of one town agency to another.

- (b) Repetitive Proposals. Whenever a reorganization proposal becomes effective, whether under the provisions of section (1) or (2), no proposal to again reorganize which deals with substantially the same subject matter shall be acted upon within eighteen months following the first reorganization, except on the petition of the town manager.
- (c) Publication of Administrative Code and Personnel Plan. For the convenience of the public, the administrative code and any amendments thereto shall be printed as an appendix to, but not an integral part, of the ordinances of the Town of Barnstable.¹

Section 5-2. Personnel Administration.

The Town Manager shall adopt rules and regulations establishing a personnel system. The personnel system shall make use of modern concepts of personnel management and may include, but not be limited to, the following elements: a method of administration; personnel policies indicating the rights, obligations and benefits of employees; a classification plan; a compensation plan; a method of recruiting and selecting employees based upon merit principles; a centralized record keeping system; a performance evaluation system; disciplinary procedures; and other elements that are determined necessary. All town agencies and positions shall be subject to the rules and regulations adopted under this section excluding employees of the school department, the libraries of the town and the airport commission.²

¹ Editor's Note: See Ch. 241, Administrative Code.

² Editor's Note: See Ch. 242, Personnel.

PART VI
Financial Procedures

Section 6-1. Annual Budget Policy.

The president of the town council shall call a joint meeting of the town council and school committee prior to the commencement of the budget process to review the financial condition of the town, revenue and expenditure forecasts and other relevant information in order to develop a coordinated budget. The town manager and superintendent of schools shall be required to develop an annual policy agreement on the allocation of the projected revenue between the general government operations and the school department operations. Said agreement shall be subject to review of the school committee and the town council.

Section 6-2. Submission of Budget; Budget Message.

Within the period prescribed by the laws of the Commonwealth, the town manager shall submit to the town council a proposed operating budget for all town agencies, which shall include the school budget as adopted by the school committee, for the ensuing fiscal year with an accompanying budget message and supporting documents. The budget message submitted by the town manager shall explain the budget in fiscal terms and in terms of work programs for all town agencies. It shall outline the proposed fiscal policies of the town for the ensuing fiscal year; describe important features of the proposed budget and indicate any major variations from the current budget, fiscal policies, expenditures and revenues together with reasons for such change. The proposed budget shall provide a complete fiscal plan of all town funds and activities and shall be in the form the town manager deems desirable.

The budget as adopted by the school committee shall be submitted to the town manager at least thirty days prior to the submission of the proposed budget to the town council.

Section 6-3. Action of the Budget.

- (a) **Public Hearing.** The town council shall publish in a newspaper of general circulation in the town a summary of the proposed operating budget as submitted by the town manager by a notice stating: (1) the times and places where copies of the entire proposed budget are available for inspection by the public, and (2) the date, time and place not less than fourteen days after such publication, when a public hearing on said proposed budget will be held by the town council. For the purpose of this section the summary of the proposed operating budget that is required to be published shall contain proposed appropriations, funding sources and any narrative summary deemed necessary by the town council.
- (b) **Adoption of the Budget.** The town council shall adopt the budget, with or without amendments, within forty-five days following the date the budget is filed with the clerk of the council. In amending the budget, the town council may delete or decrease any programs or amounts except expenditures required by law or for debt service, but except on the recommendation of the town manager, the town council shall not increase any item in or the total of the proposed budget, unless otherwise authorized by the laws of the Commonwealth.

If the town council fails to take action with respect to any item in the budget within forty-five days after receipt of the budget, such amount shall, without any action by the town council become a part of the appropriations for the year, and be available for the purposes specified.

Section 6-4. Supplementary Budgets and Appropriations.

Whenever the town manager shall submit to the town council a request for an appropriation of any sum of money, whether as a supplement to the annual operating budget or for an item or items not included therein, the town council shall not act upon such request until it has (a) given notice by publication in a local newspaper of the request, and (b) held a public hearing concerning such request. The publication and the public hearing shall be in conformity with the provisions of section 6-3(a) concerning the proposed annual operating budget.

Section 6-5. Capital Improvements Plan.

- (a) Preparation. The town manager shall, in conjunction with any committee established for such purpose, annually submit a capital improvement program to the town council at least thirty days prior to the date for submission of the operating budget, unless some other time is provided by ordinance.
- (b) Contents. The capital improvement plan shall include: (1) a clear summary of its contents; (2) an itemization of all capital improvements, including those of the school department, proposed to be undertaken during the next five fiscal years with supporting data; (3) cost estimates, method of financing, and recommended time schedules; and, (4) the estimated annual cost of operating and maintaining the facilities included.
- (c) Public Hearing. The town council shall publish in a newspaper of general circulation in the town a summary of the capital improvement plan and a notice stating: (1) the times and places where entire copies of the capital improvement plan are available for inspection by the public; and, (2) the date, time and place not less than fourteen days after such publication, when a public hearing on said plan will be held by the town council.
- (d) Adoption. At any time after the public hearing but before the first day of the last month of the current fiscal year, the town council shall by resolution adopt the capital improvement plan with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvement plan as submitted must clearly identify the method of financing proposed to accomplish this increase.

Section 6-6. Long Term Financial Forecast.

The town manager shall annually prepare a ten year financial forecast of town revenue, expenditures and the general financial condition of the town. The forecast shall include, but not be limited to, an identification of factors which will impact on the financial condition of the town, revenue and expenditure trends; potential sources of new or expanded revenues and any long or short term actions which may be taken that will enhance the financial condition of the

town. The forecast shall be submitted to the town council and shall be available to the public for inspection.

Section 6-7. Annual Audit.

The town council shall provide for an annual audit of the books and accounts of the town to be made by a certified public accountant, or firm of accountants, who have no personal interest, direct or indirect, in fiscal affairs of the town government or any of its offices.

Section 6-8. Financial Management Standards.

The town council may by ordinance establish reasonable standards relating to the management of financial systems and practices. Any standards adopted shall conform to modern concepts of financial management.

PART VII Nominations and Elections

Section 7-1. Town Elections; General and Preliminary.

The regular town election shall be held on the first Tuesday following the first Monday in November of each odd-numbered year.

On the seventh Tuesday preceding every regular town election, there shall be held a preliminary election for the purpose of nominating candidates. **[Amended by Town Council item 93-106; amendment passed by Act of Legislature August 6, 1993]**

Section 7-2. Preliminary Elections.

- (a) **Signature Requirements.** The number of signatures of voters required to place the name of a candidate on the official ballot to be used at a preliminary election shall be as follows: For an office which is to be filled by vote of the whole town, not less than one hundred and fifty. For an office which is elected by the voters in a precinct, not less than twenty-five signatures from said precinct.
- (b) **Ballot Position.** The order in which names of candidates appear on the ballot for each office shall be determined by a drawing by lot conducted by the town clerk in the presence of such candidates or their representatives as may choose to attend such drawings.
- (c) **Determination of Candidates for Election.** The two persons receiving at a preliminary election the highest number of votes for nomination for an office shall be the sole candidates for that office whose names may be printed on the official ballot to be used at the regular election at which such office is to be filled, and no acceptance of a nomination at a preliminary election shall be necessary to its validity.

If two or more persons are to be elected to the same office at such regular election, the several persons in number equal to twice the number to be so elected receiving at such

preliminary election the highest number of votes for nomination for that office shall be the sole candidates for that office whose names may be printed on the official ballot.

If the preliminary election results in a tie vote among candidates for nomination receiving the lowest number of votes, which but for said tie vote would entitle a person receiving the same to have the person's name printed upon the official ballot for the election, all candidates participating in said tie vote shall have their names printed upon the official ballot, although in consequence thereof, there be printed on such ballots the names of candidates exceeding twice the number to be elected.

- (d) **Nomination of Candidates; Conditions Making Preliminary Election Unnecessary.** If at the expiration of the time for filing petitions of candidates to be voted for at any preliminary election, not more than twice as many such petitions have been filed with the town clerk for an office as are to be elected to such office, the candidates whose petitions have thus been filed shall be deemed to have been nominated to said office and their names shall be voted on for such office at the succeeding regular election, and the town clerk shall not print said names upon the ballot to be used at said preliminary election and no other nomination to said office shall be made . If in consequence it shall appear that no names are to be printed upon the official ballot to be used at any preliminary election in any precinct or precincts of the town, no preliminary election shall be held in any such precinct or precincts.

Section 7-3. Regular Election.

- (a) **Information to Voters.** If the candidate in a regular town election is an incumbent of the office to which he seeks election, against his name shall appear the phrase "candidate for re-election."
- (b) **Ballot Position.** The order in which names of candidates appear on the ballot for each office in a regular town election shall be determined by a drawing by lot conducted by the town clerk in the presence of such candidates or their representatives as may choose to attend.

Section 7-4. Precincts.

The territory of the town shall be divided into precincts so established as to consist of as nearly equal a number of inhabitants as it is possible in compact and contiguous territory; bounded insofar as possible by the center line of known streets or ways or by other well defined limits.

Section 7-5. Application of State Laws.

Except as expressly provided in the charter and authorized by statute, all town elections shall be governed by the laws of the commonwealth relating to the right to vote, the registration of voters, the nomination of candidates, the conduct of preliminary and regular elections, the submission of charter amendments and other propositions, the counting of votes and the declaration of results.

PART VIII
Citizen Relief Mechanisms
(Free Petition; Initiative; Referendum; Recall, Open Meeting)

Section 8-1. Citizen Initiative Measures.

- (a) Commencement of Proceedings. Initiative procedures shall be started by the filing of an initiative petition with the town clerk. The petition shall be addressed to the town council or the school committee, shall contain a request for passage of a particular measure set forth in the petition and shall be signed by not less than ten percent of the total number of voters.

Signatures to initiative petitions need not be all on one paper. All such papers pertaining to any one measure shall be fastened together and shall be filed in the office of the town clerk as one instrument, with the endorsement thereon of the names and addresses of the persons designated as filing the same. With each signature to the petition, shall be stated the place of residence of the signer, giving the street and number, if any.

Within ten days of the filing of said petition the registrars of voters shall ascertain by what number of voters the petition is signed, and shall attach thereto their certificate showing the result of such examination.

The town clerk shall forthwith transmit the said certificate with the said petition to the town council or to the school committee, as appropriate, and at the same time shall send a copy of said certificate to the persons designated on the petition as filing the same.

When such certificate has been so transmitted, said petition shall be deemed to be valid unless written objections are made with regard to the signatures thereon by a voter within forty-eight hours after such certification by filing such objections with the town council or the school committee, and a copy thereof with the registrars of voters. Any such objection shall be determined forthwith.

- (b) Referral to Town Attorney. If the town clerk determines that a sufficient number of signers are voters, the town clerk shall transmit a copy of the petition to the town attorney.

Within fifteen days after receipt by the town attorney of the petition the town attorney shall advise the town clerk in writing whether the measure may be proposed by initiative procedures and whether it may lawfully be passed by the town council or the school committee. If the opinion of the town attorney is that the measure may not lawfully be passed, the town attorney shall state the reason or reasons therefor in said reply. The town clerk shall forthwith furnish a copy of the town attorney's opinion to the person designated on the petition as filing the same.

- (c) Initiative Petition; Requirements For Passage and Submission To Electorate. If any initiative petition is signed by voters equal in number to at least ten percent of the total number of voters, and in the opinion of the town attorney, such measure may lawfully be passed by the town council or the school committee, the town council or the school committee within twenty days after the date of the certificate of the registrars to that effect: (1) may pass said measure without alteration, subject to the referendum vote provided by this charter; or, (2) the town council shall call a special election to be held on a date fixed by it not less than thirty nor more than forty-five days after the date of the certificate

hereinbefore mentioned, and shall submit the proposed measure without alteration to a vote of the voters at that election; provided, that if any town election is otherwise to occur within one hundred and twenty days after the date of said certificate, the town council may, at its discretion, omit the calling of a special election and submit the proposed measure to the voters at such approaching election.

The ballots used when voting upon a proposed measure under this section shall state the nature of the measure in terms sufficient to show the substance thereof.

Section 8-2. Citizen Referendum Procedures; Referendum Petition; Effect on Final Passage.

If within ten days after the final passage of any measure a petition signed by voters equal in number to at least five per cent of the total number of voters, and addressed to the town council or to the school committee, as the case may be, protesting against such measure or any part thereof taking effect, is filed with the town clerk, the same shall thereupon and thereby be suspended from taking effect; and the town council or the school committee, as the case may be, shall immediately reconsider such measure or part thereof; and if such measure or part thereof is not entirely rescinded the town council shall submit the same, by the method herein provided, to a vote of the voters either at the next regular town election, or at a special election which may, in its discretion, be called for the purpose and such measure or part thereof shall forthwith become null and void unless a majority of the voters voting on the same at such election vote in favor thereof. The petition described in this section shall be termed a referendum petition and section 8-1(a) shall apply to the procedure in respect thereto, except that the words "measure or part thereof protested against" shall for this purpose be understood to replace "measure" in said section whenever it may occur, and "referendum" shall be understood to replace the word "initiative" in said section.

Section 8-3. Required Voter Participation.

For any measure to be effective under initiative procedure and for any measure to be declared null and void under any referendum procedure at least twenty percent of the voters shall vote at an election upon which an initiative or referendum question is submitted to the voters.

Section 8-4. Measures Not Subject to Initiative and Referendum.

Measures which include the following subject matter shall not be subject to initiative and referendum procedures: (a) revenue loan orders; (b) appropriations for the payment of debt or debt service; (c) internal operational procedures of the town council and the school committee; (d) emergency measures; (e) the town budget as a whole or the school committee budget as a whole; (f) appropriation of funds to implement a collective bargaining agreement; (g) procedures relating to election, appointment, removal, discharge or any other personnel action; and (h) proceedings providing for the submission or referral of a matter to the voters at an election.

Section 8-5. Submission of Proposed Measure to Voters.

The town council may, of its own motion, and shall, upon request of the school committee if a measure originates with that committee and pertains to the affairs under its administration, submit to a vote of the voters for adoption or rejection at a general or special town election any proposed measure, or a proposition for the repeal or amendment of any measure, in the same manner and with the same force and effect as are hereby provided for submission on petition.

Section 8-6. Measures with Conflicting Provisions.

If two or more proposed measures passed at the same election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

Section 8-7. Free Petition.

- (a) Individual Petitions, Action Discretionary. The town council and the school committee shall receive all petitions which are addressed to them and signed by a voter and may, in their discretion, take such action with regard to such petitions as they deem necessary and appropriate.
- (b) Group Petitions; Action Required. The town council or the school committee, as the case may be, shall hold a public hearing and act by taking a vote on the merits of every petition which is addressed to it and which is signed by at least one-hundred fifty voters. The hearing shall be held by the town council or the school committee, or, in either case, by a committee or subcommittee thereof and the action by the town council or school committee shall be taken not later than three months after the petition is filed with the town clerk. Hearings on two or more petitions filed under this section may be held at the same time and place. The town clerk shall mail notice of the hearing to ten petitioners whose names first appear on each petition at least seven days before the hearing. Notice by publication at least seven days prior to all such hearings shall also be made, and shall be at public expense. No hearing shall be heard upon any one subject more than once in any given twelve month period.

Section 8-8. Recall of Elected Office Holders.

- (a) Application. Any holder of an elected office in the town, with more than six months remaining in the term of office for which the officer was elected, may be recalled therefrom by the voters of the town in the manner provided in this section. No recall petition shall be filed against an officer within six months after taking office.
- (b) Recall Petition. A recall petition may be initiated by the filing of an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall, provided that, the affidavit is signed by at least one hundred voters for any officer elected at large and at least fifty voters for any officer elected by precinct.

The town clerk shall thereupon deliver to said voters making the affidavit, copies of petition blanks demanding such recall, copies of which printed forms the town clerk shall keep available. Such blanks shall be issued by the town clerk, with signature and official

seal attached thereto. They shall be dated, shall be addressed to the town council and shall contain the names of all the persons to whom they are issued, the number of blanks so issued, the name of the person whose recall is sought, the office from which removal is sought and the grounds of recall as stated in the affidavit. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk. Said recall petition shall be returned and filed with the town clerk within ten days after the filing of the affidavit, and shall have been signed by at least ten per cent of the registered voters of the town for any officer elected at large. For any officer elected by precinct, said recall petition shall be returned and filed with the town clerk within ten days after the filing of the affidavit, and shall have been signed by at least ten per cent of the voters from the precinct the officer to be recalled represents.

The town clerk shall forthwith submit the petition to the registrars of voters in the town, and the registrars shall, within five working days, certify thereon the number of signatures which are names of registered voters of the town.

- (c) Recall Election. If the petition shall be found and certified by the town clerk to be sufficient, the town clerk shall submit the same with such certificate to the town council within five working days, and the town council shall forthwith give written notice of the receipt of the certificate to the officer sought to be recalled and shall, if the officer does not resign within five days thereafter, order an election to be held on a date fixed by them not less than forty-five and not more than sixty days after the date of the town clerk's certificate that a sufficient petition has been filed; provided, however, that if any other town election is to occur within sixty days after the date of the certificate the town council shall postpone the holding of the recall election to the date of such other election.

The recall election for any officer elected by precinct, shall only be held in the precinct that the officer represents.

If a vacancy occurs in said office after a recall election has been ordered, the election shall not proceed as provided in this section.

- (e) Office Holder. The incumbent shall continue to perform the duties of the office until the recall election. If said incumbent is not recalled, the incumbent shall continue in office for the remainder of the unexpired term subject to recall as before. If recalled the officer shall be deemed removed and the office vacant. The vacancy created thereby shall be filled in accordance with this charter. Any person appointed to fill the vacancy caused by such recall shall hold office for the unexpired term of the officer recalled.
- (f) Ballot Proposition. The form of the question to be voted upon shall be substantially as follows:

“Shall [here insert the name and title of the elective officer whose recall is sought] be recalled?”

If a majority of the votes cast upon the question of recall is in the affirmative, such elected officer shall be recalled.

No recall election shall be effective unless at least twenty percent of those entitled to vote shall have voted.

- (g) Repeat of Recall. In the case of an officer subjected to a recall election and not recalled thereby, no recall petition shall be filed against such officer until at least sixty days after the election at which the officer's recall was submitted to the voters of the town.
- (h) Office Holder Recalled. No person who has been recalled from an office or who has resigned from office while recall proceedings were pending against such person, shall be appointed to any town office within one year after such recall or such resignation.

Section 8-9. Open Meeting of the Voters.

The town council may call meetings of the voters of the town. Upon the request in writing of three hundred voters setting forth the purpose (the specific purposes) thereof, the town council shall call a meeting of the voters. The president of the town council or other designee of the town council, shall preside and regulate the proceedings of such meetings. The president of the council shall cause the attendance of town officials and employees necessary to respond to the issues and concerns raised by petitioners.

ARTICLE IX **General Provisions**

Section 9-1. Charter Revision or Amendment.

The charter may be replaced, revised or amended in accordance with any procedure made available by Article LXXXIX of the Amendments to the Constitution of the Commonwealth and any laws of the Commonwealth enacted to implement said constitutional amendment.

Section 9-2. Severability.

The provisions of this charter are severable. If any of the provisions of this charter are held to be unconstitutional, or invalid, the remaining provisions of this charter shall not be affected thereby. If the application of this charter, or any of its provisions, to any person or circumstances is held to be invalid, the application of said charter and its provisions to other persons or circumstances shall not be affected thereby.

Section 9-3. Rules of Interpretation.

The following rules shall apply when interpreting the charter:

- (a) Specific Provisions to Prevail. To the extent that any specific provision of the charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.
- (b) Number and Gender. Words imparting the singular number may extend and be applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender.
- (c) References to General Laws. All references to the general laws or the laws of the Commonwealth contained in the charter refer to the general laws of the Commonwealth of Massachusetts and are intended to include any amendments or revisions to such chapters

and sections or to the corresponding chapters and sections of any rearrangement of the general laws enacted subsequent to the adoption of the charter.

- (d) Computation of Time. In computing time under the charter, if seven days or less, only business days, not including Saturdays, Sundays, or legal holidays shall be counted; if more than seven days, every day shall be counted.

Section 9-4. Definitions.

Unless another meaning is clearly apparent from the manner in which the word is used, the following words as used in the charter shall have the following meanings:

- (a) Administrative Code — The term “administrative code” shall mean a written description of the administrative organization of town offices, departments and multiple member bodies. The administrative code shall state the mode of selection, term of office and general powers and duties of each town office department and multiple member body.
- (b) Charter — The word “charter” shall mean this charter and any amendments to it made through any methods provided under Article LXXXIX of the Amendments to the Constitution of the Commonwealth.
- (c) Emergency — The word “emergency” shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action.
- (d) Town — The word “town” shall mean the town of Barnstable.
- (e) Voters — The word “voters” shall mean registered voters of the town.
- (f) Majority Vote — The words “majority vote” shall mean a majority of those present and voting, provided a quorum is present when a vote is taken, unless a higher number is required by law, this charter, or by the town council’s own rules.
- (g) Town Agency or Agency — The words “town agency” or the word “agency” shall mean any board, commission, committee, department or office of town government, whether elected, appointed or otherwise constituted.
- (h) Multiple Member Body — The words “multiple member body” shall mean any board, commission or committee.

Section 9-5. Removal of Member of Multiple Member Bodies.

Any officials appointed by the council to a multiple member body may be removed from office by the town council if said official fails to attend regularly scheduled meetings for a period of three consecutive months without express leave from the chairman of such multiple member body, unless the town council shall determine otherwise. Any such appointed official shall be automatically removed from office if such person is convicted of a felony or if such person is absent from such duties for the period of one year notwithstanding the permission from the chairman to be absent.

ARTICLE X
Transitional Provisions

Section 10-1. Continuation of Existing Laws.

All bylaws, resolutions, rules, regulations, and votes of the town meeting which are in force at the time this charter is adopted, not inconsistent with the provisions of this charter, shall continue in full force until amended or repealed.

Where provisions of this charter conflict with provisions of town bylaws, rules, regulations, orders, and special acts and acceptances of laws of the Commonwealth, the charter provisions shall govern. All provisions of town bylaws, rules, regulations, orders and special acts not superseded by this charter shall remain in force.

Section 10-2. Existing Officials and Employees.

Any person holding a town office or employment under the town shall retain such office or employment and shall continue to perform the duties of the office until provisions shall have been made in accordance with this charter for the performance of the said duties by another person or agency. No person in the permanent full-time service or employment of the town shall forfeit pay grade or time in service. Each such person shall be retained in a capacity as similar to the person's former capacity as is practical.

Section 10-3. Continuation of Government.

All town officers, boards, commissions or agencies shall continue to perform their duties until re-appointed, or re-elected, or until successors to their respective positions are fully appointed or elected or until their duties have been transferred and assumed by another town office, board, commission or agency. It is the intention of the charter commission that the present relationship of the town with the libraries of the town shall continue.

Section 10-4. Continuation of Obligations.

All official bonds, obligations, contracts and other instruments entered into or executed by or to the town before the adoption of this charter, and all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the town, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by this charter. No legal act done by or in favor of the town shall be rendered invalid by the adoption of this charter.

Section 10-5. Transfer of Records and Property.

All records, property and equipment whatsoever of any office, board, commission, committee or agency or part thereof, the powers and duties of which are assigned in whole or in part to another town office, board, commission or agency shall be transferred forthwith to such office, board, commission or agency.

Section 10-6. Authority to Reorganize.

For the purpose of the authority to reorganize town offices, departments and agencies as provided for in section 5-1 of this charter, Chapter 274 of the Acts of 1931, as most recently amended by Chapter 296 of the Acts of 1976 (An Act providing that the Board of Sewer Commissions in the Town of Barnstable be known as the Water Pollution Control Board) and provisions of previous charters, chapter 76 of the acts of 1981 (An Act Establishing the Sandy Neck Governing Board of the Town of Barnstable) and chapters 215 (An Act Establishing A Department of Planning and Development, An Economic and Community Development Commission, a Planning Board , and a Zoning Board of Appeals in the Town of Barnstable) and 295 of the Acts of 1984 (An Act Relative to The Zoning Board of Appeals of the Town of Barnstable) shall be deemed to be part of the town ordinances and may be amended, repealed or revised in accordance with the provisions of section 5-1. Notwithstanding any provision of this charter to the contrary the airport commission, if any, shall have all the powers, duties and responsibilities as provided in General Law, chapter 90. [Town Council amended by item 91-121 passed unanimously 6/6/91; amendment approved by voters 11/5/1991]

Section 10-7. Time of Taking Effect.

This charter shall become fully effective upon ratification by the voters, except as otherwise provided in this section:

- (a) A special election to elect the first officers under this charter shall be held on the third Tuesday in July following the adoption of this charter. A preliminary election to nominate candidates shall be held on the fourth Tuesday preceding such special election. At such election the voters shall elect the town council, two members of the school committee and the housing authority.

Precincts having been recently realigned, there shall be two councillors elected from each of the nine precincts. The eighteen members of the town council shall be elected at said special election in the following manner: in each precinct the candidate receiving the highest number of votes shall be elected for a term of four years and the other candidate elected shall serve a term of two years, thereafter, at the expiration of terms of four years as provided in section 2-1.

The terms of office of the two incumbent members of the school committee elected for terms of offices which were intended to expire at the annual town election in 1990, shall be terminated and their successors shall be elected at the special election to elect the first officers under this chapter. At such special election the candidate receiving the highest number of votes shall be elected to serve a term of four years and the other candidate shall be elected to serve a term of two years and thereafter upon the expiration of said terms of office candidates shall be elected for terms of four years in accordance with section 3-3 of this charter.

The two incumbent members of the school committee who are elected for terms of office at the annual town election held in April 1989 shall have their terms of office extended to the regular town election to be held in November 1993 at which time their successors shall be elected. At such regular election the candidates shall be elected for terms of four years in accordance with section 3-3 of this charter.

The term of office of the incumbent member of the school committee who is elected to fill an unexpired term of office at the annual town election in April 1989 shall be extended to the regular town election to be held in November 1991 and at such time a successor shall be elected to serve a term of four years in accordance with section 3-3 of this charter.

At such special election the term of the four elected incumbent members of the housing authority shall terminate and their successors shall be elected. The two candidates receiving the highest number of votes shall be elected for terms of four years and the two other candidates elected shall serve terms of office members shall be elected for terms of four years as provided in section 3-7.

In the year in which this charter is adopted a regular municipal election shall not be held in accordance with section 7-1 of this charter. Terms of office of any officer elected for a term of two years at said special election shall be extended to expire at the organization of town government after the regular town election for a term of four years at said special election shall be extended to expire at the organization of town government after the regular town election in November 1993.

- (b) The incumbent in the office of tax collector (town collector) shall continue to serve in said office and the term of office of said tax collector shall be extended to the regular town election held after the adoption of this charter in 1991 at such time the office of town collector shall be elected in accordance with section 3-6 of this charter.
- (c) The incumbent serving in the office of treasurer and office of town clerk shall continue to serve in said offices and the term of such offices shall be extended to the regular town election held after the adoption of this charter in 1993, at such time the office of town clerk shall be elected in accordance with section 3-5 of this charter. Upon the adoption of the charter the office of town treasurer shall become an appointive position and the incumbent in the said office shall continue in office until a successor is appointed in accordance with section 4-2.

Upon the appointment of the treasurer, the town manager, the town clerk, the director of finance, and the personnel director shall come together to evaluate the staffing needs of each entity (the town clerk and the treasurer), and shall divide the existing staff in the town clerk/treasurers office in such a way as to provide adequate staff coverage for each function. Requests for additional staffing which may be required as a result of the division of these offices shall be forwarded to the town council by the town manager as soon as possible after said division of staff.

- (d) As soon as possible following the election the town clerk shall call together persons elected to the town council for the purpose of taking their oaths of office, to choose a president and vice president of the town council and to adopt any temporary rules governing the conduct of meetings of the town council.
- (e) Following the organization meeting of the town council, the town council shall prepare to assume its full powers, duties and responsibilities which will devolve upon the town council under this charter by undertaking the following tasks: (1) The council president shall as soon as practicable appoint a committee of the council to develop rules and regulations governing the conduct of council meetings and business. Said committee shall propose such rules and regulations for review and adoption by the council as a whole

within forty-five days following the organization of government. (2) The town council shall establish a process for the selection of the town manager which shall enable the council to appoint a town manager by the first day of March or as soon as practical thereafter; provided, however, the town council shall if it has not appointed a town manager by the first day of March appoint an acting town manager in accordance with section 4-5 of this charter; (3) The town council shall provide for a review of all bylaws to bring them into conformity with the charter.

- (f) The representative town meeting in office at the time of the election shall continue to conduct all the legislative business of the town until the full power of the town council shall become operative on the first secular day of January following the election of the council. On the first secular day of January the terms of office of all members of the representative town meeting shall be terminated and the representative town meeting shall cease to exist. The office of the moderator shall cease to exist on said first secular day of January. The powers of the town council shall become fully effective upon said first secular day of January.
- (g) The board of selectmen shall continue to be responsible for the general operation and business of town government and shall continue to perform all of the powers, duties and responsibilities of the office until the first day of March at which time the board of selectmen shall have only the powers granted to boards of assessors under the laws of the Commonwealth.

The board of selectmen in office at the time of the election establishing the town council shall continue to serve in that office until the first day of March in the year following the adoption of this charter and as of said first day of March the terms of office of all members of the board of selectmen shall be terminated and the board of selectmen shall cease to exist as the board of selectmen, except that the board shall continue to have powers of and to act as the board of assessors and shall be called the board of assessors. The persons serving as members of the board of assessors shall continue to serve until such time as successors are appointed by the town council. If, at any time after the election establishing the town council, more than one member of the board of selectmen shall resign from office, the town council shall have the power to appoint an acting town manager in accordance with section 4-5 of this charter and the powers of the board of selectmen shall be limited to those of the board of assessors.

The members of the board of selectmen in office at the time of the election shall continue to be compensated in the current manner until the last day of March in the year following the adoption of this charter.

- (h) The preparation of the operating and capital budgets shall continue to be prepared in the manner that is now provided for except that the finance committee and the capital outlay committee shall submit their recommendations to the town council no later than the first day of April in the year following the adoption of this charter. The finance committee shall cease to exist on the first day of May in the year following the adoption of this charter.
- (i) Subject to appropriation, members of the town council shall receive \$1,500 per annum and the president of the council shall receive \$2,000 per annum. These amounts shall continue until such amount is changed by the town council in accordance with provisions of this charter.

(j) Subject to appropriation, the initial salary of the town manager shall not be less than \$60,000.

(k) Until such time as another form of organization is established in accordance with section 5-1 of this charter the following organization shall be in effect in the town of Barnstable:

(1) The town manager shall appoint subject to the approval of the town council:

- a town attorney
- a town accountant/director of finance
- a town treasurer
- a police chief
- a director of personnel
- a building commissioner
- a director of civil defense
- an inspector of animals
- the constables
- a dog officer
- the fence viewers
- a forest fire warden
- a gas inspector
- a harbor master

and, all other officers, department heads, and employees for whom no other method of appointment is provided.

(2) The town manager shall appoint subject to the approval of the town council:

- a superintendent of public works after consultation with the public works commission;
- a director of recreation after consultation with the recreation commission;
- a director of planning and development after consultation with the planning board and zoning board of appeals;
- a conservation agent after consultation with the conservation commission;
- a health agent after consultation with the board of health
- a chief ranger after consultation with the Sandy Neck governing board;
- a director of assessing after consultation with the board of assessors; and,
- a director of the council on aging after consultation with the council on aging.

For the purpose of this section consultation shall mean that each multiple member body cited herein shall have an opportunity to interview job candidates and make recommendations to the town manager.

Appointments made by the town manager shall be for the same term of office as currently provided for, until other provisions are made in accordance with this charter.

(3) The town council shall appoint:

- a board of assessors
 - a planning board
 - a conservation commission
 - a zoning board of appeals
 - a council on aging
 - an airport commission
 - a capital outlay and planning committee
 - a Sandy Neck governing board except those members that are appointed by another multiple member body;
 - a government study committee
 - a board of health
 - an historical commission
 - a public works commission
 - a recreation commission
 - a town library committee nominated by the boards of the libraries of the town
- and, all other multiple member bodies for whom no other method of appointment is provided.

Appointments made by the town council shall be for the same term of office, and the same number of members for each multiple member body as currently provided for, until other provisions are made in accordance with this charter.

- (l) The town manager shall review the organization of the town government and prepare an administrative code in accordance with section 5-1 of this charter. The town manager shall submit said administrative code to the town council within six months of appointment.
- (m) The town council shall within sixty days after assuming its full powers file a special act with the Great and General Court of the Commonwealth to provide that civil service coverage is not extended beyond the coverage that is already granted to selected employees or employee groups of the town. The town shall also review and consider other laws of the Commonwealth which may affect the town as a result of the adoption of this charter and file any special legislation as deemed necessary.
- (n) The town council shall commission a study of all the water and fire districts within the town of Barnstable. The purpose of said study is to evaluate the advantages and or disadvantages of such a consolidation, as well as evaluating the economic feasibility and viability of consolidating such districts. Said study shall be completed within two years of the creation of the town council.

- (o) Until such time as provided otherwise by ordinance the recreation commission shall have jurisdiction over playgrounds and athletic fields, including those under the jurisdiction of the school committee except during the regular school year or at other times when such facilities are reserved for use for Town of Barnstable school activities.
- (p) In negotiating future cable contracts for providing residents with cable television services the appropriate town committees and the town administration shall attempt to negotiate provisions which shall provide televised council meetings as a public access service.

THE CODE

PART I

GENERAL

ORDINANCES

Chapter 1

GENERAL PROVISIONS

ARTICLE I

Noncriminal Enforcement of Violations

- § 1-1. Alternative method of enforcement.
- § 1-2. Enforcing officials designated.
- § 1-3. Schedule of Fines.
- § 1-4. Fines for violations of Health regulations.
- § 1-5. Fines for violations of Town Manager's regulations.
- § 1-6. Fines for violations of Conservation Commission regulations.
- § 1-6.1. Fines for violation of Marine and Environmental Affairs Division Regulations

ARTICLE II

Schedule of Parking Fines

- § 1-7. Parking fines in effect.

ARTICLE III

Adoption of Code by Town Council

- § 1-8. Adoption of Code.
- § 1-9. Code supersedes prior ordinances.
- § 1-10. When effective.
- § 1-11. Inclusion of Ordinance in Code.

- § 1-12. Copy of Code on file.

- § 1-13. Publication; filing.

- § 1-14. Amendments to Code.

- § 1-15. Inclusion of new legislation prior to adoption of Code.

- § 1-16. Code book to be kept up-to-date.

- § 1-17. Sale of Code book.

- § 1-18. Altering or tampering with Code; penalties for violation.

- § 1-19. Severability.

- § 1-20. Repeal of ordinances.

- § 1-21. Ordinances saved from repeal.

- § 1-22. Changes in previously adopted ordinances.

ARTICLE IV

Adoption of Codified Zoning

- § 1-23. Adoption of codified Zoning Ordinance.

- § 1-24. Revisions to Zoning Ordinance.

- § 1-25. When effective.

ARTICLE V

Adoption of Regulations as Codified

- § 1-26. Adoption of codified regulations.

- § 1-27. Revisions to regulations.

- § 1-28. Ratification of codified regulations.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Board of Health regulations — See Part III.

Town Manager regulations — See Part IV.

ARTICLE I

Noncriminal Enforcement of Violations

[Adopted 11-5-1988, approved 1-3-1989; amended 12-19-1991; 6-5-2003 by Order No. 2003-091 (Art. I of Ch. IV of the General Ordinances as updated through 7-7-2003)]

§ 1-1. Alternative method of enforcement.

Noncriminal disposition shall be an alternative method of enforcement of Town ordinances.

§ 1-2. Enforcing officials designated.

- A. Any ordinance of the Town of Barnstable, or rule or regulation of its boards, commissions and committees, the violation of which is subject to a specific penalty, may in the discretion of the Town official who is the appropriate enforcing person, be enforced in the method provided in § 21D of Chapter 40 of the General Laws. "Enforcing person," as used in this article, shall mean:
- (1) The Town Manager or any police officer of the Town of Barnstable, with respect to any offense; and
 - (2) The Airport Manager and his designees;
 - (3) The Building Commissioner and his designees; **[Amended 1-20-2005 by Order No. 2005-038]**
 - (4) The Natural Resource Division Supervisor and his designees;
 - (5) The Conservation Agent and his designees;
 - (6) The Harbormaster and his designees;
 - (7) The Director of the Public Health Division and his designees;
 - (8) The Director of Regulatory Services and his designees; **[Amended 12-4-2008 by Order No. 2009-044]**
 - (9) The Tree Warden and his designees; and
 - (10) Such other officials as the Town Manager may from time to time designate, each with respect to violation of ordinances and rules and regulations within their respective jurisdictions.
- B. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto.

§ 1-3. Schedule of Fines. [Amended 9-2-2004 by Order No. 2005-004; 11-4-2004 by Order No. 2005-019; 1-20-2005 by Order No. 2005-038; 6-1-2006 by Order No. 2006-127; 9-2-2010 by Order No. 2011-003; 5-5-2011 by Order No. 2011-097; 8-1-2013 by Order No. 2013-043]

The following shall be the schedule of fines for the method of enforcement authorized by § 1-2:

Code	Subject	Fine
Ch. 17	Alarm system	\$100
Ch. 20, Art. I	Alcoholic beverages (open containers)	\$200
Ch. 20, Art. II	Alcoholic beverages (minors)	\$200
Ch. 24, Art. II, § 24-4	Keeping of roosters	
	First violation	\$25
	Second violation	\$50
	Third violation	\$100
Ch. 32, Art. I	Operations of vehicles on beach	\$100
Ch. 32, Art II	Obstruction of public access	\$100
Ch. 40, Art. I	Motorboats on waterways	\$50
Ch. 40, Art II	Houseboats	\$100
Ch, 40, Art. III	Moorings	
	First offense	\$100
	Second offense	\$200
	Third and subsequent offenses	\$300
Ch. 43	Body-piercing	\$100
Ch. 47	Building procedures	\$100
Ch. 51	Numbering of buildings	\$50
Ch. 57	Sale of cigarettes from machines	\$100
Ch. 59	Comprehensive occupancy	\$100
Ch. 80	Fire lanes	\$100
Ch. 89	Gambling	\$200
Ch. 93	Garage sales	\$25
Ch. 100, Art. I	Distribution of advertising	\$50
Ch. 100, Art. II	Commercial handbills	\$100
Ch. 104	Handicapped parking	\$100
Ch. 108	Toxic and hazardous materials	\$200
Ch. 112, Art. I	Historic properties	\$100
Ch. 121, § 121-7	Town Manager regulations	\$100
Ch. 125	Saunter or loitering	\$50

Code	Subject	Fine
Ch. 128	Operation of motorized conveyance on ways or places to which public has right of access	\$50
Ch. 133	Anti-noise regulation	\$150
Ch. 141, Art. I	Use of land on Main Street	\$50
Ch. 147, Art. II	Camping on public or private property	\$100
Ch. 147, Art. III	Protection of privacy	\$50
Ch. 150	Hawker or peddler	\$100
Ch. 166	Raffles and bazaars	\$100
Ch. 170	Rental registration	
	Any violation	\$100
	Two documented violations by owner in a 12-month period	\$300
Ch. 173	Roller-skating and skateboarding	\$50
Ch. 177, Art. I	Vehicle within a closed area (Sandy Neck Beach Park)	\$150
Ch. 177, Art. I	Vehicle without a valid permit (Sandy Neck Beach Park)	\$150
Ch. 180	Scenic roads	\$50
Ch. 184, Art. I	Sewer use	\$100
Ch. 192, Art. I	Advertising devices and billboards	\$100
Ch. 192, Art. II	Signs	\$100
Ch. 198	Removal of soil; sand pits	\$50
Ch. 206, Art. II	Snow, ice and vehicle removal	\$50
Ch. 210	Swimming pools	\$20
Ch. 221	Town trees	\$100
Ch. 228	Unregistered motor vehicles	\$200
Ch. 232	Wastewater discharge	\$250
Ch. 237	Wetlands protection	\$100
Ch. 240	Zoning	\$100

§ 1-4. Fines for violations of Health regulations. [Amended 12-4-2008 by Order No. 2009-044]

Offense	Fine
Violation of Board of Health regulations	\$100
Violation of 105 CMR 410, State Sanitary Code, Chapter 2, Minimum Standards for Fitness for Human Habitation	\$100

§ 1-5. Fines for violations of Town Manager's regulations.

Offense	Herring Regulations	Fine
Taking herring or alewives on a closed day		\$50
Failure to remove fish caught		\$50
Obstructing passage of herring or alewives		\$100

Offense	Fine
Shellfishing Rules and Regulations	
Shellfishing without a valid permit	\$50
Taking of shellfish during a closed season	\$50
Taking of shellfish on a closed day	\$75
Removing shell from shellfish before coming ashore	\$75
Taking shellfish in excess of family weekly limit or the amount allowed on a family special permit	\$75
Taking scallops in excess of family weekly limit	\$75
Taking scallops in other than designated area	\$75
Taking sea worms on Saturday	\$15
Taking sea worms in excess of 100 per family per week.	\$15
Selling shellfish, sea worms or eels with a family permit	\$75
Failure to visibly display permit while shellfishing	\$15
Transfer of family permit	\$15
Shellfishing under 12 years old without licensed adult	\$15
Shellfishing in closed area and/or damaging public and/or private culturing gear in a closed area	\$100
Taking shellfish in excess of commercial daily limit	\$300
More than two commercial permits per boat	\$75
Possession of more than 5% seed per batch of shellfish	\$300
Taking scallops without a well-defined annual growth ring	\$25
Using other than tools permitted for shellfishing	\$75
Use of scallop dredge in excess of 32 inches width	\$75
Dredging scallops in air temperature below 28° F.	\$15
Diving for shellfish without displaying proper flag	\$75
Taking of shellfish from any shellfish grant	\$100
Shellfishing during nighttime hours as defined	\$300

Offense	Fine
Dog Regulations	
Violations of dog regulations	\$50

§ 1-6. Fines for violations of Conservation Commission regulations. [Amended 2-3-2011 by Order No. 2011-045]

Offense	Fine
Wetlands Violations (Ch. 237)	
Violations within wetlands resource area	\$200
Violations within 100 feet of a wetlands resource area	\$200
Failure to comply with an enforcement order issued by the Barnstable Conservation Commission or its agents	\$300
Any unauthorized activity beyond the scope of an order of conditions, determination of applicability or certificate of compliance issued by the Conservation Commission	\$300

Offense	Fine
Land Use Regulations (Ch. 701)	
Littering	\$300
Illicit dumping	\$300
Unauthorized vehicle use (cars, trucks, ATV, motorcycles, dirtbikes):	
First offense	\$100
Second offense	\$200
Cutting or removal of vegetation, soil, or stone	\$200
Consumption of alcoholic beverages	\$100
Camping	\$200
Defacing or destruction of any structure, sign or gate.	\$200

Offense	Fine
Shooting Range (Ch. 702)	
Violations of shooting range regulations	\$150

§ 1-6.1. Fines for violation of Marine and Environmental Affairs Division Regulations [Added 9-2-2010 by Order No. 2011-003]

Offense	Fine
Violation of Sandy Neck Beach regulations	\$50

ARTICLE II
Schedule of Parking Fines

[Adopted 5-6-2004 by Order No. 2004-077; amended in its entirety 1-5-2012by Order No. 2012-034]

§ 1-7. Parking fines in effect.

The following Schedule of Parking Fines shall be in effect in the Town of Barnstable:

Type of Violation	Amount of Fine
Handicap	\$100
Fire lane	\$50
Fire hydrant	\$50
Overtime	\$25
Meter	\$25
Other parking violations	\$25

ARTICLE III
Adoption of Code by Town Council
[Adopted 1-20-2005 by Order No. 2005-038]

§ 1-8. Adoption of Code.

The ordinances of the Town of Barnstable of a general and permanent nature adopted by the Town Council, as previously consolidated by the Town of Barnstable, as amended through May 6, 2004, and Schedule A of this ordinance, and the ordinances of a general and permanent nature adopted by the Town Council subsequent to that date, all as revised, codified and consolidated into chapters and sections by General Code Publishers Corp., and consisting of Chapters 1 through 239; and the Administrative Code of the Town of Barnstable adopted by the Town Council as an appendix to but not an integral part of the general ordinances pursuant to Section 5-1(2)(c) of the Charter of the Town of Barnstable, as amended through May 6, 2004, and Schedule A of this ordinance, all as revised, codified and consolidated into chapters and sections by General Code Publishers Corp., and consisting of Chapter 241; are hereby approved, adopted, ordained and enacted as the Code of the Town of Barnstable, hereinafter known and referred to as the "Code." The terms "ordinance,"

"ordinances" and "ordinances of a general and permanent nature" whenever employed herein shall include the provisions of the Administrative Code for purposes of this recodification, except that the term "this ordinance" shall refer to this docket number 2005-038.

§ 1-9. Code supersedes prior ordinances.

This ordinance and the Code shall supersede all other general and permanent ordinances enacted prior to the enactment of this Code, except such ordinances as are hereinafter expressly saved from repeal or continued in force.

§ 1-10. When effective.

This ordinance shall take effect immediately upon passage and publication according to law.

§ 1-11. Inclusion of Ordinance in Code.

This ordinance shall, upon adoption, be included in the Code as Chapter 1, General Provisions, Article III, Adoption of Code.

§ 1-12. Copy of Code on file.

A copy of the Code in loose-leaf form has been filed in the office of the Town Clerk and shall remain there for use and examination by the public until final action is taken on this ordinance; and, if this ordinance shall be adopted, such copy shall be certified to by the Clerk of the Town of Barnstable by impressing thereon the Seal of the Town as provided by law, and such certified copy shall remain on file in the office of the Clerk of the Town to be made available to persons desiring to examine the same during all times while the said Code is in effect.

§ 1-13. Publication; filing.

The Clerk of the Town of Barnstable, pursuant to law, shall cause to be published, in the manner required, a copy of this adopting ordinance in a newspaper of general circulation in the Town. Sufficient copies of the Code shall be maintained in the office of the Clerk for inspection by the public at all times during regular office hours. The enactment and publication of this adopting ordinance, coupled with the availability of copies of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-14. Amendments to Code.

Any and all additions, amendments or supplements to the Code, when passed and adopted in such form as to indicate the intent of the Town Council to make them a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code of the Town of Barnstable shall be understood and intended to include such additions and amendments. Whenever such additions, amendments or supplements to the Code shall be adopted, they

shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing the said Code as amendments and supplements thereto.

§ 1-15. Inclusion of new legislation prior to adoption of Code.

All ordinances of a general and permanent nature adopted subsequent to the date given in § 1-21A and prior to the effective date of this ordinance given in § 1-10 are hereby deemed to be part of the Code and shall, upon being printed, be included therein. Attested copies of all such legislation shall be temporarily placed in the Code until printed supplements are included.

§ 1-16. Code book to be kept up-to-date.

It shall be the duty of the Clerk, or someone authorized and directed by her or him, to keep up-to-date the certified copy of the book containing the Code required to be filed in her office for the use of the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or new ordinances are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-17. Sale of Code book.

Copies of the Code book containing the Code may be purchased from the Clerk upon the payment of a fee to be set by Town Council, which may also arrange for procedures for the periodic supplementation thereof.

§ 1-18. Altering or tampering with Code; penalties for violation.

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Town of Barnstable to be misrepresented thereby. Anyone violating this section of this ordinance shall be subject, upon conviction, to a fine of not more than \$300.

§ 1-19. Severability.

- A. Severability of Code provisions. Each section of the Code, and every part of each section, is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.
- B. Severability of ordinance provisions. Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof

§ 1-20. Repeal of ordinances.

All ordinances or parts of ordinances of a general and permanent nature, adopted and in force on the date of the adoption of this ordinance and being inconsistent with any ordinance contained in the Code, are hereby repealed as of the effective date of this adopting ordinance, except as hereinafter provided.

§ 1-21. Ordinances saved from repeal.

The adoption of this Code and the repeal of ordinances provided for in § 1-20 of this ordinance shall not affect the following ordinances, rights and obligations, which are hereby expressly saved from repeal:

- A. Any ordinance adopted subsequent to May 6, 2004.
- B. Any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance, or any action or proceeding brought for the enforcement of such right or liability.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision, or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered, prior to the effective date of this ordinance, brought pursuant to any legislative provision.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred.
- F. Any ordinance providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place, or any portion thereof.
- G. Any ordinance or resolution appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond or other instruments or evidence of the Town's indebtedness.
- H. Ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- I. The levy or imposition of taxes, assessments or charges.
- J. The dedication of property or approval of preliminary or final subdivision plats.
- K. Any ordinance providing for salaries or compensation.
- L. Any ordinance relating to traffic or parking.

§ 1-22. Changes in previously adopted ordinances.

- A. In compiling and preparing the ordinances for adoption and revision as part of the Code, certain grammatical changes and other minor changes were made in one or more of said ordinances. It is the intention of the Town Council that all said changes be adopted as part of the Code as if the ordinances so changed had been previously formally amended to read as such.
- B. Nomenclature changes. Throughout the Code, the following nomenclature changes were made:
- (1) Information Systems to Information Technology.
 - (2) Building Division to Building Services Division.
 - (3) Health, Safety and Environmental Services Department to Regulatory Services Department.
 - (4) Subsidized Housing Committee and Fair Housing Committee to Housing Committee.
 - (5) Handicapped Access Board to Disability Commission.
- C. Fees. In the following sections, fees have been deleted therefrom and moved into Chapter 76, Fees, Article II, Schedule of Fees: §§ 96-3, 130-5, 142-6, and 217-4.
- D. In addition, the following changes, amendments or revisions are made herewith, to become effective upon the effective date of this ordinance. (Chapter and section number references in Schedule A attached hereto are to the ordinances as they have been renumbered and appear in the Code.)²

ARTICLE IV

Adoption of Codified Zoning**[Adopted 1-20-2005 by Order No. 2005-039]****§ 1-23. Adoption of codified Zoning Ordinance.**

The Zoning Ordinance of the Town of Barnstable adopted by Article 4 of the Warrant for the April 7, 1987, Special Town Meeting, as readopted on September 27, 1990, as amended through April 15, 2004, is hereby codified and renumbered into articles and sections as set forth in Chapter 240 of the Code of the Town of Barnstable, except that Subsection C of § 240-91 be amended by striking out the words "this section" and inserting in place thereof the words "Subsection B." The codification and renumbering of Chapter 240 is hereby approved, adopted, ordained and enacted.

2. **Editor's Note:** In accordance with § 1-22D, the chapters, parts and sections which were added, amended, adopted or deleted by this ordinance are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article III. During routine supplementation, footnotes indicating amendments, additions or deletions will be replaced with the following history: "Amended (added, deleted) 1-20-2005 by Order No. 2005-038." Schedule A, which contains a complete description of all changes, is on file in the Town offices.

§ 1-24. Revisions to Zoning Ordinance.

In § 240-5, the list of districts is amended, under the Commercial Districts heading, by deleting the BL-C Business Limited C District; by adding the MB-A2 Marine Business A2 District; by changing the MB-A Marine Business A District to MB-A1 Marine Business A1 District; and by adding the Medical Services Overlay District to the list of overlay districts.

§ 1-25. When effective.

This ordinance shall take effect immediately upon passage and publication according to law.

ARTICLE V

**Adoption of Regulations as Codified
[Adopted 1-20-2005 by Order No. 2005-040]****§ 1-26. Adoption of codified regulations.**

The regulations of the various boards, officers and agencies of the Town of Barnstable as listed below are hereby adopted as codified and renumbered into chapters, articles and sections in the Code of the Town of Barnstable:

- A. Part III, Board of Health.
- B. Part IV, Town Manager Regulations.
- C. Part V. Licensing Authority Regulations.
- D. Part VI, Marine and Environmental Affairs Division Regulations.
- E. Part VII, Conservation Commission Regulations.
- F. Part VIII, Planning Board Regulations.
- G. Part IX, Department of Public Works Regulations.

§ 1-27. Revisions to regulations.**A. Amendments to Board of Health Regulations:**

- (1) In Chapter 322, Food Establishments, Article III, Grease Contamination, § 322-19, the following sentence is deleted: "You are advised to call Peter Doyle, 862-6335, at the Town Sewer Plant to schedule this required pumping."

B. Amendments to Town Manager Regulations:

- (1) In Chapter 403, Dog Control, § 403-2E is amended as follows: The fee for each dog licensed shall be \$10, unless a certificate of a veterinarian stating that the dog has been spayed or neutered has been presented to the Town Clerk, in which case the fee shall be \$7. No license fee or part thereof shall be refunded because of a subsequent death, loss, spaying or neutering, or removal from the Town of such

dog. Any owner or keeper of a dog who moves into the Town of Barnstable and has a valid dog license for his or her dog from another city or town in the Commonwealth may obtain a Town of Barnstable transfer license upon presentation of license documentation from said city or town and a fee of \$3. A late fee of \$5 will be assessed to individuals who license the animal from August 1 of each year to December 31 of each year. Any person who licenses the animal from January 1 to June 30 for the prior year will be assessed a late fee of \$10. This does not apply for newly acquired dogs or for individuals who have moved into Town less than 30 days prior to licensing. License fees shall be reviewed annually in accordance with the Town of Barnstable ordinances. License fees shall be reviewed annually in accordance with the Town of Barnstable ordinances. Chapter II, Article XIII A, Establishment of Certain User Fees by the Town Council, Town Manager, and Other Municipal Agencies.

- (2) In Chapter 408, Roller Skates and Skateboards, § 408-2 is amended as follows: No person shall rent roller skates or skateboards to another person for off-premises use within the Town without first obtaining a license from the Town Manager. The Town Manager may annually issue such a license which shall be issued upon written application and payment of an annual fee of \$25. Each such licensee shall prominently post a notice at their premises listing the areas of the Town in which roller-skating is prohibited, and shall cause such a notice to be prominently reproduced in any rental contract used by the licensee in the course of business.

C. Amendments to Conservation Commission Regulations:

- (1) In Chapter 702, Shooting Range, § 702-2D is amended as follows: Individual permits shall be valid for a period of two years, commencing June 1, 2004. The permit term expires May 31, 2006.

§ 1-28. Ratification of codified regulations.

The regulations codified herein shall be subject to ratification as codified by the boards, officers and agencies set forth in § 1-26.

Chapter 9

AFFORDABLE HOUSING

ARTICLE I Inclusionary Affordable Housing Requirements

- § 9-1. Purpose and intent.
- § 9-2. Definitions.
- § 9-3. Applicability.
- § 9-4. Inclusionary affordable housing requirements.
- § 9-5. Provisions applicable to all affordable housing units/lots.
- § 9-6. Development agreement.
- § 9-7. Establishment of maximum cost; income certification of potential purchasers.
- § 9-8. Preservation of affordability; restrictions on resale.

§ 9-9. Creation of ad hoc Inclusionary Housing Study Committee.

§ 9-10. Effective dates.

§ 9-11. Conflict with other bylaws and ordinances; severability.

ARTICLE II Accessory Apartments and Apartment Units

§ 9-12. Intent and purpose.

§ 9-13. Creation of local Chapter 40B program.

§ 9-14. Amnesty program.

§ 9-15. New units accessory to single-family owner-occupied dwellings.

§ 9-16. Quarterly reporting.

[**HISTORY:** Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Rental property — See Ch. 170.
Zoning— See Ch. 240.

Subdivision Rules and Regulations — See Ch. 801.

ARTICLE I Inclusionary Affordable Housing Requirements

[Adopted 6-17-1999; amended 9-23-1999 (Ch. III, Art. LXIII, of the General Ordinance)]

§ 9-1. Purpose and intent.

The purpose of this article is to define a coherent set of policies and objectives for the development of affordable housing in compliance with MGL, Ch. 40B, §§ 2023, the Cape Cod Commission's Regional Policy Plan for Cape Cod, the Town of Barnstable's Comprehensive Plan and various initiative programs developed by Federal State, County and Town government. It is intended that affordable housing units that result from this article be considered as affordable housing units for the purposes of MGL Ch. 40B §§ 20 - 23. This article is also intended to assure that an appropriate share of the remaining undeveloped land in the Town is used to meet the Town's critical need for affordable housing and to promote

the inclusion of a fair share of the cost of construction of affordable housing in all residential and nonresidential land development activity in the Town of Barnstable.

§ 9-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING REVIEW COMMITTEE — The Housing Committee of the Town of Barnstable acting in an advisory capacity to the Town Council pursuant to § 9-6.

AFFORDABLE HOUSING UNIT — A dwelling unit that by deed restriction is and will remain (a) available for sale and sold at a selling price that will result in an annual shelter cost of not more than 30% of the annual household income of a qualified affordable housing unit purchaser or (b) available for rental and rented at an annual rent that will result in an annual shelter cost of not more than 30% of the annual household income of a qualified affordable housing unit tenant, not including any unit rented to a tenant receiving rental assistance under 42 U.S.C. § 1437f or any similar rental assistance program.

ANNUAL SHELTER COST —

- A. For owners, the aggregate of annual charges for debt service on a purchase money mortgage, real estate taxes and homeowner's insurance.
- B. For tenants, the aggregate of annual charges for rent, utilities and tenant's insurance.

COMPREHENSIVE PLAN — The Comprehensive Plan of the Town of Barnstable, adopted by the Town Council on October 30, 1997, and approved by the Cape Cod Commission on February 12, 1998, as amended from time to time.

DEED RESTRICTION — A provision, acceptable in form and substance to the Town of Barnstable, in a deed to real property that runs with the land in perpetuity so as to be binding on and enforceable against any person claiming an interest in the property. Any restriction created under this article shall survive any bankruptcy, insolvency or other action, and shall not be subject to nullification for any reason.

DEVELOPMENT AGREEMENT — An agreement between the Town acting through the Town Council and an applicant entered into in accordance with Section 14 of the Cape Cod Commission Act and this article which provides for the development of affordable housing in the Town and establishes the permitted uses, densities, location and other characteristics of the development.

LOCAL HOUSING FUND — An account established and operated for the purpose of creating or preserving affordable housing by the Town of Barnstable or the Barnstable Housing Authority, or a housing trust or community development corporation created under the laws of Massachusetts. Said funds can specifically be used to purchase and improve land, to purchase dwelling units or to develop new or rehabilitate existing dwelling units for purchase or rental by qualified affordable housing unit purchasers or tenants or to preserve existing affordable housing in the affordable housing inventory. Expenditures from the Local Housing Fund will be determined annually by the Town Council through the adoption of a housing action plan.

PLANNING BOARD — The Town of Barnstable Planning Board.

QUALIFIED AFFORDABLE HOUSING UNIT PURCHASER OR TENANT —

- A. An individual or household with total annual income that does not exceed the following percentages of the median income for the Town of Barnstable, as determined annually by the United States Department of Housing and Urban Development:
 - (1) For the purchaser of a single-family home: 80%.
 - (2) For the purchaser of a condominium unit: 65%.
 - (3) For the tenant in a rental unit: 65%.
- B. Income from part-time employment of full-time students enrolled in and attending a public school or accredited educational institution shall not be considered part of a household's total annual income.

EXEMPT REPLACEMENT HOUSE — Considered to be any of the following as determined by the Building Commissioner:

- A. A single-family house damaged or destroyed by causes not under the owner's control regardless of the length of ownership, provided the replacement house is not more than 20% larger in volume.
- B. A single-family home that has been owned for the last three years by the current owner or immediate family, and is being replaced for this owner's use.
- C. A single-family home where the portion saved and to be reused in the new design and construction represents at least 20% of the value of the existing structure. **[Amended 2-17-2000]**

§ 9-3. Applicability.

- A. This article shall apply to any division of land into two or more lots for residential use which requires action of the Planning Board under MGL Ch. 41, §§ 81K through 81GG or otherwise, whether or not subdivision approval is required.
- B. This article shall apply to the construction of single-family, multifamily and/or condominium residential units on any lot or lots under common ownership with a construction value of greater than \$100,000 per unit. The construction of affordable housing units, as defined in § 9-2 above, are specifically exempt, as are exempt replacement houses as defined under § 9-2 above.
- C. This article shall apply to any combination of land division and development activity stated in Subsections A and B above, except for the land development activities of a limited profit corporation, not-for-profit or Town agency engaged in providing affordable housing under MGL Ch. 40B, or any charitable, not-for-profit, tax exempt corporation or entity.

- D. This article shall apply to the construction of any nonresidential development or addition, or the nonresidential area of a mixed use development. It shall not apply to interior renovation, or reconstruction or replacement activities.

§ 9-4. Inclusionary affordable housing requirements.

Any land division/development activity granted in accordance with § 9-3 shall be subject to the following requirements:

- A. In a development described in § 9-3A consisting of less than 10 acres, the applicant shall pay an inclusionary housing fee of \$500 per lot created. Such payments shall be made to the Local Housing Fund established under this article upon endorsement or approval by the Planning Board.
- B. In a development described in § 9-3A consisting of 10 or more acres at least 10% of the lots created shall be dedicated by deed restriction to affordable housing units, and the applicant and any successor in interest shall comply with Subsection E below. Any fraction of a whole lot resulting from this calculation shall require the payment of an inclusionary housing fee based on 10% of the average value of all lots created by the development less the value of any dedicated lots.
- C. In a development described in § 9-3B, consisting of less than 10 housing units the applicant shall pay an inclusionary housing fee based on \$10 per \$1,000 of the building permit value of the units created. Such payments shall be made to the Local Housing Fund established under this article at the time of issuance of the building permit.
- D. In a development described in § 9-3B, consisting of 10 or more units, at least 10% of the residential units constructed shall be dedicated by deed restriction to affordable housing units, and the applicant and any successor in interest shall comply with Subsection F below. Any fraction of a whole unit resulting from this calculation shall require the payment of an inclusionary housing fee based on 10% of the average value of all units created by the development less the value of any dedicated units.
- E. Inclusionary housing fee.
- (1) In a development described in § 9-3D, the applicant shall contribute at the time of issuance of a building permit an inclusionary housing fee as follows:
- (a) All development of 5,000 square feet or less: \$0.10 per square foot.
- (b) All development of greater than 5,000 square feet: \$0.20 per square foot.
- (2) Such payments as set forth above shall be made at the time of issuance of the building permit to the Local Housing Fund established under this article. Such funds may be utilized for the continued development of appropriate methods and approaches to analyze the impacts of nonresidential development on the nature and quantity of affordable housing within the Town of Barnstable and the possible methods to mitigate and/or address same

- F. When house lots and/or units are provided under Subsections B or D above, the applicant shall, subject to such deed restrictions and other requirements as the Town shall require in order to assure compliance with MGL Ch. 40B, § 20 to 23, either by:
- (1) Conveyance of such lots to a government agency or nonprofit organization approved by the Town for the construction of affordable housing units for the sale and/or lease to qualified affordable housing unit purchasers or tenants.
 - (2) Conveyance of constructed affordable housing units to a government agency or nonprofit organization approved by the Town who shall offer said unit for sale and/or lease to qualified affordable housing unit purchasers or tenants. The proceeds of any such sale and/or lease shall be delivered to the applicant within 30 days of payment.
- G. Appeals.
- (1) An applicant who is dissatisfied for the following reasons with the fee determination made by the Planning Board under Subsection A or the Building Commissioner under Subsection C may appeal said determination as follows:
 - (2) Within 10 days after paying the fee, the applicant shall appeal in writing to the Town Manager, based upon one of the following specific criteria:
 - (a) A mistake or error in the calculation in the land or building value;
 - (b) Special circumstances relating to the physical or environmental conditions of the site that result in an excessive fee for this particular proposal;
 - (c) The application of this article makes the development of any lot or parcel of land uneconomic or without reasonable alternative.
 - (3) The Town Manager shall forthwith designate a hearing officer who shall hold a hearing and make a written determination within 21 days of the filing of the appeal. If the hearing officer determines that the fee is excessive, a rebate shall be made forthwith. Work on the project may proceed notwithstanding the filing of the appeal.

§ 9-5. Provisions applicable to all affordable housing units/lots.

All inclusionary affordable housing units and/or lots created under this article shall meet the following minimum requirements:

- A. Affordable housing units and/or lots within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with the other units and/or lots. Interior features of affordable units shall comply in all respects with the minimum design and construction standards set forth in the Local Initiative Guidelines, by the Division of Housing and Community Development, July 1996, or as amended.

- B. Affordable housing units and/or lots shall be provided coincident with the development of the market rate units and/or lots, but in no event shall the development of the affordable units and/or lots be delayed beyond the schedule below:

Market Rate Unit/Lot %	Affordable Unit/Lot %
Up to 30%	None required
30% + 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% + 1 unit	At least 70%
Up to 90%	100%

§ 9-6. Development agreement.

- A. In lieu of applying the specific provisions of this article, a person seeking to undertake a development described in § 9-3 may apply to the Town to enter into a development agreement pursuant to the Town’s Development Agreement Ordinance. The Barnstable Housing Committee shall act as a reviewing body for any development agreement proposed under this section and shall advise the Town Council if such development agreement provides benefits to the Town that are at least as beneficial to the Town as the affordable housing benefits provided for in this article. In deliberating possible development agreement provisions, the Town shall take into consideration any combination of the following:

- (1) Conveyance to the Town or the Town’s designee of land that the Town determines to be suitable for the construction of at least as many dwelling units as are required by § 9-4.
- (2) The construction of required dwelling units at locations in the Town of Barnstable other than the location that is the subject of the application.
- (3) Payment into the Local Housing Fund in lieu of dedication or construction of each whole residential lot or residential unit required by § 9-4B or D.
- (4) Any dwelling units built or lots conveyed pursuant to this section shall be of a design and quality and in locations found by the Town to be consistent with the Comprehensive Plan, including the requirement that affordable housing be distributed throughout the Town.
- (5) The need for any other requirements or restrictions in a development agreement that are necessary or appropriate to assure that the purposes of this article are carried out. Such requirements may include, but are not limited to, design standards, regulatory agreements, monitoring and reporting requirements, unrestricted access to the applicant’s financial records, periodic audits and penalties for noncompliance

- B. Development agreement applicants are encouraged to provide at least 70% of any dwelling units or house lots to be provided under a development agreement for persons or families living or working in the Town or having a substantial historical and current connection with the Town by reason of prior residence or attendance at Town schools and current residence of close relatives in the Town.

§ 9-7. Establishment of maximum cost; income certification of potential purchasers.

- A. The maximum housing cost for affordable units created under this article is as established by Massachusetts Division of Housing and Community Development, Local Initiative Program.
- B. Potential purchasers of affordable units created under this article are required to submit copies of the last three years federal and state income tax returns, and to certify, in writing prior to occupancy of the unit that his/her or their family's income does not exceed the maximum.

§ 9-8. Preservation of affordability; restrictions on resale.

Each affordable unit created under this article shall have restrictions governing its resale or reoccupancy to preserve the long-term affordability, to preserve its continued availability as affordable housing in perpetuity, including the following:

- A. A marketing plan or other method of advertisement for availability of the affordable unit(s) and selection of buyer or tenant of the affordable unit(s) to be created under this article shall be provided to the Town.
- B. Resale price. subsequent resale of an affordable unit shall be made to a qualified affordable housing purchaser and shall be based on the initial discount rate applied to the sales price of the unit, which shall be recorded at the time of initial sale, which shall be applied to any subsequent resale of the unit.
- C. Right of first refusal to purchase. The purchaser of an affordable unit shall execute a deed rider in a form provided by the Department of Housing and Community Development, granting the Town of Barnstable the right of first refusal to purchase the property in the event that a subsequent qualified purchaser can not be found.

§ 9-9. Creation of ad hoc Inclusionary Housing Study Committee.

In order to review and analyze the application of a nonresidential inclusionary housing linkage fee, there is hereby created an ad hoc Inclusionary Housing Committee (IHC), as follows:.

- A. The IHC shall be composed of one representative from the Barnstable Housing Committee, Barnstable Housing Authority, Barnstable Economic Development Commission, Hyannis Area Chamber of Commerce, Barnstable Town Manager and two representatives from the Barnstable Town Council.

- B. The IHC shall report back to the Town Council on the application of this article to nonresidential development no later than September 9, 1999.

§ 9-10. Effective dates.

This article shall take effect on the following dates:

- A. For residential construction projects: building permits issued on or after August 2, 1999.
- B. For approval not required (ANR) plans: endorsement on or after August 2, 1999.
- C. For subdivisions (definitive plan approval): definitive plan approval on or after September 6, 1999.
- D. For open space residential development projects: development plans approved on or after October 4, 1999.
- E. For nonresidential construction projects: building permits issued on or after November 1, 1999.

§ 9-11. Conflict with other bylaws and ordinances; severability.

- A. To the extent that a conflict of interest exists between this article and other ordinances of the Town of Barnstable, the more restrictive provisions shall apply.
- B. If any provision of this article is held invalid by a court of competent jurisdiction, the remainder of the article shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this article shall not affect the validity of the remaining sections or parts of sections or the other ordinances of the Town of Barnstable.

ARTICLE II

Accessory Apartments and Apartment Units
[Adopted 11-16-2000; amended 10-3-2002]

§ 9-12. Intent and purpose.

- A. The intent of this article is to provide an opportunity to bring into compliance many of the currently unpermitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.
- B. This article recognizes that although unpermitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied.
- C. It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called unpermitted and illegal dwelling units can achieve lawful status, but only in the manner described below.

- D. It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in MGL c. 40B, §§ 20 to 23, the so-called "Comprehensive Permit" program. This provision of state law encourages the development of low- and moderate-income rental and owner-occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.
- E. The Local Comprehensive Plan states that the Town should commit appropriate resources to support affordable housing initiatives. Under this article, the Town commits the following resources to support this affordable housing initiative:
- (1) Waiver of fees for the inspection and monitoring of the properties identified under this article;
 - (2) Designation of Town staff to assist the property owner in navigating through the process established under this article;
 - (3) To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment; and
 - (4) To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this article.
- F. The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing.
- G. Through the creation of a local Chapter 40B program, which uses state and federal subsidies, the Town can create a mechanism to utilize existing structures and to construct new accessory structures for the creation of affordable housing units that is consistent with the Town's identified housing needs.

§ 9-13. Creation of local Chapter 40B program.

As part of the Town's efforts to create the type of affordable housing that best meets the needs of the Town and its residents, the Town Manager and staff designated by the Town Manager shall establish a screening process and criteria for the preexisting and unpermitted units described herein, as well as for the construction of new units accessory to single-family homes, as part of a local Chapter 40B program which program will provide the state or federal subsidy necessary to establish standing under Chapter 40B for units being created and/or permitted.

§ 9-14. Amnesty program.

Recognizing that the success of this article depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town,¹ the Town hereby establishes the following amnesty program:

- A. The threshold criteria for units being considered as units potentially eligible for the amnesty program are:
- (1) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, nonconforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or
 - (2) Real property containing a dwelling unit or dwelling units which were in existence as of January 1, 2000, and which have been cited by the Building Department as being in violation of the Zoning Ordinance; and
 - (3) The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either Subsection A(1) and/or (2) have been satisfied.
 - (4) If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the entity designated by the Town Manager and found to be in conformance with the State Building Code and State Sanitary Code.
- B. The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:
- (1) The unit or units must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently unpermitted;
 - (2) The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;
 - (3) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.
 - (4) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is

1. Editor's Note: See Ch. 240, Zoning.

sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

- (5) Upon receiving the site approval letter under Subsection B(2) above, the property owner shall within three months file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

C. The procedure for obtaining amnesty is as follows:

- (1) No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the threshold criteria under Subsection A and further demonstrates that s/he is proceeding in good faith to comply with the procedures under Subsection B to obtain a comprehensive permit.
- (2) Any protection from zoning enforcement under this article shall terminate when: (a) A written determination is issued under the local Chapter 40B program that the criteria under Subsection B and the local Chapter 40B program cannot be satisfied; or (b) it is determined that the property owner is not proceeding diligently with his/her Chapter 40B application; or (c) the property owner's Chapter 40B application is denied. A person is deemed "not to be proceeding diligently" if s/he does not receive a comprehensive permit within 12 months from the date of issuance of the site approval letter under the local Chapter 40B program.
- (3) This amnesty program shall be reviewed by the Town Council no later than October 1, 2003.

§ 9-15. New units accessory to single-family owner-occupied dwellings.

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit, accessory to an owner-occupied single-family dwelling, to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

- A. The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;
- B. The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agrees that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

- C. The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).
- D. Upon receiving the site approval under Subsection A above, the property owner shall file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

§ 9-16. Quarterly reporting.

The Town Manager shall report to the Town Council no less than quarterly as to the use of this article, paying particular regard to the level of participation.

Chapter 13

AIRPORT

§ 13-1. Title.

§ 13-2. Definitions.

§ 13-3. Findings and intent.

§ 13-4. Structure and tree height restrictions.

§ 13-5. Nonconforming structures and trees.

§ 13-6. Administrative agency.

§ 13-7. Variances.

§ 13-8. When effective.

[**HISTORY:** Adopted by the Town of Barnstable 3-4-1958; approved 5-12-1958 (Art. IX of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 240.

§ 13-1. Title.

This chapter shall be known and cited as the "Airport Approach Protection Ordinance of the Barnstable Municipal Airport."

§ 13-2. Definitions.

As used in this chapter, unless the context otherwise requires:

AIRPORT — The Barnstable Municipal Airport.

AIRPORT APPROACH ZONE — Any airspace above the areas defined and shown on a map entitled Map of Approach Zones, Barnstable Municipal Airport, Hyannis, Massachusetts, dated February 1, 1957.

AIRPORT HAZARD — Any structure or tree which extends to any airport approach zone.

ADMINISTRATIVE AGENCY — The Town Manager of the Town of Barnstable which is hereby designated as the agency charged with administering the regulations herein prescribed.

PERSON — Any individual, firm, partnership, corporation, company, association, joint-stock association, and includes any trustee, receiver, assignee or other similar representation thereof.

STRUCTURE — Any object or structure installed by man, including any object regulated or licensed under any provision of law.

TREE — A tree or other object of natural growth.

§ 13-3. Findings and intent.

It is hereby declared that the existence of any airport hazard endangers occupants of the land in its vicinity, and effects a reduction of the area available for the landing, taking off and maneuvering of aircraft, thus tending to impair the utility of the airport and the public investment therein. Accordingly, it is necessary in the interests of public health, safety and general welfare that the creating, establishment or maintenance of airport hazards be prevented by exercise of police power, without compensation to any person, except as herein specifically provided.

§ 13-4. Structure and tree height restrictions.

Except as otherwise provided in this chapter, no structure may be erected or altered or any tree permitted to grow or be maintained to a height which would exceed the elevation of the end of the runway by a vertical distance hereby established as shown and indicated on the map referred to in § 13-2.

§ 13-5. Nonconforming structures and trees.

The limitation prescribed in this chapter shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to these regulations as of the effective date thereof or otherwise interfere with the continuance of any such nonconforming use. Nothing herein contained shall be construed to permit any such nonconforming structure or tree to be substantially altered or repaired, rebuilt, allowed to grow or replanted so as to become a greater hazard to air navigation than it was on the effective date of this chapter.

§ 13-6. Administrative agency.

The Town Manager of the Town of Barnstable is hereby designated as the administrative agency charged with the duty of administering and enforcing the regulations herein prescribed. The duties of such agency shall include that of hearing and deciding all permits under § 13-7.

§ 13-7. Variances.

Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, in a manner not conforming to the airport approach protection regulations as herein established, or to establish the right to do so may apply to the Town Manager for a variance from the regulations applicable to his property. Such variance may be allowed where a literal application or enforcement of such regulation would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to public interest. Any permit or variance granted under this section shall be conditioned as to require the owner of the structure or tree to permit the Barnstable Municipal Airport at its own expense to install, operate and maintain suitable obstruction markings or obstruction lights thereon.

§ 13-8. When effective.

This chapter shall have full force and effect from and after the date of its adoption and approved as required by the General Laws.

Chapter 17

ALARMS

ARTICLE I Burglar Alarm Systems

§ 17-1. Definitions.

§ 17-2. Alarm user responsibility.

§ 17-3. Limitation of liability.

§ 17-4. Administrative rules.

§ 17-5. Exceptions.

§ 17-6. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

ARTICLE I Burglar Alarm Systems

[Adopted 5-2-1984; approved 7-31-1984 (Art. XLII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 17-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALARM DEVICE — Any device which when activated by a criminal act:

- A. Transmits a signal to the police facility;
- B. Transmits a signal to a person or company who relays information to the police facility;
- C. Produces an audible or visible signal to which the police are expected to respond.

ALARM USER — Any person who is the owner or person in charge of premises where an alarm system is maintained within the Town of Barnstable.

FALSE BURGLAR ALARM — The activation of an alarm through negligence of an alarm user or employee, improper installation, mechanical failure, malfunction, or any other cause which results in the police responding, where it is determined after investigation by the Police Department that no criminal activity or attempted criminal activity has occurred.

§ 17-2. Alarm user responsibility.

- A. Every alarm user shall submit to the Chief of Police their name, address, telephone number, and at least one other person who is authorized to respond to an emergency signal transmitted by an alarm system, and who can open the premises in which the alarm system is located.

- B. All alarm users must notify the Police Department in advance of any testing of equipment. Failure to notify the Police Department in advance of testing of equipment shall constitute a false alarm, and be subject to the assessment schedule contained herein.
- C. All alarm systems which use an audible bell, horn or siren shall be equipped with an automatic shutoff device, which will deactivate the alarm system within 25 minutes. All alarm users with an audible bell, horn or siren must comply with this section within 90 days of the effective date of this article.

§ 17-3. Limitation of liability.

Neither the Town of Barnstable nor any of its officers shall be under any obligation or duty to an alarm user, or to any other person hereunder, by reason of this article. The Town of Barnstable specifically disclaims liability for any damages which may be caused by failure to respond to an alarm.

§ 17-4. Administrative rules.

The Chief of Police may promulgate such rules as may be necessary for the implementation of this article.

§ 17-5. Exceptions.

The provisions of this article shall not apply to alarm devices owned or controlled by the Town of Barnstable, nor to alarm devices installed in a motor vehicle.

§ 17-6. Violations and penalties.

- A. Failure to comply with § 17-2A, B or C above shall be punishable by a fine of not more than \$25.
- B. False alarms. After the Police Department has recorded three separate false alarms from an alarm user within a calendar year, the Police Chief or his designee shall notify the alarm user, in writing, of such facts, including the dates and times of each alleged false alarm. For the fourth alarm, a fine of \$25 shall be assessed, and a fine of \$50 for each subsequent false alarm within said calendar year.

Chapter 20

ALCOHOLIC BEVERAGES

ARTICLE I Open Containers

- § 20-1. Possession restricted.
- § 20-2. Violations and penalties.

ARTICLE II Possession by Minors

- § 20-3. Possession and transport restricted.
- § 20-4. Exception.
- § 20-5. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. .

Alcoholic beverages — See Ch. 501.

ARTICLE I Open Containers

[Adopted Fall 1984 ATM; approved 2-28-1985 (Art. XVI of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 20-1. Possession restricted.

No persons shall drink any alcoholic beverage as defined in § 1 of Chapter 138 of the General Laws or possess an open container of the same, whether full or partly full, while on, in or upon any public way or way or other place to which the public has a right of access as invitees or licensees, without the consent of the owner or person in control thereof.

§ 20-2. Violations and penalties.

Whoever violates the provisions of this article shall be fined not more than \$300.

ARTICLE II Possession by Minors

[Adopted 5-4-1985; approved 7-19-1985 (Art. XV of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 20-3. Possession and transport restricted.

No person who may not legally purchase alcoholic beverages under Chapter 138 of the General Laws and who is unaccompanied by his or her parent or guardian shall knowingly transport, carry or have the same in his or her possession while on, in or upon any public way

or way or other place to which the public has a right of access as invitees or licensees, without the consent of the owner or person in control thereof.

§ 20-4. Exception.

This article shall not apply to any person legally carrying or transporting alcoholic beverages in the course of his or her employment.

§ 20-5. Violations and penalties.

Whoever violates the provisions of this article shall be fined not more than \$300.

Chapter 24

ANIMALS

ARTICLE I Regulation of Dogs

§ 24-1. Statutory authority.

§ 24-2. Adoption of regulations by Town Manager.

§ 24-3. Disposition of money from licenses and fines.

ARTICLE II Regulation of Roosters

§ 24-4. Restrictions and enforcement.

[**HISTORY:** Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition, Town Manager regulations — See Ch. I, Art. I.
Stables — See Ch. 376.

Waterfowl — See Ch. 393.
Dog control — See Ch. 403.

ARTICLE I Regulation of Dogs

[Adopted 5-7-1992 (Art. XLVI-A of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 24-1. Statutory authority.

Pursuant to Section 6 of Article 89 of the amendments to the Constitution of the Commonwealth and § 147A of Chapter 140 of the General Laws, a local system for the licensing, regulation, control and disposition of dogs is hereby authorized.

§ 24-2. Adoption of regulations by Town Manager. ¹

The Town Manager shall adopt reasonable regulations relating to the keeping of dogs within the Town. Such regulations may include reasonable fees for licensing dogs, which fees shall be calculated so as not to exceed the cost of regulating dogs within the Town. No such regulation shall be inconsistent with the provisions of Chapter 140 of the General Laws relating to (a) the turning over or sale of animals to any business or institution licensed or registered as a research facility or animal dealer, as provided in § 151; (b) the minimum confinement period of dogs as provided in § 151A; (c) the methods of execution, as provided in said § 151A; any ordinance of the Town relating to the control or regulation of dogs or other animals.

1. Editor's Note: See Ch. 403, Dog Control, in Part IV, Town Manager Regulations, of the Code of the Town of Barnstable.

§ 24-3. Disposition of money from licenses and fines.

All money received from licenses or recovered from the fines hereunder shall be paid into the Town treasury and shall not be turned over to the county.

ARTICLE II

Regulation of Roosters

[Adopted 5-5-2011 by Order No. 2011-097]

§ 24-4. Restrictions and enforcement.

Not more than one rooster shall at any time be kept on premises not in agricultural use in the Town of Barnstable except as prohibited under Subsection C. Any person keeping a rooster on premises not in agricultural use shall comply with the following. For purposes of this article, premises shall be deemed to be in agricultural use if the parcel contains five or more acres primarily and directly used in the course of business, individually or in any combination, of farming in all its branches, cultivation and tillage of soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products on forest land, the raising of livestock, including horses, the keeping of horses, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, and fur-bearing animals; or if the parcel contains between two and five acres, any of the aforesaid activities generates at least a \$1,000 per acre based on documented gross sales dollars, regardless of the primary purpose.

- A. The rooster shall be kept between the hours of 7:00 p.m. and 7:00 a.m. within a fully enclosed structure designed to minimize noise.
- B. The person shall not allow or permit such rooster at any time to annoy another person's reasonable right to peace or privacy by making loud or continuous noise where such noise is plainly audible between the hours of 7:00 a.m. and 7:00 p.m. at a distance of 150 feet from the premises where the rooster is kept, or between the hours of 7:00 p.m. and 7:00 a.m. at a distance of 50 feet from the premises where the rooster is kept, or when such noise is continuous in excess of 10 minutes.
- C. The provisions of this article may be enforced pursuant to MGL c. 40, § 21D, and Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the Code of the Town of Barnstable for the first three violations; and by prohibiting the further keeping of roosters in lieu of or in addition to enforcement pursuant to MGL c. 40, § 21, for each violation thereafter.

Chapter 32

BEACHES AND WATERWAYS

ARTICLE I Operation of Motor Vehicles

- § 32-1. Operation restricted.
- § 32-2. Exception for personnel acting in official capacity.
- § 32-3. Violations and penalties.

ARTICLE II Obstruction of Public Access

- § 32-4. Obstruction prohibited.
- § 32-5. Erection of signs by other than Town officials prohibited.

§ 32-6. Denial of access by other than Town officials prohibited.

§ 32-7. Town Manager authorized to make rules and regulations.

§ 32-8. Violations and penalties.

ARTICLE III Approval for Buttresses and Dolphins

§ 32-9. Certificate of appropriateness required.

§ 32-10. Definitions.

§ 32-11. Violations and penalties.

[**HISTORY:** Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Boats — See Ch. 40.
Sandy Neck— See Chs. 177 and 601.

Marinas — See Ch. 405.
Mooring — See Ch. 406.

ARTICLE I Operation of Motor Vehicles

[Adopted 5-15-1978; approved 8-30-1978 (Art. XXXII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 32-1. Operation restricted.

- A. No person shall operate a motor vehicle on any salt or fresh water beach or dunes owned by the Town of Barnstable except as expressly allowed under Chapter 177, Sandy Neck, Article I, of the Code of the Town of Barnstable.
- B. No person shall fuel, launch, retrieve or otherwise operate from the Town property at 460 Shootflying Hill Road any personal watercraft (vessel) propelled by a water jet pump as its primary source of motive power and which is designed to be operated by persons sitting, standing or kneeling on the vessel. [Added 8-17-2006 by Order No. 2007-012¹]

1. Editor's Note: This ordinance also stated that it would take effect upon approval by the Massachusetts Department of Fish and Game Public Access Board.

§ 32-2. Exception for personnel acting in official capacity.

This article shall not apply to district, Town, county, state or federal vehicles operated by authorized personnel acting in an official capacity or others under contract to any of the foregoing while acting in an official capacity under said contract.

§ 32-3. Violations and penalties.

Any person violating the provisions of this article shall be punished by a fine of not more than \$200 for each offense.

ARTICLE II

Obstruction of Public Access

[Adopted 11-5-1979; approved 2-26-1980 (Art. XXXIII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 32-4. Obstruction prohibited.

No person other than a duly authorized official of the Town of Barnstable shall obstruct or cause to be obstructed any way, dock, wharf, landing or other land of the Town giving access to any water or waterway, either inland or tidal.

§ 32-5. Erection of signs by other than Town officials prohibited.

No person other than a duly authorized official of the Town of Barnstable shall erect or maintain signs in, on, or near any way, dock, wharf, landing or other land of the Town giving access to any water or waterway which indicate or tend to indicate that the public has no right of access thereto.

§ 32-6. Denial of access by other than Town officials prohibited.

No person other than a duly authorized official of the Town of Barnstable shall deny access to the public to any dock, wharf, landing or other land of the Town giving access to any water or waterway, or utter any word or take any action which would tend to deny such access.

§ 32-7. Town Manager authorized to make rules and regulations.

The Town Manager may make reasonable rules and regulations relative to public access to the tidal and inland waters and waterways of the Town, not inconsistent with the foregoing. Such rules and regulations may include, but need not be limited to, specification of the area or areas to which this article applies. Such rules and regulations shall take effect when filed with the

Town Clerk and after publication in a newspaper having general circulation in the Town, or at such later date as may be specified therein.

§ 32-8. Violations and penalties.

Any person violating the provisions of this article shall be punished by a fine not to exceed \$200 for each offense. Each day such an offense continues shall constitute a separate offense.

ARTICLE III

Approval for Buttresses and Dolphins

[Adopted 11-3-1994 by Order No. 95-048 (Art. LVIII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 32-9. Certificate of appropriateness required.

In addition to other permits, which include those necessary for navigational safety prior to the installation of buttresses, marine fenders, caisson or dolphin piles in Hyannis Harbor or any other harbor of the Town a certificate of appropriateness must be granted by the Barnstable Historic Commission or a District Historic Commission, if one exists, before building of the same to assure proportion, balance, design, texture, color, materials with the harbor in which they are to be installed in order to protect the historic and community character of the Town, the beauty of our harbors, and to promote styles that are indigenous to Cape Cod.

§ 32-10. Definitions. ¹

As used in this article, the term "stand-alone fender, caisson or dolphin" pile or buttresses shall mean any stand-alone structure secured in land under the ocean or in the intertidal zone and composed of a cluster of five or more timber piles; or a cluster of two or more steel or metal pipes, piles or I-beams; or any concrete pile; or any structure composed of concrete and metal.

§ 32-11. Violations and penalties.

Violations of this article may result in a fine not to exceed \$300 per day until such certificate is obtained.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

Chapter 37

BOARDS, COMMITTEES AND COMMISSIONS

ARTICLE I Appointments Committee

- § 37-1. Membership.
- § 37-2. Term of office.
- § 37-3. Appointment of members.
- § 37-4. At-large volunteers; advertising for volunteers.
- § 37-5. Recommendation of slate of volunteers.
- § 37-6. Invitation for letters of interest.
- § 37-7. Interviewing of candidates.

ARTICLE II Absentee Members

- § 37-8. Absentee voting members of certain boards, committees and commissions.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Administrative Code — See Ch. 241.

Officers and employees — See Ch. 138.

ARTICLE I Appointments Committee

[Adopted 7-21-1994 by Order No. 94-185 (Art. II of Chapter I of Ch. of the General Ordinances as updated through 7-7-2003)]

§ 37-1. Membership.

There shall be a standing Appointments Committee of the Town Council which shall consist of five members. At least three out of the five members should be Town Councilors.

§ 37-2. Term of office.

All members shall serve for one year commencing after the annual reorganization of the Town Council.

§ 37-3. Appointment of members.

The Councilors serving on the Appointments Standing Committee will be appointed by the President of the Council from a list of names of those Councilors who wish to serve on the Appointments Committee. The total Council will be apprised of the names of those

Councilors who are willing to serve. The full Council will have the final vote on all appointments to the Appointments Committee.

§ 37-4. At-large volunteers; advertising for volunteers.

The volunteers at-large will be appointed by the President of the Council, with approval of the full Council. Advertising for the volunteers will be done by the Council, after the annual reorganization of the Town Council.

§ 37-5. Recommendation of slate of volunteers.

In accordance with Council rules, the Appointments Committee recommends to the Town Council a slate of persons to be reappointed or appointed to volunteer boards.

§ 37-6. Invitation for letters of interest.

The Appointments Committee will advertise by press release, at least twice a year, inviting Town residents to submit letters of interest to the Town of Barnstable Talent Bank indicating in what areas they would like to serve. On an as-needed basis, the Appointments Committee will request letters of interest for openings on specific multimember boards, committees and commissions.

§ 37-7. Interviewing of candidates.

Resumes will be gathered along with letters of interest, and interviews will be conducted with new candidates. Optimally, interviews will be conducted with candidates for reappointment at least every three years.

ARTICLE II

Absentee Members

[Adopted 9-4-2008 by Order No. 2009-013]

§ 37-8. Absentee voting members of certain boards, committees and commissions.

In accordance with Massachusetts General Laws Chapter 39, Section 23D, an absentee voting member of any of the boards, committees and commissions of the Town of Barnstable holding an adjudicatory hearing shall not be disqualified from voting solely on the basis of missing a single session so long as the following criteria are met:

- A. The absentee voting member shall be absent from no more than a single session of the hearing at which testimony or other evidence is received;
- B. Prior to voting, the absentee member shall certify, in writing, that he has examined all evidence received at the missed session and watched the video recording of the missed session, or, if no video recording is available, then has listened to the audio tape or reviewed a verbatim transcript of the missed session; and

- C. The absentee member shall certify, in writing, which evidence was reviewed, and the written certification shall be made part of the record and shall be filed with the Town Clerk; and
- D. Provided that no other member of the same board, committee or commission sitting on the same matter has invoked this provision.

Chapter 40

BOATS

ARTICLE I Operation

- § 40-1. Speed and horsepower.
- § 40-2. Pollution prohibited.
- § 40-3. Abandonment.
- § 40-4. Operation and responsibility.
- § 40-5. Water skiing.
- § 40-6. Divers and diving.

ARTICLE II Houseboats and Houseboat Marinas

- § 40-7. Definitions.
- § 40-8. Docking and mooring of houseboats restricted to licensed slips.
- § 40-9. Use and occupancy of houseboats.

§ 40-10. Houseboat marina operation permit.

§ 40-11. Application for houseboat marina permit; standards.

§ 40-12. Houseboat marina permit revocation.

§ 40-13. Administration.

ARTICLE III Moorings and Anchoring

§ 40-14. Moorings.

§ 40-15. Anchoring.

ARTICLE IV Enforcement; Violations and Penalties; Severability

§ 40-16. Enforcement.

§ 40-17. Violations and penalties.

§ 40-18. Severability.

[**HISTORY:** Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Beaches and waterways — See Ch. 32.

Marinas — See Ch. 405.
Mooring — See Ch. 406.

ARTICLE I Operation

[Adopted 3-8-1967; approved 6-5-1967 (Art. XIV of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 40-1. Speed and horsepower.

- A. Speed shall not exceed six miles per hour, and no wash shall be created in posted speed/wake areas nor within 150 feet of bathers, divers, small vessels propelled by means other than machinery, and vessels not underway. In posted marked navigational channels,

the speed/wake restriction shall extend 150 feet from the sides of the channel.
[Amended 7-12-2012 by Order No. 2012-155]

- B. Speed shall not exceed six miles per hour, and no wash shall be created on any pond not a great pond and on the following great ponds: Garrett's Pond, Micah's Pond, Joshua's Pond, Neck Pond, and Parker's Pond. Speed shall not exceed 35 miles per hour on Lake Wequaquet.
- C. Horsepower of internal combustion engines shall not exceed 10 horsepower on the following ponds: Hamblin's Pond; Middle Pond; Mystic Lake, Long Pond, Centerville, Lovell's Pond, Shubael's Pond, Long Pond, Marstons Mills.

§ 40-2. Pollution prohibited.

The discharge or disposal of oil, dead fish, garbage, waste, rubbish or debris on the waters, shores or foreshores is prohibited.

§ 40-3. Abandonment. [Amended 4-7-1971; approved 6-22-1971; 11-5-1977; approved 1-12-1978; 7-12-2012 by Order No. 2012-155]

- A. No vessel, mooring or other object shall be abandoned, sunk or otherwise placed where it may constitute a danger to navigation. Any vessel, mooring or object so placed, and any vessel improperly secured, swamped, sunk, washed ashore or found in a restricted area, may be removed or relocated by direction of the Harbormaster or an Assistant Harbormaster if corrective action is not taken after 72 hours' notice to the owner, or if the owner is not known, after notice has been posted for the same period at the Town Hall or on or near such vessel, mooring or object. The expense of such removal or relocation, and any liability incurred therefor, shall be the responsibility of the owner.
- B. Nothing in the above shall be deemed to restrict earlier action by the Harbormaster or an Assistant Harbormaster, with or without notice to the owner, if, in their judgment, such action is necessary to protect life or property.

§ 40-4. Operation and responsibility. [Amended 7-12-2012 by Order No. 2012-155]

- A. Vessel operators are responsible for their wake at all times and shall not operate a vessel in a reckless or negligent manner so as to endanger the life, safety, or property of any person.
- B. No person shall operate or maintain any vessel in a manner that violates MGL c. 90B, or any regulations adopted thereunder, or any other state or federal law that may apply.

§ 40-5. Water skiing.

- A. Water skiing is prohibited on any pond not a great pond and on the following great ponds: Garrett's Pond, the Hathaway Ponds, Micah's Pond, Joshua's Pond, Neck Pond and Parker's Pond. Water skiing is prohibited on East Bay, West Bay, Cotuit Bay and all tidal inlets and rivers.

- B. Water skiing as hereinafter permitted is subject to the provisions of MGL c. 90B, § 8, and to the further restriction that there shall be no water skiing within 150 feet of bathers, divers, piers, docks, floats, moorings, other boats or of the shore. Additionally there shall be no water skiing within 300 feet of a shoreline being used as a swimming area whether public or private. For the purpose of this article, the words "water skiing" shall include the towing or manipulation of a surfboard, tube or other similar device behind a vessel. **[Amended 7-12-2012 by Order No. 2012-155; 4-25-2013 by Order No. 2013-083]**
- C. Water skiing is permitted on Great Ponds except those previously named.
- D. Water skiing is permitted on Cape Cod Bay, Nantucket Sound, Popponesset Bay and in the following bay and harbor areas described below:
- (1) That portion of North Bay lying westerly of a line running from a pier on St. Mary's Island to the northernmost tip of Little Island. Skiing will not be permitted here on weekends and holidays. **[Amended 7-12-2012 by Order No. 2012-155]**
 - (2) That portion of Hyannisport Harbor lying easterly of a line running from the stone jetty at the entrance to Stewarts Creek to the angle point in the Hyannisport breakwater. **[Amended 7-12-2012 by Order No. 2012-155]**
 - (3) Hyannis Harbor, except in that portion thereof lying within 150 feet of either side of the center line of the buoyed entrance channel to said harbor from entrance channel buoy No. 6 to Dunbar's Point and Lewis Bay, except in an area that lies west of a line 150 feet parallel to and east of the center line of the buoyed entrance channel to Hyannis inner harbor. **[Amended 3-28-1973; approved 6-25-1973]**
 - (4) That portion of Barnstable Harbor lying northerly of a line running from Calves Pasture Point through the No. 1 Buoy at Maraspin's Creek entrance channel to the Town line at Yarmouth Creek. **[Amended 7-12-2012 by Order No. 2012-155]**

§ 40-6. Divers and diving.

Any person or persons skin diving or scuba diving shall:

- A. Display a diver's flag consisting of a red field with a white diagonal stripe of a size not less than 12 inches square.
- B. Display such flag on a float or other similar device holding such flag upright at a height sufficient to be visible to passing boats.
- C. Stay within 150 feet of the aforesaid float and flag or tow the float and flag with him while he is submerged and surface thereunder, unless for special purposes permission is granted in writing by the Harbormaster to otherwise display flags for the protection of divers.¹

1. Editor's Note: Former §§ 40-7, 40-8 and 40-10, which immediately followed, were renumbered as §§ 40-16, 40-17 and 40-18, respectively, by Order No. 2012-155, adopted 7-12-2012. This order also repealed former § 40-9, Jurisdiction.

ARTICLE II

Houseboats and Houseboat Marinas ²

[Adopted 11-1-1980; approved 2-27-1981 (Art. XXXVIII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 40-7. Definitions.

For the purpose of this article, the words and phrases herein defined shall be construed in accordance with the definition set forth unless it is apparent from the context that a different meaning is intended.

HOUSEBOAT — A watercraft structure designed primarily to be occupied as living quarters.

HOUSEBOAT MARINA — Any area within any waters of the Town where one or more sites or locations are rented or offered for rent for the location of houseboats which are to be used for living quarters either permanently or on a temporary basis.

PERMANENT SEWER — A sewer connected to the sewer system of the Town of Barnstable or to a private sewage disposal system approved by the Board of Health.

§ 40-8. Docking and mooring of houseboats restricted to licensed slips.

No person shall moor or dock a houseboat in the waters of the Town except at a pier, slip or dock for which a valid current marina license has been issued under MGL c. 91, § 59B.

§ 40-9. Use and occupancy of houseboats.

No person shall use or occupy or permit the use or occupancy of a houseboat for living quarters either permanently or on a temporary basis on the waters of the Town except in a houseboat marina operated pursuant to a permit issued by the Town Manager and unless such houseboat meets the following requirements:

- A. There is provided within the houseboat not less than 600 square feet of living area.
- B. The houseboat is designed and maintained so there is a single opening above the waterline for waste and sewage removal and such opening is tightly connected to a permanent sewer.
- C. The houseboat is designed and constructed so that it meets the requirements of the State Building Code, including specialized codes thereof, except insofar as the provisions thereof are not responsibly applicable.

§ 40-10. Houseboat marina operation permit.

No person shall operate a houseboat marina or rent or hold out for rent any site or space for the location of a houseboat to be used or occupied for living quarters either permanently or on a temporary basis without having a current permit for such marina from the Town Manager.

2. Former § 40-11 through § 40-17, which immediately followed, were renumbered as § 40-7 through § 40-13, respectively, by Order No. 2012-155, adopted 7-12-2012.

§ 40-11. Application for houseboat marina permit; standards.

- A. Any person desiring to operate a houseboat marina shall file an application for a permit to do so with the Town Manager and submit a fee in the amount to be fixed by the Town Manager for processing such application.³ Such application must be accompanied by a plan showing the location of the proposed marina and the facilities contemplated therein. The Town Manager shall act on such application within 60 days after it is submitted.
- B. The Town Manager shall grant such permit if the following conditions are met:
- (1) The applicant owns or has a lease of the land over which the marina is proposed to be operated.
 - (2) There is provided within such marina a minimum of 875 square feet of space for the exclusive use of each houseboat and its appurtenances to be located therein.
 - (3) Prior to the time any houseboats are located therein, a permanent float, dock or slip for the mooring or dockage of each houseboat from which such houseboat may be directly boarded is constructed.
 - (4) Each space intended for a houseboat must be provided with the following:
 - (a) A permanent water supply with an individual antibackflow valve;
 - (b) A sewer connection leading into a permanent sewer; and
 - (c) A permanent supply of electricity.
 - (5) The marina is in a zoning district of the Town where marinas are permitted.
 - (6) There is provided on land adjacent to the marina two parking spaces for each houseboat site within the proposed marina.
- C. The Town Manager may limit the term of such permit and may impose additional conditions on such permit deemed necessary by it to protect the public health, welfare and safety and to promote the general welfare.

§ 40-12. Houseboat marina permit revocation.

Any permit for a houseboat marina may be revoked by the Town Manager after written notice to the operator of such marina and an opportunity to be heard before the Town Manager. Such written notice shall be mailed to the operator of the marina at the address shown on the permit and shall state the date and time the Town Manager will consider the proposed revocation. The grounds for revocation shall be:

- A. The houseboat marina no longer meets the conditions under which the permit was granted.
- B. The houseboat marina has become a source of pollution of the waters of the Town.

3. Editor's Note: See Ch. 405, Marinas.

- C. The facilities of the marina or the houseboats located therein have fallen into a state of disrepair.
- D. Individual houseboats are permitted or maintained within the marina which do not meet the requirements for houseboats established by this article.

§ 40-13. Administration.

The provisions of this article shall be administered by the Town Manager. The Board of Health, the Department of Public Works, the Building Commissioner and the Harbormaster shall assist the Town Manager in the administration and enforcement of this article, each within its or their appropriate jurisdiction. Any aggrieved person may appeal any decision of the Town Manager, except where another method of appeal is provided by law. The Town Manager shall make a decision on the appeal within 60 days, and such decision shall be final.⁴

ARTICLE III
Moorings and Anchoring
[Adopted 7-12-2012 by Order No. 2012-155]

§ 40-14. Moorings.

- A. The location, type and adequacy of every mooring must be approved annually by the Harbormaster or an Assistant Harbormaster before placement, and in accordance with all the provisions of the Town's Mooring Regulations. Any mooring may be inspected, removed or relocated whenever, in their judgment, the safety of other vessels or maximum use of the area requires such action. The expense of such inspection, removal or relocation, and any liability incurred therefor, shall be the responsibility of the owner.
- B. Every mooring and every vessel attached to said mooring shall be annually permitted by the Harbormaster.
- C. The Harbormaster shall have the authority to sell at public auction on behalf of the Town any mooring which has been removed under Subsection A above if said mooring has not been claimed by its owner within 12 months.
- D. There shall be a charge for picking up/removing abandoned and illegal moorings as follows (in addition to all costs directly associated with the removal):

Under 100 lb	\$100
100 to 200 lb	\$150
Over 200 lb	\$200

4. Editor's Note: Former § 40-18, Violations and penalties, which immediately followed, was repealed 7-12-2012 by Order No. 2012-155. See now § 40-17.

§ 40-15. Anchoring.

Anchoring will be allowed pursuant to the Town's Mooring Regulations. However, no vessel shall be anchored in any marked channel or so as to impede safe navigation.

ARTICLE IV
Enforcement; Violations and Penalties; Severability
[Adopted 7-12-2012 by Order No. 2012-155]

§ 40-16. Enforcement.

Unless otherwise specified, the provisions of this article shall be enforced by the Harbormaster, by Assistant Harbormasters and by police officers empowered to patrol the waters of the Town.

§ 40-17. Violations and penalties.

Whoever violates any of the provisions of this Chapter 40 or refuses or neglects to obey the lawful and reasonable orders of those empowered to enforce the same, or resists them in the discharge of their duties, shall be fined in accordance with the schedule of fines set out in Chapter 1, § 1-3. With respect to violations of Article I of this Chapter 40, each violation thereof shall be a separate offense. With respect to violations of Articles II and III of this Chapter 40, each day such an offense is found to occur shall constitute a separate offense and shall be fined as a first, second, or third and subsequent offense, as the case may be.

§ 40-18. Severability.

In the event that any provision, section or clause of this Chapter 40 is hereafter judicially found to be invalid, such a final decision shall not affect the validity of the remaining portions of this article.

Chapter 43

BODY-PIERCING BUSINESSES

**§ 43-1. Qualified nurse or physician
required to perform procedure;
violations and penalties.**

[HISTORY: Adopted by the Town of Barnstable 9-17-1999 by Order No. 99-010; effective 10-1-1999 (Art. LXII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Massage establishments — See Ch. 346.

§ 43-1. Qualified nurse or physician required to perform procedure; violations and penalties.

Whoever, not being registered as a qualified nurse under § 74 of Chapter 112 of the General Laws or as a qualified physician under § 2 of Chapter 112 of the General Laws, or corresponding provisions of earlier laws, punctures a body part, excluding the ear, of any other person as or as part of a trade or business shall be punished by a fine of not more than \$300.

Chapter 47

BUILDING CONSTRUCTION

§ 47-1. Appointment of Building Commissioner; term; vacancy.

§ 47-2. Powers and duties of Building Commissioner.

§ 47-3. Moving of buildings.

§ 47-4. Approval of building permits by Board of Health.

§ 47-5. Building restricted area.

§ 47-6. Permit fees.

§ 47-7. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable (Art. IV of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Inspection of wires — See Ch. 68.

Schedule of Fees — See Ch. 76, Art. I.

Gas piping and appliances — See Ch. 96.

Historic properties — See Ch. 112.

Wetlands protection — See Ch. 237.

Zoning — See Ch. 240.

Subdivision Rules and Regulations — See Ch. 801.

§ 47-1. Appointment of Building Commissioner; term; vacancy. [Amended 11-5-1977, approved 1-12-1978; 11-1-1980, approved 2-27-1981]

The Town Manager shall appoint a Building Commissioner, who shall hold office for a term of three years or until his successor is chosen and qualified, said three-year term commencing on July 1 in the year of such appointment. Any vacancy in the office shall be filled by the Town Manager on a temporary basis until the next July 1.

§ 47-2. Powers and duties of Building Commissioner.

The Building Commissioner shall make such inspections, issue such permits and enforce such regulations and ordinances as may be required by the Town or under the State Building Code, and he may for such purposes, at all reasonable times, enter upon such premises to carry out such lawful procedures.

§ 47-3. Moving of buildings.

No building may be moved unless a permit has been obtained from the Building Commissioner. No building may be moved into the Town unless its construction is made to conform to the State Building Code.

§ 47-4. Approval of building permits by Board of Health.

All building permits are subject to the approval of the Board of Health prior to issuance.

§ 47-5. Building restricted area.

- A. Building restrictions as set forth in this section shall be designated as the "building restricted area" and shall apply to all that portion of the Town bounded as follows:
- (1) All lands or that portion of land lying to the south of and within 150 feet of Main Street in the Village of Hyannis from the Yarmouth Town line to Potter Street; and lying to the north of and within 150 feet of Main Street in the Village of Hyannis from Yarmouth Road to Barnstable Road.
 - (2) All lands or that portion of land shown on a map entitled "Map of Extension of Building Code (Fire) in Business District, (Precinct 3) Hyannis, January 20, 1976" which map is designated as Map "B."
 - (3) All lands or that portion of land shown on a map entitled "Map of Extension of Building Code (Fire) in Business and Urban Business Districts (Precinct 3) Hyannis, January 20, 1967."
- B. No wood frame or wooden structures, or additions or alterations to the same, may be built within the building restricted area, except as hereinafter provided:
- (1) Any dwelling as defined in the State Building Code built within the building restricted area, must have a fire-resistive roof;
 - (2) An addition or alteration may be made to an existing wooden building if it does not increase its present ground area by more than 1/3, or by more than 600 square feet, whichever is less. No more than one such addition or alteration shall be permitted in any period of 60 consecutive months.

§ 47-6. Permit fees. [Amended 1-4-1996 by Order No. 96-083]

There shall be established and collected by the Building Commissioner upon the issuance of each permit a fee to be paid into the Town treasury determined in accordance with the revenue fee policy established by the Town Council. The schedule for these fees can be found in Chapter 1, Article I, of the Code of the Town of Barnstable.

§ 47-7. Violations and penalties.

Whoever violates any of the provisions of this chapter shall be punished by a fine not to exceed \$200 for each offense.

Chapter 51

BUILDINGS, NUMBERING OF

§ 51-1. Town Manager's responsibilities.

§ 51-2. Rules and regulations.

§ 51-3. Affixing and maintaining numbers on buildings.

§ 51-4. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 8-18-1994 by Order No. 95-014 (Art. V of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Subdivision Rules and Regulations — See Ch. 801.

§ 51-1. Town Manager's responsibilities.

The Town Manager shall require, determine and prescribe the numbering, changes in numbering and renumbering of buildings on or near the lines of any and all public and private ways within the Town; said numbering shall be consistent with a Town-wide uniform numbering system that is based on periodic sequential points along road layout center lines.

§ 51-2. Rules and regulations.

The Town Manager shall make reasonable rules and regulations to take effect when filed with the Town Clerk and after publication in a newspaper published within the Town, relative to numbering, changes in numbering, renumbering of buildings as well as to materials, location, visibility and size of said numbers along the lines of public and private ways.

§ 51-3. Affixing and maintaining numbers on buildings.

All property owners or occupants or either of them shall affix or maintain assigned numbers or numbering devices on buildings along the lines of public or private ways or with access to such ways, and no person shall willfully remove, deface, or change numbers or numbering devices placed upon buildings under the provisions of this chapter.

§ 51-4. Violations and penalties.

Whoever violates any provision of this chapter, or any order, rule or regulation made by the Town Manager under authority of this chapter, shall be punished by a fine not to exceed \$50.

Chapter 54

BUILDING AND PREMISES MAINTENANCE

§ 54-1. Purpose and intent.

§ 54-2. Applicability; compliance with other regulations.

§ 54-3. Outdoor storage.

§ 54-4. Stagnant water.

§ 54-5. Storage and removal of rubbish, garbage and refuse.

§ 54-6. Definitions.

§ 54-7. Enforcement; removal or abatement of nuisance.

§ 54-8. Interpretation of provisions; severability; period of effect.

[HISTORY: Adopted by the Town Council of the Town of Barnstable 7-11-2013 by Order No. 2013-032. Amendments noted where applicable.]

GENERAL REFERENCES

Numbering of buildings — See Ch. 51.

Historic properties — See Ch. 112.

Rental property — See Ch. 170.

Solid waste — See Chs. 202 and 373.

Vacant and foreclosing properties — See Ch. 224.

State Sanitary Code — See Ch. 335.

Nuisances — See Ch. 353.

§ 54-1. Purpose and intent.

The purpose and intent of this chapter is to eliminate nuisances in the Town. Nuisances such as trash, debris and stagnant pools of water cause and contribute to blight within neighborhoods and commercial areas and impair the health, safety and general welfare of the inhabitants of the Town.

§ 54-2. Applicability; compliance with other regulations.

Every owner shall maintain premises in compliance with this chapter and with applicable provisions of the sanitary and building codes (hereinafter "code") and regulations. Every occupant shall comply with the provisions of § 54-5B.

§ 54-3. Outdoor storage.

- A. Indoor items, such as furniture, appliances, plumbing fixtures and bedding, shall be kept within enclosed structures after 15 days. All other personal property shall be kept within enclosed structures or screened from public view after six months.
- B. Functional outdoor items, such as fixtures, landscape elements, outdoor furniture, outdoor appliances, children's play structures, firewood, compost materials, construction materials, boats and inventory, shall not be subject to the requirements of this section.

- C. Motor vehicles and trailers shall be kept in compliance with Chapter 228, Vehicles, Storage of.

§ 54-4. Stagnant water.

Water shall not be permitted to continuously stagnate outside of any building or structure for more than 10 days except under natural conditions. Nothing in this chapter shall operate as a waiver or exception to any other law, rule or regulation for the storage or handling of water.

§ 54-5. Storage and removal of rubbish, garbage and refuse.

A. Owners' responsibilities.

- (1) The owner of any building, structure or premises shall be responsible for receptacles with tight-fitting lids to be used for the proper storage of rubbish, garbage and other refuse and for the final collection and disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.
- (2) The owner of any dwelling that contains three or more units, and the owner of any dwelling which contains one or two units that are rented or leased for a period of six months or less, shall be responsible for the final collection and disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.

B. Occupants' responsibilities.

- (1) The occupants of any building, structure or premises shall be responsible for the proper storage of rubbish, garbage and other refuse within receptacles with tight-fitting covers. Said occupants shall also ensure that all tight-fitting covers are kept so that all rubbish, garbage and other refuse that is stored outside a building or structure is properly covered. Said occupants shall be responsible for the proper use and cleaning of the receptacles and keeping the premises free of rubbish, garbage and other refuse.
 - (2) Unless a written lease agreement specifies otherwise, the occupant(s) of any dwelling that contains one or two units and that is rented or leased for any period greater than six months shall be responsible for the collection and ultimate disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.
- C. Receptacles shall be located in such a manner that no objectionable odors enter any other building, structure or premises and so as to provide maximum screening from the street, provided that receptacles may be placed in the open near a street within 24 hours of scheduled collection and disposal by a contractor as provided in this chapter and returned to a screened location within 24 hours thereafter.

§ 54-6. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OCCUPANT — Any person who alone or severally with others rents or leases premises, or resides overnight other than as a guest.

OWNER — Any person who alone or severally with others has legal title to buildings, structures or vacant land, or to land with buildings or structures thereon, or to any dwelling or rooming unit, mortgagee in possession, or agent, trustee or person appointed by a court.

§ 54-7. Enforcement; removal or abatement of nuisance.

- A. The Director of the Health Department or her or his designee is hereby designated as the enforcing authority for this chapter.
- B. The enforcing authority shall notify the owner or occupant, in writing, of any alleged violation or violations of this chapter and order the owner or occupant to remove or abate the nuisance by a date certain not more than 10 days after service of notice of the violation(s); provided, however, that if the violation is determined to be such that the public health and safety will be jeopardized by that delay, the enforcing authority may order the abatement or removal of the nuisance in a shorter time as public health and safety may in her or his judgment require. The order shall be in writing and may be served personally on the owner, occupant or his authorized agent. If the violation is not removed or abated after notice, the enforcing authority may commence enforcement action through noncriminal, criminal or civil proceedings, and no action shall preclude any other enforcement action or actions.
- C. In addition to any penalties or enforcement actions hereunder, after final determination of three or more violations within a twelve-month period an enforcing authority may notify a violator, in writing, that the enforcing authority may elect to bill the violator for the costs incurred by the Town for response to each subsequent violation not abated or ordered without abatement as provided herein. Such bill(s) shall be due and payable in full by the violator within 30 days of submission and, if unpaid thereafter, shall be subject to a municipal charges lien as provided in MGL c. 40, § 58.

§ 54-8. Interpretation of provisions; severability; period of effect.

- A. The provisions of this chapter are in addition to and not in lieu of any other chapter, rule or regulation of the Town of Barnstable and any board, commission or officer. Compliance with this chapter shall not thereby constitute compliance with any other chapter, rule or regulation, and violation of this chapter does not thereby preclude violation of any other chapter, rule or regulation.
- B. If any provision of this chapter is declared invalid, it shall not thereby invalidate any other provision.
- C. This chapter shall be in effect until June 16, 2015, and shall be void and of no effect thereafter unless extended by ordinance enacted and effective on or before said date.

Chapter 57

CIGARETTE VENDING MACHINES

§ 57-1. Sale of cigarettes by machines prohibited.

§ 57-2. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable (Art. LIV of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Smoking — See Ch. 371.

Tobacco sales permit fee — See Ch. 318.

§ 57-1. Sale of cigarettes by machines prohibited.

All sale of cigarettes by machine is prohibited.

§ 57-2. Violations and penalties.

Any person violating this chapter shall be fined not more than \$300.

Chapter 59

COMPREHENSIVE OCCUPANCY

§ 59-1. Purpose and intent.

§ 59-2. Definitions.

§ 59-3. Maximum number of occupants.

§ 59-4. Exemptions.

§ 59-5. Enforcement; violations and penalties.

§ 59-6. Severability; construal of provisions.

[HISTORY: Adopted by the Town of Barnstable 6-1-2006 by Order No. 2006-126.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal enforcement of violations — See Ch. 1, Art.

I.

Rental property — See Ch. 170.

Zoning — See Ch. 240.

Subdivision regulations — See Ch. 801.

§ 59-1. Purpose and intent.

The purpose and intent of this chapter is to guide growth in accordance with the local comprehensive plan, so as to promote beneficial and convenient relationships between the natural resources of the Town and its inhabitants, to address nutrient management and other environmental, health and safety issues resulting from overcrowding in residential dwellings.

§ 59-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BEDROOM — A room providing privacy, intended primarily for sleeping and consisting of all of the following: (a) floor space of no less than 70 square feet; (b) a ceiling height of no less than seven feet; (c) an electrical service and ventilation; and (d) at least one window large enough to provide emergency egress. Living rooms, dining rooms, kitchens, halls, bathrooms, unfinished cellars and unheated storage areas over garages are not considered bedrooms.

[Amended 10-19-2006 by Order No. 2007-033]

OCCUPANT — Any person who has attained the age of 18 who has resided in a residential dwelling for any length of time. [Amended 1-17-2013 by Order No. 2013-033]

RESIDENTIAL DWELLING — A single unit providing complete independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation.

1. Editor's Note: This order also provided that its subject matter shall be examined by a committee appointed by the President of the Council before 10-1-2007, to report to the Council by 2-1-2008, with respect to any changes which may be deemed necessary or advisable.

§ 59-3. Maximum number of occupants.

The maximum number of occupants in a residential dwelling shall be determined by the number of bedrooms contained therein. A maximum number of two occupants is permitted for each of the first two bedrooms; for each additional bedroom a maximum number of one occupant is permitted. It shall be a violation of this chapter for any person in excess of that provided herein to occupy any residential dwelling.²

§ 59-4. Exemptions. [Amended 1-17-2013 by Order No. 2013-033]

Children, grandchildren and foster children of an owner or occupant shall be exempt from these provisions.

§ 59-5. Enforcement; violations and penalties.

- A. This chapter may be enforced by the Building Commissioner, or his designee, the Board of Health and/or its designees or the police.
- B. The owner, lessee or person in a position of control of any dwelling unit found in violation of this chapter shall be subject to a fine not to exceed \$300. Each day of continued violation may be deemed to be a separate offense.
- C. This chapter may be enforced under the provisions of MGL c. 40, § 21D. The fine for any violation under the provisions of MGL c. 40, § 21D shall be \$100. Each day of continued violation may be deemed to be a separate offense.

§ 59-6. Severability; construal of provisions.

- A. Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.
- B. Nothing herein shall be construed as allowing for more bedrooms in any residential dwelling than are otherwise permitted by any state or local law or regulation governing health and safety.

2. Editor's Note: Former Subsection B, regarding the maximum number of motor vehicles permitted, which immediately followed, was repealed 1-17-2013 by Order No. 2013-033.

Chapter 68

ELECTRICAL STANDARDS

ARTICLE I Inspection of Wires

§ 68-2. Administration and enforcement.

§ 68-3. Fees.

§ 68-1. Applicability of state standards.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 47.
Fee Schedule — See Ch. 76, Art. II.

Gas piping and appliances — See Ch. 96.

ARTICLE I Inspection of Wires

[Adopted 3-3-1931, as amended through 1-4-1996 by Order No. 96-083 (Art. VI of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 68-1. Applicability of state standards.

Whoever proposes to place wires designed to carry a current of electricity or conductors or appliances for the distribution of electrical current shall be subject to the provisions of the Commonwealth of Massachusetts Electrical Code.

§ 68-2. Administration and enforcement.

Said Code and all penalties thereunder shall be administered and enforced by the Wiring Inspector of the Town of Barnstable who shall be appointed by the Town Manager annually in June, to hold office from the first of July following for the term of one year or until his successor has been appointed and qualified to work under the supervision of the Building Commissioner.

§ 68-3. Fees.

No placement of wires as described under § 68-1 shall be made except upon application for and issuance of an appropriate permit by the Wiring Inspector at a fee schedule determined in accordance with state regulations and the revenue fee policy established by the Town Council. The schedule for these fees can be found in Chapter 1, Article I, of the Code of the Town of Barnstable.

Chapter 76

FEES

ARTICLE I Retention of Fees by Golf Pro

§ 76-1. Amount allowed to be retained.

ARTICLE II Schedule of Fees

§ 76-2. Schedule adopted.

§ 76-3. Weights and measures annual fees (MGL c. 98, § 56).

§ 76-4. Licenses.

§ 76-5. License to store inflammables.

§ 76-6. Building, sign, wiring, plumbing and gas permit fees.

§ 76-7. Newsracks.

§ 76-8. Outdoor business licenses.

§ 76-9. Tourist camps.

§ 76-10. Town Clerk's fees.

§ 76-11. Town Collector's fees.

§ 76-12. through § 76-15. (Reserved)

ARTICLE III Exception for Water Tower Construction Projects

§ 76-16. Exemption from payment of fees.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Board of Health fees — See Ch. 318.

Town Manager regulations — See Part IV.

ARTICLE I Retention of Fees by Golf Pro

[Adopted 5-21-1992 (Art. XX of Ch. II of the General Ordinances as updated through 7-7-2003); amended in its entirety 2-7-2008 by Order No. 2008-076]

§ 76-1. Amount allowed to be retained.

Notwithstanding the provisions of any other ordinance of the Town to the contrary, the golf professional and the assistant golf professional at the Barnstable Municipal Golf Course are hereby authorized to retain, as part of their official compensation, in addition to their salaries, the following amounts: for the golf professional, fees not in excess of 10% of his/her base pay annually; for the assistant golf professional, fees not in excess of 25% of his/her base pay annually. When fees charged and received for golf instruction exceed the percentages noted, the Town shall retain such receipts.

ARTICLE II
Schedule of Fees

[Adopted 5-6-2004 by Order No. 2004-066 (Art. XIII of Ch. II of the General Ordinances as updated through 7-7-2003); amended in its entirety 2-7-2008 by Order No. 2008-076]

§ 76-2. Schedule adopted.

The following Schedule of Fees shall be in effect in the Town of Barnstable.

§ 76-3. Weights and measures annual fees (MGL c. 98, § 56). [Amended 3-4-2010 by Order No. 2010-071; 1-17-2013 by Order No. 2013-064]

Description	Fee Per Device			
	2008 1 to 3	2013 1 to 3	2008 4 or more	2013 4 or more
Scale with capacity over 10,000 pounds	\$250.00	\$275.00	\$225.00	\$250.00
Scale with capacity 5,000 to 10,000 pounds	\$135.00	\$145.00	\$110.00	\$120.00
Scale with capacity 100 to 5,000 pounds	\$80.00	\$90.00	\$70.00	\$80.00
Scale with capacity less than 100 pounds	\$50.00	\$60.00	\$45.00	\$55.00
Weights (each)	\$8.00	\$10.00	\$6.00	\$8.00
Liquid measures	\$30.00	\$40.00	\$30.00	\$40.00
Liquid measure meters	-----	-----	-----	-----
Lubricant meters	\$50.00	\$60.00	\$45.00	\$55.00
Motor fuel meters	\$50.00	\$60.00	\$45.00	\$55.00
Vehicle tank meters	\$110.00	\$120.00	\$100.00	\$110.00
Vehicle tank meter gravity	\$175.00	\$185.00	\$150.00	\$160.00
Bulk storage tank meter	\$175.00	\$185.00	\$150.00	\$160.00
Mechanical pumps, each stop	\$10.00	\$15.00	\$10.00	\$15.00
Taxi meters (semiannually)	\$55.00	\$60.00	\$50.00	\$55.00
Commercial odometer - hubodometer	\$55.00	\$60.00	\$50.00	\$65.00
Leather measure	\$175.00	\$185.00	\$150.00	\$160.00
Dry measure, one bushel or less	\$85.00	\$95.00	\$85.00	\$95.00
Dry measure, more than one bushel	\$120.00	\$130.00	\$120.00	\$130.00
Counting device	\$25.00	\$35.00	\$25.00	\$35.00

Description	Fee Per Device			
	2008 1 to 3	2013 1 to 3	2008 4 or more	2013 4 or more
All other measuring devices	\$125.00	\$135.00	\$125.00	\$135.00
Rope, wire or chain measuring devices	\$25.00	\$35.00	\$20.00	\$30.00
Reinspection fee (after official rejection)	\$95.00	\$100.00	\$95.00	\$100.00
Reverse vending machines				
Bottle and can redemption inspection				
Disposable test material supplied by inspector	\$25.00	\$35.00	\$20.00	\$30.00
Disposable test material supplied by store	\$15.00	\$20.00	\$10.00	\$15.00
Automatic electronic check-out systems				
3 or less cash registers (per inspection)	\$85.00	\$95.00	N/A	
4 to 11 cash registers (per inspection)	\$170.00	\$180.00	N/A	
12 or more cash registers (per inspection)	\$280.00	\$300.00	N/A	

§ 76-4. Licenses. [Amended 3-4-2010 by Order No. 2010-071; 1-5-2012 by Order No. 2012-034; 1-17-2013 by Order No. 2013-064; 11-7-2013 by Order No. .2014-034]

MGL c./Section	Description	Fee
40, § 22	Taxicabs/limos (Town Manager)	\$50.00
100, § 2	Auctioneer, annual (Town Manager)	\$15.00
100, § 2	Auctioneer, temporary (Town Manager)	\$10.00
101, § 33	Temporary license to sell for charitable purposes	\$10.00
101, § 33	Temporary license to sell for charitable purposes	\$10.00
138, § 12	Club, all alcohol	\$2,225.00
138, § 12	Common victualer, all alcohol	\$3,050.00
138, § 12	Common victualer, beer and wine	\$1,950.00
138, § 12	Innholder, all alcohol	\$3,550.00
138, § 12	Farmer-brewery pouring	\$3,050.00
138, § 14	One-day, all alcohol	\$90.00
138, § 14	One-day, beer and wine	\$40.00
138, § 14	One-day, beer only/wine only	\$35.00

MGL c./Section	Description	Fee
138, § 15	Package store, all alcohol	\$3,025.00
138, § 15	Package store, beer and wine	\$1,950.00
138, § 30A	Pharmacist to sell alcoholic beverages	\$2,000.00
140, § 2	Inns and restaurants (common victuallers)	\$100.00
140, § 2	Live theatre	\$100.00
140, § 21B	Nonalcoholic beverages	\$100.00
140, § 32B	Mobile home parks	\$50.00
140, § 32B	Motels	\$50.00
140, § 34	License for lodging house	
	10 guests or fewer	\$75.00
	More than 10 guests	\$125.00
140, § 49	License for vehicle for sale of food	\$250.00
140, § 54	Junk dealer	\$50.00
140, § 56	Private parking lot (per space)	\$8.00
140, § 56A	Shooting gallery	\$100.00
140, § 59	Auto dealer	\$150.00
140, § 177	Pool table (each)	\$75.00
140, § 177A	Automatic amusement devices (each)	\$100.00
140, § 183A	Karaoke	\$100.00
140, § 183A	Entertainment annual	\$250.00
	Seven-day live	\$275.00
	Seven-day nonlive	\$75.00
140, § 183A	Entertainment daily	\$25.00
	Not-for-profit	\$25.00
	For-profit (including Sunday)	\$50.00
140, § 1851	Fortune-tellers	\$250.00
140, § 186	Carousel	\$75.00
140, § 192	Rental boats (freshwater)	\$100.00
148, § 13	Storage of hazardous materials (Town Manager)	\$100.00
	Septic system inspection fee (Health)	\$25.00
	Board of Health request for variance	\$95.00
	Application fee licenses and permits	\$100.00
	Bad check fee	\$25.00
	Late fee	\$100.00

§ 76-5. License to store inflammables.

Description	New Permit	Annual Permit
1 to 500 gallons or 4,000 pounds	\$45.00	\$0.00
500 to 999 gallons or 8,000 pounds	\$45.00	\$22.50
1,000 to 4,999 gallons or 40,000 pounds	\$75.00	\$37.50
5,000 to 9,999 gallons or 80,000 pounds	\$105.00	\$52.50
10,000 to 29,999 gallons or 240,000 pounds	\$135.00	\$67.50
30,000 to 99,999 gallons or 800,000 pounds	\$165.00	\$82.50
100,000 to 199,999 gallons or 1,600,000 pounds	\$240.00	\$120.00
More than 200,000 gallons or 1,600,000 pounds	\$330.00	\$165.00

§ 76-6. Building, sign, wiring, plumbing and gas permit fees. [Amended 3-4-2010 by Order No. 2010-071]

A. Building permits.

Description	Fees
Residential (R03, R-4 Use Groups)	
New buildings	
Application fee	\$100.00
Permit fee	\$5.10 per \$1,000 of construction value
Additions, alterations/renovations	
Application fee	\$50.00
Permit fee	\$5.10 per \$1,000 of construction value; \$35 minimum
Commercial and all other use groups	
New buildings	
Application fee	\$150.00
Permit fee	\$9.10 per \$1,000 of construction value
Additions, alterations/renovations	
Application fee	\$100.00
Permit fee	\$9.10 per \$1,000 of construction value; \$60 minimum
Permit fee for all other structures (not specified)	\$9.10 per \$1,000 based on actual value; \$100 minimum

B. Plumbing permits.

Description

Fees

Residential, per unit

\$40/first fixture plus \$12 each additional fixture

Commercial, per unit

\$60/first fixture plus \$15 each additional fixture

C. Gas permits.

Description	Fees
Residential, per unit	\$40/first fixture plus \$12 each additional fixture
Commercial, per unit	\$60/first fixture plus \$15 each additional fixture

D. Electrical permits.

Description	Fees
Residential	
New construction per unit	\$150.00
Additions/renovations	
Less than 500 square feet	\$30.00
Greater than 500 to 1,500 square feet	\$50.00
Greater than 1,500 square feet	\$100.00
Minor alterations/appliances	\$30.00
Change of service/meter	\$30.00
Accessory structures (garage, barn, etc., excluding separate meter)	\$30.00
Temporary service	\$30.00
Meters per unit	\$30.00
Smoke detectors/alarms	\$30.00
Commercial	
New construction per unit	\$200, plus \$25 per 1,000 square feet greater than 4,000 square feet
Additions/renovation	
Less than 1,000 square feet	\$75.00
Greater than 1,000 to 2,500 square feet	\$100.00
Greater than 2,500 square feet	\$150, plus \$25 per 1,000 square feet greater than 4,000 square feet
Minor alterations/appliances, etc.	\$30.00
Change of service/meter	\$40.00
Temporary service	\$30.00
Signs	\$30.00
Carnivals/fairs	
1 to 10 concessions/rides	\$50.00
10 concessions/rides	\$100.00

E. Signs.

Description	Fees
Under 25 square feet	\$50.00
Over 25 to 50 square feet	\$75.00
Over 50 to 75 square feet	\$150.00
Over 75 square feet	\$200.00

F. Miscellaneous permits and fees.

Description	Fees
Accessory building: all use groups	
Greater than 120 square feet to 500 square feet	\$35.00
Greater than 500 square feet to 750 square feet	\$50.00
Greater than 750 square feet to 1,000 square feet	\$75.00
Greater than 1,000 square feet to 1,500 square feet	\$100.00
Greater than 1,500 square feet	Same as new building permit based on actual cost
Change of permit holder	\$35.00
Pre-Building Code structure, certificate of occupancy	\$75.00
Change of use permit (no construction)	\$25.00
Foundation permit (separate from building permit for cause only)	\$35.00
Zoning compliance certificate (lots/existing uses/structures)	\$50.00 minimum plus research time
Reinspections (for work not ready for inspection, incomplete work or failure of inspectors to gain access to premises)	\$100.00
Removal of stop-work order	\$50.00
Replacement of lost permit inspection cards	\$50.00
Chimney/fireplace (new and reconstruction)	\$35.00
Certificates of inspection	\$10 increase CMR 780 Table 106; \$50.00 minimum
Permit renewals	
First renewal	\$50.00
Second renewal (for cause only)	\$75.00
In-ground swimming pools	\$125.00
Aboveground swimming pools	\$75.00

Description	Fees
Decks, open porch	\$60.00
Relocation/moving (includes new foundation)	\$250.00
Demolition	
Residential principal buildings	Minimum \$125.00 \$5.10 per \$1,000 of construction value
Accessory buildings	\$50.00
Commercial buildings	\$9.10 per \$1,000 of construction value
Home occupation (no construction)	\$35.00
Pre-permit plan review (one- and two-family)	\$75.00
Temporary residential certificate of occupancy (for cause only)	\$75.00
Residential certificate of occupancy	\$25.00
Temporary commercial certificate of occupancy (for cause only)	\$75.00
Commercial certificate of occupancy	\$75.00
Pre-permit plan fees	\$100.00
Site plan (fees)	
Project construction cost	
Under \$5,000	\$100.00
\$5,000 to \$14,999	\$200.00
\$15,000 to \$49,999	\$250.00
\$50,000 to \$249,999	\$350.00
\$250,000 or more	\$500.00
Permit related to work begun prior to time allowed for acquiring permits under Building, Electrical, Plumbing and Gas Code	Two times permit cost

G. Express permits.

Description	Fees
Minimum	\$35.00
Residing/reroofing (residential)	\$5.10 per \$1,000 of construction value
Wood/coal stoves	\$35.00
Replacement windows	\$35.00
Sheds under 120 square feet	\$35.00
Others (as determined by inspector)	\$35.00

H. Tents. (See § 240-9D of Ch. 240, Zoning.)

Description	Fees
Residential	\$25.00
Fund-raiser/special event/nonprofit agency	\$25.00
Commercial (temporary accessory structure)	\$100.00
Organized and supervised recreational camp (special permit required)	\$50.00

§ 76-7. Newsracks.

For a permit or renewal of a permit for newsracks pursuant to § 130-5: \$50.

§ 76-8. Outdoor business licenses.

For outdoor business licenses pursuant to § 141-6:

- A. Annual fee: \$400.
- B. When issued after October 15: \$200.
- C. For charitable organizations (special license): \$25.

§ 76-9. Tourist camps.

For tourist camps pursuant to § 217-4:

- A. Permit: \$10 per tourist camp.
- B. Renewal fee: \$10 per tourist camp.

§ 76-10. Town Clerk's fees. [Added 2-17-2011 by Order No. 2011-052¹]

MGL c. 262, § 34, Clause	Description	Fee
1	For filing and indexing assignment for benefit of creditors	\$10
11	Entering amendment of a record of the birth of a child born out of wedlock subsequently legitimized	\$20
12	Correcting errors in a record of birth	\$20
13	Furnishing certificate of a birth	\$10

1. Editor's Note: This order also renumbered former § 76-10 as § 76-16.

**MGL c. 262,
§ 34, Clause**

	Description	Fee
13A	Furnishing an abstract copy of a record of birth	\$10
	Research and furnish an ancient (over 100 years) vital record	\$20
14	Entering delayed record of birth	\$20
20	Filing certificate of a person conducting business under any title other than his real name (good for four years)	\$40
21	For filing by a person conducting business under any title other than his real name; statement of change of his residence, or discontinuance, retirement or withdrawal from, or change of location of, such business	\$20
22	Furnishing certified copy of certificate of person conducting business under any title other than his real name or a statement by such a person of his discontinuance, retirement or withdrawal from such business	\$10
23	Recording the name and address, the date and number of certificate issued to a person registered for the practice of podiatry in the commonwealth	\$25
29	Correcting errors in a record of death	\$20
30	Furnishing a certificate of death	\$10
30A	Furnishing an abstract copy of a record of death	\$10
42	Entering notice of intention of marriage and issuing certificate	\$41
43	Entering certificate of marriage filed by persons married out of the commonwealth	\$20
44	Issuing certificate of marriage (certified)	\$10
44A	Furnishing an abstract copy of a record of marriage	\$10
45	Correcting errors in a record of marriage	\$20
54	Recording power of attorney	\$20
57	Recording certificate of registration granted to a person engaged in the practice of optometry, or issuing a certified copy thereof	\$25
58	Recording the name of the owner of a certificate of registration as a physician or osteopath in the commonwealth	\$25

**MGL c. 262,
§ 34, Clause**

	Description	Fee
62	Recording order granting locations of poles, piers, abutments or conduits, alterations or transfers thereof, and increase in number of wires and cable or attachments under the provisions of Sec. 22 of Chapter 166 Flat rate Additional fee	\$40 \$10
66	Examining records or papers relating to birth, marriage or deaths upon the application of any person, the actual expense thereof, but not less than	\$10
67	Copying any manuscript or record pertaining to a birth, marriage or death	\$5
69	For receiving and filing a complete inventory of all items to be included in a closing out sale, etc. First page Plus each additional page	\$10 \$2
75	For filing a copy of written instrument or declaration of trust by the trustees of an association or trust, or any amendment thereof as provided by Chapter 182, § 2	\$20
79	Recording any other documents Issuing burial permits Certification of any document from our office not named Raffle permit (nonprofit organizations)	\$10 \$5 \$10 \$10

§ 76-11. Town Collector's fees. [Added 2-17-2011 by Order No. 2011-052]

**MGL Chapter
and Section**

	Description	Fee
60 § 23	Municipal lien certificates	\$40
60 § 15, cl. 2	Demand fees for personal property, real estate and excise taxes	\$15

§ 76-12. through § 76-15. (Reserved)

ARTICLE III
Exception for Water Tower Construction Projects
[Adopted 4-16-2009 by Order No. 2009-086]

§ 76-16. Exemption from payment of fees.

Notwithstanding the provisions of any other ordinance of the Town regarding Schedules of Fees, water tower construction project(s) shall hereby be exempt from payment of such fees.

Chapter 80

FIRE LANES

§ 80-1. Power of Town Manager.

§ 80-4. Signs.

§ 80-2. Order to establish fire lanes on certain properties.

§ 80-5. Enforcement.

§ 80-3. Marking, size and location.

§ 80-6. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 11-7-1987, approved 12-3-1987 (Art. XLVIII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

§ 80-1. Power of Town Manager.

Under the authority of General Laws Chapter 40, § 21, Clause 24, the Town Manager may require and prescribe the establishment of fire lanes whenever public safety and necessity so require, and may prescribe the method by which it shall be done.

§ 80-2. Order to establish fire lanes on certain properties.

Any person or body, that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, multiple-family and residential dwellings, hospitals, nursing homes, or any other place where the public has a right of access as invitees or licensees, shall, when directed by the Town Manager, establish a fire lane.

§ 80-3. Marking, size and location.

Said fire lane shall be marked by yellow lines, at least four inches wide on a diagonal from the point of origin to the curb or sidewalk. The fire lane shall not be less than eight feet wide from the curb, or in the case of a building with no curb or sidewalk less than 12 feet wide from the edge of said building. The legend (Fire Lane) shall be included within the printed area.

§ 80-4. Signs.

Signs with the legend "No Parking - Fire Lane - Town Zone" shall be erected no more than 50 feet nor less than 25 feet apart along the length of the fire lane. Signs shall be at least 12 inches wide by 16 inches high, and shall be securely mounted at least six feet but not more than eight feet above grade.

§ 80-5. Enforcement.

- A. Any vehicle or object obstructing or blocking any fire lane or private way may be removed or towed at the direction of the Chief of Police or such Sergeants or other officers of high rank in the Police Department as he may from time to time designate. Liability may be imposed for the reasonable cost of such removal and for the storage charges, if any, resulting therefrom, upon the owner of such vehicle; provided, however, that the liability also imposed for removal shall not exceed that as provided for in Chapter 40, § 22D of the General Laws. Neither the removal nor storage of a vehicle under the provisions of this section shall be deemed to be services rendered or work performed by the Town of Barnstable or the Police Department.
- B. Enforcement of parking violations in such established fire lanes shall be by members of the Barnstable Police Department in accordance with the Town of Barnstable Traffic Regulations, Chapter 90, § 20A 1/2 of the General Laws and this chapter.

§ 80-6. Violations and penalties.

Any such person or body who fails to establish such fire lane when directed to by the Town Manager shall be punished by a fine of not more than \$300, and this chapter may be enforced by members of the Barnstable Police Department. Each day that such violation continues shall constitute a separate offense.

Chapter 86

FUNDS

ARTICLE I

Reversion of Appropriations to General Fund

- § 86-1. Definitions.
- § 86-2. Reversion of general appropriations to the general fund.
- § 86-3. Reversion of specific appropriations to the general fund.
- § 86-4. Extension of date.
- § 86-5. Rights of creditors.

ARTICLE II Enterprise Funds

- § 86-6. Designation of certain facilities as enterprises.

ARTICLE III

Revolving Funds

- § 86-7. Establishment.
- § 86-8. Operation.
- § 86-9. Annual authorization.
- § 86-10. Annual report.
- § 86-11. Fiscal year close-out.

ARTICLE IV

Handicap Parking Fund

- § 86-12. Establishment; purpose; amount of transfer.
- § 86-13. Deposit in separate account; expenditures.
- § 86-14. Deposit of excess funds to general fund.
- § 86-15. Annual report.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Handicapped parking — See Ch. 104.

ARTICLE I

Reversion of Appropriations to General Fund

[Adopted 11-7-1981, approved 2-23-1982 (Art. XIV of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 86-1. Definitions.

As used in this article, the following words shall have the following meanings:

GENERAL APPROPRIATION — Any appropriation made by the Town Council which is not a specific appropriation within the meaning of this article.

SPECIFIC APPROPRIATION — An appropriation made by the Town Council which is described within the vote making the appropriation as being "specific," and is otherwise a specific appropriation under the law.

§ 86-2. Reversion of general appropriations to the general fund.

General appropriations made by the Town Council shall continue to revert to the general fund at the close of the fiscal year for which they are made, as provided by law.

§ 86-3. Reversion of specific appropriations to the general fund.

Unless otherwise provided in a vote of the Town Council making a specific appropriation, or unless a specific appropriation has been encumbered by contractual obligations, specific appropriations shall have a normal life of three years from the commencement of the fiscal year for which it was approved. At the end of the third fiscal year, any funds remaining in the appropriation shall revert to the general fund. A vote making a specific appropriation may provide that the appropriation shall revert to the general fund at the end of any fiscal year.

§ 86-4. Extension of date.¹

The Town may, at any time by appropriate action by the Town Council, extend the date on which a specific appropriation would otherwise revert to the general fund.

§ 86-5. Rights of creditors.

Nothing in this article shall be construed to affect the right of any creditor of the Town, regardless of the reversion of any appropriation to the general fund.

ARTICLE II

Enterprise Funds

[Adopted 7-15-1993 by Order No. 93-129 (Art. XVIII-B of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 86-6. Designation of certain facilities as enterprises.

The Town accepts the provisions of § 53F 1/2 of Chapter 44 of the MGL, authorizing the establishment of Enterprise Funds and hereby designates:

- A. The Recreation Department's Olde Barnstable Fairgrounds Municipal Golf Course facility and its operation as an enterprise thereunder;
- B. The Barnstable Municipal Airport and its operation as an enterprise thereunder;
- C. The Public Works Department Solid Waste Division, Flint Street, Marstons Mills Municipal Solid Waste Facility and its operation as an enterprise thereunder; and

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

- D. The Public Works Department Water Pollution Control Division facilities, including mains and pumping stations and their operation, as an enterprise thereunder.
- E. The Public Works Department Water Supply Division facilities, including wells and well fields, storage tanks, mains and pumping stations and their operation, as an enterprise thereunder. **[Added 5-26-2005 by Order No. 2005-099]**
- F. The Department of Community Services Marine and Environmental Affairs Division Marina facilities as an enterprise thereunder. **[Added 5-26-2005 by Order No. 2005-099]**
- G. The Department of Community Services Marine and Environmental Affairs Division Sandy Neck area and facilities as an enterprise thereunder. **[Added 5-26-2005 by Order No. 2005-099]**
- H. The Department of Community Services Hyannis Youth and Community Center facility, as an enterprise thereunder. **[Added 5-21-2009 by Order No. 2009-106]**

ARTICLE III

Revolving Funds

[Adopted 7-20-2000 by Order No. 2000-144 (Art. XVIII-A of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 86-7. Establishment. [Amended 6-2-2011 by Order No. 2011-134]

The Town hereby establishes revolving funds, pursuant to Chapter 44, § 53 E 1/2 of the General Laws, within the special revenue accounts of the Town of Barnstable which shall be known as the:

- A. Classroom Education Fund, Senior Services Division, Community Services Department.
- B. Adult Social Day Fund, Senior Services Division, Community Services Department.
- C. Recreation Program Fund, Recreation Division, Community Services Department.
- D. Shellfish Propagation Fund, Natural Resources Division, Community Services Department.
- E. Building Inspections Fund, Building Services Division, Regulatory Services Department.
- F. Consumer Protection Fund, Consumer Affairs Division, Regulatory Services Department.
- G. Geographical Information Systems Fund, Information Systems Division, Administrative Services Department.
- H. Police Training Fund, Police Department.
- I. Arts and Culture Program Fund, Growth Management Department

§ 86-8. Operation. [Amended 6-2-2011 by Order No. 2011-134]

The Senior Services Division, the Recreation Division and the Natural Resources Division of the Community Services Department, the Building Services Division and Consumer Affairs Division of the Regulatory Services Department, the Information Systems Division of the Administrative Services Department, the Police Department and the Growth Management Department are hereby authorized to operate said funds in the following manner:

- A. The Town Accountant shall account for all funds separately from all other monies of the Town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Receipts credited to each of these revolving funds shall mean the following:
- (1) For the Classroom Education Fund, Adult Social Day Fund and the Recreation Program Fund: program registration fees to participate in these programs.
 - (2) For the Shellfish Propagation Fund: fees generated from the sale of commercial and recreational shellfish permits.
 - (3) For the Building Inspections Fund: fees generated from permits issued on municipal projects over \$500,000 and private projects over \$3,000,000.
 - (4) For Consumer Protection Fund: fees generated for services performed under this program.
 - (5) For the Geographical Information Systems Fund: fees generated for the production of GIS maps and reports.
 - (6) For the Police Training Fund: fees generated for providing police training to police of other towns.
 - (7) For the Arts and Culture Program Fund: lease payments received from the rental of artist shanties gifts or contributions received for the support or promotion of arts and culture programs and any revenue generated from Town-sponsored arts and culture programming.
- B. Expenditures may be made from such revolving funds without further appropriation, subject to the provisions of this article; provided, however, that expenditures shall not be made or liabilities incurred from any of the revolving funds in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund. Expenditures from such revolving funds shall be at the approval of the Town Manager.
- C. Interest earned on any revolving fund balance shall be treated as general fund revenue of the Town.
- D. Expenditures from said fund shall not be made for the purpose of paying any wages or salaries for full-time employees unless the fringe benefits associated with such wages or salaries are also charged to the fund. Subject to the foregoing, the funds may be expended for payment of teachers, recreational instructors, police training instructors, shellfish propagation officers, building inspectors, weights and measures inspectors, and other expenses of programs providing classroom education to participating senior citizens, programs providing recreational activities to participating residents of the Town,

shellfish seed stock and related shellfish propagation equipment, professional building inspection services, weights and measures enforcement, production of GIS reports and police training and expenses related to the promotion of arts and culture programs.

§ 86-9. Annual authorization.

Annually, at the time the Town budget is submitted to the Town Council, the Town Manager shall submit an order to the Town Council authorizing the revolving funds set forth in § 86-7. The order shall contain the following:

- A. The programs and purposes for which the revolving fund may be expended;
- B. The department or officer authorized to expend from such fund;
- C. The departmental receipts which shall be credited to the revolving fund; and
- D. A limit on the total which may be expended from such fund in the ensuing year, subject further to limitations that may be established annually within the order.

§ 86-10. Annual report.

At the end of each fiscal year, the Finance Director shall report to the Town Manager the total amount of receipts and expenditures of each revolving fund for the prior fiscal year. The program directors shall report to the Town Manager the programs, services and participants served by each of the programs. The Town Manager shall forthwith cause a report to be made to the Town Council, together with such other information, as the Town Council shall require.

§ 86-11. Fiscal year close-out.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which the Town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the Town Council, upon the recommendation for a transfer from the Town Manager, votes to transfer such balance to another revolving fund.

ARTICLE IV

Handicap Parking Fund

[Adopted 5-6-2004 by Order No. 2004-078 (Art. LVII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 86-12. Establishment; purpose; amount of transfer.

There is hereby established a Handicap Parking Fund within the Town, the purpose of which shall be to allocate funds received from fines assessed for violations of handicap parking regulations. Funds transferred to the Handicap Parking Fund shall not exceed \$50 per citation collected.

§ 86-13. Deposit in separate account; expenditures.

Funds so received shall be deposited by the Town Treasurer in a separate account and shall be used solely for the benefit of persons with disabilities. Said account shall be established and shall be kept separate from all other accounts. Expenditures from said account shall be made by the Town Manager upon the recommendation of the Disability Commission for the purpose of effecting accessibility improvements within the Town of Barnstable and for administrative expenses of the Barnstable Disability Commission in an amount not to exceed a total of \$3,000 in any one fiscal year.

§ 86-14. Deposit of excess funds to general fund.

All funds collected in excess of \$50 per citation issued shall be deposited to the general fund to help defray the cost of parking enforcement, collection, printing and processing activities.

§ 86-15. Annual report.

The Town Accountant shall annually submit a report to the Town Manager and Town Council for review, and a copy of said report shall be forwarded to the Department of Revenue Bureau of Accounts.

Chapter 89
GAMBLING

§ 89-1. Definitions.

**§ 89-2. Keeping or frequenting gaming
houses prohibited; violations and
penalties.**

[HISTORY: Adopted by the Town of Barnstable 3-16-2000 (Art. LXIV of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Raffles and bazaars — See Ch. 166.

§ 89-1. Definitions.

The words "house," "building" and "place" used severally or together in this chapter shall mean and include a ship or vessel when it is within the territorial limits of the Town.

§ 89-2. Keeping or frequenting gaming houses prohibited; violations and penalties.

Whoever keeps or assists in keeping a common gaming house, or building or place occupied, used or kept for the purposes described in § 23 of Chapter 271 of the General Laws, or is found playing or present as provided in said section, or commonly keeps or suffers to be kept, in a building or place actually used and occupied by him, tables or other apparatus for the purpose of playing at an unlawful game or sport for money or any other valuable thing, shall be punished by a fine of not more than \$300.

Chapter 93

GARAGE AND BARN SALES

§ 93-1. Definitions.

§ 93-2. Limits on number, frequency and length of sales.

§ 93-3. Written permission required.

§ 93-4. Violations and penalties.

[HISTORY: Adopted by the Town Council of the Town of Barnstable 8-27-1975, approved 12-1-1975 (Art. XXIX of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Raffles and bazaars — See Ch. 166.

§ 93-1. Definitions.

Garage and/or barn sales are defined as the sale, or offering for sale, of 10 or more items of personal property at any one residential premises at any one time, excluding such sales as may be conducted by a bona fide charitable organization, religious or fraternal society or other tax exempt organization.

§ 93-2. Limits on number, frequency and length of sales.

Unless specific written authorization is given by the Town Manager, not more than two such sales shall be held on any one residential premises in each calendar year nor more than one such sale in a period of three consecutive months, and any such sale shall not continue for more than two consecutive days.

§ 93-3. Written permission required.

As a condition precedent to any such sale, written permission for the holding of said sale must be secured from the Town Manager at least three days prior thereto.

§ 93-4. Violations and penalties.

Any person violating any of the provisions of this chapter shall be punished by a fine not exceeding \$50 for each offense. Each day that a violation hereof exists will be deemed a separate offense.

Chapter 96

GAS PIPING AND APPLIANCES

§ 96-1. Applicability of state regulations.

§ 96-3. Permit required; fees.

**§ 96-2. Appointment of Gas Inspector;
term.**

[HISTORY: Adopted by the Town of Barnstable 5-18-1976, approved 9-13-1976 (Art. XVIII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Schedule of Fees — See Ch. 76, Art. I.

§ 96-1. Applicability of state regulations.

Whoever proposes to place or install or alter gas appliances or gas piping or appurtenances thereto shall be subject to the rules and regulations as specified in the Commonwealth of Massachusetts Fuel Gas Code promulgated in accordance with the provisions of M.G.L. Chapter 25, § 12H, and any amendments thereto.

§ 96-2. Appointment of Gas Inspector; term.

Said Code and any penalties thereunder shall be administered and enforced by the Gas Inspector of the Town of Barnstable who shall be appointed by the Town Manager annually in June, to hold office from the first of July following for the term of one year or until his successor has been appointed and qualified.

§ 96-3. Permit required; fees. [Amended 11-3-1979, approved 2-26-1980; 5-3-1986, approved 6-20-1986; 11-5-1988, approved 1-3-1989]

No placement or alteration as described under § 96-1 shall be made except upon application for and issuance of an appropriate permit by the Gas Inspector at a fee as provided in Chapter 76, Fees, Article II, Schedule of Fees. All reinspections shall be subject to a fee for each inspection as provided in the Schedule of Fees.

Chapter 100

HANDBILLS

ARTICLE I Distribution of Handbills

§ 100-1. Distribution in public places prohibited.

§ 100-2. Violations and penalties.

ARTICLE II Commercial Handbills

§ 100-3. Distribution restricted.

§ 100-4. Violations and penalties.

[**HISTORY:** Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

ARTICLE I Distribution of Handbills

[Adopted 6-25-1963, approved 7-22-1963 (Art. XIX of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 100-1. Distribution in public places prohibited.

The distribution of commercial advertising on handbills, cards, signs or in any other form, by placing the same on or in vehicles which are parked on the public ways, in public places, or other areas open to the public, is prohibited.

§ 100-2. Violations and penalties. [Added 5-18-1976, approved 9-13-1976]

Any person violating the provisions of this article shall be punished by a fine not to exceed \$50.

ARTICLE II Commercial Handbills

[Adopted 1984 Fall ATM, approved 2-28-1985 (Art. XLIV of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 100-3. Distribution restricted.

No person shall distribute any commercial handbill or other printed matter whose distribution is not protected by the Constitution of the United States or of the commonwealth on any sidewalk or public way within the town.

§ 100-4. Violations and penalties.

Whoever violates the provisions of this article shall be fined not more than \$300.

Chapter 104

HANDICAPPED PARKING

§ 104-1. Parking reserved for those with special license plates only.

§ 104-2. Number of handicapped spaces required for certain uses.

§ 104-3. Off-street parking areas associated with condominiums.

§ 104-4. Sign requirements for and location of handicapped parking spaces.

§ 104-5. Unauthorized vehicles in handicapped spaces prohibited.

§ 104-6. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 5-8-1984 STM by Art. 5 (Art. XLIII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Handicapped parking fines — See Ch. 1, Art. II.

Handicapped Parking Fund — See Ch. 86, Art. IV.

§ 104-1. Parking reserved for those with special license plates only.

No person shall park a motor vehicle, motorcycle or like means of transportation in a designated parking space that is reserved for vehicles owned and operated by disabled veterans or by handicapped persons unless said vehicle bears the distinctive license plates authorized by § 2 of Chapter 90 of the General Laws.

§ 104-2. Number of handicapped spaces required for certain uses.

Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for business, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has right-of-access as invitees or licensees shall be required to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by § 2 of Chapter 90, according to the following formula: If the number of parking spaces in any such area is:

- A. More than 15 but not more than 25: one parking space;
- B. More than 25 but not more than 40: 5% of the spaces but not less than two;
- C. More than 40 but not more than 100: 4% of such spaces but not less than three;
- D. More than 100 but not more than 200: 3% of such spaces but not less than four;
- E. More than 200 but not more than 500: 2% of such spaces but not less than six;
- F. More than 500 but not more than 1,000: 1 1/2% of such spaces but not less than 10;

- G. More than 1,000 but not more than 2,000: 1% of such spaces but not less than 15;
- H. More than 2,000 but less than 5,000: 3/4 of 1% of such spaces but not less than 20; and
- I. More than 5,000: 1/2 of 1% of such spaces but not less than 30.

§ 104-3. Off-street parking areas associated with condominiums. [Added 11-2-1985, approved 12-6-1985]

For the purposes of this chapter, off-street parking areas associated with residential condominiums shall not be deemed to be open to and used by the public as licensees or invitees unless there be 15 or more parking spaces available per residential unit.

§ 104-4. Sign requirements for and location of handicapped parking spaces.

Each parking space designated as reserved under the provisions of § 104-2 of this chapter shall be identified by a permanently installed above-grade sign at least six feet above ground level with white lettering against a blue background and shall bear the words "HANDICAPPED PARKING. SPECIAL PLATE REQUIRED. UNAUTHORIZED PARKING SUBJECT TO FINE AND TOWING AT OWNER'S EXPENSE," and must also contain the international symbol of accessibility which is a person in a wheel chair. Such parking spaces shall be adjacent to curb ramps or other methods permitting sidewalk access to a handicapped person, shall be 12 feet wide or have two eight-foot wide areas with four feet of cross hatch between them and contain the international symbol of accessibility on their surface.

§ 104-5. Unauthorized vehicles in handicapped spaces prohibited.

Unauthorized vehicles shall be prohibited from parking within parking spaces designated for use by disabled veterans or handicapped persons as authorized by §§ 104-1 through 104-4 of this chapter or parking in such a manner as to obstruct such parking spaces or curb ramps designated for use by handicapped persons as a means of egress to a street or public way.

§ 104-6. Violations and penalties.

- A. The penalty for parking in violation of this chapter shall be \$25 and/or the vehicle may be removed at the owner's expense according to the provisions of § 120D of Chapter 266 of the General Laws and may be enforced by the Police Department.
- B. The penalty for failure to establish and maintain the parking spaces and signs required by §§ 104-1 through 104-4 of this chapter shall be \$200 for each day such failure continues and may be enforced by the Building Commissioner.

Chapter 108

HAZARDOUS MATERIALS

- | | |
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| § 108-1. Findings. | § 108-9. Prohibitions. |
| § 108-2. Authority. | § 108-10. Licensure, registration, and inventory requirement exemptions. |
| § 108-3. Definitions. | § 108-11. 21E report information disclosure. |
| § 108-4. Inventory and registration. | § 108-12. Enforcement. |
| § 108-5. Storage controls. | § 108-13. Notice of violation. |
| § 108-6. License and contingency plan. | § 108-14. Violations and penalties. |
| § 108-7. Appeals. | § 108-15. Severability. |
| § 108-8. Handling or storage of additional hazardous materials. | |

[**HISTORY:** Adopted by the Town of Barnstable 10-7-1993 by Order No. 93-104 (Art. XXXIX of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.	On-site sewage disposal systems — See Ch. 360.
Fee for license to store hazardous materials — See Ch. 76, Art. II.	Toxic and hazardous materials — See Ch. 381.
Fuel and chemical storage systems — See Ch. 326.	Wells — See Ch. 397.

§ 108-1. Findings.

- A. Exposure to hazardous substances can cause cancer, genetic mutation, birth defects, miscarriages, lung, liver, and kidney damage, and death.
- B. Environmental contamination can bankrupt site owners, lower or destroy land values, drive out residents and industry, depress local economies, and endanger public health.
- C. Most hazardous substances do not readily decompose into harmless components. They instead remain in highly dangerous forms and penetrate by movement through land and water into and throughout the environment.
- D. Some hazardous substances are considered explosive and/or extremely hazardous and toxic. These substances have caused death and serious injuries to Fire Department personnel. A comprehensive database containing the types and amounts of toxic or hazardous materials stored or handled within buildings within the Town should be formed in order to provide essential information to Fire Department personnel.
- E. Barnstable's groundwater is the sole source of its existing and future drinking water supply. When sufficient groundwater exists to saturate a permeable geologic formation so

as to yield significant quantities of water through wells or springs, it is known as an aquifer.

- F. On Cape Cod, some aquifers may be integral with the surface waters, lakes, streams and coastal estuaries which constitute significant recreational and economic resources of the Town. These resources are used for swimming and other water-related recreation, shellfishing and fishing.
- G. Accidental spills and discharges of petroleum products and other toxic and hazardous materials onto the ground and surface waters have repeatedly threatened the quality of such groundwater supplies and related water resources on Cape Cod and other Massachusetts towns, posing substantial public health and safety hazards and threatening economic losses to the affected communities.
- H. Unless stricter preventive measures are adopted to manage the storage, use, and generation of toxic and hazardous materials and to prohibit the release of these materials within the Town, further releases of such materials to the aquifer will predictably occur, and with greater frequency and degree of hazard by reason of increasing construction, commercial and industrial development, population, and vehicular traffic in the Town of Barnstable and on Cape Cod.
- I. The foregoing conclusions are well known and have been confirmed by findings set forth by the Barnstable County Health and Environmental Department, the Cape Cod Commission, the Massachusetts Department of Environmental Protection, the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA).
- J. Recent revisions to the Massachusetts Drinking Water Regulations, 310 CMR 22.00, created the need for this chapter to be amended in order to remove potential conflicts between this chapter and 310 CMR 22.00.

§ 108-2. Authority.

The Town of Barnstable adopts the following measures under its home rule powers, its police powers to protect the public health and welfare, and its authorization under M.G.L. Chapter 40, § 21.

§ 108-3. Definitions.

- A. Enforcement agencies.

BOARD OF HEALTH — A regulatory committee of the Town. It consists of three members, one of whom is a physician. The members are appointed by the Town Council of the Town of Barnstable.

BUILDING COMMISSIONER — The designated supervisor and administrator of the Town of Barnstable Building Department. The Building Commissioner is appointed by the Town Manager.

FIRE DEPARTMENT — The appropriate Town of Barnstable Fire District's Fire Chief and/or that Fire Chief's designee(s).

HEALTH DEPARTMENT — The Director of Public Health, who is the designated agent of the Board of Health, and/or the Director of Public Health's designee(s). The Health Department provides administrative support to the Board of Health.

B. Other terms.

ACUTELY HAZARDOUS MATERIAL — A material which is extremely toxic or reactive. For the purposes of this chapter, any acutely hazardous waste listed within 310 CMR 30.136 of the Massachusetts Department of Environmental Protection Hazardous Waste Regulations, and those wastes listed within 310 CMR 30.131 with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028 are considered as acutely hazardous materials.

HANDLE — To use, to deal with, act on, or dispose of.

HAZARDOUS MATERIAL — One or more of the following:

- (1) A product or waste or combination of substances which, because of quantity, concentration or physical or chemical or infectious characteristics, poses a present or potential hazard to human health, safety, or welfare or the environment when improperly treated, stored, transported, used, or disposed of or otherwise managed.
- (2) Any material regulated under Sections 310 CMR 30.122, 310 CMR 30.123, 310 CMR 30.124, 310 CMR 30.125, 310 CMR 30.131 (except for those listed with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, F028 which are considered as acutely hazardous materials), 310 CMR 30.132, and 310 CMR 30.160 of the Massachusetts Department of Environmental Protection Hazardous Waste Regulations, et seq., as these statutes may be amended. A general listing of these materials and quantities is available at the Health Department office.
- (3) Any material, waste, product, or substance which has one or more of the following characteristics:
 - (a) Ignitable: easily catches fire, flash point of less than 140° F.;
 - (b) Corrosive: easily corrodes certain materials, very acidic or alkaline, the pH is less than or equal to 2.0 or greater than or equal to 12.5;
 - (c) Reactive: explosive, produces toxic gases when mixed with water or acid;
 - (d) Toxic: poisonous.

MATERIAL SAFETY DATA SHEET (MSDS) — The form containing data regarding physical characteristics, flammability, reactivity, toxicity, and the health and safety hazards of specific chemicals, as well as information relative to procedures recommended for spills and leaks of specific chemicals and special precautions to be taken during handling of specific chemicals.

OPERATOR — The person who has the effective control of a business operation, or governmental agency.

OWNER — The person who has legal ownership of a site. For the purpose of this regulation, the Health Department shall be entitled to rely on the most current list of owners in the records of the Town Board of Assessors as providing sufficient evidence of ownership under this chapter.

RELEASE — The accidental or intentional spilling, leaking, pumping, discharging, pouring, emitting, emptying or dumping of toxic or hazardous material upon or into any land, air, or waters of the Town of Barnstable. Release includes, without limitations, leakage of such materials from failed or discarded containers or storage systems, and disposal of such materials into any sewage disposal system, dry well, catch basin, unapproved hazardous waste landfill, or any other discharge of toxic or hazardous materials into the environment. The term "release" as used and applied in this chapter does not include the following:

- (1) Proper disposal of any material in a sanitary or industrial landfill that has received and maintained all necessary legal approvals for that purpose;
- (2) Application of fertilizers and pesticides in accordance with label recommendations and with regulations of the Massachusetts Pesticide Control Board;
- (3) Application of road salts in conformation with the Snow and Ice Control Program of the Massachusetts Highway Department and/or the Town of Barnstable Highway Division.
- (4) Disposal of sanitary sewage to subsurface sewage disposal systems as defined and permitted by Title 5 of the Massachusetts Environmental Code and the Board of Health regulations.
- (5) Disposal of sanitary sewage to the Town of Barnstable wastewater treatment plant and to other wastewater treatment facilities as defined and permitted by the Massachusetts Department of Environmental Protection.

SITE — Any real estate, personal property, facility, building, structure, installation, equipment, pipe or pipeline including any pipe into a storm drain, sewer or treatment works, well, pit, pond, lagoon, impoundment, ditch, tank, landfill, storage container, or any other place or area to, from or at which toxic or hazardous materials have been stored or discharged.

STORE — The containment of substances or materials in such a manner as not to constitute disposal or use of such substances or materials. Notwithstanding the above, such terms shall not include the maintaining of hazardous materials which are in transit or which are maintained in a fixed facility for a period of less than 30 days during the course of transportation.

§ 108-4. Inventory and registration.

- A. No owner of a business, home occupation, industry, or operator of a governmental agency shall handle or store acutely hazardous materials and/or hazardous materials in the Town of Barnstable unless he/she is the holder of a registration. Such registration shall include an inventory, the location of the site, the name of the operator, and the name of the owner. The inventory shall include the proposed and/or existing quantities of all acutely hazardous materials and hazardous materials handled or stored on site on the form provided by the Health Department.
- B. The owner shall describe the storage location of the material safety data sheets on the registration form provided. The material safety data sheets shall be made available upon request of the Health Department and/or the Fire Department.
- C. There are no minimum quantities that exempt an owner from this section.
- D. New owners of businesses, home occupations, or industrial establishments who have not previously obtained a registration in accordance with this section shall, if they handle or store acutely hazardous materials and/or hazardous materials, obtain a registration prior to handling or storage at a building or structure and prior to commencing business.
- E. The registration shall be revised or renewed if there is a change in the inventory, the site, the operator, or the owner.

§ 108-5. Storage controls.

- A. All acutely hazardous materials and/or hazardous materials shall be stored indoors, unless in product-tight containers which are protected from the elements, leakage, accidental damage, and vandalism. Liquid hazardous materials other than gasoline, which are stored outside, shall be stored above ground in a covered container within a containment area designed to contain a minimum of 110% of the volume of all materials to be stored. For the purposes of this subsection, fertilizer shall be considered as hazardous materials.
- B. Containers of acutely hazardous materials and/or hazardous materials shall be stored on an impervious, chemical-resistant surface compatible with the material being stored. Provisions shall be made to contain the product in the case of an accidental release.
- C. Wastes containing acutely hazardous materials and/or hazardous materials shall be held on the premises in product-tight containers and shall be removed and disposed of in accordance with the Massachusetts Hazardous Waste Management Act, Ch. 704 of the Acts of 1979.¹
- D. Road salts and other chemicals used for ice and snow removal shall be contained in a structure that provides protection from the elements. The structure shall be constructed in such a way to prevent a release and to prevent leachate from contaminating the groundwater and surface waters.

1. Editor's Note: See MGL C. 21C, § 1 et seq.

- E. Other containers/containment areas may be required as specified or as determined by the Director of Public Health.

§ 108-6. License and contingency plan.

- A. The Board of Health shall adopt regulations from time to time specifying the hazardous materials and acutely hazardous materials which shall be regulated by licensure, specifying the quantities of such hazardous materials and acutely hazardous materials which shall be regulated by licensure, and specifying the fees for such licenses. The Board of Health may have reference to scientific literature, publications, recommendations and regulations of federal, state, and local regulatory agencies, the expertise and experience of public safety agencies, especially and including Fire Departments. Such a determination will be based upon the ignitability, corrosivity, reactivity, or toxicity of the hazardous materials handled or stored, the amounts of hazardous materials and acutely hazardous materials stored, and the proposed storage location and handling location of the acutely hazardous materials and hazardous materials.
- B. The Health Department shall enforce such Board of Health regulations. The Health Department shall require, after reviewing the submitted registration information set forth in § 108-4, an owner to obtain an annual license.
- C. It shall be the responsibility of the owner and/or the operator to apply annually for such license.
- D. New owners of businesses, home occupations, industrial establishments or operators of governmental agencies who have not previously obtained a license in accordance with this section may be required upon registration to obtain a license prior to handling and/or storage at a building or dwelling and prior to commencing business.
- E. The owner and/or operator shall submit a contingency plan prior to the issuance of a license by the Health Department. A contingency plan shall meet the requirements set forth below:
 - (1) Submission of the names, addresses, and telephone numbers of the owner, operator, and all other persons responsible for implementation of the contingency plan in the absence of the owner and/or operator.
 - (2) A plan showing where and how all regulated substances shall be stored as described within § 108-5 of this chapter such that the method of containing any accidental release to ensure that all such releases will be totally contained and prevented from reaching any surface or ground waters or into any on-site sewage disposal system, sewer system, catch basin, or dry well. This plan shall also be posted in one of the following on-site locations: guard shack, fire alarm box, sprinkler riser, other location acceptable to the Fire Department. The location of the posting shall be specified.
 - (3) The Health Department and/or the Fire Department may require the owner to provide vacuum suction devices or absorbent scavenger materials be present on

site in sufficient magnitude so as to control and collect the total quantity of regulated substances present or may require such devices and materials to be readily available and easily accessible from off-site sources consistent with the contingency plan. Emergency containers shall be of such capacity as to hold the total quantity of regulated substances plus any absorbent material. A plan showing the location of all emergency collection devices shall be provided if the provisions of this section are required.

- (4) Proper and adequate maintenance of containment and emergency equipment shall be required. Procedures shall be established for inspections performed by the operator and/or the operator's designee(s) once every three months and for the verification of maintenance of containment and emergency equipment. Such procedures shall be in writing, including a regular schedule of maintenance. A log documenting any accidental spills, describing how such spills were handled, describing inspection results, and maintenance shall be kept at the site. Such logs and records shall be available for inspection by the Health Department and/or the Fire Department at all times.
 - (5) The procedures which will be followed in the event of release so as to control and collect all released material in such a manner as to prevent it from reaching any surface or ground waters or into any sewage disposal system, municipal sewer system, catch basin, or dry well. Every operator having knowledge of a release or other loss of acutely hazardous materials and/or hazardous materials shall report the release or loss of same to the Health Department and the Fire Department within one hour of detection. The operator shall ensure the telephone number of the appropriate Fire Department and of the Town of Barnstable Health Department office shall be posted on or adjacent to a telephone located at the site.
- F. Prior to submission of the contingency plan to the Health Department, approval of that plan must be obtained from the Fire Department.
- G. Upon receipt of the annual fee, completion of the annual application form designated by the Health Department, upon receipt of a complete inventory, and upon receipt of a satisfactory contingency plan, the Director of Public Health shall issue said license to the operator and the site. Said license shall expire on June 30 and shall be administratively renewed annually upon application and payment of the annual fee.
- H. The Director of Public Health may grant, suspend, modify, or revoke such license for due cause or failure to comply with any section of this chapter and/or failure to perform the conditions set forth in the contingency plan.

§ 108-7. Appeals.

Any person or persons upon whom any order has been served pursuant to any section of this chapter may request a hearing before the Board of Health by filing a written petition, provided that such petition shall be filed within seven days after the day the order was served. Upon receipt of a petition, the Board of Health shall in writing inform the petitioner of the date, time, and place of the hearing and their right to inspect and copy the Board of Health's file concerning the matter. The hearing shall be commenced not later than 30 days after the date

the order was served. At the hearing, the petitioner and other affected parties shall be given an opportunity to be heard, to present witnesses or documentary evidence, and to show why an order should be modified or withdrawn, or why an action by an inspector or other personnel of the Health Department should be reconsidered, rescinded, or ordered. Failure to hold a hearing within the time period specified herein shall not affect the validity of any order. The Board of Health shall sustain, modify, or withdraw the order and shall inform the petitioner in writing of its decision within not more than seven days after the conclusion of the hearing.

§ 108-8. Handling or storage of additional hazardous materials.

- A. No person shall handle or store any hazardous materials and/or acutely hazardous materials which were not listed on the submitted registration and inventory until after the owner and/or the operator has registered any additional hazardous materials as an amendment to the inventory.
- B. An operator shall first receive the approval of the owner prior to registering any additional hazardous materials with the Health Department.
- C. The Health Department may require, after reviewing the submitted amended inventory and other information, the operator and the owner of a business, home occupation, or industry to obtain an annual license if such additional hazardous materials places the applicant under the current licensing regulations of the Board of Health.
- D. The Director of Public Health may grant, suspend, modify, or revoke such license for due cause or failure to comply with any section of this chapter and/or failure to perform the conditions set forth in the contingency plan.

§ 108-9. Prohibitions.

The release of any hazardous materials and/or acutely hazardous materials upon the ground, or into any surface or ground waters or into any sewage disposal system, sewer system, catch basin, or dry well within the Town of Barnstable, is prohibited.

§ 108-10. Licensure, registration, and inventory requirement exemptions.

Licensure, registration, and reconciliation of inventory requirements shall not apply to the following:

- A. Fuel oil stored in conformance with Massachusetts fire prevention regulations and regulations of the Barnstable Board of Health for the purpose of heating buildings located on the site.
- B. Fuel stored in boats, airplanes, trucks, and other vehicles accessory to a residential use.
- C. Noncommercial buildings. The handling and storage of hazardous materials at a residential dwelling in quantities which are associated with reasonable household use. This exemption does not apply to a professional or home occupation use as defined by

§§ 240-12C(1) and 240-18 of Chapter 240, Zoning. In addition, this exemption does not apply to hotels, motels, interval ownership facilities (time-shares), guesthouses.

§ 108-11. 21E report information disclosure.

- A. The Health Department shall be the repository of information relating to releases of hazardous materials. Any person possessing hazardous material release information has an obligation to submit such information to the Health Department. Every professional engineer and/or other person conducting a 21E report analysis shall submit a copy of the final report to the Health Department within 21 days of completion of the report. Nothing shall contravene with § 12 of Chapter 21E of the Massachusetts General Laws.
- B. If a person believes that the information required by this chapter involves the release of a trade secret, the person shall nevertheless make the disclosure to the Director of Public Health and shall notify the Director of Public Health in writing of that belief on the inventory document.
- C. The Director of Public Health and the Fire Chief shall protect from disclosure any trade secret designated as such by the operator.
- D. Upon receipt of a request for the release of information to the public which includes information of which the operator has notified the Director of Public Health is a trade secret, the Director of Public Health shall notify the operator in writing of the request by certified mail, return receipt requested. The Director of Public Health shall release the information to the public within 10 days of receipt of a written request, but no earlier than three days after the date of mailing the notice of the request for information, unless, prior to the expiration of the ten-day period, the operator files an action in an appropriate court for a declaratory judgment that the information is subject to protection or for an injunction prohibiting disclosure of the information to the public and promptly notifies the Director of Public Health of that action.
- E. Any information which is confidential pursuant to this and/or § 108-4 shall not be disclosed to anyone except the following:
 - (1) An officer or employee of the Town, county, state, or the United States, in connection with the official duties of that officer or employee under any law for the protection of health, or to a contractor with the Town and their employees if, in the opinion of the Director of Public Health, disclosure is necessary and required for the satisfactory performance of a contract, for performance of work, or to protect the health and safety of the employees of the contractor. Fire and emergency rescue personnel and Health Department personnel operating within the jurisdiction of the Town shall be considered employees of the Town, as the case may be.
 - (2) Any licensed physician where the physician certifies in writing to the Health Department that the information is necessary to the medical treatment of the physician's patient.

§ 108-12. Enforcement.

- A. The provisions of this chapter shall be enforced by the Health Department. The Health Department may, according to law, enter upon any premises at any reasonable time to inspect for compliance.
- B. Upon request of the Health Department, the owner, individual identified on a registration or license application, or operator of any premises at which toxic or hazardous materials are used or stored shall furnish all information required to monitor compliance with this chapter. A sample of wastewater disposed to on-site septic systems, dry wells or sewage treatment systems may be required by the Health Department at the operator's expense.
- C. All records pertaining to storage, removal and disposal of toxic or hazardous wastes shall be retained for no less than five years by the registration holder or license holder, and shall be made available for review by the Health Department upon request.
- D. The Building Commissioner of the Town of Barnstable shall condition issuance of building and occupancy permits upon conformity with the requirements of this chapter respecting any hazardous materials and/or acutely hazardous materials to be used in the course of such construction or occupancy.

§ 108-13. Notice of violation.

Written notice of any violation of this chapter shall be given by the Health Department, specifying the nature of the violation; any corrective measures that must be undertaken, including containment and cleanup of discharged materials; any preventive measures required for avoiding future violations; and a time for compliance. Requirements specified in such notice shall be reasonable in relation to the public health hazard involved and the difficulty of compliance. The cost of containment and cleanup shall be borne by the owner and operator of the premises.

§ 108-14. Violations and penalties.

- A. Any person who shall violate any section of this chapter for which penalty is not otherwise provided in any of the General Laws shall upon conviction be fined \$300.
- B. Any person who shall fail to comply with any order issued pursuant to the sections of this chapter shall, upon conviction, be fined \$300. Each day's failure to comply with an order shall constitute a separate violation.
- C. In the alternative to criminal prosecution, the Health Department may elect to utilize the noncriminal disposition procedure set forth in MGL C. 40, § 21d. Noncriminal ticket citation for any violation of any section of this chapter shall be in the amount of \$75 for the first violation and \$25 for each additional violation. Each day's failure to comply with an order shall constitute a separate violation.
- D. Further, the Health Department, after notice to and after a public hearing thereon, may suspend, revoke, or modify any license issued hereunder for cause shown.

§ 108-15. Severability.

Each provision of this chapter shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

Chapter 112

HISTORIC PROPERTIES

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- § 112-36. Severability.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Main Street in Hyannis and Osterville — See Ch. 141,
Art. I.

Zoning — See Ch. 240.

ARTICLE I

Protection of Historic Properties

[Adopted 11-5-1988, approved 1-6-1989; amended 12-1-1994 by Order No. 95-061 (Art. XLIX of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 112-1. Intent and scope.

This article is enacted to promote the public welfare and safeguard the Town's historical, cultural and architectural heritage by protecting historical resources that make the Town a more interesting, attractive and desirable place in which to live. This article aims to protect and preserve historic properties within the Town by encouraging their owners to seek alternatives to their demolition and by providing the Town an opportunity to work with owners of historic properties in identifying alternatives to their demolition.

§ 112-2. Definitions.

As used in this article, the following words and terms, unless the context required otherwise, shall have the following meanings:

BUILDING — Any combination of materials forming a shelter for persons, animals or property.

COMMISSION — The Barnstable Historical Commission.

DEMOLITION — Any act of destroying, eliminating, pulling down, razing or removing a building or any portion thereof, or starting the work of any such act with the intention of completing the same.

PERSON — Any natural person, firm, partnership, association or corporation.

SIGNIFICANT BUILDING — Any building or portion thereof, which is not within a regional historic district or a local historic district subject to regulation under provisions MGL c. 40C but which has been listed or is the subject of a pending application for listing on the National Register of Historic Places, or has been listed on the Massachusetts Register of Historic Places, or is over 75 years of age and which is determined by the Commission to be a significant building as provided by § 112-3D of this article, either because:

- A. It is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth; or
- B. It is historically or architecturally important (in terms of period, style, method of building construction, or association with a famous architect or builder) either by itself or in the context of a group of buildings.

PREFERABLY-PRESERVED SIGNIFICANT BUILDING — Any significant building as to which the Commission determines, as provided in § 112-3G of this article, that it is in the public interest to be preserved or rehabilitated rather than to be demolished.

§ 112-3. Procedures. [Amended 1-3-2013 by Order No. 2013-057]

- A. No permit for the demolition of a building which is a significant building as defined in § 112-2 herein shall be issued other than in conformity with the provisions of this article as well as in conformity with the provisions of other laws applicable to the demolition of buildings and the issuance of permits therefore generally.
- B. Any person who intends to file an application for a permit to demolish a building which (1) Has been listed or is the subject of a pending application for listing in the National Register of Historic Places or is listed in the Massachusetts Register of Historic Places; or (2) Is over 75 years of age shall first file a notice of intent to demolish a significant building with the Town Clerk, and in addition, shall complete the review process established in § 112-3A through I herein. The Town Clerk shall forthwith transmit copies of each duly filed notice of intent to the Commission and the Building Commissioner. At the time of filing an application or request, the applicant shall pay a filing fee to be determined annually by the Town Manager to cover costs and expenses associated with this article.
- C. The Commission shall prepare and have available for distribution a notice of intent to demolish a significant building, which shall contain at least the following information:
 - (1) The applicant's name, address, if different in such property;
 - (2) The owner's name and address, if different from that of the applicant's;
 - (3) The address or location of such property;
 - (4) Assessor's map and parcel number;
 - (5) A brief description of such property; and
 - (6) An explanation of the proposed use to be made of the site of such property.
- D. Where an applicant has filed a notice of intent to demolish a building that is over 75 years of age which neither has been listed nor is the subject of a pending application for listing on the National Register of Historic Places nor has been listed on the Massachusetts Register of Historic Places, the Commission Chair or Chair's designee, in consultation with the Growth Management Department Staff, shall, within 21 business days of the filing of the notice of intent, file with the Town Clerk an initial determination, in writing, as to whether or not the building is a significant building in accordance with any criterion set forth in § 112-2, definition of "significant building," Subsections A and B. A determination that a building is not a significant building shall be transmitted by the Commission to the applicant, to the Building Commissioner and to the Town Clerk, and the applicant shall not be required to take any further steps prior to filing for a demolition permit. This determination shall be in effect for 24 months from the date of determination filing with the Town Clerk. After 24 months have elapsed, a new determination shall be required.

- E. The Commission, unless the building is not significant, shall hold a public hearing on each such notice of intent within 65 days after the date the notice intent is filed with the Town Clerk, and shall give notice thereof by publishing the date, time, place and purpose of the hearing in a local newspaper at least 14 days before such hearing, and also within seven days of said hearing, mailing a copy of said notice to the applicant and to all property owners within 300 feet of the subject property's boundaries. The Commission may require the applicant to post the Commission's notice form on the subject building and/or property. This form shall be visible from the nearest public way. Within 21 days from the close of the public hearing, the Commission shall file a written determination with the Town Clerk as to whether the demolition proposed will be detrimental to the historical, cultural or architectural heritage or resources of the Town of Barnstable.
- F. If after such hearing the Commission determined that the demolition of the significant building would not be detrimental to the historical, cultural or architectural heritage or resources of the Town, the Commission shall so notify the applicant, the Building Commissioner and the Town Clerk. Upon receipt of such notification, the Building Commissioner may, subject to the requirements of the State Building Code and any other applicable laws, ordinances, rules and regulations, issue the demolition permit.
- G. If the Commission determines that the demolition of the significant building would be detrimental to the historical, cultural or architectural heritage or resources of the Town, such building shall be considered a preferably preserved significant building.
- H. Upon a determination by the Commission that the significant building, which is the subject of the application for a demolition permit, is a preferably preserved significant building, the Commission shall notify the applicant, the Building Commissioner, and the Town Clerk, and no demolition permit may be issued until 18 months after the date of such determination by the Commission is filed with the Town Clerk.
- I. Notwithstanding the preceding sentence, the Building Commissioner may issue a demolition permit for a preferably preserved significant building at any time after receipt of written advice from the Commission to the effect that either:
- (1) The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate and restore such building; or
 - (2) The Commission is satisfied that the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.
- J. The Commission's determination shall be in effect for 24 months from the date of determination filing with the Town Clerk. After 24 months have elapsed, a new determination shall be required.

§ 112-4. Emergency demolition.

Nothing in this article shall restrict the Building Commissioner from ordering the demolition of a significant building determined by him to present a clear and present danger to the safety of the public which only demolition can prevent.

§ 112-5. Violations and penalties.

- A. Whoever violates any provision of this article shall be penalized by a fine of not more than \$300. Each day any work continues in violation hereof shall constitute a separate offense.
- B. The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity as they deem necessary to obtain compliance with the requirements of this article or to prevent a violation thereof.
- C. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this article for a period of two years after the date of the completion of such demolition. As used herein, "premises" includes the parcel of land upon which the demolished significant building was located and all adjoining parcels of land under common ownership or control.
- D. Upon a determination by the Commission that a building is a preferable-preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Building Commissioner. Should the owner fail so to secure the building, the loss of such building through fire or other causes shall be considered voluntary demolition for the purposes of Subsection C.

§ 112-6. Severability.

If any section, paragraph or part of this article be for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect.

§ 112-7. Conflict.

No provision of this article shall be construed or applied so as to conflict with Massachusetts General Laws, Chapter 143. In the event of an apparent conflict, the provisions of General Laws, Chapter 143, shall prevail.

ARTICLE II

Historic Landmarks

[Adopted 4-7-1994 (Art. LVI of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 112-8. Title.

This article shall be known as and may be cited as the "Barnstable Historic Landmark Ordinance."

§ 112-9. Authority.

This article is enacted pursuant to authority derived from Section 6 of the Home Rule Amendment to the Constitution of the Commonwealth of Massachusetts, and Charter of the Town of Barnstable.

§ 112-10. Purpose.

The purpose of this article is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of structures and landscapes significant in the history or architecture of Barnstable, and through the maintenance and improvement of settings for such structures and landscapes.

§ 112-11. Definitions.

For purposes of this article, the following words shall have the following meanings:

ALTERED — Changed in exterior color or appearance, rebuilt, reconstructed, restored, removed, or remodelled.

BUILDING — A combination of materials forming a shelter for persons, animals, or property.

COMMISSION — The municipal historical commission established under § 8D of Chapter 40 of the General Laws.

CONSTRUCTED — Built, erected, installed, enlarged, or moved.

DEMOLISHED — Destroyed or altered in such a substantial manner as to constitute destruction.

EXTERIOR ARCHITECTURAL FEATURE — A portion of the exterior of a building or structure as is open to view from a public street, public way, public park, or public body of water or is identified for preservation in an ordinance establishing a district or landmark, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs, and other appurtenant exterior fixtures.

LANDMARK — Any structure or landscape as established in accordance with § 112-12.

LANDSCAPE — A streetscape or an arrangement of land for human use and enjoyment, including placement of structures, vehicular and pedestrianways, and plantings.

PERSON AGGRIEVED — The applicant, an owner of adjoining property, an owner of property within the same historic district or of property within 100 feet of the property lines of the property subject of the application, and any charitable corporation having as one of its purposes the preservation of historic buildings or places.

STRUCTURE — A combination of materials including, but not limited to, a building, bridge, tower or other engineering work, sign, fence, wall, terrace, walk, or driveway.

§ 112-12. Procedure for designation as landmark.

- A. The Commission by majority vote may recommend for designation as a landmark any property owned by the Town, and any other property within the Town with the consent of the owner thereof, being or containing a structure or landscape which it determines to be either (a) importantly associated with one or more historic persons or events, or with the broad architectural, aesthetic, cultural, political economic, or social history of the Town or the Commonwealth, or (b) historically or architecturally significant (in terms of period, style, method of construction, or association with a famous architect or builder) either by itself or in the context of a group of structures and may recommend amendments to any designation of landmark theretofor made.
- B. Prior to the recommendation of designation or amendment of designation of any landmark, an investigation and report on the historical, architectural and other relevant significance thereof shall be made by the Commission. The report shall recommend the boundaries of any proposed landmark and shall recommend for incorporation in the order of the Town Council designating each landmark general and/or specific standards and appropriate criteria consistent with the purposes of this article and all provisions herein.
- C. Any 10 registered voters of the Town may petition that the Commission initiate, or the Commission on its own may initiate, the process of designating a landmark or amending or rescinding any such designation theretofor made. The Commission shall within 45 days following the filing of such request or petition hold a preliminary hearing and arrange for preparation of a report which in the case of such a voter petition shall be prepared by such voters unless the petitioners and the Commission elect otherwise. The Commission shall not reconsider a proposed designation, amendment or rescission of designation within one year of its previous hearing thereon, unless $\frac{2}{3}$ of the Commission's members vote to do so. No less than 45 nor more than 60 days after the transmittal of a report to the Commission pertaining to a proposed designation, the Commission shall hold a public hearing. The Commission shall give not less than 14 days notice of such public hearing by publication in a newspaper of general circulation in Barnstable and by mailing notice thereof to the owner of the proposed landmark and to every property owner abutting the proposed landmark (each such owner to be determined from the then current records of the Assessing Department), and to the Town Council, the Planning Board, and the Town Clerk.
- D. Prior to the public hearing, the Commission shall transmit copies of the report to the Planning Board for its consideration and recommendations.
- E. The recommendations of the Commission with regard to any designation, amendment or rescission shall be transmitted to the Town Council and to the Town Clerk with a copy of the approved designation report. Designation of a landmark or amendment or rescission of previous designation shall be by order of the Town Council. In the case of a designation, the order shall include a statement of the reasons for such designation and a statement of the standards which the Commission is to apply under §§ 112-13 through 17 herein.
- F. No designation, amendment or rescission of designation shall become effective until a map setting forth the boundaries of the landmark or change in the boundaries thereof has

been filed with the Town Council and has been recorded with the Registry of Deeds for Barnstable County.

§ 112-13. Review authority.

- A. Except as the order designating or amending a landmark may otherwise provide in accordance with this section, the Commission shall review all construction, demolition or alteration that affects the exterior architectural features of any landmark.
- B. The order designating or amending a landmark may provide that the authority of the Commission shall not extend to the review of one or more of the following categories of structures or exterior architectural features of a landmark in which event the structures or exterior architectural features so excluded may be constructed or altered without review by the Commission.
- (1) Temporary structures or signs, subject, however, to such conditions as duration of use, location, lighting, removal and similar matters as the Commission may reasonable specify.
 - (2) Terraces, walkways, driveways, sidewalks, and similar elements, or anyone or none of them, provided that any such element is substantially at grade level.
 - (3) Walls and fences, or either of them.
 - (4) Storm doors and windows, screens, air conditioners,
 - (5) Lighting fixtures, antennae and similar appurtenances, or any one or more of them.
 - (6) The color of paint.
 - (7) The color of materials used on roofs.
 - (8) Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than four square feet in area, consists of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them.
 - (9) The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is commenced within one year thereafter and carried forward with due diligence.
- C. Unless such action is inconsistent with the provisions of a specific order, the Commission may determine from time to time after a public hearing that certain categories of exterior architectural features or structures, including, without limitation, any of those enumerated in this section, may be constructed or altered without review by the Commission without causing substantial derogations from the intent and purposes of this article.

§ 112-14. Ordinary maintenance, repair and replacement.

Nothing in this article shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature of a landmark which does not involve a change in design or material or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent compliance with requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the order which designated that landmark, nor construed to prevent the reconstruction, substantially similar in exterior design, of a structure or exterior architectural feature damaged by fire, storm or other disaster, provided such reconstruction is commenced within one year thereafter and carried forth with due diligence.

§ 112-15. Certificates of appropriateness, nonapplicability or hardship.

- A. Except as the order designating or amending a landmark may otherwise provide, no landmark shall be constructed or altered in any way that affects exterior architectural features unless the Commission shall have first issued a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship with respect to such construction or alteration.
- B. Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, in such form as the Commission may reasonably determine, together with such plans, elevations, specifications, materials and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.
- C. No building permit for alteration of an exterior architectural feature of a landmark or construction of a structure feature and no demolition permit for demolition or removal of a landmark shall be issued by the Town or any department thereof until the certificate required by this section has been issued by the Commission.

§ 112-16. Factors to be considered by Commission.

- A. In rendering a decision on an application as described herein, the Commission shall consider, among other factors, the historic and architectural value and significance of the landmark, the general design, arrangement, texture and material of the features involved, and the relation of such features to similar features in the surrounding area. In the case of new construction or additions to existing structures the Commission shall consider the appropriateness of the size and shape of the landmark both in relation to the land area upon which the landmark is situated and to other structures in the vicinity, and the Commission may impose dimensional and setback requirements in addition to those required by an applicable provision of a zoning ordinance. A Commission shall not consider interior arrangements or architectural features not subject to public view.

- B. The Commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects, architectural significance or the distinctive character of the landmark.

§ 112-17. Powers, functions and duties of Commission.

The Commission shall have the powers, functions and duties with respect to each landmark as is provided historic district commissions under Clauses (a) through (g) of § 10 of Chapter 40C of the General Laws with respect to historic districts, including without limitation with respect to approval and disapproval of certificates of appropriateness, nonapplicability and hardship, the dating and signing of such certificates, the keeping of records and adoption of rules and regulations, the filing with the Town Clerk and Building Department of certificates and determinations of disapproval by it, and the determination of designs of appurtenances which will meet the requirements of the landmark.

§ 112-18. Procedures for public meetings and hearings.

The Commission shall adopt rules for the reasonable conduct of meetings and public hearings, which rules shall not be inconsistent with the procedures provided for meetings of and hearings by the historic district commissions under § 11 of Chapter 40C of the General Laws. In the absence of the adoption of any such rules, meetings and public hearings of the Commission shall be in conformity with the provisions of § 11 of Chapter 40C applicable to historic district commissions.

§ 112-19. Appeals.

- A. Any person aggrieved by a designation, amendment or rescission of a landmark or a decision on an application for a certificate may file a written appeal with the Commission for a review by a person or persons of competence and experience in such matters, designated by the Town Council. The appeal must be filed within 21 days of the filing of the Commission's action with the Town Clerk. The reviewing authority, after due and proper notice, shall conduct a hearing on the Commission's action and either affirm, modify or rescind said action.
- B. Any person aggrieved by a decision of the reviewing authority concerning such an appeal may seek further review in the Superior Court within 30 days of a formal decision or within 60 days of the filing of the appeal if the reviewing authority fails to act. Such review shall be made in the same manner as provided in § 12A of Chapter 40C of the General Laws.

§ 112-20. Enforcement and remedies.

The Commission is specifically authorized to institute any and all actions in court, including an action for injunctive relief, as deemed necessary and appropriate to obtain compliance with the requirements of any section of this article or to prevent a threatened violation thereof. Any violation of this article may be punished to the like extent provided in § 13 of Chapter 40C of the General Laws for a violation of said chapter, except that no such fine shall exceed \$300.

In addition to the foregoing, no building permit shall be issued, with respect to any premises upon which a landmark has been voluntarily demolished otherwise than pursuant to a certificate granted after compliance with the provisions of this article, for a period of two years after the date of the completion of such demolition. (The word "premises" for the purpose of this sentence refers to the parcel of land upon which the demolished structure was located and all adjoining parcels of land under common ownership or control.)

§ 112-21. Historical Commission authority.

No provision of this article shall alter or diminish the duties and functions of the Commission under the authority of Chapter 40, § 8D, or of a historic district commission established under the authority of Chapter 40C of the General Laws, or restrict the establishment of any additional historic district under said Chapter 40C.

§ 112-22. Severability.

The provisions of this article are severable. If any provision shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

ARTICLE III

Hyannis Main Street Waterfront Historic District

[Adopted 10-3-1996 by Order No. 97-014B (Art. LX of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 112-23. Authority.

This article shall be known and may be cited as the "Hyannis Main Street Waterfront Historic District Ordinance." It is adopted pursuant to Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended.

§ 112-24. Purpose.

The purpose of this article is to promote the educational, cultural, economic and general welfare of the inhabitants of the Town of Barnstable, and the Town's unique community character, through the preservation and protection of the distinctive characteristics of buildings, structures, and places significant in the history and architecture of Barnstable, and through the preservation, maintenance and improvement of appropriate settings for such buildings, structures, and places, and the encouragement of new design which is compatible with the existing historical and community character, and through the benefits resulting to the economy of said Town by preserving and enhancing the amenities and historical aspects of the various villages and areas which make Barnstable a desirable place to live and for tourists to visit.

§ 112-25. Definitions.

As used in this article, the following terms have the following meaning:

ALTERED — Changed in exterior color, or otherwise exteriorly changed, rebuilt, reconstructed, restored, removed, and/or remodeled.

BUILDING — A combination of materials forming shelter for persons, animals or property.

CERTIFICATE — A certificate of appropriateness, a certificate of nonapplicability, or a certificate of hardship as set forth in this article.

COMMISSION — The Hyannis Main Street Waterfront Historic District Commission acting under this article.

COMMITTEE — The Historic District Appeals Committee established by the Town Council to act as an interim appeals body.

CONSTRUCTED — Built, erected, installed, enlarged, and/or moved.

DEMOLISHED — A building, structure, or any portion thereof, that is pulled down, destroyed, dismantled, removed, or razed in such a substantial manner as to constitute destruction.

DISTRICT — The historic area containing buildings, structures, settings, and places as established in accordance with this article.

EXTERIOR ARCHITECTURAL FEATURE — Such exterior portions of buildings, structures, and places that are visible from public rights-of-way, including but not limited to architectural style and general arrangement and setting thereof, the kind, color, and texture of exterior building materials, the color of paint or other materials applied to the exterior surfaces, and the type and style of windows, doors, lights, signs and other appurtenant exterior features.

PERSON — An individual or corporation, a municipal agency, or an unincorporated organization or association.

PERSON AGGRIEVED — The applicant, an owner of adjoining property, an owner of property within the same Historic District within 100 feet of the property lines of the property subject to the application.

PUBLIC WAY — Ways open to and usable by the public.

PUBLIC VIEW — Visible from a street, public way, public park, or public body of water.

SETTING — Both the natural and man-made aspects of the physical environment and character of a historic property, including but not limited to siting, relationship to surrounding features, topography, vegetation, paths, roads, fences, and walls.

SIGN — Any symbol, design or device used to identify or advertise any place of business product, activity, or person.

STRUCTURE — A combination of materials other than a building, including but not limited to a bridge, tower or other engineered work, sign, fence, wall, terrace, walk, driveway, or pavement.

TEMPORARY STRUCTURE OR BUILDING — Building that shall not be in existence for a period of more than two years, and a structure not to be in existence for a period of more than one year. The Commission may further limit the time periods set forth herein as it deems appropriate.

§ 112-26. Establishment of district.

There is hereby established a Historic District in the Town of Barnstable to be known as the "Hyannis Main Street Waterfront Historic District." It includes all of the land as shown on the official map on file with the Town Clerk and at the Barnstable County Registry of Deeds.

§ 112-27. Establishment of Commission.

- A. There is hereby established in the Town of Barnstable the Hyannis Main Street Waterfront Historic District Commission, hereinafter called the "Commission" that shall be responsible for overseeing the Historic District. It shall consist of seven unpaid members who shall be appointed by the Town Council to serve for terms of three years. The Commission shall have the powers and authority to perform all the duties as hereinafter enumerated and provided, and those that may be added from time to time.
- B. When the Commission is established, two members shall be appointed for a term of one year, three shall be appointed for terms of two years, and two shall be appointed for terms of three years, and their successors shall be appointed for terms of three years on a staggered basis.
- C. The Commission members shall include one member appointed from two nominees of each of the following organizations: the Barnstable Historical Commission, the Massachusetts State Chapter of the American Institute of Architects, and the Cape Cod and Islands Board of Realtors and four members who are residents and/or business operators from the district. In the event that no nominations by one or another of the above-named nominating groups have been received within 30 days from the date of an invitation to nominate, the Town Council may make the appointment to the Commission without such nomination. In addition, to the extent possible, members should be appointed from among professionals in the disciplines of architecture, history, architectural history, planning, archaeology, or closely related fields. All Commission members should have demonstrated special interest, competence, and/or knowledge of community history, character, and historic preservation.
- D. Three alternate members may be appointed annually by the Town Council as well, maintaining the same representation as above. In the case of absence, inability to act, or unwillingness to act because of self-interest on the part of any member of the Commission, his or her place shall be taken by an alternate member designated by Chairman.

- E. Each member and alternate member shall continue to serve in office after the expiration date or his or her term until a successor is duly appointed. Vacancies occurring in the Commission other than by expiration of term shall be filled by appointment by the Town Council for the remaining term of the member replaced.
- F. The Commission shall annually elect a Chairman and Vice Chairman from among its principal members, and a secretary/clerk from within its membership. In the case of the absence of the Chairman from any meeting, the Vice Chairman shall preside.
- G. Meetings of the Commission shall be held at the call of the Chairman, at the request of two members, or in such other manner as the Commission shall determine in its rules and regulations. The Open Meeting Law, Commonwealth of Massachusetts, Chapter 694 of the Acts of 1986,¹ shall apply at all times. Four members shall constitute a quorum.

§ 112-28. Commission powers, duties, and administration.

- A. The Commission shall have the power, authority, and duty to do and perform any and all acts which may be necessary or desirable to carry out the purposes of this article. In addition, the Commission shall have any such other powers, authority, and duties as may be delegated or assigned to it from time to time by vote of the Town Council. Nothing in this article shall supersede the authority given to the Building Commissioner under the State Building Code.
- B. In exercising its powers and duties hereunder, the Commission shall pay due regard to the distinctive characteristics of each building, structure, site, and setting, and to the district as a whole. For the purposes of this article, any structure partially within the district shall be considered wholly within the district.
- C. The Commission shall, after a public hearing duly posted at least 14 days in advance in a conspicuous place in Barnstable Town Hall, adopt and amend guidelines which set forth design standards and criteria for certain exterior architectural building and site features which will meet the requirements of the district regarding appropriateness. No such design guidelines shall limit the right of an applicant for a certificate to present other designs to the Commission for approval.
- D. The Commission may also determine from time to time, after public hearing, that certain categories of exterior architectural features, structures, or signs may be constructed or altered without Commission review.
- E. The Commission may adopt and amend reasonable rules and regulations not inconsistent with the General Laws, or with the purpose of this article, and prescribe such forms and procedures as it deems desirable and necessary for the regulation of its affairs, and for the conduct of its business, including requirements for the contents and form of applications for certificates, hearing procedures, and other matters. The Commission shall file a copy of said rules with the Town Clerk.

1. Editor's Note: See MGL C. 39, § 23B.

- F. The Commission may advise and coordinate with the Town Manager and other agencies of Town government under the Town Charter with respect to:
- (1) Employment of clerical, technical assistance/consultants;
 - (2) Apply for, accept, receive, and expend grants, gifts, contributions, and bequests of funds from individuals, foundations, and from federal, state, and other governmental bodies, and may expend the same, for purpose of furthering the Commission's programs;
 - (3) Imposition of reasonable fees to cover the cost associated with the conduct of business as reviewed annually per the Town's general ordinances.
- G. The Commission shall keep a permanent and accurate record of its meetings, resolutions, transactions, and determinations, including the vote of each member participating therein.
- H. The Commission may provide technical assistance to property owners within the district, and to other Town residents, on matters pertaining to historic preservation. The Commission may also develop programs and publications that promote understanding and support for district objectives.

§ 112-29. Commission jurisdiction.

- A. Except as this article may otherwise provide, no building, structure, setting or part thereof within the district shall be constructed, demolished, moved or altered in any way that affects any exterior architectural feature subject to public view until the Commission shall first have issued a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship with respect to such construction, demolition, movement, or alteration.
- B. No building permit for the construction of any building or structure or for the alteration of any exterior architectural feature within the district which is subject to public view shall be issued by the Town or any department thereof until a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship has been issued by the Commission as required under this article, except that the Building Commissioner may issue a temporary sign permit for a period not to exceed 60 days for a temporary sign no larger than eight square feet on a commercial premises, provided that size is in conformance with the Town's Sign Code² and:
- (1) The applicant files a date-stamped copy of the application for a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship from the Historic District Commission.
 - (2) Should the Historic District Commission deny the application, use of the temporary sign should not be permitted beyond the end of the twenty-day appeal period of the decision made by the Historic District Commission.

2. See Ch. 240, Zoning, Art. VII, Sign Regulations.

- (3) Should the applicant appeal the denial of the application, and should the appeal be denied, use of the sign should no longer be permitted as of the day on which the Appeals Committee makes this decision.
- C. No permit for the demolition, razing, movement, or removal of a building or structure, or parts thereof within the district which is subject to public view shall be issued by the Town or any department thereof until a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship has been issued by the Commission as required under this article.

§ 112-30. Limitations, exclusions, and exemptions.

The Commission shall not make any recommendations or requirements except for the purpose of preventing structural developments obviously incongruous to the historical or architectural characteristics of the area and the context of its surroundings. In addition, the Commission shall exclude the following specific items from its purview:

- A. Consideration of interior arrangements or exterior features not visible from a public way;
- B. Ordinary maintenance, repair, repainting, or replacement of any exterior building or site feature within the district which does not involve a change in design, material, color, or the outward appearance thereof;
- C. Ordinary landscaping with plants, trees, or shrubs;
- D. Actions taken to meet requirements certified by a duly authorized public officer to be necessary for public safety;
- E. Any construction or alteration under a permit duly issued prior to the effective date of this article;
- F. Temporary structures for official celebrations or charitable drives, or directly connected with permitted construction, subject however, to conditions pertaining to the duration of existence and use, location, lighting, removal, and similar matters as the Commission may reasonably specify;
- G. Temporary signs subject however, to conditions pertaining to the duration of existence and use, location, lighting, removal, and similar matters as the Commission may reasonably specify including:
- (1) Those for use in connection with any official celebration, parade, or any charitable drive, as long as they are removed within two days of the termination of the event, provided that they are authorized by the Building Inspector;
 - (2) Single-faced sale or rent signs as allowed by the Town Zoning Ordinance,³ advertising the sale or rental of the premises on which they are erected or displayed;

3. Editor's Note: See Ch. 240, Zoning.

- (3) Special permit signs as allowed by the Town Zoning Ordinance.
- H. The removal of any sign unless the sign is deemed to contribute to the historic character of the district;
- I. The installation of storm doors without ornamentation, storm windows, screens, gutters, and downspouts, provided they are the same color as the building or building trim.

§ 112-31. Procedures for review of applications.

- A. Any person who desires to obtain a certificate from the Commission shall file with the Commission an application for a certificate of appropriateness, a certificate of nonapplicability, or a certificate of hardship, as the case may be, in such form as the Commission may reasonably determine. The application shall be accompanied by such plans, elevations, specifications, photographs, paint color samples, or other materials or information the Commission deems necessary to make a determination on the application. In the case of a demolition or removal, an evaluation of the property condition and appearance shall be included. The date of the filing of an application shall be the date on which a copy of such application is received by the Commission.
- B. The Commission, or a delegate thereof, shall determine promptly, and in all events within 14 days after the filing of an application for a certificate of appropriateness, a certificate of nonapplicability, or a certificate of hardship, as the case may be, whether the application involves any exterior architectural or site features that are subject to review by the Commission.
- C. If the Commission, or a delegate thereof, determines that an application for a certificate does not involve any such exterior architectural or site features, the Commission shall forthwith issue a certificate of nonapplicability.
- D. If the Commission determines that such application for a certificate does involve any exterior architectural or site features subject to review under this article, the Commission shall hold a public hearing on the application, except as may otherwise be provided in this article, within 30 days of filing of the application. At least 14 days before said public hearing, public notice of the time, place, and purposes thereof shall be given by posting in a conspicuous place in Town Hall, and by mailing a copy of said public notice, postage prepaid, to the:
 - (1) Applicant;
 - (2) Owners of all adjoining property and other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors;
 - (3) Planning Board;
 - (4) Any person filing a written request for notice of hearings, such request to be renewed yearly in December; and
 - (5) Such other persons as the Commission shall deem entitled to notice.

- E. As soon as convenient after such public hearing, but in any event within 45 days after the filing of an application for a certificate, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application, and issue a certificate or a disapproval. In the case of a disapproval of an application for a certificate, the Commission shall set forth in its disapproval the reasons for such determination. The Commission may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material, and similar features which if made and filed with the Commission in a subsequent application, would make the application acceptable to the Commission.
- F. Prior to the issuance of a disapproval of an application for a certificate of appropriateness, the Commission may, at its sole discretion, notify the applicant in writing of its proposed action accompanied by specific recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the Commission. If within 30 days of the receipt of such notice the applicant files a written modification of the application in conformity with the recommended changes of the Commission, the Commission shall issue a certificate of appropriateness.
- G. Certificates shall be issued upon a concurring vote of a majority of the members of the Commission. Each certificate of appropriateness, nonapplicability or hardship issued by the Commission shall be dated and signed by its Chairman, Secretary, or such other person designated by the Commission to sign such certificates on its behalf.
- H. In issuing certificates, the Commission may, as it deems appropriate, impose certain conditions and limitations and may require architectural or plan modifications consistent with the intent and purpose of this article.
- I. The Commission shall issue a certificate of appropriateness based upon the application if it determines that the construction, alteration, or demolition for which an application has been filed will be appropriate for or compatible with the preservation or protection of the district. Nothing herein shall prevent the Commission from making recommendations for changes in the applicant's proposal, which may include changes in design, arrangement, texture, material, and similar features, that, if made, would make the application acceptable to the Commission, and if the applicant so assents, including such modifications in any certificate of appropriateness it may issue.
- J. The Commission shall issue a certificate of hardship to the applicant if the Commission determines that: (1) owing to conditions especially affecting the building, structure, setting, or place involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant; (2) such application may be approved without substantial derogation from the intent and purpose of this chapter; and (3) the application may be approved without substantial detriment to the public welfare. If the Commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the Commission shall issue a certificate of hardship.

- K. If the Commission fails to make a determination through issuance of a certificate of appropriateness or a disapproval within the time period specified in Subsection E (45 days), or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a certificate of hardship due to failure to act.
- L. The Commission shall send a copy of its certificates and determinations of disapproval to the applicant, and shall file such copies with the offices of the Town Clerk, and the Building Commissioner. The date of issuance of a certificate or determination of disapproval shall be the date of the filing of a copy of such certificate or determination of disapproval with the office of the Town Clerk.

§ 112-32. Criteria for Commission determinations.

- A. In deliberating on applications for certificates, the Commission shall consider, among other things, the historical and architectural value and significance of the site, building, structure, setting, or place; the general exterior design, scale, color, placement on the lot including dimensions and setback, arrangement, proportions, texture, material of the building or structure; setting, topography, landscaping, and general appearance of the feature(s) involved and the relation of such feature(s) to similar features of buildings and structures in the surrounding area; and the position of such buildings or structures in relation to the streets or ways and to other buildings or structures.
- B. In the case of new construction or additions to existing buildings or structures the Commission shall consider the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings, structures, and general setting in the vicinity.
- C. In cases of demolition or removal, the Commission shall consider whether such demolition or removal of a building, structure, setting, or site element whose architectural or historical significance contributes to the historic character of the district would impair the public interest and the general welfare of the people of Barnstable; whether the demolition or removal of the building or structure would undermine the purpose and intent of this article, whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship. The Commission may seek advise from individuals or organizations in making these determinations.
- D. The Commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historical aspects or the architectural and other physical characteristics of the surroundings and of the district.

§ 112-33. Appeals.

- A. Pursuant to Section 5-1 of the Town of Barnstable Home Rule Charter, there shall be established a Historic District Appeals Committee, hereinafter called the Committee, which shall consist of three members independent of the Commission appointed annually by the Town Council. The Committee shall include one member, where possible, from

the Hyannis business community, one member, where possible, who is a resident of Hyannis, and one member, where possible, from the field of architecture or a related profession.

- B. Any person or persons aggrieved by a determination of the Commission, or by its failure to act as specified in this article, may, within 20 calendar days after the filing of such notice with the Town Clerk, appeal to the Committee in writing. The Committee shall hear all pertinent evidence and act upon such appeals within 30 calendar days after the filing of such appeal. The decision of the Committee shall be determined by a majority vote of the Committee members. If they determine that the Commission action is unsupported by the evidence, or exceeds the authority of the Commission, they may annul the Commission decision, or remand the case for further action by the Commission. The findings of the Committee shall be binding on the applicant and the Commission unless a further appeal is sought in the Superior Court.
- C. Any person or persons aggrieved by a determination of the Commission, or by its failure to act as specified in this article, or by a finding of the Committee, may appeal to the Superior Court sitting in equity for Barnstable County.
- D. Costs shall not be allowed against the Commission or the Committee unless it shall appear to the court that the such Commission or Committee acted with gross negligence, in bad faith, or with malice in the matter from which the appeal was taken.
- E. Costs shall not be allowed against the party appealing such decision of the Commission or Committee unless it shall appear to the Court that the appellant acted in bad faith or with malice in making the appeal to the Court.

§ 112-34. Enforcement; violations and penalties.

- A. The Building Commissioner shall be charged with the enforcement of this article.
- B. The Superior Court sitting in equity for Barnstable County has jurisdiction to enforce the provisions of this article and the rulings issued thereunder. Upon petition by the Commission or the Town Manager, said Court may restrain the applicant through injunction and without limitation may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable. Nothing in this chapter shall be construed to limit the Commission from pursuing other available remedies including those provided by § 21D of Chapter 40 of the General Laws.
- C. Any person who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined \$200, which shall be forfeited to the use of the Town. Each day that a violation continues to exist shall constitute a separate offense.

§ 112-35. Effective date.

This article shall become effective upon appointment of all members to the Commission and Committee and adoption of design guidelines and the filing of the map showing the boundaries of the district is filed with the Town Clerk and is recorded in the Registry of Deeds for Barnstable County. The foregoing shall be implemented not later than one year from adoption of this article by the Town Council.

§ 112-36. Severability.

In case any provision, section, paragraph, or part of this article be for any reason declared invalid or held unconstitutional by any court of competent jurisdiction, every other provision, section, paragraph or part shall continue in full force and effect.

Chapter 115

HOURS OF OPERATION OF BUSINESSES

§ 115-1. Purpose; hours established.

§ 115-4. Violations and penalties.

§ 115-2. Approval for change; permit.

§ 115-5. Review of provisions.

§ 115-3. Effect on alcoholic beverage licensing.

[HISTORY: Adopted by the Town of Barnstable 5-18-2006 by Order No. 2006-131. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 20.

Noise — See Ch. 133.

Body-piercing businesses — See Ch. 43.

Administrative Code — See Ch. 241.

§ 115-1. Purpose; hours established.

For the purpose of controlling noise and promoting the public peace and to protect public safety and nighttime tranquility, no person or business entity conducting any retail business shall be open for business to the public between the hours of 1:00 a.m. and 3:00 a.m. without the prior approval of the Town Manager as provided herein. The term "retail business" shall include food service establishments.

§ 115-2. Approval for change; permit.

Said approval may be granted by the Town Manager in the form of a permit issued after a public hearing, notice of which shall be published 14 days prior to said hearing. The Town Manager may issue such a permit if, after consideration of the effect the business may have on abutting residences and its impact on the community, as it relates to public safety, noise and traffic, he finds that it is unlikely that the operation of the business during the hours regulated by this chapter will itself cause a disturbance or will be an attraction for crowds which may cause a disturbance. The permit may be granted by the Town Manager upon conditions designed to advance the purposes of this chapter. The permit may be revoked at any time upon complaint by the Police Department, at a public hearing, notice of which shall be published 14 days prior to said hearing.

§ 115-3. Effect on alcoholic beverage licensing.

This chapter shall not be construed to interfere with the discretion vested in the Licensing Authority created under § 241-25 of the Administrative Code and under Chapter 138 of the General Laws, with respect to the sale of alcoholic beverages.

§ 115-4. Violations and penalties.

The penalty for violation of this chapter shall be a fine of \$200 per day for each day said business is found to continue.

§ 115-5. Review of provisions. [Added 7-20-2006 by Order No. 2006-148]

On or before May 1, 2008, there will be a review of Chapter 115 for consideration of changing it or eliminating it.

Chapter 121

LICENSING

ARTICLE I

Denial for Nonpayment of Municipal Charges

- § 121-1. List of delinquent payers.
- § 121-2. Notice of revocation or suspension of license or permit; hearing.
- § 121-3. Payment agreements; failure to comply with agreement.
- § 121-4. Waiver of denial by Town Manager.
- § 121-5. Nonapplicability.

ARTICLE II

Jurisdiction Over License and Permit Issuance

- § 121-6. Licenses and permits under the general laws.
- § 121-7. Jurisdiction of and control by Town Manager over ways; promulgation of rules and regulations.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

ARTICLE I

Denial for Nonpayment of Municipal Charges

[Adopted 11-1-1986, approved 11-25-1986 (Art. II of Ch. IV of the General Ordinances as updated through 7-7-2003)]

§ 121-1. List of delinquent payers.

The Tax Collector shall annually furnish to each licensing authority of the Town a list of any party that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve-month period, and that such party has not filed in good faith a pending application for abatement of such a tax or a pending petition before the appellate tax board.

§ 121-2. Notice of revocation or suspension of license or permit; hearing.

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on the list authorized under § 121-1; provided, however, that written notice is given to the party and the Tax Collector, as required by the applicable provisions of law, and the party is given a hearing, to be held not less than 14 days after said notice. Said list shall be prima facie evidence for denial, revocation or

suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted under this section. Any findings made by the licensing authority pursuant to the hearing hereunder shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the Town as of the date of said certificate.

§ 121-3. Payment agreements; failure to comply with agreement.

Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit, and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of such license or permit; provided, however, that the holder be given notice as required by applicable provisions of law.

§ 121-4. Waiver of denial by Town Manager.

The Town Manager may waive such denial, suspension or revocation if he finds there is not direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in § 1 of Chapter 268 in the business or activity conducted in or on said property.

§ 121-5. Nonapplicability.

This article shall not apply to licenses and permits specifically exempted from the operation hereof under § 57 of Chapter 40 of the General Laws.

ARTICLE II

Jurisdiction Over License and Permit Issuance

[Adopted 8-18-1994 by Order No. 95-012 (Art. VIII of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 121-6. Licenses and permits under the general laws.

A. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Board of Health:

Description	Chapter	Section
Animal rendering	111	154
Animal stables	111	155
Baths, public	140	51

Description	Chapter	Section
Burial	114	45, 47
Dairy products	94	40
Funeral directors	114	49
Garbage removal	111	31A
Ice cream manufacture	94	65I
Livery stable	111	155
Methyl alcohol	94	303A
Milk	94	40
Mobile homes park	140	32B
Motels	140	32B

- B. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Building Commissioner:

Description	Chapter	Section
Buildings	143	3, 3A
Elevators	143	62

- C. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Chief of Police:

Description	Chapter	Section
Bicycles	85	11A
Certain work	136	7, 15
Firearms	140	121+
Gunsmith	140	122

- D. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Fire Chief of the Fire District in which the license is to apply:

Description	Chapter	Section
Automatic sprinkler systems	148	27A
Fires, open	48	13
Fireworks	148	39A

- E. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Gas Inspector:

Description	Chapter	Section
Gas appliances	143	3N, 3O

- F. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Licensing Authority:

Description	Chapter	Section
Alcoholic beverage, sale and manufacture	138	2
Automatic amusement devices	140	177A
Automobiles: automobile graveyards	140	54A
Automobiles: Class I - New car dealer	140	58, 59
Automobiles: Class II - used car dealer	140	58, 59
Automobiles: Class III - junk dealers	140	58, 59
Bathing suit rentals	140	194 et seq.
Billiards, pool, sippio table, bowling alleys	140	177
Boarding and lodging houses	140	23
Boats (rental)	140	194
Boats: Conveyance of passengers	140	191 et seq.
Clubs, associations dispensing food or beverage to members	140	21E
Coffee and tea houses	140	47
Common day of rest, holidays, entertainment	136	4
Common victuallers, restaurants	140	2
Dancing schools	140	185H
Entertainment provided by innholder or common victualler	140	183A
Ferris wheels	140	186
Food vehicles, lunch carts	140	49
Fortune tellers	140	185I
Furnaces and steam engines	140	115
Junk collector or dealer	140	54
Lodging houses	140	23, 30
Pawnbrokers	140	70
Picnic groves	140	188
Pinball Machines	140	177A
Secondhand dealers	140	54
Skating rinks	140	186
Soft drinks	140	21A and B
Theatrical events, public exhibition	140	181

- G. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Plumbing Inspector:

Description	Chapter	Section
Plumbing	142	13

- H. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the School Superintendent:

Description	Chapter	Section
Children, work permits	149	69

- I. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Town Clerk:

Description	Chapter	Section
Dog kennels	140	137A
Dogs, collar licenses	140	137
Fishing, hunting, trapping	131	12
Marriage	207	28

- J. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Town Manager:

Description	Chapter	Section
Airport approach regulations	90	40E
Auctioneers	100	2
Blasting operations	148	19
Cable television	166A	3
Coasting	85	10A
Excavation in public ways	83	8
Explosives storage, manufacture, or sale	148	13
Gasoline service stations	148	13
Hawkers, transient vendors	101	5, 17
Moving buildings in public ways	85	18
Parking lots	148	56
Pole location permits for utility wires	166	22
Sales of articles for charitable purpose	101	33

Description	Chapter	Section
Shellfish	130	52
Signs projected over public ways	85	8
Storage and sale of gasoline and other explosives	148	13
Taxicabs	40	22

K. The following licenses or permits under the following provisions of the General Laws shall be within the jurisdiction of the Wiring Inspector:

Description	Chapter	Section
Wiring	143	32

§ 121-7. Jurisdiction of and control by Town Manager over ways; promulgation of rules and regulations.

- A. The Town Manager shall have jurisdiction and control over all Town ways, parking areas, cemeteries, landings, docks and piers and shall be deemed to be the local officer having such jurisdiction and control for the purpose of any general law vesting authority in a municipal official in charge of roads, streets, ways or the like. He or she shall have jurisdiction over yard sale permits under the laws of the Town, and shall have the power to establish reasonable fees, by regulation not inconsistent with the General Laws, the Charter or ordinance, with respect to any of the foregoing.
- B. In the exercise of the foregoing jurisdiction and control, the Town Manager may promulgate rules and regulations not inconsistent with the General Laws, the Charter, or these ordinances. Said rules and regulations may provide for penalties equal to the penalty specifically established elsewhere in these ordinances, if any, otherwise not more than \$300 for each violation thereof, and for enforcement by the method established in Chapter 1, Article I of the Code of the Town of Barnstable.

Chapter 125

LOITERING

§ 125-1. Loitering restricted.

§ 125-2. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 3-5-1968, approved 5-13-1968 (Art. XXV of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Peace and good order — See Ch. 147.

§ 125-1. Loitering restricted.

No person shall saunter or loiter in a street in such manner as to obstruct travelers, but nothing in this section shall be construed to curtail, abridge or limit the right of opportunity of any person to exercise the right of peaceful persuasion guaranteed by § 24 of Chapter 149 of the General Laws, or to curtail, abridge or limit the intendment of any statute of the Commonwealth of Massachusetts.

§ 125-2. Violations and penalties. **[Added 5-18-1976, approved 9-13-1976]**

Any person violating any of the provisions of this chapter shall be punished by a fine not to exceed \$200 for each offense.

Chapter 130

NEWSRACKS

§ 130-1. License required.

§ 130-2. Issuance of license by Town Manager.

§ 130-3. Licensing requirements.

§ 130-4. Issuance and posting of decal.

§ 130-5. Period of license validity; fee.

§ 130-6. Removal of nonconforming devices; claim procedure.

§ 130-7. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 11-5-1988, approved 1-3-1989 (Art. L of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Schedule of Fees — See Ch. 76, Art. II.

§ 130-1. License required.

It shall be unlawful for any person to place on any publicly owned property within the Town, any newspaper boxes, newsracks, or news publication vending devices without first obtaining a valid license for the location of same from the Town Manager.

§ 130-2. Issuance of license by Town Manager.

The Town Manager shall, upon written application and payment of any required fees, issue a license for the location of the installation and operation of a newspaper box, newsrack or news publication vending device, provided that the applicant submits evidence of compliance with the requirements of § 130-3.

§ 130-3. Licensing requirements.

Requirements for licensing of newspaper boxes, newsracks and news publication vending devices shall be as follows:

- A. Applications must be submitted in writing on a form prescribed by the Town Manager;
- B. The newspaper box, newsrack or news publication vending device must not occupy an area greater than nine square feet, nor be more than 52 inches tall;
- C. The placement of the device shall not result in less than four feet of pedestrian traffic width on the sidewalk;
- D. The placement of the device shall not be less than four feet from any road surface, fire hydrant, U. S. postal receptacle or handicapped person access ramp;

- E. The device shall be well maintained and shall have no sharp edges or corners which would be likely to cause personal injury;
- F. The device must display information on the person responsible for the operation of the device; said information must contain the name, street address, city or town, state and zip code of the person responsible for its maintenance and a telephone number for that person. The information required by this subsection must be placed on the device on the same side and as near as practical to any coin receiving element, or on a device with no coin receiving element, the required information shall be on the main display panel.

§ 130-4. Issuance and posting of decal.

The Town Manager shall issue with every license for a newspaper box, newsrack or newspaper publication vending device location a decal which shall contain the license number and the license expiration date. Said decal must be affixed to the device in such a manner as to make the decal visible from the nearest street or public way.

§ 130-5. Period of license validity; fee.

All licenses issued under this chapter shall be valid for a period of not more than 12 months from the date of issue. All licenses issued under this section shall expire on March 31 following the date of issuance. The fee for each new or renewal license shall be as provided in Chapter 76, Fees, Article II, Schedule of Fees.

§ 130-6. Removal of nonconforming devices; claim procedure. [Amended 5-6-1989, approved 6-30-1989]

Any newspaper box, newsrack, or news publication vending device found on any publicly owned property within the Town without a valid decal, as required in § 130-4, may be removed and stored by the Superintendent of Public Works. The owner of any newspaper box, newsrack, or news publication vending device so removed and stored may claim the unit from the Superintendent of Public Works upon payment of reasonable storage fees to be determined by the Public Works Commission.

§ 130-7. Violations and penalties. [Added 5-6-1989, approved 6-30-1989]

Any persons violating the provisions of this chapter shall be punished by a fine not to exceed \$200 for each offense.

Chapter 133

NOISE

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| <p>§ 133-1. Responsibility for noise violations by person in charge of or owning premises.</p> <p>§ 133-2. Responsibility for noise violations by persons present on premises.</p> | <p>§ 133-3. Noise from motor vehicles.</p> <p>§ 133-4. Notice of noise restrictions to be provided to renters; owner's responsibility for repeated violations by renters.</p> <p>§ 133-5. Violations and penalties.</p> |
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[HISTORY: Adopted by the Town of Barnstable 11-5-1988, approved 3-10-1989 (Art. XXI of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Peace and good order — See Ch. 147.

Rental property — See Ch. 170.
Noise at marinas — See Ch. 405.

**§ 133-1. Responsibility for noise violations by person in charge of or owning premises.
[Amended 3-21-2013 by Order No. 2013-035]**

It shall be unlawful for any person or persons occupying or having charge of or owning any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof in the Town, to cause or suffer to allow any unnecessary, loud, excessive or unusual noises in the operation of any radio, phonograph or other mechanical or electronic sound making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise, where the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance in which or from which it is produced. The fact that the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance from which it originates shall constitute prima facie evidence of a violation of this chapter.

§ 133-2. Responsibility for noise violations by persons present on premises.

It shall be unlawful for any person or persons being present in or about any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof, other than that section of any establishment licensed under Chapter 138 of the General Laws, who, shall cause or suffer or countenance any loud, unnecessary, excessive or unusual noises, including any loud, unnecessary, excessive or unusual noises in the operation of any radio, phonograph, or other mechanical or electronic sound making device, or instrument or reproducing device or instrument or in the playing of any band, orchestra, musician or group of musicians, or the

making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or group of persons, or in the use of any device to amplify the aforesaid noise, where the aforesaid noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance in which or from which it is produced. The fact that the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter boat or conveyance from which it originates shall constitute prima facie evidence of a violation of this chapter. Any person shall be deemed in violation of this chapter, who shall make, or aid, or cause, or suffer, or countenance, or assist in the making of the aforesaid and described improper noises, disturbance, breach of the peace, and the presence of any person or persons in or about the building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof during a violation of this chapter shall constitute prima facie evidence that they are a countenance to such violation.

§ 133-3. Noise from motor vehicles.

It shall be unlawful for any person while in control of any motor vehicle in the Town of Barnstable to cause any unnecessary, loud, excessive, or unusual noise in the operation of the motor vehicle. The fact that the noise is plainly audible at a distance of 150 feet from the motor vehicle from which it originates shall constitute prima facie evidence of a violation of this chapter.

§ 133-4. Notice of noise restrictions to be provided to renters; owner's responsibility for repeated violations by renters. [Amended 3-21-2013 by Order No. 2013-035]

The owner of any building, dwelling, structure, premises, shelter, boat or conveyance which is let, rented or leased shall provide any and all tenants, lessees and sublessees with a copy of this chapter at the time of entering into the rental agreement and the owner shall receive and retain a dated written acknowledgement from each tenant, lessee and sublessee verifying receipt of same. The owner of any building, dwelling, structure, premises, shelter, boat or conveyance which is let, rented or leased shall be notified in writing of each violation of this chapter committed by his tenants, lessees and sublessees. After notice of two such violations within a twelve-month period, the Chief of Police or his designee may request a meeting with the property owner to coordinate a plan to resolve the violations of this chapter. If the owner fails to meet with the Chief or his designee or if after meeting with the Chief or his designee, the owner fails to implement the plan to resolve the violations, for each subsequent violation, the owner shall be deemed to have suffered to allow noise in violation of § 133-1.

§ 133-5. Violations and penalties.

Any person violating the provisions of this chapter shall be punished by a fine not to exceed \$200 for each offense.

Chapter 138
OFFICERS AND EMPLOYEES

ARTICLE I
Tree Warden

§ 138-2. Powers and duties.

§ 138-1. Appointment; term.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Trees — See Ch. 221.

ARTICLE I
Tree Warden

[Adopted 5-8-1978, approved 8-25-1978 (Art. XXX of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 138-1. Appointment; term.

The Town Manager shall annually in June appoint a Tree Warden to hold office for the term of one year from July 1 to June 30 or until his successor is duly appointed and qualified.

§ 138-2. Powers and duties.

The Tree Warden shall have and exercise all of the powers and duties prescribed for a Tree Warden by the General Laws of this commonwealth.

Chapter 141

OUTDOOR BUSINESSES

ARTICLE I

Main Street in Hyannis and Osterville

§ 141-1. Operation of businesses restricted.

§ 141-2. Violations and penalties.

ARTICLE II

Licensing

§ 141-3. License required.

§ 141-4. Nonapplicability.

§ 141-5. No relief from compliance due to temporary association with local dealers.

§ 141-6. License fee; expiration; charitable organizations; Christmas tree sales.

§ 141-7. Power of Town Manager to place restrictions on license.

§ 141-8. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Schedule of Fees — See Ch. 76, Art. II.

ARTICLE I

Main Street in Hyannis and Osterville

[Adopted 3-5-1963, approved 5-6-1973 (Art. XVII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 141-1. Operation of businesses restricted. [Amended 1978 Fall ATM; approved 2-6-1979]

Unless in a building, no business, professional or artistic enterprise shall be conducted within 25 feet of the side lines of Main Street, Hyannis and Main Street, Osterville. Notwithstanding the provisions of this article, the Town Manager may issue a special permit for such activity if in his opinion it would not be detrimental to the public interest or if in his opinion unusual hardship would otherwise be incurred.

§ 141-2. Violations and penalties. [Added 5-18-1976; approved 9-13-1976]

Any such enterprise violating the provisions of this article shall be punished by a fine not to exceed \$50 for each offense. Each day that such violation continues shall constitute a separate offense.

ARTICLE II

Licensing

[Adopted 4-16-1992; amended 5-21-1992, 11-5-1992 (Art. LIII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 141-3. License required.

Unless in a building, no business, professional or artistic enterprise, shall be conducted without first having obtained an outdoor business license from the Town Manager.

§ 141-4. Nonapplicability.

The provisions of this article shall not apply to: amusements licensed under Chapter 140 of the General Laws; agricultural enterprises; sale of fruits and vegetables; flower and garden products and supplies when displayed out of doors but sold from a building on the property maintained primarily for that purpose; display of vehicles including rented or leased from a building on the property maintained primarily for that purpose; recreational activities; sporting events; building supplies where displayed out of doors but sold from a building on the property maintained primarily for that purpose; sale of newspapers and religious publications; licensed hunting and fishing activities; appropriately authorized activities on Town-owned property; construction and maintenance of buildings, property, roads, sidewalks, etc.; activities or a restaurant when properly licensed; transportation activities; fueling and refueling activities; licensed kennels and stables; communications activities; unauthorized activities of a properly licensed hawker or peddler; activities of public utilities; collection and disposal of waste; or the display of merchandise when displayed out of doors but sold from a building maintained primarily for this purpose.

§ 141-5. No relief from compliance due to temporary association with local dealers.

No person shall be relieved or exempted from the provisions of this article by reason of associating himself temporarily with any local dealer, trader or merchant, or by lease of all or part of a parcel of land, or by conducting his business in connection with, or as part of, the business of, or in the name of, any local dealer, trader or merchant.

§ 141-6. License fee; expiration; charitable organizations; Christmas tree sales.

The fee for an outdoor business license shall be as set forth in Chapter 76, Fees, Article II, Schedule of Fees. The fee for an outdoor business license when issued after October 15 shall be as provided in Chapter 76, Fees, Article II, Schedule of Fees. Licenses issued under this article shall expire on December 31 annually. The Town Manager may, under such conditions as he may deem proper, grant to any organization engaged in charitable work, a special license authorizing it, for a particular time period not to exceed a total of four days, to be stated in the license, and for a charitable purpose stated in such license, to conduct under their control an outdoor business, professional, or artistic enterprise for a fee as set forth in Chapter 76, Fees, Article II, Schedule of Fees, provided that the applicant demonstrates a substantial benefit to the charity and to the Town. The Town Manager may issue a special license for charitable purposes authorizing the sale of Christmas trees for a period not to exceed 45 days.

§ 141-7. Power of Town Manager to place restrictions on license.

The Town Manager may make regulations not inconsistent with the provisions of this article for clarifying the provisions of this article and to describe the methods, conditions, and form of application, and may place reasonable restrictions on any license granted under this article when, in his opinion, it is in the best interest of the Town of Barnstable to do so.

§ 141-8. Violations and penalties.

Whoever violates the provisions of this article shall be punished by a fine not to exceed \$300. Any violation of this article enforced by the methods provided in § 21D of Chapter 40 of the General Laws shall be subject to a fine of \$100. Each day that such violation continues shall constitute a separate offense.

Chapter 147

PEACE AND GOOD ORDER

ARTICLE I Profane or Obscene Language

- § 147-1. Obscene language in public prohibited.
- § 147-2. Violations and penalties.

ARTICLE II Camping

- § 147-3. Tenting and camping restricted; sleeping on public property prohibited.
- § 147-4. Violations and penalties.

ARTICLE III Protection of Privacy

- § 147-5. Peeping in windows prohibited.

[**HISTORY:** Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Open containers of alcoholic beverages — See Ch. 20,
Art. II.

Gambling — See Ch. 89.
Loitering — See Ch. 125.
Noise — See Ch. 133.

ARTICLE I Profane or Obscene Language

[Adopted 3-5-1968, approved 5-13-1968 (Art. XXIV of Ch. III of the General Ordinances as updated through 7-7-2003)]

- § 147-1. Obscene language in public prohibited.

No person shall, in any street or other public place, accost or address another person with profane or obscene language.

§ 147-2. Violations and penalties.

Any person violating any portion of this article shall be punished by a fine not more than \$50 for each offense.

ARTICLE II

Camping

[Adopted 5-18-1976, approved 9-13-1976 (Art. XXIII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 147-3. Tenting and camping restricted; sleeping on public property prohibited.

No person shall set up on any property, public or private, without permission of the owner thereof, a camp or tent, nor shall any person between the hours of 8:00 p.m. and 8:00 a.m. sleep in the open on any public property, within the limits of the Town of Barnstable.

§ 147-4. Violations and penalties.

Any person violating this provision of this article shall be punished by a fine not to exceed \$200 for each offense.

ARTICLE III

Protection of Privacy

[Adopted 6-12-1975, approved 9-10-1975 (Art. X of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 147-5. Peeping in windows prohibited.

No person shall enter upon the premises of another with the intention of peeping into the windows of a house or other building or in any manner spying upon any person or persons therein.

§ 147-6. Permit required for door-to-door solicitation; exceptions. [Added 5-18-1976, approved 9-13-1976]

There shall be no door-to-door solicitation in the Town of Barnstable by any person, other than a bona fide agent of a recognized religious, charitable, fraternal or nonprofit public service organization, without such person having first registered his true name and address with the Chief of Police and having stated fully the true purposes and duration of such solicitation. Upon such true representation, the Chief of Police shall issue a permit stating that such person has so registered and is entitled to solicit for the purposes specified.

§ 147-7. Violations and penalties.

Any person who shall violate this article shall be punished by a fine of not more than \$50 for each offense.

ARTICLE IV
Child Safety Information and Awareness
[Adopted 11-2-2006 by Order No. 2007-35¹]

§ 147-8. Title.

This article shall be known as the "Barnstable Active Safety Information for Child Awareness Ordinance" and may be referred to by the acronym "BASIC."

§ 147-9. Purpose.

The purpose of this article is to advance the public safety and welfare of the residents of the Town of Barnstable by making certain environmental information and controls available for the benefit of children and those who care for children.

§ 147-10. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CHILD — A person under the age of 16.

RESIDENCE — The place of abode of a person.

§ 147-11. Information.

- A. The Town will make available by publication on its Web site and in one of its offices, public records that chronicle areas where hazardous materials, as defined in § 2 of Chapter 21E of the General Laws of Massachusetts, have been released and the status of remedial actions updated semiannually until final response actions have been taken and thereafter maintain the record of such final response for a period of three years.
- B. The Town will make available by publication on its Web site and in one of its offices, public records on motor vehicle collisions on ways within the Town updated semiannually.
- C. The Town will make available by publication on its Web site any reports received by the Health Division from the Commonwealth of Massachusetts Department of Public Health of the presence of Eastern Equine Encephalitis within the Town for a period of 30 days.

§ 147-12. Controls.

- A. The Town will post a sign on any of its property listed for publication under § 147-11A containing a summary of the published information.
- B. Following each data update completed pursuant to § 147-11B, the Town will review motor vehicle traffic rules, regulations and improvements for the purpose of considering

1. Editor's Note: This ordinance also stated that it shall take effect 90 days following its adoption.

amendments or additional improvements designed to alleviate the occurrence of future similar incidents.

- C. No person designated as level 2 or 3 under the provisions of MGL c. 6, § 178K(2), in whole or in part by reason of a sexual offense against a child shall take up residence apart from a person related by blood or marriage within the first degree of kindred within the Town within 2,000 feet of the boundaries of land containing a facility with the principal purpose of providing services to a child.
- D. A person does not commit a violation of Subsection C if any of the following apply:
- (1) The person is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution or facility; or
 - (2) The person had already established residence as of the effective date of the prohibitions.

§ 147-13. Violations and penalties.

Violations of § 147-12 shall be punishable by a fine of \$300 per day.

§ 147-14. Severability.

The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.

Chapter 150

PEDDLING AND HAWKING

§ 150-1. License required.

§ 150-4. Selling goods in public ways.

§ 150-2. Location restrictions.

§ 150-5. Violations and penalties.

§ 150-3. Sales by nonprofit agencies.

[**HISTORY: Adopted by the Town of Barnstable 11-21-1996 (Art. LXI of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.**]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

§ 150-1. License required.

No person shall conduct the activity of a hawker or peddler unless licensed in compliance with M.G.L. Chapter 101 and the provisions of this chapter.

§ 150-2. Location restrictions.

No hawking or peddling activity required to be licensed by M.G.L. Chapter 101 shall be permitted within 150 feet of North Street, Main Street and South Street in Hyannis, or within 150 feet of any Town-operated beach or park, unless a license has been authorized in accordance with § 150-3.

§ 150-3. Sales by nonprofit agencies.

The Town Manager may grant a license authorizing sales by nonprofit agencies, to sell through its agents, in the streets and other public places within the Town identified on the license. The license shall be for a period not to exceed 12 hours. A nonprofit agency authorized by this section to sell shall provide each agent a badge, approved by the Town Manager, bearing upon it the name of the organization and the date and location on which the license is to be exercised. Each authorized agent shall wear in plain sight the badge provided by the authorized agency during the period the agent is engaged in this authorized activity. The Town Manager shall have the authority to adopt rules and regulations consistent with M.G.L. Chapter 101 and this chapter to further regulate the activities of hawkers and peddlers.

§ 150-4. Selling goods in public ways.

No hawker or peddler shall set up and display or sell goods, wares or merchandise adjacent to any public way, except a properly licensed hawker or peddler may stop a vehicle on a public way and offer or sell goods, wares or merchandise to persons who have signaled an interest in

the services, and provided, further, that the hawker or peddler does not obstruct the normal flow of traffic or endanger vehicle or pedestrian traffic. A hawker or peddler set up adjacent to any public way displaying goods, wares or merchandise for a period of more than five minutes without a customer or potential customer displaying interest in the goods, wares or merchandise shall be deemed to be in violation of this section.

§ 150-5. Violations and penalties.

Any person violating the provisions of this chapter shall be punished by a fine of not more than \$300 for each offense. Any violation of this chapter enforced by the methods provided in § 21D of Chapter 40 of the General Laws shall be subject to a fine of \$100 for each offense.

Chapter 160

PROBLEM PROPERTIES, CHRONIC

§ 160-1. Purpose and intent.

§ 160-2. Cost of assigned police officers.

[HISTORY: Adopted by the Town of Barnstable 1-17-2013 by Order No. 2013-031. Amendments noted where applicable.]

GENERAL REFERENCES

Peace and good order — See Ch. 147.

§ 160-1. Purpose and intent.

The purpose and intent of this chapter is to define a coherent method of addressing the adverse effects on the health, safety, welfare, and quality of life of residents arising from properties where illegal activity occurs on a regular basis. Some persons that own or control such properties allow their properties to be used for illegal activity, with the result that these properties have become chronic problem properties in the neighborhood. Chronic problem properties within the Town of Barnstable cause a financial burden by the numerous calls for service to the properties because of the illegal activities that repeatedly occur or exist on such properties. The current provisions of the ordinances relating to noise and disturbing the peace do not provide an adequate tool for abating such chronic problem properties. The Town through its public safety, code enforcement and regulatory agencies is in a unique position to gather data on such properties and to establish an active plan tailored to address the particularized problems and costs posed by specific properties.

§ 160-2. Cost of assigned police officers.

- A. Authority for police response. Where Police Department personnel, while on duty in service to the Department, are dispatched or caused to respond at a particular dwelling unit, property or location on multiple occasions, to incidents involving criminal offenses, whether a misdemeanor or felony under federal, state or local law, the Chief of Police is hereby authorized and empowered to assign to such dwelling unit, property or location a member or members of the department to staff such police response as the Chief of Police deems appropriate to protect the health, safety, and welfare of the inhabitants of the Town of Barnstable.
- B. Requirements for police response. Such assignment of a police response shall only occur after the following procedure has been satisfied:
 - (1) Upon being dispatched or caused to respond to an incident at a property involving a misdemeanor or a felony, Police Department personnel shall investigate the validity of the complaint against the occupants at the particular property or location.

- (2) Upon finding a valid complaint, police shall make a record of the incident and shall mail a copy of this chapter and copies of the all-calls reports relating to said police response to the property owner by certified mail. A "valid complaint," "incident" or "felony or misdemeanor," as used in this chapter, shall not include a complaint, incident or offense where an occupant of the premises is the victim of the crime.
- (3) The Police Department shall make a record of the number of such incidents at a particular dwelling unit, property or location and keep such record within the Department's control.
- (4) After two valid complaint incidents in a twelve-month period relating to the occupancy of a dwelling unit, or to a particular property or location, the Chief of Police or his designee may request a meeting with the property owner to coordinate a plan to resolve the incidents at the particular property. For the purpose of calculating the number of such incidents, where a particular property contains more than one single dwelling unit, providing complete independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation, a valid complaint incident shall be attributable to any single unit where the valid complaint incident has been documented, and not to the entire multiple-unit property.
- (5) After the four valid complaint incidents, whether misdemeanor or felony, in a twelve-month period, relating to the property owner, tenants or occupants of a dwelling unit or at a particular property or location, the Chief of Police shall schedule a meeting with the property owner and after the hearing, at his/her discretion, may make the decision to designate the property as a chronic problem property and assign a police response.
 - (a) Factors that shall be considered by the Chief of Police include the following:
 - [1] The nature, scope, and seriousness of the incident(s);
 - [2] Whether incident(s) resulted in an arrest;
 - [3] History of criminal activity taking place at the property or dwelling unit;
 - [4] Property owners' and tenants'/occupants' willingness to cooperate with police.
 - (b) The Chief of Police shall notify, in writing, the property owner of his decision to designate the property as a chronic problem property and to assign police response as follows:
 - [1] If the property owner resides within the Town of Barnstable, such notification should be hand delivered to the property owner's residence or usual place of business that is on record at the Assessor's office and by mailing the notification to such address by regular and certified mail, return receipt requested; or

- [2] If the property owner does not reside within the Town of Barnstable, by mailing the notification to the property owner's residence or usual place of business that is on record at the Assessor's office by regular and certified mail, return receipt requested.
- [3] The Chief of Police's notification must inform the property owner that he/she may request, in writing, a hearing, within 14 days of the notification, from the Chief of Police and where and to whom he/she must address his/her letter of appeal, specified under § 160-2D.
- [4] The notification shall contain the number of valid complaint incidents which occurred on said property in a twelve-month period.

- (6) After the hearing under Subsection B(5) above, the property may be officially identified as a chronic problem property, and the property owner shall be subject to the penalties addressed in Subsection C. The Chief of Police may commence assigning police response seven days after hand delivery of the notification and 10 days after mailing the notification to the property owner.
- (7) The Chief of Police or his designee shall keep an accurate record of the cost of police response to a particular property or location, including an accurate record of the number of officers who are part of the determined response; and the Chief of Police shall forward such record to the Collector.
- (8) Coordination of police response is subject to the rules and regulations of the Department.

C. Penalties.

- (1) The Collector is hereby authorized and empowered to notify and bill the property owner for the costs the Town incurred for its police response in addition to any incidental costs during the period of police response to the dwelling unit, particular property or location. The property owner is responsible for payment of the bill in full within 30 days of receiving the bill, unless an appeal under § 160-2D is timely filed. All amounts collected by the Collector shall be deposited into the general fund of the Town.
- (2) Any unpaid bill for police response, including interest and/or collection costs, shall be added to the real estate tax on the property and collected as part of that tax. Failure to pay real estate taxes will render the property owner delinquent, and the Collector shall commence foreclosure proceedings.

- D. Property owner's rights. The property owner may request, in writing, a hearing before the Problem Properties Appeals Committee within 14 days of receipt of notification in order to appeal the designation of the property as a chronic problem property under § 160-2B(6) and/or to contest any penalties set forth in § 160-2C. A decision on the appeal must be in writing. If the Committee finds that the property is not a chronic problem property, the designation shall be removed and any penalties assessed shall be rescinded. If the Committee finds that the property is a chronic problem property, it may

1) uphold the penalty in its entirety or 2) reduce the penalty or 3) abate any portion thereof that has already been paid.

- E. Eviction. In the event the property owner has commenced the process of eviction against the tenant(s) responsible for the incidents at the property, and demonstrates that he has proceeded diligently and in good faith, then the application of this chapter shall be stayed until the eviction process is concluded. The Chief of Police may continue police response at the particular property or location, at his discretion, at all times after the eviction proceeding has been completed; provided, however, that such costs shall not be assessed to the property owner.
- F. Charges to constitute municipal lien pursuant to MGL c. 40, § 58. All charges to recover costs imposed in this chapter shall constitute a municipal lien on the property so charged in accordance with MGL c. 40, § 58.
- G. Reporting requirements. The Chief of Police shall submit a written report to the Town Manager and Town Council, no later than six months after the effective date of this chapter, which shall include the total cost of administration of this chapter, as well as an accounting of all revenues collected in association with it. It shall also contain data regarding all dwelling units within a property, particular properties or locations which remain chronic problem properties and those that are no longer designated as chronic problem properties. The report shall also include the general impact, if any, that the implementation of this chapter has had on the health, safety, and welfare of residents of Barnstable.
- H. Definitions.

PERSON — Any individual, partnership, corporation, firm, association, or group, including a governmental unit and the Town of Barnstable or any of its agencies.

POLICE RESPONSE — Any and all police action deemed appropriate by the Chief of Police to protect the health, safety and welfare of inhabitants of a property or location where valid complaints have been documented.

PROPERTY OWNER — Any person who alone or severally with others has legal title to any building, structure, property, dwelling, dwelling unit(s), rooming unit or parcel of land, vacant or otherwise; mortgagee in possession; or agent, trustee or other person appointed by the courts.

VALID COMPLAINT — An investigated finding, documented by on-duty Police Department personnel dispatched or caused to respond to an incident, that a misdemeanor, felony under federal, state or local law has taken place in a dwelling unit, within a property, on a particular property or at a specific location which disturbs the health, safety and welfare of other inhabitants of said property or location. The term shall not include incidents involving an occupant of the premises as the victim of the crime.

Chapter 162
PUBLIC HEARINGS

ARTICLE I
Hearings on Ordinances

§ 162-1. Public hearings required.

§ 162-2. Notice of hearing.

ARTICLE II
Notification of Public Hearings

§ 162-3. Delivery to address of property affected.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Hearings on Ordinances

[Adopted 4-6-2000 by Order No. 2000-126 (Art. VI of Ch. I of the General Ordinances as updated through 7-7-2003)]

§ 162-1. Public hearings required.

The Council shall hold a public hearing on any proposed general ordinance or amendment thereto.

§ 162-2. Notice of hearing.

Notice of such hearings shall be published in the same manner as appropriation orders under the Charter.

ARTICLE II
Notification of Public Hearings

[Adopted 12-6-2001 by Order No. 2002-034 (Art. XXII of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 162-3. Delivery to address of property affected.

Whenever a notice of a public hearing is required to be mailed to the owner of a parcel of real estate, a copy of said notice shall also be sent to "occupant" at the local street address of the affected property, if different from the property tax billing address.

Chapter 166

RAFFLES AND BAZAARS

§ 166-1. Compliance with state and local laws required.

§ 166-3. Written notice of event required.

§ 166-2. Application information.

§ 166-4. Violations and penalties.

[**HISTORY: Adopted by the Town of Barnstable 5-11-1982, approved 6-14-1982 (Art. XL of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.**]

GENERAL REFERENCES

Noncriminal disposition — See Ch. I, Art. I.

Gambling — See Ch. 89.

§ 166-1. Compliance with state and local laws required.

No person shall operate a raffle or bazaar in the Town of Barnstable except in accordance with § 7A of Chapter 271 of the General Laws, 961 Code of Massachusetts Regulations, Sections 4.00 - 4.05, and this article.

§ 166-2. Application information.

- A. Each application for a permit to operate raffles and bazaars shall be accompanied by a document setting forth the following information:
- (1) The evidence on which the applicant relies in order to qualify.
 - (2) The names, addresses and phone numbers of three officers or members of the organization who shall be responsible for the operation of the bazaar or raffle.
 - (3) The uses to which the net proceeds will be applied.
 - (4) Names, addresses and phone numbers of persons leasing gaming equipment to the organization.
 - (5) A current list of members of the organization together with their addresses.
- B. No person other than an officer or a member specifically authorized to do so shall sign an application for a permit to operate raffles and bazaars on behalf of an organization.

§ 166-3. Written notice of event required.

No person holding a permit to operate raffles or bazaars shall operate any particular such event unless written notice has been given to the Chief of Police, not less than 30 days prior to the event, of the date, time, and place of the event and of any deviation from the information contained in the application for the permit to operate the same.

§ 166-4. Violations and penalties.

Any person violating any provisions of this chapter shall be punished by a fine of not more than \$300.

Chapter 168

REGULATORY AGREEMENTS

- | | |
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| § 168-1. Purpose and intent; legislative authority; boundary; single-family residence exception. | § 168-7. Procedural requirements where Cape Cod Commission is party to agreement. |
| § 168-2. Definitions. | § 168-8. Procedural requirements where Cape Cod Commission is not party to agreement. |
| § 168-3. Authority to enter agreement. | § 168-9. Limitations on regulatory agreements. |
| § 168-4. Parties to regulatory agreements. | § 168-10. Amendments and rescission. |
| § 168-5. Negotiation and execution of regulatory agreements. | § 168-11. Enforcement. |
| § 168-6. Elements of regulatory agreements. | § 168-12. Severability; effect on other laws. |

[HISTORY: Adopted by the Town of Barnstable 9-2-2004 by Order No. 2004-118; amended in its entirety 10-20-2005 by Order No. 2006-020. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 240.

§ 168-1. Purpose and intent; legislative authority; boundary; single-family residence exception. [Amended 5-24-2007 by Order No. 2007-105; 7-16-2009 by Order No. 2009-138; 7-12-2012 by Order No. 2012-152]

It is the purpose and intent of this chapter to enable the Town of Barnstable to enter into development agreements (hereinafter "regulatory agreements") in the areas delineated on the Regulatory Agreement Districts Map dated December 28, 2011.¹

- A. The Town of Barnstable adopts this chapter under the Home Rule Authority of Article 89 of the amendments to the Massachusetts Constitution, the provisions of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, and Chapter D, Development Agreement Regulations, Code of Cape Cod Commission Regulations of General Application.
- B. This chapter shall apply within the Regulatory Agreement Districts, shown on the Regulatory Agreement Districts Map dated December 28, 2011.²

1. Editor's Note: Said map is on file in the Town offices.

2. Editor's Note: Said map is on file in the Town offices.

- C. The provisions of this chapter shall not apply to any single-family structure in existence on the date of adoption of this chapter that is used as a primary residence by the owner or a family member of the owner, as the term "family member" is defined in the Barnstable Zoning Ordinance.³

§ 168-2. Definitions.

In this chapter, the following words have the meanings indicated:

DESIGN AND INFRASTRUCTURE PLAN — The plan established by the Barnstable Zoning Ordinance, § 240-24.1.11.

QUALIFIED APPLICANT — A person who has a majority legal or equitable interest in the real property which is the subject of the regulatory agreement. A qualified applicant may be represented by an authorized agent.

REGULATORY AGREEMENT — A contract entered into between the Cape Cod Commission and/ or the Town of Barnstable and a holder of property development rights, the principal purpose of which is to negotiate and to establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject including, without limitation, a schedule of impact fees and/or transfer development rights.

TOWN OF BARNSTABLE — The municipality where the proposed development is located. The Town Manager, or his or her designee, shall be authorized to execute, on behalf of the Town of Barnstable, a regulatory agreement, subject to the procedural requirements set forth below.

§ 168-3. Authority to enter agreement.

Notwithstanding provisions to the contrary, the Town of Barnstable is hereby authorized to enter into a regulatory agreement with a qualified applicant within the Downtown Implementation District, provided the following conditions are met:

- A. The Town's Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan, and said certification has not been revoked;
- B. The Town has adopted the enabling regulation contained in §§ 168-1 through 168-10, herein.

§ 168-4. Parties to regulatory agreements.

A regulatory agreement may be executed by and between a qualified applicant and:

- A. The Cape Cod Commission; or
- B. The Cape Cod Commission and the Town of Barnstable; or

3. Editor's Note: See Ch. 240, Zoning.

- C. The Cape Cod Commission and the Town of Barnstable and with a state agency or agencies; or
- D. The Town of Barnstable; or
- E. The Town of Barnstable and a state agency or agencies.

§ 168-5. Negotiation and execution of regulatory agreements.

- A. Negotiation of the elements of a regulatory agreement between authorized parties (§ 168-4) and a qualified applicant shall follow all pertinent rules of due process currently required for public meetings, public hearings, and ratification of board and council decisions.
- B. Negotiation of the elements of a regulatory agreement between authorized parties (§ 168-4) and a qualified applicant shall be led by the Planning Board or its designee and shall include representatives from other municipal boards, departments and commissions where said joint participation will assist the negotiation process.
- C. No regulatory agreement may be executed by the Town Manager prior to an affirmative, majority vote by the Planning Board and the Town Council recommending the execution of the regulatory agreement. When a waiver from zoning is allowed under the negotiated regulatory agreement, there shall be a two-thirds vote of the Town Council recommending execution of the regulatory agreement.
- D. The Town Manager may make minor amendments to the regulatory agreement recommended by the Planning Board and approved by the Town Council and execute said regulatory agreement as amended, provided that such amendments do not alter the use, intensity or mitigation stipulations of the regulatory agreement. However, in no instance may the Town Manager make substantial amendments to the regulatory agreement recommended by the Planning Board and approved by the Town Council without first receiving written concurrence from the Planning Board and the Town Council and qualified applicant that said substantial amendments are agreed to.
- E. The Town Manager or his/her designee shall be authorized to execute, on behalf of the Town, a regulatory agreement. Prior to executing said regulatory agreement, the Town Manager shall obtain a majority vote of the Town Council to authorize the execution, unless the regulatory agreement authorizes a waiver from the Barnstable Zoning Ordinance, in which case the Town Manager shall obtain a two-thirds majority vote of the Town Council to authorize the execution. The Town Manager shall, within seven days of the Town Council vote authorizing the execution of the regulatory agreement, cause said regulatory agreement to be so executed and forward the same to the qualified applicant by certified, return receipt, mail. Within 21 days of the date said regulatory agreement has been mailed by the Town Manager, the qualified applicant shall execute the agreement and return, either by certified mail or hand delivery, the fully executed regulatory agreement.

§ 168-6. Elements of regulatory agreements.

- A. Proffers by a qualified applicant. A regulatory agreement may include, but is not limited to, the provisions whereby a qualified applicant agrees to provide certain benefits which contribute to one or more of the following:
- (1) The Town's infrastructure.
 - (2) Public capital facilities.
 - (3) Land dedication and/ or preservation.
 - (4) Affordable housing, either on or off site.
 - (5) Employment opportunities.
 - (6) Community facilities.
 - (7) Recreational facilities.
 - (8) Alternative mass transportation.
 - (9) Any other benefit intended to serve the proposed development, municipality or county, including site design standards, to ensure preservation of community character and natural resources.
- B. Proffers by the Town of Barnstable. A regulatory agreement may include the provisions whereby the Town of Barnstable agrees to provide certain protection from future changes in applicable local regulations and assistance in streamlining the local regulatory approval process. Streamlining will include, where not in conflict with existing local, state or federal law, holding of joint hearings, coordination of permit applications and, where possible, accelerated review of permit approvals. A regulatory agreement may also provide for extensions of time within which development approvals under state, regional and local laws may be extended to coincide with the expiration of the regulatory agreement established in § 168-9, below. When the Cape Cod Commission is not a party to the regulatory agreement, the land use development rights shall not vest with respect to Cape Cod Commission regulations and designations and the property shall be subject to subsequent changes in the Commission's regulations and designations.

§ 168-7. Procedural requirements where Cape Cod Commission is party to agreement.

- A. Where the Cape Cod Commission is to be a party to a regulatory agreement, a qualified applicant shall complete a regulatory agreement application form and comply with the specific requirements set forth in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised.
- B. Where the Cape Cod Commission is to be a party to a regulatory agreement, the procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall be followed, and no such regulatory agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.

§ 168-8. Procedural requirements where Cape Cod Commission is not party to agreement.

- A. Where the Cape Cod Commission is not to be a party to a regulatory agreement, a qualified applicant shall complete a regulatory agreement application form. The regulatory agreement application form shall include:
- (1) A fully completed application form provided by the Town of Barnstable, including a certified list of abutters.
 - (2) A legal description of the land subject to the agreement and the names of its legal and equitable owners.
 - (3) The proposed duration of the agreement.
 - (4) The development uses currently permitted on the land, and development uses proposed on the land, including population densities, and building densities and height.
 - (5) A description of public facilities that will service the development, including who shall provide and pay for such facilities, the date any new facilities will be constructed, and a schedule to assure that public facilities adequate to serve the development are available concurrent with the impacts of the development.
 - (6) A description of any reservation or dedication of land for public purposes.
 - (7) A description of all local development permits approved or needed to be approved for the development of the land.
 - (8) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.
 - (9) A final environmental impact report, certified as adequate by the Secretary of Environmental Affairs, if required under MGL c. 30, §§ 61 through 62h.
 - (10) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Town of Barnstable.
- B. All qualified applicants seeking to enter into a regulatory agreement without the Cape Cod Commission as a party shall submit the proposed development to the Barnstable Building Commissioner for a jurisdictional determination. If the Barnstable Building Commissioner determines that the proposed development is not a development of regional impact, then the Building Commissioner shall forward his or her determination, together with the reasons for such determination and a copy of the regulatory agreement application form, to the Clerk of the Cape Cod Commission within five business days. If the proposed development is not a development of regional impact, then the qualified applicant may pursue a regulatory agreement without the Cape Cod Commission as a party pursuant to the provisions of § 168-8C through I, below. If the proposed development is a development of regional impact, then the Cape Cod Commission must be a party to the regulatory agreement, in which case, the provisions of Section 5 of

Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall apply.

- C. The Town of Barnstable shall assume the responsibility for overseeing the regulatory agreement process. The Town of Barnstable shall hold a public hearing after receipt of a fully completed application from a qualified applicant for consideration of a proposed regulatory agreement. The Town of Barnstable shall hold at least two public hearings. The public hearings regarding review of a regulatory agreement shall not exceed 60 days, unless extended by mutual agreement of the parties. Failure to close the public hearings within 60 days shall not result in a constructive grant of the proposed development.
- D. The Town of Barnstable shall provide notice of the public hearing to consider a regulatory agreement by publication in a newspaper of general circulation once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing, and by mailing notice not less than 14 days before to:
- (1) The Town Council, Town Manager, Town Clerk, Building Inspector, Planning Board, Board of Appeals, Conservation Commission, Board of Health, Historic District Commission, Housing Authority, and to any other Town agency or any individual that makes a written request for such notice;
 - (2) The applicant;
 - (3) Each abutter to the proposed development, based on a list of abutters provided by the applicant and certified by the Barnstable Tax Assessor. Abutters shall include owners of land directly opposite on any public or private street or way and owners of land located within 300 feet of any boundary of the proposed development; and
 - (4) The Cape Cod Commission.
- E. The qualified applicant shall bear the cost of providing notice of the public hearing to consider the proposed regulatory agreement.
- F. The Town of Barnstable shall review proposed regulatory agreements for their consistency with the Cape Cod Commission Act, the Design and Infrastructure Plan and the Barnstable Local Comprehensive Plan.
- G. The Town of Barnstable shall file its regulatory agreement with the Clerk of the Cape Cod Commission and with the Barnstable Town Clerk. Notices of regulatory agreements shall be published in a newspaper of general circulation in the Town of Barnstable, including a brief summary of the contents of the regulatory agreement and a statement that copies of the regulatory agreement are available for public inspection at the Barnstable Town Clerk's office during normal business hours. In addition, the Town of Barnstable shall provide the Cape Cod Commission with a summary of the regulatory agreement which the Cape Cod Commission shall publish in its official publication pursuant to Section 5(i) of the Cape Cod Commission Act.
- H. Regulatory agreements shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The Town of Barnstable shall record the regulatory agreement in the Barnstable County Registry of Deeds and shall submit proof of such recording to

the Town Clerk and the Cape Cod Commission Clerk within 14 days of such recording. The qualified applicant shall bear the expense of recording.

- I. The cost for filing and processing of each regulatory agreement shall be as established by the Town Manager during his annual public hearing on the Town's fee schedule, except that the Town Manager may establish temporary fees to apply from the effective date of this chapter until the next annual public hearing on Town fees.

§ 168-9. Limitations on regulatory agreements.

- A. Nothing in this chapter may be construed to permit a municipality to require a qualified applicant to enter into a regulatory agreement.
- B. A regulatory agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section. Where the Cape Cod Commission is not a party, a regulatory agreement shall not exceed 10 years; however, provisions in the regulatory agreement pertaining to the preservation of open space and park areas, and agreement to pay for maintenance of utilities and other infrastructure may exceed such ten-year limitation. Where the Cape Cod Commission is a party, a regulatory agreement may extend for a longer period of time than that noted above, as set forth in Section 7 of the Code of Cape Cod Commission Regulations of General Application, as revised.
- C. A regulatory agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring a qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction.

§ 168-10. Amendments and rescission.

- A. Where the Cape Cod Commission is not a party to the regulatory agreement, any party to the agreement may petition the Town of Barnstable to amend or rescind the regulatory agreement. The petitioning party shall provide notice to all parties to the agreement and to the Cape Cod Commission of its intention to amend or rescind the agreement by providing such parties with a copy of the petition seeking such amendment or rescission. When the Town of Barnstable initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the agreement and to the Cape Cod Commission. The process for amendment or rescission shall follow the procedures for adoption outlined above.
- B. When the Cape Cod Commission is a party to the regulatory agreement, any other party to the regulatory agreement may petition the Commission to amend or rescind the regulatory agreement. Such petition shall be made in writing, on a form provided by the Cape Cod Commission. The petitioning party shall provide notice to all parties to the regulatory agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the Commission initiates an amendment or

rescission, it shall provide advanced notice, in writing, to all other parties to the agreement. The process for amendment or rescission shall follow the procedures for adoption outlined above.

§ 168-11. Enforcement.

A regulatory agreement is a binding contract which is enforceable in law or equity by a Massachusetts court of competent jurisdiction.

§ 168-12. Severability; effect on other laws.

- A. If any provision of this chapter is held invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this chapter shall not affect the validity of the remainder of the Barnstable ordinances.
- B. To the extent that a conflict of interest exists between this chapter and other ordinances of the Town of Barnstable, the more restrictive provisions shall apply.

Chapter 170

RENTAL PROPERTIES

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| § 170-1. Purpose. | § 170-8. Fee for registration. |
| § 170-2. Definitions. | § 170-9. Parking restrictions. |
| § 170-3. Responsibility of notification. | § 170-10. Smoke detectors and carbon monoxide alarms. |
| § 170-4. Certificate of registration. | § 170-11. Inspections. |
| § 170-5. Posting of certificate of registration. | § 170-12. Written notice of violation; time limits for correction. |
| § 170-6. Keeping of register. | § 170-13. Violations and penalties. |
| § 170-7. Provision of names, addresses and telephone numbers of owners or agent. | § 170-14. Severability. |

[HISTORY: Adopted by the Town of Barnstable 6-1-2006 by Order No. 2006-125.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal enforcement of violations — See Ch. 1, Art. I.
Fees — See Ch. 76.

Noise — See Ch. 133.
Solid waste — See Ch. 202.

§ 170-1. Purpose.

The purpose of this chapter is to protect the health, safety, and welfare of both the occupant(s) of rental housing units and the general public and to maintain the quality of life in residential neighborhoods. It will assist the Board of Health in the enforcement of state and local health and safety laws or regulations and provide a method of correcting violations when conditions require immediate attention, in particular, situations associated with recreational tenancy.

§ 170-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOARD OF HEALTH — The Board of Health of the Town of Barnstable.

DWELLING — Any building or area in a building used or intended for use for human habitation, including, but not limited to, apartments, condominiums, cottages, guesthouses, one-, two- or multiple-unit residential buildings, and rooming houses, but not including any licensed facility.

1. Editor's Note: This order also provided that it would take effect 120 days after its final approval by the Council, and it repealed former Ch. 170, Rental Property, adopted 12-19-1991 (Art. LI of Ch. III of the General Ordinances as updated through 7-7-2003).

FRONT YARD — The area between the roadway and the part of the structure nearest to the roadway.

LICENSED FACILITY — Any facility licensed under any state or local laws or regulations other than those registered under this chapter.

OCCUPANT — Anyone residing overnight in a dwelling.

OWNER — Any person who alone or severally with others has legal title to any dwelling, dwelling unit, rooming unit or parcel of land, vacant or otherwise; mortgagee in possession; or agent, trustee or other person appointed by the courts.

PERSON — Any individual, partnership, corporation, firm, association, or group including a governmental unit other than the Town of Barnstable or any of its agencies.

§ 170-3. Responsibility of notification.

No person shall allow occupancy of any dwelling without first notifying the occupant(s) at the time of such occupancy of this chapter and of Chapter 133, Noise, of the Code of the Town of Barnstable.

§ 170-4. Certificate of registration.

- A. No person shall rent or lease, or offer to rent or lease, any dwelling or any portion of a dwelling to be used for human habitation without first registering with the Board of Health, which shall determine the number of bedrooms and the number of persons such dwelling or portion of a dwelling may lawfully accommodate under the provisions of any state or local health and safety ordinance or regulation.
- B. The Board of Health shall, pursuant to the above subsection, issue a certificate of registration which shall be renewed on the following December 31, provided that the certificate may be renewed each year.

§ 170-5. Posting of certificate of registration.

No person shall rent or lease, or offer to rent or lease, any dwelling or any portion of a dwelling to be used for human habitation without first conspicuously posting within such dwelling or portion of a dwelling a certificate of registration provided by the Board of Health specifying the number of bedrooms and the number of persons such dwelling or portion of a dwelling may lawfully accommodate.

§ 170-6. Keeping of register.

The owner(s) shall be responsible for keeping a register containing all names of current occupants in the dwelling. The register shall be retained for a period of two years and shall be made available to the Board of Health, the Director of Public Health, a health inspector, a police officer, or the Town's licensing agent upon request.

§ 170-7. Provision of names, addresses and telephone numbers of owners or agent.

An owner of a dwelling which is rented for residential use shall provide the Board of Health with his/her current residential address and telephone number. If the owner is a corporation, the name, address, and telephone number of the president and legal representative of the corporation shall be provided. If the owner is a realty trust or partnership, the name, address, and telephone number of the managing trustee or partner shall be provided. In the event that the owner does not reside within the Commonwealth of Massachusetts, the owner shall designate a resident agent to represent him within the commonwealth and shall provide the Board of Health with written notification of the name, address and telephone number of the resident agent so designated.

§ 170-8. Fee for registration.

There shall be a fee of \$90 to procure a certificate of registration. The fee for any additional units owned by the same owner at the same address shall be \$25 per unit.²

§ 170-9. Parking restrictions.

- A. The occupant of a dwelling shall use, or allow to be used, no more than 25% of the front yard and no more than 20 feet of frontage as a parking area and/or driveway.
- B. Nothing in this section shall be deemed to supersede the parking requirements set forth by site plan review.

§ 170-10. Smoke detectors and carbon monoxide alarms.

Every owner shall test and perform maintenance on every smoke detector and carbon monoxide alarm upon renewal of any lease term for any dwelling unit or on an annual basis, whichever is more frequent. Any detector or alarm found to be defective shall be repaired or replaced forthwith. The occupant(s) must report faulty or inoperative smoke detector unit(s) to, first, the owner of the dwelling and, second, if necessary, the local Fire Department.

§ 170-11. Inspections. [Amended 8-1-2013 by Order No. 2013-034³]

Dwelling units covered by this chapter shall be subject to reasonable inspections by Town inspectional staff. All interior inspections shall be done in the company of the owner, occupant or the representative of either.

2. Editor's Note: Section 3 of Order No. 2006-125 provided that, notwithstanding the provisions of this § 170-8, the fee for the first year of registration, prior to 1-1-2007, shall be \$40 and each additional unit owned by the same owner at the same address shall be \$10 per unit.

3. Editor's Note: This order also repealed former § 170-11, Storage and removal of rubbish, garbage and other refuse, and renumbered former §§ 170-12 through 170-15 as §§ 170-11 through 170-14, respectively.

§ 170-12. Written notice of violation; time limits for correction.

- A. Written notice of any violations of this chapter shall be given by the Board of Health or its agent specifying the nature of the violation to the occupant and owner and the time within which compliance must be achieved. The requirements of this subsection shall be satisfied by mailing, through the United States Postal Service, or by delivering in hand as memorialized by an affidavit of any Town employee or officer authorized to serve any form of process notice to the owner or legal representative named on the registration.
- B. Violations of an unoccupied dwelling shall be corrected prior to occupancy. Violations found in an occupied dwelling shall be corrected within the time specified as determined by the Board of Health or the Director of Public Health.

§ 170-13. Violations and penalties. [Amended 8-1-2013 by Order No. 2013-034]

- A. Any person who violates any provision of this chapter shall be subject to a fine not to exceed \$300. Any owner of a rental property found to have two documented violations within any twelve-month period shall pay a fine of \$300. Each day of continued violation may be deemed to be a separate offense.
- B. This chapter may be enforced under the provisions of MGL c. 40, § 21D. The fine for any violation under the provisions of MGL c. 40, § 21D shall be \$100, or \$300 for any owner of a rental property found to have two documented violations within any twelve-month period. Each day of continued violation may be deemed to be a separate offense.

§ 170-14. Severability.

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.

Chapter 173

ROLLER-SKATING AND SKATEBOARDING

§ 173-1. Roller-skating and skateboarding in congested areas prohibited.

§ 173-2. Use of public ways prohibited.

§ 173-3. Town Manager authorized to adopt rules and regulations.

§ 173-4. Violations and penalties.

§ 173-5. Severability.

[HISTORY: Adopted by the Town of Barnstable 11-3-1979 (Art. XXXV of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Roller skates and skateboards — See Ch. 408.

§ 173-1. Roller-skating and skateboarding in congested areas prohibited.

No person shall roller-skate or skateboard on public sidewalks in congested areas of Town.

§ 173-2. Use of public ways prohibited.

No person shall roller-skate or skateboard in public ways in congested areas of Town.

§ 173-3. Town Manager authorized to adopt rules and regulations.¹

The Town Manager shall adopt rules and regulations to preserve and promote the public safety, consistent with this chapter, governing the use and rental of roller skates and/or skateboards within the Town. Such regulations shall become effective when filed with the Town Clerk and published in a newspaper having general circulation within the Town, and may include, but need not be limited to, designation of the areas in which, or the times or seasons during which, roller-skating is prohibited, and may prohibit roller-skating and/or skateboarding on Town property in congested areas which is not part of a public way or sidewalk.

§ 173-4. Violations and penalties.

Whoever violates the provisions of this chapter shall be punished by a fine not to exceed \$50.

1. Editor's Note: See Ch. 408, Roller Skates and Skateboards.

§ 173-5. Severability.

The provisions of this chapter are severable. If any provisions of the chapter or the application thereof to any person or circumstance is held unconstitutional or invalid by any authority of competent jurisdiction, the application of such provisions to any other person or circumstance or the application of the remaining provisions of this chapter shall not be impaired.

Chapter 177

SANDY NECK

ARTICLE I Operation of Motor Vehicles

§ 177-1. Operation within closed area on Sandy Neck Beach.

§ 177-2. Operation on Sandy Neck Beach without valid permit.

§ 177-3. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Beaches and waterways — See Ch. 32.

Sandy Neck Barrier Beach — See Ch. 601.

ARTICLE I Operation of Motor Vehicles

[Adopted 11-7-1987, approved 12-3-1987 (Art. XXVI of Ch. III of the General Ordinances as updated through 7-7-2003); amended in its entirety 9-2-2010 by Order No. 2011-003]

§ 177-1. Operation within closed area on Sandy Neck Beach.

No person shall operate a motor vehicle on Sandy Neck Beach except within marked open sections of the front beach off-road vehicle corridor and on the beach access trail.

§ 177-2. Operation on Sandy Neck Beach without valid permit.

No person shall operate a motor vehicle on Sandy Neck Beach without first obtaining a Sandy Neck off-road vehicle permit.

§ 177-3. Violations and penalties.

Any person violating this article shall be punished by a fine of not more than \$200 for each offense.

Chapter 180

SCENIC ROADS

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| <p>§ 180-1. Definitions.</p> <p>§ 180-2. Purpose.</p> <p>§ 180-3. Designation of roads.</p> <p>§ 180-4. Control.</p> <p>§ 180-5. Public hearing; criteria for granting approval of applications.</p> <p>§ 180-6. Compensatory actions.</p> | <p>§ 180-7. Notice.</p> <p>§ 180-8. Simultaneous review under Public Shade Tree Law.</p> <p>§ 180-9. Recommendations for scenic road designation.</p> <p>§ 180-10. Adoption of regulations by Planning Board.</p> <p>§ 180-11. Violations and penalties.</p> |
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[HISTORY: Adopted by the Town of Barnstable 1983 Fall ATM, approved 2-4-1984 (Art. XLI of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

— See Ch. .

§ 180-1. Definitions.

In the absence of contrary meaning established through legislative or judicial action pursuant to M.G.L. Chapter 40, § 15C, the following terms contained in that statute shall be defined as follows:

CUTTING OR REMOVAL OF TREES — The removal of one or more trees.

REPAIR, MAINTENANCE, RECONSTRUCTION OR PAVING WORK — Any work done within the right-of-way by any person or agency, public or private. Within the meaning of this definition, it is any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing ones is included, insofar as it takes place within the right-of-way.

ROAD — A right-of-way of any way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways. When the boundary of the right-of-way is an issue so that a dispute arises as to whether or not certain trees or stonewalls or portions thereof are within or without the way, the trees and stonewalls shall be presumed to be within the way until the contrary is shown.

TEARING DOWN OR DESTRUCTION OF STONE WALLS — The destruction of more than 15 linear feet of stone wall involving more than one cubic foot of wall material per linear

foot above existing grade, but shall not be construed to include temporary removal and replacement at the same location with the same materials.

TREES — Includes any living tree whose trunk has a diameter of four inches or more as measured one foot above the ground.

§ 180-2. Purpose.

To protect the scenic quality and character of certain Town roads, the following regulations are established to control alterations that can take place within public rights-of-way.

§ 180-3. Designation of roads.

The Town may from time to time designate appropriate roads within the Town aesthetic roads by Town Council vote.

§ 180-4. Control.

- A. Within the public right-of-way of designated roads the Tree Warden or his designee may approve the cutting or removal of up to three trees per 200 linear feet of right-of-way.
- B. Within the public right-of-way of designated roads, the following activities shall require written approval of the Planning Board in accordance with the provisions of this chapter:
 - (1) The tearing down, painting or destruction of stone walls;
 - (2) The cutting or removal of trees the scope of which is outside the responsibility of the Tree Warden, as defined above;
 - (3) Repair, maintenance, reconstruction or paving work, including the construction of new driveways or alteration of existing ones, insofar as they affect stone walls or trees within the public right-of-way, as defined in Subsection B(1) and (2) above.
- C. In cases where a threat to public safety does not allow sufficient time to obtain approvals from the Tree Warden or the Planning Board, the Planning Board must be notified within five business days of any action which, had the threat not existed, would be a violation of this chapter.

§ 180-5. Public hearing; criteria for granting approval of applications.

The Planning Board shall hold a public hearing within 30 days of receipt of an application, and shall approve, conditionally approve or deny an application within 60 days of receipt. In making its decision, the Planning Board shall consider the following criteria and shall not grant approval if the proposed action will be in violation of one or more of them:

- A. Preservation of historic values;
- B. Preservation of scenic and aesthetic quality of the area;
- C. Protection of natural resource and environmental systems;

- D. Public safety;
- E. Compatibility with surrounding neighborhood.

§ 180-6. Compensatory actions.

Since the purpose of these regulations is to protect the scenic quality and character of designated roads, such as the planting of new trees or the reconstruction of stone walls in making its decision, if the overall effect of the proposed alteration, including compensatory action, is to maintain or improve the scenic quality and character of the road, the Board may grant approval that otherwise would be denied.

§ 180-7. Notice.

The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. This notice shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Town Manager, the Conservation Commission, the Historical Commission, the Tree Warden, the Department of Public Works, and the owners of property within 100 feet of the proposed action.

§ 180-8. Simultaneous review under Public Shade Tree Law.

Whenever feasible, notice shall be given and Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under M.G.L. Chapter 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work should be done until all applicable provisions of the Public Shade Tree Law, M.G.L. Chapter 87, have been complied with.

§ 180-9. Recommendations for scenic road designation.

The Planning Board, Conservation Commission, Old Kings Highway Regional Historic District Commission, and the Historical Commission may submit recommendations for additions or deletions to the list of scenic roads, which must be acted upon by the Town Council. Any recommendation for scenic road designation must be accompanied by a written description of the characteristics of the road that require the protection afforded by these regulations.

§ 180-10. Adoption of regulations by Planning Board.

The Planning Board may adopt additional regulations for carrying out provisions hereunder.

§ 180-11. Violations and penalties.

The Building Inspector, Tree Warden, or others designated by the Town Manager may issue a citation for violation of these regulations. A failure to respond to properly issued citations, or the issuance of three or more citations in a twelve-month period, or failure to take responsible compensatory action shall be construed as a major violation, subject to a fine of not more than \$100. Each day that such violation continues shall constitute a separate offense.

Chapter 183

SENIOR CITIZEN PROPERTY TAX WORK-OFF ABATEMENT PROGRAM

§ 183-1. Purpose.

§ 183-3. Program administration.

§ 183-2. Eligibility.

§ 183-4. Program criteria.

[HISTORY: Adopted by the Town of Barnstable 10-2-2008 by Order No. 2009-026. Amendments noted where applicable.]

§ 183-1. Purpose.

In accordance with the provisions MGL c. 59, § 5K, the Town is offering a program which allows certain eligible seniors aged 60 and older the opportunity to perform work for the Town in exchange for an abatement of property taxes for the maximum amount of \$750 yearly.

§ 183-2. Eligibility.

In order to be eligible to apply for the program, an individual shall meet all of the following requirements:

- A. Owns and occupies a residential property in the immediate fiscal year preceding the fiscal year in which the taxpayer applies to volunteer his/her services;
- B. Has reached 60 years of age by July 1 of the fiscal tax year for which the tax credit is given;
- C. Has a gross yearly income from all sources of not more than \$30,000 for single taxpayers and \$40,000 for married taxpayers; and
- D. Cannot be a compensated employee of the Town during the fiscal year for which the tax credit is sought.

§ 183-3. Program administration.

- A. The Town Manager or his/her designee shall be responsible for administering the Senior Tax Work-Off Program.
- B. The Town Manager or his/her designee shall review and approve the volunteer services to be included in the program and place and/or assign eligible residents to perform such services.
- C. The Town Manager or his/her designee shall certify the amount of volunteer services performed by each participating taxpayer to the Barnstable Board of Assessors on or before December 1 of the year for which tax credits are to be given. Upon timely receipt

of this certification, the Board of Assessors shall credit the real property tax obligations of the participating taxpayers in an amount not to exceed \$750 per taxpayer. A copy of each taxpayer's certification will be given to that taxpayer. This credit shall be in addition to any exemption or abatement for which the volunteer may otherwise be eligible.

- D. There shall be a maximum number of 20 residents who may participate in the program in a given year.

§ 183-4. Program criteria.

- A. The hourly rate at which the volunteer services are to be credited shall be the minimum wage of the commonwealth in effect at the time the services are provided.
- B. The Town will pay the volunteer's share of FICA taxes.
- C. The maximum amount by which the real property tax obligation of any one volunteer may be reduced in any given tax year shall not exceed \$750.
- D. Tax credits may be applied only toward real property, which the volunteer occupies as a principal residence and has property tax liability.
- E. Only one tax abatement per property per year shall be allowed.
- F. Participation will be awarded using a lottery system if qualified applications received exceed the number of available slots.
- G. Taxpayers in the program may not participate in two consecutive years unless the number of applicants is less than the eligible slots.

Chapter 184

SEWERS AND WATER

ARTICLE I Sewer Use

- § 184-1. Definitions.
- § 184-2. Building sewers and connections.
- § 184-3. Use of public sewers.
- § 184-4. Protection from damage.
- § 184-5. Powers and authority of inspectors.
- § 184-6. Private pumping stations.
- § 184-7. Violations and penalties.
- § 184-8. Repealer; severability.
- § 184-9. When effective.

ARTICLE II Collection of Sewer Use Charges

- § 184-10. Adoption of statutory provisions.
- § 184-11. Authority to follow statutory collection methods.
- § 184-12. Proportionate share of sewer betterment costs assessment charges.

ARTICLE III Collection of Water Use Charges

- § 184-13. Adoption of statutory provisions.
- § 184-14. Authority to follow statutory collection methods.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Hazardous materials — See Chs. 108 and 381.
Wastewater discharge — See Ch. 232.

On-site sewage disposal systems — See Ch. 360.
Wells — See Ch. 397.
Sewer connections — See Ch. 901.

ARTICLE I Sewer Use

[Adopted 5-15-1980, approved 8-26-1980; amended 11-1-1986, approved 11-25-1986 (Art. XXXVI of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 184-1. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

BOD (denoting "biochemical oxygen demand") — The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C., expressed in milligrams per liter.

BUILDING DRAIN — That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys in to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

BUILDING SEWER — The extension from the building drain to the public sewer or other place of disposal.

COMBINED SEWER — A sewer receiving both surface runoff and sewage.

GARBAGE — Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

INDUSTRIAL WASTES — The liquid waste from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

NATURAL OUTLET — Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

PERSON — Any individual, firm, company, association, society, corporation or group.

pH — The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDDED GARBAGE — The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.

PUBLIC SEWER — A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

SANITARY SEWER — A sewer which carries sewage and to which storm, surface and ground waters and not intentionally admitted.

SEWAGE — A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

SEWAGE TREATMENT PLANT — Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS — All facilities for collecting, pumping, treating and disposing of sewage.

SEWER — A pipe or conduit for carrying sewage.

SHALL and MAY — "Shall" is mandatory; "may" is permissive.

SLUG — Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes, more than five times the average twenty-four-hour concentration or flows during normal operation.

STORM DRAIN (sometimes termed "storm sewer") — A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

SUPERINTENDENT — The Superintendent of the Department of Public Works of the Town of Barnstable or his authorized deputy, agent or representative.

SUSPENDED SOLIDS — Solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

WATERCOURSE — A channel in which a flow of water occurs, either continuously or intermittently.

§ 184-2. Building sewers and connections.

- A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb and public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.
- B. Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the Superintendent at least 45 days prior to the proposed change or connection.
- C. A sewer connection permit shall be required before any building or unit thereof is connected to the Town sewer system. The owner or his/her agent shall make application on a special form furnished by the Town. The permit shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee shall be paid to the Town at the time the application is filed. The fee shall be based on the classification of the building or unit thereof to be connected as specified in the sewer connection fee schedule in effect at the time the application is filed. **[Amended 11-5-1988; approved 1-3-1989]**
- D. All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- E. A separate and independent billing sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
- F. Old buildings sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this article.
- G. The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the Town. In the absence of code provisions or in

amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.

- H. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity to flow to the public sewer, sanitary sewage carried by such buildings drain shall be lifted by an approved means and discharged to the building sewer.
- I. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building or sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
- J. The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the Town, or the procedures set forth in an appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gas-tight and water-tight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.
- K. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his representative.
- L. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Street, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Town.

§ 184-3. Use of public sewers.

- A. No person shall discharge or cause to be discharged any stormwater, surface water, or unpolluted industrial process waters to any sanitary sewer.
- B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted waters may be discharged, on approval of the Superintendent to a storm sewer, combined sewer or natural outlet.
- C. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
 - (1) Any gasoline, benzene, naphtha, fuel oil or other flammable liquid, solid or gas.
 - (2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to animals or humans, create a public nuisance or create any hazard in the receiving waters of the sewage treatment plant.

- (3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.
 - (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper fishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- D. No person shall discharge or cause to be discharged, the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, having an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors. The substances prohibited are:
- (1) Any liquid or vapor having a temperature higher than 150° F. or 65° C.
 - (2) Any water or waste containing fats, wax, grease, or oils whether emulsified or not, in excess of 100 mg/1 or containing substances which may solidify or become viscous at temperatures between 32° F. and 150° F. and 0° C. and 65° C.
 - (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of 3/4 horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.
 - (4) Any waters or wastes containing strong acid iron picking wastes, or concentrated plating solutions whether neutralized or not.
 - (5) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.
 - (6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage to meet the requirements of the state, federal, or other public agencies or jurisdiction for such discharge to the receiving waters.
 - (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.

- (8) Any waters or wastes having a pH in excess of 9.5.
 - (9) Materials which exert or cause:
 - (a) Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries, and lime residues) or of solids (such as, but not limited to, sodium chloride and sodium sulfate).
 - (b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solution).
 - (c) Unusual volume of flow or concentration of wastes constituting slugs as defined herein.
 - (d) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
 - (10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- E. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in § 184-3D of this chapter, and which, in the judgment of the Superintendent, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:
- (1) Reject the wastes;
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
 - (3) Require control over the quantities and rate of discharge; and/or
 - (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or by sewer charges.
- F. If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances, and laws.
- G. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be ready and easily accessible for cleaning and inspection.

- H. Where preliminary treatment or flow-equalizing facilities are provided for any water or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
- I. When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.
- J. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of "Standard Methods for the examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole. In the event that no special manhole has been required, the control manholes shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls where pH's are determined from periodic grab samples.
- K. All industry discharging into a public sewer shall perform such monitoring of their discharges the Superintendent and/or other duly authorized employees of the Town may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Superintendent. Agencies having jurisdiction over discharges to the receiving waters.

§ 184-4. Protection from damage.

- A. No person shall:
 - (1) Maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the public sewer system.
 - (2) Unless specifically authorized by the Superintendent, discharge any liquid or soils of any description whatsoever through any opening or connection to or leading into the public sewer system other than an authorized plumbing fixture.
- B. Any person violating this provision shall be fined not more than \$300 per incident. Each day or part of a day in which an incident occurs shall be treated as a separate offense.

§ 184-5. Powers and authority of inspectors.

- A. The Superintendent and other duly authorized employees of the Town bearing proper credential and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. The Superintendent or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper or other industries beyond that point having a direct bearing on the kind and source of discharging to the sewers or waterways of facilities for waste treatment.
- B. While performing the necessary work on private properties referred to in Subsection A, the Superintendent or duly authorized employees of the Town shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the Town employees, and the Town shall indemnify the company against loss or damage to its property by Town employees and against liability claims and demands for personal property or injury damage asserted against the company and growing out of the gauging and sampling operations except as such may be caused by negligence or failure of the company to maintain safe conditions as required in § 184-3.
- C. The Superintendent and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

§ 184-6. Private pumping stations. [Added 11-5-1988, approved 1-3-1989]

- A. Privately owned sewage pumping stations which discharge into the public sewer shall be designed and constructed in accordance with the same engineering standards used for construction of Town-owned pumping stations. Plans and specifications or other information considered pertinent shall be submitted to the Superintendent for review and approval prior to commencing construction.
- B. Stations in this category shall not be placed into operation until an inspection of the facility of conducted and the facility is deemed satisfactory to the Superintendent.
- C. To insure satisfactory operational performances, owners of such facilities shall perform the following minimum maintenance annually:
 - (1) Clean wet wells.
 - (2) Test high-water alarms.
 - (3) Power transfer test generator (if part of the approved installation).
 - (4) Routine preventive maintenance.

- D. Documentation certifying completion of the above maintenance items shall be submitted December 31 of each year to the Superintendent. In the case of preventive maintenance, a chart shall be submitted documenting maintenance checks performed and dates on which performed throughout the year on all installed equipment. The chart shall also indicate types of repairs and the dates on which they were made.
- E. Upon petition of the owner, the Town may assume ownership and responsibility for the operation and maintenance of the station, provided that the facility meets current standards of design and construction and material condition; necessary property easements are conveyed to the Town; and the Superintendent deems it to be in the best interests of the Town.

§ 184-7. Violations and penalties.

- A. Any person found to be violating any provision of this article, except § 184-4, shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within a period of time stated in such notice, permanently cease all violations.
- B. Any person who shall continue any violation beyond the time limit provided for in Subsection A shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in the amount not exceeding \$200 for each violation. Each day in which any violation shall continue shall be deemed a separate offense.

§ 184-8. Repealer; severability.

All ordinances or parts of ordinances in conflict herewith are hereby repealed. The invalidity of any section, clause, sentence or provision of this article shall not affect any other part of this article which can be given effect without such invalid part or parts.

§ 184-9. When effective.

This article shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

ARTICLE II

Collection of Sewer Use Charges

[Adopted 10-3-1991 (Art. XVIII of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 184-10. Adoption of statutory provisions.

The provisions of §§ 16A through 16F of Chapter 83 of the General Laws, with respect to the collection of sewer use charges, are hereby adopted by reference as a part of the general ordinances of the Town.

§ 184-11. Authority to follow statutory collection methods.

The Town Manager, together with the other officials of the Town therein named, are hereby authorized to follow the methods set forth therein in the collection of such charges.

§ 184-12. Proportionate share of sewer betterment costs assessment charges. [Added 7-15-2010 by Order No. 2010-158¹]

Fifty percent of the costs or charges for sewer construction shall be assessed to parcels or owners of land in the manner provided in Chapter 80 or 83 of the General Laws as applicable. This section shall not apply to costs or charges for sewer connection or use.

ARTICLE III

Collection of Water Use Charges

[Adopted 3-19-2009 by Ord. No. 2009-070]

§ 184-13. Adoption of statutory provisions.

The provisions of §§ 42A through 42F, inclusive, of Chapter 40 of the General Laws, with respect to the collection of water use charges by the Water Supply Division of the Department of Public Works, are hereby adopted by reference as a part of the general ordinances of the Town.

§ 184-14. Authority to follow statutory collection methods.

The Town Manager, together with the other officials of the Town therein named, are hereby authorized to follow the methods set forth therein in the collection of such charges.

1. Editor's Note: This order also renumbered former §§ 184-12 and 184-13 as §§ 184-13 and 184-14, respectively.

Chapter 188

SHELLFISHERIES

§ 188-1. Authority of Town Manager to adopt rules and regulations.

§ 188-4. Town Manager undertakings not requiring Council approval.

§ 188-2. Shellfish aquaculture licenses.

§ 188-5. Emergency action.

§ 188-3. Transmission of rules to Council; posting.

[HISTORY: Adopted by the Town of Barnstable 3-2-2000 (Art. LIX of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Shellfish — See Ch. 407.

§ 188-1. Authority of Town Manager to adopt rules and regulations.

Pursuant to Section 6 of Article 89 of the amendments to the Constitution of the Commonwealth, the Charter of the Town and Chapter 130 of the General Laws, a local system to control, regulate or prohibit the taking of eels and any or all kinds of shellfish, sea worms, and alewives within the Town is authorized. In accordance with Chapter 130 of the General Laws the Town Manager, subject to disapproval by the Town Council, shall annually adopt rules and regulations not contrary to law in regard to the shellfisheries. The Shellfish Constable, together with the Shellfish Committee shall be responsible for advising the Town Manager in regard to the drafting of said rules and regulations. The Town Manager shall subject said rules and regulations to a public hearing before final adoption.

§ 188-2. Shellfish aquaculture licenses.

The Town Manager shall also be responsible for the granting of shellfish aquaculture licenses, subject to disapproval by the Town Council. Upon written application accompanied by sufficient plans to show the intended project and project area to be licensed, the Town Manager shall forward said application to the appropriate boards, committees and departments and shall serve notice of a public hearing to be held pursuant to § 60, Chapter 130, MGL.

§ 188-3. Transmission of rules to Council; posting.

The Town Manager shall promulgate rules and regulations and make grants as aforesaid, and publish the same and file the same with the Town Clerk, and shall, forthwith upon their promulgation transmit them to the Town Council. They shall become effective upon the expiration of 30 days unless the Council votes within said time to disapprove them. Regulations made hereunder shall be published by posting a copy of the same in the office of

the Town Manager, and in the office of the Town Clerk, and in three or more public places in said city or Town, or by publishing the same once in a newspaper, if any, published in the Town, and as may be further prescribed by law.

§ 188-4. Town Manager undertakings not requiring Council approval.

- A. The Town Manager may undertake the following without approval by the Town Council:
- (1) Granting commercial and family permits.
 - (2) Opening and closing area shellfisheries with the advice of the Shellfish Constable.
 - (3) Enforcement of rules and regulations
 - (4) Promote propagation efforts for the enhancement of the Town of Barnstable fisheries with advice of the Shellfish Committee.
- B. The Town Manager shall have the authority to take emergency action as defined below.

§ 188-5. Emergency action.

The Town Manager without a hearing may take any emergency action necessary for immediate management or control of the shellfisheries. Such emergency action shall not remain in effect for a period longer than 60 days, unless approved by the Town Council.

Chapter 192

SIGNS

ARTICLE I

Billboards and Advertising Devices

- § 192-1. Prohibited signs.
- § 192-2. Blocks in which majority of buildings are residential in nature.
- § 192-3. Permit required.
- § 192-4. Nonapplicability.
- § 192-5. Violations and penalties.

§ 192-6. Severability.

ARTICLE II

Signs with Moving, Flashing or Animated Parts

- § 192-7. Signs with moving, flashing or animated parts prohibited.
- § 192-8. Enforcement.
- § 192-9. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Sign regulations — See Ch. 240, Art. VII.

ARTICLE I

Billboards and Advertising Devices

[Adopted 3-4-1924, approved 4-1-1924 (Art. II of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 192-1. Prohibited signs.

No person, firm, association or corporation shall erect, display or maintain a billboard sign, or other outdoor advertising device, except those exempted by §§ 30 and 32 of Chapter 93 of the General Laws.

- A. Within 50 feet of any public way.
- B. Within 300 feet of any public park, playground or other public grounds, if within view of any portion of the same.
- C. Nearer than 50 feet to any other such billboard, sign or other advertising device, unless said billboards, signs or other advertising devices are placed back to back.
- D. On any location at the corner of any public ways and within a radius of 150 feet from the point where the center lines of such ways intersect.
- E. Nearer than 100 feet to any public way, if within view of any portion of the same, if such billboard, sign or other advertising shall exceed a length of eight feet or a height of four feet.

- F. Nearer than 300 feet to any public way, if within view of any portion of the same, if such billboard, sign or other advertising device shall exceed a length of 25 feet or a height of 12 feet.
- G. In any event if such billboard, sign or other advertising device shall exceed a length of 50 feet or a height of 12 feet, except the Town Manager may permit the erection of billboards, signs or other advertising devices which do not exceed 40 feet in length and 15 feet in height if not nearer than 300 feet to the boundary line of any public way.

§ 192-2. Blocks in which majority of buildings are residential in nature.

No billboard, sign or other advertising device shall be erected, displayed or maintained in any block in which 1/2 of the buildings on both sides of the street are used exclusively for residential purposes, except that this provision shall not apply if the written consent of the owners of a majority of the frontage on both sides of the street in such block is first obtained and is filed with the Division of Highways of the Department of Public Works, together with the application for a permit for such billboard, sign or other advertising device.

§ 192-3. Permit required.

No billboard, sign or other advertising device shall be erected, displayed or maintained until a permit therefor has been issued by the Division of Highways of the Department of Public Works pursuant to the following provisions: Upon receipt from said Division of a notice that application for permit to erect, display or maintain a billboard, sign or other advertising device within the limits of the Town has been received by it, the Town Manager shall hold a public hearing on said application in said Town, notice of which shall be given by posting the same in three or more public places in said Town at least one week before the date of such hearing. A written statement as to the results thereof shall be forwarded to the Division, containing, in the event of a disapproval of such application, the reasons thereof, within 30 days from the date of notice of the Town that an application for such a permit has been made.

§ 192-4. Nonapplicability.

- A. The provisions of § 192-1A, C, D, E, F and G shall not apply to districts which the Town Manager may determine are of a business character.
- B. This article shall not apply to signs or other devices which advertise or indicate either the person occupying the premises in question or the business transacted thereon, or advertise the property itself or any part thereof as for sale or to let, and provided further that this article shall not apply to billboards, signs or other advertising devices legally maintained, at the time of its approval by the Attorney General, until one year from the first day of July following such approval.

§ 192-5. Violations and penalties.

Whoever violates any of the provisions of this article shall be punished by a fine of not more than \$100, and whoever, after conviction for such violation, unlawfully maintains such

billboard, sign or other outdoor advertising device for 20 days thereafter shall be punished by a fine of not more than \$500.

§ 192-6. Severability.

If any provision of this article is declared unconstitutional or illegal by final judgment, order or decree of the Supreme Judicial Court of the commonwealth, the validity of the remaining provisions of this article shall not be affected hereby.

ARTICLE II

Signs with Moving, Flashing or Animated Parts

[Adopted 11-1-1980, approved 2-27-1981 (Art. XXXVII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 192-7. Signs with moving, flashing or animated parts prohibited.

No person shall maintain or operate any sign or other such device or structure visible from any way within the Town which is open to the public, and which makes use of any moving, flashing or animated lights, or visible moving or movable parts. Such signs or flashing devices, or portions thereof, which flash, rotate or otherwise change at intervals not more frequent than one hour and portions of signs which consists solely of indicators of time or temperature shall not be deemed to make use of moving, flashing or animated lights or visible moving or movable parts.

§ 192-8. Enforcement.

This article may be enforced by any police officer of the Town or by the Sign Control Officer under Chapter 240, Zoning.

§ 192-9. Violations and penalties.

Any person violating the provisions of this article shall be punished by a fine of not more than \$200 for each offense. Each day that a violation hereof exists shall constitute a separate offense.

Chapter 198

SOIL, SAND AND GRAVEL PITS

§ 198-1. Permit required for removal of topsoil, subsoil, gravel or sand.

§ 198-2. Replanting or reforestation required.

§ 198-3. Permit required for sand and gravel pits.

§ 198-4. Nonapplicability.

§ 198-5. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 5-21-1951, approved 7-5-1951 (Art. XIII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. .

— See Ch. .

§ 198-1. Permit required for removal of topsoil, subsoil, gravel or sand.

No topsoil, subsoil, gravel, sand or other earth may be removed from the Town of Barnstable without first having obtained a permit from the Town Manager. A permit, with conditions imposed where necessary, may be issued for the removal of topsoil, subsoil, gravel, sand, and other earth if the Town Manager, after a public hearing, shall so order, provided that no such permit shall be granted except upon written application and after a public hearing of parties interested and consideration of their evidence by the Town Manager; notice of said hearing being given by publication of the time and place thereof in a local newspaper not less than two weeks before said hearing, the expense of publication to be borne by the petitioner. After such a hearing the Town Manager shall render a decision in writing stating the decision and the reasons therefor and file the decision with the Town Clerk and send a copy thereof to the applicant. Such permit may be renewed.

§ 198-2. Replanting or reforestation required.

No topsoil or subsoil shall be removed from place to place within the Town of Barnstable from an area of ground consisting of more than 5,000 square feet unless the person removing such topsoil or subsoil shall replant the entire area of such removal with rye, vetch, wheat, legumes or other soil-improving plants, or plant with a permanent cover crop or reforest the area.

§ 198-3. Permit required for sand and gravel pits. [Amended 3-6-1965, approved 3-25-1965]

No sand or gravel shall be removed from place to place within the Town of Barnstable, except that a sand and gravel pit may be open and used for such purpose if it is located 100 feet or more from a street line and no more than one entry and one exit, provided a permit is first

obtained from the Town Manager, after a public hearing has been held as set forth in § 198-1. The owner or owners of all sand and gravel pits shall burn or cart to the Town dumping area all dead trees and shrubs when any area amounting to more than 5,000 square feet becomes unsuited for further use, and in such cases the area shall be replanted with trees or shrubs to prevent soil erosion.

§ 198-4. Nonapplicability.

The foregoing shall not apply to land in public use nor shall they apply to the case of materials removed or excavated for the purpose of improving, grading, landscaping, cultivating the ground, nor for construction of buildings and the making of public or private improvements.

§ 198-5. Violations and penalties.

Any person violating the provisions of this chapter shall be punished by a fine not to exceed \$50 for the first offense, \$100 for the second offense and \$200 for each subsequent offense.

Chapter 202
SOLID WASTE

ARTICLE I
Collection and Disposal of Waste

- § 202-1. Waste collection permits required.
- § 202-2. Signed manifest required.
- § 202-3. Special permits for recycling.
- § 202-4. Applicability of other laws and regulations.
- § 202-5. Violations and penalties.

ARTICLE II
Recycling

- § 202-6. Refuse haulers required to provide recycling service.
- § 202-7. Facility for handling recyclables.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Storage of garbage and refuse — See Ch. 353, Art. I.

Solid waste management — See Ch. 373.

ARTICLE I
Collection and Disposal of Waste

[Adopted 2-21-1991 by Order No. 91-63 (Art. LII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 202-1. Waste collection permits required.

No person shall, for compensation, collect or transport garbage or refuse generated within the Town of Barnstable, whether from residential, commercial or industrial sources, without a waste collection permit from the Barnstable Board of Health. Such permits shall specify that the waste collected must be disposed of at either the Barnstable Sanitary Landfill in Marstons Mills or at the Town of Yarmouth Solid Waste Transfer Station, as may be determined by the Barnstable Department of Public Works.

§ 202-2. Signed manifest required.

At the designated point of disposal, each delivery vehicle shall submit a signed manifest on a form approved by the Board of Health, identifying the point(s) of collection or collection routes (on file with the Barnstable Department of Public Works), the date on which the waste was collected, the driver of the vehicle, and the waste collection permittee. No loads of waste shall be accepted at the Barnstable Sanitary Landfill or at the Yarmouth Solid Waste Transfer Station without a properly completed manifest.

§ 202-3. Special permits for recycling.

Notwithstanding the provisions of §§ 202-1 and 202-2 above, the Board of Health may grant special permits for the collection of recyclable materials generated within the Town of Barnstable if it finds that there is a valid agreement between a generator of commercial or industrial recyclable waste and a waste disposal or recycling firm expressly providing for the recycling of the material so collected. Material collected under such special recycling permits may be transported to and disposed of at locations other than the Barnstable Sanitary Landfill and the Yarmouth Solid Waste Transfer Station. The same manifesting requirements shall apply to recycling permittees as to waste collection permittees, except that manifests for recycled materials delivered to a disposal site other than the Barnstable Sanitary Landfill or the Yarmouth Solid Waste Transfer Station shall, in addition, identify the delivery site and the date of delivery. Such manifests shall be submitted to the Barnstable Department of Public Works by the permittee within 15 days of delivery.

§ 202-4. Applicability of other laws and regulations.

Permit holders must comply with all other applicable laws, ordinances and regulations including in the case of deliveries to the Yarmouth Solid Waste Transfer Station, the regulations of the Yarmouth Board of Health and the Yarmouth Solid Waste Transfer Station Board of Control.

§ 202-5. Violations and penalties.

Violation of this article is punishable by loss of permit and/or a fine of not more than \$300 per violation.

ARTICLE II**Recycling**

[Adopted 9-20-2001 by Order No. 2002-007 (Art. XXI of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 202-6. Refuse haulers required to provide recycling service.

The Board of Health shall, as a condition of every license granted to haulers of rubbish and offal under MGL C. 111, § 31A, require that the licensee provide a service at reasonable cost, optional to customers, of recycling waste. The Board shall make rules and regulations to give effect to this article under the authority hereof as well as under the provisions of MGL C. 111, § 31B.

§ 202-7. Facility for handling recyclables.

The Town Manager is directed to immediately work with the haulers, the county and other towns to help provide a facility for the handling of recyclables to be collected.

Chapter 206

STREETS AND SIDEWALKS

ARTICLE I

Junk, Animals and Water on Streets

- § 206-1. Placing trash, rubbish or noxious liquids on streets prohibited.
- § 206-2. Pasturing of animals.
- § 206-3. Impure waters.
- § 206-4. License for junk collection required.

ARTICLE II

Snow and Ice Removal

- § 206-5. Snow and ice on street restricted.
- § 206-6. Removal of vehicles interfering with removal operations; storage charges.

§ 206-7. Violations and penalties.

ARTICLE III

Temporary Repairs on Private Ways

- § 206-8. Certain repairs authorized upon petition of abutters.
- § 206-9. Liability for damages.
- § 206-10. Deposit; assessment of betterments.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Newsracks on streets — See Ch. 130.
Outdoor businesses — See Ch. 141.

Roller-skating and skateboarding — See Chs. 173 and 408.
Scenic roads — See Ch. 180.
Junk dealers — See Ch. 502.

ARTICLE I

Junk, Animals and Water on Streets

[Adopted 3-3-1914, approved 10-28-1915 (Art. I of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 206-1. Placing trash, rubbish or noxious liquids on streets prohibited. [Amended 5-18-1976, approved 9-13-1976]

No person shall throw away or sweep into, or place, or drop, or suffer to remain in any street, any hoops, boards, or other wood with nails projecting therefrom or nails of any kind, shavings, ashes, hair, manure, rubbish, offal or filth of any kind, or any noxious or refuse liquid or solid substance.

§ 206-2. Pasturing of animals.

No person shall pasture any cattle, goats, or other animal, either with or without keeper upon any street or way in the Town, provided that nothing herein contained shall affect the right of a person to use of the land within the limits of a street or way adjoining his own premises.

§ 206-3. Impure waters.

No person shall allow any sink water or other impure liquid to run from the house, barn or lot, occupied by him into any street of the Town.

§ 206-4. License for junk collection required.

No person shall barter, or trade, and collect junk without a license from the Town Manager of the Town.

ARTICLE II

Snow and Ice Removal

[Adopted 3-6-1965, approved 3-25-1965 (Art. XII of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 206-5. Snow and ice on street restricted. [Amended 11-6-1978, approved 2-6-1979]

No person shall throw or put snow or ice into a street or on a sidewalk unless especially authorized by the Superintendent of Public Works or his designee.

§ 206-6. Removal of vehicles interfering with removal operations; storage charges. [Amended 11-6-1978, approved 2-6-1979]

The Superintendent of Public Works or his designees is hereby authorized to remove, or cause to be removed, to some convenient place, including in such term a public garage, any vehicle interfering with the removing or plowing of snow, or the removing of ice, from any public way, and to impose liability for the cost of such removal and the storage charges, if any, resulting therefrom, upon the owner or the person in possession of such vehicle.

§ 206-7. Violations and penalties. [Amended 5-18-1976, approved 9-13-1976]

Hereafter, anyone who shall place snow or ice upon any street in violation of this article, or who shall fail to remove any vehicle interfering with the removal or plowing of snow or ice from a public way shall be subject to a fine not to exceed \$50 for each offense.

ARTICLE III

Temporary Repairs on Private Ways

[Adopted 5-6-1989, approved 6-30-1989 (Art. XXXI of Ch. III of the General Ordinances as updated through 7-7-2003)]

§ 206-8. Certain repairs authorized upon petition of abutters. [Amended 10-2-2014 by Order No. 2015-019]

Upon petition of 51% or more of the abutters thereof, the Town may in the discretion of the Town Manager, provide temporary repairs including drainage, the nature of which is not likely to have a service life expectancy greater than 15 years and is required by public necessity, on any private way which has been open to public use for more than five years.

§ 206-9. Liability for damages.

The Town shall not be liable for any damages caused by any activity herein provided.

§ 206-10. Deposit; assessment of betterments.

A nonreturnable cash deposit of \$100 shall be required with the submission of the petition to cover the cost of field inspection and initial cost estimates. Where all administrative, engineering and repair costs associated with the temporary repairs is less than \$500 per abutter, a cash sum shall be deposited with the Town Treasurer equal to the costs of repair prior to the work being commenced. Where the costs per abutter is \$500 or greater for repairs made under this article, betterments will be assessed. Any abutter may, by paying the full amount of his share, avoid the assessment of the betterment on his land.

Chapter 210
SWIMMING POOLS

§ 210-1. Fencing required.

§ 210-2. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 3-14-1966, approved 6-6-1966 (Art. XI of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

§ 210-1. Fencing required.

Private swimming pools shall be suitably fenced to a minimum height of four feet. Public and semipublic swimming pools shall be suitably fenced to a minimum height of six feet. Such fence shall be constructed so as to prohibit unauthorized access.

§ 210-2. Violations and penalties.

Any person violating the provisions of this chapter shall be punished by a fine not to exceed \$20 for each offense.

Chapter 217

TOURIST CAMPS

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| <p>§ 217-1. Definitions.</p> <p>§ 217-2. Permission of Town Manager required.</p> <p>§ 217-3. Camp cottages restricted to tourist camps; area requirements.</p> <p>§ 217-4. Tourist camp permit; fees.</p> <p>§ 217-5. Plumbing and sanitary requirements.</p> | <p>§ 217-6. Electrical requirements and lights.</p> <p>§ 217-7. Record of guests.</p> <p>§ 217-8. Limitation on residence.</p> <p>§ 217-9. Fire prevention regulations.</p> <p>§ 217-10. Exemptions.</p> <p>§ 217-11. Rules and regulations.</p> |
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[**HISTORY: Adopted by the Town of Barnstable 3-2-1937, approved 3-18-1937 (Art. VII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.**]

GENERAL REFERENCES

Inspection of wires — See Ch. 68, Art. I.

§ 217-1. **Definitions.**

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context that a different meaning is intended:

CAMP COTTAGE — Construed to mean any building or structure, house car, camp car, or auto-trailer, used for, or adaptable to use for, living quarters.

TOURIST CAMP AND PARK SITE — Any place where two or more camp cottages are located, or any premises designed or intended for the purpose of supplying to the public a location for a camp cottage.

UNIT DEFINED — A section of ground in any tourist camp used, or designed for use, as a location for a single camp cottage.

§ 217-2. **Permission of Town Manager required.**

No tourist camp or park shall be permitted to be located on any land, park or beach land owned or controlled by the Town of Barnstable except as permitted by the Town Manager.

§ 217-3. Camp cottages restricted to tourist camps; area requirements. [Amended 3-6-1956, approved 5-15-1956]

It shall be unlawful to locate or use as living or sleeping quarters any camp cottage on any premises other than those contained within a tourist camp duly permitted and maintained pursuant to the provisions of this chapter, or to permit the same to be done on any premises. No unit shall contain less than 600 feet in area, and no unit shall be permitted to accommodate more than one camp cottage.

§ 217-4. Tourist camp permit; fees.

It shall be unlawful for any person to establish or maintain, or to permit to be established or maintained upon any property owned or controlled by him, a tourist camp in the Town of Barnstable, unless there exists a valid permit therefor granted and existing in compliance with the provisions of this chapter and of the ordinances of the Town of Barnstable. The application for such permit shall be accompanied by plans of the proposed tourist camp, showing the location of all buildings, driveways, toilet facilities, showers, laundry facilities, slop sinks and other improvements. Public notice of the application for permit shall be given by the Town Manager and the same procedure followed out as applicable to conversion of lands from residential to business uses as set forth under Chapter 240, Zoning, of the Code of the Town of Barnstable. A permit fee as provided in Chapter 76, Fees, Article II, Schedule of Fees, per tourist camp shall be charged before any such permit shall be issued, and a renewal fee shall be paid each year during existence of such permit, and in the said amount as provided in the Schedule of Fees, per tourist camp maintained within the tourist camp.

§ 217-5. Plumbing and sanitary requirements.

- A. Every permanent camp cottage that is maintained within a tourist camp unit shall be improved and provided with at least one toilet, one bathtub or shower, one wash basin and one kitchen sink.
- B. All tourist camp units which are not improved with permanent structures for living quarters shall be provided with a minimum, for each six, of one toilet and one bathtub or shower for every 10 units. Such toilets and urinals shall be not more than 200 feet removed from the unit served by them. A two-compartment laundry tub, a slop sink, and a wash basin, with running water, shall be provided for every eight units or fraction thereof.
- C. All plumbing work shall be in compliance with plumbing regulations and ordinances of the Town of Barnstable, and subject to inspection by the Inspector of Plumbing of the Town.
- D. No dry or chemical closets shall be installed or used within any tourist camp site, and all such closets shall be sealed while within the limits of the Town of Barnstable.
- E. A sufficient number of tightly covered cans for garbage disposal shall be installed. Garbage so collected shall be deposited in the Town garbage disposal area at least twice in the week by the camp manager.

- F. Every tourist camp and all structures therein shall be constructed and maintained at all times in a thoroughly sanitary condition.

§ 217-6. Electrical requirements and lights.

- A. Every tourist camp shall be provided with adequate means of lighting the same by medium of electricity, provided that electrical service is available.
- B. All electric wiring, distributing systems and equipment for distributing electricity in said tourist camps shall be subject to the provisions in all laws relating thereto of Chapter 68, Electrical Standards, Article I, Inspection of Wires. If in the opinion of the Inspector of Wires and the Town of Barnstable he shall deem it to be the best interests of public safety and welfare, all or any part of any electric system may be by him required to be placed underground.
- C. Lights shall be provided at all toilets and baths and shall be kept lighted from 1/2 hour after sunset until 1/2 hour before sunrise.

§ 217-7. Record of guests.

Every tourist camp shall maintain a manager in charge thereof. Such manager shall require all tourists or other persons using such tourist camp to register in a book kept for that purpose. He shall also keep a record of the name, address and car license number of each occupant of such tourist camp, which record shall at all times be open to inspection by the Police Department.

§ 217-8. Limitation on residence.

It shall be unlawful for any person, except the manager and his bona fide employees, to remain or live in any tourist camp for more than 90 days in any six-month period, and it shall be unlawful for any tourist camp permittee or his agent to permit any person to remain in the tourist camp under the control of such permittee or his agent longer than the period herein allowed.

§ 217-9. Fire prevention regulations.

There shall be maintained at all times in every tourist camp at least one approved fire extinguisher for every five units. Cooking and heating equipment installed in a tourist camp shall have the approval of the Chief of the Fire Department of the Fire District wherein such tourist camp is located, before such equipment shall be put to use.

§ 217-10. Exemptions. [Amended 3-27-1973, approved 7-29-1974]

This chapter shall not apply to Sandy Neck or to properties in use at the time of its adoption.

§ 217-11. Rules and regulations.

The Town Manager of the Town of Barnstable shall have the power to promulgate rules and regulations for the enforcement of the provisions of this chapter, and for the purpose of insuring the maintenance of tourist camps and structures therein in a manner compatible with public health and safety.

Chapter 220
TOWN COUNCIL

ARTICLE I
Meetings

- § 220-1. Regular meetings.
- § 220-2. Rescheduling of meetings falling on holidays.
- § 220-3. Rescheduling of canceled meetings.
- § 220-4. Time and place of meetings.

ARTICLE II
Submission of Legislation to General Court

- § 220-5. Authorization of Town Council to submit.
- § 220-6. Process for submittal to the Town Council.
- § 220-7. Testimony on special legislation.

- § 220-8. Right of free petition.
- § 220-9. Requests by special districts.

ARTICLE III
Televising of Meetings

- § 220-10. Suspension of requirement for televising meetings.
- § 220-11. Utilization of signals by outside broadcast systems.

ARTICLE IV
Compensation of Councilors and Officers

- § 220-12. Town Councilors.
- § 220-13. President.
- § 220-14. Vice President.
- § 220-15. Expense allowance.

[HISTORY: Adopted by the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Legislative branch — See Part II of Charter.

Appointments Committee — See Ch. 37, Art. I

ARTICLE I
Meetings

[Adopted 2-1-1990; amended 1-4-1996 by Order No. 96-085 (Art. I of Ch. I of the General Ordinances as updated through 7-7-2003)]

§ 220-1. Regular meetings.

Regular meetings of the Barnstable Town Council shall be held on the first and third Thursdays of each month, except during July and August, when regular meetings shall be held on the third Thursday of the month.

§ 220-2. Rescheduling of meetings falling on holidays.

If a regular meeting date falls on a solemn holiday or a legal holiday, the President of the Council shall reschedule such meeting to the Thursday of the following week.

§ 220-3. Rescheduling of canceled meetings.

If for any reason a meeting is canceled, the President may reschedule a special meeting to replace the canceled meeting.

§ 220-4. Time and place of meetings.

Meetings shall commence at 7:00 p.m. at the Town Hall.

ARTICLE II

Submission of Legislation to General Court

[Adopted 5-7-1992 (Art. XIX of Ch. II of the General Ordinances as updated through 7-7-2003)]

§ 220-5. Authorization of Town Council to submit.

Pursuant to Section 8 of Article 89 of the amendments to the Constitution of the commonwealth, the Town Council of the Town is the only legislative body of the Town empowered to submit special legislation on behalf of the inhabitants of the Town to the General Court, in a manner as further prescribed by this article.

§ 220-6. Process for submittal to the Town Council.

All petitions for special legislation to the General Court, by any officer, official or employee of the Town, shall first be submitted to the Town Manager and Town Attorney for their review and placement upon the Town Council agenda, through the Town Clerk.

§ 220-7. Testimony on special legislation.

Any officer, official or employee of the Town who seeks to provide testimony on special legislation affecting the Town shall first notify the Town Manager, who shall next advise the Council President of such testimony. The Council President and Town Manager shall seek to ensure that such testimony is consistent with the actions of the Town Council concerning such special legislation.

§ 220-8. Right of free petition.

Nothing in this article shall prohibit any officer, official or employee of the Town from exercising their individual right of free petition and testimony concerning same, as guaranteed by the Constitution of the commonwealth, including an officer, official or employee's petition

of general legislation made consequent to their affiliation in professional associations within the commonwealth.

§ 220-9. Requests by special districts. [Added 6-1-1995 by Order No. 95-185]

Whenever the Council shall receive a request which has been forwarded to it pursuant to a vote of a meeting of a special district of the Town which lies entirely within the boundaries of the Town for a petition to the General Court for special legislation relating to that district, it shall forthwith be placed on the Council agenda for consideration by the Council, notwithstanding whether any Councilor sponsors the petition as an agenda item.

ARTICLE III

Televising of Meetings

[Adopted 3-21-1996 by Order No. 96-118 (Art. V of Ch. I of the General Ordinances as updated through 7-7-2003)]

§ 220-10. Suspension of requirement for televising meetings. [Amended 1-20-2005 by Order No. 2005-038]

All meetings of the Town Council and School Committee shall be televised, unless, by a vote of 2/3 of those present and voting, because of emergency conditions or some other substantial reason stated as part of the vote, the body in question suspends the requirements hereof. Nothing contained in this article shall be so construed as to conflict with the requirements of MGL Chapter 39, § 23A et seq.

§ 220-11. Utilization of signals by outside broadcast systems.

The Town shall permit outside broadcast systems to utilize signals originating from these meetings, so long as all costs related to such use are paid for by the entity requesting said use.

ARTICLE IV

Compensation of Councilors and Officers

[Adopted 11-20-1997 by Order No. 98-035 (Art. III of Ch. I of the General Ordinances as updated through 7-7-2003); amended in its entirety 3-15-2007 by Order No. 2007-076¹]

§ 220-12. Town Councilors.

The compensation for Town Councilors shall be \$8,000 per year.

§ 220-13. President.

The compensation for the President shall be \$12,000 per year.

1. Editor's Note: This ordinance also provided that it shall take effect on 1-1-2008 and be reviewed by the Town Council annually thereafter for possible change as required under Section 2-12 of the Charter of the Town of Barnstable.

§ 220-14. Vice President.

The compensation for the Vice President shall be \$10,000 per year.

§ 220-15. Expense allowance.

There will be an expense allowance for Town Councilors and the Vice President of \$1,200 per year, and for the President, an expense allowance of \$1,800 per year.

Chapter 221

TREES

ARTICLE I Preamble; Purpose; Definitions

- § 221-1. Preamble.
- § 221-2. Purpose.
- § 221-3. Definitions.

ARTICLE II Permit Requirements

- § 221-4. Permit required.
- § 221-5. Applicability.
- § 221-6. Application.
- § 221-7. Clean up of brush and wood; stump removal.
- § 221-8. Reimbursement of Tree Warden's time.
- § 221-9. Verification of ownership.
- § 221-10. Utility emergencies.
- § 221-11. Supervision of all work on Town trees.
- § 221-12. Suspension of permit; stop-work order.
- § 221-13. Appeal.

ARTICLE III Trimming

- § 221-14. Compliance required.
- § 221-15. Pruning and trimming standards.
- § 221-16. Line clearance standards.
- § 221-17. Conflict with other laws.

ARTICLE IV Tree Removal and Replanting

- § 221-18. Tree removal permits required.

- § 221-19. Replacement of Town trees.

ARTICLE V Tree Planting Standards

- § 221-20. Listing of trees acceptable for planting.
- § 221-21. Spacing between street trees.
- § 221-22. Planting near curbs and sidewalks.
- § 221-23. Planting near street corners and fire hydrants.
- § 221-24. Planting near overhead utilities.
- § 221-25. Power of Town to plant, maintain and remove trees and shrubs.
- § 221-26. Installation of tree lights.

ARTICLE VI Tree Removal From Private Property

- § 221-27. Hazardous or diseased trees.
- § 221-28. Pruning trees which endanger public safety.

ARTICLE VII Trees on Public Property and Town-Owned Trees

- § 221-29. Plan for care of street and park trees.
- § 221-30. Harming Town-owned trees.

ARTICLE VIII Enforcement

- § 221-31. Severability.
- § 221-32. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 3-17-1994 by Order No. 94-093; amended 4-6-2000 by Order No. 2000-085 (Art. LV of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Tree height restrictions near airport — See Ch. 13.

Tree Warden — See Ch. 138, Art. I.

Christmas tree sales — See Ch. 141, Art. II.

Scenic roads — See Ch. 180.

Care of trees during excavations — See Ch. 404.

Subdivision Rules and Regulations — See Ch. 801.

ARTICLE I

Preamble; Purpose; Definitions

§ 221-1. Preamble.

- A. In order to maintain and enhance the architectural character, streetscapes and scenic views along the Town's roadways of which trees are an integral part, the Town hereby reiterates its established policy with regard to wires and cables along roadways: Since 1926 the Town has established policies for the placement of utility wires and cables underground. Underground utilities were first articulated in "The Preliminary Survey for a Town Plan for the Town of Barnstable," dated October 1926, and more recently in the "Local Comprehensive Plan" adopted by the Town Council October 1997 and approved by the Cape Cod Commission 1998. Policy 7.3.3 states that all new utilities shall be placed underground, and that all existing overhead utilities shall be phased underground.
- B. All utilities should submit a program to the Town for phasing of utilities underground in order to prevent continued damage to the Town's trees by trimming, pruning and removals, and to prevent the constant occurrence of power outages.
- C. Until such time as utilities are placed underground, bare wires should be replaced with aerial spacer cable systems or covered wires, in order to limit the amount of tree trimming and clearance, and maintain the viability of the Town's trees. Such systems will also provide the highest reliability of electrical service of any aboveground system available.
- D. The utilities should submit a program to the Town for replacement of bare wires with covered conductors, and/or aerial spacer systems. The utilities and the Town should establish priorities for this program. In priority order, the Old Kings Highway (Rt. 6A), scenic roads, the Town center and village commercial centers are the Town's first priorities for such installation.

§ 221-2. Purpose.

It is the expressed policy of the Town of Barnstable to enhance the appearance of the Town by beautifying roadways and public property with shade trees and, in so doing, improve property values and the economy. The Town has invested substantial resources to plant and maintain trees, and these trees belong to the citizens of the Town. The Town also recognizes

the need for a highly reliable network of public utilities to supply businesses, homes, hospitals, and other services, in an area subject to frequent storms and high winds.

§ 221-3. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

TOWN TREES — Trees, shrubs and bushes within the Town's jurisdiction.

TREE TOPPING — The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

VISION CLEARANCE — That area included within the street lines at points which are 20 feet distant from their point of intersection measured along said street lines which will materially obstruct the view of a driver of a vehicle approaching a street intersection.

ARTICLE II
Permit Requirements

§ 221-4. Permit required.

A valid tree work permit shall be obtained prior to doing any of the following work:

- A. Trimming of Town trees.
- B. Excavation within or adjacent to the public right-of-way or public property which may disturb roots of Town trees, including but not limited to the installation of utilities.
- C. Removal of Town trees.

§ 221-5. Applicability.

This chapter shall not apply to:

- A. The clearance of trees and brush under major, cross-country transmission lines belonging to electric utility companies, except that this chapter shall apply to work in the vicinity of such utility lines along roadways.
- B. Work being done by the Town of Barnstable, or under contract to the Town of Barnstable, except where tree removal is subject to the jurisdiction of agencies listed in § 221-19 below.
- C. Maintenance and beautification of shrubs and trees within the public right-of-way which overhang private property, by the adjacent property owner, except that removal of any Town tree shall be subject to all applicable laws and regulations pursuant to § 221-19 below.

§ 221-6. Application.

Application for a tree work permit shall be made to the Tree Warden a minimum of 15 business days prior to commencement of the planned work, except in an unforeseen emergency. Application for work on conservation lands shall be submitted to the Conservation Commission.

§ 221-7. Clean up of brush and wood; stump removal.

All wood disposal is the responsibility of the utility or the contractor, except when specific direction is given by the Department of Public Works or the Conservation Commission to deliver to an in-town location. Chipping of brush and cleanup of all stumps, wood and other debris shall be a continuous operation. Stumps of trees shall be removed to the surface of the ground so that tops of stumps do not project above the surface of the ground, so that cleared areas can be maintained by mowing, and to provide safe passage for pedestrians.

§ 221-8. Reimbursement of Tree Warden's time.

- A. The Town shall be reimbursed for the total cost of the time of the Tree Warden, or his designee, and support staff, for reviewing work to the Town's trees. Costs shall be assessed through permit application fees or by direct billing.
- B. Fees may be waived for work done for the benefit of the Town, at the discretion of the Tree Warden.

§ 221-9. Verification of ownership.

It is the obligation of the contractor to positively verify that trees to be trimmed or removed are growing within the public right-of-way.

§ 221-10. Utility emergencies.

An emergency shall be considered to be breakage which threatens a power location. The utility company or tree contractor shall notify the Tree Warden of the emergency within two business days. In major emergencies, the utility shall notify the Tree Warden as soon as reasonable after the emergency.

§ 221-11. Supervision of all work on Town trees.

All work on Town trees shall be supervised in the field by an attending Massachusetts certified arborist, who shall be responsible for the work performed, and shall maintain regular contact with the Town's Tree Warden. Both the contractor and the utility shall be responsible for ensuring that the bucket operators are trained and knowledgeable of the standards of this chapter, including the ANSI Standard Z-133, and National Arborist Association (NAA) Pruning Standards.

§ 221-12. Suspension of permit; stop-work order.

The Tree Warden may cancel a permit or issue a stop-work order without notice.

§ 221-13. Appeal.

The Trees Warden's decision under §§ 221-6 and 221-12 may be appealed to the Town Manager.

ARTICLE III**Trimming****§ 221-14. Compliance required.**

In order to minimize adverse impacts of pruning on the Town's trees, all work performed shall comply with the following requirements and standards.

§ 221-15. Pruning and trimming standards.

- A. Trimming shall be done in such a manner as to protect current tree health with all possible regard for future growth and development
- B. All work will be performed in compliance with ANSI Standard Z-133 and National Arborist Association (NAA) Pruning Standards.
- C. No major limb or a limb with a diameter greater than 15% of the tree diameter at breast height (dbh) shall be removed unless approved by the Tree Warden, prior to the commencement of trimming.
- D. Climbing irons shall not be used on any tree.
- E. Unless otherwise authorized by the Tree Warden, it shall be unlawful as a normal practice for any person or firm to top any Town tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this chapter at the determination of the Tree Warden.
- F. A reasonable attempt shall be made to trim dead wood from the area being worked.

§ 221-16. Line clearance standards.

- A. Trimming for utility line clearance shall protect the viability and proper shape of a tree, and in no case shall trees be trimmed to provide clearance to wires and cables in excess of the following standards:
 - (1) The maximum clearance standards in Table 1 below, except under well documented circumstances, for specific trees only, to be approved by the Tree Warden; and

- (2) In no case shall tree trimming remove more than 15% of the leaf surface in any one year, unless approved by the Tree Warden; and
- (3) Tree trimming for clearance to wires and cables shall be performed for no more than three years' growth; and
- (4) In all cases tree trimming shall be reduced wherever possible, especially on young trees.

B. Maximum line clearance standards. See all other preceding sections including but not limited to the following:

- (1) Subsection A(2): "In no case shall trimming remove more than 15% of the leaf surface....."
- (2) Subsection A(3): "Tree trimming ... for no more than three years growth."

Table 1
Type of Wire, Cable, or Device

Specification (in feet)	120/240 Volts	2,400/4160 Volts Street Lighting	13,800 Volts Open wire Lighting	25,000 Volts + Open Wire	3,800 Volt Spacer (covered)
To overhanging branch	5	10	12	12	8
Side trimming	2	2	6	8	2
Topping (to top of tree beneath wire)	5	5	8	8	6

§ 221-17. Conflict with other laws.

Nothing in Article III shall conflict with the safety standards of the National Electrical Code.

ARTICLE IV
Tree Removal and Replanting

§ 221-18. Tree removal permits required.

A valid work permit shall be obtained from the Tree Warden for removal of any Town tree, except that approval of the Conservation Commission shall be required on conservation lands. Tree removal is subject to approval including but not limited to the Tree Warden acting pursuant to MGL Ch. 87; the Planning Board along designated scenic roads pursuant to MGL Ch. 40, § 15C, and Chapter 180, Scenic Roads, of the Code of the Town of Barnstable, and the Old Kings Highway along Route 6A pursuant to MGL Ch 61. In addition, tree removal may be subject to the Old Kings Highway Regional District pursuant to MGL Ch. 470 of the Acts of 1973, as amended, or any local Historic District, pursuant to MGL Ch. 40C, as amended. The forgoing list is intended to be for convenience only and does not purport to be exhaustive; this section shall not be construed as an exemption from or a relaxation of any applicable requirements of law.

§ 221-19. Replacement of Town trees.

- A. Town trees to be removed shall be replaced, subject to approval of a plan detailing the species and location, by the entities with jurisdiction listed in § 221-18 above. In the event that the tree replacement plan is in dispute, the following methods for assessing replacement shall apply:
- (1) The value of a public tree being removed shall be assessed by the Tree Warden based upon standards in the industry, and the costs assessed to the applicant. Such costs shall be placed in an account dedicated to the replacement planting of trees along the Town's roadways. In evaluating tree value, the applicant for tree removal may submit information based upon the Council of Tree and Landscape Appraisers, trunk formula method, or other nationally recognized methodology. Alternatively, the approving entities listed in § 221-18 above may require the replanting of street trees of equivalent value to the tree being removed.
 - (2) Where a Town tree is being removed for safety reasons and the value of the tree being removed has been reduced by previous damage or trimming, the tree shall be replaced with a minimum of two street trees, or the value thereof placed into an account dedicated to tree replacement.
 - (3) Any planned program of tree removal shall be subject to a tree replacement program, specifying the numbers, location, type and size of trees to be installed, and a maintenance program. Where a general area program of Town tree removal is planned, the approving entities listed in § 221-18 above may require implementation of the tree replacement program at least three growing seasons prior to commencement of the tree removal program.
- B. All replacement trees shall have a minimum caliper of three inches, unless a lesser caliper is approved for a smaller size class.
- C. Abutting property owners may plant street trees within the road layout, provided that the Tree Warden grants approval and that the selection and location of said trees are in accordance with the provisions of this chapter.

ARTICLE V**Tree Planting Standards****§ 221-20. Listing of trees acceptable for planting.**

- A. The Tree Warden shall develop and maintain an up-to-date listing of trees considered most desirable for new plantings along streets in the following three size classes based on mature height:
- (1) Small (under 20 feet).
 - (2) Medium (20 to 40 feet).
 - (3) Large (over 40 feet).

- B. Lists of trees not suitable for new plantings will also be developed and maintained current by the Tree Warden.

§ 221-21. Spacing between street trees.

- A. Street trees shall be planted on public property no closer together than the following:
- (1) Small size class: 20 feet.
 - (2) Medium size class: 30 feet.
 - (3) Large size class: 40 feet.
- B. An exception may be made to the above spacing for special plantings if authorized by the Tree Warden.

§ 221-22. Planting near curbs and sidewalks.

- A. Street trees may be planted on public property no closer to any curb or sidewalk than the following:
- (1) Small size class: two feet.
 - (2) Medium size class: three feet.
 - (3) Large size class: four feet.
- B. An exception may be made to the above spacings for special plantings if authorized by the Tree Warden.

§ 221-23. Planting near street corners and fire hydrants.

No tree shall be planted on public property to obstruct visual clearance of any street corner, measured from the point of nearest intersecting curbs or curblines nor within 10 feet of any fire hydrant.

§ 221-24. Planting near overhead utilities.

No tree other than those species listed as small trees in § 221-20 of this chapter, or trees with a columnar form, may be planted on public property under or within 10 feet of any overhead utility wire, except where authorized by the Tree Warden.

§ 221-25. Power of Town to plant, maintain and remove trees and shrubs.

The Town shall have the right to plant, maintain, and remove trees, plants and shrubs within the lines of all Town-owned streets, alleys, avenues, lanes, squares and other public property that may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public property.

§ 221-26. Installation of tree lights.

- A. With the approval of the Town Manager and the Tree Warden, decorative lights may be installed in Town-owned trees on public property for periods which will not interfere with the proper growth and maintenance of the trees and when the occasion for the lights is deemed appropriate.
- B. Unless otherwise authorized, holiday lights shall be installed no earlier than November 1 and removed no later than March 15.

ARTICLE VI

Tree Removal From Private Property**§ 221-27. Hazardous or diseased trees.**

A tree located on private property which constitutes a hazard to life and property in the Town right-of-way or adjacent private property, or harbors disease for which the removal of such tree will eliminate a potential threat to other trees within the Town shall be removed by the owners at their expense within 60 days following written notification by the Tree Warden. In the event the owners fail to comply with such notification, the Town shall have the right to remove or cause to have removed such trees and charge the cost of removal to the owners. Any person owning property in the Town and who qualifies on the basis of 125% of the federal poverty guidelines may petition the Town Manager for removal of a diseased tree or one which constitutes a hazard to life and limb by Town forces at no charge.

§ 221-28. Pruning trees which endanger public safety.

The Tree Warden may permit the pruning of any tree or shrub on private property when it endangers public safety by interfering with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign or sight distance at intersections.

ARTICLE VII

Trees on Public Property and Town-Owned Trees**§ 221-29. Plan for care of street and park trees.**

The Tree Warden shall develop, update annually, and administer a comprehensive plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets, and in other public property. The plan shall be submitted in June of each year to the Town Manager via the Superintendent of Public Works and upon their acceptance and approval shall constitute the official tree plan for the Town of Barnstable. The standards and specifications contained within the plan shall apply not only to work performed by Town forces but any private individuals or contractors who perform work on public property. Nothing in said plan shall be inconsistent with this chapter.

§ 221-30. Harming Town-owned trees.

It shall be unlawful to trim, prune or remove any Town tree without the approval of the Tree Warden and where applicable, approval of the entities listed in § 121-18 above, or to harm a Town tree by removing or otherwise damaging the bark and by attaching signs or any other item to any part of the tree using nails or other device that punctures the bark.

**ARTICLE VIII
Enforcement****§ 221-31. Severability.**

If any provision of this chapter is held invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this chapter shall not affect the validity of the remaining sections or parts of sections or the other ordinances of the Town of Barnstable.

§ 221-32. Violations and penalties.

Violation of any provision of this chapter shall be punished by a fine of not more than \$300 for each offense. Each act causing damage to a separate tree shall constitute a separate offense. This chapter may be enforced by noncriminal disposition methods of the Town of Barnstable.

Chapter 224

VACANT AND FORECLOSING PROPERTIES

- | | |
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| § 224-1. Purpose. | § 224-6. Properties with certificate of compliance; continuing duty to comply. |
| § 224-2. Definitions. | § 224-7. Properties without certificate of compliance; notice and order to obtain certificate. |
| § 224-3. Registration and maintenance requirements for foreclosing properties. | § 224-8. Expenses for court-ordered inspection and securing and cleaning of property. |
| § 224-4. Registration and maintenance requirements for vacant properties, including foreclosing and foreclosed properties. | § 224-9. Notices. |
| § 224-5. Signs and markings. | § 224-10. Review of provisions. |

[HISTORY: Adopted by the Town Council of the Town of Barnstable 10-17-2013 by Order No. 2013-166. Amendments noted where applicable.]

GENERAL REFERENCES

Numbering of buildings — See Ch. 51.

Building and premises maintenance — See Ch. 54.

Historic properties — See Ch. 112.

Rental property — See Ch. 170.

§ 224-1. Purpose.

Unsecured and unmaintained vacant properties and foreclosing properties present a danger to the safety and welfare of public safety officers, the public, occupants and abutters, contribute to blight within neighborhoods and commercial areas, and, as such, constitute a public nuisance. This chapter is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

§ 224-2. Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

FIRE CHIEF — The Fire Chief of the Fire District in which any property subject to this chapter is located, or his or her designee.

FORECLOSING — The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS — Taking any of the following actions:

- A. Taking possession of a residential property pursuant to MGL c. 244, § 1.

- B. Commencing a foreclosure action on a property in any court of competent jurisdiction, including, without limitation, filing a complaint in Land Court under the Service Members Civil Relief Act, Public Law 108-189 (50 U.S.C. App. §§ 501-596).
- C. In any instance, where the mortgage authorizes the mortgagee entry to make repairs upon the mortgagor's failure to do so.

MAINTENANCE — Keeping property in good sanitary condition and repair, including, without limitation the following: securing the property by locking and boarding of buildings; draining or covering swimming pools and fencing the immediate areas surrounding swimming pools; and removal from the property of perishable food items, dangerous substances or chemicals, animal litter, debris, trash, indoor items, such as furniture, appliances, plumbing fixtures and bedding, not kept in a building, and snow from adjacent sidewalks.

MORTGAGEE — The creditor, including, but not limited to, service companies, agents, lenders in a mortgage agreement, and any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

OWNER — Every person, entity, service company, property manager or real estate broker who or which, alone or severally with others:

- A. Has legal title to any real property, including but not limited to a dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
- B. Has care, charge or control of real property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, administratrix, executor, trustee or guardian of the estate of the holder of legal title; or
- C. Is a mortgagee of any such property who has initiated the foreclosure process as defined in this chapter; or
- D. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- E. Is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, "owner" shall not mean a condominium association created pursuant to MGL c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or
- F. Operates a rooming house; or
- G. Is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

PROPERTY — Any real property, or portion thereof, located in the Town, including municipally owned and commercial properties, and buildings or structures situated on the property; provided, however, that "property" shall not include property owned or under the control of the commonwealth or the United States of America.

VACANT — Any property not currently legally occupied and not properly maintained and secured, but not including any property unoccupied on a seasonal basis only and properly secured and maintained while so unoccupied.

§ 224-3. Registration and maintenance requirements for foreclosing properties.

- A. Any mortgagee of foreclosing property shall, unless exempt from such actions by Massachusetts General Laws, within 15 days of the initiation of the foreclosure process, provide written notification to the Building Commissioner and the Fire Chief of the status of such property, including in such notice the names, addresses, telephone numbers and e-mail addresses of the mortgagee's employees or representatives responsible for conducting the foreclosure, including mortgagee entry to make repairs, and the owner or person in control of the property; the location of the property; whether the property is vacant and, if so, the length of time of the vacancy, both past and estimated for the future, to the best of the owner's or mortgagee's knowledge or belief; and the nature of the contents of the building.
- B. Any mortgagee of foreclosing property shall maintain the property as required by and in accordance with the provisions of Subsections A and B of § 224-4, unless exempt from such actions by Massachusetts General Laws.

§ 224-4. Registration and maintenance requirements for vacant properties, including foreclosing and foreclosed properties.

- A. When the Building Commissioner, upon receipt of a complaint or other information and after making inquiries, determines that a property is vacant as defined herein, the Commissioner shall proceed as follows:
 - (1) If the property is foreclosing or has been foreclosed and the mortgagee has entered to make repairs or exercised any incidents of possession or ownership, including, without limitation, resorting to mortgage provisions for preservation of the property, changing locks, or payment of utilities or taxes, the Commissioner shall require compliance within the time provided in § 224-3, if necessary, and with Subsection B of this § 224-4 within 30 days, unless exempt from such actions by Massachusetts General Laws.
 - (2) If the property is not foreclosing, or a mortgagee has not become the owner at foreclosure, the Building Commissioner shall then inform the owner of the requirements of Subsection B of this § 224-4 and require that the owner submit a plan within 30 days for bringing the property into compliance with Subsection B within 30 days of submission of the owner's plan, or such additional time as the owner may request and which the Commissioner determines to be reasonable.
 - (3) The Commissioner may waive the provisions of Subsection A(1) and (2) if the property is a nuisance or danger pursuant to MGL c. 139 and procedures promulgated thereunder.
- B. Owner or mortgagee responsibilities.

- (1) Any owner or mortgagee of a vacant property, having taken ownership or possession as provided in Subsection A(1) of this § 224-4, shall also comply with the following within the time periods set forth in Subsection A:
 - (a) Register the property as a mortgagee irrespective of entry into ownership or possession as a mortgagee as provided under § 224-3A.
 - (b) As may be required by the Fire Chief for commercial property, file one set of space utilization floor plans for any buildings on said property with the Fire Chief and one set of said plans with the Building Commissioner and certify space utilization plans as accurate twice annually, in January and July.
 - (c) Remove from the property, to the satisfaction of the Fire Chief, hazardous material as that term is defined in MGL c. 21K, as that statute may be amended from time to time.
 - (d) Secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration National Arson Prevention Initiative Board Up Procedures or provide twenty-four-hour on-site security personnel on the property.
 - (e) Post "No Trespassing" signs on the property.
 - (f) Ensure that structures are maintained in sound condition.
 - (g) Maintain lawns and shrubs free from excessive overgrowth.
 - (h) Drain all water from the plumbing and turn off all electricity between September 15 and June 15 of each calendar year to guard against burst pipes and fires.
 - (i) Maintain the property in accordance with the Barnstable Zoning Ordinance,¹ the definition of "maintenance" in this chapter, and any other provision of this chapter; and dispose of trash, debris and pools of stagnant water as provided in Chapter 54 of the Town of Barnstable General Ordinances concerning the maintenance of property.
 - (j) Maintain all fences around swimming pools or install fences as required by Chapter 210 of the Barnstable General Ordinances and maintain existing fences or install fences around spas.
 - (k) Provide the Fire Chief and Building Commissioner with the name, local address, telephone number and e-mail address of a responsible person, if different from the person named in the registration under § 224-3A, who can be contacted in case of emergency and cause the name and contact number to be marked on the front of the property as may be required by the Fire Chief or Building Commissioner.

1. Editor's Note: See Ch. 240, Zoning.

- (l) Maintain liability insurance on the property and furnish the Building Commissioner with a copy of said certificate of insurance.
- (2) A mortgagee of foreclosing property shall additionally provide the following:
 - (a) A cash or surety bond in the sum of not less than \$10,000, to secure the continued maintenance of the property throughout vacancy or the foreclosure process until the property is sold or transferred and remunerate the Town for any expenses incurred in inspecting, securing, marking or making such building safe, a portion of which shall be retained by the Town as an administrative fee to fund an account for expenses incurred in inspecting, securing, and marking said building and other such buildings that are not in compliance with this chapter, and such bond or bonds for all other vacant or foreclosing properties it owns in the Town;
 - (b) Schedule inspections with the Building Commissioner and Health Director, who may at his or her discretion include the Fire Chief, within a reasonable time after notification under Subsection A(1) in order to confirm that the land and the interior of all structures comply with the provisions of this chapter and/or identify the provisions with which the property does not comply and establish a program to bring the property into full compliance; and
 - (c) Notify the Building Commissioner in writing when the property is sold or transferred.

§ 224-5. Signs and markings.

When required pursuant to this chapter, signs or markings shall be applied on the front of the property, and elsewhere as the Fire Chief or Building Commissioner may require, and shall not be placed over doors, windows or other openings. All signs/markings shall be visible from the street and, when requested by the Fire Chief or Building Commissioner, shall be placed on the sides and rear of the property. Signs/markings shall be a minimum of 24 inches by 24 inches, with lines of two-inch width, and shall have a reflective background or be painted with reflective paint in contrasting colors. Signs/markings shall be applied directly on the surface of the property and shall state the date of posting and the most recent date of inspection by the Fire Chief and Building Commissioner.

§ 224-6. Properties with certificate of compliance; continuing duty to comply.

Upon satisfactory compliance with the applicable provisions of §§ 224-3 through and including 224-5, the Building Commissioner shall issue a certificate of compliance. Said certificate shall be valid for the length of the vacancy or initiation of foreclosure, foreclosure, and vacancy following foreclosure; provided, however, that the certificate shall be subject to continued compliance with the provisions of this chapter. No owner of a vacant property and no mortgagee required to maintain a foreclosing property as provided in this chapter shall allow said property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain excessive overgrowth, or to have a stagnant pool of water, or otherwise fail to comply with this chapter.

§ 224-7. Properties without certificate of compliance; notice and order to obtain certificate.

If it appears that any vacant or foreclosing property is unregistered, or unsecured, contains rubbish, or contains excessive overgrowth of vegetation or a stagnant pool or pools of water, the Building Commissioner, upon being informed of such vacant or foreclosing property without a certificate of compliance with this chapter, shall cause notice to issue to the owner, as defined in this chapter, of the status of the property, the requirements to register and secure the property, remove rubbish or overgrowth, abate stagnant pools of water and maintain the property in compliance with this chapter and order said person to obtain a certificate of compliance. If any person fails to comply with said order, the Building Commissioner and agents thereof may commence civil proceedings to obtain injunctive relief or court orders, including recovery of any unreimbursed expenses incurred by the Town to enter the property to inspect, secure and clean the property and remove any pools of stagnant water, together with the costs of the Town's response as a municipal charges lien as provided in MGL c. 40 § 58.

§ 224-8. Expenses for court-ordered inspection and securing and cleaning of property.

The Building Commissioner may demand reimbursement for the expenses incurred by the Town for actions taken to inspect and secure the property, clean the property, and remove any stagnant pools of water, rubbish, overgrowth of vegetation and snow under a court order obtained pursuant to § 224-7.

- A. The Building Commissioner shall provide the owner or mortgagee with a written statement of all associated costs.
- B. In the case of foreclosed or foreclosing properties only, if the owner, as defined in this chapter, fails to pay or reimburse the Town within 30 days of notice of expenses, the Town may immediately seek to obtain the proceeds from the surety given pursuant to § 224-4B(2)(a).
- C. In the case of vacant property not foreclosed or in foreclosure, if the owner fails to pay or reimburse the Town within 30 days of notice of expenses, the Building Commissioner shall provide to the owner a second written statement of costs. If the owner fails to pay or reimburse the Town within 10 days of receipt of the second notice, the Building Commissioner may proceed as provided in Subsection D of this § 224-8.
- D. If there is no surety, or the Town's expenses exceed the amount of the surety, the Town may, as part of any court order sought pursuant to § 224-6 or by a separate civil action, seek to recover the balance due for reimbursement of its expenses incurred pursuant to this section and establish a lien on the property to be recorded in the Barnstable County Registry of Deeds or Land Registration District as applicable.

§ 224-9. Notices.

Notices required pursuant to this chapter shall be served in the following manner:

- A. Personally on any owner as defined in this chapter, or on the contact person specified pursuant to § 224-4A and B, as applicable; or
- B. Left at the last and usual place of abode of any owner, or the contact person as specified pursuant to § 224-4A and B, as applicable, if such place of abode is known and is within or without the commonwealth; or
- C. By certified or registered mail, return receipt requested, to any owner, or the contact person specified pursuant to § 224-4A and B, as applicable.

§ 224-10. Review of provisions.

There shall be a review of Chapter 224 within one year of its effective date for consideration of retaining, modifying, or repealing this chapter.

Chapter 228

VEHICLES, STORAGE OF

§ 228-1. Limit of one vehicle on premises. § 228-3. Violations and penalties.

§ 228-2. Nonapplicability.

[HISTORY: Adopted by the Town of Barnstable 3-8-1967, approved 4-27-1967; amended 10-23-1969, approved 12-17-1969; 7-17-2003 (Art. XX of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

§ 228-1. Limit of one vehicle on premises.

No person shall have more than one unregistered motor vehicle or trailer or any part or portion thereof, ungaraged on premises owned, occupied or controlled by him at anytime.

§ 228-2. Nonapplicability.

This chapter shall not apply to any vehicles used for agricultural purposes nor shall it apply to premises duly licensed under the provisions of Chapter 140 of the General Laws.

§ 228-3. Violations and penalties.

Any person failing to remove such vehicle or vehicles, or any part or portion thereof, within seven days, after notice by the Police Department of the Town, shall be subject to a fine of not more than \$300. Each day during any portion of which violation is permitted to exist, shall constitute a separate offense.

Chapter 232

WASTEWATER DISCHARGE

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| § 232-1. Findings. | § 232-7. Flow rate determinations. |
| § 232-2. Purpose. | § 232-8. New system defined. |
| § 232-3. Compliance required for systems of certain capacity. | § 232-9. Determining compliance of new systems with standards. |
| § 232-4. Certification of compliance required. | § 232-10. Administration; certificate of compliance. |
| § 232-5. Maximum allowable wastewater discharge. | § 232-11. Enforcement; right of entry. |
| § 232-6. Additional limitation for areas near certain wells. | § 232-12. Written notice of violation. |
| | § 232-13. Violations and penalties. |
| | § 232-14. Severability. |

[HISTORY: Adopted by the Town of Barnstable 11-7-1987, approved 12-3-1987; amended 11-4-1989; 11-1-1990 (Art. XLVII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Sewer use — See Ch. 184, Art. I.
Wetlands protection — See Ch. 237.

On-site sewage disposal systems — See Ch. 360.
Wells — See Ch. 397.

§ 232-1. Findings.

The health, safety and welfare of the residents of the Town of Barnstable and its neighboring towns are dependent upon an adequate supply of pure groundwater. The Town's entire drinking water supply is derived from groundwater, and the United States Environmental Protection Agency has designated all of Cape Cod as a "sole source aquifer" requiring special care and protection. The groundwater system is internally connected with surface waters, lakes, streams and coastal estuaries, which constitute important recreational and economic resources of the Town. Contamination of the aquifer and related surface water resources pose a serious threat to the health, safety and financial well-being of the Town.

§ 232-2. Purpose.

The purpose of this chapter is to protect the public health, safety and welfare by maintaining quality groundwater through the regulation of the volume of certain wastewater discharges.

§ 232-3. Compliance required for systems of certain capacity.

No person, company, corporation, entity, trust or firm shall install a new individual on-site sewage disposal system which will produce more than 330 gallons per day of wastewater discharge unless in compliance with the standards established by § 232-5 herein.

§ 232-4. Certification of compliance required.

A certificate of compliance with this chapter shall be received from the Board of Health or its designee prior to the commencement of any activity regulated by § 232-3 herein.

§ 232-5. Maximum allowable wastewater discharge. [Amended 12-16-1993 by Order No. 94-059]

- A. Within zones of contribution to existing and proposed public supply wells, the maximum allowable wastewater discharge from new individual on-site sewage disposal systems shall not exceed 330 gallons per acre per day.
- B. Zones of contribution to public supply wells are shown on a map entitled "Revised Groundwater Protection Map," Planning Division, dated February 2002, which is on file in the office of the Town Clerk. **[Amended 6-14-2007 by Order No. 2007-141]**
- C. The zones of contribution to public supply wells were determined by SEA Consultants Inc. in their report dated September 1985, entitled "Groundwater and Water Resource Protection Plan, Barnstable, MA," revised by SEA Consultants Inc., September 1989. The GP Overlay District is also revised to include the zone of contribution to the West Barnstable well #15-75 determined by the Cape Cod Commission; and the zone of contribution to proven future Barnstable Fire District well #8-90 determined by Whitman and Howard, Inc. The reports and maps are on file with the Town Clerk.

§ 232-6. Additional limitation for areas near certain wells. [Amended 12-16-1993 by Order No. 94-059; 6-14-2007 by Order No. 2007-141]

In addition to the standards of § 232-5 herein, within 2,000 feet of existing and proposed public supply wells as shown on the map entitled "Revised Groundwater Protection Map," Planning Division, dated February 2002, the maximum allowable wastewater discharge from a new individual on-site sewage disposal system shall not exceed 2,000 gallons per day, unless located outside of the WP Zone to the existing and proposed public supply wells.

§ 232-7. Flow rate determinations.

To determine compliance with §§ 232-5 and 232-6 herein, wastewater flow rates shall be determined according to Title V of the State Environmental Code, subject to the interpretation of the Board of Health.

§ 232-8. New system defined.

For the purposes of this chapter, the phrase "install a new individual on-site sewage disposal system" shall not include the maintenance, repair and alteration of an existing individual on-site sewage disposal system. However in no case shall the discharge of wastewater increase beyond that present prior to such maintenance, repair and alteration.

§ 232-9. Determining compliance of new systems with standards.

Any new system not in violation of the standards contained within §§ 232-5 through 232-8 shall be deemed to be in compliance with §§ 232-5 through 232-8.

§ 232-10. Administration; certificate of compliance.

This chapter shall be administered by the Board of Health or its designee by verifying compliance with the provisions established herein. Within 10 working days of receipt of a request for a certificate of compliance, the Board of Health or its designee shall notify the applicants thereof as to the approval or disapproval of the request. Upon determination that all provisions of this chapter are being met, a certificate of compliance shall be issued. However, in instances where an upgrading of an existing individual on-site sewage disposal system is proposed, the Board of Health may require from an applicant evidence that the proposed upgrading will not adversely affect the groundwater quality.

§ 232-11. Enforcement; right of entry.

The provisions of this chapter shall be enforced by the Board of Health or its designee, which may, according to law, enter upon any premises at any reasonable time to inspect for compliance.

§ 232-12. Written notice of violation.

Written notice of any violation of this chapter shall be given by the Board of Health or its designee specifying the nature of the violation and a time within which compliance must be achieved.

§ 232-13. Violations and penalties.

Penalty for failure to comply with any provision of this chapter shall be \$300 per day of violation.

§ 232-14. Severability.

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.

Chapter 237

WETLANDS PROTECTION

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| § 237-1. Purpose. | § 237-8. Promulgation of standards, specifications and rules. |
| § 237-2. Jurisdiction. | § 237-9. Escrow and security. |
| § 237-3. Exceptions. | § 237-10. Enforcement. |
| § 237-4. Applications for permits and requests for determination. | § 237-11. Burden of proof. |
| § 237-5. Notice and hearings. | § 237-12. Relation to the Wetlands Protection Act. |
| § 237-6. Issuance or denial of permits; conditions. | § 237-13. Definitions. |
| § 237-7. Wetlands replication. | § 237-14. Severability. |

[HISTORY: Adopted by the Town of Barnstable 11-7-1987, approved 12-3-1987 (Art. XXVII of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Wastewater discharge — See Ch. 232.

Wells — See Ch. 397.

On-site sewage disposal systems — See Ch. 360.

Subdivision Rules and Regulations — See Ch. 801.

§ 237-1. Purpose. [Amended 2-3-2011 by Order No. 2011-045]

The purpose of this chapter is to protect wetlands and related water resources, and their values and functions, including, but not limited to, the following: public or private water supply; groundwater; storm damage prevention; flood control; erosion and sedimentation control; prevention of water pollution; wildlife habitat; shellfish; fisheries; recreation; aesthetics; agricultural and aquacultural values; and historical values (collectively, "the wetlands values protected by this chapter").

§ 237-2. Jurisdiction.

- A. Except as permitted by the Conservation Commission or as provided in this chapter in § 237-3, no person shall remove, fill, dredge, or alter in or within 100 feet of the following resource areas: surface water body, vegetated wetland or unvegetated wetland; any land under said waters; and any land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage. In the event that the Commission determines that an activity occurring beyond the limit of jurisdiction noted above is having or has had a significant effect on the wetlands values of a resource area, the Commission may require a notice of intent or determination of applicability for that activity.

- B. In determining whether a resource area is subject to the provisions of this chapter, the origin of the wetland, whether natural or man made, is not a relevant factor.

§ 237-3. Exceptions.

- A. The permit and application required by this chapter shall not be required for maintaining, repairing, or replacing (but not substantially changing or enlarging), any existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services, sewage collection and traffic control, provided written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards, design specification, policy guidelines and other regulations adopted by the Commission.
- B. The permit and application required by this chapter shall not be required for normal maintenance or improvement of land or waters in an existing agricultural or aquacultural use. Expansion of existing uses in these areas or new uses in areas within the jurisdiction of this chapter will require a permit.
- C. The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of wetlands values or the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof. For this work, advance notice, oral or written, must be given to the Commission prior to or within 24 hours after the commencement of work. The Commission or its agent must certify the work to be an emergency project prior to the commencement of work. The work must be performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, but in no instance shall the emergency period exceed 30 days. All emergency work must conform to the performance standards, design specifications, policy guidelines and other regulations adopted by the Commission. Within 21 days of the commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in this chapter. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

§ 237-4. Applications for permits and requests for determination.

- A. Written applications shall be filed with the Commission to perform activities regulated by this chapter affecting resource areas protected by this chapter. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on wetlands, resource areas, and their values. No activities shall commence without receiving a permit issued pursuant to this chapter (except as provided in § 237-3).
- B. The Commission may, at its discretion, accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act.

- C. Any person desiring to know whether or not a proposed activity of an area is subject to this chapter may, in writing, request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.
- D. At the time of an application or request the applicant shall pay a filing fee specified in the regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency, or if the applicant can prove financial hardship, or other extenuating circumstances.

§ 237-5. Notice and hearings.

- A. Any person filing an application or a request for determination with the Commission shall give written notice thereof, within 14 days of the public hearing, by certified mail or hand delivery, to all abutters in accordance with the regulations of the Commission.
- B. The Commission shall conduct a public hearing on any application or request for determination. At the expense of the applicant, the Commission shall cause written notice of the hearing to be published at least five working days prior to the public hearing in a paper of general circulation in the Town of Barnstable.
- C. The Commission shall commence the public hearing within 21 days from the receipt of a completed notice of intent or request for determination. The Commission or its agents shall determine, for scheduling purposes only and in accordance with the submission regulations of the Commission, that the application or request is complete. The twenty-one-day deadline for a hearing may be extended by the Commission or its agents only with the assent of the applicant.
- D. The Commission shall issue its decision on the notice of intent in writing within 21 days of the close of the public hearing thereon. The Commission shall issue its decision on the request for determination in writing within 21 days of receipt of the request.
- E. The Commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act.
- F. The Commission may accept the applicant's request to continue the public hearing to a date and time certain announced at the hearing, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant deemed necessary by the Commission.

§ 237-6. Issuance or denial of permits; conditions.

- A. If the Commission, after a public hearing, determines that the proposed activities which are the subject of a notice of intent are not likely to have a significant or cumulative effect upon the wetlands values protected by this chapter, the Commission, within 21 days of the close of the public hearing, shall issue a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems

necessary or desirable to protect those wetlands values, and all activities shall be done in accordance with those conditions.

- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans required or requested by the Commission; for failure to meet the design specifications, performance standards, policy guidelines or other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetlands values protected by this chapter; where it is deemed that the denial is necessary to preserve the environmental quality of resource areas; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

§ 237-7. Wetlands replication.

- A. In order to protect the values inherent in wetland areas, it is the intent of this chapter to preserve wetlands, surface water bodies and other resource areas as functioning natural ecosystems. Filling of wetlands is therefor prohibited except when mitigated by wetlands replication as permitted in this section. At its discretion, the Conservation Commission may permit activities involving wetlands replication that do not harm the wetlands values protected under this chapter.
- B. Wetlands replication in order to make lands buildable, as by fulfilling septic system setbacks, flood elevation requirements or other construction setbacks, or to achieve lot area requirements, is prohibited. Replication is prohibited in areas providing habitat for existing rare or endangered species as listed by the Massachusetts Natural Heritage Program.
- C. Replication may be permitted to provide access to otherwise buildable uplands. Replication may also be permitted when an overriding public purpose can be demonstrated. The creation of new wetlands may be permitted, without any concomitant wetlands filling, when the applicant can demonstrate that such creation will not harm existing wetlands or their values. Purposes for creating new wetlands include, but are not limited to, the absorption of stormwater runoff, improvement of wildlife habitat, stabilization of unvegetated intertidal areas, or aesthetic, experimental, or scientific purposes.
- D. No more than 2,500 square feet of wetland may be filled in accordance with this section. The replicated wetland must be at least equal in size to the wetland that is filled and properly vegetated. Where physically possible, replicated wetlands shall be made contiguous with existing natural wetlands. When a person owns abutting properties, any applications on the properties for wetlands replication submitted within the same calendar year shall be treated as one proposal for the purpose of evaluating wetlands replication, and the combined area to be filled shall not exceed 2,500 square feet.
- E. Due to the fact that replication is an experimental process and is subject to failure, the Commission may require any applicant requesting permission for wetlands replication to conduct a scientific monitoring program to last for a time period as determined by the Commission, but not to exceed five years. If said monitoring period is less than five

years, the Commission shall review the results at the end of the monitoring period to determine if additional monitoring is needed within the maximum five-year period. The applicant shall provide an escrow bond for the duration of the monitoring period plus one year to cover correction of any deficiencies revealed by the monitoring program. Said bond shall, at a minimum, be equal to the initial cost of the replication.

§ 237-8. Promulgation of standards, specifications and rules.

- A. After public notice and public hearing the Commission may, from time to time, promulgate performance standards, design specifications, policy guidelines and other rules and regulations to accomplish the purposes of this chapter. Failure of the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.
- B. Any performance standards, design specifications, policy guidelines or other rules and regulations promulgated under a lawfully adopted Wetlands Protection Ordinance of the Town of Barnstable which may be superseded by this chapter shall be considered a part of this chapter at the time of its adoption.

§ 237-9. Escrow and security.

- A. The Commission may require the establishment of an escrow account or other security running to the municipality, and sufficient as to form and surety in the opinion of the Commission's counsel, to secure faithful and satisfactory performance of work required by any permit, in such sum and upon such conditions as the Commission may require.
- B. Notwithstanding the above, the amount of such escrow account of security shall not exceed the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security shall be recoverable at the suit of the municipality in Superior Court. The Commission may, at its discretion, accept as security a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Barnstable whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

§ 237-10. Enforcement.

- A. The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter. With the authority of the property owner or his designee, the Commission may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have the authority to enforce this chapter, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

- C. Upon request of the Commission, the Town Manager and Town Attorney may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
- D. Upon request of the Commission, municipal boards and officers, including any police officer, natural resource officer, or other officer having police powers, shall have the authority to assist the Commission in enforcement.
- E. Any person who violates any provision of this chapter, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.
- F. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D.

§ 237-11. Burden of proof.

The applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have an unacceptable significant and cumulative effect upon the wetland values protected by this chapter. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

§ 237-12. Relation to the Wetlands Protection Act.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the home rule statutes, independent of the Wetlands Protection Act (MGL c. 131, § 40), and regulations thereunder, except where specifically included herein.

§ 237-13. Definitions.

The following definitions apply to the interpretation of this chapter. Unless otherwise defined here, definitions found in 310 CMR also apply to this chapter.

AESTHETICS — Retention or improvement of natural conditions, including natural lighting, sound, odors and significant trees, as at the time are experienced by the general public from public ways, including waterways. Activities in or within 100 feet of any resource area shall not have significant effects on aesthetic values.

AGRICULTURE — Any work which produces food or other products for commerce or subsistence which occurs in, on, or within 100 feet of a resource area or which is directly or indirectly dependent upon wetlands values for proper agricultural functions, such as prevention of pollution or maintenance of adequate water flow for irrigation. Agriculture includes, but is not limited to the growing of crops, including cranberries, and the raising of livestock. Nonagricultural activities in or within 100 feet of resource areas shall not have a significant effect on existing agriculture. Notwithstanding this definition, new or expanded

agricultural activities shall not have a significant effect on other wetlands values identified in § 237-1 of this chapter.

ALTER — To change the condition of areas within jurisdiction of the Conservation Commission. Activities presumed to alter these areas, include, but are not limited to, the following:

- A. Removal, excavation or dredging if soil, sand, gravel or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material;
- E. Placing of fill or brush or removal of material;
- F. Erection of buildings, or structures of any kind; installation of piles except in accordance with pier maintenance regulations of the Commission;
- G. Destruction of plant life including the cutting of trees; application of pesticides or herbicides except in accordance with agricultural exemptions set forth in § 237-3;
- H. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- I. Any activities, changes or work which pollute in any way any body of water or groundwater;
- J. Any activities that change the aesthetics of a resource area in a significant manner and for more than a temporary period.

AQUACULTURE — The growing, raising, breeding, storing, or producing of specified aquatic or marine organisms at specified locations for commercial, municipal, or scientific purposes as approved by appropriate agencies. Organisms in aquacultural use include, but are not limited to: shellfish, such as oysters, quahogs, clams, lobsters, mussels, scallops and crabs; finfish, such as trout, eel, herring, salmon, smelt and bass; amphibians, such as frogs; reptiles, such as turtles; seaweeds, such as Irish moss and dulse; edible freshwater plants, such as watercress; and plankton grown as a food source for other organisms. Activities in or within 100 feet of a resource area shall not have a significant effect on existing permitted aquaculture. Notwithstanding this definition, new or expanded aquacultural activities shall not have a significant effect on other wetlands values set forth in § 237-1 of this chapter.

COASTAL BANK — The first significant break in slope beyond the one-hundred-year storm elevation on a seaward face or elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other coastal wetland. The slope of the bank must be greater than an 18% and serve to contain storm flowage, rather than

being inundated by it, or function as a sediment source. A coastal bank may serve one of two functions:

- A. It may serve as a vertical buffer because of its height and stability which protects upland areas from storm damage and flooding. Activities shall not increase erosion of a coastal bank, either from above (by stormwater runoff, brushcutting or other means) or from below (by tidal action, wind and waves). Any project on such a coastal bank shall have no adverse impact on the stability of the coastal bank.
- B. Coastal banks composed of unconsolidated sediment and exposed to vigorous wave action serve as a source of sediment for dunes, beaches, barrier beaches and other coastal landforms. Naturally occurring wave action removes sediment from these banks to replenish coastal landforms. These landforms protect coastal wetlands and real property by reducing storm damage and flooding by dissipating storm wave energy. Any project on or within a coastal bank serving this function shall not have a significant effect on that bank's ability to serve as a sediment source.

CUMULATIVE EFFECTS — Activities regulated under this chapter which may be individually minor, but when considered in relation to other past, present or future activities in a given area may be significant in the aggregate.

EROSION AND SEDIMENTATION CONTROL —

- A. **EROSION CONTROL** — The ability of the wetland to buffer forces or processes which would threaten or cause to be threatened the stability of landforms and the soil and/or vegetation associated with wetlands and adjoining land areas, in particular, coastal and inland banks. Erosion can be caused by a wearing away of the surface soil or by undermining the interior portion of the landform. Activities in or within 100 feet of resource areas shall not have a significant effect on natural erosion processes.
- B. **SEDIMENTATION CONTROL** — The ability of wetlands to settle out sediments and other waterborne material by reducing water flow by passing it through vegetation or by diffusing flow and reducing velocity. Activities in or within 100 feet of resource areas shall not accelerate or impede the rate of natural sedimentation significantly.

FLOOD CONTROL — The ability of wetlands to absorb, store and slowly release floodwaters to minimize peak flood levels. Flooding can be caused by precipitation or a rising water table. Activities within 100 feet of resource areas shall not alter the flood control value of wetlands significantly.

GROUNDWATER — All subsurface water contained in natural geologic formations or artificial fill, including soil water in the zone of aeration. Activities in or within 100 feet of resource areas shall not significantly alter the existing quality or elevation of naturally occurring groundwater.

HISTORICAL VALUES — The importance of wetlands and adjoining land areas as sites often used for prehistoric and historic occupation, subsistence, industry, trade, agriculture, burial and other cultural purposes. Resource areas which are known to contain sites of historic or archaeological resources (as by being listed of the State Register of Historic Places, the Inventory of Historic and Archaeological Assets of the Commonwealth, and/or the Barnstable

Historical Commission's Historic Properties Inventory) are deemed to have historic value. Activities in or within 100 feet of resource areas shall not have a significant effect on historical values.

PERSON — Any individual, group of individuals, associations, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town ordinances, administrative agency, public or quasi-public corporation or body, the Town of Barnstable, and any other legal entity, its legal representatives, agents, or assigns.

PRIVATE WATER SUPPLY — Any source or volume of surface or ground water demonstrated to be in private use or shown to have potential for private use, including ground or surface water in the zone of contribution around a private well. Activities in or within 100 feet of a resource area shall not have a significant effect on the quality of a private water supply.¹

PUBLIC WATER SUPPLY — Any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to MGL c. 111, § 160 by the Department of Environmental Quality Engineering Division of Water Supply, or demonstrated to have a potential for public use, in addition to all surface and ground water in zones of contribution. Activities within 100 feet of resource areas shall not have a significant effect on the quality of a public water supply.

RECREATION — Any leisure activity or sport taking place in, on, or within 100 feet of a resource area which is dependent on the resource area and its values directly or indirectly for its conduct and enjoyment. Recreational activities include, but are not limited to, the following: noncommercial fishing and shellfishing, hunting, boating, swimming, walking, painting, birdwatching and aesthetic enjoyment. Structures and activities in or within 100 feet of a resource area shall not have a significant effect on public recreational values. Notwithstanding this definition, new or expanded recreational activities shall not have a significant effect on other wetlands values identified in § 237-1 of this chapter.

STORM DAMAGE PREVENTION — The ability of wetland soils, vegetation and physiography to prevent damage caused by water from storms, including but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice. Activities in or within 100 feet of a resource area shall not have a significant effect on storm damage protection.

SURFACE WATER BODY — Any area where water or ice stands or flows over the surface of the ground for at least five months of any calendar year except in times of severe, extended drought as defined in appropriate section of 310 CMR. Drainage ditches, exclusive of fish runs and intermittent streams, and impoundment areas which hold or pass water only during or for short periods following storms and which, owing to their relationship to groundwater, do not support wetland vegetation, are excluded from this definition.

TRUSTLANDS — Lands impressed with public trust rights protected by the commonwealth, including great ponds; and tidelands, being present and former submerged lands and tidal flats

1. Editor's Note: The former definition of "public trust rights," which immediately followed this definition, was repealed 2-3-2011 by Order No. 2011-045.

lying between the natural high-water mark and the state limit of seaward jurisdiction. Tidelands including both flowed and filled tidelands, and privately owned and publicly owned tidelands.

UNVEGETATED WETLAND RESOURCE AREAS — Coastal areas, such as flats and unvegetated intertidal areas; coastal and freshwater beaches, dunes and banks; and land subject to flooding. Also, inland areas subject to flooding which do not support wetland vegetation, but which store at least 1/4 acre feet of water to an average depth of six inches at least once a year, and land areas two feet or less vertically above the high-water mark of any lake or pond defined by 310 CMR. Does not include swimming pools, artificially lined ponds or pools, wastewater lagoons or stormwater runoff basins, the construction of which may be regulated, but do not themselves constitute regulated areas.

VEGETATED WETLANDS — Any area of at least 500 square feet where surface or ground water, or ice, at or near the surface of the ground support a plant community dominated (at least 50%) by wetland species.

WETLANDS REPLICATION — The creation of wetland, surface water body or other resource area to compensate for the filling or other loss or displacement of all or part of an existing wetland, surface water body or other resource area.

WILDLIFE HABITAT — Resource areas that provide breeding and nesting habitats, shelter, food and water to all plant and animal species dependent on wetlands for any portion of their life cycles. Includes resource areas identified as containing rare, threatened or endangered species as listed by the Massachusetts Natural Heritage Program. Structures and activities in or within 100 feet of any resource area shall not have a significant effect on wildlife habitat.

ZONE OF CONTRIBUTION — The segment of an aquifer that contributes significant quantities of ground or surface water to a water supply well.

§ 237-14. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

Chapter 240

ZONING

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			Zoning Map Revisions
			Parking Diagrams

[HISTORY: Adopted by the Town of Barnstable 4-7-1987 STM by Art. 4; readopted 9-27-1990 by Order No. 90-65¹ (Art. III of Ch. III of the General Ordinances, as updated through 4-10-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.	Wetlands protection — See Ch. 237.
Affordable housing — See Ch. 9.	Food establishments — See Ch. 322.
Building construction — See Ch. 51.	On-site sewage disposal systems — See Ch. 360.
Hazardous materials — See Chs. 108 and 381.	Wells — See Ch. 397.
Historic properties — See Ch. 112.	Marinas — See Ch. 405.
Outdoor businesses — See Ch. 141.	Junk dealers — See Ch. 502.
Signs — See Ch. 192.	Subdivision Rules and Regulations — See Ch. 801.

ARTICLE I
Introduction

§ 240-1. Title.

This chapter shall be known and may be referred to as the "Zoning Ordinance of the Town of Barnstable, Massachusetts."

1. Editor's Note: The readoption of the Zoning Ordinance on 9-27-1990 was its conversion from bylaw adopted by the former Town Meeting to an ordinance adopted by the present Town Council. The amendment dates noted in the text of the chapter include amendments to the original bylaw.

§ 240-2. Purpose.

The purpose of this chapter is to promote the health, safety, convenience, morals and general welfare of the inhabitants of the Town of Barnstable, to protect and conserve the value of the property within the Town, to increase the amenities of the Town, and to secure safety from seasonal or periodic flooding, fire, congestion or confusion, all in accord with the General Laws, Chapter 40A, as amended. For this purpose, the height, number of stories, size of buildings and structures, size and width of lots, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, marine business, industry, agriculture, residence or other purposes are regulated within the Town of Barnstable as hereinafter provided.

§ 240-3. Interpretation.

The provisions of this chapter shall be held to be the minimum requirements for the promotion of the purposes herein stated, and shall be interpreted and applied in accordance with the following:

- A. Overlapping/contradictory regulations. Except as otherwise provided herein, this chapter shall not interfere with or annul any other ordinance, rule, regulation or permit, provided that, unless specifically excepted, where this chapter is more stringent, it shall control.
- B. Cumulative provisions. The provisions of this chapter shall be construed as a continuation thereof and not as new enactments.

§ 240-4. Severability.

The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

ARTICLE II
General Provisions

§ 240-5. Establishment of districts. [Amended 7-15-1999; 10-26-2000; 2-1-2001; 11-18-2004 by Order No. 2004-113; 1-20-2005 by Order No. 2005-038; 1-20-2005 by Order No. 2005-039; 7-14-2005 by Order No. 2005-100; 5-10-2007 by Order No. 2007-101; 2-28-2008 by Order No. 2008-077; 2-28-2008 by Order No. 2008-090; 4-3-2008 by Order No. 2008-091; 6-17-2010 by Order No. 2010-122; 10-7-2010 by Order No. 2010-159; 9-8-2011 by Order No. 2011-138; 2-6-2014 by Order No. 2014-050]

In order to carry out the purpose of this chapter, the following districts are hereby established:

Residential Districts

RB Residence B District

Residential Districts

RC	Residence C District
RC-1	Residence C-1 District
RC-2	Residence C-2 District
RC-2C	Residence 2-C (Pond Village District)
RD	Residence D District
RD-1	Residence D-1 District
RF	Residence F District
RF-1	Residence F-1 District
RF-2	Residence F-2 District
RG	Residence G District
RAH	Residence AH District
MAH	Multi-Family Affordable Housing MAH District

Office Districts

HO	Highway Office District
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Commercial Districts

B	Business District
BA	Business A District
MB-A1	Marine Business A1 District
MB-A2	Marine Business A2 District
MB-B	Marine Business B District
VB-A	Village Business A District
HB	Highway Business District
UB	Urban Business District
S&D	Service and Distribution District
SD-1	Service and Distribution District
MMV	Marston Mills Village District
WBVBD	West Barnstable Village Business District

Hyannis Village Zoning Districts

HVB	Hyannis Village Business District
MS	Medical Services District
SF	Single Family Residential District
OM	Office/Multi-Family Residential District

Hyannis Village Zoning Districts

HD	Harbor District
HG	Hyannis Gateway District
TD	Transportation Hub District

Industrial Districts

IND LIMITED	Industrial Limited District
IND	Industrial District

Overlay Districts

GP	Groundwater Protection Overlay District
AP	Aquifer Protection Overlay District
WP	Well Protection Overlay District
	Shopping Center Redevelopment Overlay District
	Adult Use Overlay District
RPOD	Resource Protection Overlay District
DOD	Dock and Pier Overlay District
	Medical Services Overlay District
FG-5	Former Grade 5 School Planned Unit Development Overlay District
SCCRC	Senior Continuing Care Overlay District
	Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District
	Medical Marijuana Overlay District

§ 240-6. Zoning Map.

The Town of Barnstable is hereby divided into districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter.

- A. Identification of Zoning Map. The official Zoning Map shall be identified by the title "ZONING MAP OF BARNSTABLE, MASS. DATED September 1, 1998", which is on file in the office of the Town Clerk as amended.
- B. Location of Zoning Map. The Official Zoning Map shall be on file with the Town Clerk.
- C. Zoning district boundaries.
 - (1) The scale of the Zoning Map and the figures entered thereon are to serve as guides in locating the zoning district boundaries shown on the Zoning Map.
 - (2) Where a street divides two zoning districts, the districts shall be deemed to abut each other.

- (3) Where the boundary line between zoning districts divides any lot existing at the time such line is adopted, which has street frontage in the less restricted area, a use authorized on the less restricted portion of such lot may be extended into the more restricted portion for a distance of not more than 30 feet. This subsection shall not apply to the following districts: HO Highway Office District; Groundwater Protection Overlay Districts; Adult Use Overlay District; Shopping Center Redevelopment Overlay District; MA-2 Business District; OR Office Residential District; and O-1, O-2, O-3 Office Districts. **[Amended 9-17-1998 by Order No. 99-012; 6-28-2001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-37, 2001-038 and 2001-039]**

§ 240-7. Application of district regulations.

Regulations within each district established herein shall be applied uniformly to each class or kind of structure or use.

- A. Conformance to use regulations. No building shall be erected or altered and no building or premises shall be used for any purpose except in conformity with all of the regulations herein specified for the district in which it is located.
- B. Conformance to bulk and yard regulations. No building shall be erected or altered to exceed the height or bulk, or to have narrower or smaller yards or other open spaces than herein required, or in any other manner contrary to the provisions of this chapter.

- C. Lot size requirements. Wetlands shall not be included in the lot area (square feet) requirement for zoning compliance.
- D. Lot shape factor/residential districts. To meet the minimum area requirements in residential districts, a lot must be a closed plot of land having a definite area and perimeter and having a shape factor not exceeding the numerical value of 22, except that a lot may have a shape factor exceeding 22 if the proposed building site is located on a portion of a lot that itself meets the minimum lot area requirement and has a shape factor not exceeding 22, and such lots shall not be created to a depth greater than two lots from the principal way.
- E. Contiguous upland required. In addition to the requirements of Subsection C herein, all lots shall have 100% of the minimum required lot area as contiguous upland.
- F. Number of buildings allowed per lot.
 - (1) Residential districts: Unless otherwise specifically provided for herein, within residential districts, only one principal permitted building shall be located on a single lot.
 - (2) All other districts: In all other districts, any number of buildings may be located on a single lot; provided, however, that all regulations for the district in which such buildings are located are complied with, including percentage lot coverage if applicable.
- G. Setbacks from wetlands/great ponds. In addition to the setbacks established hereinafter, the following shall also apply:
 - (1) All construction, with the exception of elevated stairways, decks, driveways, fences and water-dependent structures such as piers and marina facilities, shall be set back a minimum of 35 feet from wetlands.
 - (2) All construction shall be set back a minimum of 50 feet from mean high water on any great pond, except that in residential districts, all buildings except boathouses shall be set back a minimum of 50 feet from mean high water on any great pond.
- H. In any residential district a one-family dwelling and its accessory buildings may be erected on any lot which complies with the applicable provisions of Chapter 40A of the General Laws.
- I. Gross floor area requirements. Gross floor area shall be used in all determinations related to this chapter. **[Added 10-7-1993 by Order No. 94-016]**

§ 240-8. Exempt uses. [Amended 10-7-1999 by Order No. 99-160A]

- A. The following uses and structures are permitted in all zoning districts:
 - (1) Municipal and water supply uses.
 - (2) Municipal recreation use, including recreational activities conducted on Town-owned land under the terms of a lease approved by Town Council. In the

case of such a lease, any improvements or changes to such Town-owned land shall be subject to the review of a committee of five residents appointed by the Town Manager or Town Council, at least two of whom shall be from the precinct in which the land is located.

- (3) The use of land or structures exempt from the use provisions of this chapter pursuant to MGL Ch. 40A, § 3, and any other statute.
 - (a) Where such exempt uses are subject to reasonable regulation of bulk, density and parking regulations by MGL Ch. 40A, § 3, reasonable regulation shall be deemed to be: the bulk regulations of the zoning district, except that church steeples may be permitted up to 75 feet in height; Article VI, Off-Street Parking Regulations; and Article IX, Site Plan Review.
 - (b) Where the proposed use does not comply with Subsection A(3)(a) above, the Zoning Board of Appeals shall by a modification permit, modify the bulk regulations of the zoning district and/or the parking requirements of Article VI, Off-Street Parking Regulations, where such regulation would substantially diminish or detract from the usefulness of a proposed development, or impair the character of the development so as to affect its intended use, provided that the modification of the bulk regulations and/or parking requirements will not create a public safety hazard along the adjacent roadways and will not create a nuisance to other, surrounding properties such that it will impair the use of these properties.
 - (c) A modification permit shall be subject to the same procedural requirements as a special permit, except that approval of the modification permit shall require a majority of the members of the Board.
 - (4) Agriculture, horticulture, viticulture, aquaculture and/or floriculture on a parcel of land five acres or less in size shall be permitted subject to the following requirements in residential districts:
 - (a) Seasonal garden stands for the sale of seasonal fruits, flowers and vegetables shall be permitted, only for the sale of produce grown on the premises.
 - (b) No person shall be employed on the premises.
 - (c) No more than one temporary, on-premises sign may be erected, not to exceed two square feet, to be removed during the off season.
- B. Any structure for agricultural, horticulture, viticulture, aquaculture and/or floriculture use shall conform to the setbacks of the zoning district, or a minimum of 25 feet, whichever is greater, except that the keeping of horses in a residential district shall be in compliance with the requirements of that zoning district.

§ 240-9. Temporary uses.

The following temporary uses are permitted in all zoning districts:

- A. Temporary occupancy of a trailer during construction of a permanent home; provided, however, a special permit is first obtained from the Zoning Board of Appeals.
- B. Temporary occupancy of a trailer for living purposes by nonpaying guests for a period not exceeding 20 days in any calendar year; provided, however, that the owner of land upon which the trailer is to be located first obtains a permit from the Building Commissioner.
- C. Temporary occupancy of a trailer as a construction office incidental to development of or construction on the premises on which the trailer is to be located; provided, however, that a permit is first obtained from the Building Commissioner.
- D. Tents. **[Added 2-22-1996 by Order No. 95-194]**
 - (1) Maintenance and occupancy of tents in an organized and supervised recreational camp subject to compliance with the rules of the Barnstable Board of Health; provided, however, that a special permit is first obtained from the Zoning Board of Appeals.
 - (2) A tent may be put in place on a lot used for residential purposes, for not more than 10 days, in connection with special family occasions or events, but not to be used for any commercial purposes.
 - (3) A tent may be put in place for not more than 10 days, not more than twice in any calendar year, in connection with a fund-raising or special event by a public institution or nonprofit agency.
 - (4) Subject to annual approval by the Building Commissioner, a tent may be erected and used as a temporary accessory structure to an existing permanent business only during the period beginning May 1 until October 31. The tent shall conform to all the parking requirements and bulk or dimensional requirements of this chapter.

§ 240-10. Prohibited uses.

The following uses are prohibited in all zoning districts:

- A. Any use which is injurious, noxious or offensive by reason of the emission of odor, fumes, dust, smoke, vibration, noise, lighting or other cause.
- B. A tent maintained or occupied for living or business purposes, except as permitted in § 240-9D above. **[Amended 2-22-1996 by Order No. 95-194]**
- C. A trailer parked, stored or occupied for living or business purposes, except as specifically provided for in § 240-9 herein.
- D. Hotels and motels in Precincts 1, 2, 4, 6, and 7 as existing on November 9, 1983, except in the IND Limited and IND Industrial Districts.

ARTICLE III
District Regulations

§ 240-11. RB, RD-1 and RF-2 Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RB, RD-1 and RF-2 Districts:
- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RB, RD-1 and RF-2 Districts:
- (1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. **[Amended 11-7-1987 by Art. 12]**
 - (2) Keeping, stabling and maintenance of horses subject to the following:
 - (a) Horses are not kept for economic gain.
 - (b) A minimum of 21,780 square feet of lot area is provided, except that an additional 10,890 square feet of lot area for each horse in excess of two shall be provided.
 - (c) All state and local health regulations are complied with.
 - (d) Adequate fencing is installed and maintained to contain the horses within the property, except that the use of barbed wire is prohibited.
 - (e) All structures, including riding rings and fences to contain horses, conform to 50% of the setback requirements of the district in which located.
 - (f) No temporary buildings, tents, trailers or packing crates are used.
 - (g) The area is landscaped to harmonize with the character of the neighborhood.
 - (h) The land is maintained so as not to create a nuisance.
 - (i) No outside artificial lighting is used beyond that normally used in residential districts.
- C. Conditional uses. The following uses are permitted as conditional uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:
- (1) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.
 - (2) Public or private regulation golf courses subject to the following:
 - (a) A minimum length of 1,000 yards is provided for a nine-hole course and 2,000 yards for an eighteen-hole course.

- (b) No accessory buildings are located on the premises except those for storage of golf course maintenance equipment and materials, golf carts, a pro shop for the sale of golf related articles, rest rooms, shower facilities and locker rooms.
- (3) Keeping, stabling and maintenance of horses in excess of the density provisions of Subsection B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
- (4) (Reserved)²
- (5) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (6) Bed-and-breakfast. **[Added 2-20-1997]**
 - (a) Intent: It is the intent of this section to allow bed-and-breakfast operations in larger older homes to provide an adaptive reuse for these structures and, in so doing, encourage the maintenance and enhancement of older buildings which are part of the community character. This use will also create low-intensity accommodations for tourist and visitors and enhance the economic climate of the Town. By requiring that the operation is owner occupied and managed, the Town seeks to ensure that the use will be properly managed and well maintained.
 - (b) Bed-and-breakfast, subject to the following conditions:
 - [1] The bed-and-breakfast operation shall be located within an existing, owner-occupied single-family residential dwelling constructed prior to 1970 containing a minimum of four bedrooms as of December 1, 1996.
 - [2] No more than three bedrooms shall be rented for bed-and-breakfast to a total of six guests at any one time. For the purpose of this section, children under the age of 12 years shall not be considered in the total number of guests.
 - [3] No cooking facilities including but not limited to stoves, microwave ovens, toaster ovens and hot plates shall be available to guests, and no meals except breakfast shall be served to guests.
 - [4] The owner of the property shall be responsible for the operation of the property and shall be resident when the bed-and-breakfast is in operation. The owner shall file an affidavit with the Building Commissioner on an annual basis in the month of January stating that the property is the principal residence of the owner and that the owner is resident all times that the bed-and-breakfast is being operated. If the affidavit is not filed, the operation shall cease forthwith and any special permit issued shall be considered null and void. The requirement for

2. Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.

filing of an affidavit shall not apply to bed-and-breakfast operations legally established prior to October 1, 1996.

- [5] The single-family residence in which the bed-and-breakfast operation is located shall be maintained so that the appearance of the building and grounds remain that of a single-family residence.
- [6] If the property is not served by public water, the applicant shall provide evidence to the Zoning Board of Appeals that the proposed use will not have any detrimental impact on any private water supply on site or off site.
- [7] No parking shall be located in any required building yard setback, and parking areas shall be screened from adjoining residential properties by a fence or dense plantings, not less than five feet in height. Parking areas may be permitted in front of the house, not within the required building front yard setback, provided that the Zoning Board of Appeals finds that the spaces are designed and located in a manner which retains the residential character of the property. Grass overflow areas may be utilized for parking, provided these are maintained with a grass ground cover in good condition.
- [8] The special permit for the bed-and-breakfast conditional use operation shall be issued to the owner only and is not transferable to a subsequent property owner. This provision shall only apply to bed-and-breakfast conditional use operations established in residential districts.

D. Special permit uses. The following uses are permitted as special permit uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § 240-17 herein.

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)
				Front (feet)	Side (feet)	Rear (feet)	
RB	43,560 ²	20	100	20 ³	10	10	30 ¹
RD-1	43,560 ²	20	125	30 ³	10	10	30 ¹
RF-2	43,560 ²	20	150	30 ³	15	15	30 ¹

NOTES:

- ¹ Or 2 1/2 stories, whichever is lesser.
- ² A minimum lot area of 87,120 square feet is required in RPOD Overlay District. [Added 10-26-2000]
- ³ One hundred feet along Routes 28 and 132.

§ 240-12. Pond Village (Barnstable) District of Critical Planning Concern (PVDCPC) R-2C³ [Added 5-10-2007 by Order No. 2007-101]

- A. Principal permitted uses. The following uses are permitted in the R-2C District:
- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the R-2C District:
- (1) Family apartments. (See § 240-47.1.)
 - (2) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2).
 - (3) Home occupation. (See § 240-46).
 - (4) Renting of rooms to not more than three nonfamily members by the family residing in a single-family residence.
 - (5)
- C. Special permit uses. The following uses are permitted as special permit uses in the R-2C District, provided that a special permit is first obtained from the Board.
- (1) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same lot or adjacent lot as the principal building to which such use is accessory.
 - (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy but only as an accessory use. (See § 240-44.1.)
- D. Open space residential developments. (See § 240-17.)
- (1) Bulk regulations:
 - (a) Minimum lot area, contiguous upland: 87,120 square feet.
 - (b) Minimum lot frontage: 20 feet.
 - (c) Minimum front yard setback: 30 feet.
 - (d) Minimum side and rear yard setback: 15 feet.
 - (e) Maximum building height:
 - [1] Maximum building height in feet: 30.
 - [2] Maximum building height in stories: 2 1/2.
 - (2) Grandfathering. Within the R-2C District, any lot that met the minimum lot area and minimum lot frontage requirements of the RF-1 or RF-2 Districts respectively, prior to the effective date of the Pond Village DCPC nomination of August 26,

3. Editor's Note: Former § 240-12, RB-1 Residential District, as amended, was repealed 7-14-2005 by Order No. 2005-100.

2005, as specified in the Cape Cod Commission Acceptance Decision dated September 15, 2005, shall not be subject to R-2C minimum lot area.

§ 240-13. RC, RD, RF-1 and RG Residential Districts.

A. Principal permitted uses. The following uses are permitted in the RC, RD, RF-1 and RG Districts:

(1) Single-family residential dwelling (detached).

B. Accessory uses. The following uses are permitted as accessory uses in the RC, RD, RF-1 and RG Districts:

(1) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.

C. Conditional uses. The following uses are permitted as conditional uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

(1) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

(2) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.

(3) (Reserved)⁴

(4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

D. Special permit uses. The following uses are permitted as special permit uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Planning Board:

(1) Open space residential developments subject to the provisions of § 240-17 herein.

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)
				Front (feet)	Side (feet)	Rear (feet)	
RC	43,560 ²	20	100	20 ³	10	10	30 ¹
RD	43,560 ²	20	125	30 ³	15	15	30 ¹
RF-1	43,560 ²	20	125	30 ³	15	15	30 ¹

4. Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)
				Front (feet)	Side (feet)	Rear (feet)	
RG	65,000	20	200	30 ³	15	15	30 ¹

NOTES:

- ¹ Or 2 1/2 stories, whichever is lesser.
- ² A minimum lot area of 87,120 square feet is required in RPOD Overlay District. [Added 10-26-2000]
- ³ One hundred feet along Routes 28 and 132.

§ 240-14. RC-1 and RF Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RC-1 and RF Districts:
 - (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC-1 and RF Districts:
 - (1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. [Amended 11-7-1987 by Art. 12]
 - (2) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RC-1 and RF Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section: [Amended 8-17-1995 by Order No. 95-195]
 - (1) Home occupation, subject to all the provisions of § 240-46C, Home occupation by special permit.
 - (2) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.
 - (3) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (4) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
 - (5) (Reserved)⁵

5. Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.

- (6) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
 - (7) Bed-and-breakfast operation subject to the provisions of § 240-11C(6). **[Added 2-20-1997]**
- D. Special permit uses. The following uses are permitted as special permit uses in the RC-1 and RF Districts, provided a special permit is first obtained from the Planning Board:
- (1) Open space residential developments subject to the provisions of § 240-17 herein.
 - (2) Private initiated affordable housing developments: A private-initiated affordable housing developments (PI-AHD) on seven acres or more, subject to the provisions of § 240-17.1 and in full compliance with the standards set forth therein. **Added 11-18-2004 by Order No. 2004-113]**
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RC-1	43,560 ²	125	—	30 ³	15	15	30 ¹
RF	43,560 ²	150	—	30 ³	15	15	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.
² A minimum lot area of 87,120 square feet is required in RPOD Overlay District. **[Added 10-26-2000]**
³ One hundred feet along Routes 28 and 132.

§ 240-15. RC-2 Residential District.

- A. Principal permitted uses. The following uses are permitted in the RC-2 District:
- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC-2 District:
- (1) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RC-2 District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Nursing and/or retirement home, but not to include hospitals, sanatoriums, convalescent homes or detached infirmaries or clinics, subject to the following:

- (a) The site for the home consists of a minimum of five acres.
 - (b) The capacity-to-land ratio of the home does not exceed 10 beds per acre.
 - (c) Off-street parking is provided in compliance with Article VI herein.
 - (d) All buildings are located a minimum of 150 feet from existing public ways.
 - (e) The applicant has received a certificate of need from the Massachusetts Division of Medical Care, Department of Public Health.
 - (f) A perimeter survey has been submitted showing entire tract ownership, all abutting ownership and all existing ways and easements.
 - (g) A topographic plan of the entire site has been submitted by a registered land surveyor showing elevation contours at five-foot intervals and showing all existing structures and vegetative cover masses, such plan to have been compiled by means of on-site survey or approved aerial photographic method.
 - (h) A sketch plan of the proposed development has been submitted showing the density and location of structures, vehicular and pedestrian circulation, roadways and parking, proposed utilities and pertinent vegetation and soil and water conditions.
 - (i) An architectural rendering or sketch has been submitted of any proposed structure.
- (2) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (3) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
 - (4) (Reserved)⁶
 - (5) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- D. Special permit uses. The following uses are permitted as special permit uses in the RC-2 District, provided a special permit is first obtained from the Planning Board:
- (1) Open space residential developments subject to the provisions of § 240-17 herein.
- E. Bulk regulations.

6. Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RC-2	43,560 ²	20	100	20 ³	10	10	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.

² A minimum lot area of 87,120 square feet is required in RPOD Overlay District.

³ One hundred feet along Routes 28 and 132. [Added 10-26-2000]

§ 240-16. RAH Residential District. [Added 11-5-1988 by Art. 9]

A. Principal permitted uses. The following uses are permitted in the RAH District:

- (1) Single-family residential dwelling (detached).
- (2) Affordable single-family residential dwellings subject to the special bulk regulation contained herein. For the purpose of this section the term "affordable" shall mean dwellings sold or leased by a nonprofit corporation and/or governmental agency whose principal purpose is to provide housing to eligible tenants and/or buyers.

B. Conditional uses. The following uses are permitted as conditional uses in the RAH District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) (Reserved)⁷
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

C. Special permit uses. The following uses are permitted as special permit uses in the RAH District, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § 240-17 herein.

D. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RAH	43,560	125	—	30	15	15	30 ¹
RAH	10,000 ^{2,3}	20	75	30	15	15	30 ¹

7. Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.

- ¹ Or 2 1/2 stories, whichever is lesser.
- ² Provided that each dwelling is connected to the municipal sewage collection system when the site is located in a Groundwater Protection Overlay District.
- ³ As an alternative to individual lots, more than one single-family dwelling may be constructed on a lot, provided that the area of any such lot shall contain not less than 10,000 square feet of contiguous upland for each single-family dwelling constructed. When more than one single-family dwelling is constructed on a lot said dwelling shall be at least 30 feet apart.

§ 240-16.1. MAH Residential District. [Added 2-28-2008 by Order No. 2008-077; amended 1-20-2011 by Order No. 2011-039]

- A. Purpose. The purpose of this section is to authorize by special permit privately initiated affordable housing by for-profit or not-for-profit organizations that:
 - (1) Provide for residential development in a manner that is consistent with existing neighborhood development in terms of density and housing types; and
 - (2) Authorize an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide housing for persons of low or moderate income.
- B. Principal permitted uses. The following uses are permitted in the MAH District:
 - (1) Single-family residential dwelling (detached).
- C. Special permit uses. For the purposes of this section, the Planning Board shall be the special permit granting authority. The following uses are permitted as conditional uses in the MAH District, provided that a special permit is first obtained from the Planning Board subject to the provisions of § 240-125C herein and subject to the specific standards for such special permit uses as required in this section:
 - (1) Multifamily affordable housing developments connected to the municipal sewage collection system.
- D. Bulk regulations.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks ¹ (feet)			Maximum Building Height ² (feet)
				Front	Side	Rear	
MAH	87,120	200	—	60	30	30	30

NOTES:

- ¹ For developments within an existing structure previously used as a nursing or convalescent home, yard setbacks shall be the setback to the existing building footprint or the setbacks stated above, whichever is less.
- ² Height shall be measured from the grade plane to the plate.

- E. Density requirements. The total number of residential units allowable within a multifamily affordable housing development shall not exceed eight per acre of upland; provided, however, that within the redevelopment of an existing structure previously used as a nursing home or convalescent home which is 100% affordable, the total number of residential units allowable shall not exceed 16 per acre of upland.
- F. Affordable units. At least 25% of the dwelling units shall be affordable units, subject to the following conditions:
- (1) All affordable units shall remain affordable, as defined herein, in perpetuity. A use restriction shall assure this condition. The use restriction shall be structured to survive any and all foreclosures.
 - (2) The continuing enforcement of the use restriction through subsequent resale of the affordable units shall be the subject of a monitoring agreement.
 - (3) The use restriction and the monitoring agreement shall be drafted in compliance with the Local Initiative Program (LIP), and guidelines promulgated thereunder. The use restriction and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by the Town Attorney's office prior to the issuance of any building permits for any dwelling unit.
 - (4) The affordable unit shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI).
 - (5) A right of first refusal upon the transfer of such affordable units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.
 - (6) Affordable units shall not be segregated within the MAHD. The affordable units shall satisfy the design and construction standards and guidelines of the Local Initiative Program with regard to distinguishability from market rate units (with the exception that development under this section providing off-site inclusionary housing in conjunction with a senior continuing care retirement community shall not be required to provide services offered within the senior continuing care facility). It is the intent of this section that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.
 - (7) Where the Planning Board finds that an applicant for a special permit under § 240-29 of the SCCRCOD (Senior Continuing Care Retirement Community Overlay District) can satisfy its inclusionary requirement under Chapter 9 by providing off-site, affordable units, affordable units created under this section may be used to fulfill this off-site inclusionary requirement.
 - (8) Affordable units shall obtain occupancy permits issued at the rate of one affordable unit for every four market rate units. When the multifamily affordable housing development is proposed to satisfy the inclusionary requirements for a senior continuing care retirement community, phasing shall be as determined by the SPGA.

- (9) In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result of this computation shall be the number of affordable units required to be built within the MAHD. Affordable units shall only be located within any development permitted under this provision. This standard is not subject to variance.
 - (10) No occupancy permit shall be granted unless the affordable dwelling units have been approved by the DHCD as eligible for the Affordable Housing Inventory under the Local Initiative Program (LIP) Guidelines.
 - (11) When a multifamily affordable housing development is proposed to satisfy the inclusionary requirements for a senior continuing care retirement community proposed or permitted under the provision of § 240-29 of this Code, such multifamily units shall not be required to provide an additional 10% of inclusionary units as a result of the multifamily affordable housing development but shall at a minimum provide the number of affordable units required by § 240-29 of this Code.
- G. Decision. The Planning Board may grant a special permit for a MAHD where it makes the following findings:
- (1) The proposed MAHD complies with all applicable subdivision rules unless otherwise waived by the Board.
 - (2) The proposed MAHD complies with the Zoning Ordinance and the requirements of this section.
 - (3) The proposed MAHD provides affordable units consistent with the requirements set forth herein.
 - (4) The proposed MAHD does not cause substantial detriment to the neighborhood.
- H. Relation to other requirements. The submittals and special permit required herein shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.
- I. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE UNIT — A dwelling unit reserved in perpetuity for rental or ownership by a qualified affordable housing unit purchaser or tenant as defined under § 9.2 of the Code, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for ownership units set forth in the Local Initiative Program Guidelines, in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.

APPLICANT — The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit for construction of a private-initiated affordable housing development (MAHD) hereunder. The applicant must own or be the beneficial owner of all the land included in the proposed MAHD, or have authority from the owner(s) to act for the owner(s) or hold an option or contract duly executed by the

owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

MULTIFAMILY AFFORDABLE HOUSING DEVELOPMENT (MAHD) — A development of multifamily residential dwelling(s), including required affordable units and permissible accessory structures, authorized by special permit from the Planning Board as set forth herein.

NURSING OR CONVALESCENT HOME — Any dwelling or building with sleeping rooms for people who are housed or lodged with meals and nursing care for hire, as licensed by the Massachusetts Department of Public Health under MGL c. 111, § 71, as amended.

USE RESTRICTION — A restriction ensuring the continued affordability of a dwelling unit. A use restriction is a deed restriction or other legally binding instrument in a form consistent with Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) guidelines which runs with the land and is recorded with the relevant registry of deeds or land court registry district, and which effectively restricts the occupancy of a low- or moderate-income housing unit to income eligible households during the term of affordability. A use restriction shall contain terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent. A use restriction shall require that tenants of rental units and owners of homeownership units shall occupy the units as their principal residences.

§ 240-17. Open space residential development. [Amended 11-7-1987 by Art. 4; 6-17-1999]

- A. Purpose. This section has been established to permit a variation in development styles with efficient provision of roads and utilities; and to provide for the public interest by the preservation of open space in perpetuity, for protection of both natural resources and visual character of the land.
- B. Application. An open space residential development is permitted in all residential districts by special permit from the Planning Board.
- C. Minimum area. A minimum area shall be required sufficient to accommodate no less than four dwelling units based on all the requirements of the zoning district in which the development is located.
- D. Permitted uses. The following uses are permitted in an open space residential development:
 - (1) Detached single-family dwellings and permitted accessory uses, including a cluster unit wastewater treatment facility.
 - (2) Common open space, preserved as such in perpetuity.
 - (3) Recreational facilities and activities exclusively for use by residents of an open space residential development, as approved by the Planning Board.

- E. Density requirements. The total number of residential units allowable within an open space residential development shall not exceed the number of units that would be allowed in the zoning district in which the site is located. The total number of units allowed shall be determined by submission of a preliminary grid sketch plan in accordance with Subsection M(1) herein, showing the total number of developable lots which could be obtained by utilizing a conventional grid subdivision, in conformance with all the zoning district area requirements, and with legal access over the road providing frontage. Lots on the preliminary plan which are not practically buildable because of impediments to development, such as slope in excess of 15%, utility

easements, impervious soils, high groundwater or the location of wetlands, shall not be countable towards the number of developable lots, except that this provision may be waived for a development which is 100% affordable. For the purposes of this section, "affordable" shall mean dwellings sold or leased by a nonprofit corporation and/or government agency whose principal purpose is to provide housing to eligible tenants and/or buyers. Such housing shall remain affordable in perpetuity.

- F. Bulk regulations. The Planning Board may grant a reduction of the bulk regulations, provided that in no instance shall any lot contain less 15,000 square feet or have less than 20 feet of frontage, a front yard setback of not less than 20 feet, and side and rear setbacks of not less than 12 feet. The minimum lot size may be further decreased by the Planning Board for a development which is 100% affordable, as defined in Subsection C above. No lot shall be panhandled more than two lots from a roadway, and panhandled lots shall only be permitted where the Planning Board finds that safe and adequate access is provided to the rear lot. As a condition of approval of the special permit, the developer shall submit evidence to the Planning Board of recorded easements, to assure access to joint driveways, where shown on the definitive subdivision plan.
- G. Soils. The nature of the soils and subsoils shall be suitable for the construction of roads and buildings. The Planning Board may require that soil borings or test pits be made on each lot as shown on the preliminary sketch plan, when borings required pursuant to the Subdivision Rules and Regulations,⁸ or the USDA, Soil Conservation Service maps indicate soils which may not be suitable for development. Soil borings if required, shall indicate soil texture, percolation rates and depth to the ground water table at its maximum elevation, in order to determine the buildability of each lot. Maximum groundwater elevation shall be determined using data available from the US Geological Survey publication "Probable High Ground Water Levels on Cape Cod."
- H. Wastewater.
- (1) The development shall be connected to Town sewer, or shall comply with the provisions of 310 CMR 15.00, of the State Environmental Code (Title 5) and the on-site wastewater disposal regulations of the Board of Health.⁹ No on-site sewage disposal leaching field systems shall be located within 150 feet from any wetland or surface water body, and where possible, located outside a riverfront area as defined according to 310 CMR 10.58, Riverfront Area. In no instance shall an open space residential development be approved which requires a variance to be granted from Title 5 of the State Environmental Code, or on-site sewage disposal regulations of the Board of Health with regard to depth to groundwater, distance to wetlands, buildings or public or private water supply wells. Such Board of Health variance shall render the special permit void as it pertains to the lot or lots affected.
 - (2) Based only upon recommendation by the Board of Health pursuant to MGL Ch. 41, § 81U, that lots in the development be connected to a clustered unit wastewater

8. Editor's Note: See Ch. 801, Subdivision Rules and Regulations.

9. Editor's Note: See 360, On-Site Sewage Disposal Systems.

system, with or without nutrient removal, the Planning Board shall incorporate such requirement into a decision of approval, as a condition of that approval.

- (3) The clustered unit wastewater system shall be located as far as possible from any sensitive environmental receptor, such as public or private wells, wetlands or water bodies, vernal pools, and rare and endangered species habitats.
- (4) A clustered unit wastewater system location, design, maintenance, repair and operation is specifically subject to approval by the Board of Health as a condition of approval of the open space residential development.
- (5) Where the common open space is to be owned by the homeowners, a clustered unit wastewater system shall be located on a common open space lot, shown on the definitive plan and labeled as such. Where the common open space is to be deeded to the Town or to a nonprofit corporation pursuant to Subsection M(2)(b) below, a clustered unit wastewater system shall be located upon a separate lot and owned by a corporation or trust, owned or to be owned, by the owners of lots or residential units within the development. Undivided interest in the wastewater treatment facility and the lot on which it is located shall pass with the conveyance of each building lot, or unit. The trust or corporation documents ensuring common ownership and management of the facility by the homeowners shall be submitted to the Planning Board with the definitive subdivision plan; and submitted to the Board of Health at the time of application of the definitive plan to the Planning Board.
- (6) The homeowners corporation or trust shall be responsible for the operation, maintenance, repair and eventual replacement of the wastewater treatment facility, in accordance with all federal, state, Cape Cod Commission and Board of Health requirements, as a condition of approval of the open space residential development special permit.

I. Water supply.

- (1) Public water supply shall ordinarily be required in open space residential developments, unless the applicant demonstrates that it cannot reasonably be made available to the site.
- (2) In areas dependent upon private wells, a special permit for an open space residential development shall only be granted upon recommendation from the Board of Health, pursuant to MGL Ch. 41, § 81U, with the finding that contamination of private wells both on site and off site, will not occur, either because the development has been designed with sufficient distance between private wells, septic systems and drainage facilities, or because the applicant is providing an appropriately located clustered unit wastewater system.
- (3) No variance shall be granted from Board of Health, well and on-site sewage disposal regulations, to waive the minimum separation distance between a public or private well and septic system, either on site or off site.

J. Floodplains.

- (1) No developable lots or roads shall be located on barrier beaches and coastal dunes as defined by the Wetlands Policy Act, or within the FEMA V Zones.
 - (2) Filling, dredging and placement of utilities or structures within the one-hundred-year floodplain, as shown on the current National Flood Insurance Rate Maps, shall be avoided and development concentrated outside the A and B Flood Zones to the maximum extent feasible. If site conditions are such that compliance with this subsection would be impracticable, such activities may be allowed in conformity with § 240-34 herein.
- K. Preservation of site topographic features. The subdivision design shall preserve and enhance the natural topography of the land by locating roads and building sites in relationship to the existing topography so as to minimize the amount of land clearance, grading, and cuts and fills.
- L. Open space use, design and maintenance standards. Within an open space residential development, the balance of the area requirement for lot size shall be provided in common open space, designated as an open space lot or lots on the subdivision plan. The common open space shall be used, designed, and maintained in accordance with the following standards:
- (1) As a condition of approval of the special permit, open space shall be retained as such, in perpetuity, and not built upon or developed, except as permitted by the Planning Board pursuant to Subsection L(5) below.
 - (2) A minimum of 50% of the total upland area of the development shall be devoted to common open space, except that 60% shall be required where the minimum lot size of the zoning district exceeds one acre. Land set aside for roads, appurtenant drainage systems, and/or parking uses shall not be included in the percentage calculation of open space. The lot, or portion of an open space lot containing a clustered unit wastewater system, may be included in the open space minimum percentage requirement.
 - (3) Open space land shall be designed as a large contiguous lot or lots. Strips or narrow parcels of common open space shall be permitted only when necessary for access or for walking trails, including linkages to adjacent trails. Open space shall be located so as to provide maximum protection to the environmental resources of the site and of adjacent lands. Priority natural resources areas are as follows and shall include but not be limited to the following areas:
 - (a) WP and GP Groundwater Protection Overlay Districts, as shown on the most current Groundwater Protection Overlay District Map, adopted as part of this chapter;
 - (b) Three-hundred-foot buffer zones to freshwater bodies and vernal pools; and two-hundred-foot riverfront buffer areas and vernal pools as defined according to 310 CMR 10.58;
 - (c) Critical and significant habitats as determined from the following sources: Cape Cod Critical Habitats Atlas, APCC, 1990; Cape Cod Wildlife

Conservation Project, significant habitat maps, prepared by the Compact of Cape Cod Conservation Trusts Inc.; and any other town or county significant resource habitat maps;

- (d) FEMA V, A and B Flood Zones as shown on the current National flood Insurance Rate Maps;
 - (e) Wetland and coastal habitats;
 - (f) Private supply wells;
 - (g) Adjacent open space; and historic structures and archeological sites.
- (4) Open space may also be used to provide a buffer from roadways, to protect steep slopes from development activities, and to preserve a scenic corridor along roadways. The Planning Board in approving an open space residential development shall take into consideration any report from the Planning Department, Conservation Department or Conservation Commission relative to the location and design of the open space lot or lots.
- (5) Common open space shall be maintained in an open and natural condition, without clearing, predominantly in its present condition, for the protection of natural habitats, except as permitted by the Planning Board as follows:
- (a) Where the open space is to be owned by corporation or trust of homeowners, a maximum of 10% of the common open space may be developed for common recreational facilities. The location and type of recreational facilities shall be shown on the definitive open space subdivision plan. A minimum setback of 50 feet shall be provided between any common open space structure and adjacent lots.
 - (b) Naturally existing woods, fields, meadows and wetlands should be maintained and improved in accordance with good conservation practices. The Planning Board shall require submission of a maintenance plan where improvements to, or on-going maintenance, would enhance the open space lot or lots.
 - (c) Subject to approval of a management plan by the Planning Board, the following may be permitted: farming, agriculture, horticulture, silviculture, and the harvesting of crops, flowers and hay.
 - (d) The construction and maintenance of fences around the perimeter of the open space.
 - (e) The creation of unpaved walking paths, horseback riding trails or jogging paths for recreational use.
 - (f) The Planning Board may permit utility tie ins across open space, by an easement shown on the subdivision plan. Clearing should be no more than 10 feet in width, and the land promptly restored after installation. The

Engineering Division of DPW shall be notified prior to the commencement of any clearance for utilities across open space.

- (6) In cases where the open space has been environmentally damaged prior to the completion of the development as a result of land clearance, grading, soil removal, excavation, harvesting of trees, refuse disposal, structures, or any other activity deemed inappropriate with the proposed uses of the common open space, the Planning Board may require the developer to restore or improve the condition and appearance of the common open space, and may require the posting of security, in a form and amount to be determined by the Planning Board, to ensure such restoration or improvement.

M. Common open space ownership and management.

- (1) The applicant for approval of an open space residential development special permit shall demonstrate to the Planning Board ownership and control of the open space. The Planning Board may require title insurance to the open space.
- (2) Upon approval by the Planning Board of the development concept, and subject to acceptance by the Town Council, the common open space shall be conveyed to and owned by one or more of the following entities:
 - (a) A nonprofit corporation, the principle purpose of which is the preservation of open space.
 - (b) A corporation or trust, owned or to be owned, by the owners of lots or residential units within the development. Undivided interest in the open space lot or lots shall pass with the conveyance of each building lot or unit.
 - (c) The Town for conservation purposes, or for a park in areas suitable for such purpose. No open space lot or lots shall be deeded to the Town without acceptance of the land by the Town Council and/or Town Manager, taking into consideration an advisory opinion of the Planning Board, Planning Department, Conservation Commission and/or Conservation Department, local or regional historic district and Historic Commission.
- (3) In those cases where the common open space is not conveyed to the Town, a restriction enforceable by the Town by Form 1A¹⁰ shall be recorded, provided that such land shall be kept in open and in a natural state and not built upon for residential use or developed for accessory uses such as parking or roadways. The applicant shall provide an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the maintenance program, provided that, if the Town is required to perform any maintenance work, the owners of lots or units within the open space residential development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid. Form 1A shall be fully executed and recorded with the development permits and approved subdivision plan.

10. Editor's Note: Form 1A can be found at the end of Chapter 801, Subdivision Rules and Regulations.

- (4) In addition to the common open space required herein, the Planning Board may require that a developable lot or lots shall be set aside for the purpose of creating additional open space or recreational areas, pursuant to MGL Ch. 41, § 81U, for a period of not more than three years, during which time no clearing of the land or building shall be erected without approval of the Planning Board. Any such condition of approval shall be endorsed upon the definitive subdivision open space residential development plan.

N. Review procedures.

- (1) Prior to any application for an open space residential development, no land clearance, grading, cuts, fills, excavation, ditching, or utility installations shall occur, except for purposes of soil testing in accordance with all the requirements of the Subdivision Rules and Regulations,¹¹ on any part of the development site prior to development application submission and approval as provided for herein. Commencement of land clearance or grading of the land for the construction of access or development of lots prior to application may be grounds for denial of the special permit by the Planning Board.
- (2) An application for an open space residential development special permit shall be submitted in conformity with the requirements and procedures for submission and review under the Subdivision Rules and Regulations of the Planning Board, and the following additional requirements in Subsection O below.

O. Preliminary plan requirements.

- (1) Applicants shall submit a preliminary plan to the Planning Board and the Board of Health prior to filing a formal special permit application, in order to obtain a consensus regarding the suitability of the open space residential development general design concepts, and to determine allowable density prior to submission of special permit application and definitive subdivision plan. In addition to the materials required for submission of a preliminary plan under the Subdivision Rules and Regulations, the preliminary materials shall include the following:
 - (a) Nine copies of a preliminary grid sketch plan, to demonstrate the number of buildable lots that can be obtained in conformance with the area requirements of the zoning district, and all the requirements of the Subdivision Rules and Regulations. Topographic information may be obtained from Information Technology, GIS unit.
 - (b) Two copies of the following maps for the development site as follows:
 - [1] USDA Natural Resources soil survey, maps and soil descriptions regarding the nature of the soils within the proposed development. The location of all test pit and soil logs shall be shown on the topographic plan, and soil log descriptions submitted to both the Planning Board and Engineering Division of DPW.

11. Editor's Note: See Ch. 801, Subdivision Rules and Regulations.

- [2] Cape Cod Critical Habitats Atlas, APCC, 1990; Cape Cod Wildlife Conservation Project, significant habitat maps, prepared by the Compact of Cape Cod Conservation Trusts Inc.; and any other Town or county resource habitat maps; when these documents indicate critical or significant habitats on, or adjacent to the site.
- (c) Nine copies of the proposed preliminary open space residential development plan showing the location and dimensions of all building lots, the location of open space lot or lots, the location and use of any common facilities or structures, including any proposed clustered unit wastewater system, and/or recreational facilities, the location of all ways and easements, private water supply wells within the site, and public and private water supply wells on adjacent properties, and such other improvements as may be proposed.
- (d) A description of the proposed uses of the common open space and the preferred form of ownership and maintenance thereof.
- (e) The Planning Board shall notify all abutters within 300 feet of the perimeter of the subdivision of the date, time and place that the preliminary plan will be considered, in order to receive input on the overall plan design, prior to application for the special permit and definitive plan approval.
- (2) Within 45 days after the receipt of a complete preliminary plan application as specified herein, the Planning Board shall give its approval, with or without modifications, or shall disapprove the proposal stating its reasons. The Town Clerk shall be notified in writing of such action. Preliminary approval for an open space residential development shall be valid for a period of six months.

P. Definitive application.

- (1) Applicants for a special permit for open space residential development shall, at the time of filing the application, submit a definitive subdivision open space residential development plan in conformity with § 240-17 herein, and the Subdivision Rules and Regulations of the Planning Board.¹² The plan shall be derived from the approved preliminary concept plan required above. In addition to the materials required for submission of a definitive subdivision plan, the applicant shall submit documents signed by all owners and applicants as follows: deed of open space lot or lots to the Town, to a corporation, trust of homeowners, or to a nonprofit conservation organization; the corporation or trust documents; and Form 1A where applicable.¹³
- (2) The definitive development plan shall show the location of a cluster unit wastewater system or recreational facilities, if any.
- (3) The definitive plan shall indicate the limit of clearing along roadways, within both building lots and the open space lot or lots, and around any commonly owned facilities.

12. Editor's Note: See Ch. 801, Subdivision Rules and Regulations.

13. Editor's Note: Form 1A is included at the end of Ch. 801, Subdivision Rules and Regulations.

- (4) A maintenance plan for the open space lot or lots shall be submitted where required.
- (5) A note shall appear on the plan to the effect that "No lot as shown on this plan and approved in accordance with the open space residential development provisions of the Zoning Ordinance of the Town of Barnstable shall be further divided."
- (6) Upon receipt of an open space residential development application, the Planning Board shall proceed as with applications for special permits under MGL Ch. 40A. Hearings on an application for a special permit under this section shall be held simultaneously with definitive subdivision plan review hearings.

Q. Approved open space residential developments.

- (1) Within 30 days of the Planning Board's endorsement of approval of the subdivision plan, the applicant shall record the plan, together with the following documents: the decision of the Planning Board; the deed of open space to the Town, or to a trust or corporation, or to a nonprofit conservation organization; Form 1A; the trust or corporation documents; as well as development agreements and covenants required under the Subdivision Rules and Regulations. Failure to comply with this provision shall result in the Planning Board approval being considered null and void. Upon application to the Planning Board, the Board may extend the thirty-day recordation period for good cause.
- (2) Period of validity: The provisions of § 240-125C(3) shall apply. **[Amended 5-7-2009 by Order No. 2009-077]**
- (3) A request to modify the open space residential development subdivision plan requiring a change in the configuration of the open space, or the road right-of-way shall require a duly noticed public hearing and notification of all parties in interest, pursuant to MGL Ch. 40A, § 15. The Planning Board shall decide whether or not the addition of recreational facilities or a change in location of such facilities shall constitute a modification of the approved plan. If lots have been conveyed out on an individual basis, the applicant for a modification of the special permit and/or installation of recreational facilities shall provide the Planning Board with evidence of the power to act upon the behalf of the corporation or trust of owners of the open space.

R. An application for endorsement of approval-not-required plans to adjust lot lines between abutting lot owners, not involving open space lot lines or road right-of-way lines, shall not be considered a modification of the subdivision, or require notice to owners or abutters, provided that such plan and building locations comply with all the requirements of § 240-17 herein.

§ 240-17.1. Private-initiated affordable housing development. [Added 11-18-2004 by Order No. 2004-114]

A. Purpose. The purpose of this section is to authorize by special permit privately initiated affordable housing by for-profit or not-for-profit organizations that:

- (1) Provide for residential development in a manner that is consistent with existing neighborhood development in terms of density and housing types; and
- (2) Authorize an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide housing for persons of low or moderate income.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE UNIT — A dwelling unit reserved in perpetuity for ownership by a household earning less than 80% of area median family income, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for ownership units set forth in 760 CMR 45.03(4), in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.

APPLICANT — The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit for construction of a private-initiated affordable housing development (PI-AHD) hereunder. The applicant must own, or be the beneficial owner of, all the land included in the proposed PI-AHD, or have authority from the owner(s) to act for the owner(s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

BEDROOM — A separate room within a dwelling unit intended for, or which customarily could be used for, sleeping.

PRIVATE INITIATED AFFORDABLE HOUSING DEVELOPMENT (PI-AHD) — A development of single-family residential dwellings (detached), including required affordable units, and permissible accessory structures on seven acres or more authorized by special permit from the Planning Board as set forth herein.

C. Application.

- (1) An application for a special permit for a PI-AHD shall be submitted to the Planning Board on forms furnished by the Planning Board, accompanied by the following:
 - (a) Information pertaining to any association which the applicant proposes to form for the private management of the PI-AHD.
 - (b) Copies of all proposed documents as required for the subdivision, including architectural rendering and layouts of proposed homes to be built and landscaping plans.

- (c) Copies of proposed deed restrictions and monitoring agreements, drafted consistent with all requirements of 760 CMR 45 Local Initiative Program (LIP), and guidelines promulgated thereunder assuring the affordable units remain affordable in perpetuity, and assuring the resale of affordable units at the restricted price, and providing a right of first refusal in favor of the Town.
 - (2) Copies of the application and accompanying materials shall be transmitted forthwith to the Barnstable Housing Committee for review and comment. Said Committee shall have 45 days after receipt thereof to make written recommendations to the Planning Board. Failure to make such written recommendation shall be deemed a lack of opposition thereto.
- D. Standards. In order to be eligible for consideration for a special permit, the proposed PI-AHD shall meet all of the following standards:
- (1) Qualifying area. The site shall be located entirely within the RC-1 Zoning District and shall contain at least seven contiguous upland acres.
 - (2) Compliance with applicable regulations and standards. All plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.¹⁴
 - (3) Wastewater. All dwellings within the PI-AHD shall be connected to the municipal wastewater treatment facility.
 - (4) Lot shape factor. The numerical lot shape factor as required in § 240-7D of the Zoning Ordinance shall not apply. However no panhandled lot shall be created to a depth greater than two lots from the principal way.
 - (5) Bulk regulations. For all lots and building within the PI-AHD, the following bulk regulations shall apply:

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
			Front	Side	Rear	
10,000	50; 20 for a lot on the radius of a cul-de-sac	65 ⁽¹⁾	15 ⁽³⁾	10 ⁽⁴⁾	20 ⁽⁴⁾	30 ⁽⁵⁾

Notes:

- (1) The Planning Board may grant a waiver to the lot width requirement to individual lots located on the radius of a cul-de-sac, provided that the grant of the waiver will result in a proper alignment of the home to the street.
- (2) Accessory structures that require a building permit shall be required to conform to all setback requirements.
- (3) Accessory garages, whether attached or detached, shall require a minimum front yard setback of 20 feet.
- (4) The Planning Board may require a planted buffer area within any required rear or side yard setback area.
- (5) Or 2 1/2 stories, whichever is less.

14. Editor's Note: See Ch. 801, Subdivision Regulations.

- (6) Parking. A minimum of two on-site parking spaces per dwelling unit shall be provided. A one-car garage shall count as one parking space. A two-car garage shall count as two parking spaces.
 - (7) Phasing. The applicant, as part of the application for subdivision approval, may propose a phasing plan identifying the number of building permits requested to be issued in each year of the phasing plan. The Planning Board, upon a finding of good cause, may vary the provisions of § 240-114A and B and § 240-115B(1) through (3) herein and allow for the allocation to the applicant of the number of building permits proposed in the phasing plan or any different number that the Planning Board deems appropriate, provided that, at the time of the granting of the special permit, the determined number of building permits are available and that no more than 1/4 of each year's allocation under § 240-114A and B shall be allocated to the applicant. Every permit allocated to the applicant by the Planning Board shall be included as part of the yearly building permit allocations under § 240-114A and B. There shall be no extension of a building permit granted under a phasing plan, and any unused and/or expired permits shall be credited back as part of the adjustments under § 240-114D for the next calendar year.
 - (8) Visitability. The Planning Board may require that some or all of the dwelling units provide access for visitors in accordance with the recommendations of the Barnstable Housing Committee.
- E. Affordable units. At least 20% of the dwelling units shall be affordable units, subject to the following conditions:
- (1) The affordable unit shall be affordable in perpetuity. A deed rider shall assure this condition. The deed rider shall be structured to survive any and all foreclosures.
 - (2) The continuing enforcement of the deed rider through subsequent resale of the affordable units shall be the subject of a monitoring agreement.
 - (3) The deed rider and the monitoring agreement shall be drafted in compliance with 760 CMR 45.00 Local Initiative Program (LIP) and guidelines promulgated thereunder. The deed rider and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by the Town Attorney's office prior to the issuance of a certificate of occupancy for any dwelling unit.
 - (4) The affordable unit shall conform to the standards of the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Subsidized Housing Inventory.
 - (5) A right of first refusal upon the transfer of such affordable units shall be granted to the Town or its designee for a period not less than 120 days after notice thereof.
 - (6) The affordable units shall not be segregated within the PI-AHD. The affordable units shall satisfy the design and construction standards and guidelines of the Local Initiative Program, 760 CMR 45.00, with regard to distinguishability from market

rate units. It is the intent of this section that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.

- (7) The affordable units shall be constructed and occupancy permits issued at the rate of one affordable unit for every four market rate units.
 - (8) In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result shall be the number of affordable units to be built within the PI-AHD and not off site.
 - (9) No special permit shall be granted unless the affordable dwelling units have been approved by the DHCD as eligible for the Affordable Housing Inventory under 760 CMR 45.00, the LIP Program.
- F. Decision. The Planning Board may grant a special permit for a PI-AHD where it makes the following findings:
- (1) The proposed PI-AHD complies with all applicable Subdivision Rules and Regulations, the Zoning Ordinance and the requirements of this section except as they may be waived by the Board;
 - (2) The proposed PI-AHD provides affordable units consistent with the requirements set forth herein;
 - (3) The proposed PI-AHD does not cause substantial detriment to the neighborhood.
- G. Relation to other requirements. The submittals and special permit required herein shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.

§ 240-18. (Reserved) ¹⁵

§ 240-19. (Reserved) ¹⁶

§ 240-20. West Barnstable Village Business District. ¹⁷

- A. Purpose and intent. The purposes and intent of this section is to guide development and redevelopment in West Barnstable Village Business District so that it:
- (1) Promotes a location-appropriate scale and traditional mix of business, institutional and residential land uses that contribute to and respect the historic character and historic neighborhood development patterns.

15. Editor's Note: Former § 240-18, PR Professional Residential District, as amended, was repealed 7-14-2005 by Order No. 2005-100.

16. Editor's Note: Former § 240-19, OR Office Residential District, as amended, was repealed 7-14-2005 by Order No. 2005-100.

17. Editor's Note: Former § 240-20, O-1, O-2 and O-3 Office Districts, as amended, was repealed 7-14-2005 by Order No. 2005-100.

- (2) Acknowledges the historic context of the village and preserves or enhances historic buildings or other historic resources.
 - (3) Protects and preserves the historic and scenic streetscape.
 - (4) Provides a variety of functions that support residents' day-to-day use of the district.
 - (5) Supports and enhances the diverse local economy and retains established village goods and service offerings.
 - (6) Preserves and protects the traditional New England village character of West Barnstable through architectural design that replicates in scale and character the best examples of traditional neighborhood design from the historic towns and villages of Cape Cod and New England to enhance the aesthetic quality of Barnstable as a whole.
 - (7) Conforms with the Old Kings Highway Regional Historic District Act.
 - (8) Is consistent with the Barnstable Comprehensive Plan and the West Barnstable Village Plan.
- B. The following uses are permitted in the WBVBD, provided that no operation shall result in the treatment, generation, storage or disposal of hazardous materials, except as follows: household quantities; waste oil retention facilities for small-scale retailers of motor oil required and operated in compliance with MGL c. 21 § 52A; oil on site for heating of a structure or to supply an emergency generator.
- (1) Principal permitted uses.
 - (a) Single-family residential dwelling. A single-family residential dwelling may be freestanding or attached to a building also used for nonresidential uses. More than one single-family residential dwelling per lot is permitted as long as there is a minimum of one acre per single-family dwelling, but in no case will more than one principal permitted single-family residential dwelling be contained in any one building.
 - (b) Small-scale retail store.
 - (c) Professional, business or medical office.
 - (d) Office of a bank, credit union, savings and loan or other financial institution.
 - (2) Accessory uses. The following uses are permitted as accessory uses in the WBVBD:
 - (a) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6) except Subsection C(6)(b)[1] and [2]. No more than three total rooms shall be rented to not more than six total guests at any one time in the WBVBD. No special permit shall be required in the WBVBD. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.

- (b) Automated banking facilities (ATM) shall be located within a principal building and shall not be accessed from the exterior of the building.
 - (c) Accessory apartments as provided for in the Town of Barnstable Code, Chapter 9, Affordable Housing, Article II, Accessory Apartments and Apartment Units.
- (3) Special permit uses. The following uses are permitted, provided that a special permit is first obtained from the Special Permit Granting Authority (SPGA) subject to the provisions of § 240-125C herein and subject to the specific standards for such uses as required in this section:
- (a) Artisans and craftspeople.
 - (b) Personal service business.
 - (c) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy subject to the provisions of § 240-44.1.
- (4) Special permit performance standards. In addition to the standards for the grant of a special permit set forth in § 240-125C, the grant of any special permit within the WBVBD requires findings to support that the development meets the following criteria:
- (a) Is compatible with and supports the purpose and intent of this section.
 - (b) Mitigates impacts to safety and congestion from development.
 - (c) Protects and preserves water supply for both drinking water and fire protection.
 - (d) Stormwater shall be contained on site and mitigated using best management practices.
 - (e) Manages waste, by-products and other debris that may be associated with artisan and craft use in a manner compatible with abutting or nearby residential uses.
 - (f) Does not generate noise, vibration, smoke, dust or other particulate matter, odors, heat, glare or intrude with similar nuisance on abutting or nearby residential uses.
 - (g) Storage of all raw material and finished product associated with artisan or craft use shall be stored within a duly permitted permanent structure. All outdoor storage associated with artisan or craft use is prohibited.
 - (h) Deliveries may take place not sooner than one hour before, or later than one hour after the permitted operating hours of a business.
 - (i) Vehicles are prohibited from running motors, refrigeration units or other mechanical units outside of permitted hours of operation.
- (5) Bulk regulations.

Minimum Lot Area (square feet)	Minimum Yard Setbacks					Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Front ³ (feet)	Side (feet)	Rear (feet)		
43,560	160	—	30	30	30	30 ¹	10 ²

NOTES:

¹ Or two stories, whichever is lesser

² No more than 33% of the total upland area of any lot shall be made impervious by the installation of buildings, structures and paved surfaces.

³ Front yard landscaped setback from the road lot line: 20 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- (6) Nonconforming use limitations. Within the WBVBD the change of a nonconforming use to another nonconforming use is prohibited notwithstanding the provisions of § 240-94A. A nonconforming use shall only be permitted to change to a principal permitted use as of right or to a special permit use as provided for by the grant of a special permit pursuant to § 240-20B(3) and (4) herein.
- (7) Corporate branding. Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. All structures and sites shall be designed to include architectural and design elements that are consistent with the WBVBD architectural composition, character, and historic context. Interior corporate branding elements shall not be visible to the street through windows, doors or by any other means. The Town will work with applicants to adapt critical functional features of prototype plans to their sites, but will not accept standard plans, building forms, elevations, materials, or colors that do not relate to the site, adjacent development or West Barnstable community character.
- (8) Site development standards. In addition to Article IX, Site Plan Review, and Article VI, Off-Street Parking, the following additional requirements shall apply within the WBVBD.
 - (a) Loading docks. Loading docks shall be screened from Meetinghouse Way (Route 149), Main Street (Route 6A), Lombard Avenue, Navigation Road, Packet Landing Road and Whitecap Lane with landscaping or fencing materials of an appropriate scale.
 - (b) To the greatest extent feasible, all new parking areas shall be located to the side and rear of the building. Parking is not permitted in the required front yard setback with the exception of parking required by ADA compliance as determined by the Building Commissioner.
 - (c) Curb cuts and driveways.

- [1] Shared driveways and parking area interconnections are strongly encouraged. No more than one curb cut on Meetinghouse Way (Route 149, Main Street (Route 6A), Lombard Avenue, Packet Landing Road, Navigation Road and Whitecap Lane shall be allowed for any lot. For traffic safety and to reduce traffic congestion, no new driveways shall be permitted on Route 149, Route 6A, Lombard Avenue and Whitecap Lane within 200 feet of any intersection.
- [2] Driveways shall not exceed the width required by site plan review.
- (d) Lighting. In no case shall exterior or outdoor lighting cause glare that impacts motorists, pedestrians or neighboring premises.
 - [1] All exterior lighting shall use full cutoff light fixtures in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
 - [2] Up-lighting is prohibited.
- (9) Definitions. The following terms are defined in the WBVBD and shall not be construed to apply to other regulations.

ARTISAN OR CRAFTSPERSON USE — A small-scale use that typically employs one or two people who practice craft or artisan activities. A key feature of works produced by artisans or craftspeople is the high degree of manual expertise involved. The use must be compatible with abutting and nearby residential and nonresidential uses. The following is included in the definition of "artisan or craftsman use:"

- (a) **ARTISAN OR CRAFTSPERSON** — A person using manual skills to produce, in limited quantities, ornamental or functional works in ceramic, glass, metal, paper, wood or textiles. Examples include, without limitation, the following: drawing, painting, sculpture, pottery, photography, graphic design, interior design, fashion design, jewelry making, wood turning, glass blowing, furniture making, small wooden boat building, upholstering and weaving.

PERSONAL SERVICE — Establishments engaged in the provision of services, but not goods, of a personal nature to individuals and households. Such establishments include barbershop, beauty salon, clothing repair or seamstress shop, shoe repair shop, florist and day spas. Personal service establishments that are not commonly found in rural village environments such as check cashing services, fortune tellers, psychics, palm readers and similar services, spas and hot tubs for rent, tanning, piercing and similar services are prohibited.

SMALL-SCALE RETAIL STORE — Small stores and businesses, including but not limited to, corner groceries, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers, e.g. gasoline and oil filling stations, garages for automotive repair.

Small-scale retail is subject to corporate branding limitations as described herein and shall not include drive-through window service.

§ 240-21. B, BA and UB Business Districts. [Amended 2-20-1997; 3-11-1999 by Order No. 99-056]

- A. Principal permitted uses. The following uses are permitted in the B, BA and UB Districts:

- (1) Retail and wholesale store/salesroom.
- (2) Retail trade service or shop.
- (3) Office and bank.
- (4) Restaurant and other food establishment.
- (5) Place of business of baker, barber, blacksmith, builder, carpenter, caterer, clothes cleaner or presser, confectioner, contractor, decorator, dressmaker, dyer, electrician, florist, furrier, hairdresser, hand laundry, manicurist, mason, milliner, news dealer, optician, painter, paper hanger, photographer, plumber, printer, publisher, roofer, shoemaker, shoe repairer, shoe shiner, tailor, tinsmith, telephone exchange, telegraph office, undertaker, upholsterer, wheelwright.
- (6) Gasoline and oil filling stations and garages.
- (7) Hotel/motel subject to the provisions of Subsection F herein, except that hotels/motels shall be prohibited in the BA District and prohibited in the Oosterville UB District.
- (8) Any other ordinary business use of a similar nature.
- (9) Multifamily dwellings (apartments) subject to the provisions of Subsection A(9)(a) through (i) herein, except that multifamily dwellings shall be prohibited in the BA District. **[Amended 7-14-2005 by Order No. 2005-100]**
 - (a) The minimum lot area ratio shall be 5,000 square feet of lot area per each apartment unit for new multifamily structures and conversions of existing buildings.
 - (b) The maximum lot coverage shall be 20% of the gross upland area of the lot or combination of lots.
 - (c) The maximum height of a multifamily dwelling shall not exceed three stories or 35 feet, whichever is lesser.
 - (d) The minimum front yard setback shall be 50 feet or three times the building height, whichever is greater.
 - (e) The minimum side and rear yard setbacks shall be not less than the height of the building.
 - (f) A perimeter green space of not less than 20 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway.
 - (g) Off-street parking shall be provided on site at a ratio of 1.5 spaces per each apartment unit and shall be located not less than 30 feet from the base of the multifamily dwelling and be easily accessible from a driveway on the site.
 - (h) No living units shall be constructed or used below ground level.

- (i) The Zoning Board of Appeals may allow by special permit a maximum lot coverage of up to 50% of the gross area of the lot or combination of lots.

- (10) Single-family residential structure (detached), except that single-family residential structures shall not be permitted in the B District.

B. Accessory uses.

- (1) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6) except Subsections (b)[1] and [2]. No more than six total rooms shall be rented to not more than 12 total guests at any one time, and no special permit shall be required. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests. Bed-and-breakfast operations shall not be permitted in the B District.

C. Conditional uses. The following uses are permitted as conditional uses in the B, BA and UB Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:

- (1) Storage yards for coal, oil, junk, lumber or any business requiring use of a railroad siding; such uses being provided for in the B District only.
- (2) A building or place for recreation or amusement but not to include a use which is principally the operation of coin-operated amusement devices; such uses being provided for in the B District only.
- (3) Any manufacturing use; such uses being provided for in the B District only.
- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (5) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front (feet)	Side (feet)	Rear (feet)		
B	—	20	—	20 ¹	—	—	30 ³	—
BA	—	20	—	20	—	—	30 ³	35
UB	—	20	—	20 ²	0 ²	0 ²	30 ³	35

NOTES:

¹ One hundred feet along Routes 28 and 132.

NOTES:

² Fifty feet when abutting a residentially zoned area.

³ Or two stories, whichever is lesser.

Front yard landscaped setback from the road lot line:

B Business District: 10 feet, except 50 feet along Attucks Lane Extension and Independence Drive.

BA District: 10 feet.

UB District: 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein

F. Special hotel/motel provisions. In addition to the provisions of Subsection E, hotels and motels shall be developed only in conformance with the following:

- (1) The minimum lot area ratio shall be 2,500 square feet of lot area per each of the first 10 hotel/motel units, and an additional 250 square feet of lot area per each unit in excess of 10.
- (2) The minimum lot frontage shall be 125 feet.
- (3) The maximum lot coverage for all buildings shall not exceed 30% of the gross land area.
- (4) In addition to the parking requirements of § 240-54 herein, there shall be two additional off-street parking spaces provided per each 10 hotel/motel units or fraction thereof.
- (5) The minimum front yard setback shall be 30 feet.
- (6) The minimum total side yard setback shall be 30 feet; provided, however, that no allocation of such total results in a setback of less than 10 feet.
- (7) The minimum rear yard setback shall be 20 feet.
- (8) No other uses shall be permitted within the required yard setbacks, except driveways in a required front yard. All yard areas shall be appropriately landscaped and adequately maintained.
- (9) A site plan for each development or addition shall be submitted to the Building Commissioner along with the request for a building permit. The site plan shall include, but not be limited to, all existing and proposed buildings, structures, parking, driveways, service areas and other open uses, all drainage facilities and all landscape features such as fences, walls, planting areas and walks on the site.

§ 240-22. (Reserved) ¹⁸

18. Editor's Note: Former § 240-22, BL-B Business District, as amended, was repealed 7-14-2005 by Order No. 2005-100.

§ 240-23. MB-A1, MB-A2 and MB-B Business Districts.

- A. Principal permitted uses. The following uses are permitted in the MB-A1, MB-A2 and MB-B Districts:
- (1) Commercial marina to include the berthing, building, sale, rental, storage and repair of boats, including the storage of boats on racks within the MB-A1 and MB-A2 Business Districts, subject to the provisions of Subsection A(6) below, and the installation and maintenance of docks, piers, ramps, floats and moorings.
 - (2) Retail sale of marine fishing and boating supplies, marine electronics, marine motors and marine communication equipment.
 - (3) Retail sale of fishing bait, fish and shellfish, such uses being provided for in the MB-B District only.
 - (4) Commercial fishing, not including commercial canning or processing of fish; such use being provided for in the MB-B District only.
 - (5) Whale-watching facility, such use being provided for in the MB-B District only.
 - (6) Storage of boats on racks within the MB-A1 Business District subject to the following provisions:
 - (a) There shall be no more than 30 boats stored on racks for seasonal use (June 15 through Sept. 15);
 - (b) There shall be no launching or hauling of boats stored on racks for seasonal use before 8:00 a.m. or after 6:00 p.m.;
 - (c) There shall be unlimited year-round rack storage of boats that are not stored for seasonal use; and
 - (d) Any process by which seasonally used boats are launched and hauled, such as but not limited to by forklift or crane, shall be undertaken in a manner in which to minimize noise.
- B. Accessory uses. The following uses are permitted as accessory uses to principal permitted use, Subsection A(1), Commercial marina, above.
- (1) Retail sale of fuel to marine vessels only.
 - (2) Not more than one apartment for occupancy by the marina owner or by staff employed at the marina.
- C. Conditional uses. The following uses are permitted as conditional uses in the MB-A1 and MB-A2 and MB-B Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Restaurant, such use being provided for in the MB-B District only.
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

D. Special permit uses.

- (1) In the MB-A1 and MB-A2 Districts only, the retail sale of marine-related equipment, sporting-goods-type clothing, marine-related decorative goods and furnishings, as an accessory use to principal permitted use, Subsection A(1) above only

E. The following use limitations shall apply within the MB-B only: **[Added 3-18-2010 by Order No. 2010-068¹⁹]**

- (1) Use limitations: A permitted retail establishment, lodging establishment, restaurant, or take-out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
- (2) Corporate branding prohibition: Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means. **[Amended 9-8-2011by Order No. 2011-138]**

F. (Reserved)

G. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
MB-A1	10,000	20	—	—	—	—	30 ¹	—
MB-A2								
MB-B	7,500	20	75	10	30 ²	30	30 ¹	—

¹ Or two stories, whichever is lesser

² The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than 10 feet, except abutting a residential district, where a minimum of 20 feet is required

19. Editor's Note: This order also redesignated former Subsection E as Subsection G.

NOTE: Front yard landscaped setback from the road lot line:

MB-A1 and MB-A2 Business District: 10 feet.

MB-B Business District: 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. **[Amended 3-11-1999 by Order No. 99-058; 7-19-2001 by Order No. 2001-099]**

§ 240-24. VB-A Business District. [Amended 11-7-1987 by Art. 5; 10-4-1990 by Order No. 90-68; 2-20-1997; 1-7-1999; 3-11-1999 by Order No. 99-058]

A. Principal permitted uses. The following uses are permitted in Subsections (1) through (5) below in the VB-A: **[Amended 9-8-2011 by Order No. 2011-138]**

- (1) Single-family residential dwelling (detached).
- (2) Retail store.
- (3) Professional or business office.
- (4) Branch office of a bank, credit union, or savings and loan institution.
- (5) Personal service business.

B. Accessory uses. The following uses are permitted as accessory uses in the VB-A District:

- (1) Apartments, provided they are:
 - (a) Accessory to uses listed in Subsection A(2) through (5) herein; and
 - (b) Located above the first floor only; and
 - (c) Comply with the standards of § 240-19A(10)(a) through (h) herein.
- (2) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6) except Subsections (b)[1] and [2]. No more than six total rooms shall be rented to no more than 12 total guests at any one time in the VB-A Business District. No special permit shall be required in the VB-A Business District. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests. **[Amended 9-8-2011 by Order No. 2011-138]**

C. Conditional uses. The following uses are permitted as conditional uses in the VB-A District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Restaurant or other food-service establishment, but not including drive-in restaurants.
- (2) Gasoline and oil filling stations subject to the following:

- (a) There shall be no sale of vehicles on the same premises; and
 - (b) There shall be no storage of vehicles on the premises.
- (3) Auto service and repair shops subject to the following:
- (a) Such use shall be limited to two service/repair bays; and
 - (b) There shall be no sale of vehicles on the same premises; and
 - (c) Any outside storage of vehicles shall be screened from view to a height of six feet; and
 - (d) Any stored vehicles shall bear a current vehicle registration.
- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, subject to the following:
- (a) Such use remains accessory to a principal use permitted in Subsection A herein; and
 - (b) A building permit shall be obtained prior to commencement of construction of such use.
- (5) Place of business of blacksmith, decorator, upholsterer or undertaker.
- (6) Telephone exchange.
- (7) Place of business of building trades subject to the following:
- (a) Not more than three full-time employees shall be on the premises at any time; and
 - (b) Any outside parking of commercial vehicles or equipment shall be screened from view to a height of six feet; and
 - (c) Any outside storage of materials or supplies shall be screened from view to a height of six feet, and shall be stored to a height not exceeding six feet.
- (8) Light manufacturing uses subject to the following:
- (a) The building housing such use shall not exceed 2,000 square feet of gross floor area; and
 - (b) The screening standards of Subsection C(7)(b) and (c) herein.
- (9) Storage yard for coal, oil, lumber, or other business dependent on using a railroad siding subject to the following:
- (a) The screening standards of Subsection C(7)(b) and (c) herein.

D. (Reserved)²⁰

20. Editor's Note: Former Subsection D, Conditional uses, was repealed 9-8-2011 by Order No. 2011-138.

E. The following use limitations shall apply within the Barnstable Village VB-A only: **[Added 3-18-2010 by Order No. 2010-068]**

- (1) Use limitations: A permitted retail establishment, lodging establishment, restaurant, or take-out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
- (2) Corporate branding prohibition: Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means. **[Amended 9-8-2011 by Order No. 2011-138]**

F. Bulk regulations. **[Amended 9-8-2011 by Order No. 2011-138]**

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front (feet)	Side (feet)	Rear (feet)		
VB-A	10,000	20	100	10	30 ²	20	30 ¹	25

NOTES:

- ¹ Or two stories, whichever is lesser
- ² The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than the 10 feet, except abutting a residential district, where a minimum of 20 feet is required.
- ³ No more than 33% of the total upland area of any lot shall be made impervious by the installation of buildings, structures and paved surfaces.

Front yard landscaped setback from the road lot line:
VB-A 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

§ 240-24.1. Hyannis Village Zoning Districts. ²¹ **[Added 7-14-2005 by Order No. 2005-100]**

21. Editor's Note: The specific regulations for the Hyannis Village Zoning District are found in §§ 240-24.1.1 through 240-24.1.12.

§ 240-24.1.1. Title. [Added 7-14-2005 by Order No. 2005-100]

These districts shall be known as the "Hyannis Village Zoning Districts."

§ 240-24.1.2. General provisions. [Added 7-14-2005 by Order No. 2005-100]

- A. Effective date: This section shall become effective upon the adoption of a Design and Infrastructure Plan by the Barnstable Planning Board, as set forth in § 240-24.1.11 below. The foregoing shall be adopted not later than October 15, 2005.
- B. Conflicts. Unless otherwise stated, the requirements of the Barnstable Zoning Ordinance shall apply to uses within the Hyannis Village Zoning Districts. In the event of a conflict, these regulations shall apply.
- C. Nonconforming uses. The change of a nonconforming use to another nonconforming use is prohibited in the Hyannis Village Zoning Districts.
- D. Site plan review. All development within the Hyannis Village Zoning Districts, with the exception of single-family residences, shall comply with the provisions of Article IX, § 240-103, Site development standards, and with the Design and Infrastructure Plan.

Refer to § 240-24.1.10 and individual district regulations below for additional site plan review standards.

E. Special permit granting authority and special permit criteria.

(1) Within the Hyannis Village Zoning Districts, the Planning Board shall be the special permit granting authority. The Planning Board shall follow the criteria and procedures set forth in § 240-125C of the Barnstable Zoning Ordinance when acting on a special permit application. In addition to the criteria set forth in § 240-125, the Planning Board shall find that the issuance of the special permit is consistent with the Design and Infrastructure Plan, including the payment of applicable impact fees, and that the development meets one or more of the following criteria:

- (a) The development provides for or supports mixed use development where appropriate;
- (b) The development maintains or improves pedestrian access and outdoor public spaces;
- (c) The development contributes to the historic and maritime character of the Hyannis Village area;
- (d) The development eliminates or minimizes curb cuts and driveways on Route 28 and Barnstable Road;
- (e) The development provides or preserves views from public ways and spaces to the waterfront and provides or preserves public access to the waterfront;
- (f) The development provides for or contributes to alternative transportation or travel demand management; and/or
- (g) The development provides workforce housing where appropriate and provides an appropriate mix of affordability levels.

(2) Refer to individual district regulations below for additional special permit criteria.

F. Dimensional relief. Within the Hyannis Village Zoning Districts, the SPGA may provide relief from minimum lot area, minimum lot frontage, maximum building setback, minimum yard setbacks, floor area ratio limits, facade length requirements, ground floor window requirements, and through lot requirements, when such relief is necessary to ensure that a proposed development is consistent with zoning, the Design and Infrastructure Plan and/or the special permit criteria set forth above.

G. Building expansion/repair on nonconforming lot. The expansion, repair, alteration or replacement of any legally conforming building or structure in existence as of July 14, 2005, proposed to be expanded within the setbacks established herein shall not require a variance or special permit solely on the basis that the lot is rendered dimensionally nonconforming by the minimum lot area or minimum lot frontage and/or maximum building facade length provisions established in this section.

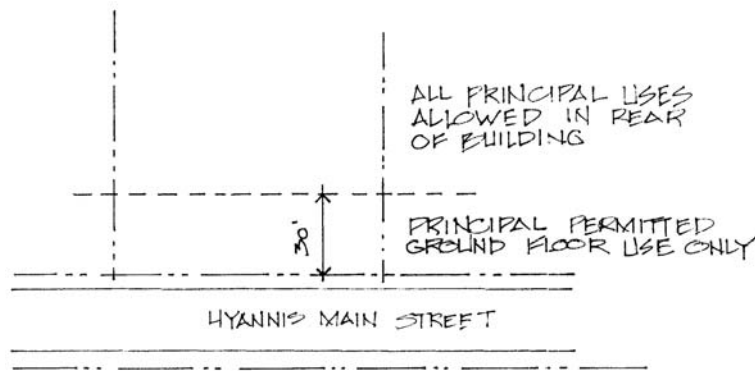
- H. Building expansion/repair exceeding lot coverage. The expansion, repair, alteration or replacement of any legally conforming building or structure in existence as of July 14, 2005, proposed to be expanded in a manner that increases lot coverage in excess of the maximum lot coverage provisions established herein shall require a special permit.
- I. Transitional exemptions. This section shall not apply to any development application that has received site plan approval or a special permit prior to July 14, 2005, provided that said site plan approval and/or special permit has been exercised within one year.
- J. Zoning district boundaries. The provisions of Barnstable Zoning Ordinance § 240-6C(3) do not apply within the Hyannis Village Zoning Districts.
- K. Related ordinances. The following list of related ordinances is provided to assist the reader. Applicants must review all Barnstable ordinances, rules, regulations and guidelines for additional requirements that may relate to a particular permit application.
 - (1) For additional information regarding the requirements of the Barnstable Inclusionary Housing Ordinance, see Chapter 9 of the Barnstable Town Code.
 - (2) For additional information regarding site plan review requirements, see §§ 240-98 through 240-105, inclusive, of the Barnstable Zoning Ordinance.
 - (3) For additional information regarding special permit requirements, see § 240-125C of the Barnstable Zoning Ordinance.
 - (4) For additional information regarding growth management requirements, see §§ 240-110 through 240-122, inclusive, of the Barnstable Zoning Ordinance.
 - (5) For additional information regarding parking requirements, see off-street parking regulations, at §§ 240-48 through 240-58, inclusive, of the Barnstable Zoning Ordinance.
 - (6) For additional information regarding signage requirements, see Sign Regulations, at §§ 240-59 through 240-89, inclusive, of the Barnstable Zoning Ordinance.
 - (7) For additional information regarding historic and design review, see Ch. 112, Historic Properties, of the Barnstable Town Code.
- L. Definitions specific to the Hyannis Village Zoning Districts are contained below at § 240-24.1.12.

§ 240-24.1.3. HVB Hyannis Village Business District. [Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the HVB District. Uses not expressly allowed are prohibited.
 - (1) Permitted principal uses.
 - (a) *Business and professional offices.
 - (b) Banks.

- (c) Retail uses.
- (d) Personal services establishments.
- (e) Packaging and delivery services.
- (f) *Research and development facilities.
- (g) Publishing and printing establishments.
- (h) Restaurants.
- (i) *Health clubs.
- (j) Movie theaters.
- (k) Artist's lofts.
- (l) Art galleries.
- (m) Museums.
- (n) Performing arts facilities.
- (o) *Educational institutions.
- (p) Bed-and-breakfasts.
- (q) *Fraternal or social organizations.
- (r) Hotels.
- (s) Motels.
- (t) Conference centers.
- (u) Recreational establishments.
- (v) Mixed use development consistent with ground floor limitations established by an asterisk (*) and with building footprint not exceeding 20,000 square feet and totaling not more than 60,000 square feet.
- (w) *Apartments and multifamily housing, not including mixed use development, totaling not more than 12 dwelling units per acre

- * Ground floor limitations: For lots abutting Hyannis Main Street and located between Sea Street and Barnstable Road/Ocean Street, uses denoted by an asterisk (*) are allowed above the ground floor only, with the exception that uses denoted by an asterisk may occur on the first floor in the rear portion of such a building only when, at a minimum, the first 30 feet of ground floor building space fronting on Hyannis Main Street is occupied by a permitted principal ground floor use. (See diagram below). In this case a Hyannis Main Street entrance to the use or uses at the rear of the building is allowed.



1. GROUND FLOOR REQUIREMENTS; HYANNIS MAIN STREET BETWEEN SEA STREET AND BARNSTABLE RD./OCEAN ST.

(2) Permitted accessory uses.

- (a) Entertainment and/or dancing is permitted: **[Amended 6-1-2006 by Order No. 2006-136]**

- [1] As an accessory use to a full-service food service establishment, subject to the following:
 - [a] Food is served to customers at tables by waitpersons;
 - [b] Bar seats and bar places do not exceed 20% of restaurant seats; and
 - [c] Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the restaurant, whichever is less.
- [2] As an accessory use to a preexisting smoking bar that has received a variance from the Barnstable Board of Health, subject to the following:
 - [a] The establishment holds a valid Board of Health variance issued under the provisions of the Barnstable Code, § 371-18; and

[b] Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the smoking bar.

- (b) Repair services.
- (c) Automated banking facilities (ATM).

B. Special permits.

- (1) Parking facilities.
- (2) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
 - (a) Nonresidential development with a total floor area greater than 10,000 square feet.
 - (b) Mixed use development with a building footprint greater than 20,000 square feet or a total building square footage greater than 60,000 square feet.
- (3) Multifamily housing, not including mixed use development, consistent with the ground floor limitations established above, and proposing 13 or more dwelling units per acre and not more than 16 dwelling units per acre.

C. Dimensional, bulk and other requirements.

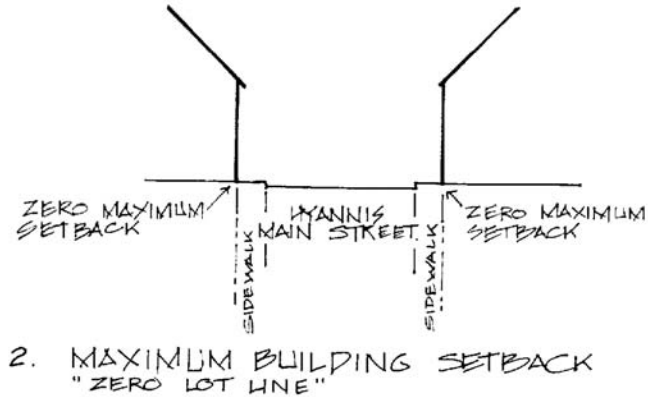
Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height ¹		Maximum Lot Coverage ²	FAR ³
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories		
Hyannis Village	5,000	10	4 ⁴	—	—	42	3	100%	3.0

NOTES:

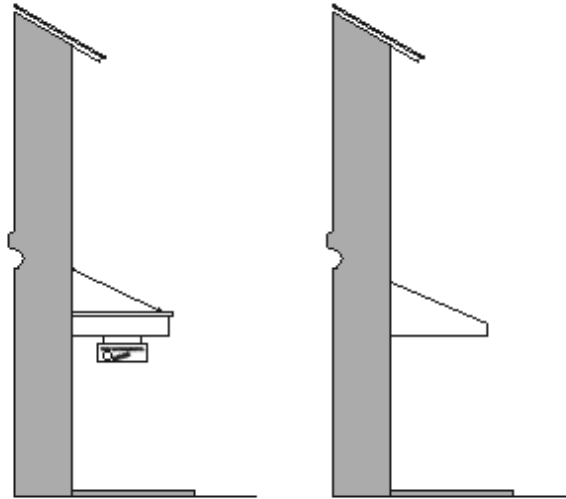
- ¹ See additional height regulations in Subsection (2) below.
- ² Maximum lot coverage pertains to building footprint only.
- ³ Applies to mixed use development only.
- ⁴ See also setbacks in Subsection (1) below.

- (1) Setbacks.
 - (a) Maximum building setback.

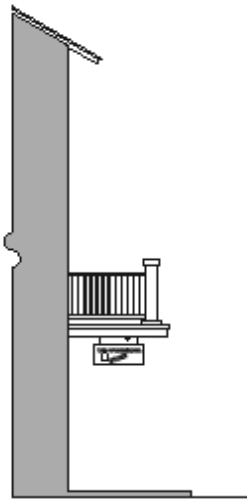
[1] The maximum building setback from the street line shall be zero feet for the front and street side facade so that the building visually reinforces the building facade line of the street. (See Diagram No. 2 below.).



- [2] Existing buildings within the HVB District not currently located at the zero maximum building setback may be altered, expanded, replaced or redeveloped so long as the maximum building setback is equal to the setback of the buildings(s) in existence upon the adoption of this section or 20 feet, whichever is less, and provided that the area between the building setback and the street line shall provide permanent public plazas, sidewalk cafes, public spaces or amenities and/or landscaping.
 - [3] The SPGA may vary the maximum building setback for the building facade, or any portion thereof, and may allow buildings to be set back from the front and/or street side property line where it would result in better alignment of buildings, improved design of the building facade, or where necessary to accommodate shop entrances, arcades, plazas, sidewalk cafes, permanent public spaces, pocket parks, or landscaping required pursuant to the provisions of this section or as allowed by permit, and so long as such increase in building setback will not create significant interruption of the alignment of any sidewalk constructed on public or private property or will not otherwise interfere with pedestrian access.
- (b) Awnings, marquees and balconies. The SPGA may provide relief from the zero front yard setback for awnings, marquees and balconies. These building structures are allowed to protrude up to five feet past the property line into the public right-of-way. All awnings, marquees and open air balconies shall require a license from the Town Manager consistent with Barnstable General Ordinances, Part 1, Chapter 121, § 121-6J.



Awnings and Marquees



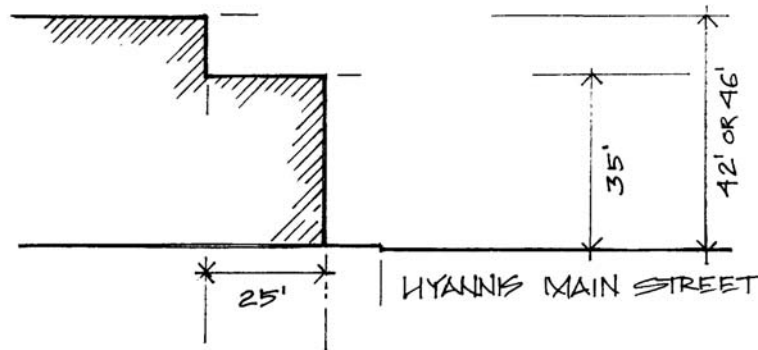
Open Air Balconies

(2) Height.

(a) Maximum building height.

[1] The maximum height of buildings or structures, other than accessory rooftop equipment discussed below or special architectural features, is 42 feet or three stories not to exceed 46 feet.

- [2] Maximum height may be increased to 46 feet or three stories when the roof pitch is in the range of six in 12.
- [3] In order to reduce shadows on Hyannis Main Street, for lots located on the southerly edge of the layout of Hyannis Main Street between Barnstable Road/Ocean Street and Sea Street, the maximum building height within 25 feet of the layout of Hyannis Main Street shall not exceed 35 feet unless a special permit is obtained from the SPGA. (See Diagram No. 3 below.)



3. MAXIMUM BUILDING HEIGHT SOUTH SIDE OF MAIN STREET BETWEEN SEA ST. AND BARNSTABLE RD. / OCEAN ST.

- (b) Height of rooftop equipment. Accessory rooftop equipment may extend to 46 feet {or to 50 feet when the building height is allowed at 46 feet under Subsection [(2)(a)[2] above}, provided that it is set back from the exterior wall(s) by at least 10 feet, and is enclosed or screened with materials compatible with the building, and the headhouse and screening are not visible from the ground. Accessory equipment shall not exceed 20% of the roof area. Eight-foot tall roof headhouse structures shall be set back from the exterior wall(s) by at least 10 feet, and shall not exceed 20% of the roof area.
- (3) Facade length. Buildings or portions of a building with a mass over 50 feet wide must divide their elevations into smaller parts. A pronounced change in massing, pronounced changes in wall planes and introducing significant variations in the cornice/roofline are all possible methods to accomplish the desired divisions of elevations into smaller parts.
- (4) Roof pitch. Flat roofs shall not extend for more than 50 linear feet, unless otherwise permitted by special permit.
- (5) Building entrances and alleyways.

- (a) For lots which have at least 10 feet of frontage on Hyannis Main Street, development and redevelopment shall include building facades that front on and have a principal pedestrian entrance on Hyannis Main Street.
 - (b) The construction of any new buildings shall provide for the creation of pedestrian alleyways, where appropriate, in order to allow for passageways to parking at the rear of the lots and adjoining streets.
- (6) Ground floor windows.
- (a) All new nonresidential development shall provide ground floor windows along street facades, including windows that allow views into working areas or lobbies, pedestrian entrances, or display windows. Required windows shall have a sill no more than four feet above grade. Where interior floor levels prohibit such placement, the sill may be raised to no more than two feet above the finished floor level, up to a maximum sill height of six feet above grade.
 - (b) Windows that block two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows along street facades.
 - (c) Any wall which is within 30 feet of the street shall contain at least 20% of the ground floor wall area facing the street in display areas, windows, or doorways. Blank walls, including walls that do not include display areas, windows, architectural features, and/or doorways, are prohibited.
- (7) Through lots.
- (a) Through lots defined. A "through lot" shall be a lot with a lot line of at least 10 feet on Hyannis Main Street that also abuts on another public street or way (the "alternative street or way"), but shall not include a corner lot. A through lot with at least 10 feet of property line abutting Hyannis Main Street is presumed to have frontage on Hyannis Main Street.
 - (b) For through lots, the lot shall provide vehicular access off of the alternative street or way unless otherwise permitted by special permit.
- (8) Curb cuts and driveways.
- (a) New curb cuts on Hyannis Main Street shall only be allowed where the curb cut leads to parking for at least 21 vehicles. No more than one curb cut on Hyannis Main Street shall be allowed for any lot. For traffic safety and to maintain traffic flow, no new driveways shall be permitted on Hyannis Main Street within 200 feet of any intersection.
 - (b) Driveways shall not occupy more than 25% of the frontage of any parcel, except for lots less than 40 feet wide.
- D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirements shall apply.

- (1) Loading docks. Loading docks shall not be visible from Main Street.
- (2) Parking spaces, computation.
 - (a) The parking standards contained within the Schedule of Off-Street Parking Requirement, § 240-56 of the Barnstable Zoning Ordinance, shall establish the minimum parking requirements, with the following exceptions:
 - [1] The use of shared parking for different uses having different peak hours of demand will be considered in evaluating compliance with § 240-56. A signed lease agreement between relevant parties sharing parking must be provided as part of the site plan approval or special permit process.
 - [2] A permitted use can be changed to another permitted use, and any permitted principal or accessory use can be intensified, without increasing the required off-street parking requirements of § 240-56, Schedule of Off-Street Parking Requirements, provided that as of July 14, 2005:
 - [a] There is no increase in gross square footage of the building; and
 - [b] There is no reduction in existing parking spaces required pursuant to § 240-56; and
 - [c] There is no added outdoor use requiring the provision of parking according to Section 204-56, except that no parking spaces shall be required for outdoor dining on both public and private property; and
 - [d] Parking space requirements for residential dwelling units shall be one parking space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.
- (3) Parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
 - (a) Fifty percent of the spaces required under § 240-56 for all uses other than office uses and residential dwelling units.
 - (b) Parking space requirements for residential dwelling units shall be one parking space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.
- (4) The SPGA may, by special permit, further reduce the parking required as follows:
 - (a) Off-site parking. Parking requirements may be satisfied if an off-street municipal parking lot of 20 spaces or more exists within 500 feet of the proposed use and provided that a fee is paid which would be set aside for the creation of future municipal parking facilities to service the district, consistent with a schedule of fees, if any, to be adopted in the Design and Infrastructure Plan. Off-site parking may also be provided on a private parking lot with sufficient parking spaces within 300 feet of the proposed

use, provided that a lease agreement is presented as part of the site plan approval or special permit process and provided that a fee is paid which would be set aside for the creation of future municipal parking facilities to service the district, consistent with a schedule of fees, if any, to be adopted in the Design and Infrastructure Plan. In no case shall leased parking be allowed on land that is residentially zoned for, or in residential use as, a single-family or a two-family dwelling.

- (b) The SPGA may reduce the on-site and off-street parking requirement for all uses except office uses and residential uses, based upon a consideration of:

- [1] Availability of shared parking.
- [2] Other factors supporting the reduction in the number of required parking spaces.

- (5) Landscaping.

- (a) Front yard landscape is not required if front setback is zero. When the front setback is greater than zero, those portions of the front yard not occupied by pedestrian amenities and public spaces shall be landscaped.
- (b) Street trees are required consistent with § 240-24.1.10 below if front setback is greater than zero feet.

- (6) Lighting.

- (a) All developments shall use full cutoff light fixtures for exterior lighting in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
- (b) Flood-, area and up-lighting is not permitted.

§ 240-24.1.4. MS Medical Services District. [Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the MS District. Uses not expressly allowed are prohibited.

- (1) Permitted principal uses.
 - (a) Single-family dwellings.
 - (b) Two-family dwellings.
 - (c) Business and professional offices.
 - (d) Nursing homes.
 - (e) Medical/dental clinics.
 - (f) Hospitals (nonveterinarian).

- (g) Bed-and-breakfasts.
- (h) Multifamily housing totaling not more than six dwelling units per acre or 12 bedrooms per acre.
- (i) Mixed-use development.
- (2) Permitted accessory uses.
 - (a) Family apartments.
 - (b) The following uses shall only be permitted as ancillary operations to a hospital, nursing home, or other medical-oriented facility:
 - [1] Personal services, such as barber or beauty shops.
 - [2] Banking services.
 - [3] Restaurants.
 - [4] Pharmacies.

B. Special permits.

- (1) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
 - (a) Nonresidential development, including nursing homes, with a total floor area greater than 10,000 square feet.
 - (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
- (2) Multifamily housing proposing to create seven or more dwelling units per acre or 13 or more bedrooms per acre and including at least 25% of workforce housing and totaling not more than 12 units per acre. Multifamily housing in the MS District is not required to provide inclusionary housing pursuant to Chapter 9 of the Barnstable Code.

C. Dimensional, bulk and other requirements. (NOTE: For hospital uses: the maximum building height provisions set forth in the table below may be extended to no more than 85 feet or a maximum of six stories not to exceed 85 feet; and, the maximum lot coverage requirements set forth below shall not apply.)

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height ¹		Maximum Lot Coverage ²	FAR ³
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories ¹		
Medical Services	10,000	50	20 ²	10 ²	10 ²	38	3	80%	—

NOTES:

- ¹ The third story can only occur within habitable attic space.
² See also setbacks in Subsection C(1) below.

- (1) Setbacks.
 - (a) The front yard landscaped setback shall be 10 feet.
 - (b) The SPGA may reduce to zero the rear and side setbacks for buildings to accommodate shared access driveways or parking lots that service buildings located on two or more adjoining lots.
- (2) Site access/curb cuts.
 - (a) Driveways on Route 28 shall be minimized. Access shall not be located on Route 28 where safe vehicular and pedestrian access can be provided on an alternative roadway, or via a shared driveway, or via a driveway interconnection. On Route 28, new vehicular access, new development, redevelopment and changes in use that increase vehicle trips per day and/or increase peak hour roadway use shall be by special permit.
 - (b) Applicants seeking a new curb cut on Route 28 shall consult the Town Director/Superintendent of Public Works regarding access on state highway roadways prior to seeking a curb-cut permit from the Massachusetts Highway Department, and work with the Town and other authorizing agencies, such as the MHD, to agree on an overall access plan for the site prior to site approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.
 - (c) All driveways and changes to driveways on Route 28 shall:
 - [1] Provide the minimum number of driveways for the size and type of land use proposed;
 - [2] Provide shared access with adjacent development where feasible; and
 - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.
- D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirement shall apply:
 - (1) Landscaping for multifamily housing. A perimeter green space of not less than 10 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway and/or entry walk.

§ 240-24.1.5. SF Single Family Residential District. [Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the SF District. Uses not expressly allowed are prohibited.

- (1) Permitted principal uses.
 - (a) Single-family dwellings (detached).
 - (b) Bed-and-breakfasts.
 - (c) Artists lofts.
 - (d) For those lots with frontage on South Street and/or High School Road, professional offices.
 - (e) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. **[Added 6-1-2006 by Order No. 2006-136]**
- (2) Permitted accessory uses.
 - (a) Family apartments.

B. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area ¹ (square feet)	Minimum Lot Frontage ¹ (feet)	Minimum Lot Width ² (feet)	Minimum Yard Setbacks			Maximum Building Height ¹		Maximum Lot Coverage ²	FAR ³
				Front (feet)	Rear (feet)	Side (feet)	Feet	Stories ¹		
Single Family Residential	20,000	20	100	20 ³	10 ³	10 ³	38	3	—	—

NOTES:

- ¹ The minimum lot area shall be reduced to 10,000 square feet and/or the minimum lot frontage shall be reduced to 50 feet if an existing nonresidential use, in existence as of the effective date of this section, is changed to a single-family residential use.
- ² Lot width at front building setback
- ³ See also setbacks in Subsection C(1) and corner lot setback in Subsection C(2) below.
- ⁴ The third story in a single-family or two-family dwelling can only occur within habitable attic space.

- (1) Setbacks. A perimeter green space of not less than 10 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway.
- (2) Corner lot setback. Corner lots shall comply with the provisions of § 240-41 of the Barnstable Zoning Ordinance.

C. Site development standard. Single-family dwellings are encouraged to comply with the provisions of Article IX, § 240-103, Site development standards. Single-family dwellings are not required to comply with § 240-24.1.10 below, and they are not required to obtain site plan approval. Single-family dwellings shall comply with the following requirements:

- (1) Parking and signage. All development within the SF District shall comply with applicable parking and signage requirements contained in Article VI, §§ 240-48

through 240-58, and Article VII, §§ 240-59 through 240-89, inclusive, of the Barnstable Zoning Ordinance.

- (2) Lighting. Reflectors and shielding shall provide total cutoff of all light at the property lines of the parcel to be developed.
- (3) Fences. No fence shall exceed a height of 6 1/2 feet (eight feet when abutting a nonresidential district) unless a special permit is obtained from the SPGA.

§ 240-24.1.6. OM Office/Multifamily Residential District. [Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the OM District. Uses not expressly allowed are prohibited.

- (1) Permitted principal uses.
 - (a) Business and professional offices.
 - (b) Personal services establishments.
 - (c) Repair services.
 - (d) Publishing and printing establishments.
 - (e) Packaging and delivery services.
 - (f) Artist's lofts.
 - (g) Restaurants.
 - (h) Multifamily housing, including but not limited to townhouses, totaling not more than 12 dwelling units, or 24 bedrooms per acre.
 - (i) Mixed-use development.
 - (j) Office, dental or medical. **[Added 3-18-2010 by Order No. 2010-069]**
- (2) Permitted accessory uses.
 - (a) Health clubs.
 - (b) Retail uses directly related to a principal permitted use that does not exceed 1,500 square feet.

B. Special permits.

- (1) Permitted principal uses as follows; provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission.
 - (a) Nonresidential development with a total floor area greater than 10,000 square feet;

- (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
- (2) Multifamily housing, including at least 25% workforce housing and totaling not more than 16 dwelling units or 32 bedrooms per acre.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height ¹		Maximum Lot Coverage ²	FAR ³
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories ²		
Office/ Multifamily Residential	20,000	50	20 ¹	10 ¹	10 ¹	40	3	80%	1.0

NOTES:

¹ See also setbacks in Subsection C(1) below.

(1) Setbacks.

- (a) The front yard landscaped setback shall be 10 feet, with the exception of townhouse development.
- (b) The SPGA may reduce to zero the rear and side setbacks for buildings to accommodate shared access driveways or parking lots that service buildings located on two or more adjoining lots.
- (c) For townhouses, buildings shall be set back zero to 15 feet from the frontage line. Buildings at street intersections shall be set back at least six feet but not more than 15 feet from the frontage line and side street lines. Setback requirements shall apply to the enclosed portion of the buildings only. That area between the building setback (including decks and unenclosed structures) and the street line shall be landscaped.
- (d) For townhouses with direct vehicular access from the street, garage and carport entrances shall not be closer to the street property line than any other portion of the front facade of the building.

D. Site development standards. For additional site plan review and special permit standards see § 240-24.1.10 below.

§ 240-24.1.7. HD Harbor District. [Added 7-14-2005 by Order No. 2005-100]

- A. Permitted uses. The following principal and accessory uses are permitted in the HD District. Uses not expressly allowed are prohibited.

- (1) Permitted principal uses.
 - (a) Marinas.
 - (b) Building, sale, rental, storage and repair of boats.
 - (c) Retail sale of marine fishing and boating supplies.
 - (d) Retail sale of fishing bait, fish and shellfish.
 - (e) Commercial fishing, not including canning or processing of fish.
 - (f) Charter fishing and marine sightseeing and excursion facilities.
 - (g) Museums.
 - (h) Performing arts facilities.
 - (i) Restaurants.
 - (j) Hotels.
 - (k) Motels.
 - (l) Conference centers.
 - (m) Bed-and-breakfasts.
 - (n) Artist's lofts.
 - (o) Mixed-use development with all residential units located above the ground floor only.
- (2) Permitted accessory uses.
 - (a) Offices to be used for ancillary activities which are directly related to a principal permitted use in the district.
 - (b) Accessory retail uses that do not exceed 1,500 square feet and which are directly related to a principal permitted use in the district.
 - (c) Health club not exceeding 1,500 square feet and which is directly related to a principal permitted use in the district.

B. Special permits.

- (1) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
 - (a) Nonresidential development with a total floor area greater than 10,000 square feet;
 - (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.

- (2) Multifamily residential development totaling not more than seven units per acre.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height ¹		Maximum Lot Coverage ¹	FAR
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories		
Harbor District	20,000	20	20 ²	10 ²	10 ²	35	2.5 ³	70%	—

NOTES:

- ¹ See additional dimensional regulations for marine uses in Subsection C(1) below.
- ² See also setbacks in Subsection C(2) below.
- ³ The half story can only occur within habitable attic space.

- (1) Special dimensional regulations for marine uses. In order to support water-dependent uses on the harbor, for buildings and structures used as a marina and/or used in the building, sale, rental, storage and/or repair of boats, so long as such buildings or structures exist as of the date of the adoption of this section, the following dimensional regulations shall apply: maximum building height 45 feet, maximum lot coverage 90%.

- (2) Setbacks. The front yard landscaped setback shall be 10 feet.

D. Site development standards. For additional site plan review and special permit standards, see § 240-24.1.10 below.

§ 240-24.1.8. HG Hyannis Gateway District. [Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the HG District. Uses not expressly allowed are prohibited.

- (1) Permitted principal uses.
 - (a) Business and professional offices.
 - (b) Banks.
 - (c) Restaurants.
 - (d) Business support services not exceeding 5,000 square feet.
 - (e) Dental and medical clinics, including a change of use, that do not increase the number of vehicle trips per day and do not increase peak hour vehicle trips per day.
 - (f) Retail uses that do not increase the number of vehicle trips per day and do not increase peak hour vehicle trips per day.

- (g) Mixed-use development.
- (h) Multifamily housing totaling not more than four dwelling units per acre, or eight bedrooms per acre.
- (2) Permitted accessory uses.
 - (a) Accessory retail uses that do not exceed 1,500 square feet and which are directly related to a principal permitted use in the district.
 - (b) Personal services establishments.
 - (c) Automated banking facilities (ATM).

B. Special permits.

- (1) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
 - (a) Nonresidential development with a total floor area greater than 10,000 square feet.
 - (b) Mixed use developments with a total floor area greater than 20,000 square feet or greater than 10,000 square feet of commercial space.
- (2) Multifamily housing, including workforce housing totaling not more than 16 dwelling units or 32 bedrooms per acre, that includes at least 25% of workforce housing dwelling units.
- (3) Retail uses and dental and medical clinics that increase the number of vehicle trips per day and/or increase peak hour vehicle trips per day.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height ¹		Maximum Lot Coverage ²	FAR ³
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories		
Hyannis Gateway	40,000	50	30 ³	15	20	40	3	80%	0.8

NOTES:

- ¹ Floor area ratio = gross building square footage divided by the lot area.
- ² The third story can only occur within habitable attic space.
- ³ See also setbacks in Subsection C(1) below.

- (1) Setback. Front yard landscape setback on Route 28 is 60 feet. For lots with less than 20,000 square feet of lot area, front yard landscape setback shall be at least 10 feet.

(2) Site access/curb cuts.

- (a) Driveways on Route 28 and Barnstable Road shall be minimized. Access shall not be located on Route 28 or Barnstable Road where safe vehicular and pedestrian access can be provided on an alternative roadway, or via a shared driveway, or via a driveway interconnection. On Route 28, new vehicular access, and changes in use that increase vehicle trips per day and/or peak hour roadway use for an existing driveway or curb cut, shall be by special permit.
- (b) Applicants seeking a new curb cut on Route 28 shall consult the Town Director of Public Works regarding access on state highway roadways prior to seeking a curb cut permit from the Massachusetts Highway Department, and work with the Town and other authorizing agencies such as the MHD to agree on an overall access plan for the site prior to site approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.
- (c) All driveways and changes to driveways shall:
 - [1] Provide the minimum number of driveways for the size and type of land use proposed.
 - [2] Provide shared access with adjacent development where feasible.
 - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.
- (d) Parking at the front of the lot is strongly discouraged. When parking is allowed on the front of the lot, where feasible, it shall be limited to a single row of vehicles and associated turning space. Also within the HG District, to the extent feasible, existing parking located on the front of the lot shall be removed and relocated to the rear and/or side of buildings, consistent with this section.
- (e) Transit improvement incentives. For redevelopment, the SPGA may provide relief from required parking where the applicant:
 - [1] Permanently eliminates and/or significantly reduces the width of existing curb cuts in a manner that improves the through flow of traffic on Barnstable Road and/or Route 28; and/or
 - [2] Provides a perpetual agreement for one or more driveway interconnections that will alleviate traffic on Barnstable Road and/or Route 28.

D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirements shall apply.

- (1) Landscaping. All site plan and special permit applications shall include a landscaping plan which shall be signed and stamped by a Massachusetts certified landscape architect.

§ 240-24.1.9. Transportation Hub District. [Added 7-14-2005 by Order No. 2005-100]

A. Permitted uses. The following principal and accessory uses are permitted in the TD District. Uses not expressly allowed are prohibited.

(1) Permitted principal uses.

- (a) Restaurants.
- (b) Tourist information service.
- (c) Parking facilities outside of the WP Overlay District.
- (d) Bicycle rental services (nonmotorized vehicles only).
- (e) Shuttle services.
- (f) Alternative transportation facilities.
- (g) Car rental services outside of the WP Overlay District.
- (h) Automated banking facilities (ATM).

(2) Permitted accessory uses. Accessory retail uses that do not exceed 1,500 square feet and which are directly related to a principal permitted use in the TD District.

B. Special permits.

- (1) Parking facilities within the WP Overlay District.
- (2) Public transportation maintenance facilities.
- (3) Car rental services within the WP Overlay District.
- (4) Permitted principal uses as follows, provided, however, that a special permit shall not be required when the applicant has obtained a development of regional impact approval, exemption or hardship exemption from the Cape Cod Commission:
 - (a) Nonresidential development with a total floor area greater than 10,000 square feet.

C. Dimensional, bulk and other requirements.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height		Maximum Lot Coverage ¹	FAR
			Front (feet)	Rear (feet)	Side (feet)	Feet	Stories ²		
Transportation Hub	30,000	100	20 ³	10 ³	10 ³	40	3	25%	—

NOTES:

- ¹ Maximum lot coverage pertains to building footprint only, with the exception of parking facilities which are permitted a maximum lot coverage of 65%.
- ² The third story can only occur within habitable attic space.
- ³ See also setbacks in Subsection C(1) below.

(1) Setbacks.

- (a) Front setback on Route 28 is 50 feet.
- (b) The SPGA may reduce to zero the rear and side setbacks for buildings to accommodate shared access driveways or parking lots that service buildings located on two or more adjoining lots.

(2) Site access/curb cuts.

- (a) Driveways on Route 28 shall be minimized. Access shall not be located on Route 28 where safe vehicular and pedestrian access can be provided on an alternative roadway, via a shared driveway, or via a driveway interconnection. On Route 28, new vehicular access, and changes in use that increase vehicle trips per day and/or peak hour roadway use for an existing driveway or curb cut, shall be by special permit.
- (b) Upon the redevelopment, expansion, alteration or change of use of any lot with a lot line on Engine House Road, the new, expanded, altered or changed use shall provide vehicular access solely on Engine House Road.
- (c) Applicants seeking a new curb cut on Route 28 shall consult the Town Director of Public Works regarding access on state highway roadways prior to seeking a curb cut permit from the Massachusetts Highway Department, and work with the Town and other authorizing agencies such as the MHD to agree on an overall access plan for the site prior to site approval. The applicant shall provide proof of consultation with the listed entities and other necessary parties.
- (d) Parking at the front of the lot is strongly discouraged. When parking is allowed on the front of the lot, where feasible, it shall be limited to a single row of vehicles and associated turning space. Also within the TD District, to the extent feasible, for redevelopment, existing parking located on the front of the lot shall be removed and relocated to the rear and/or side of buildings, consistent with this section.
- (e) All driveways and changes to driveways shall:

- [1] Provide the minimum number of driveways for the size and type of land use proposed;
 - [2] Provide shared access with adjacent development where feasible;
 - [3] Provide a driveway interconnection between adjacent parcels to avoid short trips and conflicts on the main road.
- (f) Transit improvement incentives. For redevelopment, the SPGA may provide relief from required parking where the applicant:
- [1] Permanently eliminates and/or significantly reduces the width of existing curb cuts in a manner that improves the through flow of traffic on Barnstable Road and/or Route 28; and/or
 - [2] Provides a perpetual agreement for one or more driveway interconnections that will alleviate traffic on Barnstable Road and/or Route 28.
- D. Site development standards. In addition to the site development standards set forth in § 240-24.1.10 below, the following requirements shall apply.
- (1) Special permit criteria. In determining whether to grant a special permit within the WP Overlay District, the SPGA shall consider the criteria set forth in § 240-24.1.2, General provisions, Subsection E, above, in addition to the following factors:
 - (a) The nature and extent of the risk of contamination to the proposed well that will result from the grant of the special permit;
 - (b) The nature and degree to which the proposal eliminates existing threats to the public water supply, including on-site and off-site mitigation;
 - (c) The overall effectiveness of existing land uses and/or protective measures on the public water supply well; and
 - (d) Whether granting the special permit will accommodate an overriding community interest.

§ 240-24.1.10. Site development standards. [Added 7-14-2005 by Order No. 2005-100]

- A. Application. Unless otherwise stated herein, the following additional site development standards shall apply within the Hyannis Village Zoning Districts, with the exception of Zone 3, the Single Family Residential District.
- (1) Utilities and services.
 - (a) Mechanical equipment, whether ground level or rooftop shall be screened from view of adjacent properties and public rights-of-way and designed to be an integral part of the building.

(b) Trash containers shall be fully screened on three sides with solid walls a minimum of six feet high with a solid front gate, six feet high, which shall be kept closed. Trash compacters shall be enclosed to minimize noise.

- (2) Stormwater. Rain gardens, as defined in § 240-24.1.12 below, are encouraged.
- (3) Drive-through windows. Drive-through windows are prohibited within the Hyannis Village Zoning Districts, with the exception that banks allowed as a principal permitted use may construct and operate a drive-through window upon the issuance of a special permit.
- (4) Off-street parking requirements. All new, expanded or intensified uses shall provide adequate off-street parking. No uses shall be intensified, except for single-family detached dwellings, without providing adequate parking as provided herein.
 - (a) Parking spaces, computation. See § 240-24.1.3 above for additional parking regulations applicable to the HVB District.
 - [1] Unless otherwise specified, all development shall comply with the parking requirements contained in Article VI, § 240-56, Schedule of Off-Street Parking Requirements, of the Barnstable Zoning Ordinance. The SPGA may by special permit reduce the on-site and off-street parking requirements consistent with these regulations.
 - [2] For multifamily housing, off-street parking shall be provided on-site at a ratio of 1 1/2 spaces per each dwelling unit and shall be located not less than 30 feet from the base of the multifamily dwelling and be easily accessible from a driveway on the site.
 - [3] Existing parking spaces may be counted to meet the minimum off-street parking requirements for an intensified use only if it can be demonstrated that they are not used as of right by existing uses and are exclusively available as of right for said proposed intensification.
 - [4] Circumstances warranting reduction of requirements. The SPGA may reduce or waive required on-site parking if lesser off-street parking is shown to be adequate given such special circumstances as:
 - [a] Use of a common parking area by different uses having different peak hours of demand and where the applicant provides a lease agreement between the necessary parties.
 - [b] Age or other characteristics of occupants which reduce auto usage.
 - [c] Characteristics of use invalidating normal methods of calculating parking demand.
 - [d] Supplementary parking provided off premises.
 - (b) Location of off-street parking spaces.

- [1] All required off-street parking spaces shall be located on the same lot as the use for which such spaces are required, except that the SPGA may reduce or waive on-site parking required by the Zoning Ordinance for new development located within 500 feet of leased parking, provided that a lease agreement is presented as part of the site plan approval or special permit process and provided that a fee is paid which would be set aside for the creation of future municipal parking facilities to service the district, consistent with a schedule of fees, if any, to be adopted in the Design and Infrastructure Plan. In no case shall leased parking be allowed on land that is residentially zoned for, or in residential use as, a single-family or a two-family dwelling.
- (c) Parking design standards.
- [1] Parking areas shall be located to the rear of a building unless such location would have an adverse environmental impact, or is infeasible due to configuration of the site. To the extent that parking cannot be located to the rear of a building, it shall be located to the side of a building to the extent possible.
 - [2] Each off-street parking space shall have a minimum dimension of nine feet by 20 feet, excluding the driveway, and consistent with the dimensional parking requirements set forth in § 240-104, Minimum parking lot design standards, of the Barnstable Zoning Ordinance.
 - [3] Maneuvering space shall be provided so that vehicles need not back onto a public way.
 - [4] Lighting shall not cause glare for motorists, pedestrians or neighboring premises. Full cut-off light fixtures shall be used in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
 - [5] Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises.
- (d) Parking lot landscaping.
- [1] Trees. One three-inch minimum caliper low-water-use, low-maintenance tree must be provided for every five parking spaces and must be located within 50 feet of the parking lot. Trees shall be maintained and irrigated as necessary and planted within at least 50 square feet of permeable area. Existing trees located in the interior of lots shall be credited towards this requirement.
 - [2] Five or more spaces: A six-foot landscape buffer must be provided between property lines and parking spaces. The landscape buffer must screen parking with a dense hedge providing year-round screening or a fence must be constructed with no more than 50% open space between the panels. Hedges and fences may be subject to other regulation.

- [3] Ten or more spaces: A six-foot landscape buffer must be provided between a building and a surface area parking lot or drive except at entrances, building loading, and utility locations.
- [4] Twenty-one or more spaces: at least 10% of the interior parking lot must be landscaped. Planting along the perimeter shall not be considered as part of the 10%. Interior planting beds are ideally continuous to allow for maximum plant bed size and are constructed as rain gardens to control stormwater. No landscaped island shall be less than six feet wide, except that in parking lots with 51 or more parking spaces where the minimum island with shall be 10 feet.
- [5] Plant materials shall be low-water-use and low-maintenance and be of a sufficient size to create an attractive appearance. A list of recommended plant materials shall be included in the Design and Infrastructure Plan and can be obtained from the Planning Department. Brick or stone mulch shall not be used in place of plant material in landscaped islands. Where mulch is used, it shall not be placed in such a manner that it will wash into catch basins or drainage pipes in the lot or in adjacent roadways.

(e) Landscaping of pre-existing parking lots.

- [1] Upon the expansion of an existing parking lot containing 21 or more parking spaces and/or an alteration of a structure, or a change or extension of a use which increases the parking requirements by five or more spaces according to the standards of §§ 240-48 through 240-58, Schedule of Off-street Parking Requirements, the entire existing parking lot shall be brought into compliance with this section.

(5) Landscaping.

- (a) Existing significant trees and shrubs shall be maintained to the maximum extent possible.
- (b) The front yard landscaped setback from the road lot line shall be 10 feet, unless otherwise specified.
- (c) Within the HD, MS, SF, HG and TD Districts, landscaped setback from all residential property lines shall be 20 feet.
- (d) In addition to natural vegetation that is retained, the front yard landscaped setback shall be landscaped with a combination of indigenous grasses, trees and shrubs commonly found on Cape Cod.
- (e) All developments must be adequately landscaped with low water use plants and provide habitat value whenever possible. No plantings shall obscure site entrance and exit drives and road intersections. Planting areas should serve as stormwater treatment areas often referred to as "rain gardens." As such they should be designed in a way that they are slightly depressed below adjacent parking or sidewalk grades with run-off directed to these areas. Plantings,

while encouraging drought resistance, should be capable of withstanding seasonally wet conditions.

- (f) Street trees. One deciduous tree with a three-inch minimum caliper is required to be planted within the front setback for every 30 feet of frontage of property if the front setback is greater than zero feet. Trees in paved areas shall have a minimum of 25 square feet of permeable area for growth. Trees in islands shall have a minimum of 50 square feet of permeable area for growth. All landscaped areas shall be continuously maintained, irrigated, and fertilized. Plant materials shall be organically maintained to the maximum extent possible.
- (g) No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation of the plant materials.
- (6) Signage. All development shall comply with the applicable signage requirements contained in Article VII, Sign Regulations, at §§ 240-59 through 240-89, inclusive, of the Barnstable Zoning Ordinance. Internally illuminated signs are prohibited in the Hyannis Village Zoning Districts.
- (7) Lighting. Reflectors and shielding shall provide total cutoff of all light at the property lines of the parcel to be developed.
- (8) Fences. No fence shall exceed a height of 6 1/2 feet (eight feet when abutting a nonresidential district) from the grade plane unless a special permit is obtained from the SPGA.

§ 240-24.1.11. Design and infrastructure plan. [Added 7-14-2005 by Order No. 2005-100]

- A. The Planning Board shall establish a Design and Infrastructure Plan (DIP) which shall be adopted after public hearing. The DIP shall establish building and site design standards for all development and shall require, at a minimum:
 - (1) Consistency with the historic and maritime character of the area;
 - (2) Creation of livable neighborhoods for year-round residents;
 - (3) Creating housing opportunities for persons and households of all income levels;
 - (4) Creation of opportunities for pedestrian access and public spaces;
 - (5) Preservation of views and public access to the waterfront;
 - (6) Creation of opportunities for eliminating curb cuts and for creating driveway interconnections, shared driveways, public transit, alternative transportation and/or travel demand management; and

- (7) Creation of opportunities to foster history, culture and the arts.
- B. Design review. The DIP shall establish guidelines regarding the appropriateness of the scale, placement, materials, design and detail of buildings, landscapes and settings, and signage. The DIP shall identify buildings and areas of the landscape that are of particular cultural, historical and/or architectural significance and shall establish guidelines for their preservation. The Hyannis Main Street Waterfront Historic District Commission shall implement design review within the Hyannis Village Zoning Districts.
- C. Infrastructure. The Downtown Hyannis area is the transportation, health care, and commercial hub of Cape Cod. In recognition of this and local growth initiatives for the Downtown Hyannis area, the DIP shall identify the infrastructure and services necessary to support new development and redevelopment, the method or methods of providing such services, and the time schedule for providing those services. Without limitation, the DIP may establish standards related to the following:
- (1) The Design and Infrastructure Plan shall establish a process for permit applicants to challenge ITE assumptions regarding trip generation (vehicle trips per day). Based upon generally accepted engineering, legal and planning standards, the Design and Infrastructure Plan may modify the definition of peak hour roadway use for specific roadways in the Hyannis Village Zoning Districts and may establish base line traffic counts for existing land uses.
 - (2) The Barnstable Town Council may establish a fee schedule to be included in the DIP, which fee schedule shall establish the fair share contribution of new development and redevelopment. In such case, the DIP shall establish the costs of providing services to new development and redevelopment using generally accepted legal, accounting, and planning principles. In the event the Barnstable Town Council adopts such a fee schedule, it shall be included in the DIP as a severable provision.
 - (3) The DIP shall identify prior Town actions and future opportunities to offset increased development in the Hyannis Village Zoning Districts.
 - (4) The DIP shall identify opportunities to benefit residents and business owners by identifying locations for shared community services, shared parking, shared transit and travel demand management facilities, shared waste management facilities, and similar facilities.

§ 240-24.1.12. Definitions applicable to the Hyannis Village Zoning Districts. [Added 7-14-2005 by Order No. 2005-100]

- A. In the interpretation of §§ 240-24.1.1 through 240-24.1.11, the following words and terms are to be used and interpreted as defined herein unless the context otherwise requires. The definitions contained in § 240-128 of the Barnstable Zoning Ordinance shall also apply to § 240-24.1.1 through 240-24.1.11, provided that, in the event of a conflict the definitions below shall apply.

- B. As used in § 240-24.1.1 through 240-24.1.11, the following terms shall have the meanings indicated:

ACCESSORY USE — A structure or use that is subordinate in building area, building extent, and purpose to the principal use; is customarily incidental and subordinate to the principal use and contributes to the comfort, convenience, or necessity of the principal use; and, is located on the same lot as the principal use.

ART GALLERY — A public or private facility which is operated as a repository or a collection of works of individual art pieces, not mass-produced, consisting of one or more of the following: paintings, drawings, etchings or sculptures; may include the sale of related objects and services.

ARTIST'S LOFT — A place designed to be used as both a dwelling and a place of work by an artist, artisan, or craftsman, including persons engaged in the application, teaching, or performance of fine arts, such as drawing, vocal or instrumental music, painting, sculpture, photography, graphics, media arts, and writing. The work activities shall not adversely impact the public health, safety, and welfare, or the livability, functioning, and appearance of adjacent property.

AUTOMATED BANKING FACILITY (ATM) — An automated device, which is operated by the customer, that performs banking or financial transactions.

AUTOMOBILE GASOLINE AND REPAIR STATION — A retail establishment engaged in the sale of automotive fuel, motor oil, and/or services, which provides for the routine maintenance of automobiles. Such services may include washing, polishing, greasing, emissions testing, tire repair, wheel alignment, brake repair, muffler replacement, engine tune-up, flushing of radiators, servicing of air conditioners, and other activities of minor repair and servicing.

BANK — A financial institution that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities. Walk-in services to consumers are generally provided on site. Drive-through services may be allowed by special permit where banks are allowed as a principal permitted use.

BUILDING HEIGHT — Shall be measured as the vertical distance from the grade plane to the average height of the highest roof plane that also has the highest ridgeline.

BUILDING STORY — The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

BUSINESS OFFICES — Include all types of offices, other than professional offices as defined elsewhere in this chapter, which are defined as a room, or group of rooms used for conducting the affairs of a business, service industry, or government entity.

BUSINESS SUPPORT SERVICES — Establishments engaged in the sale, rental, or repair of office equipment, supplies, and materials, or the provision of services used by office, professional, and service establishments. Typical uses include office equipment

and supply firms, small business machine or computer repair shops, convenience printing and copying establishments, or hotel equipment and supply firms.

CLINIC, DENTAL OR MEDICAL — A building or portion of a building in which the primary use is the provision of health care services to patients or clients. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services. The sale of merchandise is allowed only as an accessory use. **[Amended 3-18-2010 by Order. No. 2010-069]**

CONFERENCE CENTER — A facility which provides meeting halls for conferences, seminars, training and other similar functions for large numbers of people. A conference center shall be considered to be an accessory use to a hotel.

CONVENIENCE STORE GAS STATION — A facility associated with the sale of prepackaged food items and other retail goods, primarily for self-service by the consumer which also offers the retail sale of gasoline from pumps.

DESIGN AND INFRASTRUCTURE PLAN — A plan establishing site and building design standards and establishing fair share contributions to infrastructure (impact fees) for new development and redevelopment, as further defined in § 240.24.1.11 herein.

DRIVE-THROUGH WINDOW — This use is prohibited in all districts, with the exception that banks may seek a special permit to construct and operate a drive-through window.

DRIVEWAY/CURB CUT — Any access point onto a roadway. This may include, but is not limited to, an entrance to a parcel, or an intersection with another roadway.

DRIVEWAY INTERCONNECTION — A private driveway connection between two lots that does not require traveling on the public roadway system.

FLOOR AREA RATIO (FAR) — The ratio of gross building area to the lot area on which the building(s) are located. The ratio is calculated by dividing the gross area of said buildings by said lot area.

FRATERNAL OR SOCIAL ORGANIZATION LODGE — A building or land used for the activities of an association of persons for the promotion of some nonprofit common objective, such as literature, science, politics, and good fellowship (not accessory to, or operated as, or in connection with a tavern, eating place, or other place open to the public), which meets periodically and may be limited to members.

GRADE PLANE — A reference plane representing the natural, undisturbed ground level adjoining the proposed building at all exterior walls. Where the ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and a point six feet from the building, or between the building and the lot line, whichever point is closer.

GROUND FLOOR — The floor located at the street level, closest to the naturally occurring grade.

HABITABLE ATTIC — The habitable space between the rafters of a pitched roof and the next floor below.

HABITABLE SPACE — Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and other similar areas are not considered "habitable space."

HEALTH CLUB — A building or portion of a building designed and equipped for the conduct of exercise and related activities utilizing weight control or muscle building equipment or other apparatus for the purpose of physical fitness, along with customary ancillary activities and facilities.

HIGHEST ROOF PLANE — The roof plane having the highest ridge and having highest average height (exclusive of cupolas and parapets) or the flat roof that is higher than any pitched roof.

HOSPITAL — A facility for the care and treatment of patients as licensed by the Massachusetts Department of Public Health under MGL c. 111, § 51.

HOTEL — One or more buildings providing temporary lodging accommodations offered to the public on a daily rate for compensation. The building or buildings have an interior hall and lobby with access to each room from such interior hall or lobby, supervised by a person in charge at all hours. Accessory uses may include a restaurant, conference center facility, meeting rooms, health club and other customary uses.

HYANNIS VILLAGE ZONING DISTRICTS — The seven Hyannis zoning districts including HVB, MS, SF, OM, HD, HG and TD.

LOT COVERAGE, MAXIMUM — A measure of the portion of a site that is impervious (i.e., does not absorb water), including but not limited to all areas covered by buildings, structures, parked surfaces and structures, driveways, roads, sidewalks and any area of concrete asphalt, except as otherwise defined herein. The remaining area of a site shall be maintained as natural vegetation or landscaped area.

MIXED-USE DEVELOPMENT — Development including residential and nonresidential principal permitted uses on a single lot and including at least 33% residential development for three-story buildings.

MOTEL — One or more attached or detached buildings providing residential room accommodations intended primarily for sleeping which are rented out to the public on a daily rate, where each room has a separate entrance leading directly outside the building.

MULTIFAMILY HOUSING — A structure containing three or more dwelling units, or apartments, each of which shall contain separate living, sleeping, cooking, and bathroom facilities for the families residing there.

MUSEUMS — A public or private facility, including an aquarium, established for preserving and exhibiting artistic, historical, scientific, natural or man-made objects of

interest, designed to be used by members of the public for viewing, with or without an admission charge. Such activity may include, as an accessory use, the sale of memorabilia, crafts work and artwork, and the holding of meetings and social events.

NURSING HOME — A facility for the aged or chronically ill, providing bed-care and in-patient services for persons requiring regular medical attention, but excluding a facility providing surgical or emergency medical services.

OFFICE, DENTAL OR MEDICAL — A building or portion of a building in which the primary use is the provision of health-care services to patients or clients by an appointment only. Appointments limited to the hours between 7:00 a.m. to 7:00 p.m., Monday through Friday, and Saturday from 7:00 a.m. to 1:00 p.m. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services. The sale of merchandise is allowed only as an accessory use. **[Added 3-18-2010 by Order No. 2010-069]**

PACKAGING AND DELIVERY SERVICES — The packaging and delivery of parcels as a retail service use. It shall not include the bulk storage of parcels on-site but may include the sale of ancillary goods typically used in the packaging and shipping of parcels.

PARKING FACILITY — When identified as a permitted principle use within a zoning district, refers to either structured parking (such as a multi-level parking garage or parking deck), or a surface parking lot, which is not an accessory use to another permitted use in the district.

PEAK-HOUR ROADWAY USE — For Monday through Friday, peak morning (7:30 a.m. to 9:30 a.m.) and peak evening (4:00 p.m. to 6:00 p.m.) roadway use; for Saturday, 10:00 a.m. to 12:00 p.m. roadway use. Based upon accepted engineering, legal and planning standards, the Design and Infrastructure Plan may change, modify or expand the definition of peak hour roadway use for specific roadways in the Hyannis Village Zoning Districts.

PERFORMING ARTS FACILITY — An enclosed space suitable for a variety of cultural arts performances, permanently available for the primary principal use of public performing arts presentations, such as plays, dances, and concerts, although incidental use for private meetings, exhibits and presentations shall be permitted. Such space may also include studios, classrooms, and galleries.

PERSONAL SERVICES ESTABLISHMENT — An establishment engaged in the provision of frequent or recurrent needed services of a personal nature. Typical uses include, but are not limited to, barbershop, beauty shop, dry cleaner, tailor, or other similar services, but shall not include a public laundry where clothing is laundered on-site.

PROFESSIONAL OFFICES — The office of a member of a recognized profession maintained for the conduct of that profession. A "profession" is defined as an occupation requiring training in the liberal arts or sciences, or combination thereof, requiring advanced study in a specialized field, any occupation requiring licensing by the state and maintenance of professional standards applicable to the field. This category excludes medical and dental offices and clinics but includes lawyers and realtors.

PUBLISHING AND PRINTING ESTABLISHMENT — The publishing and printing of information as a retail service use. It shall not include the bulk publishing or printing of paper documents on-site, but may include the sale of ancillary goods typically used in the publishing and printing of information.

RAIN GARDEN — A bowl-shaped landscape area designed to absorb stormwater runoff from impervious surfaces. It cleanses water of pollutants by filtering water through soil and plants.

RECREATIONAL ESTABLISHMENT — An establishment engaged in the provision of public recreational services, including bowling and billiards, but not including miniature golf and video arcades.

REPAIR SERVICES — Repair and servicing of appliances, computers, electronic equipment, tools and other small machinery common to homes and businesses, not to include any appliances, tools or small machinery that are powered by hydrocarbon fuel.

RESEARCH AND DEVELOPMENT FACILITY — A business that engages in research and development of innovative ideas and technology. Examples include research and development of computer software, information systems, communication systems, transportation, multi-media and video technology. Development and construction of prototypes may be associated with this use.

RESTAURANT — An establishment where food and/or beverages are prepared, served, and consumed, and whose principal method of operation includes one or both of the following characteristics: customers are normally provided with an individual menu and served their food and beverages by a restaurant employee at the same table or counter where the items are consumed; or a cafeteria-type operation where food and beverages generally are consumed within the restaurant building. This category excludes drive-through restaurants.

RESTAURANT, DRIVE-THROUGH — An establishment whose primary business is serving food to the public for consumption on or off the premises, and which provides all or part of these services by means of a drive-through window. A "drive-through window" is defined as an opening in the wall of a building or structure designed and intended to be used to provide for sales to and/or service to patrons who remain in their vehicles.

RETAIL USES — A business or activity having as its primary function the sale of merchandise or wares to the end consumer (for example, grocery stores, hardware stores, apparel stores, bookstores); or establishments engaged in the rental of goods at retail, or in providing a service(s) to individuals and households (for example, travel agents or real estate sales offices). This category excludes animal sales or service; bulk retail sales or rental of building and garden materials or equipment (for example, lumber, electrical and

heating fixtures, plant nurseries); and motor vehicle retail or wholesale sales and related equipment sales, leasing, rental, or repair.

RETIREMENT HOUSING — A facility for long-term residency exclusively by persons 60 years of age or older, which provides independent living and/or assisted living arrangements, and which may include common dining and social and recreational features, and special safety and convenience features designed for the needs of the elderly. The facility may also include the provision of services, such as meal services, transportation, housekeeping, personal care, or health care. Such a facility shall not be construed to mean a nursing home, group home, or residential treatment center.

SPGA — The special permit granting authority, which shall be the Barnstable Planning Board.

STREET LINE — The edge of the public layout of the street, or public right-of-way as defined by the sidewalk, whichever is greater.

TOTAL FLOOR AREA — Gross floor area as defined in § 240-128 of the Barnstable Zoning Ordinance, and shall include additions and auxiliary buildings.

TOWNHOUSE — A single dwelling unit which is not above or below another dwelling unit and whose side walls are separated from other dwelling units by a fire wall or walls. Each unit in the row may be owned by a separate owner.

VEHICLE TRIPS PER DAY — As defined by the Institute of Transportation Engineers' (ITE) Trip Generation Manual, 7th Edition, as that publication may be amended from time to time, provided, however, that the Design and Infrastructure Plan shall establish a process for permit applicants to challenge ITE assumptions regarding trip generation, and the Design and Infrastructure Plan may establish existing vehicle trips per day for a particular use or uses in the Hyannis Village Zoning Districts.

WORKFORCE HOUSING — Residential dwelling units, offered for sale or rent, affordable to families earning between 81% and 120% of the area median income, as defined by the U.S. Department of Housing and Urban Development, and provided within a multifamily structure. Such residential dwelling units shall remain affordable in perpetuity and shall provide a deed restriction, regulatory agreement and monitoring agreement and similar documentation as may be required by and approved by the Barnstable Town Attorney.

§ 240-24.2. Marstons Mills Village Zoning District. [Added 6-17-2010 by Order No. 2010-122]

- A. Principal permitted uses. The following uses are permitted in the Marstons Mills Village Zoning District (MMVD). Uses not expressly allowed are prohibited.
- (1) Professional or business office.
 - (2) Medical or dental office.
 - (3) Branch office of a bank or credit union, excluding drive-through banking.

- (4) Small-scale retail.
 - (5) Small-scale food service.
 - (6) Mixed use development where the building footprint does not exceed 5,000 square feet and total gross floor area does not exceed 10,000 square feet with retail or office use on the first floor, residential apartment units above not to exceed four apartment units.
 - (7) Bed-and-breakfast within an owner-occupied single-family residential structure subject to the provisions of § 240-11C(6) except Subsection C(6)(b) [1] and [2]. No more than six total rooms shall be rented to not more than 12 total guests at any one time. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.
 - (8) Single-family residential dwelling (detached).
- B. Accessory uses. In addition to Article V, Accessory Uses, herein, the following uses are also permitted as accessory uses in the MMV District.
- (1) Apartment incidental to a nonresidential use.
 - (2) Automated banking facilities (ATM) within a principal building or a walk-up ATM facility located in a side or rear yard.
- C. Conditional uses. The following uses are permitted as conditional uses in the MMV District, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:
- (1) Mixed use development in excess of that permitted as of right above provided that:
 - (a) The building footprint does not exceed 5,000 square feet and total gross floor area of the building does not exceed 13,300 square feet;
 - (b) Retail or office use on the first floor with residential apartment units above;
 - (c) The number of residential apartment units does not exceed seven;
 - (d) Effluent from the on-site septic system for the mixed use development complies fully with all Board of Health regulations without relief or variances from the Board of Health nitrogen standard for this area; and
 - (e) The location of the mixed use development is appropriate and compatible with abutting uses and supports abutting uses.
 - (2) Health clubs.
 - (3) Artist's lofts.
 - (4) Art galleries.
 - (5) Museums.

- (6) Performing arts facilities.
 - (7) Educational institutions.
 - (8) Bed-and-breakfast inns within an owner-occupied structure that exceed the provisions of accessory uses permitting, provided that the on-site septic system complies fully with all current Board of Health regulations.
 - (9) Not-for-profit fraternal or social organizations.
- D. Special permit standards. In addition to the standards for the grant of a special permit set forth in § 240-125C, the grant of any special permit within the MMVD requires findings to support that the development meets one or more of the following criteria:
- (1) The development maintains or improves pedestrian access and outdoor public spaces.
 - (2) The development contributes to the historic character of the Marstons Mills Village area.
 - (3) The development eliminates or minimizes curb cuts and driveways on Route 149 and River Road.
- E. Bulk regulations.

Minimum Yard Setbacks

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Front⁴ (feet)	Side (feet)¹	Rear (feet)¹	Maximum Building Height (feet)	Maximum Coverage by Structures as a Percentage of Lot Area³
10,000	20	10	0	0	30 ²	20%

Notes:

¹ A minimum thirty-foot side or rear yard setback is required where lot boundaries abut a residential district.

² Or 2 1/2 stories, whichever is less, and except that:

The maximum building height may be increased to 36 feet when the roof pitch is at least six in 12.

Accessory rooftop equipment may extend to 36 feet, provided that it is set back from all exterior wall(s) by at least 10 feet, and is enclosed or screened with materials compatible with the building, and the equipment and screening are not visible from the ground. Accessory equipment shall not exceed 20% of the roof area.

Notes:

³ 30% of the total upland area of the lot shall remain pervious and may contain landscaping, tree plantings, mulch or natural vegetation including the requirements of § 240-53.

⁴ Front yard landscape setback from the road lot line shall be 10 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of 3.0 inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure the site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- F. Special permit for dimensional relief. The SPGA may provide relief from minimum yard setbacks where the boundary does not abut a residential district, facade length requirements or ground floor window requirements when such relief is consistent with this section and § 240-125C.
- G. Nonconforming use limitations. Within the MMVD the change of a nonconforming use to another nonconforming use is prohibited notwithstanding the provisions of § 240-94A. A nonconforming use shall only be permitted to change to a principal permitted use as of right or to a conditional use as provided for by the grant of a special permit pursuant to § 240-24.2C and D herein.
- H. Corporate branding. Buildings, colors, signage, architectural features, text, symbols, graphics, other attention-getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation is prohibited. All structures and sites shall be designed to include architectural and design elements that are consistent with the MMVD architectural composition, character, and historic context. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means. The Town will work with applicants to adapt critical functional features of prototype plans to their sites, but will not accept standard plans, building forms, elevations, materials, or colors that do not relate to the site, adjacent development or Marstons Mills community character.
- I. Design guidelines. Within the MMVD the following design guidelines shall apply to all new buildings and structures and/or expansions and alteration to existing buildings and structures as follows:
 - (1) Facade and roof standards.
 - (a) Facade length. Buildings or portions of a building with a mass over 50 feet wide must divide their elevations into smaller parts. A pronounced change in massing, pronounced changes in wall planes and introducing significant

variations in the cornice/roofline are all possible methods to accomplish the desired divisions of elevations into smaller parts.

- (b) Roof pitch. Roof pitch for new structures and additions to existing structures shall be within the range of roof pitches found on the main roofs of existing structures within the MMVD. Flat roofs may extend up to 20 linear feet only in combination with other pitched roof elements by right or, if greater than 20 feet with other pitched roof elements, through a special permit.
 - (c) Roofline variation. Roofline variation is achieved by visually and physically changing roof direction or off-setting roof peaks and ridgelines, both horizontally and vertically. The roofline shall be varied on all elevations visible from a street, parking area, or public space. Individual segments of the roofline shall not extend more than 30 feet in width measured horizontally.
- (2) Ground floor windows. Religious institutions are exempt from ground floor window requirements.
- (a) All new nonresidential development or redevelopment shall provide ground floor windows for facades facing the street, including windows that allow views into working areas or lobbies, pedestrian entrances, or display windows. The glazing pattern shall be aligned in regular and traditional patterns found within the MMVD.
 - (b) In new and redeveloped nonresidential structures, windows that block two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows along street facades.
 - (c) In new and redeveloped nonresidential structures, any wall that is within 30 feet of the street shall contain at least 20% of the ground floor wall area facing the street in display areas, windows, or doorways. Blank walls, including walls that do not include display areas, windows, architectural features, and/or doorways, are prohibited.
- (3) All structures within the MMVD shall utilize at least four of the following design features:
- (a) Gables.
 - (b) Offsets on the building face or roof of at least two inches.
 - (c) Gable dormers.
 - (d) Cupolas or other appropriate roof elements.
 - (e) Covered porch or recessed entry area.
 - (f) Window shutters.
 - (g) Horizontal lap siding.

- (h) Wood shingles.
- (4) Divided light windows metal-sided buildings are prohibited within the Marstons Mills Village District.
- (5) Drive-through and drive-up windows are prohibited within the Marstons Mills Village District.
- (6) The design of all structures and materials selected for their exterior surfaces will utilize scale, color and materials that enhance and promulgate the traditional small-scale village character currently found in the MMVD.
- (7) Signs. In addition to compliance with Article VII, Sign Regulations, the following restrictions shall also apply to all signs in the MMVD.
 - (a) Internally illuminated signs, halo and backlit signs are prohibited in the MMVD.
 - (b) Business identity, either by awnings, accent bands, paint or other applied color schemes, signage, decorative roof details or materials should not be the dominant architectural feature.
- J. Site development standards. In addition to Article IX, Site Plan Review, and Article VI, Off-Street Parking, the following additional requirements shall apply within the MMVD.
 - (1) Loading docks. Loading docks shall be screened from Route 149, River Road and Main Street with landscaping or fencing materials of an appropriate scale.
 - (2) To the greatest extent feasible, all new parking areas shall be located to the side and rear of the building. Parking is not permitted in the required front yard setback with the exception of parking required by ADA compliance as determined by the Building Commissioner.
 - (3) Curb cuts and driveways.
 - (a) Shared driveways and parking area interconnections are strongly encouraged. No more than one curb cut on Route 149, River Road and Main Street shall be allowed for any lot. For traffic safety and to maintain traffic flow, no new driveways shall be permitted on Route 149, River Road and Main Street within 200 feet of any intersection.
 - (b) Driveways shall not exceed the width required by site plan review
 - (4) Lighting.
 - (a) All developments shall use full cutoff light fixtures for exterior lighting in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
 - (b) Flood, area and up lighting is prohibited.
- K. Definitions. The following terms are defined for the purpose of the MMVD and shall not be construed to apply to other regulations.

APARTMENT — One or more rooms with private bath and kitchen facilities comprising an independent self-contained rental dwelling unit (a unit not owned in fee simple) located in a building where the principal use is nonresidential.

MIXED USE DEVELOPMENT — Development including at least one residential unit and at least one nonresidential use on a single lot or several nonresidential uses on a single lot. In the MMV District, for every four apartment units permitted, one of those units shall be dedicated as affordable in addition to the provisions of Chapter 9, Article I, Inclusionary Affordable Housing Requirements.

SMALL-SCALE FOOD SERVICE — An establishment where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to corporate branding limitations as described herein. These uses are intended to increase pedestrian traffic.

SMALL-SCALE RETAIL — Small stores and businesses, including but not limited to, corner groceries, artist space, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers, e.g. gasoline and oil filling stations, garages for automotive or machine repair. Small-scale retail is subject to corporate branding limitations as described herein. These uses are intended to increase pedestrian activity.

§ 240-25. HB Business District. [Amended 11-7-1987 by Art. 1; 5-7-1988 by Art. 4; 3-11-1999 by Order No. 99-058]

- A. Principal permitted uses. The following uses are permitted in the HB Business District:
- (1) Office, but not including medical office.
 - (2) Bank, but not consisting in whole or in part of drive-in bank or drive-up automatic teller.
- B. Accessory uses. (Reserved for future use.)
- C. Conditional uses. The following uses are permitted as conditional uses in the HB District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Any use permitted in the B District not permitted in Subsection A herein, subject to the following:
 - (a) Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.

- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (3) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
HB	40,000	20	160	60 ²	30 ³	20	30 ¹	30

¹ Or two stories, whichever is lesser

² One hundred feet along Route 28 and 132.

³ The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than 10 feet, except abutting a residential district, where a minimum of 20 feet is required.

NOTE: Front yard landscaped setback from the road lot line:
HB 45 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

§ 240-26. HO Highway Office.

A. Standards applicable to all uses within the HO Highway Office District:

- (1) Naturally occurring vegetation, including trees shall be incorporated into the design of the site wherever possible, and natural vegetation shall be retained in landscaped buffer areas to the maximum extent feasible. The limit of clearing shall be indicated on plans submitted to site plan review pursuant to Article IX herein. No clearance of vegetation shall occur prior to submission to site plan review.
- (2) No nonresidential development shall have principal vehicular access through a single-family residentially zoned area, or principal vehicular access via a road located in a single-family residential zoning district.
- (3) Building and site design shall, in so far as practical, conform to officially published, local and regional design guidelines applicable to Cape Cod.

B. Principal permitted uses. The following uses are permitted in the HO Highway Office Zone:

- (1) Business, professional and governmental office; bank, including drive-through facilities.
 - (2) Medical, dental office and clinic, including patient treatment facilities.
 - (3) Technological and computer research, data processing; computer operations.
 - (4) Publishing and printing operations.
- C. Accessory uses. (Reserved for future use.)
- D. Conditional uses. (Reserved for future use.)
- E. Special permit uses. (Reserved for future use.)
- F. Bulk regulations. [Amended 7-16-1998 by Order No. 98-133; 3-11-1999 by Order No. 99-056; 3-11-1999 by Order No. 99-058]

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ²
				Front	Side	Rear		
HO	2 acres	200	—	45	15	20	30 ¹	0.3

¹ Or two stories, whichever is lesser.

³ Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Front yard landscaped setback from the road lot line: 45 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- (1) Dimensional requirements.
- (2) Landscape buffer:
 - (a) Landscape buffer from side yard: 10 feet.
 - (b) Landscape buffer from rear yard: 20 feet.
 - (c) Natural vegetation shall be retained in landscape buffers and supplemented, or replanted where natural vegetation has been lost, with similar plant materials common to Cape Cod, including bushes, trees and ground cover.

§ 240-27. S&D Service and Distribution District. [Amended 7-16-1998]

- A. Principal permitted uses. The following uses are permitted in the S&D District:
 - (1) Retail store.
 - (2) Professional/business office.
 - (3) Bank.
 - (4) Personal service store/shop.
 - (5) Warehouse and distribution facility.
 - (6) Servicing, storing and processing of goods in transit.
 - (7) Facilities for service-type trades, including shops and storage yards.

- B. Accessory uses. The following uses are permitted as accessory uses in the S&D district.
 - (1) Offices, garages and related facilities for uses listed as principal permitted uses in Subsection A herein.

- C. Conditional uses. The following uses are permitted as conditional uses in the S&D District provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
 - (1) Full-service restaurants and delicatessens.
 - (2) Kennels as defined in MGL Ch. 140, § 136A, or other similar facilities for the breeding, boarding, sale or training and related treatment of common domestic pets subject to the following:
 - (a) The Board may impose reasonable conditions, including without limitation, measures for security and the reduction or containment of noise so as to render such uses as inoffensive as practicable.
 - (3) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use
 - (4) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

- D. Special permit uses. (Reserved for future use.)

- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
S&D	43,560	20	160	60	25	40	30 ¹	25

¹ Or two stories, whichever is lesser.

NOTE: Front yard landscaped setback from the road lot line:
S & D: 20 feet, 60 feet from Route 28.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Amended 3-11-1999 by Order No. 99-056]

§ 240-28. SD-1 Service and Distribution District.

- A. Principal permitted uses. The following uses listed in Subsection A(1) through (9) below are permitted in the SD-1 Service and Distribution District, provided that no operation shall result in the treatment, generation, storage or disposal of hazardous materials, except as follows: very small quantity generators; waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21, § 52A; oil on site for heating of a structure or to supply an emergency generator.
- (1) Medical, dental offices, laboratory services, treatment facilities.
 - (2) All other business, governmental and professional offices.
 - (3) Bank.
 - (4) Personal service business including but not limited to the following: barber, beauty shop, dry-cleaning pickup service, shoe repair, tailor and dressmaker.
 - (5) Mortuary or funeral home.
 - (6) Research and development, technological and computer research, software development and data processing including computer operations services.
 - (7) Publishing and printing establishments.
 - (8) Boat sales and storage.
 - (9) Contractor service establishments:
 - (a) Wholesale sales and distribution of building materials including plumbing, carpentry, lumber, electrical, heating and air conditioning, and other similar service or repair businesses; associated showrooms and sales/display space customarily accessory to such uses; and
 - (b) Landscaping, construction and site preparation, and other similar service businesses, provided that all outdoor storage of building materials, trucks and landscaping equipment and materials, are screened from view from Route 28 and Old Post Road.
- B. Accessory uses. (Reserved for future use.)
- C. Conditional uses. (Reserved for future use.)

- (1) Retail store, provided that Zoning Board of Appeals finds that:
 - (a) The proposed business is a low- to average-volume traffic generator, not to include a high-volume traffic generator such as a convenience store. The applicant shall provide the Zoning Board of Appeals with traffic data including a comparison with trip generation rates for different types of retail uses, from the Institute of Transportation Engineers "Trip Generation Manual."
- (2) Full-service restaurant, subject to the following conditions:
 - (a) Food is served to customers at tables by waitpersons, except that the Zoning Board of Appeals may permit buffet style dining;
 - (b) Approximately 85% of food is consumed on the premises;
 - (c) Bar seats or places do not exceed 15% of restaurant seats;
 - (d) Entertainment shall be limited to nonamplified dinner music;
 - (e) No drive-in or outdoor take-out counter facilities shall be permitted; and
 - (f) Access shall be from Industry Road or Old Post Road.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations (dimensional requirements).

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Floor Area Ratio ² Retail/All Other
				Front (feet)	Side (feet)	Rear (feet)		
SD-1	43,560	150	—	45	15	20	30 ¹	0.25/0.30

NOTES:

¹ Or two stories, whichever is lesser.

² Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

Front yard landscaped setback from the road right-of-way: 20 feet, 45 feet from Route 28. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Added 7-15-1999]

§ 240-29. SCCRCOD Senior Continuing Care Retirement Community Overlay District.
²⁰ [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

20. Editor's Note: Former § 240-29, MA-1 Business District, as amended, was repealed 7-14-2005 by Order No. 2005-100. The specific requirements for the SCCRCOD District are found in §§ 240-29.1 through 240-29.11.

§ 240-29.1. Purpose. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The purpose of this section is to encourage the development of residential communities designed to offer shelter, convenience, services and personal medical care, including nursing facility services, to senior persons while providing adequate and economical provision of streets, utilities and public spaces and preserving the natural and scenic qualities of the open areas. These facilities shall offer a continuum of care, ranging from independent living to assisted living and nursing home care that reflects the changing needs of their residents.

§ 240-29.2. Definitions. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

As used in this § 240-29, the following terms shall have the meanings indicated:

APPLICANT — The person or persons, including a corporation or other legal entity, who applies for approval of a Senior Continuing Care Retirement Community Overlay District (SCCRCOD) hereunder. The applicant must own, or be the beneficial owner of, all the land included in the proposed SCCRCOD, or have authority from the owner(s) to act for the owner (s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

ASSISTED-LIVING UNITS — Residential living units in which supportive services are offered for individuals who need assistance in activities of daily living.

BUILDING HEIGHT — Building height shall be measured as the vertical distance from the grade plane to the average height of the highest roof plane that also has the highest ridgeline.

BUILDING STORY — The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

CONTINUING CARE RETIREMENT COMMUNITY — A facility which may include a wide range of housing types including studio, one-, two-, and three-bedroom apartments, townhouses, duplexes, clusters or single-family homes and which offers a continuum of services ranging from in-home services to on-site nursing home care. The facility shall include independent living units, assisted living units and skilled nursing home facilities. The facility may include accessory uses for the benefit of the residents which accessory uses are subordinate and incidental to the continuing care retirement community as determined by the Town of Barnstable Planning Board. Other than nursing home beds, the facility shall meet the Town's Inclusionary Ordinance, Chapter 9 of the Barnstable Code, requiring that 10% of the units be affordable as "affordable" is currently defined under Chapter 9, with the exception that required affordable units may be provided off-site. In the event that off-site units are allowed, the applicant shall provide such units in accordance with § 240-29.3 below.

GRADE PLANE — A reference plane representing the average of the finished ground level adjoining the building at all exterior walls. The reference plane shall be established by using the lowest points of grade within the area between the building and a point six feet from the building.

SENIOR PERSON — Person aged 55 or older or in the case of a couple, one spouse must be over the age of 55. It may include a developmentally disabled adult person under the age of 55.

SPECIAL PERMIT GRANTING AUTHORITY — For the purposes of this section, the Barnstable Planning Board shall be the special permit granting authority.

NURSING OR CONVALESCENT HOME — Any dwelling or building with sleeping rooms for people who are housed or lodged with meals and nursing care for hire, as licensed by the Massachusetts Department of Public Health under MGL c. 111 §§ 71 through 73, as amended.

VISITABILITY — Shall mean that a dwelling unit has no steps between the exterior walking surface adjacent to the unit and the interior primary floor level of the unit; that at least one egress door from the unit be at least three feet wide; that all primary floor passage doors in the unit are at least two feet eight inches wide; and that at least one toilet room be located on the primary floor of the unit.

§ 240-29.3. Description of district. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The SCCRCOD is an overlay district that allows a continuing care retirement community as a use by special permit and which overlay district may be superimposed on any parcel(s) of five acres or more of contiguous upland in any zoning district deemed appropriate as determined by the Town of Barnstable Planning Board. Where the SCCRCOD authorizes uses not otherwise allowed in the underlying district, the provisions of the SCCRCOD shall control. In the event that off-site affordable units are allowed, such units are not required to meet the definition of a "continuing care retirement community" but must meet the following criteria: The number of required affordable units shall be increased to a number not less than 12% of the total proposed market rate units on-site plus not less than 12% of any additional market rate units proposed off site.

§ 240-29.4. Location. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The SCCRCOD is to be shown on the Official Zoning Map of the Town of Barnstable.

§ 240-29.5. Concept plan. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

Prior to the rezoning of any property for inclusion in the SCCRCOD and as part of a petition for such rezoning, a schematic plan, called for purposes of this section, a "concept plan," shall be filed by the applicant with the Planning Board for review at least 21 days prior to a regularly scheduled meeting of the Planning Board. The concept plan shall be consistent with the provisions of this SCCRCOD Ordinance. In deliberation on approval of a concept plan, the Planning Board shall give consideration to the Town of Barnstable Local Comprehensive Plan. The purpose of the concept plan is to ensure that the overall development scheme is consistent with Town policies and plans; adequately protects natural resources; provides safe traffic circulation consistent with the adjacent roadway network that also ensures adequate

access to the development; and to ensure that the development is arranged to provide maximum protection of its residents from nuisance and hazard.

A. The concept plan shall include:

- (1) A schematic site development plan showing in general, the location and square footage of all proposed buildings, general site grading, parking, landscaping, roads, walkways and accessways, open space, wetlands, lighting and signage.
- (2) A general breakdown of building types: single-family, two-family, multifamily and accessory structures, including total number of bedrooms for the entire development.
- (3) A schematic subdivision plan(s), if applicable.
- (4) Specific floor plans, building plans or other detailed construction documents are not required at the concept plan stage.

B. The Barnstable Planning Board will notify the public of the time and date of the public meeting on the concept plan. Thereafter, the Barnstable Planning Board shall determine that (i) the concept plan has been approved; or (ii) the concept plan has been approved subject to modifications; or (iii) the concept plan has been disapproved. The Barnstable Planning Board shall provide to the applicant in writing the reasons for any denial of approval of the concept plan. The determination of the Barnstable Planning Board of the approvability of the concept plan shall be the basis for a recommendation to the Town Council for the rezoning petition.

§ 240-29.6. Map amendment. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

In order to obtain approval of a SCCRCOD the applicant, after first having received a decision from the Planning Board on the approvability of its concept plan, must file a petition for the amendment of the Town of Barnstable Zoning Map for inclusion of the subject parcel(s) within the SCCRCOD.

§ 240-29.7. Application for special permit. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

After successful rezoning of a SCCRCOD, an application for a special permit shall be submitted to the Planning Board within one year from the effective date of such rezoning. The Planning Board may grant extensions for the time of filing for a special permit as may be deemed appropriate due to the size and scope of the proposed development. The application for special permit shall be submitted on forms furnished by the Planning Board, accompanied by the following:

- A. A site plan in accordance with the Town of Barnstable site plan review regulations, §§ 240-98 through 240-105, indicating the planned location of buildings and their use, off-street parking areas, driveways, easements, walks, the location, type and height of

walls, and the extent of landscaping or other treatment for the protection of adjacent properties.

- B. Building plans and elevations for all buildings and structures as may be required to fully describe the project.
- C. A tabulation of the areas of the proposed site elements (including footprints and gross floor area), including total number of buildings, number of bedrooms, accessory structures, parking structures and surface parking areas (square footage and number of parking spaces) and stormwater management areas.
- D. Information pertaining to the proposed entity that is to manage the SCCRCOD and the type of operating agreement contemplated.
- E. If a subdivision is proposed, then all documents as required for the subdivision shall be reviewed during the special permit process.
- F. A narrative detailing the services to be provided to the residents and the staff to be employed to provide those services.
- G. Description of all proposed accessory structures and uses.
- H. Building phasing schedule, if applicable.
- I. Description of any green building construction techniques being used, including a description of how maximum water and energy efficiencies will be achieved.
- J. A landscape plan signed and stamped by a Massachusetts certified landscape architect.
- K. Proposed signage, consistent with the requirements of the underlying zoning district.
- L. Plans detailing provision for wastewater disposal.
- M. Description of any infrastructure improvements that may be necessary to provide for the project.
- N. Additional information as may be required by the Planning Board as reasonably necessary to making the determinations required by this section.

§ 240-29.8. Joint Cape Cod Commission Review. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

- A. Upon a determination by the Building Commissioner that an application for site plan review for a development requiring a special permit under the SCCRCOD constitutes a development of regional impact (DRI) under Section 12(h) of the Cape Cod Commission Act, 1990 Mass. Acts, Ch. 716, a referral shall be made to the Cape Cod Commission, accompanied by a request that a joint review process of the proposed development be established between the Cape Cod Commission and the Planning Board.
- B. The joint review process shall include joint hearings between the Planning Board and the Cape Cod Commission, as feasible.

§ 240-29.9. Standards. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

In order to be eligible for consideration for a special permit, the proposal must contain parcels included in the SCCRCOD and shall meet all of the following standards:

- A. Compliance with applicable regulations and standards. In the case of a subdivision, all plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.
- B. Bulk regulations. For all lots within the SCCRCOD the minimum lot area shall be 217,800 square feet of contiguous upland. For all lots and buildings within the SCCRCOD, the density, minimum lot frontage, property line and road layout setbacks, minimum building height and number of stories and minimum building separation requirements of the underlying zoning district shall apply unless the Planning Board finds that a waiver of any of those requirements is beneficial to create a SCCRCOD which better preserves open space without creating adverse environmental or aesthetic impacts or facilitates the delivery of services to senior persons or provides benefits which outweigh any detriments or provides sufficient mitigation to offset impacts.
- C. Parking. Parking shall be provided as follows:

SCCRCOD Uses	Minimum Number of Spaces	Guest Spaces
Independent-living dwelling unit	0.75 per dwelling unit	0.5 per dwelling unit
Assisted-living dwelling unit	0.5 per dwelling unit	0.5 per dwelling unit
Skilled care facility	0.5 per bed	0.5 per bed
Employee — dwelling unit administration	0.75 per 5 dwelling units	N/A
Employee — skilled care facility	0.5 per bed	N/A

- D. Waiver of parking requirements. The Planning Board may waive the number of parking spaces required for the above-listed uses upon a finding that the applicant has provided a parking demand analysis that adequately demonstrates alternate parking requirements for the proposed use or combination of uses.
- E. Parking and loading design standards.
 - (1) Any above-grade parking or loading facility should be screened from public view to the extent necessary to eliminate unsightliness. Screening shall consist of landscape materials, topographic features, residential buildings or any combination of these. In the alternative, the parking facility shall treat exterior walls with

architectural features typical of the development it serves. Aboveground, multilevel parking garages are discouraged.

- (2) Outdoor storage shall not be permitted.
 - (3) These requirements are in addition to the parking and parking lot landscaping requirements of the underlying zoning district.
- F. Visitability. The applicant shall provide that all of the dwelling units shall be visitable as determined by the SPGA.
- G. Design standards.
- (1) All buildings in the layout and design, including landscaping, the placement of pedestrian sidewalks and parking, shall be an integral part of the development and have convenient access to and from adjacent uses.
 - (2) Primary landscape treatment shall consist of a combination of indigenous grasses, trees and shrubs commonly found on Cape Cod and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Planting areas should be designed to serve as stormwater treatment areas often known as "rain gardens."
 - (3) Existing significant trees and natural vegetation shall be retained to the maximum extent possible. A minimum of one tree with a three-inch minimum caliper is required to be planted within the front setback for every 30 feet of frontage of property.
 - (4) All landscaped areas shall be continuously maintained, irrigated, and organically fertilized.
 - (5) All stormwater shall be treated as appropriate and discharged on site and shall incorporate low-impact techniques for stormwater discharge.
 - (6) Minimum recommended light levels established by the Cape Cod Commission Technical Bulletin 95-001, DRI Standards and Submittal Requirements for Exterior Lighting Design shall apply. Site lighting, security lighting and architectural/landscape lighting shall provide illumination levels appropriate for the designed activity without exceeding minimum requirements.
 - (7) There shall be an adequate safe and convenient arrangement of pedestrian circulation facilities, sidewalks, roadways, driveways, off-street parking and loading space. Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.
- H. Impact analysis. The applicant shall provide additional data and analysis requested by the Planning Board to enable the Board to assess the fiscal, community and environmental impacts of the proposed development. At its discretion, the Planning Board may impose reasonable fees upon the applicant for the hiring of outside consultants and the provisions of MGL c. 44, § 53G, shall apply thereto.

- I. Phasing and period of validity for special permit. The applicant, as part of the application, may propose a phasing plan identifying the specific units to be constructed in each phase and stating the reasons for the request. Said submission shall show the full buildout of the development. The Planning Board, upon a finding of good cause and of consistency with the provisions of this section, may approve a phasing plan that allows the construction of the development to be extended over a period not to exceed 10 years. Notwithstanding anything to the contrary contained in § 240-125C(3), as long as the applicant proceeds with construction continuously in compliance with the approved phasing plan or with any modifications thereto approved by the Planning Board, the period of validity for the special permit shall be the same as the period of the phasing plan. **[Added 6-18-2009 by Order No. 2009-139]**

§ 240-29.10. Decision. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The Planning Board may grant a special permit for a SCCRCOD where it makes the following findings:

- A. The SCCRCOD complies with all applicable Subdivision Rules and Regulations,²¹ except as they may be waived by the Board.
- B. The SCCRCOD does not cause substantial detriment to the neighborhood.
- C. The SCCRCOD is consistent with the Town of Barnstable Local Comprehensive Plan.
- D. The SCCRCOD provides an effective and unified treatment of the development on the project site making appropriate provision for environmental protection, the preservation of scenic features, sensitive habitat and other amenities of the site and the surrounding areas.
- E. The SCCRCOD is planned and developed to harmonize with any existing or proposed development in the surrounding area.
- F. The applicant has provided mitigation that sufficiently addresses the impacts of the SCCRCOD.
- G. The SCCRCOD provides services which are tailored to the needs of senior persons and may include meals, housekeeping, transportation, health care services and personal care assistance, and the benefits of the development for the residents and the community outweighs the detriments.
- H. The SCCRCOD complies with the standards established in §§ 240-29.9 and 240-29.3 except as they may be waived by the Board based upon a finding that the waivers granted do not jeopardize health and safety and do not diminish environmental and aesthetic protections. Nothing herein shall allow the Board to waive the minimum twelve-percent off-site inclusionary housing requirement.

21. Editor's Note: See Ch. 801, Subdivision Regulations.

- I. Where a phasing plan has been proposed, that the applicant has demonstrated good cause to phase the development and that the approved phasing plan is consistent with the provisions of the SCCRCOD. [Added 6-18-2009 by Order No. 2009-139]

§ 240-29.11. Transferability. [Added 6-21-2007 by Order No. 2007-160; amended 2-28-2008 by Order No. 2008-057]

The special permit for the SCCRCOD shall be transferable upon the prior written approval of the Planning Board.

§ 240-30. Medical Marijuana Overlay District. ²⁴ [Added 2-6-2014 by Order No. 2014-050]

- A. District established. A Medical Marijuana Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § 240-6, Zoning Map, herein.
- B. Purpose; use.
 - (1) Purpose. The purpose of the Medical Marijuana Overlay District is to provide for the limited establishment of registered marijuana dispensaries as they are authorized pursuant to state regulations set forth at 105 CMR 725.000, Implementation of an Act for the Humanitarian Medical Use of Marijuana. Given that registered marijuana dispensaries shall be limited in number and strictly regulated by the Massachusetts Department of Public Health, these zoning regulations intend to permit them where there is access to both regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where their impacts are ameliorated by these locations.
 - (2) Use. Within the Medical Marijuana Overlay District, a registered marijuana dispensary that dispenses, cultivates and prepares marijuana products may be permitted as a conditional use only within the overlay district, provided a special permit is first obtained from the Zoning Board of Appeals, subject to the provisions of § 240-125C herein and subject to the all additional standards and conditions of this section.
- C. Special permit granting authority. Within the MMOD, the Zoning Board of Appeals shall be the special permit granting authority.
- D. Use. Notwithstanding the use limitations of the base zoning district or any other overlay zoning district, a registered marijuana dispensary shall be allowed within the Medical Marijuana Overlay District upon the granting of a special permit, subject to the requirements set forth in this section. Within the Medical Marijuana Overlay District, and only within the Medical Marijuana Overlay District, a registered marijuana dispensary

24. Editor's Note: Former § 240-30, MA-2 Business District, as amended, was repealed 7-14-2005 by Order No. 2005-100.

may be permitted, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the following standards and conditions.

E. Requirements/standards.

- (1) **Registration.** All permitted registered marijuana dispensaries shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. No building permit or certificate of occupancy shall be issued for a registered marijuana dispensary that is not properly registered with the Massachusetts Department of Public Health.
- (2) **Building.** A registered marijuana dispensary shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified clients pursuant to applicable state and local regulations.
- (3) **Proximity to residential uses.** A medical marijuana treatment center shall not be allowed within a building containing a residential use, or upon a lot with a residential use, except an incidental residential use that may be necessary for RMD security.
- (4) **Separation requirements.** The site is located at least 1,000 feet distant from a religious institution/place of religious assembly, school, day-care center, preschool or afterschool facility or any facility in which children commonly congregate, or if not located at such a distance, it is determined by the Zoning Board of Appeals to be sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the registered marijuana dispensary, but in no case shall the distance be less than 500 feet measured from parcel boundary to parcel boundary. In no case shall a RMD directly abut another RMD or any medical marijuana use.
- (5) **Dimensional requirements.** Except where it is explicitly stated otherwise in this section, Registered marijuana dispensaries shall conform to the dimensional requirements applicable to nonresidential uses within the underlying and other overlaying zoning districts.
- (6) **Parking.** The required number of parking (both long-term and short-term) spaces for a registered marijuana dispensary shall be one space for every 200 square feet of gross floor area for a RMD; and one space for every 700 square feet of gross floor area for RMD marijuana infused product manufacturing or marijuana cultivation. The Board of Appeals shall also rely on the recommendation of site plan review.
- (7) **Loading.** The Board of Appeals may require loading bays based on the recommendation of site plan review and/or based on the needs of the proposed use.
- (8) **Signage.** Signage shall not exceed 12 square feet in area, and no part of the sign shall exceed eight feet above existing average grade. For other site signage, the

requirements of Article VII of this chapter shall also apply through the underlying zoning district. The Zoning Board of Appeals may impose additional restrictions on signage, as appropriate, to mitigate any aesthetic impacts.

- (9) Consistency with registration materials. Plans and information provided to the Zoning Board of Appeals shall be consistent with the with the registration materials issued by the Massachusetts Department of Public Health and any other information and materials provided to the Massachusetts Department of Public Health.

F. Special permit requirements.

- (1) Application requirements. An application to the Zoning Board of Appeals shall include, at a minimum, the following information:
 - (a) Complete application form.
 - (b) Description of activities: A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIPs), on-site sales, off-site deliveries, site security, hours of operation, community benefit, distribution of educational materials, and other programs or activities.
 - (c) Service area: A scaled map and narrative describing the area proposed to be served by the registered marijuana dispensary and the anticipated number of clients that will be served within that area. This description shall indicate where any other registered marijuana dispensaries exist or have been proposed within the expected service area.
 - (d) Context map: A scaled map depicting all properties and land uses within a two-thousand-foot radius of the project site, whether such uses are located in Barnstable or within surrounding communities, including but not limited to all religious institutions/places of religious assembly, schools, day-care centers, preschool or afterschool facilities or any facilities in which children commonly congregate.
 - (e) Site plan: The proposal is subject to the provisions of Article IX, Site Plan Review, § 240-102.
 - (f) Security plan: The security plan shall be submitted to the Chief of Police who shall provide written comment to the Board as to the adequacy or inadequacy of the security provisions and plans.
 - (g) Building elevations and signage: Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required.
 - (h) Registration materials: Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to

the Massachusetts Department of Public Health for the purpose of seeking registration, to confirm that all information provided to the Zoning Board of Appeals is consistent with the information provided to the Massachusetts Department of Public Health.

- (2) Special permit criteria. In granting a special permit for a registered marijuana dispensary, in addition to the general criteria for issuance of a special permit as set forth in § 240-125C herein and in consideration of all application materials submitted and testimony received, the Zoning Board of Appeals shall find that the following criteria are met:
 - (a) The registered marijuana dispensary complies with all requirements of this section, including but not limited to Subsections E and F in their entirety.
 - (b) The registered marijuana dispensary is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other registered marijuana dispensaries, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.
 - (c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, cyclists and public transportation users.
 - (d) Traffic generated by client trips, employee trips, and deliveries to and from the registered marijuana dispensary shall not create a substantial adverse impact on nearby residential uses.
 - (e) Where necessary to shield adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
- (3) Prohibition on transfer. The special permit shall be issued to the owner of the Medical marijuana treatment center and shall not transfer with a change in ownership of the business and/or property.
- (4) Limitation of approval. A special permit authorizing the establishment of a registered marijuana dispensary shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the registered marijuana dispensary has been authorized by special permit. If the registration for a registered marijuana dispensary has been revoked, transferred to another controlling entity, or relocated to a different site within the Medical Marijuana Overlay District, a new special permit shall be required prior to issuance of a certificate of occupancy.
- (5) Revocation/nonrenewal.
 - (a) In accordance with 105 CMR 725.100(E), Expiration and Renewal of Registration, all materials submitted pursuant to the RMD compliance with that section shall also be submitted to the Zoning Board of Appeals record file. The Board reserves the right to hold a public hearing based on a review

of the materials showing inconsistencies with special permit conditions and/or the requirements and standards of this section.

- (b) In accordance with 105 CMR 105(O), Requirements Upon Expiration, Revocation or Voiding of Certificate of Registration of RMD, should DPH take action under this section, the special permit shall be null and void.

- G. Relationship to other laws. Nothing in this section poses an obstacle to federal enforcement of federal law. Nothing in this law supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes. Nothing in this law requires the violation of federal law or purports to give immunity under federal law.

§ 240-31. (Reserved) ²³

§ 240-32. IND Limited Industrial District.

A. Principal permitted uses.

- (1) The following uses are permitted in the IND Limited District:
 - (a) Warehousing and wholesale distribution facilities of nontoxic and nonhazardous materials.
 - (b) Light manufacturing and assembly facilities.
 - (c) Research and development facilities.
 - (d) Professional or business offices, banks, architectural, engineering and drafting firms, computer operations centers, recreation facilities, and such sewerage treatment facilities as may have been allowed by previous Zoning Ordinance.
- (2) Specifically prohibited are petroleum refineries, landfills, resource recovery facilities, hotels, motels, restaurants, manufacturing and processing uses, any use involved in the manufacture, storage, transportation, disposal or use of toxic or hazardous materials and any residential use.

B. Accessory uses. (Reserved for future use.)

C. Conditional uses. The following uses are permitted as conditional uses in the IND Limited District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (2) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front (feet)	Side (feet)	Rear (feet)		
IND LTD	90,000	20	200	50	30	30	30 ¹	25

23. Editor's Note: Former § 240-31, B-1 Business District, added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039, was repealed 7-14-2005 by Order No. 2005-100. Said § 240-31, was subsequently repealed again 6-1-2006 by Order No. 2006-136.

NOTES:

¹ Or two stories, whichever is lesser.

- F. Special screening standards. In IND Limited Districts a buffer strip with a minimum depth of 30 feet at the rear and side site lines and a buffer strip of 50 feet at the front line shall be maintained in existing ground cover and trees or shall be replanted with native trees, shrubs and grasses which do not require continued nurturing and watering; provided, however, that in no instance shall the natural vegetation coverage on any lot consist of less than 25% of the total lot area. A maximum of two driveways, each not more than 50 feet wide, shall be allowed for ingress and egress.

§ 240-33. IND Industrial District.

- A. Principal permitted uses.
- (1) The following uses are permitted in the IND District:
 - (a) Any use permitted in the B District.
 - (b) Lumber, fuel and ice establishments.
 - (c) Contractors' yards.
 - (d) Manufacturing and industrial uses.
 - (e) Any use permitted in the S&D District.
 - (f) Recreation ice rink facilities.
 - (2) Specifically prohibited are petroleum refineries, landfills, resource recovery facilities, sewerage treatment facilities which process and discharge less than tertiary-treated effluent, and any other use which involves as a principal activity the manufacture, storage, use, transportation or disposal of toxic or hazardous materials.
- B. Accessory uses. (Reserved for future use.)
- C. Conditional uses. The following uses are permitted as conditional uses in the IND District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Kennels as provided for in § 240-27C(2) herein.
 - (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
 - (3) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
- D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
IND	90,000	20	200	60	30	30	30 ¹	25

¹ Or two stories, whichever is lesser.

F. Special screening standards. The provisions of § 240-32F herein shall apply.

§ 240-34. Floodplain District. [Amended 5-22-2014 by Order No. 2014-126]

A Floodplain District is herein established within the Town of Barnstable. The district includes all special flood hazard areas within the Town designated as Zone AE, AO, or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Barnstable are Panel Numbers 25001C0532J, 25001C0533J, 25001C0534J, 25001C0537J, 25001C0539J, 25001C0541J, 25001C0542J, 25001C0543J, 25001C0544J, 25001C0551J, 25001C0552J, 25001C0553J, 25001C0554J, 25001C0556J, 25001C0557J, 25001C0558J, 25001C0559J, 25001C0561J, 25001C0562J, 25001C0563J, 25001C0564J, 25001C0566J, 25001C0567J, 25001C0568J, 25001C0569J, 25001C0752J, 25001C0754J, 25001C0756J, 25001C0757J and 5001C0776J, effective date July 16, 2014. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner, and Engineering Department.

Permits for new construction, alteration of structures, or other development (any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations), at or below the base flood elevation as specified with the A and V Zones as determined by the Flood Insurance Study and designated on the special FEMA Flood Insurance Rate Maps, shall be approved subject to the following:

- A. New construction or substantial improvement (repair, construction or alteration costing 50% or more of the market value of the structure before improvement, or if damaged, before damage occurred) of residential structures shall have the lowest floor (including basement) elevated to not less than base flood elevations. New construction or substantial improvement of nonresidential structures shall either be similarly elevated or, together with attendant utility and sanitary facilities, be floodproofed to not less than base flood elevations.

- B. Where floodproofing is utilized in accordance with Subsection A herein, a registered engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.
- C. Any new construction or substantial improvement to be under taken within flood areas shall be in accordance with Massachusetts State Building Code 780 CMR. The Building Commissioner shall review all proposed development within flood areas to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Sec. 404 of the Federal Water Pollution Control Act Amendments of 1972, U.S.C. § 1334, and shall obtain and maintain records of elevation and floodproofing levels for new construction or substantial improvement within the flood areas.
- D. Any new construction, alteration of structures or other development which is removed from the A or V Zones by subsequent FEMA Flood Insurance Rate Map amendments shall only have to meet the requirements of its new zone designation.
- E. All subdivision proposals and other proposed new developments greater than 50 lots or five acres, whichever is lesser, shall include within such proposals base flood elevation data.
- F. Subdivision and development proposals, including utility and drainage systems, shall assure that they are located and designed to be consistent with the need to minimize flood damage.
- G. In Zone AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- H. In a riverine situation, the Conservation Division Administrator or designee shall notify the following of any alteration or relocation of a watercourse: Adjacent Communities, the NFIP State Coordinator, Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104, and the NFIP Program Specialist, Federal Emergency Management Agency, Region I at 99 High Street, 6th Floor, Boston, MA 02110.
- I. Within Zone AO on the FEMA Flood Insurance Rate Maps, adequate drainage paths must be provided around structures on slopes to guide floodwaters around and away from proposed structures.
- J. No land within areas designated as V (Velocity) Zones on the FEMA Flood Insurance Rate Maps shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. All new construction and substantial improvement within the V Zones shall be in full compliance with the Sate Building Code and shall be certified by a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.

- K. The following shall be prohibited within flood areas designated as V Zones:
- (1) Any man-made alteration of sand dunes and salt marshes which might increase the potential for flood damage.
 - (2) Use of fill.
 - (3) Mobile homes.
- L. The Zoning Board of Appeals may authorize exceptions from the flood regulations of this section by special permit within the flood areas in accordance with § 240-125 herein, as in any other zoning district, and may grant special permit exceptions from the requirements of this section in the case of new structures or substantial improvement to be erected on a lot contiguous to and surrounded by lots with existing structures and constructed below the base flood elevation, provided that the following are met:
- (1) A showing of good and sufficient cause.
 - (2) A determination that failure to grant the special permit would result in exceptional hardship to the applicant.
 - (3) A determination that the special permit will not result in increased flood heights, additional threats to public safety or environment, extraordinary public expense, or any conflict with requirements in accordance with Chapter 40A of the Massachusetts General Laws.
 - (4) The Zoning Board of Appeals has notified the applicant for the special permit in writing that the actuarial rates will increase as the first-floor elevation decreases, and that such construction below base flood elevation increases risks to life and property.
 - (5) Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.
- M. Upon the granting of such a special permit or permits, the Zoning Board of Appeals shall maintain a record of all such special permits granted by said Board, including justification for their issuance, and report such special permits in its annual report to the Flood Insurance Administrator in accordance with the Housing and Urban Development Guidelines.
- N. The Zoning Board of Appeals may grant a special permit for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places or the Old King's Highway Regional Historic District without regard to the procedures set forth in Subsection J herein.

§ 240-35. Groundwater Protection Overlay Districts. [Added 11-7-1987 by Art. 2; amended 11-4-1989 by Art. 5; 8-19-1993 by Order No. 93-105]

- A. Purpose. The purpose of this section is to protect the public health, safety, and welfare by encouraging nonhazardous, compatible land uses within groundwater recharge areas.

- B. Districts established. In order to carry out the purpose of this section, the following overlay districts are hereby established, and shall be considered as superimposed over any other district established by this chapter:

AP Aquifer Protection Overlay District
GP Groundwater Protection Overlay District
WP Well Protection Overlay District

- (1) The GP Groundwater Protection Overlay District is based on Zone 11 delineations to existing, proven future, and proposed future public supply wells, as determined by Geraghty and Miller, Inc., and as shown on Figure 44, in their report entitled "Groundwater Conditions, Town of Barnstable, Massachusetts, Volumes I of III; together with Appendices A-D and E-H in Volumes II of III and III of III," dated November 1993 and "Corrections, Zone II Delineations for Public Water Supply Wells, Town of Barnstable, Massachusetts," dated December 1993; except that the GP Groundwater Protection Overlay District (Zone II), to Barnstable Fire District wells 3 and 4, is delineated by Whitman and Howard, Inc. in a report entitled "Report on Prolonged Pumping Test and Zone II Delineation at Test Well Site 8-90, Barnstable Fire District, Barnstable, Massachusetts," dated October 1991. The Zone II delineations to existing and proven future wells have been approved by the Department of Environmental Protection, Executive Office of Environmental Affairs, Commonwealth of Massachusetts, in a letter to the Town of Barnstable dated March 13, 1996.
 - (2) The WP Well Protection Overlay District is based on a five-year time of travel zone to existing, proven future and potential future public supply wells, delineated by Geraghty and Miller Inc., in reports referenced above, except that the WP Zone to Barnstable Fire District Well No. 2 is delineated by Earth Tech, consultant to Barnstable Fire District, summarized in a letter and a map to the district dated May 13, 1997. The WP Well Protection Overlay District to Barnstable Fire District 2 is that portion of the five-year time of travel zone located within the GP Groundwater Protection Overlay District (Zone 11).
 - (3) The AP Aquifer Protection Overlay District consists of all areas of the Town, except those areas within the GP Groundwater and WP Well Protection Overlay Districts. The reports, letters and maps are on file with the Town Clerk. **[Amended 9-17-1998 by Order No. 99-012]**
- C. Overlay Districts Map. The overlay districts established by this section (the GP Groundwater Protection District; the WP Well Protection Overlay District; and the AP Aquifer Protection Overlay District) are shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map. **[Amended 9-17-1998 by Order No. 99-012]**
- D. District boundaries. Where the overlay district boundaries divide a lot, each portion of that lot shall be subject to all the regulations applicable to the district in which it is located. **[Amended 9-17-1998 by Order No. 99-012]**
- E. AP Aquifer Protection Overlay District regulations.

- (1) Permitted uses. The following uses are permitted in the AP Aquifer Protection Overlay District:
 - (a) Any use permitted in the underlying zoning districts, except for those uses specifically prohibited by Subsection E(2) herein.
 - (2) Prohibited uses. The following uses are prohibited in the AP Aquifer Protection Overlay District:
 - (a) Any use prohibited in the underlying zoning districts.
- F. GP Groundwater Protection Overlay District regulations.
- (1) Permitted uses. The following uses are permitted in the GP Groundwater Protection Overlay District:
 - (a) Any use allowed in the underlying zoning districts, except those uses specifically prohibited in Subsection F(2) herein:
 - (2) Prohibited uses. The following uses are prohibited in the GP Groundwater Protection Overlay District:
 - (a) Any use prohibited in the underlying zoning districts.
 - (b) Landfills and open dumps as defined in 310 CMR 19.006.

- (c) Junkyards, salvage yards and automobile graveyards, as defined in MGL Ch. 140B, § 1.²⁴
- (d) Mining of land, removal of sand and gravel, and quarrying of other raw materials.
- (e) The removal of soil, loam, sand, gravel and other mineral substances to within four feet of the historic high-water mark unless the substances removed are redeposited within 45 days and the final grade exceeds four feet above the historic high-water mark, and except for excavations for the foundations of buildings and structures and the installation of utilities.
- (f) Underground fuel storage tanks.²⁵
- (g) Storage for resale of heating fuels, including but not limited to, oil, coal, gas and kerosene.
- (h) Sewage treatment plant, disposal works, or small package treatment facility subject to 314 CMR 5.00, except for the following:
 - [1] The replacement or repair of an existing facility that will not result in a design capacity greater than the design capacity of the existing system(s);
 - [2] Treatment works approved by the Department of Environmental Protection designed for the treatment of contaminated ground or surface waters; and
 - [3] Sewage treatment works including package treatment facilities, which are owned and operated by the Town of Barnstable, and located in areas with existing water quality problems attributable to current septic systems where there will be a net improvement in water quality with the installation of the treatment facility.
- (i) Commercial feeding of livestock.
- (j) Storage of road salt or other deicing materials.
- (k) Metal plating, finishing and polishing.
- (l) Chemical and bacteriological laboratories.
- (m) Boat, motor vehicle and aircraft cleaning, service and repair.
- (n) Dry-cleaning processing establishments.
- (o) Furniture stripping, painting and refinishing.

24. Editor's Note: See Ch. 502, Junk Dealers.

25. Editor's Note: See Ch. 326, Fuel and Chemical Storage Systems.

- (p) Any other use which generates, treats, stores or disposes of hazardous waste that are subject to MGL Ch. 21C and 310 MCR 30.00, except for the following uses:
- [1] Very small quantity generators as defined by 310 CMR 30.00;
 - [2] Waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21, § 52A.
 - [3] Treatment works approved by the Department of Environmental Protection designed in accordance with 314 CMR 5.00, for the treatment of contaminated ground or surface waters.
 - [4] Household hazardous waste collection centers or events operated according to 310 CMR 30.390.
- (q) Landfilling of sludge and septic as defined in 310 CMR 32.05.
- (r) Storage of sludge and septage, as defined in 310 CMR 32.05, unless in compliance with 310 CMR 32.30 and 310 CMR 32.41
- (s) Storage of animal manures unless protected from the elements and contained in a structure which prevents leachate from contaminating groundwater, in accordance with all the requirements of the United States Soil Conservation Service.
- (t) Stockpiling and disposal of snow and ice removed from highways and streets located outside of the GP and WP Districts which contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for ice and snow removal.
- (u) Storage of liquid petroleum products of any kind, except those incidental to:
- [1] Normal household use and outdoor maintenance or the heating of a structure;
 - [2] Waste oil retention facilities required by MGL Ch. 21, § 52A;
 - [3] Emergency generators required by statute, rule or regulation;
 - [4] Treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;

and provided that such storage is either in a freestanding container within a building or in a freestanding container above ground level with protection adequate to contain a spill the size of the container's total storage capacity; however, replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline is allowed consistent with state and local requirements; and

- [5] Any other use which involves as a principal activity or use the generation, storage, use, treatment, transportation or disposal of hazardous materials.
- (v) Storage of commercial fertilizers, as defined in MGL c 128, § 64, unless such storage is within a structure designed and engineered to prevent escape or transport of commercial fertilizers to the groundwater under any circumstances. **[Added 1-17-2013 by Order No. 2013-001]**
- (3) Lot coverage. Unless the applicant demonstrates that all runoff is recharged on site, no more than 15% or 2,500 square feet, whichever is greater, of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed of on site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.
- (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees.
- G. WP Well Protection Overlay District regulations. **[Amended 8-19-1993 by Order No. 93-105]**
- (1) Permitted uses. The following uses are permitted in the WP Well Protection Overlay District:
- (a) Any use allowed in the underlying zoning districts, except those specifically prohibited in Subsection G(2) herein:
- (2) Prohibited uses. The following uses are prohibited in the WP Well Protection Overlay District:
- (a) Any use prohibited in the underlying zoning districts.
- (b) All uses prohibited in Subsection F(2) herein.
- (c) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
- (d) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
- (e) Any use which uses, generates or stores, including racking for resale, toxic or hazardous substances, totaling at any one time more than 50 gallons liquid volume or 25 pounds dry weight.
- (3) Lot coverage. Unless the applicant demonstrates that all runoff is recharged on site, no more than 15% or 2,500 square feet, whichever is greater, of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed on on site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.

- (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees.

§ 240-36. RPOD Resource Protection Overlay District. [Added 10-26-2000]

A. Purpose.

- (1) The purpose of this section is to create a Resource Protection Overlay District overlaying residential zoning districts, and, in part, the Groundwater Protection Overlay District. The boundaries of the Resource Protection Overlay District shall include the recharge areas to the Centerville River, Popponessett and Shoestring Bays, and the Three Bays area of Cotuit and Osterville, so-called, together with areas dependent upon private well water supplies, and shall be as shown on the Barnstable Zoning Map as described in Subsection C below. When regulations are in conflict, the more restrictive regulation shall apply.
- (2) The Resource Protection Overlay District implements the Barnstable Local Comprehensive Plan, adopted by the Barnstable Town Council, October 30, 1997, and approved by the Cape Cod Commission, February 12, 1998. The purposes of the Resource Protection Overlay District include:
 - (a) To reduce nitrogen contamination by reducing impacts from septic systems, fertilizers, and runoff from impervious surfaces, which contamination adversely affects groundwater, ponds and freshwater bodies, and south coastal marine embayments.
 - (b) To reduce nitrogen loading to groundwater, surface water and coastal embayments to prevent deterioration of water quality, destruction of bottom habitat, loss of fin fish and shellfish habitat, closure of swimming areas, and other adverse environmental and economic impacts.
 - (c) To increase protection of groundwater quality in areas where no public wastewater treatment and no public water supply is provided; to ensure protection of private drinking water wells; to protect private drinking water wells from adverse impacts in areas of varying soil conditions that are vulnerable to contamination of groundwater due to environmental conditions such as impervious soils, high groundwater levels or steep slopes; and to protect private wells from impacts from adjacent road drainage systems.
 - (d) To reduce development potential. The Barnstable Local Comprehensive Plan identifies the potential for 36% more residential growth and a shortfall in public facilities to service that additional residential development. Potential shortfalls in public services include inadequate roads, lack of capacity in public wastewater treatment facilities, lack of options for public water supply development, and lack of capacity of schools and recreational facilities.

B. Districts established. In order to implement the purpose of this section, the Resource Protection Overlay District is hereby established, and shall be superimposed over existing

residential zoning districts established by this chapter, and as they may be amended from time to time.

- C. Overlay Districts Map. The boundaries of the Resource Protection Overlay District established by this section are shown on the Official Zoning Map, § 240-6A,

Identification of Zoning Map, as amended with a file date of October 26, 2000, and a title of "Resource Protection Overlay District."

- D. Resource Protection Overlay District regulations. Within the Resource Protection Overlay District, the minimum lot area requirement of the bulk regulations in all residential zoning districts shall be 87,120 square feet.

§ 240-37. Dock and Pier Overlay District. [Added 2-1-2001]

A. Purpose.

- (1) The purpose of this section is to protect the general public interest in, and access to, the public tidelands of the commonwealth by creating a Dock and Pier Overlay District overlaying residential zoning districts. The boundaries of the Dock and Pier Overlay District shall include an area along the western and northerly shores of Cotuit Bay from Loop Beach to Handy Point, and shall be as shown on the Barnstable Zoning Map as described in Subsection C below. If the provisions of this amendment conflict with any other provisions of this chapter, the more restrictive provisions shall apply.
- (2) The Dock and Pier Overlay District implements the Barnstable Local Comprehensive Plan, adopted by the Barnstable Town Council on October 30, 1997, and approved by the Cape Cod Commission on February 12, 1998. The purposes of the Dock and Pier Overlay District include:
 - (a) Maintaining public access along the shore and to shellfish and shellfish beds, whether existing or potential, for the purposes allowed by law (Strategy 2.2.6.1.1);
 - (b) Maintaining safe, open waters for recreational pursuits, including swimming, power boating, rowing, rowing instruction, sailing, sailing instruction, sailboat racing, and kayaking (Goal 2.2.4); and
 - (c) Protecting and retaining the natural open character and scenic vistas of the seacoast and water (Policy 2.2.6.2).

B. Establishment of district.

- (1) In order to implement the purposes of this section, the Dock and Pier Overlay District is hereby established and shall be considered as superimposed over any other districts established by this chapter as amended from time to time.

- C. Overlay District Map. The boundaries of the Dock and Pier Overlay District established by this section are shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map, as amended with a file date of August 30, 2000.

- D. Prohibition. Within the Dock and Pier Overlay District, the construction and/or installation of docks and piers is prohibited.

- E. Reestablishment of damaged or destroyed nonconforming docks or piers. The reestablishment of a lawful preexisting nonconforming dock or pier which has been

destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted pursuant to § 240-95, Reestablishment of damaged or destroyed nonconforming use or building or structure. The redeployment of a lawful preexisting nonconforming seasonal dock or pier is permitted.

- F. Expansion of existing docks or pier. For the purposes of Article VIII, Nonconformities, the expansion of an existing dock or pier located within the Dock and Pier Overlay District shall be deemed to be substantially detrimental and shall be prohibited.

§ 240-37.1. Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District. [Added 4-3-2008 by Order No. 2008-091; amended 10-7-2010 by Order No. 2010-159]

A. Purpose.

- (1) The purpose of this section is to protect the general public's interest in the recreational harvesting of shellfish by creating a Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District within said overlay zoning district.
- (2) The purposes of the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District include:
 - (a) Maintaining public access along the shore and to shellfish and shellfish beds, whether existing or potential, for the purposes allowed by law.
 - (b) Prohibiting docks and piers in mapped portions of the coastal waters of Cotuit Bay, North Bay, West Bay, Lewis Bay and Barnstable Harbor designated as a Recreational Shellfish Area or Shellfish Relay Area.

- B. Establishment of district. The boundaries of the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District are hereby established and shall be considered as superimposed over any other districts established by this chapter as amended from time to time. The Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District shall include those areas shown on a maps on file with the Town Clerk entitled "Recreational Shellfish Area and Shellfish Relay Area Overlay District," dated June 17, 2010, and "Amendment to the Barnstable Zoning Map - Sheet 1 of 7, Cotuit Zoning Map Sheet 7 of 7, Hyannis Zoning Map Sheet 3 of 7, Centerville Zoning Map Sheet 4 of 7, Osterville Zoning Map Sheet 5 of 7," all dated June 17, 2010, up to and including the area seaward of the mean high water line, which map, together with all explanatory material thereon, is hereby incorporated in and made part of this chapter.

- C. Prohibition. Within the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District, the construction and/or installation of docks and piers is prohibited, unless such dock or pier has the benefit of a valid order of conditions issued prior to August 17, 2007, and receives all other necessary local, state and federal permits, in which case the construction and/or installation and maintenance of said dock or pier shall not be prohibited.

- D. Reestablishment of damaged or destroyed nonconforming docks or piers. The reestablishment of a lawful preexisting nonconforming dock or pier which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted pursuant to § 240-95A(1) and B, provided that such reestablishment shall include only materials currently allowed for such construction by the Barnstable Conservation Commission, and, for the purposes of this section, the "pursuit of construction continuously to completion" shall mean that construction shall be completed within one year of receipt of all required permits. The redeployment of a lawful preexisting nonconforming seasonal dock or pier is permitted.
- E. Expansion of existing docks or pier. For the purposes of Article VIII, Nonconformities, the expansion of an existing dock or pier located within the Recreational Shellfish Area and Shellfish Relay Area Overlay District shall be deemed to be substantially detrimental and shall be prohibited.
- F. Definitions. As used in this section, the following terms shall have the meanings indicated, [(from Ch. 703, Private Docks and Piers, § 703-2, Definitions.)]

DOCK and PIER — The terms "dock" and "pier" shall be used interchangeably for the purposes of these regulations and shall mean the entire structure of any pier, wharf walkway, or float, and any part thereof, including pilings, ramps, walkways, float, tie-off pilings, dolphins and/or outhaul posts, that is located on a coastal bank (310 CMR 10.30), land under water bodies and waterways (310 CMR 10.56), land under the ocean (310 CMR 10.25), land under a salt pond (310 CMR 10.33), rocky intertidal shore (310 CMR 10.31), or that portion of a coastal beach (310 CMR 10.27) seaward of the mean high water line. Notwithstanding the above, either a swimming float or work float, kept at a mooring, that receives a permit from the Harbormaster and is not connected with the shore, is not a float subject to these regulations. Bulkheads duly permitted for the purpose of erosion control are not subject to this section.

SEASONAL — The dock, ramp, floats and all supporting materials are not in place prior to April 1 of each year and are removed prior to November 1 of each year.

- G. Enforcement. Any violation of the provisions of the Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District shall be subject to penalty and fines pursuant to § 240-123 of the Town of Barnstable Code.

§ 240-38. Medical Services Overlay District. [Added 8-16-2001]

A. Purpose.

- (1) The purpose of this section is to permit the development and relocation of medical and healthcare services on a previously developed site with convenient regional access. The Medical Services Overlay District is established as a special district which overlays the Industrial Zoning District and, in part, the Groundwater Protection Overlay District. The boundaries of the Medical Services Overlay District are shown on a map of land entitled "Medical Services Overlay District" filed with the Town Clerk, which map, together with all explanatory matter therein, is hereby incorporated in and made a part of this chapter.

- (2) Provisions of this section are designed to insure that all development activities associated with the Medical Services Overlay District will be carried out so as to provide for and maintain protection of neighboring properties, convenient and safe access for vehicular and pedestrian movement, fire-fighting and emergency rescue vehicles, satisfactory methods of stormwater management, groundwater recharge and handling and disposal of sewage and waste and adequate off-street parking. Nothing contained herein shall serve to invalidate or affect the provisions of any existing zoning ordinances which affect the proposed Medical Services Overlay District, including without limitations, the provisions of §§ 240-33 and 240-35 of this chapter.
- B. Principal permitted uses. The principal permitted uses allowed in the Medical Services Overlay District shall include ambulatory medical services, medical offices, dental offices and clinics including patient treatment facilities of an ambulatory nature, research and development activities associated with medical and healthcare issues and/or healthcare research, treatment or administration.
- C. Accessory use. (Reserved for future use.)
- D. Conditional use. (Reserved for future use.)
- E. Special permit use. (Reserved for future use.)
- F. Bulk regulations (dimensional requirements).
 - (1) Minimum lot area: 90,000 square feet.
 - (2) Minimum lot frontage: 200 feet.
 - (3) Minimum setback, front: 60 feet (except 100 feet from Hadaway).

- (4) Side/rear yard: 30 feet maximum.
- (5) Building height: 30 feet or 2 1/2 stories, whichever is less.
- (6) Front yard landscape buffer: 45 feet.
- (7) Landscape buffer, rear and side yard: 30 feet.
- (8) Maximum lot coverage: 25%.
- (9) Maximum floor area ratio: 0.40.

§ 240-39. Shopping Center Redevelopment Overlay District. [Added 4-24-1996]

A. Purposes.

- (1) The purpose of this § 240-39 is to permit the renovation and redevelopment of a large-scale integrated retail shopping center on a large site with convenient highway access. The Shopping Center Redevelopment Overlay District is established as a special district which overlays another nonresidential zoning district or districts (including a Groundwater Protection Overlay District).
- (2) The Shopping Center Redevelopment Overlay District permits the redevelopment and expansion of a shopping center subject to the specific regulations and requirements contained in this § 240-39, which regulations and requirements shall govern even where they are inconsistent with or less restrictive than the other requirements of this chapter. The regulations of this § 240-39 relating to use, building and lot dimensions, development intensity, parking, signage and advisory site plan review shall apply only to a regional shopping center, and not to any other use that is allowed or permitted in the underlying zoning district.
- (3) The provisions of this § 240-39 are designed to assure that all development activities associated with a regional shopping center will be carried out so as to provide for and maintain:
 - (a) Protection of neighboring properties against harmful effects of uses on the development site;
 - (b) Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
 - (c) Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
 - (d) Satisfactory methods of stormwater management and groundwater recharge shall be provided with due regard to the protection of the Town's groundwater resources;

- (e) Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishments on the development site;
 - (f) Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishments on the development site;
 - (g) Adequate off-street parking and traffic mitigation measures that will enhance the efficiency of the transportation system taking into consideration the overall Town traffic needs identified in the Barnstable/Yarmouth Transportation Study prepared by the Town in conjunction with the Town Local Comprehensive Plan;
 - (h) Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site; and
 - (i) Attractive and functional design with due regard to the existing conditions of the development site and the use thereof for a regional shopping center, in order to promote the interests of the community.
- B. Location. The boundary of the Shopping Center Redevelopment Overlay District is shown on a map of land entitled "Shopping Center Redevelopment Overlay Zoning District" filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this chapter.
- C. Relationship to underlying districts and regulations.
- (1) The Shopping Center Redevelopment Overlay District shall overlay all underlying districts so that any parcel of land lying in a Shopping Center Redevelopment Overlay District shall also lie in the zoning district or districts in which it is otherwise classified by this chapter.
 - (2) All regulations of the underlying zoning district(s) shall apply within the Shopping Center Redevelopment Overlay District to the extent that they are not inconsistent with the specific provisions of this § 240-39. To the extent the provisions of this § 240-39 are in conflict with or are inconsistent with other provisions of this chapter, the provisions of this § 240-39 shall govern and prevail even if such other provisions are more restrictive than those set forth in this § 240-39.
- D. Definitions. The following definitions shall be applicable to land and its use within the Shopping Center Redevelopment Overlay District:
- ADVISORY SITE PLAN REVIEW — The process set forth in § 240-39L of this chapter, and shall not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto.
- AMUSEMENT USES — The principal use of stores or common areas in a regional shopping center for the operation of a coin-operated video arcade, game room, indoor

playground, bowling alley or similar use (but restaurant and theater uses and amusement uses that are accessory to retail uses shall not constitute amusement uses).

GROSS FLOOR AREA -- — The meaning set forth in § 240-128 of this chapter.

GROSS LEASABLE AREA -- — Gross floor area, exclusive of mall areas, stairs, escalators, elevators, utility, storage and equipment rooms, mall offices, exit and service corridors, toilet rooms, maintenance areas, and mezzanine areas not used for the public sale or display of goods.

INITIAL REDEVELOPMENT — The expansion of existing improvements within the Shopping Center Redevelopment Overlay District which increases the gross floor area of all buildings within the district above that which is in existence on January 1, 1996, by 50,000 square feet of gross floor area or more in the aggregate pursuant to a special permit issued under § 240-39M hereof.

MAJOR STORE — A store having 50,000 or more contiguous square feet of gross floor area occupied by a single tenant or occupant and operated under a single trade name.

MEZZANINE(S) — An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than 10% of the gross floor area of the store or area of the building in which the level or levels are located. Mezzanines which are not used for the public sale or display of goods shall not be treated as an additional story for purposes of calculating maximum building height. Mezzanine space may be used for storage and for backroom office functions incident to the operation of gross floor area within the regional shopping center, but shall not be rented for such purposes to persons not operating gross floor area within the regional shopping center. Mezzanines which are used for the public sale or display of goods shall be treated as gross leasable area.

REDEVELOPMENT AREA — Land within the boundaries of the Shopping Center Redevelopment Overlay District, which is used or proposed for use as part of a regional shopping center, and encompassing one or more individual lots on which the regional shopping center will be situated.

REGIONAL SHOPPING CENTER — A concentration of stores and establishments devoted to retail shopping center uses and amusement uses including an enclosed structure (which may consist of several buildings) containing a total of not less than 500,000 square feet of gross floor area and located on a redevelopment area, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. A regional shopping center may consist of one or more lots and one or more buildings under separate ownership, provided that:

- (1) The lots and buildings are subject to an operating agreement or leasehold arrangements, provided that the areas used in common, including the central enclosed mall area, the parking structures and the exterior parking and circulation areas, will be under integrated management; and

- (2) The separate lots and buildings are developed with a unified approach to architectural and landscape design, pedestrian ingress and egress, parking, truck loading, vehicular entrances and exits, drainage, groundwater recharge and utilities.

RETAIL SHOPPING CENTER USES — A concentration of retail stores and service establishments, including restaurants, movie theaters and such other uses as are customarily found in a regional shopping center, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. Regional shopping center uses may include one area devoted to outdoor, tent-type sales of home and garden goods, provided that any such area is operated incident to a retail store having not less than 40,000 square feet of gross floor area and occupies not more than 5,000 square feet of area.

E. Application of requirements.

- (1) A redevelopment area may consist of more than a single building lot, and in such event the requirements of this chapter shall not be applied to individual building lots, but shall be applied to the entire redevelopment area as if the redevelopment area were a single building lot notwithstanding the fact that the building lots within the redevelopment area may be in different ownership.
- (2) The regional shopping center and other improvements within the redevelopment area may be developed in phases and may be developed and occupied under one or more building permits and occupancy permits.
- (3) The provisions of this § 240-39 shall not apply to any expansion of existing improvements within the Shopping Center Redevelopment Overlay District until the exercise of rights under a special permit issued under § 240-39M with respect to the initial redevelopment, and any such expansion which does not constitute the initial redevelopment shall be subject to all of the requirements of the underlying zoning district(s) including, without limitation, the requirement of a special permit for certain uses and structures within the district. Following the exercise of rights under a special permit issued under § 240-39M with respect to the initial redevelopment, this § 240-39 shall apply to all improvements thereafter constructed within the Shopping Center Redevelopment Overlay District.

F. Permitted and prohibited uses.

- (1) No more than 25% of the gross leasable area within the regional shopping center shall be devoted to uses other than retail shopping center uses, and not more than 75,000 square feet of gross leasable area in a regional shopping center shall be devoted to amusement uses unless a special permit is issued therefor by the Zoning Board of Appeals.
- (2) The following uses are prohibited in the Shopping Center Redevelopment Overlay District:
 - (a) All uses prohibited in § 240-35F(2) [GP Groundwater Protection Overlay District] of this chapter.

- (b) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
- (c) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
- (d) Hotel/motel.
- (e) Multifamily dwellings.
- (f) Drive-through restaurant or drive-through bank, except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District, as lies within the underlying Highway Business District, subject to the special permit provisions of § 240-39M. **[Amended 9-18-2008 by Order No. 2009-08]**
- (g) Gasoline and oil filling stations (other than a tire, battery and auto accessories store which is operated incident to a retail store having not less than 40,000 square feet of gross floor area in the regional shopping center and which does not provide for the changing of oil or lubrication of motor vehicles).
- (h) Casinos and other gambling establishments (other than the incidental sale of lottery tickets as part of a use otherwise permitted in the Shopping Center Overlay District).

G. Bulk and dimensional regulations.

- (1) Land located within the Shopping Center Redevelopment Overlay District and used for a regional shopping center shall be subject to the dimensional controls set forth below:
 - (a) Minimum area of redevelopment area: 50 acres.
 - (b) Minimum lot size (individual building lots): none.
 - (c) Minimum lot frontage (individual building lots): 20 feet.
 - (d) Minimum side, front and rear yards (other than at the perimeter of the redevelopment area): none.
 - (e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet. **[Amended 9-18-2008 by Order No. 2009-08]**
 - [1] One hundred feet along Route 132/Iyanough Road.
 - [2] One hundred feet along the easterly side of the roadway which would be created if Independence Drive were extended from its existing terminus on the northerly side of Route 132 along its current trajectory across Route 132 and the redevelopment area.
 - [3] Within 100 feet of Route 28/Falmouth Road, the minimum setback shall be 20 feet, but there shall be a maximum setback of 50 feet.

- (f) Minimum side and rear yards (at perimeter of redevelopment area): 30 feet.
 - (g) Maximum lot coverage as percentage of lot area of redevelopment area: 50%.
 - (h) Maximum building height: 42.5 feet or two stories, whichever is lesser.
- (2) Except as specifically stated to the contrary in Subsection G(1), the bulk and dimensional requirements set forth therein shall be applied to a redevelopment lot as if it were one lot, even though it may be comprised of several lots in different ownerships. More than one building may be located on a single lot within the Shopping Center Redevelopment Overlay District.
- (3) Skylights, mechanical penthouses and architectural features not designed for human occupancy (collectively, the "special features") shall be excluded in determining the height of any building within a regional shopping center. However, such special features shall be subject to the following restrictions and limitations:
- (a) Provided the same are approved in the special permit issued pursuant to § 240-39M hereof, architectural features shall be permitted above each entrance to the regional shopping center in excess of the maximum building height, provided such architectural features do not exceed 60 feet in height, and the length of the architectural features over any single entrance shall not extend over more than 25% of the entire length of the building wall above which such architectural features are located (measured on a building-by-building basis); and
 - (b) Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses), rooftop screening elements and skylight features over the food court and over the enclosed mall (collectively, the "rooftop features") shall be permitted to exceed the maximum building height, provided that they remain within the rooftop feature height limitation. A rooftop feature shall be considered to remain within the rooftop feature height limitation if it falls below a sight line running 10° above the horizontal starting from a height of 42.5 feet. Rooftop features may exceed the rooftop feature height limitation only if the special permit described in § 240-39M so provides. In no case shall a rooftop feature exceed 60 feet in height. Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses) shall in any event be screened by use of parapet walls or similar elements if necessary. **[Amended 1-20-2005 by Order No. 2005-038]**
- H. Maximum increase in gross leasable area. No regional shopping center shall result in more than 1,200,000 square feet of gross floor area within the redevelopment area, measured on an aggregate basis. The maximum gross floor area of 1,200,000 square feet set forth above shall be reduced by 20,000 square feet of gross floor area for every acre by which the total area of the redevelopment area is less than 59 acres. For purposes of this § 240-39, the floor area of parking structures shall not be treated as gross floor area or gross leasable area.

I. Limitation on impervious surfaces; buffer strip landscaping.

- (1) No more than 70% of the total redevelopment area shall be rendered impervious by the installation of buildings, structures and paved surfaces, measured on an

aggregate basis, unless groundwater mitigation land is provided at a one-to-one ratio for any overage of impervious cover in the redevelopment area. Groundwater mitigation land shall mean land located within the same or a more restrictive Groundwater Protection District in a zone of contribution to the well fields operated as of January 1, 1996 by the Barnstable Water Company and/or the Barnstable Fire District which land is permanently restricted by or on behalf of the owners of the redevelopment area to be left in an open and natural state. However, even with the dedication of groundwater mitigation land, no more than 82.7% of the total redevelopment area shall be so rendered impervious. Rooftop and surface water drainage systems shall be designed and maintained in accordance with the standards set forth in § 240-39L(4)(j). For purposes of this § 240-39I, roadways (other than interior access drives) built in accordance with municipal specifications (as the same may be modified or waived by the Planning Board) and used as public way(s) or private way(s) shall not be treated as impervious surfaces and shall not be treated as part of the area of the district for purpose of such calculation.

- (2) As a part of the portion of the redevelopment area to be maintained in pervious condition, a landscaped buffer strip of variable width shall be provided and maintained along the redevelopment area's frontage on Route 28, Route 132 and any extension of Enterprise Road which is laid out in conjunction with the redevelopment. Said landscaped buffer strip shall be a minimum of 15 feet in depth from the property line and contain at least 2.5% of the total redevelopment area. The design of this buffer strip may include sidewalks/bikepaths, berms, indigenous planting materials and other ground cover. Cross over access drives and signs provided for herein shall be permitted in the landscaped buffer strip, but parking areas are prohibited. All other roadway frontages shall have a landscaped buffer strip of at least 10 feet.

J. Parking and loading. A regional shopping center shall be subject to the following minimum off-street parking and loading requirements:

- (1) Required off-street parking for a regional shopping center shall be provided at a ratio of not less than 4.3 parking spaces for each 1,000 square feet of gross leasable area of all buildings located in the regional shopping center. The foregoing parking requirement shall be calculated without regard to the multiple uses that may be contained in the regional shopping center.
- (2) All off-street parking spaces required by this § 240-39J shall be located within the redevelopment area, except that parking spaces may be located outside of the redevelopment area on another nonresidentially zoned lot provided (a) such other lot is located within 300 feet of the redevelopment area on which the use for which such spaces are required is located, and (b) such lot is in common ownership with, or subject to a long term lease or easement for the benefit of, all or a portion of the redevelopment area. In addition, parking spaces may be located at such other locations as may be approved by the Zoning Board of Appeals as part of any Traffic Demand Management Plan which shall be incorporated as part of the special permit issued under § 240-39M hereof.

- (3) Each off-street parking space shall have minimum dimensions of nine by 18 feet, excluding the driveway to such space. Parking stalls within the Shopping Center Redevelopment Overlay District which are designed at 90° shall have the following minimum dimensions:
 - (a) Ninety-degree parking dimensions:
 - [1] Stall width: nine feet, zero inches.
 - [2] Stall length: 18 feet, zero inches.
 - [3] Aisle width: 24 feet, zero inches.
 - [4] Bay width: 60 feet, zero inches.
 - (b) All parking stalls which are designed at angles other than 90° shall comply with the minimum parking space dimensions set forth in § 240-104 of this chapter. Landscaping shall be provided at the rate of one tree of three-inch caliper per eight spaces, and such trees shall be located within the parking area. Such parking area landscaping areas shall constitute not less than 5% of the land area devoted to grade-level parking fields. Above-grade parking structures shall be designed so as to provide a visual screen to shield, to the extent practicable, cars parked on the upper level from the view of pedestrians.
- K. Signs in the Shopping Center Redevelopment Overlay District. Only the following types of signs shall be permitted in the Shopping Center Redevelopment Overlay District:
 - (1) Large freestanding exterior signs:
 - (a) Maximum number: three signs.
 - (b) Maximum height: not to exceed 22 feet above grade.
 - (c) Maximum area: not to exceed 150 square feet per side exclusive of structures holding the sign. Reasonable efforts shall be exercised to minimize the size of any such supporting structures.
 - (2) Wall signs identifying retail stores or restaurants having gross leasable area of greater than 25,000 square feet or having exterior public entrances; the food court; and the regional shopping center, provided that no wall sign shall extend higher than the top of the parapet wall:
 - (a) Maximum number: the lesser of two times the total number of exterior public entrances or 15 signs.
 - (b) Maximum letter height: five feet for signs accessory to major stores, and four feet for other such signs.
 - (c) Maximum area: 150 square feet for signs accessory to major stores, and 100 square feet for other such signs

- (3) Wall signs designating loading areas, service courts, employee entrances and similar areas:
 - (a) Maximum number: no limit.
 - (b) Maximum mounting height above ground: eight feet.
 - (c) Maximum area: six square feet.
- (4) Freestanding directional signs indicating access and egress to the site, as well as direction to department stores, services or other areas within the regional shopping center:
 - (a) Maximum number: three times the total number of vehicular entrances.
 - (b) Maximum height to top of sign above ground: seven feet.
 - (c) Maximum area: 16 square feet per side.
- (5) Hanging parking structure signs at vehicular entrances to parking structures:
 - (a) Maximum number: one per vehicle ramp access point to parking structures.
 - (b) Maximum height: one foot, six inches.
 - (c) Maximum area: 16 square feet per side.
 - (d) In addition, directional and parking area identification signs shall be permitted within the parking structures, and safety/height limitation markings shall be permitted on the exterior of the parking structures.
- (6) Parking lot identification signs.
 - (a) Maximum number: one per light post.
 - (b) Maximum size: three square feet per side.
- (7) One electronic reader board shall be permitted on one of the large freestanding exterior signs permitted under Subsection K(1), subject to the following restrictions:
 - (a) Maximum number: one.
 - (b) Maximum height: three feet per side.
 - (c) Maximum width: 10 feet per side.
 - (d) Maximum letter height: 12 inches high, with a total of no more than three lines of text per side.
 - (e) The text on any such electronic reader board:

- [1] Shall not flash or trail;
 - [2] Shall only relate to promotional events within the regional shopping center; and
 - [3] May be changed no more frequently than once per day.
- (8) Banners which do not advertise particular stores or articles for sale shall be permitted.
 - (9) In addition to the signs otherwise permitted under this § 240-39J, wall signs for freestanding buildings and movie theaters (meaning buildings and movie theaters which are not physically connected to the enclosed mall of the regional shopping center) which are otherwise permitted in the underlying zoning district under this chapter shall be permitted in the Shopping Center Redevelopment Overlay District. In addition, for so long as fewer than two of the freestanding signs described in Subsection K(11) are installed, one freestanding exterior sign shall be permitted for freestanding movie theaters, which sign shall have dimensions which meet the size requirements of the underlying zoning district.
 - (10) In addition to the wall signs permitted under § 240-39K(2), one exterior marquee wall sign for movie theaters located within a regional shopping center shall be permitted with a size of up to 150 square feet.
 - (11) In addition to the signs permitted under § 240-39K(1) hereof, up to two freestanding exterior signs for movie theaters located within a regional shopping center shall be permitted as follows:
 - (a) Maximum number: two.
 - (b) Maximum height: 14 feet above grade.
 - (c) Maximum area: not to exceed 175 square feet per side, exclusive of structures holding the sign.
 - (12) No special permit shall be required for signs that are in conformance with the standards set forth above.

L. Advisory site plan review and provisions.

- (1) Findings. Owing to their physical characteristic and the nature of their operations, a regional shopping center may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of a regional shopping center and to minimize any harmful affects on surrounding areas.
- (2) Purposes. The provisions of this section are designed to assure that all development activities associated with a regional shopping center will be carried out in furtherance of the purposes articulated in § 240-39A, taking into account the existing condition of the redevelopment area, the large-scale character of developments such as the regional shopping center, the customary site layout of regional shopping centers, and the necessity to permit natural light to illuminate

the common areas of the regional shopping center (hereinafter referred to as the "design constraints").

- (3) Advisory site plan review/when required. The provisions of this § 240-39L shall apply to development within the Shopping Center Redevelopment Overlay District in lieu of the site plan review provisions of Article IX of this chapter. At least 60 days prior to filing any DRI application with the Cape Cod Commission, the proponent of a regional shopping center shall make an informal filing with the Building Commissioner, in draft form, of such plans and materials relating to the DRI application as the proponent intends to file with the Commission with its DRI application and such relevant plans and materials relating to the MEPA process as are then available. Within 30 days following such informal submission, the Building Commissioner and other members of the Site Plan Review Committee established under Article IX of this chapter and such other Town staff as may be designated by the Building Commissioner shall review, comment upon and make recommendations with respect to the plans and materials so submitted, provided that the Building Commissioner shall have the right to extend such thirty-day period by an additional 30 days at the request of the Site Plan Review Committee. In conducting its review the Site Plan Review Committee shall consider the consistency of such plans and materials with the site development standards set forth in Subsection L(4) hereof. The informal filing and review described in this Subsection L(3) requires no approval and therefore does not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto; however, the Cape Cod Commission shall be invited to have representatives participate in the advisory site plan review process.
- (4) Site development standards.
 - (a) A reasonable effort shall be made to improve, conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
 - (b) Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.
 - (c) The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
 - (d) At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway and a line joining points along said lines 20 feet distant from their projected intersection.

- (e) Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to interfere with traffic beyond the perimeter of the site.
- (f) All areas designed for vehicular use shall be paved with a minimum of either a 2 1/2 inches bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick or cobblestone, as approved by the Town Engineer.
- (g) All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-39J herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.
- (h) The provisions of § 240-52 of this chapter shall not apply to land within the Shopping Center Redevelopment Overlay District. Instead, exterior landscaping of a regional shopping center shall be subject to review in connection with the advisory site plan review process described herein.
- (i) All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground. Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, electric switching boxes or similar equipment and gas meters, which may be above ground.
- (j) All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case shall surface water runoff be drained directly into wetlands or water bodies (except for drainage structures in place as of the effective date of this § 240-39). All drainage systems shall be designed to minimize the discharge of pollutants by maximizing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration (with due regard to the design constraints). Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. Subject to ambient surcharge conditions, roof runoff shall be recharged to the ground via a system of dry wells and/or infiltration systems. Nontoxic roof materials shall be used to minimize the leaching of toxic materials to the groundwater. To minimize water utilization, all new plumbing fixtures shall be designed to meet water conservation measures as required under the State Building and Plumbing Codes. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-five-year storm and shall be reviewed by the Town Engineer. The materials submitted shall include provision for an appropriate maintenance program for such drainage structures to be implemented and maintained by the proponent. The materials submitted shall show adequate measures to mitigate pollution of surface or groundwater to minimize erosion and sedimentation. All drainage shall be designed so that all runoff shall be disposed of on site, groundwater

recharge is maximized, and neighboring properties will not be adversely affected.

- (k) The materials submitted shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow showing adequate access to and from the site and adequate circulation within the site taking into account the Barnstable/Yarmouth Transportation Study. The proponent of a regional shopping center will include in such materials reasonable measures to lower traffic demand to the regional shopping center such as, by way of example only, working with other major retailers along the 132 corridor to promote bus and shuttle bus activity, encouraging carpooling among employees, and/or similar measures, which materials shall be referred to as the "Traffic Demand Management Plan." Reasonable efforts shall be made to provide vehicular and pedestrian connections within the redevelopment area to adjoining properties devoted to retail use.

M. Special permit provisions.

- (1) Special permit for regional shopping center.
 - (a) No building permit or occupancy permit shall be issued for any expansion of a regional shopping center which increases the gross floor area of the regional shopping center above that existing on the effective date of this § 240-39 by more than 50,000 square feet of gross floor area unless the Zoning Board of Appeals has issued a special permit approving such use in accordance with the provisions of this § 240-39M. In addition, no building permit or occupancy permit shall be issued for a drive-through bank unless the Zoning Board of Appeals has issued a special permit or a modification of a special permit issued under this section, approving such use, subject to the provisions of this § 240-39M. **[Amended 9-18-2008 by Order No. 2009-08]**
 - (b) A special permit for a regional shopping center may provide for phased development (and, if applicable, a projected phasing plan shall be provided to the Board of Appeals as part of the special permit process under § 240-39M). A special permit for a regional shopping center shall become void two years from the date of issue unless any construction work contemplated thereby (or first phase thereof, if applicable) shall commence and proceed in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the use authorized thereby is commenced.
 - (c) Any work done in deviation from a special permit granted pursuant to this § 240-39M shall be a violation of this chapter, unless such deviation is approved in writing by the Zoning Board of Appeals. However, a special permit may be granted based upon plans showing one or more permissible building areas and/or permissible parking structure areas, in which buildings and other structures are to be located, rather than with the locations of the buildings and other structures finally established. Provided the boundaries of such permissible building areas and/or permissible parking structure areas are approved by the Zoning Board of Appeals in connection with the special

permit, once the special permit is granted, no separate approval of the Zoning Board of Appeals will be required for the actual location of the buildings or improvements within such permissible building areas and/or permissible parking structure areas [provided that no material change to the design or materials described in § 240-39M(2)(a) shall be made without the approval of the Zoning Board of Appeals.] The Zoning Board of Appeals may amend or modify a special permit upon the application of the developer of a regional shopping center and, if the Zoning Board of Appeals determines that such amendment or modification is minor in nature, such amendment or modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Zoning Board of Appeals, be less extensive than the plans and information required in this § 240-39M. Amendments or modifications determined by the Zoning Board of Appeals not to be minor in nature shall require a public hearing.

- (d) The purpose of the special permit for a regional shopping center is to assure that the development of a regional shopping center is carried out in a manner which is (1) consistent with the purposes set forth in § 240-39A hereof and the site development standards set forth in § 240-39L(4) hereof, (2) consistent with the terms and conditions of any DRI permit issued by the Cape Cod Commission and the certificate of the Secretary of Environmental Affairs on the final environmental impact report, (3) with due regard given to the Design Guidelines for Cape Cod prepared by the Cape Cod Commission in light of the design constraints, and (4) consistent with such additional reasonable conditions as may be imposed by the Zoning Board of Appeals as are not inconsistent with the foregoing. The Zoning Board of Appeals shall grant a special permit for a regional shopping center upon its determination that the standards for the issuance of such special permit set forth in this Subsection M(1)(d) have been complied with, giving due regard to the design constraints.
- (2) Required contents of special permit application. The application for a special permit under this § 240-39M shall include:
- (a) Building elevation plans for all exterior facades of buildings and structures, at a scale of 1/16 inch equals one foot, or such scale as may be required by the Zoning Board of Appeals for detail drawings, indicating surface materials and colors, together with not less than three representative cross sections.
 - (b) A tabulation of the areas of the proposed site elements, including buildings (footprints and gross leasable area and gross floor area), parking structures and surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings).
 - (c) Updated versions of the materials submitted to the Building Commissioner in connection with the advisory site plan review process described in § 240-39L above.

- (d) Any request for gross leasable area in excess of the use limitations set forth in § 240-39F(1).
- (e) Any request to permit rooftop features to exceed the rooftop feature height limitation set forth in § 240-39G(3)(b).

- (f) All materials relating to any request to permit off-site parking under § 240-39J(2).
 - (g) A description of the operating agreement and/or leasehold agreements contemplated in the definition of "regional shopping center."
 - (h) Additional information as may be required by the Zoning Board of Appeals as reasonably necessary to making the determinations required by this section.
- (3) Required procedures for special permit.
- (a) At least six copies are required of all plans, drawings and written information. Submissions shall be delivered to the Zoning Board of Appeals.
 - (b) The Zoning Board of Appeals may solicit the advice of any other Town agency or department it deems necessary to properly make the determinations required by this section.
 - (c) In issuing a special permit under this § 240-39M, the Zoning Board of Appeals shall give due regard to, and shall not be inconsistent with the decisions and recommendations of the Cape Cod Commission as set forth in any DRI permit or similar approval.
 - (d) The Zoning Board of Appeals shall also include as a condition of its special permit the performance of any written commitments made by the developer of a regional shopping center to the Zoning Board of Appeals, the Planning Board or the Town Council intended to reduce or limit the impacts, financial or otherwise, of the regional shopping center on the Town. Such conditions shall be based on the written information furnished to the Zoning Board of Appeals by the Planning Board and Town Council. Such conditions shall be binding on the applicant for such special permit provided they are consistent with the provisions of Section 15 of Chapter 716 of the Acts of 1989 (the Cape Cod Commission Act).
 - (e) The Zoning Board of Appeals may include as a condition of its special permit that, prior to the issuance of a certificate of occupancy for the regional shopping center, the Building Commissioner shall be provided with evidence that the operating agreement and/or leasehold arrangements contemplated in the definition of "regional shopping center" are in place.
 - (f) If the proposed improvements which are the subject of an application for a special permit under this § 240-39M have not been subject to the review of the Cape Cod Commission because at the time of such application the Cape Cod Commission or the DRI process has been abolished, then the proposed improvements shall be subject to site plan review under Article IX of this chapter.

§ 240-40. Adult Use Overlay District. [Added 6-4-1998]

- A. District established. An Adult Use Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § 240-6, Zoning Map, herein.
- B. Adult use. Within the Adult Use Overlay District, and only within the Adult Use Overlay District, an adult use may be permitted, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the following conditions of approval:
- (1) The special permit shall be issued to the owner of the adult use and shall not transfer with a change in ownership of the business and/or property.
 - (2) The special permit shall lapse after two years, unless a shorter term is specified by the Zoning Board of Appeals. Upon receipt of a valid application, the Zoning Board of Appeals may grant another special permit, provided that the Board finds that all conditions of this § 240-40 herein have been complied with, and all conditions of approval of the Zoning Board of Appeals.
 - (3) The special permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises, as provided for in Subsection B(2) above:
 - (a) Unlawful sexual activity.
 - (b) Gambling.
 - (c) Drug use.
 - (d) Violent crimes.
 - (e) Offenses against children.
 - (f) Repeated public disturbances requiring intervention by the police.
 - (g) Any other illegal activities.
 - (4) Violation of any of the conditions of approval of the special permit shall be grounds for nonrenewal of the special permit as provided for in Subsection B(2) above.
 - (5) No special permit shall be issued to an owner convicted of violating MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272 § 28, (Matter harmful to minors, etc.), or similar laws in other states.
 - (6) Where necessary to protect adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
 - (7) No adult use shall be allowed within a building containing residential use, or upon a lot with residential use. No adult use shall be located within 500 feet of a residence.

- (8) Where the adult use is not governed by the Licensing Board, the following conditions shall apply:
- (a) A manager responsible for the operation of the establishment shall be designated by the owner, if the owner is not the manager. The manager shall register with the Building Commissioner. No manager shall be designated who has been convicted of violating MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272, § 28, (Matter harmful to minors, etc.) or similar laws in other states
 - (b) The owner and/or manager of the establishment shall be responsible for knowing what is taking place with respect to the patrons in all parts of the establishment at any given time.
 - (c) The Zoning Board of Appeals may establish the hours of operation.
 - (d) There shall be screening of windows and doors to prevent the public's view of the interior from any public or private right-of-way.
 - (e) The interior of an adult bookstore, adult video store, or adult paraphernalia store shall be well lit; and there shall be no closed booths.
- (9) The interior of an adult use nonlive entertainment establishment shall provide the following:
- (a) An anteroom or other content-neutral space which will identify the adult use through the use of content-neutral signage.
 - (b) All adult materials will be segregated from nonadult use nonlive entertainment materials.
 - (c) Written cautions will be made denying access to minors to the adult sections of the establishment.
 - (d) The purchase point of adult use nonlive entertainment materials shall be segregated from the purchase point of nonadult use nonlive entertainment materials.
 - (e) Adult use nonlive entertainment purchases or rentals shall be bagged with an opaque material.
- C. Preexisting adult uses. Any adult use that was in existence as of the first date of publication of the notice of public hearing on the zoning amendment inserting this section regulating adult uses may continue to operate in the same location, without material change in scale or content of the business, provided that the owner complies with the provisions of this section requiring a special permit, including all relevant conditions imposed thereon.
- D. Prohibited uses. Nothing in this chapter is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violated any Town ordinance or statute of the commonwealth of Massachusetts regarding public

nuisances, sexual conduct, lewdness, or obscene or harmful matter, or the exhibition or public display thereof.

§ 240-40.1. Former Grade 5 School Planned Unit Development Overlay District. [Added 9-2-2004 by Order No. 2004-128]

A. Purpose.

- (1) The purpose of the Former Grade 5 School Planned Unit Development District is to encourage flexibility in the design and development of land within the district in order to promote its most appropriate use; to facilitate the adequate and economical provision of streets, utilities and public spaces; and to preserve the natural and scenic qualities of open areas.
- (2) This development district is intended to permit diversification in the location of structures and uses and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety and welfare and convenience both in the use and occupancy of buildings and facilities.

B. Procedure. The owner or owners or lessees of tracts of land consisting of five acres or more in the Former Grade 5 School Planned Unit Development Overlay District may submit to the Planning Board a request for a Special Permit to allow for a plan of development and use of such tracts meeting the requirements set forth below:

- (1) The Planning Board shall be the special permit granting authority and shall follow the procedures for issuing special permits as provided for in § 240-125C herein, specifically substituting the words "Planning Board" for the words "Zoning Board of Appeals."
- (2) Lot area and lot frontage requirements may be reduced, provided the overall density is not reduced, and yard requirements need only be applied in relationship to the tract boundaries.
- (3) Bulk regulations shall be as follows:

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
FG-5 PUD	43,560	20	--	50	50	50	38	50 ¹

Notes:

¹ Less any required setback.

- (4) More than one building is permitted on tracts held by one owner or in common ownership.

- (5) A site plan in accordance with the Town of Barnstable site plan review regulations²⁸ indicating the planned location of buildings and their use, off-street parking areas, driveways, easements, walks, the location, type and height of walls, and the extent of landscaping or other treatment for the protection of adjacent properties is required.
 - (6) A copy of any deed restrictions intended to be recorded shall be submitted.
- C. Permitted uses with issuance of special permit for planned unit development. The permitted uses shall include: residential uses such as garden apartments, townhouses, multifamily housing; office uses such as medical and professional offices; assisted-living developments; museum uses; recreational uses; open space uses; private educational uses; higher educational uses; and mixed-use developments incorporating any of the above, including food service as an accessory use to the principal uses listed above.
- D. Standards for reviewing and approving planned unit developments. Before any action on any of the plans for a planned unit development, a site plan and any supplemental plans shall be submitted to the Planning Board for study and review. The Planning Board shall report its recommendations for approval or disapproval, together with the reasons therefor and any additional requirements, within 20 days of receipt of a site plan. Reasonable requirements may be recommended by the Planning Board for the protection of adjoining residential property. The Planning Board shall approve the planned unit development only if it finds that the planned unit development satisfies all of the following standards:
- (1) General standards.
 - (a) The planned unit development shall be consistent with the Town of Barnstable Comprehensive Plan.
 - (b) The planned unit development shall provide for an effective and unified treatment of the development possibilities on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas.
 - (c) The planned unit development shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the site.
 - (2) Design standards.
 - (a) All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses.
 - (b) Individual buildings shall be related to each other in design, masses, materials, placement and connections to provide a visually and physically integrated development.

28. Editor's Note: See Art. IX, Site Plan Review.

- (c) Treatment of the sides and rear of all buildings within the planned unit development shall be comparable in amenity and appearance to the treatment given to street frontages of these same buildings.
 - (d) The design of buildings and the parking facilities shall take advantage of the topography of the project site where appropriate, to provide separate levels of access.
 - (e) All buildings shall be arranged as to avoid undue exposure to concentrated loading or parking facilities wherever possible and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.
 - (f) All buildings shall be arranged as to be accessible to emergency vehicles.
- (3) Landscape design standards.
- (a) Landscape treatment for plazas, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design.
 - (b) Primary landscape treatment shall consist of shrubs, ground cover, and street trees, and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to the growing conditions of the Town of Barnstable's environment.
- (4) Circulation system design standards.
- (a) There shall be an adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways, off-street parking and loading space.
 - (b) Road, pedestrian walks and open space shall be designed as an integral part of an overall site design. They shall be properly related to existing and proposed buildings, and appropriately landscaped.
 - (c) There shall be an adequate amount, in a suitable location, of pedestrian walks and landscaped spaces to discourage pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks and public transportation loading places from general vehicular circulation facilities.
 - (d) Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.
 - (e) Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to street, parking areas and adjacent buildings.
 - (f) The location and design of pedestrian walks should emphasize desirable views of new and existing development in the area.

- (g) Encourage the maximum separation of private automobiles and service vehicles through the use of separate service lanes.
 - (h) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance, easily maintained, and indicative of their function.
- (5) Parking and loading design standards.
- (a) Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked cars.
 - (b) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access, and shall be developed as an integral part of an overall site design.
 - (c) Any above-grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.
 - (d) Outdoor storage shall not be permitted.

ARTICLE IV Supplemental Provisions

§ 240-41. Vision clearance on corner lots.

In residential districts, on corner lots, no fence, wall or structure, planting or foliage more than three feet in height above the plan of the established grades of the streets shall be allowed in any part of a front or side yard herein established, that is included within the street lines at points which are 20 feet distant from their point of intersection measured along said street lines which will materially obstruct the view of a driver of a vehicle approaching a street intersection.

§ 240-42. Planning Board standards/certain subdivisions.

The Planning Board, as part of its review of subdivisions within 500 feet of the major arteries known as Routes 28, 132, 149 and West Main Street, is hereby authorized to:

- A. Prescribe, in distance and composition, a vegetation buffer strip between said major arteries and a proposed subdivision.
- B. Locate streets within a proposed subdivision so that:
 - (1) Ingress and egress onto the aforementioned major arteries is safe, efficient and convenient;
 - (2) A minimum number of roads intersect any such artery. Roads intersecting a major artery on the same side of the artery should, if possible, be not less than 500 feet apart between side lines. Roads intersecting a major artery on the opposite sides of such an artery should, if possible, be not less than 150 feet between center lines.

ARTICLE V
Accessory Uses

§ 240-43. Incidental and subordinate nature of accessory uses.

Within the zoning districts established herein, accessory uses or accessory buildings are permitted, provided that any such use or building is customarily incidental to, subordinate to and on the same lot as the principal use it serves except as otherwise provided for herein.

§ 240-44. Accessory uses permitted with special permit.

The following accessory uses are permitted, provided that a special permit is first obtained from the Board of Appeals:

- A. In residential zoning districts, accessory uses and structures on a lot adjoining or immediately opposite and across a road from the lot on which the principal use it serves is located, provided that both lots are retained in identical ownership with respect to both fee and nonfee interests.
- B. Uses accessory to permitted scientific research or scientific development or related production only if the Board finds that such accessory use does not substantially derogate from the public good. Such accessory use need not be located on the same lot as the principal use it serves.
- C. Other accessory uses requiring special permit authorization are provided for within the various zoning districts established herein.

§ 240-44.1. Land-based wind energy conversion facilities (WECFs). [Added 6-14-2007 by Order No. 2007-082]

- A. Purpose and intent. It is the express purpose of this section to accommodate distributed wind energy conversion facilities in appropriate land-based locations, while minimizing any adverse visual, safety and environmental impacts of the facilities. The section enables the review of wind energy conversion facilities by the Town's special permit granting authority, clarifying the criteria for siting such a facility. This section is intended to be used in conjunction with other regulations adopted by the Town, including historic district regulations, site plan review and other local ordinances designed to encourage appropriate land use and environmental protection. Further, it is the express intent of this section that any special permit granted hereunder run with the land and that any subsequent owner of said land be bound by the terms and conditions of said special permit.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

CLEAR AREA — The distance from the lowest point of the blade tip to the ground.

HEIGHT — Height is measured from the grade at the base of the tower to the top of the fixed tower (moveable blades are not included).

LAND-BASED — Wholly located on upland including any guy wires as may be required.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — Shall be the Planning Board, for this section.

WIND ENERGY CONVERSION FACILITY (WECF) — All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use. A wind energy conversion facility may consist of one or more wind turbines.

WIND-MONITORING OR METEOROLOGICAL (TEST OR MET) TOWERS — Tower used for supporting anemometer, wind vane and other equipment to assess the wind resource at a predetermined height above the ground.

WIND TURBINE — A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft.

C. District regulations.

(1) Use regulations.

- (a) All wind energy conversion facilities or wind-monitoring towers shall require a building permit and may be permitted only as an accessory use to permitted uses in all zoning districts.
- (b) Wind energy conversion facility and wind-monitoring or meteorological towers. The construction of any wind energy conversion facility or wind-monitoring/meteorological tower shall be permitted in all zoning districts, subject to issuance of a special permit and provided the proposed use complies with all dimensional and special permit regulations set forth in § 240-125C (unless waived by the SPGA). Any subsequent change or modification of wind energy equipment shall be subject to review by the Building Commissioner.

(2) Dimensional requirements.

- (a) Type. Tilt-up towers, fixed-guyed towers, freestanding towers or other designs may be considered for approval by the SPGA. Towers may not be attached to any residence or habitable structures.
- (b) Setback. The base of any WECF shall be set back from any property line or road layout line by not less than 120% of the proposed height of the tower if abutting residentially zoned properties and 80% of the proposed height of the tower, if abutting nonresidentially zoned properties. Guy wires or any WECF related construction not wholly below grade, as may be required by the proposed design, shall be set back at least 20 feet from property lines, and 30 feet from road layout lines if located on, or adjacent to, residentially zoned property. If located on nonresidentially zoned property and not abutting residentially zoned property, guy wire setbacks may be reduced to five feet.

Other setbacks shall conform to the yard setbacks of the zone in which the subject property is located. The SPGA may allow the setback to be reduced as part of the special permit process if the project proponent can demonstrate that additional height is needed and that the additional benefits of the higher tower outweigh any increased adverse impacts.

- D. Special permit regulations. The SPGA shall grant a special permit only if it finds that the proposal complies with the provisions of this Zoning Ordinance (unless waived) and is consistent with the applicable criteria for granting special permits.
- (1) General. Proposed wind energy conversion facilities shall be consistent with all applicable local, state and federal requirements, including, but not limited to, all applicable electrical, construction, noise, safety, environmental and communications requirements.
 - (a) Demonstrated utility. The proponent shall demonstrate that the proposed WECF efficiently generates electrical power.
 - (b) Maintenance. A written maintenance plan shall be submitted with the application for a special permit for review and approval by the SPGA and shall be made a condition of said special permit.
 - (2) Design standards.
 - (a) Visual impact. The proponent shall demonstrate through project siting and proposed mitigation that the wind energy conversion facility minimizes any impact on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering, lighting. All electrical conduits shall be underground.
 - (b) Color. Wind energy conversion facilities shall be painted nonreflective muted colors that blend with the sky, without graphics or other decoration.
 - (c) Equipment shelters. All equipment necessary for monitoring and operation of the wind energy conversion facilities should preferably be contained within the turbine tower. If this is infeasible, ancillary equipment may be located outside the tower, provided it is contained either within an underground vault, or enclosed within a separate structure or behind a year-round landscape or vegetated buffer.
 - (d) Lighting and signage.
 - [1] Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA). The proponent shall provide a copy of the FAA's determination to establish the required markings and/or lights for the structure.
 - [2] Lighting of equipment structures and any other facilities on site (except lighting required by the FAA) shall be shielded from abutting properties.

[3] No signage allowed.

- (e) Guy wires. Guy wires as may be utilized in the construction of the tower shall be left totally unadorned. Nothing shall be hung from or attached to said wires. To prevent unintended contact by persons who may be on-site, landscaping or other approved methods may be implemented. Exception: On nonresidentially zoned properties, not abutting residential property, guy wires may be wrapped with a colored sleeve only, to prevent unintended contact. Such sleeve shall extend to a height not greater than 10 feet above grade.

(3) Environmental standards.

(a) Noise.

[1] The wind energy conversion facility and associated equipment shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10). A source of sound will be considered to be violating these regulations if the source:

[a] Increases the broadband sound level by more than 10 dB(A) above ambient; or

[b] Produces a pure tone condition: when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three decibels or more.

[2] "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. The ambient noise level shall be measured at the property line when the WECF is located on a lot adjacent to residentially zoned property. Otherwise, the special permit granting authority, in consultation with the Department, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.

[3] Upon complaint of an abutter, ambient and maximum permitted decibel measurements shall be performed by an agent designated by the SPGA. The report shall be submitted to the SPGA for review. The fee for this service shall be paid by the complainant unless the maximum permitted decibel level has been exceeded in which case the owner of the system shall pay the fee.

[4] If the maximum decibel readings are exceeded, the installation shall be considered a nuisance. The nuisance violation must be corrected within 90 days from notification of the violation, and if the violation cannot be corrected, the wind energy system shall be removed or relocated at the expense of the owner.

- (b) Shadowing/flicker. Wind energy conversion facilities shall be sited in a manner that does not result in significant shadowing or flicker impacts. The proponent has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through siting or mitigation.
- (c) Safety standards.
 - [1] No hazardous materials or waste shall be discharged on the site of any wind energy conversion facility. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste.
 - [2] Climbing access to tower shall be limited by placing climbing apparatus no lower than 10 feet from the ground.
 - [3] The clear area shall be no less than 10 feet.
 - [4] The wind turbine shall conform to FAA safety standards, as amended.
- (4) Condemnation.
 - (a) Upon a finding by the Building Commissioner that the WECF has been abandoned or has been left in disrepair or has not been maintained in accordance with the approved maintenance plan, the owner of said WECF shall be notified in writing by certified mail that the WECF shall be brought up to standard. If required repairs or maintenance are not accomplished within 45 days, the WECF shall be deemed condemned and shall be removed from the site within 90 days thereafter at the expense of the property owner. The aforementioned periods of time may be extended at the request of the owner and at the discretion of the Building Commission. "Removed from site" shall mean:
 - [1] Removal of the wind turbine and tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property;
 - [2] Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations;
 - [3] Restoration of the location of the wind energy conversion facility to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after condition.
 - (b) If an applicant fails to remove a wind energy conversion facility in accordance with this section of this chapter, the Town shall have the authority to enter the subject property and physically remove the facility. The SPGA may require the applicant to provide a form of surety (i.e., post a bond, letter of credit or establish an escrow account or other) at the SPGA's election at the time of construction to cover costs of the removal in the event the Town must remove the facility. The amount of such surety shall be equal

to 150% of the cost of compliance with this section. The applicant shall submit a fully inclusive estimate of the costs associated with removal. The amount shall include a mechanism for a cost of living adjustment every five years.

§ 240-44.2. Ground-Mounted Solar Photovoltaic Overlay District. [Added 10-7-2010 by Order No. 2011-006²⁸]

A. Purpose.

- (1) This section promotes the creation of new large-scale, ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and for providing adequate financial assurance for the eventual decommissioning of such installations. This section ordinance is adopted pursuant to the Commonwealth of Massachusetts Green Communities Act.
- (2) The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale, ground-mounted solar photovoltaic installations.

B. Applicability. This section applies to large-scale (250 kW), ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

C. District established. A Ground-Mounted Solar Photovoltaic Overlay District (GMSPOD) is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § 240-6, Zoning Map

D. Definitions. These definitions shall apply to § 240-44.2 exclusively:

AS-OF-RIGHT SITING — The ground-mounted solar photovoltaic installation may proceed without the need for a special permit, variance, amendment, waiver, or other local discretionary approval. As-of-right development is subject to Article IX, Site Plan Review. As-of-right solar photovoltaic installations that are consistent with the Zoning Ordinance and applicable state and federal law can be reasonably regulated and approved by the Building Commissioner.

GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION — A large-scale solar photovoltaic (PV) system that is structurally mounted on the ground, not roof-mounted, and has a nameplate capacity of at least 250 kW DC.

28. Editor's Note: Section 3 of this order reads as follows: "A building permit shall be issued by the Building Commissioner within one year from the date an application submitted is deemed complete by the Building Commissioner. Failure to issue a building permit within one year shall not result in a constructive grant."

OFF-GRID SYSTEM — A solar photovoltaic installation where all energy generated on the installation site is consumed on that site and does not send any energy into the electrical grid for distribution.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in direct current (DC).

E. Application and review.

- (1) Ground-mounted, large-scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review pursuant to Article IX, Site Plan Review, prior to construction, installation or modification as provided in this section. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.
- (2) Required documents. In addition to the requirements of § 240-102, Contents of site plan, the project proponent shall provide the following documents:
 - (a) A site plan showing:
 - [1] Property lines and physical features, including roads, for the project site;
 - [2] Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - [3] Blueprints or drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - [4] One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - [5] Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - [6] Name, address, and contact information for proposed system installer;
 - [7] Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - [8] The name, contact information and signature of any agents representing the project proponent; and
 - (b) Documentation of actual or prospective access and control of the project site (See also Subsection G below.);
 - (c) An operation and maintenance plan (See also Subsection H below.);

- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a Zoning Map with the parcel(s) identified is suitable for this purpose);
 - (e) Description of financial surety that satisfies Subsection N(3) below.
- F. Site control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.
- G. Operation and maintenance plan. The project proponent shall submit a plan for the operation and maintenance of the ground-mounted solar photovoltaic installation, which shall include specific measures for maintaining safe access to the installation, a stormwater management plan, and general procedures for and frequency of operational maintenance of the installation.
- H. Utility notification. No ground-mounted solar photovoltaic installation shall receive a building permit until an executed interconnect agreement with Nstar, the utility company operating the electrical grid, has been submitted to the Building Commissioner. Off-grid systems are exempt from this requirement.
- I. Dimensional requirements. Ground-mounted solar photovoltaic installations are subject to the front, side and rear yard setbacks as set forth in the underlying zoning district(s).
- J. Design standards.
 - (1) Lighting. Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.
 - (2) Signage. Signs on large-scale, ground-mounted solar photovoltaic installations shall comply with Article VII, Sign Regulations. A sign shall be required to identify the owner and provide a twenty-four-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising.
 - (3) Accessory structures. All structures accessory to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. To avoid adverse visual impacts, all such accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other, multiple accessory structures shall be clustered to the greatest extent feasible and views of such structures to residential properties and roadways shall be screened with landscaping.
- K. Utility connections. Reasonable efforts, as determined by site plan review, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any

requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

L. Safety and environmental standards.

- (1) Emergency services. The large-scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- (2) Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale, ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

M. Monitoring and maintenance.

- (1) Solar photovoltaic installation conditions. The large-scale, ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to site plan review. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation.
- (2) Modifications. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require site plan review approval.

N. Abandonment or decommissioning.

- (1) Removal requirements. Any large-scale, ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with this section shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Building Commissioner by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
 - (a) Physical removal of all large-scale, ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
 - (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - (c) Stabilization or revegetation of the site as necessary to minimize erosion. The Building Commissioner may allow the owner or operator to leave

landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

- (2) Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large-scale, ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.
- (3) Financial surety. Proponents of large-scale, ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal and disposal in the event the Town must remove the installation and remediate the landscape, in an amount and in a form acceptable to the Town Attorney but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for pro rating removal costs as they may be affected by inflation or changes to disposal regulations.

§ 240-45. Off-street storage of trailers. [Amended 2-22-1996 by Order No. 95-194]

A mobile home may be stored in a garage or other accessory building or on the rear half of a lot owned or occupied by the owner of the mobile home. The location of the mobile home shall comply with the yard requirements of the zoning district in which it is located.

§ 240-46. Home occupation. [Added 8-17-1995 by Order No. 95-195]

- A. Intent. It is the intent of this section to allow the residents of the Town of Barnstable to operate a home occupation within single-family dwellings, subject to the provisions of this section, provided that the activity shall not be discernible from outside the dwelling; there shall be no increase in noise or odor; no visible alteration to the premises which would suggest anything other than a residential use; no increase in traffic above normal residential volumes; and no increase in air or groundwater pollution.
- B. After registration with the Building Commissioner, a customary home occupation shall be permitted as of right subject to the following conditions:
 - (1) The activity is carried on by the permanent resident of a single-family residential dwelling unit, located within that dwelling unit.
 - (2) The activity is a type customarily carried on within a dwelling unit.
 - (3) Such use is clearly incidental to and subordinate to the use of the premises for residential purposes.

- (4) Such use occupies no more than 400 square feet of space.
- (5) There are no external alterations to the dwelling which are not customary in residential buildings, and there is no outside evidence of such use.
- (6) The use is not objectionable or detrimental to the neighborhood and its residential character.
- (7) No traffic will be generated in excess of normal residential volumes.
- (8) The use does not involve the production of offensive noise, vibration, smoke, dust or other particulate matter, odors, electrical disturbance, heat, glare, humidity or other objectionable effects.
- (9) There is no storage or use of toxic or hazardous materials, or flammable or explosive materials, in excess of normal household quantities.
- (10) Any need for parking generated by such use shall be met on the same lot containing the customary home occupation, and not within the required front yard.
- (11) There is no exterior storage or display of materials or equipment.
- (12) There are no commercial vehicles related to the customary home occupation, other than one van or one pickup truck not to exceed one-ton capacity, and one trailer not to exceed 20 feet in length and not to exceed four tires, parked on the same lot containing the customary home occupation.
- (13) No sign shall be displayed indicating the customary home occupation.
- (14) If the customary home occupation is listed or advertised as a business, the street address shall not be included.
- (15) No person shall be employed in the customary home occupation who is not a permanent resident of the dwelling unit.
- (16) Customary home occupations shall not include such uses similar to, and including the following:
 - (a) Barber- and beauty shops.
 - (b) Commercial stables or kennels.²⁹
 - (c) Real estate or insurance office.
 - (d) The sale of retail or wholesale merchandise from the premises.
 - (e) The sale of antique or secondhand goods.
 - (f) Service or repair of vehicles, and gasoline or diesel powered machinery.
 - (g) Contractors storage yards.

29. Editor's Note: See Ch. 376, Stables.

- (h) Veterinary services.
 - (i) The manufacture of goods using heavy machinery.
 - (j) Medical or dental practice.
 - (k) Fortune-telling or palm reading.
- C. Home occupation by special permit. A home occupation may be permitted in the RC-1 and RF Single-Family Zoning Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein, and subject to the specific standards for such conditional uses as required in this section:
- (1) All of the requirements of Subsection B(1) through (12) above.
 - (2) There is no more than one nonilluminated wall sign not exceeding two square feet in area, listing only the occupants' name and occupation.
 - (3) Not more than one nonresident of the household is employed.

- (4) Home occupations shall not include the uses listed in Subsection B(16) above.
- (5) The Zoning Board of Appeals may permit the home occupation to be located within an accessory structure located on the same lot as the single-family residential dwelling unit.
- (6) Approval of site plan review is obtained.
- (7) The special permit shall be issued to the applicant only at his or her residence, and shall not be transferable to another person, or to another location.

§ 240-47. Shared elderly housing. [Added 4-27-2000]

The Zoning Board of Appeals may grant special permits to allow for the use of structures as shared housing to provide care and shelter for persons with special needs due to age or disability. Said special permits shall be issued only with respect to owner-occupied single-family residences to be occupied by not more than six persons not less than 65 years of age or in approved instances persons of lesser age in need of special care, in addition to the family residents in the dwelling, and shall be conditioned upon the maintenance of proper licensed status as a shared residence under the laws of the commonwealth, and upon such other requirements as the Zoning Board of Appeals deems appropriate with respect to safety, parking, screening and other amenities designed to mitigate the impact of the use upon the neighborhood, and may be conditioned as to time and ownership in the discretion of the Board.

§ 240-47.1. Family apartments. [Added 11-18-2004 by Order No. 2005-026; amended 10-7-2010 by Order No. 2011-010]

The intent of this section is to allow within all residential zoning districts one temporary family apartment unit occupied only by the property owner or a member(s) of the property owner's family as accessory to an owner-occupied single-family residence. A family apartment may be permitted, provided there is compliance with all conditions and procedural requirements herein.

- A. Conditions. A family apartment shall comply with and be maintained in full compliance with all of the following conditions:
 - (1) The apartment unit shall not exceed 800 square feet or 50% of the square footage of the existing single-family dwelling, whichever is less. The Zoning Board of Appeals may allow up to 1,200 square feet by a special permit finding. In any case, the apartment shall be limited to no more than two bedrooms;
 - (2) Occupancy of the apartment shall not exceed two family members;
 - (3) The apartment shall be located within a single-family dwelling or connected to the single-family dwelling in such a manner as to allow for internal access between the units. The apartment must comply with all current setback requirements for the zoning district in which it is located.

- (4) At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit.
 - (5) When the family apartment is vacated, or upon noncompliance with any condition or representation made including but not limited to occupancy or ownership, the use as an apartment shall be terminated. A building permit must be applied for to remove all cabinets, countertops, kitchen sinks and appliances from the family apartment, and the water and gas service utilities must be capped and placed behind a finished wall surface.
- B. Procedural requirements. Prior to the creation of a family apartment, the owner of the property shall make application for a building permit with the Building Commissioner providing any and all information deemed necessary to assure compliance with this section including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document.
- (1) Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection of the apartment unit and the single-family dwelling for compliance and a copy of the family apartment accessory use restriction document recorded at the Barnstable Registry of Deeds is submitted to the Building Division.
 - (2) Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that the property is the year-round primary residence of the property owner and family member(s), shall be signed and submitted to the Building Division.

ARTICLE VI Off-Street Parking Regulations

§ 240-48. Purpose.

It is the purpose of this article that all new, expanded or intensified uses within the Town provide adequate off-street parking.

§ 240-49. Applicability.

No use shall be intensified, except for single-family detached dwellings, without providing adequate off-street parking as provided herein.

§ 240-50. Computation.

Existing parking spaces may be counted to meet the minimum off-street parking requirements for an intensified use only if it can be demonstrated that they are not used as of right by existing uses and are exclusively available as of right for said proposed intensification.

§ 240-51. Location of parking spaces. [Amended 11-15-2001 by Order No. 2002-029]

All off-street parking spaces required by this article shall be located on the same lot as the use for which such spaces are required, except that in nonresidential districts, parking spaces may be located on another lot within 300 feet of, and in the same zoning district as, the use for which such spaces are required, except that in the MA-1 Business District, parking spaces may be located on another lot within 500 feet of the use, provided that no parking lot shall be created by the demolition of buildings within the MA-2 Business District, OR Office Residential District, or buildings with frontage on Main Street in the MA-1 Business District.

§ 240-52. Design and screening standards. [Amended 3-11-1999 by Order No. 99-056]

- A. Each off-street parking space shall have minimum dimensions of nine feet by 20 feet excluding the driveway to such space.
- B. Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises.
- C. Parking areas for five or more cars shall be designed with enough maneuvering space so that vehicles need not back onto a public way.
- D. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.

§ 240-53. Landscape requirements for parking lots.

- A. In all Single Family Residential Districts, where a legal use or a combination of legal uses requires the provision of five or more parking spaces pursuant to § 240-56, Schedule of Off-Street Parking Requirements, the following requirements shall apply:
 - (1) All the requirements of § 240-53, Landscape Requirements of Parking Lots, Subsections C, D, E and F below; and
 - (2) A landscaped setback shall be provided from the surfaced area of a parking lot and all entrance and exit drives to the road lot line, a distance equal to the required front yard building setback requirement, or a maximum of 50 feet, whichever is lesser. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the required front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout

the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

B. In all office and commercial districts, a parking lot shall conform to the following requirements:

- (1) The surfaced area of a parking lot and all entrance and exit drives shall be set back from the side and rear lot lines, by a landscaped buffer, as follows: **[Amended 6-28-2001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039; 11-15-2001 by Order No. 2002-029]**

**Landscape Buffer Setbacks (in feet)
to Parking Lots and Drives**

Zoning District	Side	Rear
B-1 Business	5	5
HO Highway Office	10	20
MA-1 Business	—	5
MA-2 Business	5	5
O-1, O-2, O-3 Office	5	5
OR Office Residential	5	10
PR Professional Residential	5	5
All other office and commercial districts	10	10
Uses requiring 5 or more spaces in single-family residential districts	10	10

- (2) A ten-foot minimum, landscaped perimeter buffer shall be maintained between a building and the surfaced area of a parking lot or drive, except at entrances, building loading and utility locations. A walkway may be located within the landscaped perimeter buffer, provided that the landscape area is not reduced to less than 40% of the area of the perimeter buffer.
- (3) Screening from residential districts: Where a parking lot containing five or more spaces abuts a residential district, or is located across the road from a residential district, it shall be screened as follows: (a) retention or planting of a sufficient area of natural vegetation to provide a dense screen; and/or (b) a dense hedge providing year-round screening, and/or (c) where vegetative screening is not practical, a fence, with not more than 50% open space between the panels. Such screening shall be maintained in good condition at all times, and no advertising shall be placed upon the screening. In an Historic District, fences and hedges may be subject to other regulation.

- C. In all office and commercial districts, at least 10% of the interior of a parking lot with 21 or more parking spaces shall be landscaped. Planting along the perimeter of a parking area shall not be considered as part of the 10% interior landscaping. Interior landscaped islands shall be distributed throughout the parking lot. At least one tree with a minimum three-inch caliper or larger shall be provided per eight spaces or any portion thereof, located within interior landscaped islands. Existing naturally occurring trees in good condition located in landscaped islands shall be credited towards this requirement only in those areas where the existing trees are located. No landscaped island shall have an overall width of less than six feet, except that in parking lots with 51 or more parking spaces, the overall width of islands shall be no less than 10 feet. A walkway may be located within an interior landscaped island, provided that the walkway is separated from the surfaced area of the drive or parking lot by a minimum of four feet of landscaped area. The interior landscape requirements of Subsection D herein shall not apply to parking lots used for sale and/or display of motor vehicles.
- D. In all industrial districts, and in marine business districts, a parking lot with 21 or more parking spaces shall comply with the requirements of Subsections B(2) and (3) and C and E herein, except where a parking lot is also used for loading, material storage, or parking of trucks, boat storage and other equipment associated with the following uses: light industry, warehouse and distribution, contractor service establishments and commercial marinas. **[Amended 7-19-2001 by Order No. 2001-099]**
- E. Where landscaped setbacks to parking areas, landscaped buffers to buildings, and landscaped islands within parking areas are required in Subsections B, C and D above, the following requirements shall apply:
- (1) Existing natural trees and shrubs shall be retained within landscaped islands, and side and rear yard landscaped buffers to parking lots and drives wherever possible and supplemented with other landscape materials, in accordance with accepted landscape practices. Specimen trees shall be retained and, if practical, relocated within the site where necessary. Where natural vegetation cannot be retained, these areas shall be landscaped with a combination of low-maintenance grasses, trees and shrubs commonly found on Cape Cod. A list of recommended plant materials is on file with the Town Clerk and may also be obtained from the Planning Department. Plant materials shall be of sufficient size and density to create an attractive appearance. Brick or stone mulch shall not be used in place of ground covers in landscaped islands. Where mulch is used, it shall be in such a manner that it will not wash into leaching catch basins located in a parking lot, or adjacent roadway.
 - (2) All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except that the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation and plant materials.

F. The preceding requirements of this § 240-53 shall not apply to parking lots constructed and in use prior to March 11, 1999, which conformed to all applicable regulations when established, except whenever there is:

- (1) An expansion of an existing parking lot containing 21 or more parking spaces; and/or
- (2) An alteration of a structure, or a change or extension of a use created prior to March 11, 1999, which increases the parking requirements by five or more spaces according to the standards of § 240-56, Schedule of Off-Street Parking Requirements;

The entire parking lot shall be brought into compliance with § 240-53 herein; and the front yard landscaped setback requirement, if any, in accordance with the applicable zoning district bulk regulations. For the purpose of this subsection only, a development containing several different business enterprises sharing a common parking lot or lots shall be considered to be one use.

- (3) Reduction of parking and/or landscape buffers for parking lots created prior to March 11, 1999. The number of parking spaces required in § 240-56 may be reduced by the number of spaces lost to the installation of landscape buffers and traffic islands. Alternatively or in addition thereto, landscape buffers and islands may be reduced sufficient to ensure the creation of a functional, attractive parking lot, subject to approval of site plan review. This provision shall only apply to parking lots subject to § 240-53F herein. **[Amended 3-11-1999 by Order No. 99-056]**

§ 240-54. Location of parking lot in relationship to buildings. [Amended 3-11-1999 by Order No. 99-056]

Parking lots shall be located to the rear or side of a building unless such location would have an adverse environmental impact or is infeasible due to configuration of the site.

§ 240-55. Conflicting provisions.

Any specific provision in any other section of this chapter relating to parking shall prevail over the provisions of this section.

§ 240-56. Schedule of Off-Street Parking Requirements. [Amended 11-5-1988 by Art. 1]

The following standards represent the minimum parking requirements to be applied as provided for herein:

Use	Required Spaces
Attached dwelling units (D.U.)	1.5/D.U.+ 1 visitor space/10 required D.U. spaces

Use	Required Spaces
Guesthouse, lodging house, group accommodation, bed-and-breakfast	1.2/bedroom
Hotel/motel guest units	1.2/guest unit + 1/every 2 employees on maximum shift
Nursing homes/hospitals	1/every 3 beds
Industry, warehousing, storage, distribution, wholesaling	1/700 sq. ft. gross floor area or 1/every 1.3 employees on maximum shift, whichever is greater
Retail, consumer service	1/200 sq. ft. gross floor area + 1/separate enterprise
Office, professional, administrative, banks	1/300 sq. ft. gross floor area + 1/separate suite
Restaurants, licensed common victualer or purveyor of food ready to be consumed on or off premises	1/every 3 seats + 1/every 2 employees + 5/take-out area
Places of public assembly	1/every 3 persons capacity
Bowling alley	4/alley
Tennis, handball and racquetball courts	3/court, except 0 when a single court is located as accessory to a single-family dwelling
Laundromats	1/every 4 machines
Gas/service stations	3/service bay or 1/100 sq. ft. gross floor area, whichever is greater
All other uses	As determined by the Building Commissioner

§ 240-57. Circumstances warranting reduction of requirements. [Amended 11-5-1988 by Art. 1]

The Zoning Board of Appeals may reduce the requirements of this article by the granting of a special permit only if lesser off-street parking is shown to be adequate given such special circumstances as:

- A. Use of a common parking area by different uses having different peak hours of demand.
- B. Age or other characteristics of occupants which reduce auto usage.
- C. Characteristics of use invalidating normal methods of calculating parking demand.
- D. Supplementary parking provided off premises.

§ 240-58. Reduction of parking within the MA-1 and MA-2 Business Districts. [Added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039; amended 11-15-2001 by Order No. 2002-029]

- A. Within the MA-1 and MA-2 Business Districts, a permitted use can be changed to another permitted use, and a use can be intensified, without increasing the required

off-street parking requirements of § 240-56, Schedule of Off-Street Parking Requirements, herein, provided that as of September 15, 2001, there is:

- (1) No increase in gross square footage of the building; and
 - (2) No reduction in existing parking spaces required pursuant to § 240-56; and
 - (3) There is no added outdoor use requiring the provision of parking according to § 204-56, except that no parking spaces shall be required for outdoor dining on both public and private property; except
 - (4) That in the MA-1 Business District, the following requirements shall apply to apartments:
 - (a) One parking space per one-bedroom apartment unit;
 - (b) Two parking spaces per apartment unit with two bedrooms.
- B. Within the MA-1 Business District, parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
- (1) Fifty percent of the spaces required under § 240-56 for all uses other than apartments.
 - (2) Parking spaces requirements for apartments shall be according to Subsection A(4) above.
- C. The Zoning Board of Appeals may by special permit, further reduce the parking required within the MA-1 Business District as follows:
- (1) Off-site parking. Parking requirements may be satisfied if an off-street municipal parking lot of 20 spaces or more exists within 500 feet of the proposed use.

ARTICLE VII Sign Regulations

§ 240-59. Statement of intent.

The provisions of this article establish the comprehensive regulations, conditions and limitations under which signs are permitted in the Town of Barnstable. It is intended that these regulations shall be held to be the minimum regulations necessary for the protection of the visual environment of the Town and the public safety, convenience and welfare and shall be narrowly construed and strictly applied in favor of the public interest to those ends.

§ 240-60. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ABANDONED SIGN — A sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity and/or for which no legal owner can be found.

ANIMATED SIGN — Any sign which uses movement or change of lighting to depict action or to create a special effect or scene.

AREA (OF A SIGN) — (See § 240-62 herein).

BANNER — A sign made of fabric or any nonrigid material with no enclosing framework.

BILLBOARD — (See "off-premises sign.")

BUILDING COMMISSIONER — The Building Commissioner of the Town of Barnstable or his designee.

BUILDING SIGN — A sign affixed to and wholly supported by an exterior wall of a building or structure.

BUSINESS AREA SIGNS — An off-premises sign intended to direct the motoring public to specific commercial areas only, and not to include individual businesses.

CANOPY OR ARCADE SIGN — A wall-mounted sign attached to or constructed on the face of a permanent roofed structure covering an area customarily used for pedestrian circulation.

CHANGEABLE-COPY SIGN — A sign that is designed so that characters, letters or illustrations can be changed or rearranged either manually or automatically without altering the face or the service of the sign.

CONSTRUCTION SIGN — A temporary sign identifying an architect, contractor, subcontractor, material supplier or others participating in the construction on the property on which the sign is located.

DIRECT LIGHTING — Illumination by means of an external source.

DIRECTIONAL/INFORMATION SIGN — An on-premises sign identifying a premises or activity conducted upon such premises, and providing direction for the safe and efficient flow of vehicular or pedestrian traffic to such activity or premises. Directional signs shall include signs marking entrances, exits, parking areas, loading areas or other operational features of the premises.

DISCONTINUED SIGN — (See "abandoned sign.")

DOUBLE-FACED SIGN — A sign with two faces or panels, neither of which is visible at the same time and are directly back to back as opposed to a V-shaped sign.

ELECTRONIC MESSAGE CENTER — A sign on which the copy changes automatically on a lampbank or through mechanical means, e.g., electrical or electronic time-and-temperature units.

EXTERNALLY ILLUMINATED SIGN — A sign whose illumination is derived entirely from an external artificial source.

FACADE — The entire building front, including the parapet.

FLASHING SIGN — A sign which contains an intermittent or sequential flashing light source used primarily to attract attention. This does not include changeable-copy signs, animated signs or signs which, through reflection or other means, create an illusion of flashing or intermittent light. (Compare "animated sign.")

FREESTANDING SIGN — A sign supported upon the ground by poles or braces and not attached to any building.

FRONTAGE — The length of the property line of any one premises along a public right-of-way on which it borders.

GOVERNMENT SIGN — Any temporary or permanent sign erected and maintained by the Town, county, state or federal government for traffic direction or for designation of or direction to any school, hospital, historic site or public service, property or facility.

HEIGHT (OF A SIGN) — The vertical distance measured from the highest point of the sign to the average ground grade beneath the sign.

IDENTIFICATION SIGN — A sign whose copy is limited to the name and address of the building, institution or person and/or activity or occupation being identified.

ILLEGAL SIGN — A sign which does not meet the requirements of this chapter and which has not received legal nonconforming status.

INDIRECT LIGHTING — Illumination by means of a concealed light source, whereby all incandescent or fluorescent devices are shielded from view by opaque or translucent materials, and including reflected lighting.

INTERNALLY ILLUMINATED SIGN — Illumination by means of a light source completely enclosed by the sign panel(s).

INTERMITTENT LIGHTING — (See "flashing sign.")

LOCATION HARDSHIP SIGN — **[Added 6-17-2010 by Order No. 2010-123]**

A. A temporary portable sign allowed in the HVB for a business demonstrating a location hardship, as further defined herein, to identify and/or direct patrons to their business. Such locations are ones where:

- (1) A permitted sign is not visible due to substantial obstruction(s) outside the control or ownership of the business owner, including but not limited to other signs, awnings, trees in leaf, outdoor dining or other business appurtenances or where building facades are excessively setback; or
- (2) Due to the location on an upper floor the business is unable to display a trade figure or symbol or a trade flag; or
- (3) Where, due to the upper floor location, the visibility of other permitted signage is substantially reduced.

B. Hardship location signs are not counted toward the amount of signage allowed.

MAINTENANCE (OF A SIGN) — The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

MENU SIGNS — The menu normally presented at tableside.

MULTIPLE-FACED SIGNS — Signs containing more than two faces or panels.

NEON SIGN — A neon sign is made of glass tubes filled with an inert gas, such as neon or argon, electrified to produce illumination. This provision is an exception to § 240-24.1.10A(6). **[Added 6-20-2013 by Order No. 2013-133]**

NONCONFORMING SIGN — Sign which was erected legally, but which does not comply with subsequently enacted regulations.

OFF-PREMISES SIGN — A sign structure advertising an establishment, merchandise, service or entertainment which is not sold, provided, manufactured or furnished at the property on which said sign is located, e.g., "billboards," "outdoor advertising" or "off-site signs."

ON-PREMISES SIGN — A sign which pertains to the use of the premises on which it is located and maintained.

OPEN/CLOSED SIGN — A sign indicating whether a business is open or closed. A business in the HVB may display a neon open/closed sign, as defined herein, indicating whether it is open or closed. Open/closed signs are not counted towards the amount of signage allowed. **[Added 6-17-2010 by Order No. 2010-123; amended 6-20-2013 by Order No. 2013-133]**

OPEN HOUSE DIRECTIONAL SIGN — A temporary sign to be displayed only for real estate open house events staffed by real estate professionals such as brokers or agents. Such directional signs shall not exceed 24 inches by 24 inches in size, may be two-sided and shall display a directional arrow in addition to any other sign display. **[Added 5-5-2011 by Order No. 2011-046]**

OPEN HOUSE SIGN — A temporary sign to be displayed only for real estate open house events where real estate professionals such as brokers or agents are present at the open house. Such signs shall not exceed 24 inches by 24 inches in size and may be two-sided A-frame or panel signs. **[Added 5-5-2011 by Order No. 2011-046]**

PAINTED WALL SIGN — A sign which is applied with paint or similar substance on the face of a wall; such sign shall be considered a wall sign for calculation purposes.

PORTABLE SIGN — Any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

PRIVATE WAY — For the purposes of this Article VII, a private way shall be considered a public way. (See "public way.")

PROJECTING SIGN — A sign other than a flat wall sign which is attached to and projects from a building wall or other structure not specifically designed to support the sign and is not parallel to the structure to which it is attached.

PUBLIC SERVICE INFORMATION SIGN — Any sign intended exclusively to promote items of general interest to the community, such as time, temperature, date, atmospheric conditions, news or travel control.

PUBLIC WAY — Any roadway over which everyone has rights to pass, including Town ways and private ways.

REAL ESTATE SIGN — A temporary sign advertising real estate upon which the sign is located as being for rent, lease or sale.

ROOF SIGN — Any sign erected upon a roof and wholly or partially supported by the sign structure placed upon the roof.

ROTATING SIGN — Any sign or device which has any visible moving part, visible revolving part, or visible mechanical movement but not including methods of changing copy.

SIGN — Any permanent or temporary structure, light, letter, word, model, banner, pennant, insignia, trade flag, representation or any other device which is used to advertise, inform or attract the attention of the public and which is designed to be seen from outside a building, including all signs in windows or doors but not including window displays of merchandise.

SPECIAL EVENT SIGN — A temporary sign advertising or pertaining to any civic, patriotic or special event of general public interest taking place within the Town.

STREET BANNER SIGN — Any banner which is stretched across and hung over a public right-of-way.

SUBDIVISION IDENTIFICATION SIGN — A freestanding or wall sign identifying a recognized subdivision, condominium complex or residential development.

TEMPORARY SIGN — A sign not constructed or intended for long-term use.

TRADE FIGURE OR SYMBOL — A three-dimensional representation of a business that is used to indicate the type of merchandise or services offered by the business. Trade figures or symbols shall be still and silent. Business trade figures are not counted towards the amount of signage allowed. **[Added 6-17-2010 by Order No. 2010-123]**

Trade Figure or Symbol Example Butcher Shop

TRADE FLAG — Any sign consisting of lightweight fabric that is affixed to a pole displaying letters, designs or icons exemplary of the business displaying the flag. Such images shall be consistent with the historical heritage and character of village or neighborhood in which it is displayed. [Added 6-17-2010 by Order No. 2010-123; amended 5-5-2011 by Order No. 2011-047]

UNDER-CANOPY SIGN — A directional sign suspended beneath a canopy, ceiling, roof or marquee.

V-SHAPED SIGN — A sign with two faces or panels not supported by one common structural member and which faces are not back-to-back.

WALL SIGN — A sign attached parallel to and extending not more than 18 inches from the wall of a building, including painted signs, individual lettered signs, cabinet signs and signs on a mansard.

WINDOW SIGN — A sign installed inside a window and intended to be viewed from the outside.

§ 240-61. Prohibited signs.

The following signs shall be expressly prohibited in all zoning districts, contrary provisions of this chapter notwithstanding:

- A. Any sign, all or any portion of which is set in motion by movement, including pennants, banners or flags, with the exception of trade flags pursuant to § 240-72 and at the entrance to subdivisions where developed and undeveloped lots are offered for initial sale and official flags of nations or administrative or political subdivisions thereof. [Amended 6-17-2010 by Order No. 2010-123; 5-5-2011 by Order No. 2011-046; 5-5-2011 by Order No. 2011-047]
- B. Any sign which incorporates any flashing, moving or intermittent lighting. Such signs include LED (light emitting diode) signs; LED border tube signs, including any sign that incorporates or consists solely of a LED border tube lighting system; and simulated neon

signs which are extremely bright backlit signs using fluorescent lamps and neon colored inks or translucent vinyl for lettering and display. [**Amended 6-17-2010 by Order No. 2010-123**]

- C. Any display lighting by strings or tubes of lights, including lights which outline any part of a building or which are affixed to any ornamental portion thereof, except that temporary traditional holiday decorations of strings of small lights shall be permitted between November 15 and January 15 of the following year. Such temporary holiday lighting shall be removed by January 15.
- D. Any sign which contains the words "Danger" or "Stop" or otherwise presents or implies the need or requirement of stopping or caution, or which is an imitation of, or is likely to be confused with any sign customarily displayed by a public authority.
- E. Any sign which infringes upon the area necessary for visibility on corner lots.
- F. Any sign which obstructs any window, door, fire escape, stairway, ladder or other opening intended to provide light, air or egress from any building.
- G. Any sign or lighting which casts direct light or glare upon any property in a residential or professional residential district.
- H. Any portable sign, with the exception of a location hardship sign in the HVB, including any sign displayed on a stored vehicle, except for temporary political signs. [**Amended 6-17-2010 by Order No. 2010-123**]
- I. Any sign which obstructs the reasonable visibility of or otherwise distracts attention from a sign maintained by a public authority.
- J. Any sign or sign structure involving the use of motion pictures or projected photographic scenes or images.
- K. Any sign attached to public or private utility poles, trees, signs or other appurtenances located within the right-of-way of a public way.
- L. A sign painted upon or otherwise applied directly to the surface of a roof.
- M. Signs advertising products, sales, events or activities which are tacked, painted or otherwise attached to poles, benches, barrels, buildings, traffic signal boxes, posts, trees, sidewalks, curbs, rocks and windows regardless of construction or application, except as otherwise specifically provided for herein.
- N. Signs on or over Town property, except as authorized by the Building Commissioner for temporary signs for nonprofit, civic, educational, charitable and municipal agencies.
- O. Signs that will obstruct the visibility of another sign which has the required permits and is otherwise in compliance with this chapter.
- P. Off-premises signs except for business area signs as otherwise provided for herein.
- Q. Any sign, picture, publication, display of explicit graphics or language or other advertising which is distinguished or characterized by emphasis depicting or describing

sexual conduct or sexual activity as defined in MGL Ch. 272, § 31, displayed in windows, or upon any building, or visible from sidewalks, walkways, the air, roads, highways, or a public area.

§ 240-62. Determination of area of a sign.

- A. The area of the sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed.
- B. The area of signs painted upon or applied to a building shall include all lettering, wording and accompanying designs or symbols together with any background of a different color than the finish material or the building face.
- C. When a sign consists of individual letters or symbols attached to or painted on a surface, wall or window, the area shall be that of the smallest rectangle which encompasses all of the letters and symbols.
- D. Only one side of a double-faced sign shall be counted in computing the area of that sign.
- E. For the purposes of these regulations, the area of a building face or wall shall be calculated by using a height of no more than 10 feet from the ground multiplied by the width of the building front.

§ 240-63. Signs in residential districts. [Amended 2-20-1997]

In residential districts, only the following signs are permitted:

- A. One sign displaying the street number and identifying the premises not to exceed two square feet in area. The street number must be approved by the Engineering Department in conformance with the Town's regulations governing numbering of buildings.³¹
- B. One sign no larger than four square feet in area shall be allowed which displays the name of the house or the name of the family residing therein.
- C. One sign not to exceed two square feet in area shall be permitted for a professional office or home occupation for which a special permit or variance has been granted by the Board of Appeals.
- D. One temporary sign not to exceed four square feet in area advertising property for sale, lease or rent. Such signs must be removed within 10 days of transfer of title or signing of lease or rental agreement.
- E. Where a legal nonconforming business exists within a residential district, one sign may be permitted by the Building Commissioner if it is determined that the appearance, placement, size and lighting of the proposed sign will not be detrimental to the residential character or visual quality of the area. In no instance shall such signs exceed eight feet in height or eight square feet in area.

31. Editor's Note: See Ch. 51, Buildings, Numbering of.

- F. Permits may be posted at construction sites as required by state or Town regulations, except that in no instance shall they be attached to trees or utility poles.
- G. One identification sign not to exceed 12 square feet in area may be permitted at any public entrance to a subdivision or multifamily development.
- H. Illuminated signs within residential zones require the approval of the Building Commissioner, and may be permitted if the applicant can demonstrate that the proposed illumination will not intrude upon adjacent residential areas, will not be illuminated except during actual hours of business, and will not cause traffic hazards.
- I. One identifying sign for lodging houses, bed-and-breakfast or similar identification not to exceed four square feet in area.

§ 240-64. Signs in Medical Services District. [Amended 7-14-2005 by Order No. 2005-100]

- A. One sign giving the name of the occupant or other identification of a permitted use in a professional residential zone may be permitted. Such signs shall be no more than 12 square feet in area and shall not extend more than eight feet above the ground.
- B. Any illuminated sign must comply with the provisions of § 240-63 herein.

§ 240-65. Signs in B, UB, HB, HO, S&D and SD-1 Districts. [Amended 8-15-1991; 7-15-1999; 6-20-2013 by Order No. 2013-133]

- A. Each business may be allowed a total of two signs.
- B. The maximum height of any freestanding sign will be 10 feet, except that a height of up to 12 feet may be allowed by the Building Commissioner if it is determined that the additional height will be in keeping with the scale of the building and will not detract from the appearance or safety of the area and will not obscure existing signs that conform to these regulations and have a Town permit.
- C. The area of all signs for each individual business establishment shall not exceed 10% of the area of the building facade associated with the business establishment that contains the establishment's primary customer entrance or 100 square feet, whichever is the lesser amount. In instances where multiple business establishments share a customer entrance on the same facade, the total square footage for all signs of all business establishments attached to each facade shall not exceed 10% of the total area of the facade associated with the business establishments that contains the establishments' shared customer entrance or 100 square feet, whichever is the lesser amount. **[Amended 4-17-2014 by Order No. 2014-047]**
- D. Only one freestanding sign is allowed per business, which may not exceed half the allowable size as permitted in this section.
- E. One projecting overhanging sign may be permitted per business in lieu of either a freestanding or wall sign, provided that the sign does not exceed six square feet in area,

is no higher than 10 feet from the ground at its highest point and is secured and located so as to preclude its becoming a hazard to the public. Any sign projecting onto Town property must have adequate public liability insurance coverage, and proof of such insurance must be provided to the Building Commissioner prior to the granting of a permit for such sign.

- F. Incidental business signs indicating the business, hours of operation, credit cards accepted, business affiliations, "sale" signs and other temporary signs shall be permitted so long as the total area of all such signs does not exceed four square feet and is within the allowable maximum square footage permitted for each business.
- G. When a business property is located on two or more public ways, the Building Commissioner may allow a second freestanding sign, so long as the total square footage of all signs for a single business does not exceed the provisions of this section.
- H. When two or more businesses are located on a single lot, only one freestanding sign shall be allowed for that lot, except as provided in this section, in addition to one wall or awning sign for each business. If approved by the Building Commissioner, the one freestanding sign can include the names of all businesses on the lot.
- I. One awning or canopy sign may be permitted per business in lieu of the allowable wall or freestanding sign, subject to approval by the Building Commissioner.
- J. In addition to the allowable signs as specified in this section each restaurant may have a menu sign or board not to exceed three square feet.
- K. In lieu of a wall sign, one roof sign shall be permitted per business, subject to the following requirements:
 - (1) The roof sign shall be located above the eave, and shall not project below the eave, or above a point located 2/3 of the distance from the eave to the ridge.
 - (2) The roof sign shall be no higher than 1/5 of its length.

§ 240-65.1. Signs in BA Districts. [Added 6-20-2013 by Order No. 2013-133]

- A. Business identification signs.
 - (1) Each business establishment is allowed two signs.
 - (2) The area of all signs for each individual business establishment shall not exceed 10% of the area of the building facade associated with the business establishment that contains the establishment's primary customer entrance or 100 square feet, whichever is the lesser amount.
 - (3) In instances where multiple business establishments share a customer entrance on the same facade, the following requirements shall apply:
 - (a) The total square footage for all signs of all business establishments attached to each facade shall not exceed 10% of the total area of the facade associated

with the business establishments that contains the establishments' shared customer entrance or 100 square feet, whichever is the lesser amount.

- (b) In instances where a building facade with a shared customer entrance does not have a ground-floor window belonging to each and all business establishments within the building, the following additional requirements shall apply:
 - [1] Business establishments with a window on the ground floor of the building facade that includes a shared customer entrance shall be allowed one sign attached to that building facade.
 - [2] Up to two directory signs shall be allowed for all businesses within the building. That sign may have multiple panels for each business tenant within the building. The total size of the directory sign(s) shall not exceed 20 square feet.
- (4) Additional standards for each sign type. In addition to the number and size limitations of Subsection (A), signs shall be subject to the following requirements. The most restrictive requirement shall apply.
 - (a) Wall signs.
 - [1] The maximum size of a wall sign shall not exceed 50 square feet.
 - (b) Projecting signs.
 - [1] The maximum size of a projecting sign shall not exceed six square feet.
 - [2] The sign may be double-faced.
 - [3] The bottom of a projecting sign shall be a minimum of 8 feet from grade and the height of the projecting sign shall not exceed 12 feet where the sign projects over a pedestrian walkway.
 - [4] The projecting sign must be secured and located so as to preclude it from becoming a hazard to the public.
 - [5] Each business establishment may only have one projecting sign on a facade.
 - [6] Any sign projecting over Town property must have adequate public liability insurance coverage. Proof of such insurance must be provided to the Building Commissioner prior to the granting of a permit for such sign.
 - (c) Roof signs.
 - [1] The maximum size of a roof sign shall not exceed 20 square feet.
 - [2] A roof sign shall be no higher than 1/5 of its length.

[3] The roof sign shall be located above the eave, and shall not project below the eave, or above a point located $\frac{2}{3}$ of the distance from the eave to the ridge.

(d) Freestanding signs.

[1] One freestanding sign is allowed on each lot where the building is set back a minimum of five feet from the property line.

- [2] The sign may be double-faced.
 - [3] The maximum size and height of freestanding signs shall be as follows:
 - [a] For properties that contain one business establishment, a freestanding sign shall not exceed four square feet in area and seven feet in height.
 - [b] For properties that contain two or more business establishments, a freestanding sign shall not exceed eight square feet in area and 10 feet in height.
 - [c] For properties that are located in the portion of the BA District south of Osterville-West Barnstable Road and north of Pond Street, a freestanding sign shall not exceed 20 square feet in area and 12 feet in height.
 - [4] When a lot is located on two or more public ways, the Building Commissioner may allow a second freestanding sign, provided the second freestanding sign also conforms to the requirements of Subsection A(4)(d)[3] above.
- (e) Awning signs.
- [1] Signage may be displayed on a maximum of two awnings per facade per business establishment.
 - [2] For the purposes of this section, two awnings with signage on the same facade shall constitute one sign.
 - [3] When a business establishment elects to put signage on two awnings on the same facade pursuant to Subsection A(4)(e)[2] above, that business establishment shall be limited to one of the following additional signs:
 - [a] One wall sign, not to exceed six square feet in area; or
 - [b] One projecting sign, subject to the requirements of Subsection A(4)(b); or
 - [c] One freestanding sign, subject to the requirements of Subsection A(4)(d).
 - [4] Lettering on an awning sign shall not exceed six inches in height.
 - [5] Any logo, symbol, graphic, or image incorporated into an awning sign shall not exceed two square feet.
- (5) Special permit for dimensional relief. Within the BA Zoning District, the Special Permit Grant Authority (SPGA) may provide relief subject to the provisions of § 240-125C herein, from the size and dimensional requirements of § 240-65.1A. The grant of any special permit for dimensional relief within the BA District shall require the SPGA to make the following findings:

- (a) There are unique features affecting the property or structure containing the business establishment that make it distinctly different in character from other development in the district. Such features may include, but are not limited to, the visibility of a structure or primary customer entrance from a public way, the size of the structure containing the business establishment, orientation of the structure on the lot, access to the structure, or the number of tenants located on a single lot.
 - (b) The proposed sign is consistent with the visual character of surrounding neighborhood and the community.
- B. Identification signs. Identification signs shall not count toward the total number of signs allowed for a business establishment in § 240-65.1A.
 - (1) Identification signs for secondary customer entrances.
 - (a) Each business establishment with a second customer entrance on a second facade oriented to a public way, parking lot, or publicly used walkway is allowed one identification sign.
 - (b) The area of the sign shall not exceed 5% of the area of the building facade associated with the business establishment that contains the establishment's secondary customer entrance or 20 square feet, whichever is the lesser amount.
 - (c) The identification sign shall be limited to either a wall sign, projecting sign, or awning sign, subject to the requirements set forth in § 240-65.1A(4) above.
 - (d) The sign shall be attached to the building facade containing the second customer entrance.
 - (e) In instances where the multiple business establishments share a secondary customer entrance, identification signs shall be subject to the requirements of § 240-65.1A(3), except that size limitations of Subsection B(1)(c) above shall apply.
 - (2) Identification signs for delivery or service entrances.
 - (a) Each business establishment is allowed one identification sign attached to a building facade oriented to a public way, parking lot, or publicly used walkway, providing that such facade has a delivery or service entrance serving that business establishment.
 - (b) The identification sign shall be a wall sign located near the delivery or service entrance.
 - (c) The maximum size of an identification sign shall not exceed two square feet.
- C. Trade signs and temporary signs. These signs shall be permitted in addition to the signs permitted in Subsections A and B above. All trade signs and temporary signs shall be

made of high-quality materials and kept clean and properly maintained so as to avoid peeling, rusting or other forms of decay.

- (1) Menu signs.
 - (a) Each restaurant or food-service establishment may have one menu sign not to exceed three square feet.
 - (b) The menu sign shall be attached to the building.
- (2) A-frame menu boards.
 - (a) A-frame menu boards are permitted for restaurants and other food service establishments.
 - (b) One A-frame menu board sign per establishment is permitted.
 - (c) The maximum size of the A-frame menu board shall not exceed two feet by three feet. The sign may be double-sided.
 - (d) The sign must be A-frame style, and the frame must be made out of solid wrought-iron and may incorporate a chalkboard.
 - (e) Where the A-frame menu board is proposed on private property, proof shall be submitted demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner of the property proposed for locating the A-frame menu board.
 - (f) Where the A-frame menu board is proposed on Town property, the following additional criteria shall be met:
 - [1] Proof of receipt of a license from the Town Manager or designee for the sign at the proposed location.
 - [2] Proof of insurance consistent with this license from the Town Manager or designee shall be provided to the Building Commissioner prior to placing any approved sign.
 - (g) A-frame menu boards may not be used in conjunction with trade figure/symbols, open/closed signs or menu signs.
 - (h) A-frame menu boards must comply with the following performance standards:
 - [1] Shall be secured as necessary so as not to create nuisance or hazard to pedestrians, motorists or business patrons under any conditions.
 - [2] Shall not obstruct safe passage or impede accessibility on the sidewalk.
 - [3] Shall not obstruct views to another business or business sign.
 - [4] Shall be professionally made and well maintained. Hand-lettered signs shall not incorporate informal, irregular hand lettering.

- [5] Shall not be illuminated.
 - [6] Shall not have lights, banners, flags or similar objects placed on or adjacent to the sign.
 - [7] Shall be placed on the sidewalk leading to the public business entrance.
 - [8] Shall be removed at the close of business each day.
 - [9] Shall not be displayed outside of business hours.
- (3) Trade figure or symbols.
- (a) One trade figure or symbol per business establishment is permitted.
 - (b) The trade figure or symbol shall represent the business and/or its services and shall be based on historic trade representations.
 - (c) Trade figures or symbols shall comply with the following requirements:
 - [1] The trade figure or symbol shall be placed at the public entrance immediately abutting the building front or affixed to the front facade of the building in which the business is located. Trade figures or symbols may also be incorporated into a freestanding sign.
 - [2] The maximum size of any trade figure or symbol shall be three cubic feet.
 - [3] The trade figure or symbol shall be secured as necessary so that it does not create nuisance or hazard under any conditions to pedestrians, motorists or business patrons.
 - [4] The trade figure or symbol shall not obstruct safe passage or impede accessibility on the sidewalk and shall not obstruct views to another business or business sign.
 - [5] Trade figures or symbols may not be used in conjunction with A-frame menu boards.
 - (d) Proof shall be submitted demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner of the property proposed for locating the trade figure or symbol.
 - (e) Where the trade figure or symbol is proposed on Town property, the following additional criteria shall be met:
 - [1] Proof of receipt of a license from the Town Manager or designee for the sign at the proposed location.
 - [2] Proof of insurance consistent with this license from the Town Manager or designee shall be provided to the Building Commissioner prior to placing any approved trade figure or symbol.

- (4) Open/closed signs.
 - (a) Each business establishment is allowed one open/closed sign on each building facade oriented to a street or parking lot, providing that such facade has a customer entrance serving that business establishment.
 - (b) The open/closed sign shall either be attached at the customer entrance, in a display window or door of the building in which the business is located or attached to a freestanding sign. Open/closed signs may also be incorporated into a trade figure or A-frame menu board.
 - (c) The maximum size of an open/closed sign shall not exceed 22 inches by 14 inches.
- (5) Incidental business signs.
 - (a) Incidental business signs indicating the business, hours of operation, credit cards accepted, and business affiliations shall be permitted so long as the total area of all signs does not exceed one square foot.
 - (b) "Sale" signs and other temporary signs shall be permitted so long as the total area of all such signs does not exceed three square feet.
- (6) Trade flags. Trade flags are prohibited in the BA District.

D. Illumination, design and materials.

- (1) No neon or LED signs are permitted in the BA District.
- (2) Internally illuminated signs are prohibited in the BA District.
- (3) The lettering, shape, and color employed in a sign shall be compatible with the form, color, and materials of the building housing the business establishment that the sign is identifying. Signs for different businesses within the same building or for multiple business establishments in multiple buildings on the same property shall be of harmonious style and design.
- (4) Wall signs, projecting signs, roof signs, and freestanding signs shall be made primarily of wood, PVC composite, medium-density or high-density overlay plywood or HDPE sign board.

§ 240-66. Signs in industrial districts.

The provisions of § 240-65 herein shall apply, except that the total square footage of all signs, while normally not to exceed 100 square feet, may be allowed up to 200 square feet if the Building Commissioner finds that larger signs are necessary for the site and are within the scale of the building and are otherwise compatible with the area and in compliance with the provisions and intent of these regulations.

§ 240-67. Signs in CVD, OM, HG, TD, VB-A, WBVBD and MMV Districts. [Amended 6-1-2006 by Order No. 2006-136; 7-16-2009 by Order No. 2009-137; 6-17-2010 by Order No. 2010-122; 9-8-2011 by Order No. 2011-138]

The provisions of § 240-65 herein shall apply except that:

- A. The maximum allowable height of all signs is eight feet, except that the Building Commissioner may allow up to 12 feet if he finds that such height is necessary for the site and is compatible with the appearance, scale and character of the area.
- B. The maximum square footage of all signs shall be 50 square feet or 10% of the building face, whichever is less.
- C. The maximum size of any freestanding sign shall be 10 square feet, except that the Building Commissioner may grant up to 24 square feet if he finds that the size is necessary for the site and that the larger size is in scale with the building and does not detract from the visual quality or character of the area.

§ 240-68. Signs in MB-A1, MB-A2, MB-B and HD Districts. [Amended 7-14-2005 by Order No. 2005-100]

The provisions of § 240-65 herein shall apply except that:

- A. The maximum allowable height of signs shall not exceed eight feet.
- B. Freestanding signs shall not exceed 24 square feet in area.
- C. The total square footage of all signs shall not exceed 50 square feet.

§ 240-69. Gasoline station signs.

- A. In addition to the two allowable signs as specified in § 240-65 herein each gas pump may have signage not to exceed 12 inches by eight inches indicating the name or type of gasoline and its price and other information as may be required by federal, state or Town regulation.
- B. Each gas station or garage may divide the one allowable attached wall sign into no more than four separate signs affixed to and parallel to the wall indicating the separate operations or departments of the business, provided that the total area of the separate signs shall not exceed maximum permitted areas specified in § 240-65 herein.
- C. If the business is an approved inspection station, it may additionally have a sign indicating that fact as part of its permitted building or freestanding sign, except that the total square footage of all signs must not exceed the maximum permitted in § 240-65 herein.
- D. Temporary or portable signs of any and every type are specifically prohibited.

§ 240-70. Shopping center signs.

Each business in a shopping center is allowed one attached building sign and one portion of a common freestanding sign. If the shopping center has two or more public entrances which are at least 500 feet apart, a second freestanding sign may be permitted if the Building Commissioner finds that an additional sign is necessary, will not represent a visual hazard, and will not detract from the visual quality or character of the area.

§ 240-71. Signs HVB District. [Amended 11-15-2001 by Order No. 2002-029; 7-14-2005 by Order No. 2005-100]

The provisions of § 240-65 herein shall apply except that:

- A. The maximum allowable height of all signs on buildings shall be 12 feet, and the maximum height of a freestanding sign shall be eight feet.
- B. The maximum square footage of all signs shall be 50 square feet or 10% of the building face, whichever is less.
- C. The maximum size of any freestanding sign shall be 12 square feet.
- D. Temporary street banners may be permitted in the HVB Business District only, for the purpose of informing the general public of community events and activities, with approval of the Town Manager. Street banners shall be hung in prescribed locations, securely fastened to buildings, maintain a minimum height of 16 feet above the street, be constructed of durable materials, used solely for community events in the district, and remain in place for no more than three weeks prior to the event and be removed within one week after the event.
- E. Open/closed sign, business trade figure or symbol, or location hardship sign: Subject to § 240-85, Permit required; identification stickers. **[Added 6-17-2010 by Order No. 2010-123; amended 5-5-2011 by Order No. 2011-047]**
 - (1) Open/closed sign. A business may display a sign to identify and/or direct patrons to their business, provided that the following standards are met:
 - (a) The open/closed sign is attached, at the public entrance, in a display window or door of the building in which the business is located.
 - (b) Only one open/closed sign per business establishment is permitted per frontage.
 - (c) An open/closed sign may not be used in conjunction with a trade flag or business trade figure or symbol.
 - (d) The dimensions of any open/closed sign shall not exceed 22 inches by 14 inches.
 - (2) Trade figure or symbol. A business may use a three dimensional representation of their business, providing that the following criteria are met:
 - (a) The business trade figure or symbol is placed at the public entrance immediately abutting the building front or is affixed to the front facade of the building in which the business is located. Such figures or symbols shall not be located on Town property.
 - (b) The business trade figure or symbol represents the business and/or its services and is based on historic trade representations.

- (c) Only one business trade figure or symbol per business establishment is permitted.
 - (d) A business trade figure or symbol may not be used in conjunction with an open/closed sign or a trade flag.
 - (e) The dimensions of any business trade figure or symbol shall not exceed two feet by three feet by four feet.
 - (f) The business trade figure or symbol shall be secured as necessary so that it does not create nuisance or hazard under any conditions to pedestrians, motorists or business patrons.
 - (g) The business trade figure or symbol shall not obstruct safe passage or impeded accessibility on the sidewalk and shall not obstruct views to another business or business sign.
 - (h) Proof shall be submitted demonstrating to the satisfaction of the Building Commissioner that explicit written permission has been given by the owner of the property proposed for locating the trade figure or symbol.
- (3) Location hardship sign. These signs are allowed in the HVB District, provided that a special permit is obtained from the Planning Board subject to the provisions of § 240-125C herein and subject to the following criteria and performance standards.
- (a) Criteria.
 - [1] Applications for location hardship signs shall demonstrate through visual evidence substantial obstruction or other substantial location hardship as defined herein.
 - [2] One location hardship sign is permitted per each business frontage.
 - [3] Evidence demonstrating to the satisfaction of the Planning Board and the Building Commissioner that explicit written permission has been given by the owner(s) of the property proposed for placing the sign that is the subject of the special permit application.
 - [4] Where the location hardship sign is within the Hyannis Main Street and Waterfront Historic District a certificate of appropriateness shall be obtained prior to and submitted with the application for special permit.
 - [5] Where the location hardship sign is proposed on Town property, the following additional criteria shall be met:
 - [a] Proof of receipt of a license from the Town Manager or designee for the sign at the proposed location.
 - [b] Proof of insurance consistent with this license from the Town Manager or designee shall be provided to the Planning Board and the Building Commissioner prior to placing any approved sign.

(b) Performance standards.

[1] Location hardship signs:

- [a] Shall not exceed two feet by four feet.
- [b] Shall be secured as necessary so as not to create nuisance or hazard to pedestrians, motorists or business patrons under any conditions.
- [c] Shall not obstruct safe passage or impede accessibility on the sidewalk.
- [d] Shall not obstruct views to another business or business sign.
- [e] Shall be professionally made, professionally painted and well maintained. Hand-lettered signs shall not incorporate informal, irregular hand lettering.
- [f] Shall not be illuminated.
- [g] Shall not have lights, banners, flags or similar objects placed on or adjacent to the sign.
- [h] Shall be placed on the sidewalk leading to the public business entrance.
- [i] Shall be removed at the close of business each day.
- [j] Shall not be displayed outside of business hours.

§ 240-72. Trade flags. ³² [Added 5-5-2011 by Order No. 2011-047]

Trade flags may be displayed by a business use located in a nonresidential zoning district or trade flags may be displayed by a preexisting nonconforming business use along the portion of Phinneys Lane from Attucks Lane to Kidd's Hill Road and along Route 6A from Sandwich/Barnstable line to the Barnstable/Yarmouth line. Trade flags are subject to § 240-85 and to the following:

- A. Trade flags shall not be displayed in conjunction with location hardship signs, open/closed signs, or trade figure or symbol.
- B. Trade flags are not counted towards the amount of signage allowed.
- C. Trade flags shall be attached at the primary public entrance, to the facade of the building in which the business is located.

32. Editor's Note: Former § 240-72, Signs in B-1, O-1, O-2, and O-3 Districts, as amended, was repealed 7-14-2005 by Order No. 2005-100.

- D. One trade flag per business establishment is permitted. For structures with common entrances leading to multiple business establishments, only one trade flag is allowed per common entrance.
- E. The dimensions of any trade flag shall not exceed three feet by five feet.³³

§ 240-73. Construction signs.

- A. When a building permit has been issued for the construction, alteration or repair of a structure, and all other required permits have been obtained, contractors or architects shall display a sign on the site while approved work is going on.
- B. No contractor or architect shall display more than one sign on any building at any given time.
- C. No sign shall be larger than 24 square feet in area, nor more than five feet tall.
- D. The total area of all construction signs displayed at a site at any given time shall not exceed 24 square feet.

§ 240-74. Temporary signs.

Temporary signs and special sale signs may be permitted in all districts subject to the following requirements:

- A. The total area of all temporary signs allowed in this section shall not exceed 20% of the glass area of the window in which the sign is placed.
- B. Special event and/or temporary signs, flags or banners belonging to a not-for-profit organization, civic organization or church: **[Added 5-7-2009 by Order No. 2009-074]**
 - (1) Prior to installation, shall be registered with and approved by the Building Commissioner for a specific property owned or leased to a not-for-profit, civic organization or church.
 - (2) Shall be displayed only during permitted hours of operation and shall be removed once operations cease each day.
 - (3) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
 - (4) Shall not exceed four feet in width and five feet in length.
 - (5) Shall remain subject to approvals of all applicable historic boards or commissions.
- C. Real estate signs. **[Added 5-5-2011 by Order No. 2011-046]**

³³. Editor's Note: Former Subsection F, regarding trade flags in the BA District, which immediately followed this subsection, was repealed 6-20-2013 by Order No. 2013-133.

- (1) Open house signs:
 - (a) Shall only be placed for display 60 minutes before and shall be removed within 60 minutes after the open house event.
 - (b) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
 - (c) Shall not be placed in any area that obstructs or otherwise intrudes into areas containing memorials or monuments. Open house signs are prohibited on a traffic island where such memorials or monuments are located.
- (2) Open house directional signs:
 - (a) Shall only be placed for display 60 minutes before and shall be removed within 60 minutes after the open house event.
 - (b) Shall only be displayed to assist motorists in finding an open house that is concurrently displaying an open house sign.
 - (c) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
 - (d) Shall not be placed in any area that obstructs or otherwise intrudes into areas containing memorials or monuments. Open house signs are prohibited on a traffic island where such memorials or monuments are located.
- (3) Subdivision off-premises directional signs:
 - (a) Shall be displayed only during period of time when developed or undeveloped lots in the subdivision are offered for initial sale by the developer and shall be removed once such initial sales are complete.
 - (b) In accordance with § 240-85, prior to installation, shall be permitted by the Building Commissioner for the specific subdivision. Evidence of ownership, lease or other arrangement allowing installation and display at the proposed location shall be provided to the Building Commissioner with the sign permit application.
 - (c) Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
 - (d) Shall be located within reasonable proximity to the boundary of the subdivision.
 - (e) Shall not exceed three feet by five feet.
 - (f) Shall remain subject to approvals of all applicable historic boards or commissions.

§ 240-75. Directional or safety signs.

In addition to other allowable signs, directional, warning or traffic signs necessary for the safety and direction of residents, employees, customers and visitors may be allowed as follows:

- A. Such signs shall not exceed one square foot in area, nor be more than three feet high.
- B. No more than four such signs will be allowed per site.
- C. The Building Commissioner may grant exceptions from the provisions of this subsection on a case-by-case basis if he finds that the site requires more or larger or higher directional or safety signs, and that such signs will not conflict with the visual quality and character of the area nor lead to clutter or confusion.

§ 240-76. Business area signs.

Business area signs may, at the discretion of the Building Commissioner, be permitted off-premises in remote areas, provided that the owner of record of the land on which the sign is placed has given written permission and that such signs shall be no more than eight square feet in area and shall identify the business area only, and not individual businesses.

§ 240-77. Movie houses and places of entertainment.

- A. Movie houses and places of entertainment may use one of their signs as a display sign indicating movie titles, their ratings, the time(s) of showing, or in the case of places of entertainment, the names of current and/or next-appearing performers so long as they meet all dimensional requirements.
- B. When a movie house or place of entertainment is one of two or more businesses on a single lot, the Building Commissioner may allow two freestanding signs, one of which may be a display sign, so long as the total area of both signs combined does not exceed the maximum square footage allowed in § 240-65 herein.

§ 240-78. Illumination. [Amended 11-15-2001 by Order No. 2002-029]

- A. Illuminated signs will normally not exceed fifty-foot lamberts (or equivalent measurement) of intensity. Additional intensity may be permitted by the Building Commissioner if it is determined that additional intensity is necessary and that it will not detract from the visual quality or character of the area. **[Amended 7-14-2005 by Order No. 2005-100]**
 - (1) Internally illuminated signs shall not be permitted in the Hyannis Village Zoning Districts.
- B. The light from any sign shall be so shaded, shielded or directed or shall be maintained at a sufficiently low level of intensity and brightness so that it shall not adversely affect neighboring premises or the safe vision of operators of vehicles moving on public roads and highways.

- C. All illuminated signs shall be so shaded, shielded or directed that they will not reflect or shine on or into residential structures to an extent that would constitute a nuisance or a disruption of the residential character of the area.

§ 240-79. Signs in Old King's Highway Historic District.

- A. The dimensional requirements of these regulations shall apply to all portions of the Town.
- B. Within the boundaries of the Old King's Highway Historic District, the Historic District's Regional Committee shall exercise the duties of the Building Commissioner for the purposes of these regulations, except that the Building Commissioner shall be informed of all actions taken by the Regional Committee.
- C. The Building Commissioner and the Chairman of Regional Committee shall consult with each other frequently regarding the administration of these regulations, and shall work together to establish common sign and architectural standards whenever possible.

§ 240-80. Relocating or changing signs.

- A. Any sign that is moved to another location, either on the same or other premises shall require a permit.
- B. Any change in the width, length, height, color, wording, materials, illumination or clearance between the bottom of the sign and the ground, other than authorized in the permit, will require a new permit prior to making any such changes.

§ 240-81. Transfer of permits prohibited.

Permits cannot be transferred, and the new owner of a business for which there are permitted signs must request a permit for those signs, which shall be granted if all signs are found to be in compliance with these regulations.

§ 240-82. Protection of subsequent purchasers.

Any vendor or lessor who sells or leases any real property which includes a nonconforming sign or signs has a duty to disclose to his vendee or lessee the time remaining in the amortization or transition period applicable to the sign or signs in question.

§ 240-83. Illegal signs.

- A. Order to remove. Following the procedures described in these regulations for abandoned signs, the Building Commissioner can establish an order of removal for illegal signs which may then be removed by the Building Commissioner following due procedures of law, with costs assessed to the permit holder or property owner.

- B. New signs at sites of illegal signs. No sign permit shall be granted for a new sign to be located on a building or on a lot where one or more illegal signs exist.

§ 240-84. Abandoned signs.

- A. Signs which have been abandoned due to a closing of a business, a change in business name or for any other reason which renders the sign not applicable to the property involved shall be removed by the permit holder or the owner of the building or premises within 14 days from the date of the action that caused the sign to be considered abandoned.
- B. A condition of approval for all sign permits shall be that permit holders or owners of the building or premises shall, at his or her own expense, remove all abandoned signs.
- C. New signs for a building or property on which an abandoned sign is located shall not be approved until the abandoned sign is removed.
- D. The Building Commissioner shall determine when a sign is abandoned. Notice shall be sent to the permit holder and to the property owner prior to administrative action.

§ 240-85. Permit required; identification stickers.

- A. All signs regulated by this chapter require a permit from the Building Commissioner, with the exception of residential signs described in § 240-63A and B herein, so long as the house number has been approved by the Engineering Department.
- B. Failure to obtain a permit shall make the sign illegal and subject to the penalty provisions of § 240-86 herein.
- C. All signs regulated by this chapter shall be marked with an identification sticker supplied by the Building Commissioner. Failure to display this sticker as issued by the Town shall constitute a violation of these regulations and be subject to the provisions of § 240-86 herein.

§ 240-86. Violations and penalties.

- A. The Building Commissioner may issue citations for violations of these regulations.
- B. A failure to respond to properly issued citations or the issuance of three or more citations for a sign shall be construed as a major violation subject to a fine of not more than \$100. Each day that such violation continues shall constitute a separate offense.
- C. Continued violation, even with payment of penalties, for a period of 60 days, shall be grounds for removal of the sign(s) in question, following the procedures for illegal signs.
- D. Applicants for signs who have previously had penalties for illegal signs may be required to post a deposit of not more than \$500 per sign for new permits. The Building Commissioner shall review the sign one year from the issuance of a permit and either issue a certificate of compliance, release the deposit, or order necessary corrective action

utilizing the deposited funds, with any remaining funds and a full accounting of monies spent returned to the applicant.

§ 240-87. Safety and maintenance.

- A. All signs, together with their supporting structures, must be kept properly maintained, repaired, and in proper condition. All signs and the grounds about them shall be kept free from all rubbish and other objectionable material.
- B. Failure to comply with these provisions shall be grounds for a citation.
- C. If the Building Commissioner finds that a sign is unsafe or otherwise improperly maintained, he shall issue a written notice to that effect to the permit holder and the property owner. If the specified conditions are not corrected, the Building Commissioner is authorized to remove or repair the sign, all costs of which shall be assessed to the permit holder or property owner, including an administrative fee of \$50. If public safety is involved, the Building Commissioner may take immediate action.

§ 240-88. Appeals.

Any individual aggrieved by a decision of the Building Commissioner may appeal to the Barnstable Board of Appeals, as provided under Chapter 40A of the General Laws.

§ 240-89. Enforcement. [Amended 10-17-2002]

- A. The provisions of these regulations shall be enforced by the Building Commissioner.
- B. Citations, as specified in § 240-85 may be issued by the Building Commissioner.

**ARTICLE VIII
Nonconformities**

[Amended 11-7-1987 by Art. 8; 11-2-1995 by Order No. 95-198]

§ 240-90. Intent.

It is the intent of this section to protect property rights of owners of preexisting legally created nonconforming lots, uses and buildings or structures and to provide regulation of changes or expansion of preexisting nonconforming structures, building and uses.

§ 240-91. Nonconforming lot.

- A. Separate lot exemption. Any increase in area, frontage, width, yard or depth requirement of this chapter shall not apply to a lot for single- or two-family residential use which at the time of recording or endorsement:

- (1) Was not held in common ownership with any adjoining land; and
 - (2) Had a minimum of 5,000 square feet of area and 50 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and
 - (3) Conformed to the existing zoning if any when legally created; and
 - (4) Was separately owned at the time of every zoning change which made it nonconforming.
- B. Common lot protection.
- (1) Any increase in the area, frontage, width, yard or depth requirement of this chapter shall not apply for a period of five years from the effective date of the change, to a lot for single- or two-family residential use that:
 - (a) Is held in common ownership with not more than two adjoining lots; and
 - (b) Had a minimum of 7,500 square feet in area and 75 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and
 - (c) Was recorded or endorsed on a plan that conformed to zoning when legally created; and
 - (d) Conformed to applicable zoning requirements as of January 1, 1976.
- C. The protection afforded by Subsection B shall become vested upon the sale or transfer of the lot so protected into ownership separate from that of adjoining lots or the building thereon of a residence. **[Amended 1-20-2005 by Order No. 2005-039]**
- D. Approval-not-required plan protection. Any change in uses permitted under this chapter shall not apply to any lot created by a plan endorsed by the Planning Board as a plan not requiring approval under the Subdivision Control Law for such period of three years from the date of endorsement, as provided by MGL Ch. 40A, § 6.
- E. Subdivision plan protection. Any change in this chapter shall not apply to land shown on a plan under the Subdivision Control Law by a duly submitted and endorsed definitive subdivision plan, or a preliminary plan followed within seven months by a definitive plan, for such period of eight years from the date of endorsement, as provided by MGL Ch. 40A, § 6. Any legally created lot with a recorded release from covenant of the Planning Board that has been sold or transferred into separate ownership and control from any adjoining lots within eight years from the endorsement of the original subdivision plan shall be exempt from any dimensional or bulk zoning changes and shall not lose its status as a single buildable lot under zoning.
- F. Merged lots. Except as otherwise provided herein, lawfully nonconforming lots that are adjoining and held in common ownership, or under the control of the same owner, shall be treated so as to conform so far as possible with the minimum area requirement of the zoning district in which they are located. No lot so merged, or portion thereof, may be changed or transferred in any manner that will increase the degree of nonconformity

unless a special permit has first been obtained from the Zoning Board of Appeals. No such special permit may create any additional buildable lot(s).

G. Resource Protection Overlay District. **[Amended 10-26-2000]**

- (1) Any increase in area, frontage, width, yard or depth requirements of the Resource Protection Overlay District shall not apply to a lot for single- or two-family residential use which immediately prior to November 16, 2000, either:
 - (a) Conformed to the applicable bulk requirements of this chapter immediately prior to November 16, 2000: or
 - (b) Immediately prior to (on the effective date of this chapter,) was protected from the applicable bulk requirements of this subsection by the provisions of § 240-91A, B, C, D, or E of this chapter.
- (2) This protection afforded by this subsection shall be permanent.

H. Developed lot protection; demolition and rebuilding on nonconforming lots. Preexisting legal nonconforming lots which have been improved by the construction of a single- or two-family residence which conformed to all provisions of the zoning ordinance or bylaw at the time of construction shall be entitled to completely demolish the old residence and construct thereon a new residence in accordance with the following. **[Added 11-18-2004 by Order No. 2005-025³¹]**

- (1) As-of-right. The proposed demolition and rebuilding shall be permitted as-of-right on a preexisting legal nonconforming lot that contains a minimum of 10,000 square feet of contiguous upland, provided that the Building Commissioner determines that all of the following criteria are met:
 - (a) The proposed new structure conforms to all current use and setback requirements of the zoning district it is located in;
 - (b) The proposed construction conforms to the following requirements of lot coverage, floor area ratio and building height:
 - [1] Lot coverage by all buildings and all structures shall not exceed 20% or the existing lot coverage, whichever is greater;
 - [2] The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished and rebuilt, whichever is greater; and
 - [3] The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 1/2 stories. The building height, in feet, shall be defined as the vertical distance from the average grade plane to plate.
 - (c) Further expansion of the rebuilt structure must conform to Subsection H(1)(b) above.

31. Editor's Note: This order also redesignated former Subsection H(2) as Subsection H(3).

- (2) As of right: merged lots each containing a minimum area of 43,560 square feet of contiguous upland. Where, immediately prior to November 16, 2000, two legally created contiguous lots each containing a minimum area of 43,560 square feet of contiguous upland were: (a) located in the Resource Protection Overlay District and (b) held in common ownership and (c) improved by the construction of one single-family residence, including accessory structures which occupied both lots, each said 43,560 square foot lot may be treated under these provisions as two separate buildable lots, provided that each of said lots conformed to all the bulk regulations of the zoning ordinance immediately prior to November 16, 2000, and as long as the other requirements of § 240-91H(1)(a) through (c) above are satisfied. **[Added 5-7-2009 by Order No. 2009-099]**
- (3) By special permit. If the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection H(1) above, then the Zoning Board of Appeals may allow the demolition and rebuilding by special permit, provided that the Board finds that:
 - (a) If the proposed new dwelling does not comply with Subsection H(1)(a) above, then the proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building; and **[Amended 2-17-2005 by Order No. 2005-058]**
 - (b) All the criteria in Subsection H(1)(b)[1], [2] and [3] above are met.
 - (c) The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.
 - (d) This section shall only apply to Subsection H(2) to the extent that the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection H(1) above and shall not be available for relief from any of the other provisions of Subsection H(2). **[Added 5-7-2009 by Order No. 2009-099]**

§ 240-92. Nonconforming buildings or structures used as single- and two-family residences.

A preexisting nonconforming building or structure that is used as a single- or two-family residence may be physically altered or expanded only as follows:

- A. As of right. If the Building Commissioner finds that:
 - (1) The proposed physical alteration or expansion does not in any way encroach into the setbacks in effect at the time of construction, provided that encroachments into a ten-foot rear or side yard setback and twenty-foot front yard setback shall be deemed to create an intensification requiring a special permit under Subsection B below; and
 - (2) The proposed alteration or expansion conforms to the current height limitations of this chapter.

- B. By special permit. If the proposed alteration or expansion cannot satisfy the criteria established in Subsection A above, the Zoning Board of Appeals may allow the expansion by special permit, provided that the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.

§ 240-93. Nonconforming buildings or structures not used as single- or two-family dwellings.

- A. As of right.
- (1) The normal and customary repair and maintenance of a preexisting nonconforming building or structure not used as a single or two-family dwelling is permitted as of right.
 - (2) The alteration and expansion of a preexisting nonconforming building or structure, housing a conforming use, is permitted as of right, provided that the alteration or expansion does not increase or intensify the degree of the preexisting nonconformity of the building or structure, and that the alteration or expansion conforms in all other respects with all applicable requirements of this chapter.

- B. By special permit. Alterations or expansions in a preexisting nonconforming building or structure that do not meet the provisions of Subsection A shall be permitted only by a special permit from the Zoning Board of Appeals. In granting such special permit, the Board must find that the proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood. If the building or structure houses a nonconforming use, the provisions of § 240-94 shall also apply.

§ 240-94. Nonconforming use. [Amended 3-11-1999 by Order No. 99-056]

A preexisting nonconforming use shall be limited in the extent it may expand or intensify. A preexisting nonconforming use may be changed to a principal permitted use as of right. A preexisting nonconforming use may be changed to a conditional use by special permit as provided for within the zoning district in which it is located, or to another nonconforming use as provided for herein.

- A. Change of a nonconforming use to another nonconforming use. A preexisting nonconforming use may be changed to another nonconforming use only by special permit from the Zoning Board of Appeals. In granting a special permit for the change of a nonconforming use, the Board must find that the proposed nonconforming use is no more detrimental to the neighborhood and that all of the following requirements are met:
- (1) The applicant has received all necessary approvals from the Board of Health.
 - (2) The proposed nonconforming use:
 - (a) Requires no more parking than the previous use;
 - (b) Does not generate more traffic than the previous use, as measured by the Institute of Transportation Engineers Trip Generation Handbook or other sources acceptable to the Zoning Board of Appeals, nor does it cause Town expenditures to address traffic mitigation measures;
 - (c) Does not result in an increase of on-site and off-site noise, dust, and odors;
 - (d) Does not result in an increase in the hours of operation or in the number of tenants or employees;
 - (e) Does not expand the gross floor area of the nonconforming use, except as may be provided in § 240-93B, nor does it increase the number of nonconforming uses on a site;
 - (f) Is on the same lot as occupied by the nonconforming use on the date it became nonconforming; and
 - (g) Is not expanded beyond the zoning district in existence on the date it became nonconforming.
- B. Expansion of a preexisting nonconforming use. A preexisting nonconforming use shall not be expanded and/or intensified except by special permit from the Zoning Board of Appeals. In granting a special permit for expansion of a preexisting nonconforming use,

the Board must find that the proposed expansion, and/or intensification will not be more detrimental to the neighborhood and that the following requirements are met:

- (1) Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.
- (2) The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
- (3) The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
- (4) At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
 - (a) Greater conformance of signage to the requirements of Article VII;
 - (b) The addition of off-street parking and loading facilities;
 - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
 - (d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.
 - (e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

§ 240-95. Reestablishment of damaged or destroyed nonconforming use, building or structure.

- A. The reestablishment of a lawful preexisting nonconforming use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
- (1) The reconstruction or repair will not increase the gross floor area or height of the building or structure beyond that which previously existed, nor increase the footprint of the structure;
 - (2) If the building's location on the lot is to be changed, it will change in a manner that will result in greater compliance with the bulk regulations established in the zoning district in which it is located; and
 - (3) The reconstruction or repair will not constitute an expansion or intensification of any nonconforming use.

- (4) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
- B. The preexisting nonconforming use and/or structure or building shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

§ 240-96. Variance situations.

Situations which exist pursuant to the duly authorized grant of a variance from the terms of this chapter as provided for in § 240-125B(3) and (5) shall not constitute nonconformities for the purposes of this chapter.

§ 240-97. Abandonment; nonuse.

Any lawful preexisting nonconforming use or building or structure or use of land which has been abandoned or not used for three years shall not thereafter be reestablished. This section shall not apply in cases of damage or destruction governed by § 240-95.

ARTICLE IX
Site Plan Review
[Added 11-7-1987 by Art. 1]

§ 240-98. Findings.

Developments designed to be used for business and professional offices, commercial establishments, industrial facilities, medical-service facilities, public recreational facilities and multiple-family dwellings, together with their associated outdoor areas for vehicular movement and parking, invite and accommodate varying degrees of open and continuous use by the general public. Owing to their physical characteristic and the nature of their operations, such developments may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of such developments and to minimize any harmful effects on surrounding areas.

§ 240-99. Purposes.

The provisions of this article are designed to assure that all development activities regulated by this article will be carried out so as to provide for and maintain:

- A. Protection of neighboring properties against harmful effects of uses on the development site;
- B. Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
- C. Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;

- D. Satisfactory methods for drainage of surface water to and from the development site;
- E. Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishment(s) on the development site;
- F. Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment(s) on the development site; and
- G. Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site.

§ 240-100. Scope of application.

The provisions of this article shall apply to:

- A. Any construction, demolition, grading, clearing or other land development activity, except for improvements made as shown on a definitive subdivision plan approved by the Planning Board of the Town of Barnstable and minimal clearing necessary to accomplish soil test borings, percolation tests and similar site testing and investigation.
- B. Establishment of any new use or new construction of any building or structure, including any grading or land development activity except detached single-family and two-family dwellings and permitted accessory structures thereto. **[Amended 10-7-1993 by Order No. 94-015]**
- C. Any alteration, expansion, reconstruction or modification to the existing condition(s) of a structure or any change of use which would necessitate the provision of additional off-street parking, additional lot area or any other site alteration in order for such structure or use as so changed to comply with all requirements of this chapter.
- D. The construction or creation of any new parking lot or the expansion or redesign of any existing parking lot. **[Amended 2-22-1996 by Order No. 95-194]**
- E. The erection of any freestanding sign, except not to include directional signs.

§ 240-101. Site plan approval required.

- A. No building permit or occupancy permit shall be issued for any activity or use within the scope of § 240-100 herein unless a site plan has been approved therefor.
- B. No activity within the scope of § 240-100 herein shall be carried out without an approved site plan therefor. Any work done in deviation from an approved site plan shall be a violation of this chapter, unless such deviation is approved in writing by the Building Commissioner as being of no significant detriment to the achievement of any of the purposes set forth in § 240-99 herein.

§ 240-102. Contents of site plan.

- A. The site plan shall include one or more appropriately scaled maps or drawings of the property, drawn to an engineer's scale, clearly and accurately indicating such elements of the following information as are pertinent to the development activity proposed:
- (1) Legal description, Planning Board subdivision number (if applicable), Assessors' Map and parcel number and address (if applicable) of the property.
 - (2) Name, address and phone number of the property owner and applicant, if different than the property owner.
 - (3) Name, address, and phone number of the developer, contractor, engineer, other design professional and agent or legal representative.
 - (4) Complete property dimensions, area and zoning classification of property.
 - (5) Existing and proposed topographical contours of the property taken at two-foot contour intervals by a registered engineer or registered land surveyor.
 - (6) The nature, location and size of all significant existing natural land features, including, but not limited to, tree, shrub, or brush masses, all individual trees over 10 inches in caliper, grassed areas, large surface rock in excess of six feet in diameter and soil features.
 - (7) Location of all wetlands or water-bodies on the property and within 100 feet of the perimeter of the development activity.
 - (8) The location, grade and dimensions of all present and/or proposed streets, ways and easements and any other paved surfaces.
 - (9) Engineering cross sections of proposed new curbs and pavements, and vision triangles measured in feet from any proposed curb cut along the street on which access is proposed.
 - (10) Location, height, elevation, interior and exterior dimensions and uses of all buildings or structures, both proposed and existing; location, number and area of floors; number and type of dwelling units; location of emergency exits, retaining walls, existing and proposed signs.
 - (11) Location of all existing and proposed utilities and storage facilities including septic systems and any storage materials, truck loading and parking areas, tanks, garbage dumpsters and recyclable storage materials.
 - (12) Proposed surface treatment of paved areas and the location and design of drainage systems with drainage calculations prepared by a registered civil engineer.
 - (13) Complete parking and traffic circulation plan, if applicable, showing location and dimensions of parking stalls, dividers, bumper stops, required buffer areas and planting beds.

- (14) Lighting plan showing the location, direction and intensity of existing and proposed external light fixtures.
 - (15) A landscaping plan showing the location, name, number and size of plant types, and the locations and elevation and/or height of planting beds, fences, walls, steps and paths.
 - (16) A location map or other drawing at appropriate scale showing the general location and relation of the property to surrounding areas including, where relevant, the zoning and land use pattern or adjacent properties, the existing street system in the area and location of nearby public facilities.
 - (17) Location within an Historical District and any other designation as an historically significant property, and the age and type of each existing building and structure on the site which is more than 50 years old.
 - (18) Location of site with regard to the GP Groundwater Protection Overlay District and WP Well Protection Overlay District as shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map. **[Amended 9-17-1998 by Order No. 99-012]**
 - (19) Location of site with regard to flood areas regulated by § 240-34 herein.
 - (20) Location of site with regard to areas of critical environmental concern as designated by the Commonwealth of Massachusetts, Executive Office of Environmental Affairs.
- B. Additional information may be required by the Building Commissioner or his designee, as reasonably necessary, to make determinations required by this article.

§ 240-103. Site development standards. [Amended 11-15-2001 by Order No. 2002-029]

- A. A reasonable effort shall be made to conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
- B. Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.
- C. The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
- D. At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway and a line joining points along said lines 20 feet distant from their projected intersection.

- E. Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. In no case shall freestanding illumination devices be installed to a height exceeding 15 feet in a residential district. All illumination shall be directed and/or shielded so as not to shine beyond the perimeter of the site or interfere with traffic.
- F. All areas designed for vehicular use shall be paved with a minimum of either a three-inch bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick, cobblestone or gravel, as approved by the Town Engineer.
- G. All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-104 herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.
- H. All utility service transmission systems, including but not limited to electrical, telephone, cable and other communication lines, shall, whenever practicable, be placed underground or moved behind buildings.
- I. All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case, shall surface water runoff be drained directly into wetlands or water bodies. Drainage systems shall be designed to minimize the discharge of pollutants by providing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration. Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-year storm and shall be reviewed by the Town Engineer.
- J. In addition to the provisions of this section, all other applicable requirements of this chapter shall be complied with.
- K. Storage areas. Exposed storage areas, machinery, garbage dumpsters, recyclable storage, service areas, truck loading areas, utility buildings and structures shall be screened from view of abutting properties and streets using planting, fences and other methods compatible with this chapter. Garbage dumpsters shall be located in designated areas, and where feasible, shared with other uses.
- L. Craigville Beach District implementing regulation: additional site development standards.
[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]
 - (1) Stormwater management. Within the Craigville Beach District, for nonresidential uses including nonresidential parking lots, all new development, expansions, modifications, alterations and changes in use shall obtain the approval of the Building Commissioner for a stormwater management plan that meets the following requirements:
 - (a) Stormwater management and erosion controls shall use best management practices, low-impact designs and other adaptive management practices that at a minimum accommodate the twenty-four-hour, twenty-five-year storm

event and, to the maximum extent feasible, conform to the Massachusetts Stormwater Management Standards adopted pursuant to 310 CMR 10.05(6)(k), Policy, and guidelines as set forth in the Massachusetts Stormwater Handbook; and

- (b) A long-term operation, inspection and maintenance plan that ensures stormwater management systems will function as designed.
- (2) Planting and vegetation management. Within the Craigville Beach District, for nonresidential uses including nonresidential parking lots, all new development, expansions, modifications, alterations and changes in use shall obtain the approval of the Building Commissioner for a planting and vegetation management plan that incorporates the use of native and drought-resistant plantings that minimize the need for irrigation and the use of pesticides and chemical fertilizers. Drip irrigation should be used as an alternative to spray irrigation for establishing plantings and maintaining plantings under extreme drought conditions.

§ 240-104. Minimum parking lot design standards.

(Editor's Note: See drawings at the end of this chapter.)

§ 240-105. Required procedures for site plan review.

- A. At least six copies are required of all site plan sheets, drawings and written information. Submissions shall be delivered to the Building Department.
- B. Within five working days of receiving a site plan, the Building Commissioner or his designee shall distribute copies of the site plan to the Department of Planning and Development, the Department of Public Works and the Board of Health.
- C. Upon receipt of a site plan from the Building Commissioner or his designee, the agencies as noted in Subsection B shall respond in writing, by notations on the site plan, or both, as to the propriety of the proposed development, within the context of each agency's jurisdiction. Such response shall be made to the Building Commissioner or his designee within 10 working days of each agency's receipt of the site plan.
- D. The Building Commissioner or his designee may solicit the advice of any other Town agency or department he deems necessary to properly make the determinations required by this article.
- E. Site plans shall be reviewed for consistency with zoning and other applicable regulations and standards, and within 20 working days of receiving a site plan, the Building Commissioner or his designee, shall notify the applicant of any approval, conditional approval or disapproval, stating reasons.
- F. One copy of the approved site plan shall be provided each to the applicant, the Department of Planning and Development, the Department of Public Works and the Board of Health. One copy of the approved site plan shall remain in the records of the Building Department.

- G. Upon completion of all work, a letter of certification, made upon knowledge and belief according to professional standards, shall be submitted to the Building Commissioner or his designee by a registered engineer or registered land surveyor, as appropriate to the work involved, that all work has been done substantially in compliance with the approved site plan, except that the Building Commissioner or his designee may certify compliance.

ARTICLE X

Personal Wireless Communication **[Added 6-3-1999 by Order No. 99-074A]**

§ 240-106. Purpose and intent.

It is the intent of this article to provide for the location and siting of wireless service communication facilities and their accessory structures in accordance with the Telecommunications Act of 1996, to provide for the orderly provision of facilities; ensure public safety; and to minimize adverse visual impacts upon both residential and nonresidential areas.

§ 240-107. Requirements for all personal wireless facilities in all zoning districts.

- A. Installation and construction of all personal wireless service facilities, including but not limited to antennas, mounts, equipment shelters and structures, shall be subject to Article IX Site Plan Review, and shall require issuance of a building permit.
- B. The applicant shall provide site plan review with evidence that they are a licensed carrier, authorized by the Federal Communications Commission (FCC) to construct and operate personal wireless services, and that the proposed transmitters are FCC regulated and approved.

- C. The structure to which any mount or antenna is attached is a legally built structure under zoning, or a preexisting, legal nonconforming structure.
- D. If the location is within a designated historic district, the applicant shall secure a certificate of appropriateness, to the extent required.
- E. Structural components including guy wire anchors and equipment shelters shall comply with all required setbacks of the zoning district.
- F. Any equipment or base receiver station, not located within an existing building or underground vault, shall be designed to fit in with traditional Cape Cod architecture styles and materials, or shall be screened from view.

§ 240-108. Antennas permitted by special permit in all zoning districts. [Amended 8-1-2013 by Order No. 2013-126]

Except where permitted as of right in § 240-109 below, in all zoning districts, an antenna mounted or located on any existing building, structure or communications tower may be permitted by special permit from the Zoning Board of Appeals, provided that no antenna exceeds the height of the existing structure by more than 12 feet, unless the Board finds that additional height is necessary to provide coverage, and the additional height will not be visually intrusive upon the surrounding area.

§ 240-109. Antennas permitted as of right in all zoning districts. [Amended 8-1-2013 by Order No. 2013-126]

Antennas permitted as of right in all zoning districts shall be as follows:

- A. Co-location of antennas and customary appurtenant equipment on an existing communications tower lawfully permitted for the purpose of supporting FCC-licensed antennas, subject to compliance with § 240-107 and the following standards:
 - (1) The antenna shall not increase the height of the communications tower.
 - (2) The antenna shall not extend out from the tower more than technically necessary for proper operation.
 - (3) The applicant shall submit a structural analysis, prepared and stamped by a registered professional engineer licensed to practice in the Commonwealth of Massachusetts, demonstrating that the communications tower has sufficient structural capacity for the installation. The analysis shall include information about all antenna installations on the tower.
 - (4) Ground-mounted accessory equipment shall be located within an existing equipment shelter or an area fully screened in accordance with § 240-107F.
- B. An antenna and/or tower used in accordance with the terms of an amateur radio service license issued by the Federal Communications Commission provided that any facility tower is not licensed or used for any commercial use, subject to all the requirements of § 240-8, Exempt uses.

- C. Television and radio antennas, including satellite dishes not exceeding a diameter of four feet, for personal use, accessory to a residential use, or to provide entertainment for a single business such as a restaurant.
- D. An antenna completely enclosed within an existing structure other than a communications tower, provided that the associated equipment or base transceiver station is located within an underground vault, or within an existing building or addition thereto, other than an equipment or base receiver shelter.
- E. An antenna located upon the roof of an existing building or structure other than a communications tower, provided that the antenna does not exceed a height of 12 feet, and provided that the equipment shelter is set back from the roof edge a distance equal to the height of the equipment shelter
- F. An antenna located on a water tower belonging to a public water supply utility, by permission of the water utility, not to exceed the height of the water tower by more than 12 feet, except that the Zoning Board of Appeals may by special permit increase the height of the antenna up to 20 feet where the location of the water tower and design of the antenna is such that it will not be visually intrusive upon the surrounding area.
- G. Antennas located on existing utility stanchions, not to exceed a height of 12 feet above the utility stanchions, located within a Commonwealth Electric Company easement, with permission of the landowner to location and maintenance of an equipment or base receiver station shelter, or submission of recorded easement language demonstrating the right to install an equipment or base receiver station for a wireless communication facility.

ARTICLE XI

Growth Management

[Added 7-19-2001 by Order No. 2001-118³⁵]

§ 240-110. Authority.

This article is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, MGL Ch. 40A, Ch. 41 §§ 81L through 81GG, and Ch. 111.

§ 240-111. Purposes.

- A. The purpose of this article is to ensure that a harmonious pattern and predictable rate of development occurs in Barnstable, which protects the health, safety and welfare of current and future Barnstable residents. The consequences of the historical and current patterns and rates of development in Barnstable such as our historic inability to fund our capital needs and the further degradation of our environmental assets are described in the

35. Note: The following Growth Management Ordinance is a DCPC (District of Critical Planning Concern) implementing regulation. The DCPC was approved by the Barnstable Assembly of Delegates on September 5, 2001; and the Cape Cod Commission gave its final approval on September 20, 2001. The Commission also approved this ordinance (originally approved by the Barnstable Town Council on July 19, 2001) as the implementing regulation on September 20, 2001. This implementing ordinance became a part of the Zoning Ordinance on September 21, 2001.

Local Comprehensive Plan. The rate of residential development in Barnstable is determined by and should not exceed the ability of the Town to provide adequate infrastructure and to protect the natural environment. In addition, this development rate is intended to further the legitimate commonwealth and local interests in the provision of a fair share of housing that is affordable to persons with both low and moderate incomes. This development rate will also guard against potential increases in the growth rate, which could adversely affect the Town's environmental resources, economy and land values.

- B. This article establishes a development rate adequate to ensure that the Town, with prudent reliance on local and other financial sources and in compliance with the revenue generating guidelines of Proposition 2 1/2, can and will provide infrastructure and operate in a manner which provides current and future Barnstable residents with an adequate and responsible level of Town services, as defined by relevant, commonly accepted professional standards. This article also establishes a development rate adequate to ensure that the Town has the ability to implement its affordable housing goals, as set

forth in the Barnstable Local Comprehensive Plan as updated by the Barnstable Affordable Housing Plan dated January 31, 2001.³³

- C. It is anticipated by this article that during the time until buildout occurs, the Town will strive to upgrade its infrastructure to keep pace with its total population, as outlined in the Capital Improvements Plan and consistent with the growth rate established by this article. This includes the preparation of a long-term capital plan and a commitment to make contributions, as practical, to infrastructure and to the established Capital Trust Fund as appropriate to fund infrastructure, promote affordable housing and protect the environment.

§ 240-112. Definitions.

For the purposes of this Article X only, the following terms shall have the following meanings:

AFFORDABLE DWELLING UNIT — A residential dwelling unit:

- A. Subject to a valid Chapter 40B comprehensive permit and meeting the requirements of the Commonwealth's Department of Housing and Community Development (the "DHCD") to be counted as affordable in the state count toward the 10% goal, as that goal may be amended by the General Court (the "affordable goal"); or
- B. Otherwise meeting the affordability requirements of the DHCD as evidenced by receipt of a certificate of affordability, as defined below.

AFFORDABLE PERMIT — A building permit to construct an affordable dwelling unit.

BUILDING PERMIT — A permit to construct an affordable or market rate residential dwelling unit, issued pursuant to the State Building Code, state law and local ordinances and regulations. When a single structure is proposed to accommodate three or more residential dwelling units, the issuance of the first building permit shall authorize construction of the entire structure; however, only three dwelling units shall receive a certificate of occupancy per building permit issued.

CERTIFICATE OF AFFORDABILITY — A certificate issued by the Barnstable Office of Community Development authorizing an applicant to apply for a building permit to construct an affordable dwelling unit. A certificate shall issue for all units that meet the requirements of the DHCD to be counted as affordable in the state count toward the affordable goal.

CALENDAR YEAR — January 1 through December 31 of a given year.

DATE OF FILING — The date of the Building Department's date and time stamp on a fully completed application to construct a new residential dwelling unit.

MARKET PERMIT — A building permit to construct a market-rate residential dwelling unit.

PERSON — An individual, corporation, business trust, estate, trust, partnership, association, joint venture, two or more persons having a joint or common interest, or any legal entity.

33. Editor's Note: See Ch. 9, Affordable Housing.

RESIDENTIAL DWELLING UNIT — A single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. The term "residential dwelling unit" shall not include family apartments, group homes and congregate facilities, hotels, motels, and other uses that are not considered residential for purposes of zoning, as determined by the Town Attorney.

[Amended 2-28-2008 by Order No. 2008-089]

SUBSTANTIAL FINANCIAL INTEREST — A one-percent or greater legal or equitable interest. A person is deemed to have a substantial financial interest in an application for a building permit in which that person has a current, or had within the last 12 months a one-percent or greater legal or equitable interest in the real property that is the subject of the building permit application.

TOWN MANAGER — The Town Manager or his designee(s).

§ 240-113. Effective date and applicability.

- A. Effective date. The provisions of this article shall take effect upon the termination of the limited moratorium establishing a lottery system for the issuance of building permits, as established through the District of Critical Planning Concern nomination under the provisions of Sections 10 and 11 of the Cape Cod Commission Act.
- B. Applicability. This article applies to all new residential construction, including new structures and expansions, changes or alterations of existing structures that result in an increase in residential dwelling units, as that term is defined in § 240-112 above. It is intended that the cap established by this article shall apply to both market-rate units and affordable units. The development of additional dwelling units protected by MGL, Ch. 40A, § 6 shall be subject to the delays imposed by this growth management article; provided, however, this article is not intended to diminish the ability ultimately to construct a dwelling unit.

§ 240-114. Rate of residential development.

- A. Affordable growth rate. Subject to adjustments provided in this Article XI, the Building Commissioner shall issue building permits for construction of additional affordable dwelling units only if the aggregate of permits issued therefor will not result in authorizing construction, within each consecutive calendar year, of greater than 36 additional affordable dwelling units (the "annual affordable distribution"). In the event the Building Commissioner is required pursuant to a Chapter 40B comprehensive permit to issue affordable permit(s) in excess of the annual affordable distribution, or the Town Manager authorizes issuance of affordable permit(s) pursuant to a certificate of affordability in excess of the annual affordable distribution, future annual affordable distribution(s) shall be decreased by the same number, as necessary. In the event the Building Commissioner does not issue all of the affordable permits made available through an annual affordable distribution, as adjusted, the next calendar year annual affordable distribution shall be increased by the amount of remaining affordable permits.
- B. Market growth rate.

- (1) Subject to adjustments provided in this Article XI, the Building Commissioner shall issue building permits for construction of additional market rate residential dwelling units only if the aggregate of permits issued therefor will not result in authorizing construction, within each consecutive calendar year, of greater than 96 market permits (the "annual market distribution"). In the event the Building Commissioner is required to issue market permit(s) in excess of the annual market distribution pursuant to Subsection D, Adjustments, below, future annual market distribution(s) shall be decreased by the same number, as necessary.
- (2) In order to lessen the impact of this article at the time of its adoption, this article:
 - (a) Contains the following graduated scale for implementation of the target growth rate:

Graduated Annual Market Distribution Schedule

Year	Market Permits
2002	132
2003	126
2004	108
2005 and forward	96 = target annual market distribution

- (b) And provides a hardship exemption procedure (§ 240-117).
- (3) Transition year 2001. The following provisions shall remain in effect from the effective date of this article through December 31, 2001:
 - (a) The Building Commissioner shall issue building permits for construction of additional market-rate and affordable residential dwelling units only if the aggregate of permits issued will not result in authorizing construction, within the 2001 calendar year, of greater than 183 building permits.
 - (b) No person shall submit a building permit application within 10 days from the date of their last building permit application in which they have a substantial financial interest, and no person shall submit more than three building permit applications per month in which they have a substantial financial interest. In a given month, no person or entity shall receive more than three building permits in which the person or entity has a substantial financial interest.
 - (c) During calendar year 2001 no person shall receive more than 30 building permits in which they have a substantial financial interest. Any person issued 30 or more building permits in calendar year 2001 permits in which they have a substantial financial interest shall, upon receipt of the 30th building permit, immediately withdraw all pending building permit application(s); said withdrawn application(s) may be resubmitted consistent with the terms of the preceding subsection.
- C. Chapter 40B permits. It is the intention of the Town to phase the development of all residential dwelling units constructed under the provisions of Chapter 40B. Within

Chapter 40B comprehensive permit developments, those units that are included in the DHCD tally of affordable units counted toward the affordable goal, as determined by the Town, shall apply for affordable permits. Those units that are not included in the DHCD count toward the affordable goal, as determined by the Town, shall apply for market permits.

- D. Adjustments. The following activities shall result in the adjustment of annual affordable and market distributions, as the case may be:
- (1) Revocation and abandonment. Building permits issued on or after July 1, 2000, but revoked or subsequently abandoned under the provisions of the State Building Code shall be added to the next annual distribution. Building permits issued pursuant to this article shall be exercised in a continuous and expeditious manner. Construction shall commence within six months of issuance of a building permit; provided, however, that the Building Commissioner shall grant one six-month extension upon request.
 - (2) Single lot protection. A building permit to construct a market-rate single-family dwelling unit on a lot in single ownership, to be owned and occupied by the owner of that parcel of land, applied for but not issued within 24 months from the date of filing shall be issued, and future annual market distributions shall be decreased by the same amount, if necessary.
 - (3) Other required permits. Permits required to be issued under Chapter 40B or by a final court or administrative order shall be issued as required, and future annual affordable and/or market distributions, as the case may be, shall be decreased by the same amount, if necessary.
 - (4) Borrowing against future distributions. In the event that no market permits are available to be issued in a given month, the Building Commissioner shall issue six market permits in that month and shall decrease subsequent annual market distribution(s) by the same number.

§ 240-115. Issuance of residential building permits.

- A. The Building Commissioner shall issue building permits for construction of additional residential dwelling units only if permit issuance complies with the requirements of this section.
- (1) Building permits shall be issued on a monthly basis. Prior to issuing market permits within each month, the Building Commissioner shall determine the number of market permits remaining available within the annual market distribution and shall increase or decrease the number of available market permits consistent with any adjustments required by § 240-114D above. The Building Commissioner shall then divide the number of available market permits by the number of months remaining in the calendar year, which shall be the number of market permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.

- (2) Prior to issuing affordable permits within each month, the Building Commissioner shall determine the number of affordable permits remaining available within the annual affordable distribution and shall increase or decrease the number of available affordable permits consistent with any adjustments required by § 240-114A and D above. The Building Commissioner shall then divide the number of available affordable permits by the number of months remaining in the calendar year, which shall be the number of affordable permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.
 - (3) In the event that no affordable or market permits are available to be issued in a given month, only those permits requiring issuance or authorized for issuance pursuant to § 240-114A and D above shall be issued until any adjustments result in additional available permits or the next annual distribution becomes available.
- B. Limitations and transferability of building permits. The following restrictions shall apply to the submission of building permit applications and the issuance of building permits:
- (1) Within any calendar year, no person shall submit to the Building Department more than 20 building permit applications in which such application(s) that person has a substantial financial interest;
 - (2) No person shall submit a building permit application within 10 days from the date of their last building permit application in which that person has a substantial financial interest, and no person shall submit more than three building permit applications per month in which that person has a substantial financial interest. In a given month, no person or entity shall receive more than three building permits in which the person or entity has a substantial financial interest.
 - (3) During any calendar year no person shall receive more than 20 building permits in which that person has a substantial financial interest.
 - (4) Any applicant authorized to receive a building permit under this article may transfer said building permit to another lot owned by the same applicant. This provision shall not be deemed to extend the time period for exercising a building permit.
- C. Application and issuance of affordable permits.
- (1) In order to be deemed complete, applications for affordable permits shall include a valid certificate of affordability or shall include a copy of a valid Chapter 40B comprehensive permit providing that the unit constructed will meet the requirements of the DHCD to be counted as affordable in the state count toward the affordable goal.
 - (2) Affordable permits shall be issued based upon the date of filing. Applications filed prior in time shall be issued a building permit prior to subsequently filed applications.

- D. Market permit issuance. Market permits shall be issued based upon the date of filing. Applications filed prior in time shall be issued a building permit prior to subsequently filed applications.

§ 240-116. Exemptions.

The following uses shall be exempt from the residential building permit limitations established by this article:

- A. Municipal uses;
- B. Affordable housing dwelling units created pursuant to Chapter 9, Affordable Housing, Article II, Accessory Apartments and Apartment Units, of the Code of the Town of Barnstable;
- C. Senior continuing care retirement community units created under § 240-29 of the Code of the Town of Barnstable; [Added 2-28-2008 by Order No. 2008-089³⁴]
- D. Nonresidential development; and
- E. Reconstruction, extension, alteration, modification, and upgrade of an existing dwelling unit that does not result in the creation of a new residential dwelling unit.

§ 240-117. Hardship procedure.

The Town Manager shall establish a procedure for holding hearings and rendering decisions on whether to grant an exemption from the provisions of this article, in whole or in part, to relieve a substantial hardship, financial or otherwise.

§ 240-118. Determination of buildability.

The Town Manager shall establish a procedure for issuance of determinations of buildability to establish the residential development potential of a lot or lots. Such procedure shall include consultation with the Planning Board if such lot or lots are included in an approved subdivision or approval-not-required plan. Other boards and officials may be consulted to determine potential limitations on development.

§ 240-119. Violations and penalties.

Any person who knowingly violates the provisions of this article shall be prosecuted to the fullest extent of the law. Fraud and conspiracy in connection herewith shall remain separate offenses.

34. Editor's Note: This order also provided for the redesignation of former Subsections C and D as Subsections D and E, respectively.

§ 240-120. Review of provisions.

The Town Council shall review this article within one year of adoption and every three years thereafter, and may review this article upon achieving its goal of supplying 10% affordable housing, to determine whether adjustments are necessary for the public health, safety or welfare.

§ 240-121. Scope and validity.

Nothing in this article shall nullify or exempt any property or use from any other provisions of this chapter or other Town regulations. The invalidity of any section or provision of this article shall not invalidate any other section or provision hereof, nor shall it invalidate any building permit, occupancy permit or special permit issued in reliance on said section or provision prior to the determination of its invalidity.

§ 240-122. Severability.

If for any reason the proposed District of Critical Planning Concern nomination under consideration by the Barnstable County government fails, the provisions of this article shall become effective under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, MGL Ch. 40A, and Ch. 41, §§ 81L through 81GG.

ARTICLE XII
Administration and Enforcement

§ 240-123. Enforcement; violations and penalties.

- A. Enforcement. This chapter shall be enforced by the Building Commissioner of the Town of Barnstable or his designee.
- B. Violations. For any violation of this chapter, the Building Commissioner or his designee may, where the situation requires, cause a criminal complaint to issue from the First District Court of Barnstable or may institute proceedings in Superior Court to enjoin the construction, alteration, enlargement, reconstruction or use of any building or the use of any premises in violation hereof, or further may institute proceedings to enjoin the construction, alteration, enlargement or reconstruction of any building which would result in a use in violation hereof.
- C. Nonconflicting remedies. The use of one of the remedies described in Subsection B above shall not preclude the use of the other remedy for the same violation or a continuing violation.
- D. Verification required. The Building Commissioner or his designee may require any plans, documents or sworn statements to be filed with his office to verify the intended use of a building or premises, or to establish the existence, nature or extent of a nonconformity alleged to exist or any other matter in which evidence is required.

- E. Penalties. Anyone convicted of a violation under this chapter shall be fined not more than \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

§ 240-124. Bonds and permits.

- A. Performance bonds required. A performance bond of not less than \$4 per foot of frontage against possible costs due to erosion or damage within passable street rights-of-way shall be required by the Building Commissioner prior to authorization of any new building, and a bond or cash security may be required by the Building Commissioner for other construction, such bond or cash security to be held by the Town Treasurer until an occupancy permit is granted as provided for in Subsection B herein. Prior to the proceeding with construction above the foundation, a registered land surveyor shall certify that the structure has been located in compliance with all yard requirements.
- B. Occupancy permits. No premises and no building or structure erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit signed by the Building Commissioner. Such permit shall not be issued until the premises, building or structure and its uses and accessory uses comply in all respects with this chapter.

§ 240-125. Zoning Board of Appeals.

- A. Establishment of the Board. The Zoning Board of Appeals established by Chapter 215 of the Acts of 1984, as amended by Chapter 295 of the Acts of 1984 and as may be further amended from time to time, is the Zoning Board of Appeals referred to herein.
- (1) Membership of the Board. The Zoning Board of Appeals shall consist of five members appointed by the Town Council of the Town of Barnstable.
 - (2) Term of office. Members of the Zoning Board of Appeals shall be appointed for three-year terms so arranged that as nearly as possible 1/3 of the terms shall expire each year.
 - (3) Associate Board members. The Town Council may appoint not more than six associate members for similar terms as provided in Subsection A(2).
 - (4) Election of officers. The Zoning Board of Appeals shall elect a Chairman and clerk from its own membership each year.
 - (5) Removal of members. Members may only be removed for cause by the Town Council after a hearing.
 - (6) Vacancies. In case of a vacancy, inability to act, or interest on the part of a member of the Board, the Chairman of the Zoning Board of Appeals may designate a duly appointed associate member to act to fill the vacancy.
- B. General powers.

- (1) The Zoning Board of Appeals shall have the following powers:
 - (a) Appeals from administrative official. To hear and decide an appeal taken by any person aggrieved by reason of their inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Building Commissioner, or other administrative official in violation of any provision of Chapter 40A of the General Laws or of this chapter.
 - (b) Special permits. To hear and decide applications for special permits for exceptions as provided for in Chapter 40A of the General Laws and in this chapter.
 - (c) Variances. To authorize upon appeal or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise.
 - (d) Other powers. To act as a Board of Appeals under the provisions of Chapter 41, §§ 81Y, 81Z, 81AA, and 81BB of the General Laws.
 - (e) Use variances. To authorize variances for uses in accordance with the provisions of this chapter; provided, however, that no such variances shall be granted within 300 feet of the major arteries known as Route 28, Route 132, Route 149 and West Main Street and Route 6A, within the Marstons Mills Village District (MMVD) and the West Barnstable Village Business District (WBVBD) and within 300 feet of the MMVD and WBVBD boundary.
[Amended 6-17-2010 by Order No. 2010-122; 9-8-2011 by Order No. 2011-138; 3-21-2013 by Order No. 2013-060]
 - (2) In exercise of the foregoing enumerated powers, the Zoning Board of Appeals shall take into consideration the same types of evidence as referred to in § 240-123D. **[Amended 11-2-1995 by Order No. 95-198]**
- C. Special permit provisions. The Zoning Board of Appeals may grant special permits only for uses specifically provided for as such in this chapter.
- (1) Public hearing required. The Zoning Board of Appeals shall, within 65 days after the filing of a special permit application with the Town Clerk or the Board, hold a public hearing on said application as per Chapter 808, Acts of 1975, as amended. Special permits shall not be issued until said public hearing is held.

- (2) Standards for granting special permits. A decision of the Zoning Board of Appeals on an application for a special permit shall be based on the following:
 - (a) Whether or not the application falls within the category specifically excepted by this chapter.
 - (b) An evaluation of all the evidence presented at the public hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this chapter without substantial detriment to the public good or the neighborhood affected.
 - (c) A site plan has been reviewed and found approvable in accordance with Article IX herein subject only to the issuance of a special permit. **[Added 11-7-1987 by Art. 1]**
- (3) Validity. **[Amended 5-7-2009 by Order No. 2009-077]**
 - (a) Period of validity: A special permit shall become void within two years from the date of issue unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the premises shall be open for business or in full use under said special permit. The two-year period shall not include time required to pursue or await determination of an appeal referred to in MGL Ch. 40A, §17. However, the special permit granting authority, in its discretion, may extend the time for exercise of such rights for a period not to exceed a total of one year upon a showing of good cause; and provided, further, that the request for such extension is filed with the special permit granting authority prior to the expiration of said two-year period. If the permit granting authority does not grant such extension, upon the expiration of the original two-year period, such special permit shall become void.
 - (b) Retroactive applicability: The period of validity for any special permit in effect on the effective date of these provisions shall be two years from the date of issue, unless further extended pursuant to Subsection C(3)(a) above. The period of validity for any special permit that would have lapsed before the effective date of these provisions, but for which a request for extension was filed prior to its lapse, shall be two years from the date of issue, unless further extended pursuant to Subsection C(3)(a) above.
- (4) Subsequent amendments. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance unless the use or construction is commenced within a period of not more than six months after the issuance of said permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

§ 240-126. Variance provisions. [Amended 10-7-1993 by Order No. 94-014]

The Zoning Board of Appeals may grant variances as provided for within this chapter and in accordance with MGL Ch. 40A, § 10, provided that, when an application for a variance proposes a development or activity which would require site plan review in accordance with § 240-100, the applicant should submit to the Zoning Board of Appeals a site plan which has been reviewed and found approvable in accordance with Article IX herein, subject only to the issuance of a variance.

ARTICLE XIII

Amendment; Definitions; Moratorium**§ 240-127. Zoning amendment procedures**

All amendments to the Zoning Ordinance shall be in accordance with Massachusetts General Law, Chapter 40A, § 5.

§ 240-128. Definitions.

In the interpretation of this chapter, the following words and terms are to be used and interpreted as defined herein unless the context otherwise requires:

ACUTELY HAZARDOUS WASTE — As defined in MGL Ch. 21C. **[Added 8-19-1993 by Order No. 93-105]**

ADJOINING — When used to modify "lot" or "lots," shall mean that the said lots share a common boundary or property line for at least 20 continuous feet. **[Added 11-2-1995 by Order No. 95-198]**

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other material, which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

ADULT MOTION-PICTURE THEATRE — An enclosed building used for presenting material, motion picture films, video cassettes, cable television, slides or any other such visual material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. **[Added 6-4-1998 by Order No. 98-064]**

ADULT PARAPHERNALIA STORE — An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

ADULT VIDEO STORES — An establishment having a substantial or significant portion of its stock-in-trade for sale or rent, movies, videos, and similar audio/visual media, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

ADULT USE — As defined herein, an adult bookstore, adult paraphernalia store, adult motion-picture theatre establishment, or an establishment which displays live nudity, or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. Adult use shall include an establishment with a combination of adult use materials as listed above including books, magazines, devices, objects, tools, or toys, movies, videos, and any similar audio/visual media for sale or rent, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31, which in combination, is either greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

AGRICULTURE AND RELATED USES — The adoption of this definition is explicitly intended to be a clarification of existing ordinances and is not intended to be a new restriction. **[Added 10-7-1999 by Order No. 99-160A]**

- A. For the purposes of § 240-8A(3), agriculture, horticulture, floriculture and viticulture on a parcel of land more than five acres subject to statutory exemption pursuant to MGL Ch 40A, § 3, shall be defined to mean what they mean under state statute.
- B. For the purposes of § 240-8DA(4), on a parcel of land five acres or less in size, the terms agriculture, horticulture, viticulture, aquaculture or floriculture shall not include:
- (1) The sale of products or plants grown elsewhere;
 - (2) The storage of loam, mulch, gravel, and similar materials;
 - (3) The storage of plants for installation, use or sale elsewhere;
 - (4) The parking, storage or use of heavy equipment; and
 - (5) The assembling of crews for the purpose of landscape construction and maintenance at off-site locations.

APARTMENT UNIT — That portion of the floor area of a multifamily dwelling designed for occupancy by a single family and containing one kitchen.

BED-AND-BREAKFAST — Tourist and guest accommodations located within an owner-occupied, single-family residential dwelling unit, let for compensation for brief periods of time, customarily less than two weeks long, without cooking facilities accessible to the guests; the temporary abode of visitors who have a permanent residence elsewhere. **[Added 2-20-1997]**

BOATHOUSE — A building used solely for the storage of boats and related equipment.

BUILDING HEIGHT — The vertical distance from the ground level to the plate.

DOCK or PIER — A combination of assembled materials that may be used as access to the water and extending below the reach of mean high water, including but not limited to, the following: **[Amended 2-1-2001]**

- A. Elevated open, pile-supported structure including gangways, floats, extensions, including ells and tees, dolphins, outhaul piles, and attendant pilings;
- B. Floating dock or pier; and
- C. Float, dock or pier installed for seasonal use, whether fixed or floating.

DWELLING, SINGLE-FAMILY — A detached residential building designed for and occupied by a single family.

DWELLING, TWO-FAMILY — A detached residential building designed for and occupied by two families.

ESTABLISHMENT WHICH DISPLAYS LIVE NUDITY — An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL Ch. 272, § 31.

FAMILY APARTMENT — A living unit, complete with kitchen and bath to supply a year-round residence for a family member.

FAMILY MEMBER — Any person who is related by blood or marriage.

FLOOR AREA, GROSS — The sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor area, mezzanine and attic space and enclosed porches. **[Amended 10-7-1993 by Order No. 94-016]**

HALF STORY — That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story. **[Added 6-28-2001 by Order No. 2001-036]**

HAZARDOUS MATERIALS — As defined in Chapter 108, Hazardous Materials, of the Code of the Town of Barnstable. **[Added 8-19-1993 by Order No. 93-105]**

HAZARDOUS WASTE — As defined in MGL Ch. 21C. **[Added 8-19-1993 by Order No. 93-105]**

INTENSIFICATION OF USE — Any new construction, reconstruction, alteration, remodeling, repair, enlargement, change in use, increase in capacity, or addition of service resulting in greater off-street parking demand.

LOT — A single area of land in one ownership defined by metes and bounds or boundary lines, no portion of which is bisected by a street.

LOT COVERAGE — The term "maximum lot coverage as % of lot area" where used as a column heading in bulk regulations shall mean the maximum lot coverage by structures as a percent of lot area. **[10-4-1990 by Order No. 90-68]**

LOT WIDTH — The width of any lot shall be measured wholly within the lot at the building setback line along a straight line parallel to a line connecting the intersection of the front boundary with the lot side lines, except that an owner of land may establish his own setback line at a distance greater than that required, and the lot width may be determined at the setback line so established.

PERSONAL WIRELESS SERVICE FACILITIES — Facilities for personal wireless service including commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as defined by the Telecommunications Act of 1996. **[Added 6-3-1999 by Order No. 99-74A]**

RETAIL — The term "retail" shall not be construed to include "restaurant."

SETBACK — The distance between a street line and the front building line of a principal building or structure, projected to the side lines of the lot. Where a lot abuts on more than one street, front yard setbacks shall apply from all streets.

SHAPE FACTOR (LOT SHAPE FACTOR) — The numerical value resulting from:

- A. Division of the square of the perimeter in feet of a lot by the area in square feet thereof;
or
- B. Division of the square of the perimeter in feet of that portion of a lot intended as the site for building by the area in square feet thereof. **[Amended 1-20-2005 by Order No. 2005-038]**

SIGN — See Article VII, § 240-59 et seq., herein.

SPECIMEN TREES — A native, introduced or naturalized tree which is sufficiently well grown to be an important visual element on a site. Any tree with a dbh of six inches or greater is eligible to be considered a specimen tree. Trees that have a small height at maturity, or are slow growing, such as a flowering dogwood or American holly with a dbh of four inches or larger, are eligible to be considered specimen trees. **[Amended 3-11-1999 by Order No. 99-056]**

STORY — That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and having at least 1/2 its height above grade.

STRUCTURE — Any production or piece of work, artificially built up or composed of parts and joined together in some definite manner, not including poles, fences and such minor incidental improvements.

TENT — A temporary shelter with a frame supporting a cloth or similar flexible covering, without a fixed location, foundation or permanent anchors. **[Added 2-22-1996 by Order No. 95-194]**

UPLAND — All lands not defined herein as wetlands.

VERY SMALL QUANTITY GENERATORS — Those operations that generate less than 26 gallons or 220 pounds of dry weight of hazardous waste per month and no acutely hazardous waste as defined in 310 CMR 30.00.

WETLANDS — The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune or other shifting sand formation.³⁷

37. Editor's Note: Former § 240-129, Hyannis Downtown 500 Block Moratorium Zone, added 4-10-2003 by Town Council agenda item 2003-045, which immediately followed this section, was removed from the Code because it ceased to be effective on 5-10-2005.

§ 240-129. Temporary moratorium on medical marijuana treatment centers and associated activities relating to Ballot Question 3. [Added 3-7-2013 by Order No. 2013-065]

- A. There shall be a temporary moratorium on the use of land or structures in the Town for the siting of one or more medical marijuana treatment centers and associated activities relating to Ballot Question 3.
- B. No building permit, special permit, variance, site plan approval decision or other permit may be issued under this Zoning Ordinance for the purpose of establishing a medical marijuana treatment center or associated activities.
- C. The moratorium shall be in effect through and including January 1, 2014, or until 180 days after the effective date of the final regulations promulgated by the State Department of Public Health relating to Ballot Question 3, whichever occurs first.
- D. During the moratorium period, the Town shall undertake a planning process to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers in the Town and shall review and consider the Department of Public Health regulations regarding the siting of such centers and related uses, and shall consider proposing the adoption of zoning amendments to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers and related uses in the Town.
- E. Zoning amendments resulting from the aforementioned study process shall be deemed to be continuations of this moratorium and not new zoning amendments. Applications for permits submitted after the first publication of the notice of the public hearing which results in the adoption of this moratorium but before the moratorium's effective date, shall be administered according to established procedures until the effective date of this moratorium, and if a permit or other relief is granted prior to such effective date, it shall be subject to the effectiveness of this moratorium and shall be issued at the peril of the permit applicant and/or recipient. During the moratorium, any application shall be denied on the basis of this moratorium. In no event shall any permit or other relief sought after the first publication of the notice of the public hearing create or result in any protections with respect to the land, its uses or structures upon it.
- F. Unless extended, continued or modified by a subsequent action of Town Council, this section shall cease to be effective January 2, 2014, or 180 days after the effective date of the final regulations promulgated by the Department of Public Health relating to Ballot Question 3, whichever occurs first.

ARTICLE XIV

District of Critical Planning Concern Regulations
[Added 7-16-2009 by Order No. 2009-137]**§ 240-130. Centerville Village District.**

Authority. This article is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, and the Cape Cod Commission Act, Chapter 716 of the Acts of 1989.

§ 240-130.1. Purposes and intent.

A. The purposes and intent of this section is to guide development and redevelopment in Centerville Village that:

- (1) Promotes a location-appropriate scale and traditional mix of business, institutional and residential land uses that contribute to and respect the historic character and historic neighborhood development patterns;
- (2) Acknowledges the historic context of the village, including the National Register District which encompasses properties in the northern portion of the district;
- (3) Protects and preserves the historic and scenic streetscape and minimizes traffic congestion;
- (4) Provides a variety of functions that support residents' day-to-day use of the district;
- (5) Supports and enhances the diverse local economy and retains established village goods and service offerings;
- (6) Preserves and protects the traditional New England village character of Centerville through architectural design that replicates in scale and character the best examples of traditional neighborhood design from the historic towns and villages of Cape Cod and New England to enhance the aesthetic quality of Barnstable as a whole.

B. The further purpose and intent of this section is to enable the Town of Barnstable to enter into development agreements (hereinafter "regulatory agreements") under Chapter 168 of the Code of the Town of Barnstable (Barnstable Code) within the Centerville Village District (CVD).

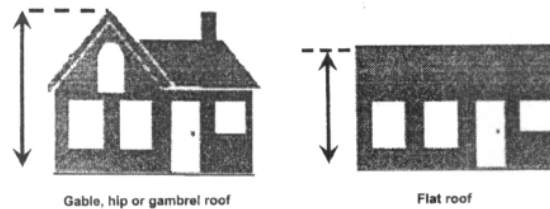
§ 240-130.2. Definitions.

As used in the CVD, the following terms shall have the meanings indicated:

APARTMENT — One or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit located in a building containing two or more such rooms or suites or located in a building devoted primarily to nonresidential use or in a mixed-use building.

BED-AND-BREAKFAST — Tourist and guest accommodations located within an owner-occupied, single-family residential dwelling unit, let for compensation for brief periods of time, customarily less than two weeks long, without cooking facilities accessible to the guests; or the temporary abode of visitors who have a permanent residence elsewhere.

BUILDING HEIGHT — The vertical distance between the grade and the highest point of a gable, hip or gambrel roof; the highest point of the coping of a flat roof.



GRADE — The referenced plane of the average of all finished ground level adjoining the building or structure for a distance of six feet from all exterior walls.

HALF STORY — That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

ICE CREAM SPECIALTY RETAIL USE — An establishment specializing in the retail sale of ice cream for consumption on or off site or carry-out consumption that may include a seating area for food service use as an accessory use to the ice cream specialty retail or an ice cream retail use in existence at the time of the adoption of this section. Accessory food service use may sell and serve by wait staff a variety of foods that may be prepared on site. Ice cream specialty retail and any accessory food service use is subject to formula business limitations as described herein. Ice cream specialty retail may include on-site ice cream product preparation for wholesale sales; provided, however, in no case shall wholesale sales of ice cream product for use off-site become the principal use; truck distribution and delivery activity necessary to the wholesale sale of ice cream product for off-site use shall not create additional congestion; and the use shall not generate noise that violates Town ordinances, or detract from the established character within the CVD.

IMPERVIOUS SURFACE — A surface which prevents the penetration of precipitation or other liquids into the ground, including roofs, concrete, asphalt, natural stone, sidewalks, etc. Any area designed for vehicle use or vehicle parking covered with porous pavers may become impervious over time and may, at the discretion of the Building Commissioner, be considered impervious surface.

INN — A commercial structure used for overnight lodging accessed through interior hallways which may include the provision of meals and incidental related services to lodgers or a motel or motor inn use in existence at the time of the adoption of this section.

LIBRARY — A building or room that houses a collection of books, records, literary documents or other reference materials for borrowing, reading, study, education or reference and which is owned or operated by a nonprofit educational corporation.

LOT AREA — The upland area of the lot.

MARIJUANA — Has the meaning given "marihuana" in Chapter 94C of the General Laws. [Added 2-6-2014 by Order No. 2014-050]

MARIJUANA DISPENSARY, REGISTERED — Also known as "RMD" or "medical marijuana treatment center," shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. [Added 2-6-2014 by Order No. 2014-050]

MIXED-USE DEVELOPMENT — Development including at least one residential unit and at least one nonresidential use on a single lot or several nonresidential uses on a single lot.

NONPROFIT EDUCATIONAL USE — An educational use conducted by a not-for-profit corporation whose articles of incorporation permit it to engage in educational activities and "educational purposes" as its principal permitted use within the meaning of MGL c. 40A, § 3, including but not limited to libraries and museums.

PROFESSIONAL OR BUSINESS OFFICE — Office, but not including medical or dental offices.

RELIGIOUS INSTITUTION — An institution engaged in "religious purposes" within the meaning of MGL c. 40A, § 3.

SETBACK — The required distance between every structure and lot line of the lot on which it is located.

SINGLE-FAMILY RESIDENCE — A detached residential building designed for and occupied by a single family.

SMALL-SCALE FOOD SERVICE — An establishment where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to formula business limitations as described herein. These uses are intended to increase pedestrian traffic.

SMALL-SCALE RETAIL — Small stores and businesses, including, but not limited to, corner groceries, artist space, bookstore, galleries and other small retail uses typically found in small New England towns. Small-scale retail does not include retail or commercial buildings or storage designed to serve a large volume of customers, e.g. gasoline and oil filling stations, garages for automotive or machine repair. Small-scale retail is subject to formula business limitations as described herein. These uses are intended to increase pedestrian activity.

STORY — That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and having at least 1/2 its height above grade.

STRUCTURE — Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, sheds, swimming pools and towers, but shall exclude fences of six feet or less in height, flagpoles and retaining walls.

UPLAND — All lands not defined herein as wetlands.

WETLANDS — The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune or other shifting sand formation.

§ 240-130.3. Permitted uses.

The following principal and accessory uses are permitted in the Centerville Village District subject to the use limitations outlined below. Other uses of an appropriate scale and function may also be considered subject to a regulatory agreement and are subject to the use limitations outlined below. Municipal uses are exempt from these regulations.

- A. Use limitations. Permitted retail establishment, lodging establishment, restaurant, or take-out food franchise shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than 14 other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
- B. Principal uses.

- *Ice cream specialty retail
- *Mixed-use development
- *Professional or business office
- Single-family residence
- *Small-scale food service
- *Small-scale retail
- *Bed-and-breakfast
- *Inn

*Subject to use limitations as described in § 240-130.3A.

- C. Accessory uses.

- (1) Automated banking facilities (ATM) within a principal building or a walk-up facility located in a rear or side yard that also meets landscaping and lighting guidelines of this section.

(2) Garages accessory to a single-family residence. Such structures shall be located in the rear or side yard. The footprint of the garage shall not exceed 40% of the footprint of the single-family residence and may consist of 1 1/2 stories with a pitched roof unless otherwise permitted for residential use.

(3) Apartment.

D. Exempt uses.

(1) Religious institutions, accessory day-care centers, and nonprofit educational uses are permitted as exempt uses within the CVD. These uses shall, however, be subject to and in conformance with the reasonable bulk, density, design and

development regulations of the CVD as set forth in § 240-130.1A, Purposes and intent, § 240-130.6, Dimensional, bulk and other requirements, § 240-130.7, Design guidelines, and § 240-130.8, Site development standards.

- (2) Where the exempt use does not comply with said regulations, the Zoning Board of Appeals shall, by modification permit, modify said regulations if compliance with the regulation substantially diminishes or detracts from the usefulness of a proposed development or impairs the character of the development so as to affect its intended use; provided, however, that the relief granted will not create a public safety hazard along adjacent roadways and will not create a nuisance to other surrounding properties.
- (3) A modification permit shall be subject to the same procedural requirements as a special permit except that approval of a modification permit shall require a simple majority of the members of the Board.

§ 240-130.4. Continuation; changes to use; damaged structures.

- A. Continuation. Legally established structures, uses and site improvements in existence at the time of the adoption of this section shall be allowed to continue.
- B. Change, expansion or alteration of uses and structures.
 - (1) As of right.
 - (a) The normal and customary repair and maintenance of a building or structure is permitted as of right.
 - (b) The alteration and expansion of a building or structure is permitted as of right, provided that the alteration or expansion conforms in all other respects with all applicable requirements of this chapter.
 - (2) By special permit. Alterations or expansions of a building or structure that do not qualify under as-of-right provisions shall be permitted only by a special permit from the Zoning Board of Appeals, the special permit granting authority (SPGA) for the CVD. In granting such special permit, the Board must find that the proposed alterations and/or expansion are not substantially more detrimental, by standards set out herein, to the surrounding neighborhood under this chapter, § 240-130.1A, Purposes and intent, § 240-130.3A, Use limitations, and, where applicable, § 240-130.2, Definitions.
- C. Special permit for dimensional relief. The SPGA may provide relief from minimum lot area, minimum lot frontage, maximum building setback, minimum yard setbacks, facade length requirements, and ground floor window requirements when such relief ensures that the proposed development is consistent with the § 240-130.1A, Purposes and intent, and the applicant demonstrates undue hardship without desired relief.
- D. Re-establishment of damaged or destroyed building or structure.

- (1) The re-establishment of a previously legally established use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
 - (a) The reconstruction or repair will not, as determined by the Building Commissioner, materially increase the gross floor area or height of the building or structure beyond that which previously existed, nor materially increase the footprint of the structure, or materially change the grade.
 - (b) If the building's location on the lot is to be changed, it will change in a manner that will be closer to complying with the dimensional and bulk regulations.
 - (c) The reconstruction or repair will not constitute an expansion or intensification of any use.
 - (d) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
 - (e) Design and architecture of damaged or destroyed buildings and structures in existence at the time of the adoption of this regulation may be replicated. If the Building Commissioner finds that the structure is to be rebuilt to replicate what existed before the damage or destruction, the CVD design guidelines do not apply.
 - (f) A building permit has been applied for within two years from the date of damage or destruction.
- (2) Discontinuance: Any legally established structure which no longer complies with the provisions of the CVD that has been damaged or destroyed shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

§ 240-130.5. Additional provisions.

- A. Other regulations. The following provisions of the Barnstable Code are hereby incorporated into this regulation: § 240-7, Application of district regulations; § 240-9C and D; § 240-10, Prohibited uses; § 240-34, Floodplain District; § 240-43, regarding accessory uses; § 240-46A and B, home occupations; Article VI, Off Street Parking Regulations; Sections 240-52, 240-53.B through .E ; and Sign Regulations § 240-59 through 62, and Section 240-67; Article XI, Growth Management, §§ 240-110 through 240-122; Article IX, Site Plan Review; Article XII, Administration and Enforcement, §§ 240-123 and 240-124; § 240-125C special permit provisions, as these provisions of the Barnstable Code cited in this section may be amended from time to time. **[Amended 5-22-2014 by Order No. 2014-126]**

- B. Conflicts. Unless otherwise stated, the requirements of the Centerville Village District shall apply to uses and structures within the Centerville Village District. In the event of a conflict, these regulations shall apply.

C. Severability. The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

§ 240-130.6. Dimensional, bulk and other requirements.

Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Yard Setbacks			Maximum Building Height		Maximum Lot Coverage By Structures	Total Impervious Surface
		Front ² (feet)	Rear (feet)	Side (feet)	Feet	Stories		
20,000 or lot area of legally established lot as of 06/18/2009	20	20 or setback of existing legally established structure from front lot line as of 06/18/2009, whichever is less	0	0	36 ¹	2 1/2	35%	80%

NOTES:

- (1) Height - maximum building height. The maximum height of buildings or structures is 36 feet or 2 1/2 stories, whichever is less, at the highest point of the roof for roofs with a pitch of at least six inches in each foot and at the highest point of a gambrel roof. The maximum height for flat-roofed structures is limited to two stories at a maximum of 24 feet.
- (2) Setbacks:
 - (a) The building setback may be modified through a special permit from the Zoning Board of Appeals upon demonstration to the satisfaction of that Board that redevelopment cannot meet the minimum setback without undue hardship or due to topography, lot shape or constraints of existing structures.
 - (b) Wherever possible parking shall be located within side or rear yard setbacks.

§ 240-130.7. Design guidelines.

A. Purpose: The purpose of these design guidelines is to enhance the traditional small-scale village character currently found in the CVD through the use of compatible building materials, appropriate scale and architectural details currently found within the district or immediate surrounding area. New structures are encouraged to complement, but not necessarily duplicate, surrounding structures.

B. Objectives:

- (1) To encourage site planning and architectural design that will enhance the existing historic character of the CVD.
- (2) Ensure that redevelopment and new development is compatible with the existing character of the CVD while encouraging variety through flexibility in the application of these design standards.

- C. Application: The design guidelines set forth herein do not apply to legally established structures in existence as of the effective date of the CVD but shall apply to all new development, to any additions to existing structures and to all reconstruction projects except as provided for in § 240-130.4D(1)(e). These design guidelines shall not apply to walk-in coolers, freezers or their accessories for an ice cream specialty retail use. Any such coolers, freezers and accessories shall be attached to the side or rear of the principal structure and shall be appropriately screened from street view.
- (1) Massing: Buildings or portions of buildings with a mass, including rooflines, over 32 feet in length must divide their elevations into smaller parts through a variety of architectural elements, including but not limited to dormers or additive massing as well as pronounced changes in wall planes. Flat and shed roof architectural elements are limited to a length of 20 linear feet and only in combination with other gable or hip roof elements; except that ground floor open porches may have a longer expanse of shed roof on a structure that otherwise meets these massing provisions.
 - (2) Roof pitch: Except as permitted under massing herein, roof pitch and pattern for new structures and additions to existing structures shall complement the roof pitches found on the main rooflines of existing structures within the CVD and the immediate surrounding area or at least 4 in 12 where the roofs of surrounding structures are flat or only slightly pitched.
 - (3) Ground floor windows for nonresidential development:
 - (a) All new nonresidential development, including nonresidential portions of mixed-use developments, shall provide ground floor windows along street facades, including windows that allow view into working areas or lobbies, pedestrian entrances, or display windows. The glazing pattern shall be aligned in a regular and traditional pattern as found within the CVD and the immediate surrounding area.
 - (b) Window glazing or films that inhibit two-way visibility, such as darkly tinted and mirrored windows, are prohibited as ground floor windows. Mirrored windows are prohibited throughout the CVD.
 - (c) Street facade blank walls greater than four feet in length that do not include display areas, functional landscape structures such as a trellis, windows, architectural features, and/or doorways are prohibited.
 - (4) Architectural details and materials:
 - (a) Architectural character of buildings must complement the historic character of buildings found within the CVD and the immediate surrounding area.
 - (b) Facade materials shall be high-quality, authentic materials such as wood, stone or brick. Manufactured materials intended to duplicate the look of natural materials may be allowed.

- (c) External side elements, including but not limited to screening devices, site walls, enclosed service, loading and refuse areas and mechanical equipment, shall be designed as an integral part of the building's architectural character.
- (d) Primary entrance to buildings, other than single-family homes, shall be distinguished with façade variations, porticos, roof variations, recesses or other integral architecturally appropriate building elements.
- (e) Extended bands of corporate or franchise colors are prohibited in the CVD.
- (f) Metal-sided buildings are prohibited in the CVD.
- (g) The following design features shall be incorporated into structures within the CVD where architecturally appropriate. Structures shall include at least one of the following elements:
 - [1] Gable.
 - [2] Offsets on the building face or roof of at least two inches.
 - [3] Gable dormers.
 - [4] Cupolas or other appropriate roof elements.
 - [5] Covered porches.

§ 240-130.8. Site development standards.

All new development and redevelopment and change of use except as set forth in § 240-130 within the CVD with the exception of single-family residences shall be subject to the provisions of Article IX, Site Plan Review, §§ 240-98 through 240-105.

- A. Access management. To ensure traffic safety, pedestrian safety and maintain traffic flow, the following standards for new access shall apply in the CVD:
 - (1) New access on South Main Street and Main Street:
 - (a) Shall only be allowed where the Building Commissioner determines that the access will improve internal circulation or address safety at existing access.
 - (b) Interconnections between lots and uses are encouraged to prevent unsafe turning conflicts and increase pedestrian safety.
 - (c) New driveways on South Main Street and Main Street within 200 feet of any intersection shall not be permitted unless the Town Engineer determines that the proposed driveway location will not create new traffic safety hazards or increase traffic congestion.
 - (2) New access shall not be more than 24 feet in width unless the Building Commissioner or site plan review determines that a wider width is necessary for safety purposes.

B. Parking spaces, computation.

- (1) The parking standards contained within the Schedule of Off-Street Parking Requirements, § 240-56 of the Barnstable Zoning Ordinance, shall establish the minimum parking requirements, with the following exceptions:
 - (a) The use of shared parking for different uses having different peak hours of demand will be considered in evaluating compliance with § 240-56. A signed lease agreement or recorded easement between relevant parties sharing parking must be provided as part of the site plan approval.
 - (b) A permitted use can be changed to another permitted use, and any permitted or accessory use can be intensified, without increasing the required off-street parking requirements of § 240-56, Schedule of Off-Street Parking Requirements, provided that:
 - [1] There is no increase in gross square footage of the building; and
 - [2] There is no reduction in existing parking spaces required pursuant to § 240-56; and
 - [3] A minimum of two on-site parking spaces per dwelling unit shall be provided. A one-car garage shall count as one parking space. A two-car garage shall count as two parking spaces.
- (2) Parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
 - (a) Parking space requirements for residential mixed use shall be subject to § 240-130.8B(1) above; and for the residential units parking, the parking requirement shall be one parking space per bedroom for one- and two-bedroom units or a total of two parking spaces for units with two or more bedrooms.
 - (b) Parking space requirements for nonresidential uses shall be subject to § 240-130.8B(1) above.
- (3) Reduction of required parking spaces may be allowed, provided the Building Commissioner, who may waive up to two spaces, or if parking is proposed to be reduced by more than two (2) spaces the Zoning Board of Appeals must find that:
 - (a) Adequate shared parking is available consistent with Subsection A(1) above; or
 - (b) There are other factors that support the reduction.

- C. Landscaping. All applications for new nonresidential development and redevelopment shall be accompanied by a landscape plan that shows the location within the development of each species of trees, shrubs and/or other plantings, their suitability for the conditions at the proposed location and their size at maturity.

- (1) Those portions of the front yard not occupied by pedestrian amenities and public spaces shall be landscaped.
- (2) Existing trees and other features of the land shall be protected in the development or redevelopment of the site.
- (3) Landscape materials shall be used that, at full growth, will not overwhelm the site location or interfere with views or pedestrian activity over time.
- (4) Landscaping plan will adequately provide street trees and will buffer parking areas from sidewalks and streets.

D. Lighting.

- (1) All exterior lighting shall use full cutoff light fixtures in which no more than 2.5% of the total output is emitted at 90° from the vertical pole or building wall on which it is mounted.
- (2) Flood, area and up lighting shall not cast glare onto neighboring properties or oncoming traffic.

§ 240-131. Craigville Beach District; statutory authority. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

Sections 240-131 through 240-131.8 are adopted under the local authority of the Town of Barnstable and the Cape Cod Commission Act, Chapter 716 of the Acts of 1989.

§ 240-131.1. Purposes and intent. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. The purpose and intent of §§ 240-131 through 240-131.8 are to guide development in the Craigville Beach District pursuant to the Guidelines of Barnstable County Ordinance 09-10 to ensure that development and redevelopment:
- (1) Contributes to and respects the character and historic development patterns of the area and minimizes inconsistent development and redevelopment impacts to the historic and community character resources in this area;
 - (2) Protects and preserves scenic views and vistas and ways to the water;
 - (3) Protects and improves natural resources, including but not limited to the barrier beach and groundwater and coastal water quality and minimizes development and redevelopment impacts to the natural resources and ecosystems in this district;
 - (4) Protects human life and property from the hazards of periodic flooding;
 - (5) Preserves the natural flood control characteristics and the flood control function of the floodplain;

- (6) Preserves and maintains the groundwater table and water recharge areas within the floodplain. As the entire complex of coastal wetland resources moves landward due to relative sea level rise, the Craigville Beach area's coastal floodplains immediately landward of salt marshes, coastal beaches, barrier beaches, coastal dunes, and coastal banks require special protection.

§ 240-131.2. District boundaries. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. The provisions of §§ 240-131 through 240-131.8 shall apply within the Craigville Beach District (CBD), as shown on the Zoning Map of the Town of Barnstable, as amended in Section 1 above.³⁶
- B. Neighborhood Overlays. For the purpose of §§ 240-131 through 240-131.8, the Craigville Beach District is divided into the following Neighborhood Overlay areas, as shown on the Zoning Map and identified as:

LBSB	Long Beach/Short Beach
CB	Craigville Beach
CRNB	Centerville River North Bank
CV	Craigville Village

§ 240-131.3. Definitions. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

ACCESSORY USE OR BUILDING — A use or structure which is customarily incidental to and subordinate in area, extent, and purpose to that of the principal use or structure.

BASE FLOOD ELEVATION (BFE) — The elevation shown on the Flood Insurance Rate Map (FIRM) that indicates the water surface elevation resulting from a flood that has a one-percent chance of equaling or exceeding that level in any given year.

BEACH CLUB — A membership establishment legally in existence at the time of the adoption of §§ 240-131 through 240-131.8, not open to the general public, located in close proximity to a beach and providing recreational and social activities, including food service, to members.

BUILDING COVERAGE — The percentage of a lot covered by principal and accessory buildings or structures. For the purposes of §§ 240-131 through 240-131.8, this definition does not include uncovered swimming pools and tennis courts, and decks not exceeding 100 square feet or 10 feet in length.

³⁶ Editor's Note: Section 1 of Ord. No. 11-01 of the Barnstable County Assembly of Delegates amended the Zoning Map of the Town of Barnstable. A description of said amendment is included in the Table of Zoning Map Revisions at the end of this chapter.

BUILDING HEIGHT — The vertical distance from the grade plane to the highest point of a gable, hip or gambrel roof and the highest point of the coping of a flat roof. These height limitations shall not apply to chimneys, cupolas, flagpoles or other similar appurtenances as approved by the Building Commissioner.

COASTAL BANK — The first significant break in slope beyond the one-hundred-year storm elevation on a seaward face or elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action, or other coastal wetland. The slope of the bank must be greater than 18% and serve to contain storm flowage, rather than being inundated by it, or function as a sediment source. (See Barnstable Code, Wetlands Protection, § 237-5.)

COMMON DRIVEWAY — A form of access which is not a street but extends from a street and provides common vehicular access to more than one lot. For the purposes of calculating lot coverage, the common driveway's impervious surfaces shall be equally allocated among the lots served and/or benefited by the common driveway in proportion to the sizes of the lots.

CONFERENCE CENTER — A nonprofit religious and educational use legally in existence at the time of the adoption of §§ 240-131 through 240-131.8, comprised of guest houses and cottages, single-family residences, recreational areas, lodging for guests, meeting spaces, and summer recreational opportunities.

COTTAGE COLONY — A group of three or more detached dwellings, under one ownership, legally in existence at the time of the adoption of §§ 240-131 through 240-131.8, located on a single lot, which are customarily rented out to the transient public by day, week, month, or season and occupied on a seasonal basis only. Cottage colonies shall not be used year round. Cottage colony structures shall not exceed 1 1/2 stories and 800 square feet of gross floor area.

DEMOLITION, VOLUNTARY — Destruction of 20% or more of the exterior walls of a building or the destruction of more than 50% of the roof structure of a building, not including like-for-like replacement of the roof structure.

ELEVATED STRUCTURE — A structure elevated for the purpose of Barnstable Code, § 240-34, Floodplain District, whose lowest structural member is one foot above BFE in A Zones and two feet above BFE in V Zones. **[Amended 5-22-2014 by Order No. 2014-126]**

FEMA — Federal Emergency Management Agency.

FEMA FLOOD ZONES — Geographic areas susceptible to inundation by water that FEMA has mapped according to varying levels of flood risk, as defined and delineated on a community's Flood Insurance Rate Map, as may be amended from time to time.

FIRM — Flood Insurance Rate Map.

GRADE — The referenced plane as of November 6, 2009, representing the ground elevation adjoining the proposed building at all exterior walls. Where the ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and a point six feet from the building, or between the building and the lot line, whichever point is closer. Retaining walls for mounded septic systems mandated by the Board of Health are not included in the calculation of grade.

GROSS FLOOR AREA — The sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall include all areas capable of being used for human occupancy, including all basement floor areas, mezzanine and attic space and enclosed porches.

HALF STORY — That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story.

IMPERVIOUS SURFACE — A surface which prevents the penetration of precipitation or other liquids into the ground, including roofs, concrete, asphalt, sidewalks, etc. Any area designed for vehicle use or vehicle parking covered with porous pavers, which may become impervious over time may, at the discretion of the Building Commissioner, be considered impervious surface.

LOT AREA — For the purpose of determining maximum building coverage and maximum lot coverage allowances, the lot area for legally created lots that are vacant or developed and/or improved as of November 6, 2009, shall be the horizontal area of the lot defined by metes and bounds. All of the lot area used for zoning compliance shall be land other than that under water nine months or more in a normal year.

LOT COVERAGE — The percentage of a lot covered by impervious surfaces. For the purposes of §§ 240-131 through 240-131.8, paved driveways and parking areas, principal and accessory structures, and other on-site amenities that render any portion of a lot impervious shall be included in the calculation of lot coverage.

NONPROFIT EDUCATIONAL USE — An educational use conducted by a not-for-profit corporation whose articles of incorporation permit it to engage in educational activities and educational purposes as its principal permitted use within the meaning of MGL c. 40A, § 3, including but not limited to libraries and museums.

OPEN FOUNDATION — A pile or column foundation designed for structures in flood zones that minimizes the foundation area subject to lateral flood loads. Open foundations are intended to prevent flotation, collapse, and lateral movement of a building during a flood event.

RELIGIOUS INSTITUTION — An institution engaged in religious purposes within the meaning of MGL c. 40A, § 3.

SEASONAL USE — A use carried on for only a part of the year. Typical seasonal uses are outdoor recreational activities such as swimming and boating, both motorized and nonmotorized; impermanent use of cottages, motels, hotels, letting of rooms in a residential structure and letting an entire residential structure.

SEASONAL USE STRUCTURE — Any structure designed or used as temporary seasonal living quarters that is not used as a primary, permanent residence. Seasonal use structures may have heat and other amenities but do not deposit wastewater into wastewater treatment systems on a regular year-round basis and do not withdraw water for consumption or other activities on a regular year-round basis.

SINGLE-FAMILY RESIDENCE — A detached residential building designed for and occupied by a single family.

SMALL-SCALE FOOD SERVICE — An establishment legally in existence at the time of the adoption of §§ 240-131 through 240-131.8, where food is served to customers by wait staff. Small-scale food service does not include restaurants designed to serve a large volume of customers. Small-scale food service is subject to formula business limitations as described herein. These uses are intended to increase pedestrian activity.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — The Zoning Board of Appeals shall be the special permit granting authority within the Craigville Beach District.

STORY — The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

STRUCTURE — Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, sheds, swimming pools and towers, but shall exclude fences of six feet or less in height and flagpoles.

UPLAND — All lands not defined herein as wetlands.

V (VELOCITY) ZONE — The area extending from mean low water to the inland limit one-hundred-year floodplain supporting waves greater than three feet in height. V-zones are mapped on the FEMA FIRM.

WETLAND — The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune, or other shifting sand formation.

§ 240-131.4. Craigville Beach District use regulations. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

Municipal uses are exempt from these regulations. For principal permitted uses, see § 240-131.7 (Neighborhood Overlay regulations) herein.

A. Use limitations.

- (1) Any use not expressly allowed herein is prohibited.
- (2) The conversion of any building or structure from seasonal use to year-round use is prohibited, except that single-family residences are not subject to this use limitation. The conversion of a building, or buildings, constituting a cottage colony, hotel, inn or rooming house, or of a facility required to be licensed as a recreational camp, overnight camp or cabin, or motel under MGL c. 140, §§ 32A to 32I, to condominium-type ownership, shall be deemed to be a change in use from seasonal to year-round use and is prohibited.

- (3) Permitted business and retail uses shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (formula) array of services and/or merchandise, trademark, logo, service mark, symbol, decor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than 14 other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.
- B. Exempt uses.
- (1) Religious institutions, accessory day-care centers, and nonprofit educational uses are permitted as exempt uses within the Craigville Beach District. These uses shall, however, be subject to and in conformance with the reasonable bulk, density, design and development regulations of the Craigville Beach District as set forth in § 240-131.1, Purposes and intent, § 240-131.5, Dimensional, bulk and other regulations, § 240-131.7, Neighborhood Overlay regulations, including general performance standards and applicable neighborhood performance standards.
 - (2) Where the exempt use does not comply with said regulations, the Zoning Board of Appeals shall, by modification permit, modify said regulations if compliance with the regulation substantially diminishes or detracts from the usefulness of a proposed development or impairs the character of the development so as to affect its intended use; provided, however, that the relief granted will not create a public safety hazard along adjacent roadways and will not adversely impact natural resources or create a nuisance or adverse impacts to other surrounding properties. A modification permit shall be subject to the same procedural requirements as a special permit, except that approval of a modification permit shall require a simple majority of the members of the Board.
- C. Continuation. Any lawfully established lot, structure or use existing at the time of the adoption of §§ 240-131 through 240-131.8 that does not conform to the provisions of the CBD shall be allowed to continue.
- D. Change, expansion or alteration of uses and structures. Changes, expansions, or alterations of existing conforming or nonconforming uses and structures lawfully existing are permitted subject to the following:
- (1) As of right.
 - (a) The normal and customary repair and maintenance of a building or structure and the conversion of existing floor area to habitable space consistent with Board of Health and other regulations is permitted as of right.
 - (b) The alteration and expansion of a building or structure is permitted as of right, provided that the alteration or expansion shall conform to following criteria:
 - [1] Conforms to applicable height and setback requirements of § 240-131.5B, § 240-131.5A notwithstanding.
 - [2] Does not exceed the coverage limitations set forth in § 240-131.6.

- [3] Complies with applicable general and neighborhood performance standards.
- (2) By special permit.
- (a) The alteration or expansion of an existing conforming or nonconforming lawfully established building or structure in lawful existence at the time of adoption of §§ 240-131 through 240-131.8 that does not qualify under the as-of-right provisions above shall be permitted only by a special permit from the SPGA. In granting such special permit, the SPGA shall find that the proposed alterations and/or expansions:
 - [1] Are not substantially more detrimental to the environment, community and/or historic character of the neighborhood than the existing building or structure.
 - [2] Comply with § 240-131.1, Purposes and intent, and with the performance standards and design guidelines for the neighborhood overlay area in which the development is located, in accordance with § 240-131.7, Neighborhood District Overlay regulations, with the exception of the dimensional requirements of § 240-131.7D(1).
 - [3] Do not entail an increase in gross floor area or footprint for voluntary demolition of a single-family residence.
 - [4] Do not exceed 25% of the gross floor area of structures in existence as of July 1, 1989, or do not exceed 10% of the gross floor area of structures in existence as of November 6, 2009.
 - [5] Do not increase lot coverage over what is allowed under § 240-131.6, Coverage limitations, or by more than 10% over what was existing on November 6, 2009, whichever is greater.
 - [6] Do not increase flood hazards in the neighborhood.
 - [7] Maintain or enhance views to Nantucket Sound and/or the Centerville River where applicable in accordance with § 240-131.5, Note 4.
 - [8] In V Zones, do not increase south-facing building surfaces so as to limit the adverse effect of increasing elevation or velocity of floodwaters due to a change in flowage characteristics on the subject site, adjacent properties, or any public or private way.
- E. Special permit for dimensional relief. The SPGA may provide relief from minimum yard setbacks when such relief ensures that the proposed development:
- (1) Is consistent with § 240-131.1, Purposes and intent;
 - (2) Is consistent with the performance standards for the neighborhood district where the development is located in accordance with § 240-131.7, Neighborhood Overlay regulations; and

- (3) The applicant demonstrates undue hardship without desired relief.

F. Reestablishment of damaged or destroyed use, building or structure.

- (1) The reestablishment of a lawfully established conforming or nonconforming use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
 - (a) The reconstruction or repair will not materially increase the gross floor area or height of the building or structure beyond that which previously existed, nor materially increase the footprint of the structure; or materially change the grade other than grades required for installation or upgrade of on-site septic systems; except that buildings in the floodplain that existed prior to November 6, 2009, may be elevated two feet above BFE or as required by the applicable law regardless of the resulting building height, provided that the building complied with building height regulations at the time of its construction.
 - (b) If the building's location on the lot is to be changed, it will change in a manner that will be closer to complying with the dimensional and bulk regulations and with performance standards regarding building orientation.
 - (c) The reconstruction or repair will not constitute an expansion or intensification of any use.
 - (d) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
 - (e) Design and architecture of damaged or destroyed buildings and structures in existence at the time of the adoption of this regulation may be replicated. If the Building Commissioner finds that the structure is to be rebuilt to replicate what existed before the damage or destruction, the design guidelines in this chapter do not apply. If the structure is in the floodplain, any design or architectural changes associated solely with floodproofing the reconstructed structure shall not require compliance with the design guidelines.
- (2) Any previously established use or structure which no longer complies with the provisions of the CBD shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

G. Voluntary demolition and reconstruction of single-family residences. Lawfully established single-family residences may be demolished and reconstructed in accordance with § 240-131.4F.

§ 240-131.5. Dimensional, bulk, and other requirements. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

The following requirements apply to all development and redevelopment in the Craigville Beach Zoning District:

- A. For all legally created vacant lots, the frontage and area in existence as of November 6, 2009, and/or legally developed lots that were in existence as of November 6, 2009, and conformed to the existing zoning when legally created, the existing lot area, lot frontage, front, side and rear setbacks and building height dimensions may be used in lieu of the following dimensional requirements in § 240-131.5B, except where stated otherwise.
- B. Requirements table.

Requirements	Neighborhood Overlays			
	Village Craigville	Craigville Beach	Long Beach/Short Beach	Centerville River North Bank
Minimum lot area (square feet)	87,120	87,120	87,120	87,120
Minimum lot frontage (feet)	75	100	125	125
Minimum Front yard setback (feet)	15	20	20	20
Minimum Side yard setback (feet)	10	15	15 ⁴	15
Minimum Rear yard setback (feet)	10	15	15	15
Maximum building height ^{1,2,3}	30	26	30	30
Maximum number of stories ³	2	2	2	2
Maximum building coverage		See § 240-131.6.		
Maximum lot coverage		See § 240-131.6.		

Dimensional Table Notes:

¹ Maximum building height allowances vary depending upon the roof pitch of the structure, with gable roofs having a slope of 7/12 or greater allowed the maximum building height; hip and other sloped roofs with a slope of 4/12 or greater are allowed five feet less than the maximum building height; and flat roofs prohibited except on one-story additions totaling less than 300 square feet per parcel. For the purposes of determining building height, no more than 50% of the roof slope used in the calculation may be altered by dormers and other roof changes.

² Buildings in the floodplain that existed prior to November 6, 2009, may be elevated two feet above BFE or as required by the applicable law, provided that the building complied with building height regulations at the time of its construction.

³ The second story must be set back at least two feet from the facade line of the floor below on two of the building's facades, and the second story floor area shall not exceed 80% area of the floor area immediately below it.

⁴ In the Long Beach/Short Beach Neighborhood, to preserve and enhance views of Craigville Beach and the Centerville River, a view corridor shall be preserved using 20 feet of either side setback or, where side yard setbacks are less than 20 feet, the greater of either side yard setback existing on November 6, 2009. The view corridor shall remain free of view-obstructing buildings, structures, site improvements or landscaping other than low-growing plant material or existing natural vegetation for the entire depth of the property from the street to the river or beach.

§ 240-131.6. Coverage limitations. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

The following limitations apply to all development and redevelopment in the Craigville Beach Zoning District.

Lot Size (square feet)	Maximum Building Coverage (Footprint) Allowance (square feet)	Maximum Lot Coverage Allowance
1,300 to 4,999	1,100, plus 10.8% of lot area over 1,300	50%
5,000 to 7,499	1,500, plus 6% of lot area over 5,000	50%, but no more than 3,200 square feet
7,500 to 9,999	1,650, plus 6% of lot area over 7,500	3,200 square feet
10,000 to 14,999	1,800, plus 4% of lot area over 10,000	3,300 square feet
15,000 to 19,999	2,000, plus 6% of lot area over 15,000	3,400 square feet
20,000 to 34,999	2,300, plus 4% of lot area over 20,000	3,600 square feet
35,000 to 44,999	2,900, plus 4% of lot area over 35,000	3,600 square feet or 10%, whichever is greater
45,000 and above	3,300, plus 3% of lot area over 45,000	10%

§ 240-131.7. Neighborhood Overlay regulations. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. Purpose. The Neighborhood Overlay regulations establish uses, dimensional requirements and design guidelines to preserve the distinctive character; allow continued use and enjoyment of properties and structures; make provisions for changes and expansions; protect and preserve scenic views and vistas; protect and improve natural resources; and limit damage from periodic flood events for each neighborhood within the Craigville Beach District.
- B. Historic and community character. These regulations will ensure that development and redevelopment in the CBD contribute to and do not detract from the historic character of the Craigville Beach area; that any proposed additions to historic structures shall be consistent with the historic structure and shall be consistent with the character of the surrounding neighborhood, including elements such as building height, mass and orientation; and preserve views and ways to the water from public spaces, streets and ways.
- C. Applicability. Development and redevelopment shall be subject to the following additional requirements and regulations based upon the applicable Neighborhood Overlay.
- D. General performance standards.
- (1) The development complies with the setbacks and lot coverage requirements set forth herein, and is in character with surrounding structures, particularly structures that predate it unless relief has been granted by the SPGA in accordance with § 240-131.4D and E.
 - (2) The development complies with the height limitations set forth herein.
 - (3) Exposed foundation walls for raised septic systems and/or elevated structures are prohibited; foundation walls shall be screened through the use of foundation plantings and/or the use of other natural materials.
 - (4) Stormwater management and erosion control for nonresidential uses comply with best management practices through low-impact development or other adaptive management practice.
 - (5) Up to 50 square feet of roof deck may be allowed atop the first or second floor of a structure if the railing and support structure for the roof deck are constructed fully below the tallest part of the roofline they are contained within.
 - (6) All new non-water-dependent development shall be set back at least 50 feet from the top of the coastal bank resource area. Change, alteration, or expansion of existing structures shall not be sited closer to the top of the coastal bank resource area than the existing development to the maximum extent feasible.
 - (7) Existing natural vegetation within the fifty-foot buffer area to salt marsh and undisturbed buffer areas 50 feet landward of the mean high-water mark of coastal water bodies shall be preserved to the maximum extent feasible.
 - (8) No direct untreated stormwater discharges shall be permitted into any coastal waters or wetlands, including discharges above or below the mean high water

level. Stormwater discharge shall be located and treated the farthest practicable distance from wetlands and water bodies and shall be located a minimum of 50 feet from wetlands or water bodies.

E. Long Beach/Short Beach Neighborhood.

- (1) Permitted principal uses: The following principal uses are permitted in the Long Beach/Short Beach Neighborhood Overlay area subject to the performance standards listed below.
 - (a) Single-family residence.
- (2) Permitted accessory uses: Customary and incidental uses and structures are permitted in the Long Beach/Short Beach Neighborhood Overlay area subject to the use limitations and performance standards listed in § 240-131.7D.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following standards:
 - (a) No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided that there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone. This provision shall not be construed to include duly permitted docks and piers.
 - (b) New septic systems shall be prohibited in V Zones except to upgrade existing failed systems where such systems pose a demonstrated threat to public health, water quality, or natural resources.
 - (c) Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. Any proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
 - (d) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

F. Craigville Beach Neighborhood.

- (1) Permitted principal uses. The following principal uses are permitted in the Craigville Beach Neighborhood Overlay area subject to the performance standards listed below.
 - (a) Single-family residence.
 - (b) Small-scale food service.
 - (c) Beach club.
 - (d) Cottage colony.
 - (e) Hotel or motel in existence as of July 16, 2008, that is lawfully established.
- (2) Permitted accessory uses. Customary and incidental uses and structures are permitted in the Craigville Beach Neighborhood Overlay area subject to the use limitations and performance standards listed in § 240-131.7D.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following standards:
 - (a) No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone.
 - (b) New septic systems shall be prohibited in V Zones except to upgrade existing failed systems where such systems pose a demonstrated threat to public health, water quality, or natural resources.
 - (c) Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
 - (d) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- (4) Beach club design guidelines.

- (a) Purpose: to maintain public views to the water and to maintain the neighborhood's existing character with small-scale building masses and natural or traditional building materials.
- (b) Building height and massing. New construction on beach club properties shall have modest massings to relate to the small scale of most structures in the beachfront neighborhood. Any structure with a footprint of 3,000 square feet or more shall incorporate significant changes in massing to break up the facade and should integrate one-story massings into the design to relate the building to the surrounding smaller structures.
- (c) Building orientation. Buildings shall be oriented with the narrow end facing the street and the water to maximize public views of the water across the site. New buildings or complexes should not extend over more than 150 feet of the lot frontage, and efforts should be made to limit the expansion of existing buildings.
- (d) Maintaining views to water. Multiple buildings on one lot should be clustered close together to limit obstructed views of the water, or shall be separated from each other by 100 feet or more of road frontage to allow broad unobstructed views across the lot to the water.
- (e) Fences. Fences shall be of open construction and low profile (such as split rail and low picket fencing) to maintain public views to the water. Fences over three feet in height should be limited to screening loading and delivery areas adjacent to buildings, or modest trash collection areas. Screening fences should not extend farther than necessary beyond the building footprint to maintain public views.
- (f) Building materials. Exterior building materials shall be those traditionally used in the region or other naturally weathering materials, such as wood shingle, wood clapboard, or board and batten siding.

G. Centerville River North Bank Neighborhood.

- (1) Permitted principal uses. The following principal uses are permitted in the Centerville River North Bank Neighborhood Overlay area subject to the performance standards listed below:
 - (a) Single-family residence.
- (2) Permitted accessory uses. Customary and incidental uses and structures are permitted in the Centerville River North Neighborhood Overlay area subject to the use limitations and performance standards listed in § 240-131.7D.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following standards:
 - (a) Tree removal or vista pruning shall not interrupt the treeline as viewed from the south looking northward to the treeline.

- (b) No development or redevelopment shall be permitted within V Zones, except that existing structures may be changed or altered, provided that there is no increase in gross floor area, footprint, or intensity of use (including but not limited to increases in wastewater flow and impervious area) within the V Zone.
- (c) Any activity or development in a V Zone that creates an adverse effect by increasing elevation or velocity of floodwaters due to a change in drainage or flowage characteristics on the subject site, adjacent properties or any public or private way is prohibited. A proposed activity shall not result in flood damage due to filling which causes lateral displacement of floodwaters that, in the judgment of the SPGA, would otherwise be confined to said area. The burden of proof for this standard rests with the applicant and shall require certification by a professional engineer.
- (d) Open foundations shall be designed to accommodate only the height required to elevate the lowest structural member two feet above the BFE in V Zones and one foot above BFE in A Zones. For all new construction and substantial improvements within the V Zones, the space below the lowest floor must either be free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

H. Craigville Village Neighborhood.

- (1) Permitted principal uses. The following principal uses are permitted in the Craigville Village Neighborhood Overlay area subject to the performance standards listed below.
 - (a) Single-family residence.
 - (b) Conference center.
- (2) Permitted accessory uses. Customary and incidental uses and structures are permitted in the Craigville Village Neighborhood Overlay area subject to the use limitations and performance standards listed in § 240-131.7D.
- (3) Neighborhood performance standards. All development and redevelopment shall meet the following design guidelines:
 - (a) Purpose. Most buildings in the Craigville Village Neighborhood date from the late 1800s and early 1900s when the neighborhood developed as a Christian Camp Meeting Association. The neighborhood is still defined by its historic structures and their configuration around a central green, small street grid, and communal paths.
 - (b) Objectives.

- [1] To preserve the character-defining features of the original camp meeting neighborhood, including its small lots, modest-scale structures, and orientation of buildings to public areas.
 - [2] To ensure that additions and alterations to structures are compatible with the existing scale and character of the building and preserve the original massing and unique architectural features of its historic buildings.
- (c) Application. The design guidelines set forth herein do not apply to structures in existence as of the date of the adoption of §§ 240-131 through 240-131.8, but shall apply to all new development, to any additions to existing structures, and to all reconstruction projects except as provided for in § 240-131.4F(1)(e).
- (d) Building design. The guidelines shall apply to construction of new structures and expansions and alterations of existing structures.
- [1] Preserve the original massing of historic structures (pre-1945).
 - [2] Additions should be attached to secondary or less prominent facades of the building (the side or rear facades), and should be stepped back from the front and rear corners of the building so as to preserve the original massing of the structure, including its roof form.
 - [3] Work with modest massings. Additions should be scaled to be consistent with or smaller than the size of the original historic structure, following the neighborhood tradition of expanding small cottages incrementally with modest additions. Additions should generally have a lower roofline than the original structure to maintain the prominence of the original building, though some additions may be slightly taller than the original structure if attached to the original structure with a smaller connecting mass.
 - [4] Roof forms. The roof pitch on new construction and additions should complement the roof pitch of the original historic structure and should maintain a pitch of at least six over 12.
 - [5] Retain original architectural details and unique forms. Additions should be placed so as to limit the removal of distinctive architectural trim and features that are unique to the building. Additions and alterations should not interfere with character-defining features, such as open porches, steeply pitched roof forms, unique windows, and carpenter gothic trim along eaves and entries. Siding materials used on the original structure should be retained, though other regional siding materials may be appropriate on additions.

§ 240-131.8. Additional provisions. [Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

- A. Other regulations. The following provisions of the Barnstable Code are hereby incorporated into this regulation: § 240-7, Application of district regulations; § 240-9C and D; § 240-10, Prohibited uses; § 240-34, Floodplain District; § 240-43, Accessory uses; § 240-46A and B, Home occupations; Article VI, Off-Street Parking, §§ 240-52, 240-53B through F, as delimited only in the Craigville Beach neighborhood; and sign regulations, §§ 240-59 through 240-63; Article XI, Growth Management, §§ 240-110 through 240-122; Article IX, Site Plan Review; Article XII Administration and Enforcement §§ 240-123 and 240-124; and § 240-125C, Special permit provisions, as these provisions of the Barnstable Code cited in this section may be amended from time to time. **[Amended 5-22-2014 by Order No. 2014-126]**
- B. Conflicts. Unless otherwise stated, the requirements of the Craigville Beach District shall apply to uses and structures within the Craigville Beach District. In the event of a conflict, these regulations shall apply.
- C. Severability. The provisions of §§ 240-131 through 240-131.8 are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

ZONING

240 Attachment 1

Zoning Map Revisions

**The following table lists amendments to the Zoning Map.
(Refer to § 240-6.)**

Article/ Order No.	Warrant or Adoption Date	Description
L3	5-7-1988 ATM	Rezoning a portion of the RD-1 southeast of Route 132, Assessor's Map Number 253, Parcels 16, 15 and 18, for a depth of 300 feet to HB Highway Business District
4	11-5-1988 STM	Designating a portion of the RB Zoning District located southerly of Route 28 between Old Strawberry Hill Road and the westerly property line of Barnstable Middle School for a depth of 300 feet to HB Highway Business District
5	11-4-1989 ATM	Adopted "Revised Groundwater Protection Overlay District Map," dated October 1989
9	11-4-1989 ATM	Designating Assessor's Map 272, Parcel 2, and Assessor's Map 251, Parcel 99, from RC-1 Residence C-1 District to RAH Residence AH District
11	11-4-1989 ATM	Designating a portion of the RD-1 Residence D-1 District located northerly along Route 28 for a depth of 300 feet, starting at Strawberry Hill Road and continuing easterly for 800 feet to the HB Highway Business District
L1	5-6-1989 ATM	Designating a portion of the existing R-C and RD-1 Residential Zoning Districts, northerly of Route 28 (Falmouth Road) at Phinney's Lane, shown as portions of Assessor's Map 209, Parcels 18 and 19, to HB Highway Business District
95-175	6-15-1995	Map passed
99-012	9-17-1998	Subsequent map passed
2001-036	6-28-2001	B-1 Business District adopted as shown on the cover sheet map and Sheet 3 of 7 (Hyannis) entitled "Proposed amendment file copy date of February 1, 2001." The intent of the Town Council is to reserve its rights to act at a later date upon the other proposed zoning districts shown on a map.
2001-037, - 038, -039	7-19-2001	MA-2, OR, O-1, O-2 and O-3 Districts adopted as shown on cover sheet map and Sheet 3 of 7
2001-117	8-16-2001	Redesignated a portion of the RF Residential District in Marstons Mills to the VB-A Village Business A District shown on the cover sheet and Sheet 6 of 7 (Marstons Mills) as shown on a map entitled "Proposed VB-A Zoning Change Requested by Vice President Gary C. Blazis," May 8, 2001, on file with the Town Clerk and specifically incorporated by reference

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Article/ Order No.	Warrant or Adoption Date	Description
2002-029	11-15-2001	A new zoning district, the MA-1 Business District, shown on the cover sheet and sheet 3, entitled "proposed amendment file copy date of September 15, 2001"
2003-008	9-19-2002	Amendment of the boundary of the downtown zoning districts as shown on maps filed with the Town Clerk entitled "Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7, Hyannis," both maps notated "Proposed Amendment File Copy," date May 1, 2002
2004-075	4-15-2004	Extend boundary of the MA-1 District as shown on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7, Hyannis," both maps notated "Proposed Amendment File Copy" date March 31, 2004
2004-115	11-18-2004	To reconfigure the boundary line of the Residential C-1 Zoning District and the B Business Zoning District in Hyannis as shown on maps on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, Massachusetts, Index Map," identified as "Proposed Amendment to Reconfigure the Boundary Line Between Residence C-1 Zoning District and the B Business Zoning District in Hyannis," file copy date June 9, 2004; and "Zoning Map of the Town of Barnstable, Massachusetts, Hyannis, Sheet 3 of 7," identified as "Proposed Amendment to Reconfigure the Boundary Line Between Residence C-1 Zoning District and the B Business Zoning District in Hyannis," file copy date June 9, 2004.
2004-128	9-2-2004	A new overlay district entitled "Former Grade 5 School Planned Unit Development Overlay District" shown as Parcels 1 and 5 on maps on file with the Town Clerk entitled "Grade Five School Property, Hyannis, Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7 Hyannis Proposed Amendment to add a Plan Unit Development Overlay District," all maps file copy date July 27, 2004.

ZONING

Article/ Order No.	Warrant or Adoption Date	Description
2005-100	7-14-2005	Establish the boundaries of the Hyannis Village Zoning Districts as shown on the map on file with the Town Clerk, entitled "Hyannis Village Zoning Districts, file copy dated July 14, 2005. The BL-B and RB-1 Zoning Districts are deleted and replaced by the Harbor District; portions of the PRD and HB Zoning Districts are amended to create the Medical Services District; the OR Zoning District is deleted and portions of the RB Zoning District are amended to create the Single Family Residential District; that portion of the OR Zoning District not included in the new Single Family Residential District is deleted and replaced by the RB Zoning District; the B-1, O-1, O-2, and O-3 Zoning Districts are deleted and portions of the UB Zoning District are amended to create the Office/Multi-Family Residential District; the B-1, MA-1, MA-2, O-2, and RB-1 Zoning Districts are deleted and portions of the B, RB, and UB Zoning Districts are amended to create the Hyannis Village Business District; the B-1 Zoning District is deleted and portions of the B and HB Zoning Districts are amended to create the Hyannis Gateway District; portions of the B and HB Zoning District are amended to create the Transportation District.
2006-136	6-1-2006	Extension of the boundary of the HG Zoning District within the Hyannis Village Zoning Districts as shown on maps on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, Massachusetts, Index Sheet" and "Sheet 3 of 7, Hyannis" and to extend the boundary of the HVB Zoning District within the Hyannis Village Zoning Districts as shown on maps on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, Massachusetts Index Sheet" and "Sheet 3 of 7, Hyannis."
2007-101	5-10-2007	Creation of a new zoning district known as "R-2C" which covers the area shown on a reference map entitled "Proposed Pond Village DCPCs 1 and 2, Draft Map" and described as follows: the northerly boundary is Cape Cod Bay/Barnstable Harbor; the easterly boundary includes those parcels on the east side of Scudder Lane; the southerly boundary includes those parcels on the south side of Route. 6A from the Scudder Lane intersection to the railroad overpass; and the westerly boundary follows the property line of the so-called Blair parcel up to the Mass Audubon parcels to Barnstable Harbor
2008-077	2-28-2008	Addition of a Multifamily Affordable Housing District as shown on the map entitled "Proposed Multi-Family Affordable Housing District," dated 12-19-2007

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Article/ Order No.	Warrant or Adoption Date	Description
2008-090	2-28-2008	Creation of a new overlay zoning district known as "SCCRCOD 2008-1," which includes the area shown on the reference map entitled "Senior Continuing Care Retirement Community Overlay District, 2008-#1," dated 1-29-2008
2008-091	4-3-2008	Addition of a new overlay zoning district known as "Temporary Recreational Shellfish Area and Shellfish Relay Area Overlay District," as shown on the map entitled "Temporary Recreational Shellfish Area and Shellfish Relay Area Overlay District," dated 2-28-2008
2009-137	7-16-2009	Adding the boundary of the Centerville Village District replacing portions of the Business A, RC and RD-1 Districts in the vicinity of Main Street and South Main Street in Centerville and rezoning portions of the BA Zoning District that lie outside the Centerville Village District boundary to the RC Zoning District as shown on a map on file with the Town Clerk entitled "Proposed Amendment to the Town Zoning Map Creating the Centerville Village District" dated May 28, 2009, and "Proposed Amendment to the Centerville Zoning Map Sheet 4 of 7" dated May 28, 2009.
2010-122	6-17-2010	Rezoning the VB-A Zoning District located near the intersection of Route 149, River Road and Main Street in the Village of Marstons Mills to the MMV District and RF as shown on the map
2010-159	10-7-2010	Amending the Official Zoning Map as shown on a map entitled "Proposed Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District Map," dated June 17, 2010, and Proposed Amendment to the Barnstable Zoning Map - Sheet 1 of 7, Cotuit Zoning Map Sheet 7 of 7, Hyannis Zoning Map Sheet 3 of 7, Centerville Zoning Map Sheet 4 of 7, Osterville Zoning Map Sheet 5 of 7, all dated June 17, 2010
Barnstable County Assembly of Delegates Ord. No. 11- 01 pursuant to Ch 716 of the Acts of 1989 (Cape Cod Commission Act)	1-19-2011	Rezoning portions of the RB, RC, RD and RD-1 Zoning Districts in Centerville and a small portion of western Hyannis to the Craigville Beach District as shown on a map on file with the Town Clerk entitled "Proposed Amendment to the Town Zoning Map Creating the Craigville Beach District," dated July 16, 2009, Index Sheets Hyannis Sheet 3 of 7 and Centerville Map 4 of 7 creating the Craigville Beach District

ZONING

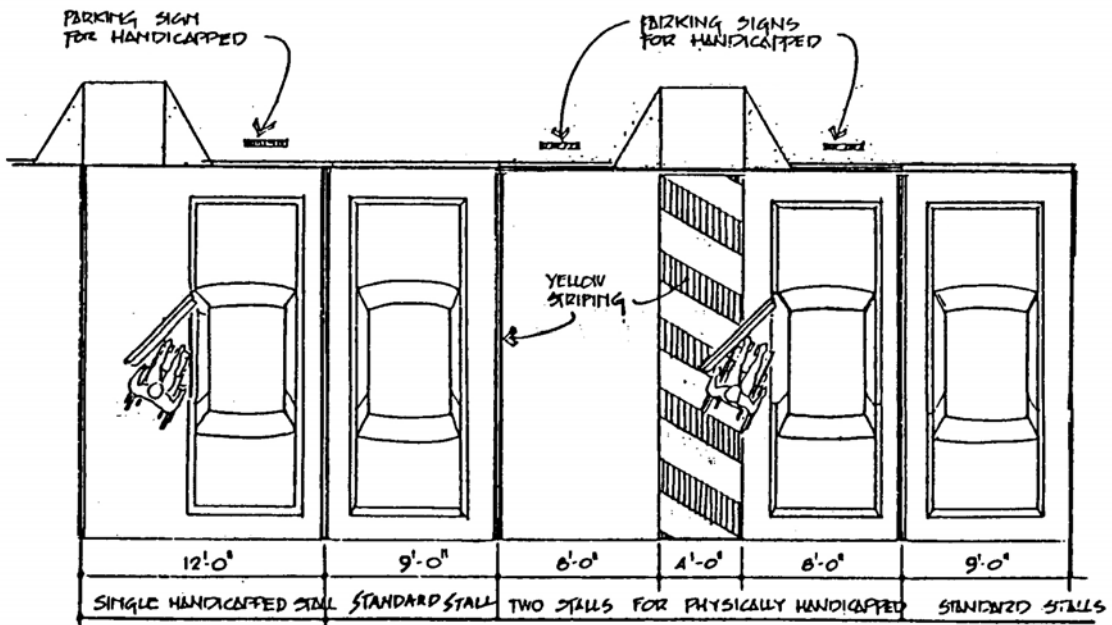
Article/ Order No.	Warrant or Adoption Date	Description
2011-006	10-7-2010	Addition of Ground-Mounted Solar Photovoltaic Overlay District
2011-138	9-8-2011	Renaming the VB-B Zoning District located near the intersection of Meetinghouse Way (Route 149) and Main Street (Route 6A) in the Village of West Barnstable to the WBVBD Zoning District
2014-050	2-6-2014	Adding the Medical Marijuana Overlay District

ZONING

240 Attachment 2

Minimum Parking Lot Design Standards

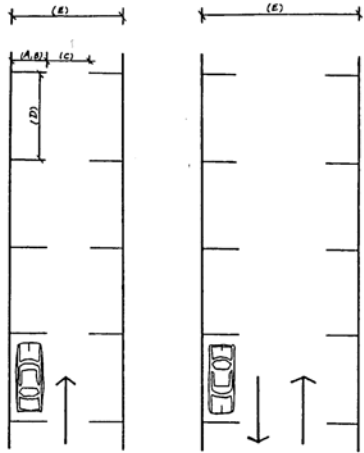
Handicapped Parking Dimensions



BARNSTABLE CODE

Minimum Parking Lot Design Standards

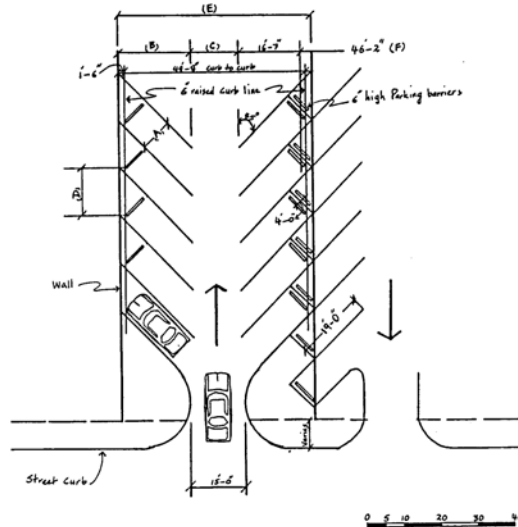
Parallel Parking Dimensions



A	B	C	D	E
8-0	8-0	12-0	23-0	40-0/28-0
8-6	8-6	12-0	23-0	41-0/29-0
9-0	9-0	12-0	23-0	42-0/30-0
9-6	9-6	12-0	23-0	43-0/31-0
10-0	10-0	12-0	23-0	44-0/32-0

- A Stall Width
- B Stall to Curb
- C Aisle Width
- D Car Curb Length
- E Wall to Wall
- F Overlap to Overlap

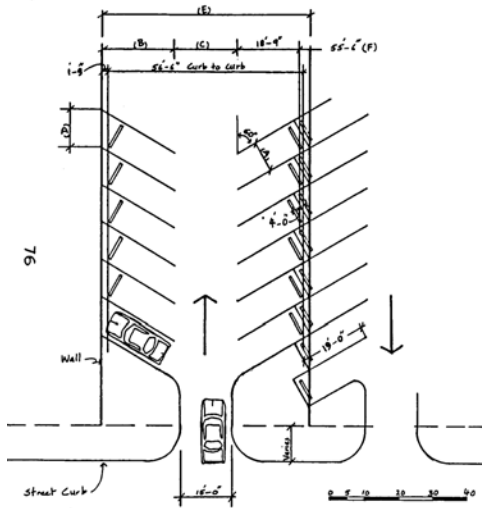
45° Parking Dimensions



A	B	C	D	E	F
8-6"	19-5"	13-6"	12-0"	52-4"	46-4"
9-0"	19-10"	13-0"	12-9"	52-8"	46-2"
9-6"	20-1"	13-0"	13-5"	53-2"	46-6"
10-0"	20-6"	13-0"	14-1"	54-0"	46-11"

ZONING

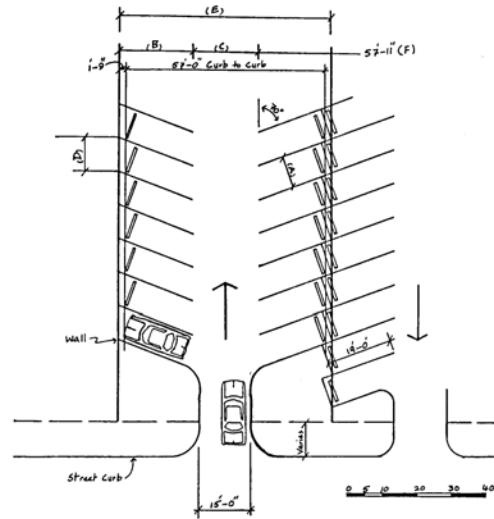
60° Parking Dimensions



A	B	C	D	E	F
8'-6"	20'-0"	18'-6"	9'-10"	59'-11"	55'-7"
9'-0"	21'-0"	18'-0"	10'-5"	60'-0"	55'-6"
9'-6"	21'-2"	18'-0"	11'-0"	60'-5"	55'-7"
10'-0"	21'-6"	18'-0"	11'-6"	61'-0"	56'-0"

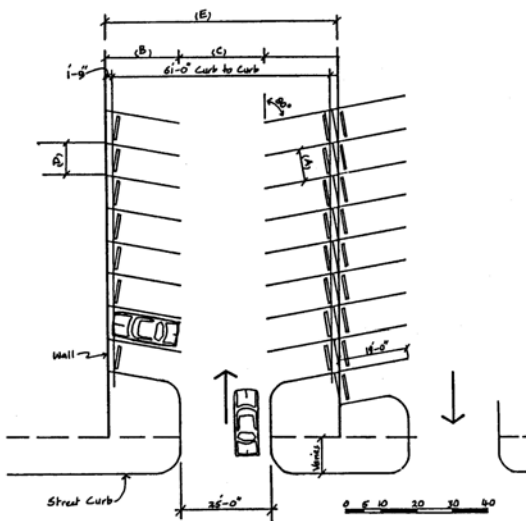
- A Stall Width
- B Stall to Curb
- C Aisle Width
- D Car Curb Length
- E Wall to Wall
- F Overlap to Overlap

70° Parking Dimensions



A	B	C	D	E	F
8'-6"	20'-10"	19'-6"	9'-0"	61'-1"	58'-2"
9'-0"	21'-0"	19'-0"	9'-7"	61'-0"	57'-11"
9'-6"	21'-2"	18'-6"	10'-1"	60'-10"	57'-6"
10'-0"	21'-6"	18'-0"	10'-7"	60'-5"	57'-2"

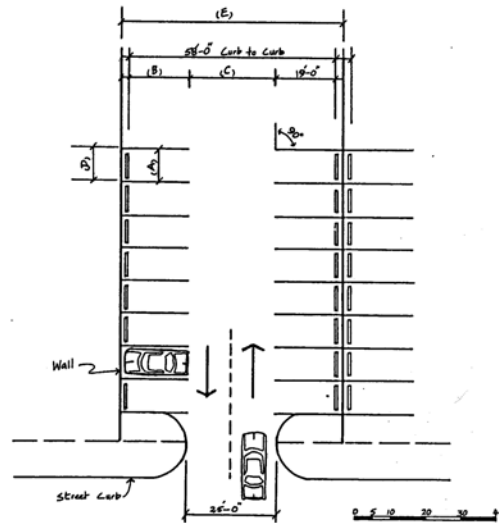
80° Parking Dimensions



A	B	C	D	E	F
8'-6"	20'-0"	24'-0"	8'-7"	64'-5"	62'-10"
9'-0"	20'-6"	24'-0"	9'-1"	64'-8"	63'-0"
9'-6"	20'-5"	24'-0"	9'-7"	64'-5"	
10'-0"	20'-6"	24'-0"	10'-2"	65'-0"	

- A Stall Width
- B Stall to Curb
- C Aisle Width
- D Car Curb Length
- E Wall to Wall
- F Overlap to Overlap

90° Parking Dimensions



A	B	C	D	E
8'-6"	19'-0"	25'-0"	8'-6"	63'-0"
9'-0"	19'-0"	24'-0"	9'-0"	62'-0"
9'-6"	19'-0"	24'-0"	9'-6"	62'-0"
10'-0"	19'-0"	24'-0"	10'-0"	62'-0"

PART II

**APPENDIX TO THE
GENERAL ORDINANCES**

Chapter 241

ADMINISTRATIVE CODE

	ARTICLE I		§ 241-18.	Comprehensive Financial Advisory Committee.
	Preamble		§ 241-19.	Golf Committee.
§ 241-1.	Purpose; description of Administrative Code organization.		§ 241-20.	Disability Commission.
			§ 241-21.	Board of Health.
			§ 241-22.	Historical Commission.
	ARTICLE II		§ 241-23.	John F. Kennedy Memorial Trust Fund Committee.
	Elective Organization		§ 241-24.	Town Library Committee.
§ 241-2.	Offices and standards.		§ 241-25.	Licensing Authority.
§ 241-3.	The Barnstable Town Council.		§ 241-26.	Old King's Highway Historic District Committee.
§ 241-4.	The Barnstable School Committee.		§ 241-27.	Personnel Board.
§ 241-5.	The Barnstable Town Clerk.		§ 241-28.	(Reserved)
§ 241-6.	The Barnstable Town Collector.		§ 241-29.	Planning Board.
§ 241-7.	The Barnstable Housing Authority.		§ 241-30.	Public Works Commission.
			§ 241-31.	Recreation Commission.
			§ 241-32.	Board of Registrars of Voters.
	ARTICLE III		§ 241-33.	Sandy Neck Board.
	Multiple-Member Appointive Organization		§ 241-34.	Scholarship Committee.
			§ 241-35.	Trust Fund Advisory Committee.
§ 241-8.	Offices and standards.		§ 241-36.	Water Pollution Control Board.
§ 241-9.	Council on Aging.		§ 241-37.	Waterways Committee.
§ 241-10.	Airport Commission.		§ 241-38.	Water Quality Committee.
§ 241-11.	Zoning Board of Appeals.		§ 241-38.A.	Hyannis Water Board.
§ 241-12.	Cultural Council.		§ 241-39.	Youth Commission.
§ 241-13.	Board of Assessors.		§ 241-40.	Road Committee.
§ 241-14.	Cable Television Advisory Committee.		§ 241-41.	Shellfish Committee.
§ 241-15.	Conservation Commission.		§ 241-42.	Hyannis Main Street Waterfront Historic District Commission.
§ 241-16.	Economic Development Commission.			
§ 241-17.	Housing Committee.			

BARNSTABLE CODE

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| § 241-43. Hyannis Main Street Waterfront Historic District Appeals Committee. | § 241-47.15. Growth Management Department. |
| § 241-44. Community Preservation Committee. | § 241-47.16. (Reserved) |
| § 241-44.1. Agricultural Commission. | § 241-47.17. (Reserved) |
| § 241-44.2. Problem Properties Appeals Committee. | § 241-47.18. (Reserved) |
| § 241-44.3. through § 241-44.4. (Reserved) | § 241-47.19. (Reserved) |
| § 241-44.5. Land Acquisition and Preservation Committee. | § 241-47.20. Police Department. |
| § 241-45. Jane Eshbaugh Community Service Award Committee. | § 241-47.21. (Reserved) |
| § 241-45.1. Human Services Committee. | § 241-47.22. (Reserved) |
| § 241-45.2. Renewable Energy Commission. | § 241-47.23. (Reserved) |
| | § 241-47.24. (Reserved) |
| | § 241-47.25. Public Works Department. |
| | § 241-47.26. (Reserved) |
| | § 241-47.27. (Reserved) |
| | § 241-47.28. (Reserved) |
| | § 241-47.29. (Reserved) |

ARTICLE IV
Municipal Organization

- § 241-46. Offices and standards.
- § 241-47. Organization of administration.
- § 241-47.1. Town Manager.
- § 241-47.2. (Reserved)
- § 241-47.3. (Reserved)
- § 241-47.4. (Reserved)
- § 241-47.5. Administrative Services Department.
- § 241-47.6. (Reserved)
- § 241-47.7. (Reserved)
- § 241-47.8. (Reserved)
- § 241-47.9. (Reserved)
- § 241-47.10. Community Services Department.
- § 241-47.11. (Reserved)
- § 241-47.12. (Reserved)
- § 241-47.13. (Reserved)
- § 241-47.14. (Reserved)

§ 241-47.30. Regulatory Services Department.

- § 241-48. (Reserved)
- § 241-49. (Reserved)
- § 241-50. (Reserved)
- § 241-51. (Reserved)
- § 241-52. (Reserved)

ARTICLE V
Administrative Policies and Procedures of Town Council

- § 241-53. Generally.
- § 241-54. Communications.
- § 241-55. Ethics.
- § 241-56. Financial.
- § 241-57. Fleet services.
- § 241-58. Insurance.
- § 241-59. Investment.
- § 241-60. Computers and automation.
- § 241-61. Personnel.

- § 241-62. Procurement.
- § 241-63. Property management.
- § 241-64. Trust fund management.
- § 241-65. Volunteer.

- § 241-67. Publication of procedures.
- § 241-68. Annual report on attainment of policy goals.
- Designations of Town Officers/Positions As Special for Purposes of the Conflict of Interest Law

ARTICLE VI
Town Manager Implementation and Reporting Responsibilities

- § 241-66. Authority to promulgate regulations.

[HISTORY: Adopted by the Town Council of the Town of Barnstable 4-18-1991 by Order No. 91-83. Amendments noted where applicable.]

GENERAL REFERENCES

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| Administrative procedures — See Part V of the Charter. | Tree Warden — See Ch. 138, Art. I. |
| Appointments Committee — See Ch. 37, Art. I. | Manager's administrative procedures — See Ch. 401. |
| Funds — See Ch. 86. | Personnel — See Ch. 242. |
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ARTICLE I
Preamble

§ 241-1. Purpose; description of Administrative Code organization.

- A. The Administrative Code of the Town of Barnstable has the broad purpose of providing for the internal organization and administration of the Barnstable Town government. The intention and purpose of this code is to provide for a legal, practical, and efficient plan of organization and administrative procedures which allows for and encourages the effective delivery of municipal services to the residents of Barnstable.
- B. The Administrative Code is composed of four parts, the purpose of which is to detail the various responsibilities, authorities, and methods of administering municipal agency services. The parts describe the elective organization, the multiple-member appointive organization, the administrative organization, and the administrative procedures of the Town. A brief description of each part follows:
 - (1) Elective organization: This describes all elective officers of the Town, their manner and time of election, term of office, authorities, responsibilities and interrelationship with the other sections of the organization. It is based largely upon the provisions of the Barnstable Town Charter.
 - (2) Multiple-member appointive organization: This describes all multiple-member body appointments made by the Town Council, and further delineates manner and time of appointment and terms of appointment generally, and authorities, responsibilities and interrelationships with the other sections of the organization.

- (3) Administrative organization: This describes all of the administrative agencies of the Town under the jurisdiction of the Town Manager. It further delineates the mission and functions of each said agency, the authorities, responsibilities and interrelationships amongst and between the administrative agencies, the multiple-member bodies, and the elective organization.
- (4) Administrative procedures: This describes all legislative, administrative, and adjudicatory procedures of the Town. This part establishes procedures by which municipal legislation is developed, introduced, and approved before the Town Council and by which rules and regulations are adopted by Town administrative agencies. It specifies the manner in which all the entities of the Town function administratively, through the promulgation of policies and procedures. It delineates the method and manner in which adjudicatory proceedings are to be conducted by the various Town agencies and officials who have the responsibility of deciding individual cases.

ARTICLE II Elective Organization

§ 241-2. Offices and standards.

- A. Generally. In addition to the Barnstable Town Council, the offices to be filled by the voters shall be a School Committee, a Town Clerk, a Town Collector and a Housing Authority and such other regional authorities, districts, or committees as may be established by law or interlocal agreement.
- B. Eligibility for office. Any voter shall be eligible to hold any elective Town office, provided that no person shall simultaneously hold more than one elective Town office.
- C. Town elections. A preliminary election is held for the nomination of candidates on the seventh Tuesday preceding every regular Town election. The regular Town election is held on the first Tuesday following the first Monday in November of each odd-numbered year.
- D. Term of office. The term of office of all elective Town officers shall be four years beginning on the second Monday following election and continuing until their successors are qualified. Terms of office of Town Councilors shall be so arranged that the terms of as nearly half of the Councilors as may be shall expire at each biennial Town election. To accomplish this, odd-numbered precincts and even-numbered precincts shall expire in alternating election years. Terms of office for the five members of the School Committee and the four elective members of the Housing Authority shall be so arranged that the terms of as nearly an equal number of members as is possible shall expire at each regular election. The fifth member of the Housing Authority shall be appointed by the Secretary of Communities and Development of the commonwealth. **[Amended 9-8-2005 by Order No. 2005-126]**
- E. Filling of vacancies.

- (1) Town Clerk and Town Collector: If a vacancy occurs in the office of Town Clerk or Town Collector either by failure to elect or otherwise, the Town Council shall, within 30 days following the date such vacancy is declared to exist, act to fill the vacancy. The Town Council shall choose from among the voters a person to serve for the balance of the unexpired term. Any person so chosen shall be sworn and commence to serve forthwith.
 - (2) School Committee and Housing Authority: If a vacancy occurs in the membership of the School Committee or Housing Authority either by failure to elect or otherwise, the President of the Town Council shall, within 30 days following the date such vacancy is declared to exist, call a joint meeting of the Town Council and the remaining membership of whichever agency in which a vacancy is declared to exist, to act to fill the vacancy. At any such joint meeting a majority of those present and voting shall choose, from among the voters, a person to serve for the balance of the unexpired term. Participants in such joint meeting to fill a vacancy in the School Committee or Housing Authority shall give consideration to whichever of the defeated candidates for the seat in which the vacancy is declared to exist who received the highest number of votes at the last regular Town election immediately preceding the date the vacancy is declared to exist. Any person so chosen shall be sworn and commence to serve forthwith.
- F. Annual reports. All elective offices of the Town of Barnstable shall prepare annual reports of their activities and submit same to the Town Manager for inclusion in the Annual Report of the Town, on or before the fourth Friday in January. The annual report shall describe calendar-year activities for the year ending each December 31. Where required by state and/or federal regulations, certain elective offices shall be required to submit copies of their annual reports to appropriate state and/or federal agencies.

§ 241-3. The Barnstable Town Council.

- A. Composition and authority. There shall be 13 members of the Barnstable Town Council, one Councilor elected from each precinct. The Barnstable Town Council shall exercise all of the legislative powers of the Town. **[Amended 9-28-1993 by Order No. 93-130; 9-8-2005 by Order No. 2005-126]**
- B. Eligibility. Only voters of the Town of Barnstable, who at all times during their term of office shall be and remain residents of the Town shall be eligible to hold the office of

Councilor. A member of the Town Council who moves from one precinct to another during the term for which the Councilor was elected shall cease to be a member of the Town Council; provided, however, that a Councilor with six months or less remaining on the term for which the Councilor was elected, notwithstanding removal from one precinct to another, shall continue to serve and to perform all official duties during the term of office.

- C. Council organization. After the Councilors-elect have been sworn, the Town Council shall be called together by the Council President for the purpose of conducting an election in December among Council members for the office of Town Council President and Vice President to serve at the pleasure of the Town Council. In nonelection years, the Town Council shall conduct a reorganization election each December. The President presides at all meetings of the Town Council, and performs such other functions as may be assigned by the Barnstable Town Charter, by ordinance or by vote of the Town Council. The Vice President presides at meetings of the Town Council during the absence or disability of the President.
- D. General powers and duties. Except as otherwise provided by law or by the Barnstable Town Charter, specifically Section 1-4 (Powers of the Town), Section 1-5 (Interpretation of Powers), and Section 2-3 (General Powers and Duties), all powers of the Town of Barnstable shall be vested in the Town Council which shall provide for their exercise and for the performance of all duties and obligation imposed on the Town by law.
- E. Filling of Town Council vacancies. If a vacancy in the office of Councilor occurs during the first 44 months of a term, it shall be filled by a precinct election. If a regular Town election is scheduled to be held within 120 days, but more than 50 days, after the date vacancy occurs, it shall be filled by a special election within that regular election; otherwise, the Council shall schedule a special election to be held as soon as is practical to fill the vacancy for the balance of the unexpired term. The provisions of the Charter governing regular elections shall, so far as they are apt, apply to said special election, provided no preliminary election shall be held.¹ **[Amended 9-23-2003 by Order No. 93-130]**
- F. Exercise of powers. Except as otherwise provided by the laws of the commonwealth or the Barnstable Town Charter, the legislative powers of the Town Council may be exercised in a manner determined by the Town Council.
- G. Interrelationships. The Barnstable Town Council interacts with all elective officers of the Town, all multiple-member appointive boards, and the administrative organization of the Town. A description of said interactions appears as part of the Administrative Code under each appropriate part and section that describe the officers and agencies of the Town.

§ 241-4. The Barnstable School Committee.

- A. Composition. There shall be a School Committee composed of five members elected by and from the voters at large.

1. Editor's Note: See Part VII of the Charter, § 7-1 et seq.

- B. Powers and duties. The Barnstable School Committee shall have general charge and superintendence of the public schools for the purpose of educating children in the Town. The powers of the School Committee shall include, but need not be limited to: appoint a superintendent of schools, and all other officers and employees associated with the school, fix their compensation, define their duties and discharge them; make all reasonable rules and regulations, consistent with law, for the administration and management of the public schools of the Town. The School Committee shall have all the powers and duties given to school committees by the laws of the commonwealth in particular Chapters 70, 71, 72, 74, and 76, the Barnstable Town Charter, ordinance or other Town Council vote.
- C. Interrelationships.
- (1) Town Council: The School Committee and the Town Council shall meet during each year to cooperatively discuss financial and educational policy matters of the Town. The School Committee Chairman and Town Council President shall preside over each joint meeting. The Barnstable Town Charter shall serve as the basis for establishing and maintaining this interrelationship.
 - (2) Other boards: The School Committee shall interact with any multiple-member board within the Town as necessary, so as to ensure furtherance of the Committee's responsibility to educate the children of the Town.

§ 241-5. The Barnstable Town Clerk.

- A. Eligibility. A Town Clerk shall be elected by and from the voters at large.
- B. Powers and duties. The Town Clerk is the keeper of vital statistics of the Town, the custodian of the Town Seal and of all records of the Town, administers the oath of office to all Town officers, issues licenses and permits as may be provided by law and is responsible for the conduct of elections and all matters relating thereto. The Town Clerk has all the powers and duties provided that office by the laws of the commonwealth the Barnstable Town Charter, ordinance or other Town Council vote.
- C. Clerk of the Town Council. Unless otherwise provided by the Town Council, the Town Clerk is to be the Clerk of the Town Council and shall give notice of all meetings of the Town Council to its members and to the public, keep a record of its proceedings and perform such duties as may be assigned by the Barnstable Town Charter, by ordinance, or by other Town Council vote.
- D. Interrelationships.
- (1) Town Council: The Town Clerk meets annually with the Town Council in a manner convenient to both elective officers, for the purpose of discussing those matters within the purview of the Town Clerk.
 - (2) Other officials: The Town Clerk interacts on a regular basis with all of the administrative agencies of the Town, as well as all of the multiple-member boards and all other elective officers, in particular as these pertain to administration of oath of office, and keeper of the Town records. Additionally, the Town Clerk's

department, as a full-time operation, participates in the Town's administration through its Administrative Services Department.

§ 241-6. The Barnstable Town Collector.

- A. Eligibility. A Town Collector shall be elected by and from the voters at large.
- B. Powers and duties. The Town Collector is responsible for the collection of all accounts due and payable to the Town. Town officials and Town agencies, from time to time, shall commit to the Town Collector for collection all accounts due and payable to the Town, listed against the parties obligated to assume and pay the same. The Town Collector shall pay over to the Town Treasurer all collections received with any sums received in interest. The Town Collector has all the powers and duties provided that office by the laws of the commonwealth, the Barnstable Town Charter, ordinance or other Town Council vote.
- C. Interrelationships.
 - (1) Town Council: The Town Collector meets annually with the Town Council in a manner convenient to both elective officers, for the purpose of discussing those matters within the purview of the Town Collector.
 - (2) Other officials: The Town Collector interacts on a regular basis with the Assessing Division of the Administrative Services Department concerning collection of assessed taxes, liens, betterments; the Town Treasurer concerning payovers, tax title taking and processing; the Town Attorney concerning tax titles; the Information Technology Department for operation of computer hardware and software matters; the Public Works Department concerning collection of sewer and solid waste revenues; and the Fire and Water Districts of the Town for collection of district taxes, liens and betterments.

§ 241-7. The Barnstable Housing Authority.

- A. Eligibility. There shall be a Housing Authority composed of five members. Four shall be elected by the voters at large, the fifth member shall be appointed by the Secretary of Communities and Development of the commonwealth.
- B. Powers and duties. The Housing Authority provides public housing services to low and moderate income residents of the Town. The Authority operates pursuant to MGL Chapter 121B. The Authority secures state and federal resources for housing assistance and operates programs in conjunction with state and federal requirements.
- C. Interrelationships.
 - (1) Town Council: In the development and planning of affordable housing efforts, the Authority interacts with the Town Council. The Housing Authority meets biannually with the Town Council in a manner convenient to both elective officers, for the purpose of discussing those matters within the purview of the Housing Authority.

- (2) Other officials: The Housing Authority, when acting as a developer for affordable housing, interrelates with all local boards that have jurisdiction in the Chapter 40B, comprehensive permitting process. In normal property management activities, the Authority interacts regularly with the Board of Health, the Health and Building Services Divisions of the Regulatory Services Department, the Public Works Department, the Town Clerk, the Assessing Division of the Administrative Services Department, the Planning Board, the Town Collector, the Council on Aging, and the Town Manager. The Authority further interacts with each of the Fire and Water Districts of the Town for property management activities.

ARTICLE III

Multiple-Member Appointive Organization

§ 241-8. Offices and standards.

- A. Generally. This describes all standing multiple-member body appointments made by the Barnstable Town Council, and further delineates manner and time of appointment and terms of appointment generally, and authorities, responsibilities and interrelationships with the other sections of the organization. Town of Barnstable representatives to regional governmental boards and committees shall, unless the organic law establishing such a committee provides otherwise, be appointed by the Town Council.
- B. Standing committees and ad hoc committees.
- (1) This article of the Administrative Code lists and describes all current standing committees of the Town. The Barnstable Town Council may establish additional standing committees of the Town, based upon passage, by a majority vote of its members, of an ordinance creating said standing committee. Organic ordinances establishing standing committees shall specify the following: membership, term of office, authorities and responsibilities, and interrelationships with both the Town Council and other agencies within the organization.
- (2) The Barnstable Town Council may from time to time, based upon passage by a majority vote of its membership, establish ad hoc committees to assist the Town Council in carrying out the Council's responsibilities. Ad hoc committees shall be limited to a particular subject area and serve only in that capacity for a specific period of time.
- C. Term of office. The terms of office of multiple-member boards are arranged so that 1/3 of the terms, as nearly as is possible, shall expire each year. A vacancy shall be filled by the Town Council for the remainder of the term, except when vacancies occur involving a majority of the members of a multiple-member board which conducts adjudicatory hearings, then the Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term. Length of office is three years, except as noted. Appointments are effective the first of July, and expire the 30th of June. Numbers of members for boards will vary. The Town Council shall annually evaluate all members subject to reappointment. Members may be removed for cause, subject to an investigation and hearing by the Town Council, pursuant to the Charter, Section 2-10. **[Amended 9-4-2008 by Order No. 2009-016]**

- D. Annual reports. All multiple-member boards of the Town of Barnstable shall prepare annual reports of their activities and submit same to the Town Manager for inclusion in the Annual Report of the Town, on or before the fourth Friday in January. The annual

report shall describe calendar-year activities for the year ending each December 31. Where required by state and/or federal regulations, certain boards shall be required to submit copies of their annual reports to appropriate state and/or federal agencies.

- E. Multiple-member board internal organization. Each multiple-member board shall, at a minimum, annually elect from its membership a chair, vice chair and clerk. Boards may further elect a treasurer, and such other officer or officers as are deemed necessary or as is required by statute. The annual election shall occur in July of each year, or as near after appointment of new members by the Town Council. The Town Council shall be notified of the officers of the board upon their election. The chair shall preside over all meetings of the board, and shall be the official representative of the board in all proceedings before the Town Council and other officials of the Town. The vice chair shall perform the chair's functions, in the absence of the chair. The clerk shall be responsible for the certification of the board's meeting minutes, observance of the public records law, and maintenance of other records of the board.
- F. Time and place of meetings. The clerk of each board shall be responsible for notifying the Town Clerk and the Town Council on or before the first of January of the regularly scheduled board meeting times and dates for the ensuing calendar year. The notification shall also include a location for each regular meeting. This shall not prevent boards from calling special meetings in addition to those regularly scheduled, provided that, in all instances, standards of the Open Meeting Law are followed. The Town Clerk shall ensure posting of all meeting schedules, consistent with the Open Meeting Law.² No multiple-member board shall schedule a regular meeting which conflicts with a regularly scheduled meeting of the Town Council.
- G. Authority to establish subcommittees. Each multiple-member board may, by a majority vote of its membership, establish subcommittees of the board for the purpose of addressing a particular issue or issues. A report of their activities shall regularly be made to the full board. Each subcommittee so established shall observe laws relevant to the keeping of public records, the Open Meeting Law, and any other laws as prescribed by the Barnstable Town Charter, by ordinance or by law.
- H. Multiple-member board meetings with Town Council. Annually at reorganization, the President and Vice President shall designate each Councilor as the Council liaison to one or more of the multiple-member bodies, after taking into consideration the preferences of each Councilor. Each multiple-member body shall have such a liaison relationship with the Council. The chairman of each multiple-member board shall annually, upon election, meet with the member of the Town Council to which the board is assigned a reporting relationship, for the purpose of defining an appropriate reporting relationship during the ensuing fiscal year. The meeting should review the following minimum areas: frequency and method of reporting, official or officials responsible for reporting, transmittal of monthly and quarterly summaries of board actions, and board and Council committee roles in development of legislation and/or policy of interest to the board. **[Amended 2-2-1995 by Order No. 95-072]**
- I. Authority of standing committees.

2. Editor's Note: See MGL C. 39, § 23B.

- (1) Standing committees may be:
 - (a) Advisory: wherein the committee has no legal authority to promulgate rules or regulations, decide individual cases or enact policy;
 - (b) Regulatory: wherein the committee has legal authority to promulgate rules and regulations, decide individual cases and enact policy;
 - (c) Ministerial: wherein the committee has legal authority to take actions which are essentially administrative in nature; or
 - (d) Combinations of advisory, regulatory, and ministerial.
 - (2) Standing committees shall be defined in the manner noted.
- J. Eligibility for service. Any registered voter of the Town of Barnstable, except a permanent full-time municipal employee of the Town, is eligible to be appointed to a standing committee of the Town. Only where expressly authorized by the Barnstable Town Charter, the Town Administrative Code, ordinance or general law shall a permanent full-time municipal employee be appointed by the Town Council for service on a standing committee. This limitation shall not apply to ad hoc committees as further defined in Subsection B of this § 241-8. Membership on a standing committee of the Town shall terminate forthwith upon the members ceasing to be a resident of the Town or otherwise ceasing to be a registered voter, unless explicitly excused from the foregoing residence and voter requirements of the Town. **[Amended 8-15-1996 by Order No. 97-017]**

§ 241-9. Council on Aging.

- A. Term of office. There shall be a Council on Aging consisting of three member classifications: 13 regular members, one alternate member, and two associate members. The alternate member may serve on committees and will have voting rights at meetings if there is an absence of a regular member. Associate members may serve on committees, but have no voting privileges if a regular member is absent. **[Amended 10-14-1999 by Order No. 00-026; 8-16-2007 by Order No. 2008-002]**
- B. Authorities and responsibilities. The purpose of the Council on Aging is to advocate for and to meet the needs of the elderly people residing in the Town of Barnstable. The Council on Aging surveys the elderly population to better determine their needs problems and concerns. It develops criteria for program and supportive services development based upon an assessment of needs and participates in programs offered by the commonwealth's Department of Elder Affairs. The Council on Aging is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Council on Aging interacts with the Town Council in the matter of developing policies and legislation concerning itself with the issues and needs facing the elderly within the Town. The Council on Aging interacts

primarily with the Council Committee on Human Resources, in order to regularly apprise said Committee on current activities and concerns of the Council on Aging.

- (2) Town Manager: The Council on Aging interacts with the Town Manager and the administrative organization primarily through the Senior Services Division of the

Community Services Department, the latter whom provides administrative staff support to the Council on Aging. The Council on Aging provides advisory information to the Senior Services Director concerning program and supportive service delivery as well as financial management issues.

§ 241-10. Airport Commission.

- A. Term of office. There shall be an Airport Commission consisting of seven members, appointed for three-year terms, provided that no more than three members' terms shall expire in any one year. **[Amended 10-4-2001 by Order No. 2002-021]**
- B. Authorities and responsibilities.
- (1) The Airport Commission is responsible for the custody, care and maintenance of the Barnstable Municipal Airport, as well as ensuring a safe and efficient operation under pertinent rules and regulations. The Commission operates under the authorities provided to airport commissions pursuant to MGL C. 90, by the Barnstable Town Charter, ordinance, and by any other state and/or federal rules and regulations governing airports. The Airport Commission is a regulatory and ministerial committee of the Town.
 - (2) The Airport Commission appoints an Airport Manager who is the executive officer of the Commission, and may also appoint an assistant airport manager. The Airport Commission may, consistent with state procurement regulations, let or lease land areas at the airport for up to 20 years, determine charges or rentals for property, facilities, installations, landing fees and services, and determine the terms and conditions for such charges. Subject to the approval of the Town Council, the Airport Commission may let or lease for longer periods.
 - (3) The Airport Commission is authorized to expend any funds granted by the Town, state or federal government for airport purposes and may make contracts for the maintenance, operation, construction, enlargement and improvement of the airport pursuant to the laws of the commonwealth governing the making of such contracts.
 - (4) The Airport Commission shall adopt rules and regulations for the use of the airport or for the safety of the public upon or beyond the limits of the airport under its control. Such rules and regulations must be approved by the Massachusetts Aeronautics Commission and published in the same manner that ordinances are required to be published.
 - (5) If the Airport Commission obtains an offer for a grant of federal funds, it shall designate the Massachusetts Aeronautics Commission as its agent to receive federal monies and receipt therefor in its behalf, and shall enter into an agreement with the Massachusetts Aeronautics Commission prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of the commonwealth.
 - (6) The Airport Commission may invite bids for any contract involving the acquisition, establishment, construction, enlargement, protection, equipment,

maintenance or operation of its airport, and shall submit every such proposed contract to said Massachusetts Aeronautics Commission for approval. After approval has been given, the Airport Commission may award such contracts, subject to availability of appropriation.

- (7) The Airport Commission assumes all other responsibilities and authorities granted pursuant to MGL C. 90, and pertinent state and/or federal regulations. It establishes all policies concerning personnel and fixes compensation rates for personnel through Commission decision or negotiations, with compensation rates subject to appropriation.

C. Interrelationships.

- (1) Town Council: The Airport Commission interacts with the Town Council in the matter of developing policies and legislation concerned with the issues and problems inherent in the operation and maintenance of the Barnstable Municipal Airport. The Airport Commission interacts primarily with the Council Committee on Finance in order to regularly apprise the Committee on current activities and concerns of the Airport Commission.
- (2) Town Manager: The Airport Commission interacts with the Town Manager and the administrative organization primarily through the Airport Manager, the latter whom serves to interact with all other administrative personnel within the Town for the purpose of maintaining and managing the airport's personnel, financial management, informational, and other management systems. Regular interaction shall involve the departments of Administrative Services, Police, the Divisions of Health, Conservation, within the Department of Regulatory Services, and Public Works; as well as the Fire and Water Districts. The Town Manager meets with the Commission as necessary, for review of financial, collective bargaining, informational and other administrative matters.

§ 241-11. Zoning Board of Appeals.

- A. Term of office. There shall be a Zoning Board of Appeals consisting of five members and up to four associate members. **[Amended 8-15-1991 by Order No. 92-05]**
- B. Authorities and responsibilities. The Zoning Board of Appeals hears and decides individual cases brought by persons seeking land use relief; all as provided for in MGL Chapter 40A, §§ 7 through 17, and the Zoning Ordinance of the Town.³ The Zoning Board of Appeals is an advisory and regulatory committee of the Town. The Board acts as a board of appeals on matters of subdivision control under the applicable sections of MGL Chapter 41, §§ 81M, 81Y, 81Z, 81AA, 81BB; and decides on comprehensive permits pursuant to the provisions of MGL Chapter 40B, §§ 20 through 23, provided that with respect to comprehensive permits issued under Chapter 9, Article II, of the Code, said permits shall be determined after hearing by a Hearing Officer appointed in conformity with § 241-47.5E of this chapter, and provided further that the Hearing Officer shall be appointed by the Town Manager from among the regular members of the

3. Editor's Note: See Ch. 240, Zoning.

Zoning Board of Appeals and s/he shall be compensated for serving as Hearing Officer.
[Amended 4-5-2001]

C. Interrelationships

- (1) Town Council: The Zoning Board of Appeals interacts with the Town Council in the matter of developing policies and legislation concerned with the issues and problems of comprehensive zoning within the Town. The Zoning Board of Appeals interacts primarily with the Council Committee on Planning and Development in order to regularly apprise the Council on current activities and concerns of the Zoning Board.
- (2) Town Manager: The Zoning Board of Appeals interacts with the Town Manager and the administrative organization primarily through the Planning Department, the latter which serves to interact with all other administrative agencies within the Town for the purpose of providing professional assistance to the Board in the areas of land use planning, site plan review, zoning, engineering and the law.
- (3) Other boards: As occasioned, the Zoning Board of Appeals interacts with either the Planning Board, Conservation Commission, Old Kings Historic District Committee, the Board of Health, the Historical Commission, the Economic Development Commission, the Licensing Authority, and the Public Works Commission, in order to effectuate accomplishment of the Board's responsibilities.

§ 241-12. Cultural Council. [Amended 9-23-1993 by Order No. 93-130]

- A. Term of office. There shall be a Cultural Council, to consist of 11 members. Members shall have demonstrated scholarship or creativity in, or distinguished service to, the arts, humanities, or interpretive sciences. **[Amended 5-1-1997 by Order No. 97-125]**
- B. Authorities and responsibilities. The Cultural Council decides the distribution of arts lottery funds or other funds that may be available to it and may also conduct other activities to promote and encourage the arts, humanities, or interpretive sciences. The Cultural Council operates pursuant to the provisions of MGL C. 10, § 58, as amended. The Cultural Council is an advisory and ministerial committee of the Town.
- C. Interrelationships.
 - (1) Town Council: The Cultural Council interacts with the Town Council for the purpose of discussing policies and legislation designed to promote and encourage the arts with the Town. The Cultural Council interacts primarily with Council Committee on Human Resources for this purpose.
 - (2) Town Manager: The Cultural Council interacts with the Town Manager for the purpose of receiving administrative support, financial assistance, utilization of property for the purpose of sponsoring art exhibits, displays and related administrative activities. **[Amended 8-19-1993 by Order No. 93-130]**

§ 241-13. Board of Assessors.

- A. Term of office. There shall be a Board of Assessors consisting of three members.
- B. Authorities and responsibilities. The Board of Assessors annually make a fair cash valuation of all of the estate, both real and personal, subject to taxation within the Town.

They annually determine the annual tax rate necessary to meet all sums voted by the Town. They hear and decide all questions relating to the abatement of taxes levied by it. They have all of the other powers, duties and responsibilities which are given to Boards of Assessors by general laws. The Board of Assessors is an advisory and regulatory committee of the Town.

C. Interrelationships.

- (1) Town Council: The Board of Assessors interacts with the Town Council for the purpose of annually providing the Council with the necessary classification rate information for the holding of classification hearings, to include exemption recommendations, as well as to advise the Town Council on legislative and policy matters concerning valuation, classification, abatements, and otherwise. The Board of Assessors interacts primarily with the Council Committee on Finance, in order to advise on the aforementioned issues.
- (2) Town Manager: The Board of Assessors interacts with the Town Manager primarily through the Assessing Division of the Administrative Services Department, the latter which performs the necessary administrative functions necessary to implement the Board's determinations. The Town Manager otherwise provides support as requested or required by law.⁴

§ 241-14. Cable Television Advisory Committee.

- A. Term of office. There shall be a Cable Television Advisory Committee consisting of five members.
- B. Authorities and responsibilities.
 - (1) The Cable Television Advisory Committee advises the Town Manager on matters relating to the licensing and supervision of a contract for cable television services in the Town consistent with MGL Chapter 166A. Consistent with the cable television contract, the Committee may be designated by the Town Manager to exercise certain authorities under the contract.
 - (2) The Committee acts as a sounding board for citizen complaints and suggestions relating to the cable television services and shall, under the direction of the Town Manager, refer subscriber complaints to the cable operator for appropriate resolution. The Committee meets not less than once each quarter for the purpose of reviewing cable contract compliance, and advising on other licensing matters. The Cable Television Advisory Committee is an advisory committee of the Town.
- C. Interrelationships.
 - (1) Town Council: The Cable Television Advisory Committee interacts with the Town Council for the purpose of advising the Town Council on matters relating to issues and legislation concerning cable television matters.

4. Editor's Note: Original Section 7.00, Building Code Board of Appeals Board, which immediately followed this section, was deleted 2-19-1998 by Order No. 98-067.

- (2) Town Manager: The Cable Television Advisory Committee meets regularly with the Town Manager, and otherwise provides advice and recommendations to the Manager in the matter of licensing for the cable contract. The Manager provides staff support to the Committee, when requested, in order to effectuate efficient management of the cable license.⁵

§ 241-15. Conservation Commission.

- A. Term of office. There shall be a Conservation Commission consisting of seven members.
- B. Authorities and responsibilities.
 - (1) The purpose of the Conservation Commission is to protect, promote and enhance the quantity and quality of the natural resources within the Town, especially wetlands, wildlife and water resources; through planning, acquisition, land management, regulation, scientific research and public education. The Commission may conduct researches into its local land areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes. The Conservation Commission is an advisory and regulatory committee of the Town.
 - (2) The Conservation Commission may receive gifts, bequests or devises of personal property or interests in real property in the name of the Town, subject to approval of the Town Manager. The Commission may receive monetary gifts for development of a Conservation Fund, and expend the same, subject to the General Laws and the approval of the Town Manager.
 - (3) The Conservation Commission is responsible for the implementation of the provisions of MGL Chapter 131, § 40, in protecting floodplains, sea coasts and other wetlands within the Town, and Chapter 237, Wetlands Protection, of the Code of the Town of Barnstable.
 - (4) The Conservation Commission is responsible, with the Recreation Commission, for development and adoption of the Town's Open Space and Recreation Plan, subject to Town Council approval. The Commission may adopt policies and promulgate land management plans for properties of the Town reserved for conservation purposes.
- C. Interrelationships.
 - (1) Town Council: The Conservation Commission interacts with the Town Council for the purposes of developing policies and legislation for the Town designed to protect, promote and enhance the quantity and quality of the natural resources within the Town. The Commission interacts primarily through the Council Committee on Planning and Development in furtherance of these objectives.
 - (2) Town Manager: The Conservation Commission interacts with the Manager in all matters relating to the receipt of gifts, bequests or devises of personal property or

5. Editor's Note: Original Section 9.00, which immediately followed this section, was deleted 12-6-1993 by Order No. 94-001.

interests in real property in the name of the Town. Administrative support to the Commission is primarily through the Conservation Division of the Regulatory Services Department which coordinates the activities of other administrative departments in order to ensure effectiveness of the Commission's deliberations.

- (3) Other boards: As occasioned, the Conservation Commission interacts with the Planning Board, Zoning Board of Appeals, Old Kings Historic District Committee, the Board of Health, and the Historical Commission, in order to effectuate accomplishment of the Commission's mission.

§ 241-16. Economic Development Commission. [Amended 4-7-2005 by Order No. 2005-073]

- A. Term of office. There shall be an Economic Development Commission, consisting of nine members whose terms shall be evenly divided so that each year three members are appointed for three-year terms.
- B. Authorities and responsibilities.
 - (1) The BEDC is an advisory committee to the Town. The BEDC, in conjunction with other Town agencies and committees, establishes methods to increase job opportunities with sustainable wages for residents of the Town of Barnstable, to assist existing businesses in their changing needs, and assist businesses that conform to the Town's local comprehensive plan (LCP) to locate in the Town. The BEDC's focus is to create an environment conducive to economic development and redevelopment, to attract substantial investment within the Town of Barnstable. The BEDC brings private sector expertise, public sector support and volunteer business organizations together to develop and carry out specific plans and projects. In addition the BEDC assists with the implementation of the economic development sections of the Town Council's Strategic Plan and Local Comprehensive Plan (LCP).
 - (2) The BEDC is notified of and may review economic development proposals that come before the Town and report its findings to the Town Council, Town Manager, and others on their impact and consistency with the LCP and the Town Council's Strategic Plan. The BEDC may originate economic development initiatives.
- C. Interrelationships.
 - (1) Town Council: The BEDC, with the assistance of Town staff and outside agencies when appropriate, provides advice and technical assistance relative to the development and management of the Town of Barnstable's economic base. The BEDC provides recommendations to the Town Council on the economic development section of the Council's annual Strategic Plan, the Local Comprehensive Plan (LCP) and on such other matters as deemed appropriate by the Town Council.

- (2) Town Manager: The BEDC assists the Town Manager through the Office of Community and Economic Development on economic development issues. Administrative support to the Commission is provided by the Town's Office of Community and Economic Development.
- (3) Other boards and organizations: As necessary, the Economic Development Commission meets and interacts with the following organizations, but is not limited thereto: the Planning Board, the Zoning Board of Appeals, the Historic District Commission, the Cape Cod Chamber of Commerce, the Hyannis Area Chamber of Commerce, the Hyannis Main Street Business Improvement District, and Cape and Islands Community Development, Inc., and the Cape Cod Economic Development Council (CCEDC).

§ 241-17. Housing Committee. [Amended 8-21-1997 by Order No. 97-156]

- A. Term of office. There shall be a Housing Committee, to be composed of public and private representatives, not exceeding nine in number, as follows: banking, real estate, Town officials, housing authority, minority groups, single head of household, private developers, nonprofit civic group, tenants' associations.
- B. Authorities and responsibilities. The Housing Committee facilitates the coordination of the factors that affect equal access to housing and issues relating to the development of affordable housing. The Committee seeks to implement the Town's policy statement and program for fair housing and regularly seeks commitment to the enforcement of antidiscrimination laws and the promotion of equal choice and access to housing for all persons as is outlined in the commonwealth's Fair Housing Guidelines, 301 CMR § 50.19. The Committee also provides advice to the Town Council regarding the Town's policies and programs for meeting its requirements for subsidized housing under MGL Chapter 40B. The Housing Committee is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Housing Committee interacts with the Town Council to provide advice to the Council on the Town's efforts in the promotion of fair treatment and equal opportunities for safe, sanitary and affordable housing for citizens of the Town, regardless of race, color, age, sex, religion, welfare status, marital status, national ancestry, sexual preference, physical or mental disability. The Committee meets annually, or more frequently as is necessary, with the Town Council to apprise the Town Council of issues pertaining to fair housing and affordable housing and to discuss policies to effectuate fair and affordable housing in the Town.⁶
 - (2) Town Manager: The Housing Committee interacts with the Manager to ensure implementation of the Fair Housing Plan. The Housing Committee also advises the Town Manager regarding the resolution of conflicts that may arise among Town agencies, boards and officials relative to proposals for the development of subsidized housing in Barnstable. The Manager provides staff support to the Committee through the Planning Department, and other appropriate staff.
 - (3) Other boards: The Housing Committee meets as necessary with the Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, Historical Commission, Old King's Highway Historic District Committee, and the Housing Authority, to ensure compliance with the fair and affordable housing policies of the Town.

§ 241-18. Comprehensive Financial Advisory Committee. [Amended 12-16-1993 by Order No. 94-001]

- A. Term of office. There shall be a Comprehensive Financial Advisory Committee, consisting of nine members. The terms shall be for three years so arranged so an equal

6. Editor's Note: See Ch. 9, Affordable Housing.

number shall expire each year. **[Amended 10-22-1998 by Order No. 99-023; 11-2-2006 by Order No. 2007-041]**

B. Authorities and responsibilities.

- (1) The Comprehensive Financial Advisory Committee provides financial advice to the Town Council on the yearly operating budget for all Town agencies, which includes the school budget as adopted by the School Committee.
- (2) The Comprehensive Financial Advisory Committee provides financial advice to the Town Council and to the Town Manager on matters of long-range financial planning.
- (3) The Comprehensive Financial Advisory Committee is responsible for advising the Town Manager on the annual preparation of the Town's capital improvement plan. It prepares a report to the Town Council on said annual capital improvement program and participates in public hearings called for review of this program.

C. Interrelationships.

- (1) Town Council: The Comprehensive Financial Advisory Committee interacts with the Town Council.
- (2) Town Manager: The Comprehensive Financial Advisory Committee interacts with the Manager for the purpose of providing advice and exchanging information in matters of operational budgeting, capital budgeting, and long-term financial forecasting.

§ 241-19. Golf Committee. [Amended 4-6-2000 by Order No. 2000-086; 7-17-2003 by Order No. 2004-009; 2-3-2011 by Order No. 2011-049]

A. Composition. There shall be a Golf Committee consisting of at least seven members appointed through nominations by the Appointments Committee.

B. Authorities and responsibilities. The Golf Committee is advisory to the Town Manager relative to the operation of the municipal golf courses. The Committee advises on the establishment of course policies, rules and regulations. The Town Manager retains authority over the personnel and financial matters for the proper operation of the courses, including the setting of the rates; however, the Town Manager seeks the Committee's recommendations on rates. The Committee provides advice to the Town Manager in the preparation of the operating and capital budgets for the municipal courses. The Golf Committee is an advisory committee of the Town.

C. Interrelationships.

- (1) Town Council: The Golf Committee interacts with the Town Council in order to discuss matters of municipal golf course policies, rules, and regulations.
- (2) Town Manager: The Golf Committee interacts with the Manager for the purposes noted herein, seeking to ensure that the Manager remains apprised of the needs of

the municipal golf courses. The Manager provides staff support to the Committee through the Golf Section of Community Services Department, Recreation Division.

- D. Term of office. Terms are three years, staggered dates of expiration so that no more than three expire each year.

§ 241-20. Disability Commission. [Amended 9-23-1993 by Order No. 93-130]

- A. Term of office. There shall be a Disability Commission consisting of not more than 11 members. A majority of the persons appointed shall consist either of persons with disabilities or persons in an immediate family of a person with a disability or persons who have extensive experience in the field of disabilities, and one member shall be an employee of the Town. The Commission may appoint two alternates.
- B. Authorities and responsibilities. The Disability Commission seeks to research local problems of people with disabilities; advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities; coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts Office on Disability; review and make recommendations about policies, procedures, services, activities and facilities of departments and boards of the Town as they affect people with disabilities; provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; and coordinate the activities of other local groups organized for similar purposes. The Commission may draft rules and regulations concerning disabled persons needs and issues, for adoption by the Town Manager and Town Council. The Commission may receive gifts of property, both real and personal, in the name of the Town, subject to approval of the Town Manager, such gifts to be managed and controlled by the Commission. The Disability Commission is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Disability Commission interacts with the Town Council to advise the Council on policies designed to meet the needs of the disabled. The Commission interacts primarily with the Council Committees on Human Resources and Planning and Development.
 - (2) Town Manager: The Disability Commission interacts with the Manager to ensure that Town programs and activities, as well as facilities, seek to improve and enhance service to the disabled, as well as come into compliance with state and federal standards concerning same. The Commission receives administrative support through the Human Resource Department.
 - (3) Other boards: The Disability Commission interacts with the Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, Historical Commission, Old King's Highway Historic District Committee, Public Works Commission, Housing Authority, and to ensure compliance with relevant laws, rules and regulations concerning disabled persons. **[Amended 1-20-2005 by Order No. 2005-038]**

§ 241-21. Board of Health.

- A. Term of office. There shall be a Board of Health consisting of three regular members, one of whom shall be a physician, plus one alternate member. The alternate member shall have voting rights at meetings if there is an absence of a regular member. **[Amended 7-16-2009 by Order No. 2010-002]**
- B. Authorities and responsibilities. The Board of Health seeks to preserve and maintain the Town's public health standards and protect its environmental resources by educational means and by strict enforcement of various regulations, ordinances, State Health Codes, General Laws, in particular MGL Chapter 111, and federal law. The Board carries out duties and responsibilities assigned by either state or local legislation, as these primarily concern public health standards and protection of environmental resources. The Board establishes policies and programs for implementation by the Health Department. The Board of Health is an advisory and regulatory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Board of Health interacts with the Town Council concerning issues related to the public health of the Town. The Board interacts primarily with the Council Committees on Planning and Development and Human Resources to discuss policies and legislation in regard to public health.
 - (2) Town Manager: The Board of Health interacts with the Town Manager for the purpose of ensuring that administrative staff in the Health Division of the Regulatory Services Department carry out the implementation of the Board's rules, regulations, and decisions. The Manager meets periodically with the Board so as to ensure that administrative staff support is effective.
 - (3) Other boards: As necessary, the Board interacts with other boards within the Town on issues of concern to the public health, including the Planning Board, Conservation Commission, Old Kings Historic District Committee, the Barnstable Housing Authority, the Historical Commission, the Economic Development Commission, the Licensing Authority, and the Public Works Commission.
- D. Office space. The Town Manager shall provide a suitable office for the Board of Health in the Town Office Building, and all books, records and documents pertaining to the doings of the Board, properly indexed, shall be kept on file in said office for convenient inspection by the Town officials and the Board's successors in office. **[Added 1-20-2005 by Order No. 2005-038]**

§ 241-22. Historical Commission. [Amended 11-5-1992 by Order No. 93-026]

- A. Term of office. There shall be a Historical Commission consisting of seven regular members and one alternate. The alternate shall have voting rights at meetings only in the absence of a regular member. **[Amended 8-2-2012 by Order No. 2013-002]**
- B. Authorities and responsibilities.
- (1) The purpose of the Historical Commission is to preserve, protect, and develop the historical and archaeological assets of the Town. The Commission may conduct research for places of historic and archaeological value, and shall cooperate with the State Archaeologist in conducting such research. It seeks to coordinate the activities of unofficial bodies organized for similar purposes and may, subject to appropriation and approval by the Town Manager, advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it deems necessary for its work.
 - (2) The Historical Commission, for the purpose of protecting and preserving such places may make such recommendations as it deems necessary to the Town Council, and, subject to the approval of the Town Council, to the Massachusetts Historical Commission, that any such place be certified as an historical or archaeological landmark.
 - (3) The Historical Commission may hold hearings, may recommend to the Town Manager execution of contracts with individuals, organizations and institutions or services furthering the objectives of its program, may recommend to the Town Manager execution of contracts with local or regional associations for cooperative endeavors furthering its program, and may, with the approval of the Town Council, accept gifts, contributions and bequests of funds from individuals, foundations and from federal, state or other governmental bodies for the purpose of furthering its programs. The Commission may recommend to the Town Manager acquisition of property by gift, purchase, grant, bequest, devise, lease or otherwise a fee or lesser interest in real or personal property of significant historical value and, upon approval by the Town Manager, may be directed to manage the same, may make and execute any agreement and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section. **[Amended 8-2-2012 by Order No. 2013-002]**
 - (4) The Historical Commission surveys and compiles a listing of all historical sites and buildings within the Town, public and private; determines the functions and structures of all historical organizations within the Town; and holds correlative seminars with historical organizations. It further determines the requirements for repair, reconstruction, and protection of historical landmarks and assists and cooperates with public commissions in the conduct of public historical events. The Historical Commission is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Historical Commission interacts with the Town Council to advise the Council on policies and legislation concerning the preservation,

protection and development of historical or archaeological assets in the Town. The Commission interacts primarily with the Council Committee on Planning and Development.

- (2) Town Manager: The Historical Commission interacts with the Manager primarily for the purposes outlined in order to effectuate publication of its activities and/or acquisition of interests in historical properties within the Town. Principal agencies are the Growth Management Department, Regulatory Services Department (Conservation and Building Services Divisions), and Public Works. Administrative support is provided to the Commission through the Growth Management Department. **[Amended 8-2-2012 by Order No. 2013-002]**
- (3) Other boards: The Historical Commission shall, with respect to matters or actions affecting the historical or archaeological assets of the Town, coordinate with state boards and agencies, including, but not limited to, the Massachusetts Historical Commission, the State Archaeologist, the Cape Cod Commission, planning committees and interact with respect to such matters or actions with Town boards and agencies existing now or in the future, including, but not limited to the Planning Board, Zoning Board of Appeals, Old Kings Highway Historic District Committee, Public Works Commission, Conservation Commission, Sandy Neck Board, Board of Health, the Barnstable Housing Authority, other district governments, and the Site Plan Review Committee as necessary in order to better coordinate the activities of these boards in instances where properties of either a historical or archaeological value are under consideration by these boards.⁷

§ 241-23. John F. Kennedy Memorial Trust Fund Committee.

- A. Term of office. There shall be a John F. Kennedy Memorial Trust Fund Committee consisting of five members, one of whom shall be the Town Manager, and one of whom shall be the Chairman of the Recreation Commission with the other trustees appointed at large. **[Amended 11-7-1991 by Order No. 92-43; 7-18-2002 by Order No. 2003-003]**
- B. Authorities and responsibilities. The John F. Kennedy Memorial Trust Fund Committee has broad general powers to use the income and principal received by the trust at their discretion in the field of youth activities within the Town. The Committee may make recommendations to the Town Manager regarding the establishment and maintenance of youth activities programs it fosters and the Kennedy Memorial. The Committee may grant scholarships to Barnstable High School graduates. The Committee acts pursuant to the Acts of 1971, Chapter 34. The funds shall be invested in the manner provided by MGL Chapter 44, § 54, and in further accordance with the trust policy of the Town. The John F. Kennedy Memorial Trust Fund Committee is a ministerial committee of the Town.
- C. Interrelationships.

7. Editor's Note: Original Section 18.00, Industrial Development Finance Authority, which immediately followed this section, was deleted 5-21-1998 by Order No. 98-120.

- (1) Town Council: The Committee annually reports its activities to the Council, through the Council Committee on Human Resources.
- (2) Town Manager: The Committee interacts with the Town Manager for the purposes outlined, and receives administrative support from the Manager in accordance with the accomplishment of its duties.

§ 241-24. Town Library Committee.

- A. Term of office. There shall be a Town Library Committee consisting of 14 members, two from each library, to be composed of individuals nominated by the boards of each of the seven libraries of the Town. Terms of office shall be for one year. **[Amended 12-2-1993 by Order No. 94-072-T]**
- B. Authorities and responsibilities. The Town Library Committee has no independent authority within the Town's municipal operations, but serves primarily to be the body which the Town interacts with for the purpose of the Town's financial assistance to the libraries. The Committee represents to the Town, the interests, issues, and concerns of the libraries of the Town. The Town Library Committee is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Committee meets annually with the Council Committee on Human Resources for the accomplishing the purposes described herein.
 - (2) Town Manager: The Committee meets as necessary with the Manager for the purposes outlined, and further, in order to participate in the annual budget process.

§ 241-25. Licensing Authority.

- A. Term of office. There shall be a Licensing Authority consisting of three members and not more than three associate members. They shall not be engaged, directly or indirectly, in the manufacture or sale of alcoholic beverages and shall be voters of the Town. If any member or associate member of said board engages directly or indirectly in such manufacture or sale, his or her office shall immediately become vacant. **[Amended 11-3-2005]**
- B. Authorities and responsibilities. The Licensing Authority may grant licenses relating to alcoholic beverages under Chapter 138 of the General Laws and those licenses under Chapter 140 of the General Laws which are not, by the provisions of said chapter, placed within the jurisdiction of another municipal officer or agency, and shall have all the powers and duties of a licensing authority under said chapters. The Licensing Authority is an advisory and regulatory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Licensing Authority annually reports to the Council the Authority's activities, with recommendations as necessary concerning issues relative to Chapter 138 and Chapter 140 licensing within the Town.
 - (2) Town Manager: The Licensing Authority interacts with the Manager for the purposes of receiving administrative support for its deliberations and responsibilities, to include but not be limited to the departments of Town Manager, Legal, and Consumer Affairs Division and Health Division of the Regulatory Services Department. The Authority shall further discuss with the Manager budgetary issues and other related licensing issues of the Town.

§ 241-26. Old King's Highway Historic District Committee.

- A. Term of office. There shall be an Old King's Highway Historic District Committee consisting of five members. At least one of the members shall be an architect, who need not be a resident of the district. In the event an architect is not available for service, a building contractor with not less than five years' experience in the building trades may be appointed a member, in lieu of the architect. The offices of the Committee, except that of the architect, shall be filled by the election at a meeting of registered voters residing in the district held annually at the call of the Town Council, one to two months prior to expiration, consistent with district regulations concerning elections. The terms of members shall be four years, so arranged that the term of one member expires each year. The office of architect shall be appointed annually by the Town Council. The Town Council may, upon the nomination and approval of the Committee, annually appoint one person residing in the district to serve as an alternate member. Vacancies occurring in the Committee other than by expiration shall be filled by appointment by the Town Council.
- B. Authorities and responsibilities.
- (1) The Old King's Highway Historic District Committee is the Town of Barnstable's delegation to the Old King's Highway Regional Historic District. The local Committee seeks, along with the Regional Commission, to promote the educational, cultural, economic, aesthetic and literary significance through the preservation and protection of buildings, settings and places within the boundaries of the regional district and through the development and maintenance of appropriate settings and the exterior appearance of such buildings and places, so as to preserve and maintain the regional district as a contemporary landmark compatible with the historic, cultural, literary and aesthetic tradition of Barnstable County, as it existed in the early days of Cape Cod. The district within the Town is all land area north of the mid-Cape Highway (Route 6), bounded further by Sandwich on the west, and Yarmouth on the east. The Committee is an advisory and regulatory committee of the Town, pursuant to the Old King's Highway Regional Historic District Act, as established by the Acts of 1973, Chapter 470, as amended.
 - (2) The Committee acts in accordance with the Acts of 1973, Chapter 470, as amended, and the Rules and Regulations of the Regional Commission. The Committee holds hearings. The Committee determines the appropriateness of exterior architectural features of buildings and structures to be erected within the district; passes upon the demolition or removal of any building or structure or any part thereof; determines the appropriateness of the erection or display of occupational, commercial or other signs and billboards within the district wherever a certificate of appropriateness is required.
- C. Interrelationships.
- (1) Town Council: The Old King's Highway Historic District Committee interacts with the Town Council to ensure Town policy and legislation of interest to the district is preserved and enhanced. The primary interaction occurs with the Council Planning and Development Committee.

- (2) Town Manager: The Old King's Highway Historic District Committee interacts with the Town Manager primarily to receive administrative and financial assistance in pursuit of the Committee's activities. The Committee receives such assistance through the Planning Department. The Committee further receives enforcement assistance through the Building Services Division of the Regulatory Services Department, and other Town agencies as appropriate.
- (3) Other boards: The Old King's Highway Historic District Committee interacts with the Zoning Board of Appeals, Planning Board, Conservation Commission, the Board of Health, the Historical Commission, the Economic Development Commission, the Licensing Authority, and the Public Works Commission, in order to effectuate accomplishment of the Board's responsibilities.

§ 241-27. Personnel Board.

- A. Term of office. There shall be a Personnel Board consisting of five members.
- B. Authorities and responsibilities.
 - (1) The Personnel Board formulates personnel policy in the form of a Personnel Code, or sections thereof including amendments, for the purpose of proposing to the Town Manager such changes as will give effect to the provisions of the Personnel Ordinances and votes of the Town Council with respect to personnel management. The Town Manager shall consider and take action on all such proposals, and may adopt such sections and amendments as deemed necessary or advisable for the furtherance of sound personnel practices in the Town government.
 - (2) The Town Manager is authorized to initiate policy in his own right, in which instance he shall inform the Personnel Board prior to adoption, permitting the Personnel Board the right of review and comment. In regard to any personnel policy or change thereof which incorporates any increase in funding, such policy or change may be adopted, contingent upon favorable action of Town Council with respect to the approval of necessary monies to support such change or changes. The Personnel Board is an advisory committee of the Town.
- C. The duties of the Personnel Board also include the following:
 - (1) To advise the Town Manager on problems arising in personnel management and be available to the Manager for discussion of critical personnel policy decisions.
 - (2) To conduct any special study or studies it deems advisable for the improvement of personnel management in the Town government.
 - (3) To render assistance to the Town Manager in that officer's role in collective bargaining, when requested, by providing information and data on matters related to the collective bargaining process.
- D. Interrelationships.

8. Editor's Note: See Ch. 242, Personnel.

- (1) Town Council: The Personnel Board interacts with the Town Council, primarily through the Council Committee on Human Resources to advise the Council on the issues of personnel policy and legislation necessary to effectuate sound personnel management in the Town.
- (2) Town Manager: The Personnel Board interacts with the Manager in the manner prescribed, and meets regularly with the Manager and his staff in furtherance of its objectives. The Board receives administrative assistance from the Human Resources Department.
- (3) Other boards: The Personnel Board shall make itself available to other boards and departments in order to provide advice on personnel matters.

§ 241-28. (Reserved)

§ 241-29. Planning Board.

- A. Term of office. There shall be a Planning Board consisting of seven members.
- B. Authorities and responsibilities. The Planning Board makes recommendations to the Town Council with regard to any changes in the Zoning Ordinance of the Town.⁹ The Board is responsible for the regulation of subdivisions within the Town pursuant to MGL Chapter 41, §§ 81A through 81GG.¹⁰ It renders advice concerning land use planning to the Town Council. The Planning Board is an advisory and regulatory committee of the Town.
- C. Interrelationships.
 - (1) Town Council: The Planning Board interacts with the Town Council, principally through the Council Committee on Planning and Development concerning items related to zoning, subdivisions, land use planning.
 - (2) Town Manager: The Planning Board interacts with the Manager by receiving administrative support, primarily through the Planning Department, Public Works Department and Town Attorney's office.
 - (3) Other boards: The Planning Board interacts with the Zoning Board of Appeals, Conservation Commission, Board of Health, Old King's Highway Historic District Committee, Historical Commission, Disability Commission, Economic Development Commission, and Public Works Commission in furtherance of its responsibilities.

9. Editor's Note: See Ch. 240, Zoning.

10. Editor's Note: See Ch. 801, Subdivision Regulations.

§ 241-30. Public Works Commission.

- A. Term of office. There shall be a Public Works Commission consisting of five regular members and one alternate member. The alternate shall have voting rights at meetings only in the absence of a regular member. **[Amended 10-16-2014 by Order No. 2015-026]**

- B. Authorities and responsibilities. The Public Works Commission is responsible for providing the Town Manager and the Superintendent of Public Works with recommendations concerning the development of rules and regulations for the maintenance and sanitary operation of the solid waste disposal area, water pollution control facilities, public highways, bridges, sidewalks, parking lots, parks, bulkheads, docks, Town landings, beaches playgrounds, recreation and conservation areas, cemeteries, Town forests, and public buildings, excluding schools. The Public Works Commission is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Public Works Commission interacts with the Town Council to advise the Council on those policies and legislative matters concerning public works activities within the Town. The Commission interacts primarily with the Council Committee on Planning and Development for this purpose.
 - (2) Town Manager: The Public Works Commission provides the Manager with recommendations on those areas noted, in order to provide oversight to the Department of Public Works. Administrative support to the Commission shall be primarily through the department staff.
 - (3) Other boards: The Public Works Commission interacts, as necessary, with any body requiring or requesting assistance in matters of public works activities in the Town.

§ 241-31. Recreation Commission.

- A. Term of office. There shall be a Recreation Commission consisting of seven members.
- B. Authorities and responsibilities. The Recreation Commission advises and otherwise assists the Town Manager in the establishment of rules and regulations concerning the use of all playground and athletic fields and the municipal ice rink, including those under the jurisdiction of the School Committee except during the regular school year or at other times when such facilities are reserved for use for Town of Barnstable school activities. The Commission further advises and otherwise assists the Town Manager in establishing rules and regulations for development, servicing, and delivery of recreational activities in the Town. The Recreation Commission is an advisory committee of the Town.
- C. Interrelationships.
- (1) Town Council: The Recreation Commission interacts with the Town Council to advise the Council relative to the establishment of policies and legislation concerning recreational programming within the Town. The Commission interacts primarily with the Council Committee on Human Resources for this purpose.
 - (2) Town Manager: The Recreation Commission interacts with the Town Manager to ensure that rules and regulations concerning playgrounds, the ice rink, athletic fields, beaches and the development and delivery of recreational activities are effective. The Commission receives administrative support from the Community Services Department for this purpose.

- (3) Other boards: The Recreation Commission interacts with the Conservation Commission, Sandy Neck Board, Golf Course Committee, Public Works Commission, Historical Commission, JFK Memorial Trust Fund Committee, and other boards as necessary.

§ 241-32. Board of Registrars of Voters.

- A. Term of office. There shall be a Board of Registrars of Voters consisting of the Town Clerk and three other persons. Members of the Board shall be appointed so that they represent the two leading political parties, and in no case shall an appointment be made as to cause a board to have more than two members, including the Town Clerk, of the same political party. Every such appointment shall be made from a list to be submitted by the Town committee of the political party from the members of which the position is to be filled, containing the names of three enrolled members of such party resident in the Town, selected by a majority vote at a duly called meeting of such committee.
- B. Authorities and responsibilities. The Board of Registrars hold voter registration sessions, certify the signatures on nomination papers and petitions, hold hearings and decide disputes over signatures on nomination papers, prepare an annual list of persons, and all other duties as cited in MGL Chapter 51. The Board of Registrars is a regulatory and ministerial committee of the Town.
- C. Interrelationships.
 - (1) Town Council: Interaction with the Town Council is minimal; the main function of the Board of Registrars concerns itself with elective matters. The Council Committee on Ordinances meets with the Board at its convenience so as to ensure conformity by the Town with statutory matters concerning elective issues.
 - (2) Town Manager: Interaction with the Manager is primarily in the form of providing staff assistance through the employment of poll workers, ballot counters, supervision and facilities for the conduct of electoral matters.

§ 241-33. Sandy Neck Board.

- A. Term of office. There shall be a Sandy Neck Board consisting of seven members. One shall be a member of the Recreation Commission, one shall be a member of the Conservation Commission, with the other five members appointed at large. In the event that an insufficient number of members of such commissions are willing to serve, the Town Council may appoint any resident to the respective conservation or recreation seats, and it shall be the duty of members so appointed to communicate and coordinate the work of the Board with the respective commissions.
- B. Authorities and responsibilities.
 - (1) The Sandy Neck Board provides the Town Manager with advice relative to the management, control and jurisdiction of real and personal property at Sandy Neck, for the purposes of preservation, conservation, education and passive recreation

such as hiking, horseback riding, swimming, hunting, camping and fishing. The Sandy Neck Board is an advisory committee of the Town.

- (2) Consistent with the foregoing purposes, the Sandy Neck Board is authorized to recommend to the Town Manager the adoption of rules and regulations for the public health, safety and convenience with respect to the use by the public of Sandy Neck, such regulations to be adopted only after a public hearing held by the Town Manager in a manner prescribed by ordinance.¹³

C. Interrelationships.

- (1) Town Council: The Sandy Neck Board interacts with the Town Council to ensure that Town policies and legislation serve to protect and preserve the natural resources at Sandy Neck. The Board interacts primarily with the Council Committee on Planning and Development for this purpose.
- (2) Town Manager: The Sandy Neck Board interacts with the Manager for the purposes of ensuring that all management, control and jurisdiction of real and personal property at Sandy Neck, for the purposes of preservation, conservation, education and passive recreation is effectively performed. The Board receives administrative support through the Community Services Department, Sandy Neck Section of the Recreation Division.
- (3) Other boards: The Board interacts with the Conservation Commission, Historical Commission, Recreation Commission, Board of Health, and the Public Works Commission concerning a variety of activities at Sandy Neck.

§ 241-34. Scholarship Committee.

- A. Term of office. There shall be a Scholarship Committee consisting of five members: the Superintendent of Schools or his designee, a member of the Town Council and three members at large. As Trustee, the Town Manager shall serve as an ex officio member.
- B. Authorities and responsibilities.
 - (1) The Scholarship Committee recommends the award of financial aid in the form of scholarships to Barnstable residents to the Town Manager, acting in full accordance with the Acts of 1985, Chapter 267, Sections 1 and 2. The Scholarship Committee utilizes, as much as practicable, the full net income received from the scholarship fund. The Scholarship Committee is an advisory committee of the Town.
 - (2) In selecting the recipients of financial aid from the Barnstable Scholarship Fund, the Scholarship Committee is be guided by the following criteria:
 - (a) The recipients of financial aid must be residents of the Town who have been accepted to pursue education beyond the secondary school level at an institution deemed accredited by said committee.

13. Editor's Note: See Ch. 177, Sandy Neck, and Ch. 601, Sandy Neck Barrier Beach.

- (b) Said committee shall also take into consideration each recipient's financial need, character, scholastic record, and involvement in community work as well as extracurricular activities.
- (c) A recipient may be interviewed if deemed necessary by said Scholarship Committee prior to the award of any financial aid.

C. Interrelationships.

- (1) Town Council: The Scholarship Committee interacts with the Town Council to advise the Council of Scholarship Recipients each year. The Committee interacts primarily with the Council Committee on Human Resources for this purpose.
- (2) Town Manager: The Scholarship Committee interacts with the Town Manager to recommend scholarship fund recipients. The Manager, as Trustee, shall authorize their award based on the Committee's recommendations.¹⁴

§ 241-35. Trust Fund Advisory Committee.

- A. Term of office. There shall be a Trust Fund Advisory Committee consisting of seven members. Two of the members shall have a background in finance and government, two shall have a background in human services, one shall be an attorney with a background in trusts and estates, one shall be a member of a village civic association, and one shall be a member at large.
- B. Authorities and responsibilities. The Trust Fund Advisory Committee is responsible for advising the Town Manager with respect to all issues which arise relating to the management and administration of the trusts of the Town, including investments, disbursements, and compliance with the terms thereof. The Committee may be a resource to be available to persons who wish to make gifts of money or property in trust to the Town, to facilitate such gifts. The Committee is an advisory committee of the Town.
- C. Interrelationships.
 - (1) Town Council: The Trust Fund Advisory Committee interacts with the Town Council for the purpose noted. Interaction is primarily through the Council Committee on Human Resources.
 - (2) Town Manager: The Trust Fund Advisory Committee interacts with the Town Manager for the purpose noted. Interaction is primarily through held between the Committee and Manager to discuss all trust activity of the Town. The Town Manager, as Trustee for most Town trusts, provides direct administrative support to the Committee.

14. Editor's Note: Original Section 30.00, which immediately followed this section, was deleted 8-21-1997 by Order No. 97-156.

§ 241-36. Water Pollution Control Board.

- A. Term of office. There shall be a Water Pollution Control Board consisting of three members.
- B. Authorities and responsibilities. The Water Pollution Control Board is charged with the responsibility of planning all municipal wastewater management systems in the Town and serves as an advisory board to the Public Works Commission for establishment of rules and regulations governing the operation of all Town water pollution control facilities. The Water Pollution Control Board is an advisory committee of the Town.
- C. Interrelationships.
 - (1) Town Council: The Water Pollution Control Board interacts with the Town Council concerning policies and legislation governing operation of water pollution control facilities in the Town. Primary interaction is with the Council Committee on Planning and Development.
 - (2) Town Manager: The Water Pollution Control Board interacts with the Town Manager concerning implementation of those rules and regulations referenced, as well as ensuring that adequate administrative personnel are available to ensure the effective operation of such facilities.

§ 241-37. Waterways Committee.

- A. Term of office. There shall be a Waterways Committee consisting of five members: the Town Manager or his or her designee, the Harbormaster and three resident taxpayers of the Town of Barnstable to be appointed by the Town Council, for three year terms, so arranged that the term of one such resident taxpayer members shall expire each year. ¹⁵
- B. Authorities and responsibilities.
 - (1) The Waterways Committee studies, plans and makes recommendations regarding the development, protection, maintenance and improvements of the foreshores, jetties, breakwaters, channels, wharves, bulkheads, docks, piers, slips, marinas, Town landings, launching ramps and other marine improvements of interest to the Town. The Waterways Committee is an advisory committee of the Town.
 - (2) The Waterways Committee recommends to the Town Manager, the promulgation of rules, regulations, and fees to be charged for the use of Town owned waterfront piers, bulkheads, slips and marinas, for sale of fuel and oil and the furnishing of water or other utilities or service to boats using Town owned waterfront piers, bulkheads, slips and marinas.
 - (3) The powers and duties of the Waterways Committee shall apply only to the facilities under the jurisdiction of the Town Manager.
- C. Interrelationships.

15. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

- (1) Town Council: The Waterways Committee interacts with the Town Council to advise the Council on the establishment of policies and legislation concerning the Town's waterways as noted above. The Committee interacts primarily with the Council Committee on Planning and Development for this purpose.
- (2) Town Manager: The Waterways Committee interacts with the Town Manager for the purpose of providing the Manager with advice and recommendations concerning rules and regulations relative to waterways facilities under the jurisdiction of the Manager. Administrative support shall principally be through the Harbormaster Division of the Regulatory Services Department.
- (3) Other boards: The Waterways Committee interacts with the Conservation Commission, Sandy Neck Board, Board of Health, Recreation Commission and others, in order to seek assurances that the waterways of the Town are properly protected and managed as a natural resource.

§ 241-38. Water Quality Committee.

- A. Term of office. There shall be a Water Quality Committee consisting of seven members.
- B. Authorities and responsibilities. The Water Quality Committee is responsible for providing the Town Manager and Town Council with advice and information necessary to ensure the protection of the quality and quantity of water within the Town. It serves as a source of information to water suppliers, it acts as the Town's liaison on water issues with other Towns, it provides a forum for resolution of multi-jurisdictional concerns and conflicts involving ground-, surface and coastal water quality and assists in preparation of ordinances and regulations concerning water quality within the Town. The Water Quality Committee is an advisory committee of the Town.
- C. Interrelationships.
 - (1) Town Council: The Water Quality Committee interacts with the Town Council to advise the Council on those policies and legislative matters concerning water quality and quantity within the Town. The Committee interacts primarily with the Council Committee on Planning and Development for this purpose.
 - (2) Town Manager: The Water Quality Committee interacts with the Manager primarily by receiving administrative support through the Planning Department, and additional support through the Public Works Department and the Regulatory Services Department, Health and Conservation Divisions.
 - (3) Other boards: The Water Quality Committee interacts with the Zoning Board of Appeals, the Planning Board, the Conservation Commission, the Board of Health, the Old King's Highway Historic District Committee, the Historical Commission, the Economic Development Commission, the Waterways Committee and the Public Works Commission in furtherance of its responsibilities.

§ 241-38.A. Hyannis Water Board. [Added 1-19-2006 by Order No. 2006-05]

- A. There is hereby established a Hyannis Water Board, which shall consist of five members who are ratepayers of Hyannis Water, the water supply operation administered by and through the Water Supply Division of the Department of Public Works, appointed by the Town Manager for three-year overlapping terms. Two members of said Board will be owners of Hyannis business property located in Hyannis Water, served by the Hyannis Water System, and three members of said Board shall be residents of Hyannis in the area served by Hyannis Water. Said Board shall be responsible for the oversight of the Water Supply Division of the Department of Public Works and shall have the authority, subject to the authority and responsibility of the Town Manager and the Town Council under the Charter, to: **[Amended 10-5-2006 by Order No. 2007-032; 11-17-2011 by Order No. 2012-028]**
- (1) Review and approve the operating budget for the Division;
 - (2) Review and approve the capital outlay plan and budget for the Division;
 - (3) Organize itself into subcommittees as needed;
 - (4) Review and approve the rate schedules for the Division;
 - (5) Prepare an inventory and master plan for all assets of the Water Supply Division, including all real and personal property acquired from the Connecticut Water Company in the course of the acquisition which will conclude in the year 2006; and
 - (6) Make any recommendations to enhance the performance and operation of the Division which, in its opinion, are appropriate.
- B. In addition, the Division shall be entitled to, to the extent permissible by law, having the proceeds of any sale or change of use of property acquired in the acquisition of the Barnstable Water Company by the Town of Barnstable dedicated to the capital outlay budget of the Division, debt reduction then to the operation thereof.
- C. The Town Manager shall annually cause a review to be completed with respect to the provisions of this section of the Administrative Code, and report on said review to the Town Council.

§ 241-39. Youth Commission. [Added 7-16-1992 by Order No. 92-141; amended 6-12-1997 by Order No. 97-150; 11-4-2004 by Order No. 2005-030; 4-3-2014 by Order No. 2014-069]

- A. Composition; term of office. There shall be a Youth Commission consisting of 11 members, nine of whom will be between the ages of 13 and 19. These nine members shall serve for a one-year term and may be reappointed as long as they continue to qualify, and they will be the only voting members. Two members shall be adults and will serve for three-year terms, overlapping, as determined by the Appointments Committee. The two adult members will be nonvoting members and serve in an advisory capacity. All members appointed shall provide for a balanced and diverse representation of the

community's interests and concerns. One member of the Youth Commission shall serve as a liaison to the Town Council, reporting either in person or in writing, as they are able.

- B. Authority and responsibilities. The Youth Commission advises and assists the Town Council and Town Manager in the development of policies, programs, and delivery of services for the health and welfare of youth and their families. The Commission shall regularly assess the needs of youth as individuals and community members and work with all public and private schools located within the Town as well as the Community Services Department, Police and other town departments, multiple-member boards and community groups in coordinating or developing mutual efforts to address these needs. The Commission further advises and otherwise assists the Town Manager in utilization of all federal, state, and municipal programs and services available to youth and provides education and referral resources to all members of the community. The Youth Commission is an advisory commission to the Town.
- C. Interrelationships.
- (1) Town Council. The Youth Commission interacts with its Town Council liaison and the Town Council to advise the Council relative to the establishment of policies and legislation concerning issues affecting youth within the Town. The Board interacts primarily with the Recreation Commission and Golf Commission.
 - (2) Town Manager. The Youth Commission interacts with the Town Manager to ensure that the development and delivery of youth and family services are effective. The Commission receives administrative and staff support from the Department of Community Services.
 - (3) Other boards. The Youth Commission interacts with the Recreation Commission, Golf Commission, Conservation Commission, Sandy Neck Board, Public Works Commission, Historical Commission, J.F.K. Memorial Trust Fund Committee, and other boards as necessary.

§ 241-40. Road Committee. [Added 9-23-1993 by Order No. 93-130]

- A. Term of office. There shall be a Road Committee consisting of six persons: the Town Manager, one member of the Public Works Commission, one member from the Historical Commission and one member of the Planning Board, and two voters of the Town. In addition, ad hoc members shall be appointed by each village civic association to act as liaisons with their respective village associations on matters relating to the taking of private roads. **[Amended 3-4-1999 by Order No. 99-075]**
- B. Authorities and responsibilities. The Road Committee shall make recommendations on all roads being considered for layout and acceptance within the Town. The Road Committee shall qualify roads under consideration for layout and acceptance as to their relative importance within the Town's overall hierarchy of roads providing for intratown traffic movements and public safety. The Road Committee is an advisory committee of the Town.

C. Interrelationships.

- (1) Town Council: The Road Committee interacts with the Town Council for the purpose of advising the Town Council on matters related to road layout and acceptance policies within the Town.
- (2) Town Manager: The Road Committee interacts with the Town Manager for the purpose of qualifying roads being considered by the Town Manager for layout and acceptance. It receives administrative support from the Public Works Department, Planning Department and other staff as necessary to accomplish its purposes.
- (3) Other boards: The Road Committee interacts with the Public Works Commission, Planning Board, and other municipal boards as necessary to accomplish its purposes.¹⁴

§ 241-41. Shellfish Committee. [Added 12-1-1994 by Order No. 95-034; amended 3-2-2000]

A. Term of office.

- (1) There shall be a Shellfish Committee consisting of nine members, which shall be geographically diverse and will be appointed by the Town Council and shall consist of:
 - (a) No more than three commercial shellfishermen (one of which shall be a grantholder).
 - (b) No more than three family permit holders.
 - (c) One person professionally trained in the aspects of shellfishing.
 - (d) No fewer than two members at large.
- (2) One member of the Shellfish Committee shall be the liaison to the Town Council.

B. Authorities and responsibilities. The Shellfish Committee shall be responsible for reviewing and making recommendations to the Town Manager and Town Council relative to the control, regulation and/or prohibition of the taking of eels and any or all kinds of shellfish, sea worms, and alewives within the Town. The Committee shall annually review regulations and make recommendations for change not contrary to law, concerning the times, places, methods, purposes, uses, sizes, quantities and any other particulars, including a review of fees associated with the controlling, regulating and propagating of the Town's shellfisheries. The Committee shall also review and make written recommendations to the Town Council relative to the issuance of shellfish aquaculture licenses. The Committee is an advisory committee of the Town.

14. Editor's Note: Original Section 37.00, Government Study Committee, which immediately followed this section and was added 12-2-1993 by Order No. 94-072-T, was deleted 6-24-1999.

C. Interrelationships.

- (1) Town Council: The Committee meets annually, or more frequently as is necessary, with the Town Council to apprise the Town Council of issues pertaining to the shellfisheries of the Town in order to effectuate accomplishment of its mission.
- (2) Town Manager: The committee meets as necessary with the Town Manager, the Shellfish Constable, the Natural Resources Division of the Department of Regulatory Services and/or other administrative staff in order to effectuate accomplishment of its mission.
- (3) Other boards: The committee meets as necessary with any multiple-member body of the Town to effectuate accomplishment of its mission.

§ 241-42. Hyannis Main Street Waterfront Historic District Commission. [Added 10-9-1997 by Order No. 98-022]

A. Term of office. There shall be a Hyannis Main Street Waterfront Historic District Commission consisting of seven unpaid members appointed by the Town Council. The Commission members shall include one member appointed from two nominees of each of the following organizations: the Barnstable Historical Commission, the Massachusetts State Chapter of the American Institute of Architects, and the Cape Cod and Islands Board of Realtors and four members who are residents and/or business operators from the district. In the event that no nominations by one or another of the above-named nominating groups have been received within 30 days from the date of an invitation to nominate, the Town Council may make the appointments to the Commission without such nomination.

B. Authorities and responsibilities.

- (1) The Hyannis Main Street Waterfront Historic District Commission seeks to promote the educational, cultural, economic and general welfare of the Town of Barnstable, and the Town's unique community character through the preservation and protection of the distinctive characteristics of buildings, structures and places significant in history and architecture within the boundaries of the District, and through the preservation, maintenance and improvement of appropriate settings for such buildings, structures, and places, and the encouragement of new design which is compatible with the existing historical and community character, and through the benefits resulting to the economy of said Town by preserving and enhancing the amenities and historical aspects of this district which make Barnstable a desirable place to live and for tourists to visit. The district includes all of the land as shown within the boundaries on the Official Map on file with the Barnstable Town Clerk and recorded at the Barnstable County Registry of Deeds.
- (2) The Commission is an advisory and regulatory commission of the Town, pursuant to Chapter 40C of the General Laws of the Commonwealth of Massachusetts, as amended. The Commission acts in accordance with Chapter 40C and Chapter 112, Historic Properties, Article III, of the Code of the Town of Barnstable. The Commission holds hearings. The Commission determines the appropriateness of

exterior architectural features of buildings and structures to be erected or altered within the district, passes upon the demolition or removal of buildings or structures or any part thereof; determines the appropriateness of erection or display of occupational, commercial or other signs and billboards within the district wherever a certificate of appropriateness is required.

C. Interrelationships.

- (1) Town Council: The Hyannis Main Street Waterfront Historic District Commission interacts with the Town Council to ensure Town policy and legislation of interest to the district is preserved and enhanced.
- (2) Town Manager: The Hyannis Main Street Waterfront Historic District Commission interacts with the Town Manager primarily to receive administration and financial assistance in pursuit of the Commission's activities. The Commission receives such assistance through the Historic Preservation Division of the Planning Department. The Commission further receives enforcement assistance through the Building Services Division of the Regulatory Services Department, and other Town agencies as appropriate.
- (3) Other boards: The Hyannis Main Street Waterfront Historic District Commission interacts with the Zoning Board of Appeals, the Planning Board, the Conservation Commission, the Board of Health, the Historical Commission, the Hyannis Main Street Waterfront Historic District Appeals Committee, the Licensing Authority, the Public Works Commission and the Economic Development Commission, in order to effectuate accomplishment of the Commission's responsibilities.

§ 241-43. Hyannis Main Street Waterfront Historic District Appeals Committee. [Added 10-9-1997 by Order No. 98-022]

- A. Term of office. There shall be a Historic District Appeals Committee consisting of three unpaid members appointed annually by the Town Council. The Committee shall include one member, where possible, from the Hyannis business community, one member, where possible, who is a resident of Hyannis, and one member, where possible, from the field of architecture or a related profession.
- B. Authorities and responsibilities. The Historic District Appeals Committee decides on individual cases brought by persons seeking relief from a decision of the Hyannis Main Street Waterfront Historic District Commission. The decision of the Committee shall be determined by majority vote of the Committee members. If they determine that the Commission action is unsupported by the evidence, or exceeds the authority of the Commission, they may annul the Commission decision, or remand the case for further action by the Commission. The Historic District Appeals Committee is an advisory and regulatory committee of the Town pursuant to Section 5-1 of the Town's Home Rule Charter and Chapter 112, Historic Properties, Article III, of the Code of the Town of Barnstable, as amended.
- C. Interrelationships.

- (1) Town Council: The Hyannis Main Street Waterfront Historic District Appeals Committee interacts with the Town Council in matters of policies and legislation concerned with the issues and problems relating to the preservation, protection and development of aesthetic values within the district.
- (2) Town Manager: The Hyannis Main Street Waterfront Historic District Appeals Committee interacts with the Town Manager and the administrative organization primarily through the Historic Preservation Division of the Planning Department, the latter which serves to interact with all other administrative agencies within the Town for the purposes of providing professional assistance to the Committee.
- (3) Other boards: As needed the Hyannis Main Street Waterfront Historic District Appeals Committee interacts with the Hyannis Main Street Waterfront Historic District Commission, the Historical Commission, the Zoning Board of Appeals, the Planning Board, the Board of Health, the Economic Development Commission, the Licensing Authority and the Public Works Commission in order the effectuate accomplishments of the Committee's responsibilities.

§ 241-44. Community Preservation Committee. [Added 2-18-1999 by Order No. 99-063; amended 7-18-2002 by Order No. 2003-005; 1-20-2005 by Order No. 2005-038; 4-7-2005 by Order No. 2005-071]

- A. Establishment and term of office. There shall be a Community Preservation Committee consisting of nine members who shall be appointed by the Town Council to include the following: one member of the Conservation Commission; one member of the Historical Commission; one member of the Planning Board; one member or the Executive Director of the Housing Authority; and five at-large members. The Town Council may give consideration to any recommendation from the members of the Conservation Commission, Historical Commission, Planning Board and Housing Authority as to the member to be so appointed. Members of the Community Preservation Committee shall serve for terms of three years, so arranged that as equal a number as possible shall expire each year.
- B. Authorities and responsibilities.
 - (1) Acquisition and preservation.
 - (a) The Community Preservation Committee shall make recommendations to the Town Council for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation and preservation of land for recreational use; for the creation, preservation and support of community housing; and for the rehabilitation or restoration of open space, land for recreational use and community housing that is reacquired or created as provided in MGL c.44A. With respect to community housing, the Community Preservation Committee shall recommend , whenever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

- (b) The Community Preservation Committee may include in its recommendation to the Town Council a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.
 - (c) In considering its recommendations, the Community Preservation Committee shall use as a guideline local and regional open space plans, housing plans, master plans and the Local Comprehensive Plan.
- (2) Needs study. The Community Preservation Committee shall study the needs, possibilities and resources of the Town regarding community preservation. The Committee shall consult with existing Town boards, including the Conservation Commission, the Historical Commission, the Planning Board, and the Housing Authority, in conducting such studies. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.
 - (3) Management. Real property interests acquired with community preservation funds shall be owned and managed by the Town unless otherwise specified by vote of the Town Council.
- C. Interrelationships.
- (1) Town Council: The Committee shall meet at least quarterly with the Town Council to apprise the Town Council of issues pertaining to acquisition and preservation pursuant to the Community Preservation Act.
 - (2) Town Manager: The Committee meets as necessary with the Town Manager and all municipal departments and/or other administrative staff in order to effectuate accomplishment of its mission.
 - (3) Other boards: The Committee meets as necessary with the Conservation and Recreation Commission and any multiple-member body of the Town, to effectuate accomplishment of its mission.
- D. The Committee shall serve without compensation.

§ 241-44.1. Agricultural Commission. [Added 7-19-2007 by Order No. 2007-166]

- A. There is hereby established an Agricultural Commission to be an advisory committee to the Town. The Agricultural Commission, in conjunction with other Town agencies and committees as necessary, will establish methods to improve and increase agricultural and farming opportunities within the Town of Barnstable; assist existing and future agricultural businesses with their needs; and work to ensure an environment of healthy, safe products for human consumption.

- B. The Agricultural Commission's focus will be to help create and maintain an agricultural environment conducive to sustainable economic development. In addition, the Agricultural Commission will work toward the preservation and improvement of private and public agricultural land and resources. The Agricultural Commission will bring private and public sector support and volunteers together to develop and carry out specific agricultural plans, where feasible, throughout the Town.
- C. For the purposes of this order, agriculture shall include, but not be limited to, the production of crops, keeping and boarding of horses or livestock, horticulture, fresh water and marine aquaculture, forestry, nurseries, greenhouses, and other related activities.

§ 241-44.2. Problem Properties Appeals Committee. [Added 3-21-2013 by Order No. 2013-069]

- A. Term of office. Notwithstanding anything to the contrary contained in Chapter 37, Article I, and § 241-8 of the Barnstable Code, there shall be a committee known as the "Problem Properties Appeals Committee," consisting of three unpaid members and up to three alternate members to be appointed from time to time by the Town Council President upon the filing of an appeal under § 160-2D of the Barnstable Code. Members and alternates shall be chosen from the Town's standing committees.
- B. Authorities and responsibilities.
 - (1) The Problem Properties Appeals Committee decides on individual cases brought by persons seeking relief from a decision of the Chief of Police to officially identify a property as a chronic problem property under § 160-2B(6) and to assess the property owner penalties under § 160-2C.
 - (2) The Committee will formulate its decision in conformance with Chapter 160, Chronic Problem Properties. The decision of the three-member panel shall be determined by majority vote of the Committee. If the Committee finds that the property is not a chronic problem property, based upon the criteria established under § 160-2B, the designation shall be removed and any penalties assessed shall be rescinded. If the Committee finds that the property is a chronic problem property, it may: uphold the penalty in its entirety; or reduce the penalty based upon a finding that the period of time or cost of the assigned police response was excessive; or abate any portion thereof that has already been paid based upon a finding that the period of time or cost of the assigned police response was excessive.
 - (3) The Town Council may from time to time designate the committee as the Committee to hear appeals for other ordinances involving problem properties.
- C. Interrelationships.
 - (1) Town Council: The Problem Property Appeals Committee interacts with the Town Council in matters relating to the implementation of its functions under the provision of this section.

- (2) Town Manager: The Problem Property Appeals Committee interacts with the Town Manager in matters relating to the implementation of its functions under the provision of this section.

§ 241-44.3. through § 241-44.4. (Reserved)

§ 241-44.5. Land Acquisition and Preservation Committee. [Added 6-2-2005 by Order No. 2005-121]

- A. Term of office. There shall be a Land Acquisition and Preservation Committee consisting of nine members, who shall be appointed by the Town Council. Members shall serve for terms of three years, so arranged that an equal number shall expire each year. Said Committee shall be geographically diverse whenever possible.
- B. Authorities and responsibilities.
 - (1) Acquisition.
 - (a) The Land Acquisition and Preservation Committee shall recommend to the Community Preservation Board parcels of land available for acquisition.
 - (b) The Land Acquisition and Preservation Committee, in conjunction with the Town Manager and the Town Council, will leverage non-CPA funding for purchase of additional land.
 - (c) The Land Acquisition and Preservation Committee shall review conservation restrictions before presentation to the Town Council for approval.
 - (d) The Land Acquisition and Preservation Committee shall be responsible for keeping the Open Space and Recreation Plan and open space section of the Local Comprehensive Plan updated and current.
 - (e) The Land Acquisition and Preservation Committee shall be responsible for implementing the approved Cape Cod Pathways Plan.
 - (f) A member of the Land Acquisition and Preservation Committee shall serve as the Town's representative on the Santuit Preserve Management Committee.
 - (g) The Land Acquisition and Preservation Committee shall assist Town departments in the management of the Land Bank lands acquired under the Land Bank Act in accordance with the Act and its provisions
 - (h) Nothing in this section shall be construed to alter or change the responsibilities of the Community Preservation Committee as prescribed by law.

§ 241-45. Jane Eshbaugh Community Service Award Committee. [Added 4-18-2002 by Order No. 2002-092]

- A. Term of office. There shall be a Jane Eshbaugh Community Service Award Committee consisting of five members who shall serve at large.
- B. Authorities and responsibilities. The Jane Eshbaugh Community Service Award Committee distributes applications for nominations from which a person or organization

is chosen to receive this award. The award is to be given to a person or organization in recognition of service to others in the areas of environmental protection, land conservation, health and human services, innovative community initiatives, beautification, and other appropriate areas of community endeavor. Special emphasis is to be placed on contributions to the community by unsung residents who work quietly, even to the extent of self-sacrifice, without expectation of recognition or reward.

- C. Interrelationships. Town Council: The Jane Eshbaugh Community Service Award Committee interacts with the Town Council to notify the Council of its choice on an annual basis. The Town Council may assist the Committee through notification and/or advertisement of nomination procedures and other related matters.

§ 241-45.1. Human Services Committee. [Added 10-20-2005 by Order No. 2006-017]

- A. Composition and term of office. There shall be a Human Services Committee consisting of at least nine members, representing Barnstable's diverse community. These members should include, but not be limited to, representatives from human services organizations and corporations based in the Town of Barnstable, as well as individuals residing in the Town of Barnstable concerned with human services. The term of office will be three years, staggered, appointed through the Town Council Appointments Committee. **[Amended 9-2-2010 by Order No. 2011-007]**
- B. Authority and responsibilities. The Human Services Committee will be a standing committee serving as an advisory board to the Town Council and Town Manager, presenting and promoting solutions, including implementation plans, and coordinating and consolidating efforts with agencies at the local, regional, and state levels where indicated. The Committee will assess the health and human service needs of our community, including, but not limited to, homelessness, and the mental and physical health of the Town's residents. On a regular basis, but not less than once a year, the Committee will report to the Town Council with an assessment of the Town's human condition.
- C. Interrelationships.
- (1) Town Council. The Human Services Committee interacts with the Town Council to advise the Council relative to the establishment of policies and legislation concerning the human service needs of the Town's residents.
 - (2) Town Manager. The Human Services Committee interacts with the Town Manager to ensure that the development and delivery of health and human services is effective.
 - (3) Other boards. The Human Services Committee interacts with various boards, committees, and commissions, such as the Housing Authority, Council on Aging, Disability Commission, Housing Committee, Recreation Commission, Youth Commission, and other boards as necessary.

§ 241-45.2. Renewable Energy Commission. [Added 1-21-2010 by Order No. 2010-065]

Mission: The mission of the Barnstable Renewable Energy Commission is to promote energy conservation, energy efficiency, the development of renewable energy, and explore other ways to reduce carbon emissions among the Town's residents, businesses, and in municipal affairs. These goals will be accomplished through educational activities and programs designed to encourage stakeholders to evaluate their energy use and to consider renewable energy alternatives.

- A. Establishment and term of office. There shall be a Barnstable Renewable Energy Commission consisting of nine members who shall be appointed by the Town Council. The Commission members may be selected from the following categories: local utility, state and federal officials, construction managers, architects and engineers, electricians and any other residents with an interest or background in renewable energy or energy conservation. Members of the Renewable Energy Commission shall serve for terms of three years, so arranged that as equal a number of terms as possible shall expire each year. All members are required to be registered to vote and to reside in the Town.
- (1) Officers: The Commission shall elect the following officers annually at the first meeting of the group after the scheduled appointments:
 - (a) The Chairperson shall preside at all meetings of the Commission and when he or she is present and shall direct the work of the committee. The Chair may appoint annually chairs of any subcommittees from the membership as approved by the Commission. The Chair shall submit a brief annual report to the Town Council and the Town Manager for publication in the annual report of the Town. The Chair shall ensure continuing liaison between the Commission and the Town Council and all other appropriate Town departments, committees and commissions.
 - (b) The Vice Chairperson shall assume all duties and powers in the absence of the Chairperson.
 - (c) The Clerk shall keep minutes of all meetings and proceedings of the Commission and record any action taken. The Clerk shall post notices of Commission meetings and give notice to members, when necessary.
 - (2) Meetings: The Commission's meetings shall be open to the public, and shall be held at a regular time and place, when possible. The time and place of each meeting shall be posted at Town Hall. All records and minutes of any Commission meeting or action shall be filed with the Town Clerk and be available to the public. Five members shall constitute a quorum. Members shall make every effort to attend all meetings and perform such duties as are assigned. Any member unable to attend a meeting shall notify an officer of the Commission.

- B. Authorities and responsibilities. The Renewable Energy Commission will be a standing committee serving as an advisory board to the Town Council and the Town Manager. The Commission's charge is to:
- (1) Study and recommend viable methods for achieving energy conservation and for utilizing renewable sources of energy within the Town.
 - (2) Provide assistance/education and outreach to residents on how individuals, families and businesses can implement renewable energy and conservation efficiency measures in their homes, businesses and daily lives.
 - (3) Promote energy efficiency programs available through the Cape Light Compact in residential and commercial sectors.
 - (4) Undertake, and update yearly, a Town-wide energy audit and inventory of energy and greenhouse gas emissions for the Town and the setting of goals for energy and emissions reductions.
 - (5) Review Town ordinances to promote energy conservation and renewable energy use.
 - (6) Make recommendations to and cooperate and communicate with Town officials, boards and commissions, as well as public and private groups with similar concerns, and with the appropriate agencies of the state, regional, and federal governments.
 - (7) Draft an Energy and Climate Action Plan.
 - (8) Facilitate the implementation of the goals of the Barnstable Energy and Climate Action Plan to ensure that the savings potential possible through energy efficiency and renewable energy technologies are achieved.
- C. Interrelationships. The Renewable Energy Commission will work in cooperation with other Town boards and committees, as well as with Town employees, in carrying out its mission and responsibilities. The Commission will also seek the cooperation and assistance of relevant governmental agencies, nonprofit organizations, businesses and the general public.
- (1) Town Council: The Commission shall meet at least annually with the Town Council to apprise the Town Council of issues pertaining to energy conservation and renewable energy.
 - (2) Town Manager: The Commission meets, as necessary, with the Town Manager and all municipal departments and/or other administrative staff in order to effectuate accomplishment of its mission.
 - (3) Other boards: The Commission meets, as necessary, with any multiple-member body of the Town to effectuate accomplishment of its mission.
- D. All members shall serve without compensation.

ARTICLE IV
Municipal Organization
[Amended 9-23-1993 by Order No. 93-111; 5-11-2000]

§ 241-46. Offices and standards.

- A. General. The municipal agencies of the Town under the jurisdiction of the Town Manager are described in this Administrative Code Article IV. The description of municipal agencies delineates the mission and functions of each said agency, their authorities and responsibilities and the interrelationships amongst and between the agencies, the multiple-member bodies, and the elective organization.
- B. Administrative and operational branches. The municipal organization of the Town consists of the Executive Branch and five departments grouped into two branches, Administrative and Operational. The Executive encompasses the office of the Town Manager and his duties and responsibilities. The Administrative Branch encompasses two departments, Administrative Services and Regulatory Services. Administrative Services encompasses Legal, Information Technology, Human Resources, Finance, Planning and Community and Economic Development. Regulatory Services encompasses Building Services, Conservation, Consumer Affairs and Health. Within Administrative Services, Finance has an operational liaison with the Town Clerk and Town Collector. The Operational Branch includes Community Services, Police and Public Works Departments. Community Services encompasses Recreation, Senior Services, Marine and Environmental Affairs, and Veteran's Services.
- C. Coordination of administrative and operational activities.
- (1) The Town Manager, managers of principal organizational components (department managers, recreation, senior services and such other managers of organizational components identified by the Town Manager), the Town Clerk and the Town Collector coordinate administrative and operational activities by meeting at least biweekly to discuss departmental activities, seeking coordination of activities to mitigate duplication of services where possible. These managers shall develop action programs, evaluate program completion, review management, financial, personnel, and legal issues. Significant attention shall be made towards coordination of work programs for quarterly periods, so as to ensure minimal work disruption and efficient service delivery.
 - (2) Department managers and division managers shall be accountable to the Town Manager for the achievement of department and division activities. Departmental division managers shall meet at least biweekly with the department manager for the purposes outlined. The department manager shall have the authority to commit departmental staff to work programs, and shall call to order and conduct the departmental division work group meetings.

- (3) The delivery of services to the public and intra-town departments requires coordination and cooperation amongst the various departments, divisions and programs within the Town. At the administrative and operational branch level, managers shall seek to identify those areas of concern where it is believed that the various departments and divisions can assist each other in accomplishment of their mission.

D. Multiple-member board coordination.

- (1) Generally, those departments that provide administrative support to multiple-member boards shall continue to do so. It is an administrative obligation for the departmental liaison to a board to regularly and accurately represent to management the multiple-member board activities, policies and decisions, so as to ensure efficient implementation of said board activities.
- (2) It is further an administrative obligation to assist boards in pursuit of their missions and responsibilities. Administrative personnel shall ensure that boards receive objective, timely, professional and accurate information upon request, in order to better assist boards in their activities.
- (3) The Town Manager shall seek to ensure proper staff support to multiple-member boards. The Town Manager shall discuss with the chair of any board, the level and quality of administrative support provided, upon the board chairman's request. Board chairmen are encouraged to communicate with the Town Manager as necessary in this and other matters.

E. Elective organization coordination.

- (1) The municipal organization provides professional support to elective organization of the Town primarily through the Town Manager, School Superintendent and Housing Authority Director.
- (2) Coordination of report service to the Town Council occurs through the Town Manager. All departments under the jurisdiction of the Town Manager shall ensure that the Town Council receives objective, timely, professional and accurate information upon request, in order to better assist the Town Council in its legislative and policy decisionmaking process.
- (3) In order to ensure that the coordination of report service to the Town Council is effective, the Town Manager shall assume responsibility for the information transmittal. The procedure for transmittal of reports from a department to the Town Council is for information to route through the Town Manager. Requests for reports or other services from the Town Council to a department must be routed through the Town Manager. Information not transmitted by this process shall lessen the accountability of the Town Manager in that regard.
- (4) Coordination of report service requests to the School Committee shall similarly be transmitted through the School Superintendent by any municipal agency. Coordination of service to the Housing Authority shall similarly be transmitted through the Executive Director by any municipal agency.

- (5) Nothing in this section, however, shall be construed so as to deny to members of the Town Council direct access to information that is readily available and provided by departments to citizens in the pursuit of their civic responsibilities or private business, nor shall staff members be discouraged from providing said information through formal or informal discourse.
- F. Monthly reporting. In order to ensure that accurate and timely information concerning the administrative operations of the various Town agencies is transmitted effectively, departments and divisions are required to submit to the Town Manager, monthly reports which detail in summary form, the various activities of their department or division for the preceding monthly period. Reports will focus upon program and service delivery, financial expenditures, achievement of performance standards, personnel actions, and related information.
- G. Annual reports. All administrative agencies of the Town of Barnstable shall prepare annual reports of their activities and submit same to the Town Manager for inclusion in the Annual Report of the Town, on or before the fourth Friday in January. The annual report shall describe calendar-year activities for the year ending each December 31. Where required by state and/or federal regulations, certain agencies shall be required to submit copies of their annual reports to appropriate state and/or federal agencies.

§ 241-47. Organization of administration. [Added 9-8-2005 by Order No. 2005-126¹⁷]

The administration of the Town affairs shall be organized as set forth below.

§ 241-47.1. Town Manager. [Added 9-8-2005 by Order No. 2005-126]

- A. Mission. The administration of all Town fiscal, business and municipal affairs shall be vested in the Executive Branch headed by the Town Manager. The Town Manager is the chief administrative officer of the Town and is responsible to the Town Council for the proper operation of Town affairs for which the Town Manager is given responsibility under the Barnstable Town Charter, the Administrative Code, ordinance, general laws, or vote of Town Council.
- B. Authorities and responsibilities.
- (1) The Town Manager appoints all department heads, officers, and employees, except employees of the School Department, the airport, and persons serving under officers elected directly by the voters of Barnstable. Certain appointments made by the Town Manager are subject to the approval of the Town Council, as set forth in other chapters of the Code of the Town of Barnstable. The Town Manager consults with multiple-member boards as appropriate, and as determined in the Barnstable Town Charter, concerning the appointments of certain department managers.

17. Editor's Note: This order also repealed former §§ 241-47, Town Manager, as amended, 241-48, Administrative Services Department, as amended, 241-49, Regulatory Services Department, 241-50, Community Service Department, as amended, 241-51, Police Department, as amended, and 241-52, Public Works Department, as amended.

- (2) The powers, duties and responsibilities of the Town Manager shall include, but are not intended to be limited to, the following:
- (a) To supervise, direct and be responsible for the efficient administration of all officers appointed by the Town Manager and their respective departments and of all functions for which the Town Manager is given responsibility under the Barnstable Town Charter, by ordinance, or by vote of the Town Council.
 - (b) To administer, either directly or through a person or persons supervised by the Town Manager, in accordance with the Charter, all provisions of general or special laws applicable to the Town, all ordinances, and all regulations established by the Town Council.
 - (c) To coordinate all activities of Town departments or agencies.
 - (d) To attend all regular and special meetings of the Town Council, unless excused, and to answer all questions addressed to the Town Manager which are related to matters under the general supervision of the Town Manager.
 - (e) To keep the Town Council fully informed as to the needs of the Town, and to recommend to the Council for adoption such measures requiring action by them as the Town Manager deems necessary or expedient.
 - (f) To insure that complete and full records of the financial and administrative activity of the Town are maintained and to render reports to the Town Council as may be required.
 - (g) To be responsible for the rental, use, maintenance and repair of all Town facilities, except those under the jurisdiction of the School Committee and the Airport Commission.
 - (h) To be responsible for the purchase of all supplies, materials, and equipment, except books and other educational materials for schools and approve the award of all contracts, except contracts for educational materials.
 - (i) To develop and maintain a full and complete inventory of all Town-owned real and personal property.
 - (j) To administer personnel policies, practices, or rules and regulations, any compensation plan and any related matters for all Town employees and to administer all collective bargaining agreements, except for School Department agreements, entered into by the Town.
 - (k) To fix the compensation of all Town employees and officers appointed by the Town Manager within the limits established by appropriation and any applicable compensation plan.
 - (l) To be responsible for the negotiation of all contracts with Town employees over wages, and other terms and conditions of employment, except employees of the School Department and the Airport Commission. The Town

Manager may employ special counsel to assist in the performance of these duties. Insofar as they require appropriations, contracts shall be subject to the approval of the Town Council.

- (m) To prepare and submit an annual operating budget, capital improvement program and a long-term financial forecast as provided for in the Barnstable Town Charter.
- (n) To keep the Town Council fully informed as to the financial condition of the Town and to make recommendations to the Town Council as the Town Manager determines necessary or expedient.
- (o) To investigate or inquire into the affairs of any Town department, agency or office.
- (p) To delegate, authorize or direct any employee of the Town to exercise any power, duty or responsibility which the office of Town Manager is authorized to exercise, provided that all acts that are performed under such delegation shall be considered to be the acts of the Town Manager.
- (q) To perform such other duties as necessary or as may be assigned by the Charter, by ordinance, or by vote of the Town Council.
- (r) To manage all Town trusts given or bequeathed for the benefit of the Town or the inhabitants thereof, unless the donor in making the gift or bequest shall otherwise provide.
- (s) To prosecute and defend suits, either civil or criminal, in which the Town in its corporate capacity or any Town officer in his official capacity is a party or in which its rights, duties and interest may be the subject of adjudication before any judge, magistrate, court or tribunal, and, with the advice and consent of the Town Attorney, to compromise and settle all claims or suits against the Town if in their opinion such claims cannot be defended advantageously or successfully. In order to accomplish such objectives the Town Manager and Town Attorney will meet with the Town Council at least once a year to get Council input.
- (t) To be responsible for and have the management of all trust funds given or bequeathed for the benefit of the Town or the inhabitants thereof, unless the donor in making the gift or bequest shall otherwise provide. He or she shall, so far as is consistent with the terms of the trusts, manage and control the same, and distribute the income in accordance with the terms of the respective trusts. He shall keep a record of his activities with respect to the same, and at the close of each financial year shall make a report to the Town, showing the total amount of the funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures. In carrying out the duties assigned hereunder, the Town Manager shall consult with the Trust Fund Advisory Committee from time to time as he or she deems necessary or desirable.

- (u) To administer the provisions of MGL c. 44, § 55c, in a manner which is not inconsistent therewith. In so doing, the Town Manager shall be aided, in his discretion, by a Board of Trustees appointed by him in a manner consistent with Paragraph (b) of said § 55C. Furthermore, the powers to be exercised hereunder shall, consistent with Paragraph (c) of said § 55C, include the exercise of powers thereunder for the purpose of sound and prudent economic development as well as the purposes recited in said § 55C.
[Added 6-21-2007 by Order No. 2007-158]
- C. Interrelationships. The Town Manager interacts with the Town Council on all matters noted above and, as the chief administrative officer of the Town, interacts as necessary with all other agencies, boards, and officers of the Town. Descriptions specific to interaction appear in either the elective, multiple-member appointive or administrative organization parts of the Administrative Code.
- D. Department heads.
- (1) The term "department head" as used in this section shall mean the following positions:
 - (a) An Assistant Town Manager.
 - (b) A Town Attorney.
 - (c) A Town Accountant/Director of Finance.
 - (d) A Town Treasurer.
 - (e) A Police Chief.
 - (f) A Director of Human Resources
 - (g) A Director of Information Technology.
 - (h) A Building Commissioner.
 - (i) A Director of Civil Defense.
 - (j) An Inspector of Animals.
 - (k) The Constables.
 - (l) A Dog Officer.
 - (m) The Fence Viewers.
 - (n) A Forest Fire Warden.
 - (o) A Gas Inspector.
 - (p) A Harbormaster.
 - (q) A Director of Public Works.

- (r) A Director of Recreation.
 - (s) A Conservation Agent.
 - (t) A Health Agent.
 - (u) A Chief Ranger for Sandy Neck.
 - (v) A Director of Assessing.
 - (w) A Director of the Council on Aging.
 - (x) A Director of Growth Management.
 - (y) A Director of Regulatory Services.
- (2) Appointments of department heads made by the Town Manager shall become effective upon approval by the Council after submission of such appointments in accordance with rules made by the Council from time to time governing the approval of such appointments. The appointments of all other officers and employees shall be deemed, for the purposes of Section 4-2 of the Charter, to have been approved when made by the Manager, provided that the Manager files notice of the name and residential address of the person appointed, together with the position to which the person is appointed, with the Clerk of the Council within 30 days of the date of the appointment.

§ 241-47.2. (Reserved)

§ 241-47.3. (Reserved)

§ 241-47.4. (Reserved)

§ 241-47.5. Administrative Services Department.

The Administrative Services Department, located with the Administrative Branch, consists of four subordinate departments: Legal, Information Technology, Finance and Human Resources. Through these four subordinate departments, the Department provides a variety of professional services to all components of the Town.

A. Legal.

- (1) Mission. The objective of the Office of the Town Attorney is to provide and/or supervise the provision of all legal services necessary to the proper conduct of the affairs of the Town.
- (2) Authorities and responsibilities. The responsibilities of the Town Attorney are varied, and include the following:

- (a) Title examination for all real estate and other property to be acquired by the Town, approval of deeds and other instruments in writing under which the Town takes title to the same.
- (b) Draft all deeds, leases, conveyances and releases to be executed in behalf of the Town and all contracts, bonds, obligations or other agreements in writing whereby the Town assumes any pecuniary, contractual or other liability, to be executed by any Town official, board, department or committee by virtue of any special or general authorization.

- (c) Draft formal orders, notices, votes, adjudications or decrees for the layout, relocation, alteration or discontinuance of Town ways and for the taking of lands or interests in lands, in behalf of the Town, by purchase or eminent domain, for any municipal purpose.
 - (d) Attend all Town Council meetings and, at the request of the President thereof, advise the Council on questions of law relating to the subject matter of any matter before the Council and as to the form of proposed votes or motions or the legality of any particular action proposed to be taken by the Council.
 - (e) Provide advice or opinion to all elective or appointive Town officers, multiple-member bodies, or departments as to any function of their respective offices or on any specific question of law in relation thereto.
 - (f) Appear and act as Attorney for the Town, or for any Town officer in his official capacity, in any suit, action, complaint or court proceedings in which the Town, or such Town officer in his official capacity, is a party plaintiff or a party defendant, subject to the Town Manager's advice and consent.
 - (g) Appear and act for the Town and its officers, boards and committees before state and county boards and officials, executive departments and committees of the legislature, in all proceedings involving the rights, duties or interests of the Town, subject to the Town Manager's request.
 - (h) Appear for and defend any Town officer against whom in person any suit or proceedings in court has been brought, founded on his official action performed in good faith relative to a matter in which the Town in its corporate capacity has a duty to perform, a right to defend, or an interest to protect, provided that the Town Manager, at the request of such officer, directs the Town Attorney in writing so to do.
 - (i) Give his advice and consent to the Town Manager with respect to the question of whether or not to compromise and settle claims or suits against the Town.
- (3) Interrelationships.
- (a) Town Council. The Town Attorney interacts with the Town Council by attending all Town Council meetings and advise the Council on questions of law relating to the subject matter of any matter before the Council and as to the form of proposed votes or motions or the legality of any particular action proposed to be taken by the Council.
 - (b) Town Manager. The Town Attorney shall interact with the Manager to pursue the responsibilities set forth, and shall serve further to advise the Manager on matters of law and specific functions of the organization.
 - (c) Other departments. Interaction shall be consistent with the responsibilities set forth herein.

B. Information technology.

- (1) **Mission.** The objective of Information Technology is to provide assistance and professional services to all Town departments utilizing systems for which they are responsible. Significant attention is given to coordination, integration, standardization and centralization of the Town's information resources.
- (2) **Authorities and responsibilities.** Information Technology is responsible for several major functional areas: systems development and planning, systems modification and enhancement, operations, central services and management and administration of the hardware and software for the geographic information system, computer hardware acquisition and maintenance support, software acquisition, development and enhancement, management of the Town's Web site, computer supplies management, binding, printing, plotting and scanning services, desktop publishing, developing and conducting in-house computer training, and most significantly, processing of all municipal software programs on the host computer system, and central depository for all electronic information and associated systems which are maintained and/or utilized by the Town.
- (3) **Interrelationships.**
 - (a) **Town Manager.** Regular interaction through the Executive Branch, for the purpose of ensuring adherence to information systems procedures and practices by all municipal departments, development and maintenance of information systems planning, and procurement, and compliance by all departments to the information systems policies and procedures for management of information systems.
 - (b) **Other departments.** Ongoing interaction with all departments to ensure accomplishment of the Department's goals and objectives is commonplace. Special projects, development of software and/or hardware enhancements as needed and as are consistent with management policy on same. Regular and recurring interaction with all users of information systems technology by technical support staff and programming and development staff is commonplace, so as to ensure the effective and efficient integration of information systems within the Town.

C. Finance.

- (1) **Mission.** Finance is responsible for providing financial and internal support to all municipal departments as well as to the School Department, providing the general public with departmental information, providing the Town Council, School Committee, Town Manager and School Superintendent oversight review, and improving accessibility to local government and its services.
- (2) **Town Accountant and Treasurer appointment.** The Town Manager appoints a Town Accountant, who shall also serve as the Finance Director. The Town Manager also appoints a Town Treasurer. The Town Accountant operates pursuant to MGL c. 41, § 55, for the purpose of maintaining financial records, supervising and controlling all expenditures of Town funds, supervising a consolidated

financial administrative function in accordance with MGL c. 71 § 37M, and all related work as required by law. The Town Treasurer is responsible for receipt of, and disbursement of, all monies of the Town. The Town Treasurer has all of the other powers and duties which are given to Town Treasurers by MGL c. 41, §§ 35 through 43A.

- (3) Authorities and responsibilities of Town Accountant.
 - (a) The Town Accountant is responsible for maintenance of all Town and School insurance policies, trust funds, budget preparation, and monthly financial reporting of revenues and expenditures. The Town Accountant examines the books and accounts of all Town officers, School officers and committees entrusted with the receipt, custody or expenditure of money, and all original bills and vouchers on which money has been or may be paid from its treasury. The Town Accountant verifies the cash balance of each of such officers and committees by actual count of the cash and inserts in his annual report his certificate under oath of the facts so found. Additionally, he/she causes audits to be made annually of the accounts of the trustees of any property, the principal or income of which, in whole or in part, was bequeathed or given in trust for public uses for the benefit of the Town, or for the benefit of the inhabitants of the Town, and examines and estimates the funds, securities and evidences of property held by such trustees.
 - (b) The Town Manager, School Superintendent and other officers authorized to spend money shall approve and transmit to the Town Accountant as often as practicable but not less than once a month all bills, drafts, orders and payrolls chargeable to the respective appropriations of which they have the expenditure. The Town Accountant shall examine all such bills, drafts, orders and payrolls, and, if found correct, draws a warrant upon the treasury for the payment of the same, and the Treasurer pays no money from the treasury except upon such warrant approved by the Town Manager. The Town Accountant may disallow and refuse to approve for payment any claim as fraudulent, unlawful or excessive, and in such case shall file with the Town Treasurer a written statement of the reasons for such refusal.
 - (c) The Town Accountant maintains a complete set of books and the accounts are kept, so far as practicable, in conformity with the classifications and forms prescribed law.
 - (d) The Town Accountant participates actively in the development and review of all municipal budgets.
- (4) Authorities and responsibilities of Town Treasurer.
 - (a) The Town Treasurer receives and takes charge of all money and securities belonging to the Town. In accordance with the orders of the Town or its authorized officers, the Treasury pays out and accounts for all disbursements in behalf of the Town. The Treasurer is responsible for annually rendering a true account of all receipts and disbursements.

- (b) The Town Treasurer establishes and maintains an efficient cash management system, which includes monthly, quarterly projections of cash flow and disbursements. The Treasurer maintains professional investment policies and practices, and, with the approval of the Town Manager, is authorized to borrow monies for those projects authorized for funding by the Town Council. He/she is responsible for maintenance and operation of the Town's payroll system as well as the benefits management system, both coordinated with the Human Resources Department. The Town Treasurer pursues, with the assistance of the Town Collector and Town Attorney, all tax title processing.
- (5) Organizational components.
- (a) Accounting function. This component includes oversight for all financial transactions of the Town including School and Enterprise Fund operations. This component maintains a comprehensive general ledger chart of accounts tracking all financial activity of the Town and provides expertise in the areas of accounts payable; sound accounting principles and techniques for all departments; and various internal and external financial reporting including the annual independent financial audit process and preparation of the Town's Comprehensive Annual Financial Report. The function interacts with all departments and many outside organizations. It provides departments with monthly budget reports, encumbrance status reports and processes all invoices for the Town. It conducts routine financial reconciliations with other Town functions, such as the Treasury, School Department and Town Collector. This function is responsible for providing all documentation for the annual audit process, assisting in the preparation of setting the tax rate, providing information for certification of free cash and surplus funds, preparing various state and federal financial reports, training on the Town financial management system for all departments and other financial information as the need arises.
 - (b) Budget function. This component includes assistance in the annual development of the capital and operating budgets for the Town and School. This function monitors the budget and produces annual financial reports there upon. This function also prepares an annual cost of service analysis, a ten-year forecast in accordance with the Town's Charter, performs cost/benefit analysis, conducts training on the Town's financial management system for all departments and other special projects as the need arises.
 - (c) Treasury function. The functions of the Treasury include investment policies, cash management, debt management and collection of real estate liens. All activities are conducted with the objective of safeguarding principal, maintaining liquidity to meet the Town's operating needs while optimizing the yield to the fullest extent possible and minimizing risk. This component is also responsible for producing the Town and School payroll, wage reporting for Town and School, paying over authorized deductions to appropriate vendors and making timely payroll tax deposits. The Treasury

also oversees the issuance and disbursement of all vendor checks and the issuance and servicing of the Town's bonds.

- (d) Procurement function. The procurement function offers expertise in the procurement of goods and services to the departments and divisions of the Town to allow for the efficient expenditure of Town funds in accordance with MGL c. 30B, c. 30 § 39M, and c. 149. The Chief Procurement Officer (CPO) provides direction in the process of acquiring goods and services, suggestions for alternative products, using state contracts to avoid the duplicative bid process, assistance with surplus property disposal and assistance in managing the interaction of vendors with the Town. The procurement program also manages the Town insurance policies and provides assistance with the Town's risk management activities in conjunction with other Town divisions.
 - (e) Assessing function. Assessing appraises each account or parcel of taxable property within the Town at its market value, so as to ensure an equitable distribution of the total tax burden within the Town. As the organizational component responsible for providing administrative support to the Board of Assessors, Assessing is responsible for appraisal of all property, both real and personal. It is responsible for carrying out its responsibilities under the Massachusetts General Laws, in particular Chapter 40, § 56, as it concerns the percentages of local tax levy for property; Chapter 41, §§ 24, 25, 25A, 26, 27, 28, 29, 30, 30A and 30B, as they concern the relating powers and duties of the Board, the appointment of Assistant Assessors, and the oath of office; Chapter 58 relating to the general provisions of taxation; Chapter 59, relating to the assessment of local taxation; Chapter 60A, relating to excise tax on registered motor vehicles; Chapter 60B, relating to excise tax on boats, ships and vessels; Chapter 61, relating to classification and taxation of forest land and forest products; Chapter 61A, relating to assessment and taxation of agricultural and horticultural land; Chapter 61B, relating to classification and taxation of recreational land; and Chapter 80, relating to the assessment of betterments.
 - (f) Town Clerk. The Town Clerk is an elective officer of the Town. The mission, authorities and responsibilities, and interrelationships are described in § 241-5. The Town Clerk is an integral component within the Town's Administrative Services Department.
 - (g) Town Collector. The Town Collector is an elective officer of the Town. The mission, authorities and responsibilities, and interrelationships are described in § 241-6. The Town Collector is an integral component within the Town's Administrative Services Department.
- (6) Interrelationships.
- (a) Town Manager. The Town Accountant is responsible for management of the Town's financial resources. As such, all matters of a financial nature within the Town shall receive Town Accountant and Town Manager approval. The

Town Accountant advises the Town Manager on all matters financial, so as to ensure the proper and efficient financial management of the Town. The Treasurer interacts with the Town Manager for the purposes herein stated, and further to ensure that the monies of the Town are properly managed through sound investment and disbursement practices. The Treasurer shall actively work with the Town Accountant and Town Manager in the development and review of the process for all municipal budgets, capital planning and long-term forecasting.

- (b) Other departments. All organizational components, officers, boards or committees authorized to collect revenues, or expend same, interact with Finance for the purposes stated herein. As indicated, interrelationships shall occur throughout the Town, where matters of payroll, benefits management or other treasury or budgetary planning activities take place. As an integral part of the Administrative Services Department, financial planning matters within the Division are primary.
- (c) Multiple-member boards. Finance Division interacts with the Board of Assessors, School Committee and the Comprehensive Financial Advisory Committee and other Boards and Commissions as requested.

D. Human Resources.

- (1) Mission. Human Resources is committed to providing information and services that effectively and economically support the execution and integration of personnel management decisions, to seeking to combining policies and services to enhance the employment relationship and provide for optimum organizational effectiveness, and to the maintenance of operating standards for the Town and School consistent with recognized human resources management and executive policy.
- (2) Authorities and responsibilities. Human Resources performs the following duties and responsibilities:
 - (a) Assure fair treatment of applicants and employees in all aspects of human resources administratively.
 - (b) Assist, advise and train management personnel in matters of job selection and termination, classification, disciplinary action and management training.
 - (c) Assist the Town Manager in the collective bargaining process.
 - (d) Maintain an automated human resources management system.
 - (e) Implement and maintain affirmative action employment program for Town, reporting results regularly to the state.
 - (f) Manage the worker's compensation and unemployment insurance programs.
 - (g) Maintain the job classification system, establishing position descriptions, rates of pay, hours of work.

- (h) Manage the Town's job selection and recruitment process, approving postings, interviewing candidates, recommending candidate selection to the department or division manager and Town Manager.
 - (i) Manage employee benefits assistance programs.
- (3) Interrelationships.
- (a) Town Manager. Human Resources is the primary entity responsible for management of the Town's human resources. As such, all human resources policies, directives, rules and regulations promulgated by the Town Manager shall be implemented and enforced by Human Resources for all municipal components.
 - (b) Other departments. In any matter concerning management of the Town's human resources, Human Resources will be required to interact with municipal and school departments for the purpose of observing and enforcing the Town's human resources management system.
 - (c) Multiple-member boards. Human Resources interacts with the Personnel Advisory Board, the School Committee and the Barnstable Disability Commission.

E. Hearing Officer. **[Added 10-20-2005 by Order No. 2006-028]**

- (1) Mission. The mission of the Hearing Officer is to provide judicious, expert, fair, impartial and prompt determinations consistent with applicable provisions of statutory, case and regulatory law upon questions and causes specifically placed under the Hearing Officer's jurisdiction, specifically comprehensive permits applied for under Chapter 9, Article II, of the Code.
- (2) Authorities and responsibilities. The Hearing Officer hears evidence and issues written decisions with respect to the grant or denial of comprehensive permits under Chapter 9, Article II, of the Code. The Hearing Officer shall transmit his/her written decision to the Zoning Board of Appeals. The decision of the Hearing Officer shall become effective within 14 days of its transmittal to the Board of Appeals unless reversed by the Board of Appeals; any such reversal to be made only on the basis that the Hearing Officer's decision is erroneous as a matter of law.
- (3) Interrelationships.
 - (a) Town Manager. The Hearing Officer interacts directly with the Town Manager's office on administrative, budgetary and broad, general policy issues. The Hearing Officer shall be independent of the Town Manager with respect to decisions in specific cases.
 - (b) Other departments. The Hearing Officer shall be guided by precedents established by the Zoning Board of Appeals in deciding similar cases. The Hearing Officer shall make recommendations through the Town Manager to

the Town Council with respect to legislation beneficial to the administration of matters with the Hearing Officer's jurisdiction.

- (c) Other interactions. The Hearing Officer interacts with appropriate community agencies, groups and private enterprise as well as state agencies to seek effective achievement of goals and objectives.

§ 241-47.6. (Reserved)

§ 241-47.7. (Reserved)

§ 241-47.8. (Reserved)

§ 241-47.9. (Reserved)

§ 241-47.10. Community Services Department. [Added 9-8-2005 by Order No. 2005-126; amended 6-21-2012 by Order No. 2012-140]

The Community Services Department, located within the Operational Branch, provides an array of recreation, social and leisure time services to the citizens of Barnstable that appeal to a wide range of ages and interests as well as those that will preserve, protect and enhance our natural environment. The Department also provides liaison with Veterans' Services.

A. Recreation – Leisure Services, Aquatics and Youth Services Division.

- (1) **Mission.** Recreation provides a variety of opportunities and choices for Barnstable citizens to achieve their human potential while preserving and protecting the integrity of the natural environment that will enhance the quality of life for the individuals, families, and the community at large within the Town.
- (2) **Authorities and responsibilities.** Recreation is responsible for the development and delivery of a variety of educational, social, recreational and counseling services to the residents of Barnstable. The major responsibility is to provide services in a manner that eliminates duplication of services, maximizes existing personnel resources, and utilizes a variety of volunteer programs to diversify the effectiveness of programming. It services the community's entire population, as well as servicing the tourism population on a seasonal basis.
- (3) **Organizational components.**
 - (a) **Recreation Section.** The Recreation Section administers activities of three programs to ensure efficient accomplishment of program objectives with a minimum of duplication. Programs are as follows:
 - [1] Leisure Services provides and coordinates leisure activities through programs such as basketball, softball, open gym, Sunshine, Friday night

social, sailing, karate, dance, tennis, playground program, track and field, baseball, theater, floor hockey, volleyball, gymnastics, community youth centers, after-school soccer, special events and special needs programs.

[2] Aquatics provides and maintains aquatic services at the 16 Town of Barnstable beach sites. Services in the aquatic program include general supervision, operating the gate attendant program, bathhouse attendants, overseeing the police program, water safety, and a swim program.

[3] The Youth Services program is dedicated to creating successful youth and family services programs through the Hyannis Youth and Community Center and other municipal and school buildings. These programs include the Youth Commission and its Youth Advisory Group, and follow the tenets of America's Promise: Prevention, Skills Education, Youth Center, Caring Adults, and Service Learning.

(4) Interrelationships.

(a) Town Manager. Recreation interacts with the Town Manager for the purpose of program approval, budgeting, expenditure, grant assistance, as well as scheduling of facility use and coordination.

(b) Other departments. It interacts with Public Works on a regular basis to prepare, maintain, and improve facilities. Work order requests are utilized. The Leisure Services Director and Public Works Superintendent meet to review facilities management issues. Police Department interaction takes place in scheduling of recreation programs, special details, patrols and coordination of recreational services with public safety concerns. The Leisure Services Director meets periodically with the Chief of Police to review public safety and coordination issues.

(c) Interaction with the Regulatory Department relates to land use for passive and active recreation. School Department interaction concerns utilization of school gyms, fields, coordination of special needs activities with the School Department's Special Needs Division; scheduling activities for the ice rink and athletic fields, and beach areas.

(d) Multiple-member boards. Recreation provides administrative support to the Recreation Commission and the Youth Commission, implementing the policies of said committees through the promulgation of rules and regulations that are subject to approval by the Town Manager.

B. Hyannis Youth and Community Center Division.

(1) Mission. The Hyannis Youth and Community Center is committed to providing a safe, healthy recreational facility to every segment of the community. Providing quality, well-rounded programs of a general and specialized nature that contribute to the maximum use of the community is essential to the overall success of the facility. The Division strives to constantly improve service to the community and

patrons through creative innovation and teamwork built upon a solid foundation of values and beliefs in order to achieve its mission. There are two programs: Ice and Youth Center.

- (2) Authorities and responsibilities. The Hyannis Youth and Community Center is responsible for the development and delivery of a variety of educational, social, recreational and counseling services to the residents of Barnstable. The major responsibility is to provide services in a manner that eliminates duplication of services, maximizes existing personnel resources, and utilizes a variety of volunteer programs to diversify the effectiveness of programming. It services the community's entire population, as well as servicing the tourism population on a seasonal basis.
- (3) Organizational components: The Hyannis Youth and Community Center is comprised of an Ice program and a Youth Center program. The Ice program includes two NHL regulation ice rinks, one of which is the Lt. Joseph P. Kennedy Jr. Memorial Skating Rink and provides a public skating program, hockey activities and figure skating instruction. The Youth Center program includes a Teen Center and basketball/volleyball courts and other dry floor activities.
- (4) Interrelationships.
 - (a) Town Manager. The Hyannis Youth and Community Center interacts with the Town Manager for the purpose of program approval, budgeting, expenditure, grant assistance, as well as scheduling of facility use and coordination.
 - (b) Other departments. It interacts with Public Works on a regular basis to prepare, maintain, and improve facilities. Police Department interaction takes place in scheduling of recreation programs, special details, patrols and coordination of recreational services with public safety concerns. The Hyannis Youth and Community Center General Manager meets periodically with the Chief of Police to review public safety and coordination issues.
 - (c) Interaction with departments as needed.
 - (d) Multiple-member boards. The Hyannis Youth and Community Center provides information to the Recreation Commission, implementing the policies of said committee through the promulgation of rules and regulations that are subject to approval by the Town Manager.

C. Golf Division.

- (1) Mission. Barnstable Golf is dedicated to providing, operating and maintaining affordable, self-supporting public golf facilities, while protecting them for the future, by maintaining and improving the courses, buildings, and equipment. Golf Course Management strives to provide programs that enrich recreational opportunities, while being fiscally responsible to the residents and taxpayers of the Town of Barnstable.

- (2) Authorities and responsibilities. Golf is responsible for the development and delivery of a variety of educational, social, and recreational programs for the residents of Barnstable. The major responsibility is to provide services in a manner that eliminates duplication of services and maximizes existing personnel resources. It services the community's golfing population as it is an enterprise account and the users of the service pay for the service. It also services the tourism population on a seasonal basis.
- (3) Organizational components: The Golf Division is dedicated to operating and maintaining an attractive, affordable, and self-supporting public golf facility. The two facilities are the Olde Barnstable Fairgrounds Municipal Golf Course, which is an eighteen-hole golf course located in Marstons Mills, and the Hyannis Golf Course, which is also an eighteen-hole golf course located in Hyannis. The golf component is self-supporting through an enterprise account. It is responsible for all aspects of operating the golf course. The primary services are as follows:
 - (a) Membership offers residents the opportunity to play year-round golf at a responsible rate. It provides the players with organized events, scheduled activities and a sense of belonging to a top golf facility.
 - (b) Junior golf provides the Barnstable youth with affordable recreation, trains the juniors in the rules, etiquette, and swing technique, provides a home for the high school golf team, plus tournaments, clinics and competitions of various kinds are organized throughout the season.
 - (c) Fee players provide quality service, a high level of conditioning, and a pace of play attracting visitors from all parts of New England to make the Olde Barnstable Fairgrounds and the Hyannis Golf Course their choice of courses. Combined, the courses are open to the public seven days a week, year round.
 - (d) A pro shop consists of a full line of equipment, fashions, and accessories that are always stocked.
 - (e) A driving range offers the serious golfer an area to practice all parts of the game.
 - (f) Maintenance provides continuous improvements of course. The condition of the course is essential to its future. Cooperative efforts with conservation, Audubon and other environmental groups will improve public relations. A beautification program to improve the esthetic value of the facility is ongoing.
 - (g) A tournament schedule provides high quality events for members, local charities, and state and local associations.
 - (h) A restaurant provides food and beverages for customers prior, during, and after golfing. It also offers nongolfers an opportunity to visit the facility and enjoy the scenery.
- (4) Interrelationships.

- (a) Town Manager. Golf interacts with the Town Manager for the purpose of program approval, budgeting, expenditure, as well as scheduling of facility use and coordination.
- (b) Other departments. It interacts with Recreation on a regular basis to prepare, maintain, and improve programs.
- (c) Interaction with the Regulatory Department relates to land use for passive and active recreation.
- (d) Multiple-member boards. Golf provides administrative support to the Golf Committee, implementing the policies of said committee through the promulgation of rules and regulations that are subject to approval by the Town Manager.

D. Marine and Environmental Affairs Division.

- (1) Mission. Marine and Environmental Affairs provides administration of the Town waterways, safety and marina program and the protection, preservation, management and enhancement of the Town's natural and wetland resources, including Sandy Neck.
- (2) Authorities and responsibilities. Marine and Environment Affairs is responsible for enforcement and promulgation of mooring regulations, marina rules and regulations subject to approval of the Town Manager, the federal Clean Water Act (in conjunction with U.S. Coast Guard) ¹⁶ and Town ordinances concerning vessel use in public waters; enforcement of state boating laws; the placement and maintenance of the Town's private aids to navigation; approval of moorings; slip contracts and supervision of four Town marinas which operate as an enterprise account; inspection of Town ways to water; harbor patrols; and collection of fees and charges at various marinas, ramps, and for mooring permits. Public safety activities include the placement and maintenance of aids to navigation, compliance activities, emergency response activities and technical assistance to the Waterways Committee. It is responsible for the administration of programs and the enhancement and protection of resources relative to the Town property at the Sandy Neck Barrier Beach which operates as an enterprise account; programming relative to shellfish protection, propagation, and management pursuant to MGL c.130; implementation of conservation land management plans; herring run management; and provides assistance to federal, state, and other local agencies in projects of mutual concern. It enforces statutes (MGL c. 90B, 130, 131; MGL c. 266, § 113; and MGL c. 270, § 16), ordinances, rules and regulations relative to shellfish, fish and game, marine and recreational vehicles, conservation regulations, illegal disposal and taking of timber, berries, etc. It is responsible for answering complaints or other matters pertaining to animals within the Town; enforcement of all laws relating to the care, custody and control of dogs, pursuant to MGL c.140, § 136S through § 174; MGL c. 266, § 47; and MGL c. 272, § 77 through § 98;

16. Editor's Note: See 33 U.S.C. § 1251 et seq.

Chapter 108, Hazardous Materials, and Chapter 24, Animals, Article I, Regulation of Dogs, of the Code of the Town of Barnstable.

- (3) Organizational components.
 - (a) Marine Affairs Section. Marine Affairs is responsible for administration and management of the Town waterways safety program, including daily supervision of Town docks, moorings, boat ramps and Town waters, and the promotion of public safety for persons and property on the waterways. The mooring program serves to provide adequate space for harbor users and for the safety of moored boats.
 - (b) Environmental Affairs Section. Environmental Affairs is responsible for the protection, preservation, management and enhancement of the Town's natural and wetland resources as well as the promotion of public safety for persons, property and animals.
- (4) Interrelationships.
 - (a) Town Manager. Marine and Environmental Affairs interacts with the Town Manager with respect to approval of rules and regulations relative to moorings and marinas, fees and charges resulting therefrom, and approval of rules and regulations, including, but not limited to, shellfish regulatory matters, fish and game, and all fees and charges resulting therefrom. Interaction further occurs relative to implementation of the Town's property and facilities management plan, approval of programs, budgets, expenditures, and other programs as necessary. Interaction also occurs through the Town Manager's responsibilities pursuant to state law and local ordinance concerning restraining orders, banishment and disposition of dangerous dogs.
 - (b) Other departments. It interacts with Conservation on waterway-related project applications and implementation of conservation land management plans, and land use; Recreation to maintain passive recreational facilities and placement of recreational devices; Public Works for land management maintenance and maintenance of Town landings, vehicle maintenance, and equipment use, erosion control projects, moth infestations, snow fence construction, building maintenance, mapping, GIS; Police for law enforcement issues concerning complaint investigation, abandoned/recovered motor vehicles, land search/rescue operations; Fire Districts for underwater search/recovery; Fire Districts and Health Division for oil spill cleanup and pollution response and investigation; Health Division for animal bites and quarantines; and Town Clerk for census and dog licensing matters; Assessing and Collector concerning mooring permit issuance/boat excise tax.
 - (c) Multiple-member boards. It provides administrative and technical support to the Waterways Committee, to the Shellfish Committee, and to the Sandy Neck Board and interacts with the Conservation Commission, Recreation Commission, and other boards as necessary.

E. Senior Services Division.

- (1) Mission. Senior Services assesses the needs of those citizens age 60 and over living in Town. It designs and creates programs to meet those needs, advocates and educates the community on those issues affecting the elderly, and enlists the support and the funding for the programs from federal, state, Town, and other public and private organizations.
- (2) Authorities and responsibilities. Senior Services provides a wide and diverse array of programs designed to meet the needs of elders that includes, but is not limited to, the following: outreach, medical education and assistance, social day care, social, recreational and educational programming, counseling, information and referral, newsletters, financial, nutrition, and transportation. Services are developed and provided through staff, volunteers and cooperative efforts with community groups and agencies. It also serves as a resource to other departments and community groups concerning issues having an impact on elders, as well as regularly assessing needs and developing financial resources.
- (3) Interrelationships.
 - (a) Town Manager. Senior Services interacts with the Manager primarily for program approval, budget expenditures, secondarily and through the section for all other matters.
 - (b) Other departments. Senior Services interacts with Public Works relative to facilities program preparation, maintenance, and improvement. It interacts with the Health Division for cooperation in providing appropriate health services. Ongoing interaction with all other departments and organizational components to insure accomplishment of its goals and objectives is commonplace.
 - (c) Multiple-member boards. Senior Services provides administrative support to the Council on Aging and receives advisory information regarding program service delivery.
 - (d) Other interactions. Senior Services interacts with appropriate community agencies and groups as well as state agencies to seek effective accomplishment of the departmental programming.

F. Veterans' Services Division.

- (1) Mission. Veterans' Services provides assistance in obtaining benefits from federal, state, and local programs for veterans and their dependents, as well as aiding them financially for ordinary living expenses and medical needs.
- (2) Authorities and responsibilities. Veterans' Services operates within the Town of Barnstable as part of a Veterans' Services District, pursuant to MGL c. 115. It provides aid and assistance to veterans and/or their dependents, secures appropriate benefits for this service group, and provides outreach, counseling, medical and other support services. It is headquartered in Barnstable.
- (3) Interrelationships.

- (a) Town Manager. Veterans' Services interacts with the Town Manager, as the Manager is a member of the District Board. The Manager approves programs, budgets, and coordinates the District employee benefits through its financial offices.
- (b) Other departments. It interacts with the Finance Director and the Town Treasurer to provide the financial needs of the veteran in an acceptable manner under law and in a timely fashion and with Assessing to assist veterans with real estate tax abatements.

§ 241-47.11. (Reserved)

§ 241-47.12. (Reserved)

§ 241-47.13. (Reserved)

§ 241-47.14. (Reserved)

§ 241-47.15. Growth Management Department. [Added 9-8-2005 by Order No. 2005-126]

The mission of the Growth Management Department is to preserve the character of the seven villages and improve the quality of life for Town residents by developing and implementing land use, traffic management, and property management strategies while promoting consistent sustainable economic redevelopment in Hyannis through the interdisciplinary coordination of municipal departments. The Department is comprised of six functions, Regulatory Review, Comprehensive Planning, Community Development, Economic Development, Property Management, and Traffic and Parking Management.

A. Regulatory Review.

- (1) Mission. The Regulatory Review Function provides professional planning advice and services to Town residents, the Town Manager and other Town boards, commissions, committees and departments and assists in the implementation of the Town's ordinances and regulations relating to land use.
- (2) Authorities and responsibilities. The Regulatory Review Function provides staff support, technical assistance and clerical services to the Planning Board, Zoning Board of Appeals, Old King's Highway Historic District Committee, Historical Commission and Hyannis Main Street Waterfront Historic District Commission and Appeals Committee and provides general advice and assistance on day-to-day zoning, planning and historic issues to other Town entities.
- (3) Interrelationships.

- (a) Town Manager. Regulatory Review interacts directly with the Town Manager's office, primarily through the Assistant Town Manager, who provides direction and supervision.
- (b) Other departments. In addition to the interdisciplinary approach and interrelationships which exist between the functions in the Growth Management Department, interrelationships commonly exist with the Public Works, Legal, and Regulatory Services Departments.
- (c) Multiple-member boards. Interaction with the Planning Board, Zoning Board of Appeals, Historical Commission, Old King's Highway Historic District Committee, Hyannis Main Street Waterfront Historic District Commission and Appeals Committee and other boards and commissions as requested.

B. Comprehensive Planning.

- (1) **Mission.** The Comprehensive Planning Function is responsible for identifying, analyzing and planning for the Town's long-term needs as they relate to commercial and economic development, the preservation and enhancement of natural and historic resources and the provision of adequate public facilities and infrastructure, with the goal of recommending strategies, plans and legislation to promote sustainable development.
- (2) **Authorities and responsibilities.** The Comprehensive Planning component performs long-term professional planning for the Town, including the drafting of amendments to the zoning and general ordinances, the coordination of intergovernmental activities relating to planning issues, performing grant administration, and the undertaking of the revisions to the Town's local comprehensive plan. In carrying out these duties it:
 - (a) Provides the Town with relevant data concerning its physical, social, economic and environmental future;
 - (b) Advises and assists all Town departments and agencies in the administration of their respective municipal functions and responsibilities as they relate to Town planning;
 - (c) Initiates and conducts studies of the resources and needs of the Town and its relationship with other towns in Barnstable County and its environs;
 - (d) Prepares plans and recommendations with regard to land use, population patterns and projections, siting of public works projects, economic development, and related matters;
 - (e) In conjunction with the other functions within the Growth Management Department, analyzes proposals for housing, transportation, employment, public utility developments, recreation, parking and traffic circulation and related matters to assist the Town Manager and other Town agencies in the making of any recommendations, or rendering of any approvals, which they may be required to make concerning such matters;
 - (f) Distributes reports or plans in connection with planning and development issues, problems, policies and strategies;
 - (g) Coordinates with the Regional Planning Organization and other planning agencies of neighboring communities and other agencies and groups;
 - (h) Represents the Town to the Regional Planning Organization, recording and transmitting all municipal referrals of developments of Regional Impact, Districts of Critical Planning Concern, the Regional Policy Plan, coordinating the review of potential regional referrals through a management level review team working in conjunction with the managers of the Building, Conservation, Health and Public Works;

- (i) Drafts, maintains, and updates the LCP of the Town, including data and analyses, maps, surveys, and plans affecting the components of the Comprehensive Plan; goals, objectives, policies and strategies that implement the Comprehensive Plan; and coordination of functions and activities consistent with the Comprehensive Plan; and
 - (j) Provides a wide array of data and analysis as part of the planning process. This database is coordinated with other Town departments to ensure that projects, functions and activities are consistent with the goals, polices, and strategies of the LCP.
 - (k) Reviews state MEPA filings.
- (3) Interrelationships.
- (a) Town Manager. Comprehensive Planning interacts directly with the Town Manager's office, primarily through the Assistant Town Manager, who provides direction and supervision.
 - (b) Other departments. In addition to the interdisciplinary approach and interrelationships which exist between the functions in the Growth Management Department, interrelationships commonly exist with Public Works, Legal, and Regulatory Services Departments.
 - (c) Multiple-member boards. Interaction with the Planning Board, Zoning Board of Appeals, Historical Commission, Old King's Highway Historic District Committee, Hyannis Main Street Waterfront Historic District Committee and Appeals Committee, Conservation Commission and Board of Health.
 - (d) Outside agencies. Significant interrelationships exist between the Regional Planning Organization, concerning regional policy planning, developments of regional impact, districts of critical planning concern, and other regional issues. Extensive interaction occurs with respect to the State Office of Environmental Affairs and its subsidiary land use and regulatory agencies, and other agencies as appropriate.

C. Community Development.

- (1) Mission. The objective of the Community Development Function is to provide leadership and expertise working with the community to assess the needs in the areas of low income housing, including the implementation of a comprehensive affordable housing plan for the residents of the Town. In addition, the function aims to enhance and enrich the quality of life for the Town's residents through the coordination and augmentation of activities promoting arts and culture.
- (2) Organizational components.
 - (a) Community Development Block Grant (CDBG). The Town, through the federal Community Development Block Grant Program, receives funds annually from the U.S. Department of Housing and Urban Development and Economic Development. The Town's allocation of these funds is based upon

the Town's Five-Year Consolidated Plan and the annual action plans that are developed under the U.S. Department of Housing and Urban Development regulations.

- (b) Accessory apartment/amnesty activity. This activity is a component of the Town's affordable housing plan. The main objective of the activity is to use existing housing, which may currently violate the Town's zoning laws, to provide safe, legal and affordable housing units utilizing the Chapter 40B Comprehensive Permit process.
 - (c) Housing acquisition activity. This activity assists eligible public, quasi-public and private entities such as the Barnstable Housing Authority, local nonprofit organizations and private individuals to purchase existing housing units in order to maintain them at affordable rents.
 - (d) Development of municipally owned vacant land activity. This activity involves identifying municipally owned parcels of land that may be suitable to develop affordable housing to provide further affordable housing opportunities for Barnstable residents.
 - (e) Development of privately owned land activity. The activity involves working with and providing technical assistance to private developers engaged in obtaining the necessary permits in order to provide affordable housing which meets the goals and objectives of the Town's Affordable Housing Plan.
 - (f) Culture and arts. This activity encourages and supports a wide range of cultural and artistic endeavors through the implementation of innovative and diverse events and programs, the goal of which is to increase access to the arts for the citizens of the Town and to enhance public spaces through the arts.
- (3) Interrelationships.
- (a) Town Manager. Community Development interacts directly with the Town Manager's office, primarily through the Assistant Town Manager, who provides direction and supervision.
 - (b) Other departments. In addition to the interdisciplinary approach and interrelationships which exist between the functions in the Growth Management Department, interrelationships commonly exist with Public Works, Legal, and Regulatory Services Department.
 - (c) Multimember Boards. Interaction with the Housing Committee, Cultural Council, Planning Board, Zoning Board of Appeals and the Hyannis Main Street Waterfront Historic District Commission.
 - (d) Other interactions. Community Development interacts with appropriate community agencies, groups and private enterprise as well as state agencies to seek effective accomplishment of goals and objectives.

D. Economic Development.

- (1) Mission. The Economic Development Function is to provide the leadership and expertise to develop and implement a comprehensive economic development plan based upon the economic development policies outlined in the local Comprehensive Plan.
- (2) Organizational components.
 - (a) Economic Development Incentive Program. The EDIP is a state program that allows municipalities to provide tax incentives to new and existing businesses that make capital investments in their real estate and create jobs in the Town's two Economic Opportunity Areas (EOAs); Downtown Hyannis and the Hyannis Industrial Park.
 - (b) Hyannis revitalization. Various components to assist in the promoting of the revitalization effort includes providing staff support for the implementation of the rezoning of downtown Hyannis, the regulatory agreement ordinance as well as proposing methods for addressing related traffic and parking issues.
 - (c) Commercial revitalization grants. Commercial revitalization grants provide financial and technical assistance to Downtown Hyannis property owners and business tenants to upgrade their commercial properties.
- (3) Interrelationships.
 - (a) Town Manager. Economic Development interacts directly with the Town Manager's office, primarily through the Assistant Town Manager, who provides direction and supervision.
 - (b) Other departments. In addition to the interdisciplinary approach and interrelationships which exist between the functions in the Growth Management Department, interrelationships commonly exist with the Public Works, Legal, and Regulatory Services Departments
 - (c) Multimember boards. Interaction with the Planning Board, Zoning Board of Appeals, Barnstable Economic Development Commission, Historical Commission and the Hyannis Main Street Waterfront Historic District Commission.
 - (d) Other interactions. Economic Development interacts with the Hyannis Main Street Business Improvement District, the Hyannis Area Chamber of Commerce, community agencies, groups and private enterprise as well as state agencies to seek effective accomplishment of goals and objectives.

E. Property Management.

- (1) Mission. The Property Management Function provides management oversight of all Town-owned property that has not been specifically assigned to another Town agency and provides assistance to all Town boards and officials on issues relating to property management.

- (2) Authorities and responsibilities. The Property Management Function provides expertise in the areas of acquisition, management, inventory and disposal of property assets held by the Town. It manages all property whose management is not specifically assigned as a responsibility to another municipal agency. The Property Management Function maintains comprehensive plans of all Town properties, including maps, surveys, land management plans, values, leaseholds, restrictions and easements.
- (3) Interrelationships.
 - (a) Town Manager. Property Management interacts directly with the Town Manager's office, primarily through the Assistant Town Manager, who provides direction and supervision.
 - (b) Other departments. In addition to the interdisciplinary approach and interrelationships which exist between the functions in the Growth Management Department, interrelationships exist with all departments who acquire, manage and dispose of property.
 - (c) Multimember boards. Interaction is anticipated with the Community Preservation Committee, the Housing Committee, the Conservation Commission, the Barnstable Housing Authority and the Airport Commission.

F. Traffic and Parking Management.

- (1) Mission. The Traffic and Parking Management Function is responsible for providing:
 - (a) Review and analysis of plans for roadway improvements to ensure proper traffic flow;
 - (b) On-going analysis of parking needs and making recommendations for resolving parking problems; and
 - (c) Close liaison with the Cape Cod Regional Transportation Authority.
- (2) Interrelationships.
 - (a) Town Manager. Traffic and Parking Management interacts directly with the Town Manager's office, primarily through the Assistant Town Manager, who provides direction and supervision.
 - (b) Other departments. In addition to the interdisciplinary approach and interrelationships which exist between the programs in the Growth Management Department, interrelationships commonly exist with the Public Works, Legal, and Regulatory Services Departments.
 - (c) Multimember boards. Interaction with the Planning Board and the Zoning Board of Appeals.
 - (d) Other interactions. Cape Cod Regional Transportation Authority and the Cape Cod Commission.

§ 241-47.16. (Reserved)

§ 241-47.17. (Reserved)

§ 241-47.18. (Reserved)

§ 241-47.19. (Reserved)

§ 241-47.20. Police Department. [Added 9-8-2005 by Order No. 2005-126]

The Police Department, located in the Operational Branch, provides police services to all people within the Town with respect, fairness and compassion. The Department is under the administrative and operational control of the Chief of Police.

- A. Mission. The Department is committed to crime prevention; protection of life and property; preservation of peace, order and safety; the enforcement of laws and ordinances; and the safeguarding of constitutional guarantees. The Department seeks to enhance the Town's quality of life by investigating problems and incidents, seeking solutions and fostering a sense of security in individuals and the Town. The Department is dedicated to providing a quality work environment and the development of its members through effective training and leadership. The Department also seeks to maximize survival of persons and preservation of property in the Town in the event of a natural or man-made disaster, nuclear or otherwise, by effective preplanning and by making use of all manpower, equipment, available shelter protection and other resources during an actual emergency.
- B. Authorities and responsibilities.
- (1) The Department acts pursuant to the authorities vested to Police Departments under MGL c. 41, §§ 97A and 98, as well as c. 31, as it concerns civil service. The Department is a full-service Department which is responsible for all law enforcement within the jurisdiction of the Town of Barnstable. It conducts public relations with the media and public, and operates the following divisional activities: patrol, detective, records, identification, prosecution, marine, auxiliary police and ancillary services. It establishes procedures for recruitment, selection and training of all personnel to effectively maintain the public peace, safety and order through a variety of functions and activities.
 - (2) The Department functions as the Emergency Preparedness Department, consistent with the Acts of 1950, Chapter 639, § 13, as amended. The Department is responsible for coordinating and preplanning all disaster emergency functions and services within the Town amongst all municipal and nonmunicipal agencies and departments on behalf of the Town Manager. The Department, in fulfilling this role, provides assistance to the Town Manager in a declared disaster emergency, and in further accordance with the Town's Emergency Operations Plan. The Chief of Police serves as the Director in this regard.

C. Interrelationships.

- (1) Town Manager. As the appointing authority and the Chief Administrative Officer of the Town, the Department has extensive interaction with the Town Manager.
- (2) Other departments. Interaction with many municipal departments, schools, and airport, for a variety of reasons. Particular interaction exists with Public Works, Information Technology, Legal, and Schools. Other agency involvement includes most federal, state and regional law enforcement organizations.

§ 241-47.21. (Reserved)**§ 241-47.22. (Reserved)****§ 241-47.23. (Reserved)****§ 241-47.24. (Reserved)****§ 241-47.25. Public Works Department. [Added 9-8-2005 by Order No. 2005-126]**

The Public Works Department, located in the Operational Branch, consists of six divisions, Administration and Technical Support, Highway, Solid Waste, Structures and Grounds, Water Pollution Control and Water Supply. The Department is under the management control of the Director of Public Works.

- A. Mission. The Department's mission is to protect, preserve and improve the Town's infrastructure and related assets in a manner which meets and enhances the current and future social and economic needs of the community, contribute to a healthy, safe and quality environment for the Town's citizens and its visitors, to provide water service to the Hyannis area, and a cost-effective and environmentally sound means of disposing of solid waste and wastewater.
- B. Authorities and responsibilities. The Department operates pursuant to various state, federal and municipal laws: MGL c. 21, §§ 26 through 53, c. 246 and CMR 314 pertaining to sewage treatment and disposal; 310 CMR, Section 19, governing solid waste disposal; c. 85 and 90 governing highway and bridge traffic control, financing and repair; c. 114 concerning management and financing of cemeteries; c. 7, c. 149, § 44, c. 30B which regulate procurements; c. 131, § 40 and 310 CMR, Section 10, governing wetlands protection.
- C. Organizational components.
 - (1) Administration and Technical Support: provides centralized administrative and management support to the five other divisions and other Town departments. Activities include policy, function planning and procedural guidance, operations procedures, procurement, personnel, capital planning, and budgetary management,

establishment of community relations, and continuous liaison with the Town Manager.

- (2) Highway Division: protect, maintain and improve the Town's roadway system, parking facilities and drainage facilities in a manner which promotes maximum life, improves traffic flow and enhances both pedestrian and vehicle safety; and to provide a level of routine and emergency repairs to Town vehicles and equipment; and to seasonally operate the drawbridge in Osterville.
- (3) Solid Waste Division: manages a residential solid and certain hazardous waste collection programs, including maintenance and monitoring of the capped sanitary landfill, a recycling and hazardous waste collection center; promotion of a recycling program; marketing of recyclable materials; coordination with Yarmouth and the SEMASS waste-to-energy plant for transfer and disposal of solid waste; manages a construction and demolition material transfer station for residents; and provides municipal packer collections services for municipal facilities and locations.
- (4) Structures and Grounds Division: protect and maintain the Town's municipal buildings, parks, cemeteries, marinas, recreational and community facilities and resources; manage construction, renovation, and maintenance of facilities with a high priority on energy-efficient and conservation.
- (5) Water Pollution Control Division: manages the wastewater collection and disposal system, including operation and maintenance of a secondary wastewater treatment plant and septage processing facility, wastewater pumping stations, and gravity and force sewage collection mains; operation of an industrial pretreatment program and a laboratory for testing the quality of septage and sewage; maintenance of an accounts receivable and billing system for sewer use.
- (6) Water Supply Division: provides commercial and residential properties in the Hyannis area with a safe, efficient and effective means of obtaining drinking water.

D. Interrelationships. [Amended 1-19-2006 by Order No. 2006-057]

- (1) Town Manager. In respect to the vast majority of activities, significant interaction is necessary.
- (2) Other departments. As the Department services most departments, interaction is recurring, dependent upon the specific activity to be undertaken.
- (3) Multiple-member boards. The Department provides technical and administrative support to the Public Works Commission, the Hyannis Water Board, the Water Pollution Control Board, and the Road Committee.

§ 241-47.26. (Reserved)

§ 241-47.27. (Reserved)

§ 241-47.28. (Reserved)**§ 241-47.29. (Reserved)****§ 241-47.30. Regulatory Services Department. [Added 9-8-2005 by Order No. 2005-126]**

The Regulatory Services Department, located within the Administrative Branch, provides efficient and effective public health and public safety services that are environmentally balanced and meet the needs of the community.

A. Building Services Division.

- (1) **Mission.** Building Services, under the direction of the Building Commissioner, maintains and enforces all laws, rules, regulations and policies concerning building, wiring, plumbing and gas construction and installation within the Town, as well as to enforce the Town's Zoning Ordinance,¹⁸ for the purpose of protecting the public health and safety of residents.
- (2) **Building Commissioner appointment.** The Town Manager shall appoint a Building Commissioner.
- (3) **Authorities and responsibilities.** Building Services makes inspections, issues such permits and enforces such regulations and ordinances as may be required by the Town or under the State Building, Wiring, Plumbing and Gas Codes. Through its personnel, it enforces all the provisions of the Zoning Ordinance, and further enforces all the provisions of the Old King's Highway Historic District rules. It operates pursuant to MGL c. 143, 142, 302, Acts of 1973, Chapter 470, CMR 248, 521, and 780; and NFPA 54 and 58; the Town Zoning Ordinance and Town General Ordinances.
- (4) **Interrelationships.**
 - (a) **Town Manager.** Interaction with respect to program approval, budgets, expenditures, as well as enforcement activities of relevant laws.
 - (b) **Other departments.** Extensive interaction with other divisions and departments. On a recurring basis, the Building Services interacts with most municipal organizational components in pursuit of its objectives. Assistance is further provided to the Disability Commission and the Zoning Board of Appeals.

B. Conservation Division.

- (1) **Mission.** Conservation seeks to protect wetland and watershed resources and to set management direction for municipal properties held for conservation purposes.
- (2) **Authorities and responsibilities.**

18. Editor's Note: See Ch. 240, Zoning.

- (a) Conservation serves the Conservation Commission through the implementation of three primary objectives: regulatory, land management and land acquisition.
 - (b) In respect to regulatory matters, it administers and implements the State Wetland Protection Act (MGL c. 131, § 40) and the Town Wetland Protection Ordinance (Chapter 237 of the Code), which includes review of permit applications and issuance of permits subsequent to Conservation Commission decisions, recordkeeping, public assistance and enforcement.
 - (c) In respect to land management, the Conservation Commission develops land management plans for conservation lands within the Town consistent with the Comprehensive Land Management Plan and based upon those policies established by the Commission.
 - (d) In respect to land acquisition, Conservation evaluates land proposed for donation for conservation purposes, evaluates potential fee simple acquisitions consistent with the Open Space Plan, evaluates tax title and owners unknown parcels, and implements Town policy dealing with conservation restrictions.
 - (e) Conservation seeks to implement other objectives of the Open Space Plan. The division implements a public environmental education agenda, particularly for elementary schools.
- (3) Interrelationships.
- (a) Town Manager. Conservation interacts for the purpose of conservation facilities management, budgeting, program approval, expenditures, and staff support for Conservation-Commission-related issues coming before the Town Council.
 - (b) Other departments. Extensive interaction with other municipal components: interaction with Marine and Environmental Affairs in permit review and enforcement matters; interaction with Marine and Environmental Affairs and Public Works, for the purpose of implementation of land management plans for conservation properties; Assessing, Collector, and Treasurer with respect to tax title properties; Legal with respect to Commission representation on adjudicatory matters and land acquisition; and Recreation and Planning for preparation and implementation of the Five-Year Open Space Plan, for approval by the Conservation and Recreation Commissions and Town Council.
 - (c) Multiple-member boards. Interaction with Conservation Commission for provision of administrative, clerical, and technical support.
- C. Consumer Affairs Division.
- (1) Mission. Consumer Affairs seeks to protect the public interest through enforcement of laws relating to weights and measures, parking citations and meters, licensing and regulation of certain establishments and processing of civil infractions.

- (2) Authorities and responsibilities.
 - (a) Consumer Affairs is responsible for enforcement of all laws pertaining to the sale of commodities by weight or measure, the inspection and testing of weighing and measuring devices, the operation and use of electronic retail checkout systems, the method of sale of commodities and the labeling of prepackaged commodities.
 - (b) Consumer Affairs enforces laws regulating hawkers and peddlers, transient vendors and business entities licensed by the Town. It provides technical support to the Licensing Authority and inspection and enforcement activities for establishments licensed by the Licensing Authority.
 - (c) Consumer Affairs provides collection and adjudication functions for the processing of parking citations and provides an administrative process for all other noncriminal citations issued by the Town agencies, except motor vehicle infractions. It maintains and polices all municipal parking meters and enforces other prohibited parking within the Town, pursuant to local ordinance and general law. It operates pursuant to Town ordinance, and the following MGL Chapters: 94, 95, 96, 97, 98, and 99 concerning weights and measures; 100 concerning auctions, 101 concerning hawkers, peddlers and transient vendors; 136, 138, and 140 concerning licensing; 90 concerning parking; 40 concerning civil infractions; 31 concerning civil service status of Sealer of Weights and Measures.
- (3) Interrelationships.
 - (a) Town Manager. Interaction concerning enforcement of all licensing, advice on establishment of rules, regulations, fee and charges and enforcement of pertinent Town ordinances, and the impact of fees, fines and enforcement activities in the area of parking controls and other noncriminal regulations.
 - (b) Other departments. Extensive interaction with Planning and Marine and Environmental Affairs, particularly as concerns training in the issuance and processing of noncriminal citations, licensing activities, and provision of measurement devices for various purposes. Other interaction is with the police in provision of measurement devices, processing of parking and noncriminal citations, safety inspections for vehicles for hire, and licensing activities and Public Works in provision of measurement devices for various purposes.

D. Health Division.

- (1) Mission. Health seeks to preserve and maintain the Town's public health standards and protect its environmental resources by educational means and by strict enforcement of various health regulations, ordinances, state codes and general and federal laws through the efficient and effective efforts of divisional personnel.
- (2) Authorities and responsibilities. Health provides administrative support to the Board of Health. It has further responsibilities in respect to the following:

communicable diseases; groundwater protection for benefit of drinking water supply; protection of wetlands, surface waters, and shellfish resources from contamination; immunization and vaccination of residents; investigation of all health-related complaints; action and reporting concerning premature-born infants; enforcement of fuel and chemical storage systems regulations; inspect establishments possessing hazardous and/or toxic waste; inspect all food establishments, swimming pools, seasonal rental units, motels, campgrounds, saunas, well installation, well destruction, septic system installations, horse stables; observe test holes and percolation tests; process death certificates; issue all licenses and permits in relation to food establishments, bed-and-breakfast, retail food, continental breakfast, frozen dessert, food unit, milk pasteurization, motel, camp, sauna, vapor baths, swimming pools, burial, stable, disposal works construction, disposal works installer, well construction, funeral director, masseuse, garbage hauler, septage hauler.

(3) Interrelationships.

- (a) Town Manager. Interaction primarily for program approval, budget, expenditures, and to further provide Manager information concerning public and environmental health issues and problems; secondarily, and through department, for all other matters.
- (b) Other departments. Interaction is continuous and frequent with all divisions and departments of the Town, as well as federal, state, or regional agencies in order for the division to seek effective accomplishment of its responsibilities.
- (c) Multiplemember boards. Interaction with Board of Health primarily to provide administrative, clerical, and technical support relative to promulgation of regulations and variance request reviews. Reporting on interpretation and implementation of Board regulations and policies as regards compliance levels and public and environmental health problems and concerns.

§ 241-48. (Reserved)

§ 241-49. (Reserved)

§ 241-50. (Reserved)

§ 241-51. (Reserved)

§ 241-52. (Reserved)

ARTICLE V

Administrative Policies and Procedures of Town Council**§ 241-53. Generally.** ¹⁹ [Added 10-20-2005 by Order No. 2006-028]

This article describes all Town Council administrative policies established for the purpose of guiding the development and implementation of administrative procedures by the Town Manager within the Town.²⁰ The administrative policies and, hence, the administrative procedures shall describe all legislative, administrative, and adjudicatory procedures of the Town. It shall establish policies and procedures by which municipal legislation is developed, introduced, and approved before the Town Council and by which rules and regulations are adopted by Town administrative agencies. It specifies the manner in which all the entities of the Town function administratively, through the promulgation of policies and procedures. It delineates the method and manner in which adjudicatory proceedings are to be conducted by the various Town agencies and officials who have the responsibility of deciding individual cases.

§ 241-54. Communications. ²¹ [Added 10-20-2005 by Order No. 2006-028]

- A. It is the policy of the Town of Barnstable that effective communication, whether written, oral, or graphic, be exhibited on all occasions in order to convey all relevant goals, policies, procedures, and facts related to all issues.
- B. Effective management is based on effective communication. The nature of communicating is ever changing as more people are involved and depend on information; information is more complex, subtle, and subliminal; and communication depends far more on high technology. In light of these realities, the Town's communication practices shall be based on the following goals: clarity, succinctness, and timeliness.

§ 241-55. Ethics.

- A. It is the policy of the Town of Barnstable that all public officials and employees demonstrate the highest standard of personal integrity, truthfulness, honesty and fortitude in all of their public activities.
- B. The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people they serve; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain or to advance the interests of family, relatives or friends; and that the public have confidence in the integrity of its government.
- C. Public official and employee conduct and actions shall strive to achieve the following goals:

19. Editor's Note: Former § 241-53, Generally, was repealed 9-8-2005 by Order No. 2005-126.

20. Editor's Note: See Ch. 401, Administrative Procedures.

21. Editor's Note: Former § 241-54, Communications, was repealed 9-8-2005 by Order No. 2005-126.

- (1) To maintain impartiality;
- (2) To ensure that public office not be used for personal gain;
- (3) To ensure that the public have confidence in its local government.

§ 241-56. Financial.

- A. It is the policy of the Town of Barnstable that financial management be conducted with the objectives of providing municipal service in a predictable manner and alignment with public policy goals as set forth by the Town Council.
- B. The Town of Barnstable faces continuing operational and capital requirements to meet the increasing needs of its citizens. These requirements have to be met amidst little or no state or federal assistance and within the constraints of Proposition 2 1/2. To help ensure the Town's financial stewardship, an established program of managing the Town's finances becomes essential. To this end, the Town Council seeks policies and procedures that are financially prudent and in the Town's best economic interest. The Town Council promulgates these financial policies consistent with its responsibilities under Part VI, Financial Procedures, Section 6-8, Financial Management Procedures, of the Town Charter.
- C. In following this policy, the Town shall pursue the following goals:
 - (1) To develop effective financial management within the Town which conform to generally accepted accounting principles;
 - (2) To simplify, clarify, and modernize the financial systems of the Town as the need occurs;
 - (3) To provide increased public confidence in public financial management;
 - (4) To provide increased economy and financial performance and to maximize to the fullest extent practicable the use of public funds of the Town; and

(5) To provide safeguards to ensure quality and integrity of the financial systems.

D. In order to obtain the above goals, the Town Council adopts the following policies:

(1) Accounting, auditing and financial planning.

(a) The Town will establish accounting practices which conform to generally accepted accounting principles (GAAP) as set forth by the authoritative standard-setting body for units of local government.

(b) An annual audit will be performed by an independent public accounting firm and an official, comprehensive annual financial report (CAFR) shall be issued no later than six months following the end of the fiscal year.

(c) A management letter, a by-product of an annual audit, shall be provided by the independent public accounting firm no later than February 1. Additional findings and recommendations may be communicated in a separate letter to be provided no later than March 1.

(d) A ten-year financial forecast shall be prepared annually by the Town Manager, in accordance with the Charter, Section 6-6, projecting revenues and expenditures for all operating funds. This forecast shall be used as a planning tool in developing the following year's operating budget and capital improvements plan. The forecast shall be submitted no later than October 1.

(2) General topics.

(a) A Self Insurance Reserve Fund will be established and maintained to cover workers' compensation as authorized by Chapter 40, § 13A, of the Massachusetts General Laws and property losses as authorized by Chapter 40, § 13, of the Massachusetts General Laws.

(b) In order to cover losses arising out this fund, amount will be appropriated to cover the stop-loss premium and a sum to establish the fund for future losses.

(c) It is the intention of this fund to cover all losses arising out of employment injury, fire, vandalism, burglary, theft and repairs. A stop-loss insurance through an insurance carrier will be provided for catastrophic losses.

(3) Debt refinancing. An advance refunding of outstanding debt shall only be considered when present value savings of at least 3.00% of the principal amount of the refunded bonds are produced, unless: (a) a debt restructuring is necessary or (b) bond covenant revisions are necessary in order to facilitate the ability to provide services or to issue additional debt. An analysis shall be conducted when necessary to determine whether debt financing, cash purchase, or leasing is the most effective method of financing for the Town. **[Amended 1-6-2011by Order No. 2011-036]**

(4) General fund.

(a) Current revenues will be sufficient to support current expenditures.

(b) Debt will not be used to fund current operating expenditures.

- [1] General Fund Undesignated Fund balance of at least 4% of total annual expenditures shall be budgeted. The Undesignated Fund balance shall be used to provide for temporary financing for unanticipated or unforeseen extraordinary needs of an emergency nature, for example, costs related to a natural disaster or calamity, or an unexpected liability created by federal or state legislation, new service needs that have been identified after the budget process, new public safety or health needs, revenue shortfalls, service enhancements, or opportunities to achieve costs savings. **[Amended 5-18-1995 by Order No. 95-147]**
 - [2] Funds shall be allocated from the Undesignated Fund balance only after an analysis has been prepared by the Town Manager and presented to Town Council. The analysis shall provide sufficient evidence to establish that the remaining balance is adequate to offset potential downturns in revenue sources and provide a sufficient cash balance for daily financial needs. The analysis shall address the nature of the proposed expenditure and the revenue requirement in subsequent budget years.
 - [3] Prior to allocating funds from the Undesignated Fund balance the Town Council shall find that an emergency or extraordinary need exists to justify the use of these funds. Funds shall be allocated each year in the budget process to replace any use of Undesignated Fund balance funds during the preceding fiscal year to maintain the balance of the Undesignated Fund balance at 4% of budgeted expenditures. **[Amended 5-18-1995 by Order No. 95-147]**
- (c) The year-to-year increase of actual revenue from the levy of the ad valorem (property) tax shall generally not exceed 2.5% (Proposition 2 1/2):
- [1] Excluding taxable value gained through consolidation;
 - [2] Excluding the value gained through new construction; and
 - [3] Excluding expenditure increases funded outside the tax limit cap; and
 - [4] Not excluding the valuation gained or lost through revaluation or equalization programs.
- (d) Property values shall be appraised at a minimum every three years.
- (e) The Town shall encourage the Tax Collector to follow an aggressive policy of collecting property tax revenues. An average collection rate of at least 95% of current levy shall be maintained.
- (f) Charges for service and other revenues shall be examined annually and adjusted as deemed necessary to respond to changes in cost of service.
- (g) An adequate level of maintenance and replacement will be funded each year to insure that all capital facilities and equipment are properly maintained as needed and tied to proper repair and maintenance procedures.

- (5) General obligation debt.
- (a) All debt shall be financed outside the limitations of Proposition 2 1/2 with the exception of debt related to Enterprise Funds, gifts, and betterments. The requirements for such financing shall be an expenditure of at least \$250,000 and a useful life in excess of five years. **[Amended 5-18-1995 by Order No. 95-147]**
 - (b) The term of long-term debt generally shall not exceed the expected useful life of the capital asset being financed and, in no case, shall it exceed 20 years.
 - (c) The ratio of net debt (total outstanding Town of Barnstable general obligation debt less reimbursements) to total assessed valuation shall not exceed 1.5%. This excludes debt of overlapping jurisdictions.
 - (d) The ratio of debt service to total expenditures (operating expenditures and debt service combined) shall not exceed 15%.
 - (e) The Town shall target a Standard and Poor's (S and P) ratio of 8%. S and P ratio is calculated by dividing overall net debt per capita by effective buying income per capita.
 - (f) Current revenue should be committed annually to provide sufficient "pay-as-you-go" financing so that, at the end of five years, annual contributions from current revenues amount to 10% of new debt to be issued.
 - (g) Excess appropriated bond issues shall be placed into a bond repayment fund account at the end of a project completion. The only purpose of the bond repayment fund account shall be:
 - [1] To make bulk principal paydowns against general bond debt; or
 - [2] To be used to pay down the principal on any bond issue at the time of refinancing as provided for in Subsection D(3) of this § 241-56.
- (6) Offset receipts and Enterprise Funds in general.
- (a) The Town shall establish and maintain offset receipts and Enterprise Funds pursuant to MGL Chapter 40, § 39, and Chapter 44, § 53, respectively, wherever possible in order to ensure annual operation and maintenance needs are met and such services are financed in an equitable manner.
 - (b) The term of debt for offset receipts and Enterprise Funds generally shall not exceed the useful life of the asset, and in no case shall the term exceed 30 years.
 - (c) Principal repayment delays shall not exceed five years.
 - (d) An offset receipts and Enterprise Fund shall maintain a fully funded debt service reserve for its existing bond issues and future issues.
 - (e) Debt service coverage of at least 1.25 times shall be the target.

- (f) Short-term debt, including tax-exempt commercial paper, shall be used when authorized for interim financing of capital projects. The term of short-term debt shall not exceed five years. Total short-term debt shall generally not exceed 10% of outstanding long-term debt.
 - (g) Ongoing routine, preventive maintenance should be funded on a pay-as-you-go basis.
 - (h) Capital enterprise projects should be financed through a combination of cash financing and debt. A ratio of at least 10% equity contributions is desirable.
 - (i) All offset receipts and Enterprise Funds shall maintain a working capital reserve, defined as cash and investment pool equity in current assets, which is equivalent to 30 days of budgeted operations and maintenance expense.
 - (j) Rates for offset receipts and Enterprise Funds shall be designed to generate sufficient revenues to support the full cost (direct and indirect) of operations and debt and provide debt service coverage, if applicable, and to ensure adequate and appropriate levels of working capital. Rates for the Department of Community Services Enterprise Fund shall be designed to generate revenue amounts less than required to support the full cost (direct and indirect) of operations and debt and working capital. **[Amended 5-18-1995 by Order No. 95-147]**
- (7) Gifts and grants.
- (a) All grants shall be managed to comply with the laws, regulations and guidance of the grantor; and all gifts and donations shall be managed and expended according to the wishes and instructions of the donor.
 - (b) All gifts and grants shall be evaluated for suitability and consistency to Town policies. They shall also be formally accepted by both the Town Manager and the Town Council.
- (8) Capital Trust Fund. A Capital Trust Fund is hereby established for the purpose of financing debt service for recommended capital improvement program projects, as contained within the Town's five-year capital improvement plan. **[Added 5-18-1995 by Order No. 95-147; amended 5-21-1998 by Order. No. 98-119]**
- (a) The Capital Trust fund will be funded through a general operations set-aside at a minimum of \$1,900,000 annually.
 - (b) The Capital Trust Fund shall not be utilized for any purpose other than that stated herein.
 - (c) The criteria for reviewing capital project eligibility for Capital Trust Fund borrowing include the following:
 - [1] The capital project shall have a financing term of 20 years or less;
 - [2] The capital project shall have a minimum project cost of \$250,000;

- [3] The capital project is approved by the Town Council for funding through an appropriation and loan order submitted by the Town Manager.
- (d) The Capital Trust Fund will have a debt service restriction on the fund, such that debt service estimates from authorized loan orders shall not exceed, at any one time, more than 80% of the amount in the fund as of the close of the fiscal year prior to the next debt service authorization, unless recommended by the Town Manager
- (e) The Capital Trust Fund shall otherwise function in accordance with related financial policies of the Town.

§ 241-57. Fleet services.

- A. It is the policy of the Town of Barnstable to authorize the acquisition and utilization of vehicles for use by officials of the Town, in the conduct of their employment responsibilities. Municipal employee are obligated to comply with the provisions of this procedure when their employment responsibilities require use of a municipal vehicle.
- B. This policy is based on the following guidelines:
- (1) Legal compliance with all federal and state laws, rules, and regulations;
 - (2) Appropriate financial security;
 - (3) Proper maintenance of all Town vehicles; and
 - (4) Superior ethical conduct by Town employees when using vehicles.

§ 241-58. Insurance.

It is the policy of the Town of Barnstable that, giving due regard to the financial limitations of the Town, prudent managerial oversight should limit risks and exposures. Local governments are subject to four basic types of risks: real and personal property loss; loss of income or increased costs associated with property loss; personnel loss; and liability. In response to these potential losses, the Town of Barnstable shall always consider and pursue the best action or combination of actions to control risk: risk avoidance; risk prevention; risk assumption; and risk transfer. The purpose of this policy is to provide a functional tool for insurance management. In pursuing this policy, the Town shall abide by the following goals:

- A. The Town should not insure itself against minor recurrent losses;
- B. Self insurance should be used where risks are recurrent and financially manageable; and
- C. Insurance be sought for potential major losses.

§ 241-59. Investment.

It is the policy of the Town of Barnstable that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with legal and administrative guidelines and maximize yields with the minimal risk and utilization of collateralization when requested. Effective cash management is recognized as essential to good fiscal management. An aggressive cash management and investment policy will be pursued to take advantage of investment interest as a viable revenue source. The Town's portfolio shall be designed and managed in a manner responsive to the public trust and consistent with state and local law. Investments shall be made with the primary objectives of:

- A. Preservation of capital;
- B. Maintenance of sufficient liquidity to meet operating needs;
- C. Security of Town funds and investments;
- D. Diversification of investments to avoid unreasonable or avoidable risks; and
- E. Maximization of return on the portfolio.

§ 241-60. Computers and automation.

- A. The purpose of this policy is to establish guidelines for the selection and utilization of computers in the Town of Barnstable. This policy is also intended to set up support procedures and personnel for assisting users in acquiring and utilizing computers.
- B. Computers are currently being acquired and used in most Town departments. This occurrence is streamlining work and changing the way many employees view information and its effect on their jobs. The decreasing costs and increasing power have put computers in the reach of all departments. The Town recognizes the need to define the appropriate role for the computer.
- C. While acknowledging the power of the computer to increase productivity, there is a need to set standards for ensuring compatibility. There is also a need to review uses for appropriate minicomputer applications and ensure that information systems needs could not be handled better in some other manner. These computer policies are specifically intended to attain the following objectives:
 - (1) Encourage the use of technology of all types to improve and enhance the efficiency of the Town's procedures and practices whenever and wherever possible.
 - (2) Maintain and promulgate standards for computer technology and general electronic information management. Provide policy guidance to the management on the review and purchase of computer technology (hardware, software, and communications) so as to insure compliance with published standards.
 - (3) Maintain procedures and policies to insure that the Town's electronic resources are properly managed. Emphasis shall be placed on insuring that electronic information is easily accessible by those departments requiring access.

- (4) No deviation from published hardware, software, communications, or information management policies/standards without a written waiver signed by the Town Manager and/or his/her designee.
- (5) Centralize functions which can be automated and/or centralize so as to maximize the utilization of the Town's personnel and/or other financial resources.

§ 241-61. Personnel.

- A. It is the policy of the Town of Barnstable to establish and maintain an equitable personnel system. This system should also promote the efficiency and economy of government, to promote the morale and well-being of Town employees, and to promote equal employment opportunity for all employees and candidates for employment.
- B. The dynamics of personnel management must mediate between organizational change and the need for technical stability through affirmative action, human resource planning and cutback management, productivity, and labor relations. Effective personnel management must also balance the four values of social equity, responsiveness, efficiency, and individual rights. The personnel policies are based on the following principles in order to balance these values:
 - (1) Recruiting, selecting, and developing employees on the basis of their abilities, knowledge, and skills.
 - (2) Providing equitable compensation.
 - (3) Training employees as needed to assure high quality performance in delivering quality services to the public.
 - (4) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose performance does not adequately improve.
 - (5) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, age, sex, creed, handicap, or any other nonmerit factor, except where such factor is a bona fide occupational requirement, and with proper regard for their privacy and constitutional rights as citizens; prohibiting discrimination against any person on the basis of such nonmerit factors.
 - (6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for any purpose other than those duties and responsibilities directly associated with their positions in Town government.

§ 241-62. Procurement.

It is the policy of the Town of Barnstable to procure goods and services that help the organization deliver quality, competitively priced services in a manner as environmentally

benign as practicable to the citizens and visitors of Barnstable. The Town's procurement policies are intended to minimize risks and realize efficiencies by way of superior management consistent with the Commonwealth of Massachusetts Chapter 30B of the General Laws: Uniform Procurement Act; Chapter 30, § 39M; and Chapter 149, §§ 44A through M. The Town of Barnstable's management of procurement will be conducted with the primary objectives of purchasing competitively priced, quality goods and/or services in quantities necessary to accomplish service delivery objectives. The Town of Barnstable recognizes that the use of taxpayer funds deserves the greatest care in procuring goods and services which are as environmentally benign as practicable and which enable the Town to attain its objectives in a cost-effective manner.

§ 241-63. Property management.

- A. It is the policy of the Town of Barnstable to manage its public land and waters, buildings and structures in order to protect the public's investment.
- B. Effective property management is based on the following basic principles:
 - (1) Protect against liability.
 - (2) Preserve and enhance financial and natural assets.
 - (3) Provide for appropriate access.
 - (4) Maintain visual and cultural character.
 - (5) Use of public lands and facilities shall be consistent with applicable open space, recreation, historic, building, and land management plans.
- C. These principles are best served by the pursuit of the following goals:
 - (1) Protect against liability:
 - (a) Ensure that insurance policies provide for asset replacement where practical.
 - (b) Provide appropriate security for all properties.
 - (c) Provide for appropriate maintenance and improvement of buildings, structures and lands.
 - (d) Seek the removal of attractive nuisances.
 - (e) Educate users as to safe and appropriate activities.
 - (2) Preserve and enhance financial and natural assets.
 - (a) Implement long-range capital improvement plan
 - (b) Develop management plans for all lands and facilities.
 - (c) Establish guidelines for asset acquisition and disposition.

- (d) Provide for appropriate maintenance and improvement of buildings, structures and lands [Subsection C(1)(c)].
 - (e) Enforce rules and regulations regarding public use and access.
- (3) Provide for appropriate access.
- (a) Enforce rules and regulations regarding public use and access [Subsection C(2)(e)].
 - (b) Educate users as to safe and appropriate activities [Subsection C(1)(e)].
 - (c) Provide for appropriate maintenance and improvement of buildings, structures and lands [Subsection C(1)(c)].
 - (d) Implement American for Disabilities Act Plans for access.
 - (e) Develop management plans for all lands and facilities [Subsection C(2)(b)].
- (4) Maintain visual and cultural character.
- (a) Provide for appropriate maintenance and improvement of buildings, structures and lands [Subsection C(1)(c)].
 - (b) Enhance and preserve the physical appearances and vistas.
 - (c) Ensure conformity to existing zoning, historic district guidelines, and local comprehensive plan architectural design guidelines.
- (5) Use of public lands and facilities shall be consistent with applicable management plans for open space, recreation, historic, building, and land.
- (a) Develop management plans for all lands and facilities, and update every 10 years, or more often as is required, except as noted below.
 - (b) Ensure conformity to existing zoning, historic district guidelines, and local comprehensive plan architectural design guidelines [Subsection C(4)(c)].
 - (c) Provide appropriate security for all properties [Subsection C(1)(b)].
 - (d) Provide for appropriate maintenance and improvement of buildings, structures and lands [Subsection C(1)(c)].
 - (e) Ensure that all maintenance and improvements to existing buildings and structures or the development of new ones are energy efficient.
 - (f) Seek the removal of attractive nuisances [Subsection C(1)(d)].
 - (g) Educate users as to safe and appropriate activities [Subsection C(1)(e)].
 - (h) Develop and implement the Town's Open Space and Recreation Plan, and update every five years, or more often as is required.

- (i) Follow appropriate federal and state grant guidelines to ensure eligibility for funding property management objectives.
 - (j) Establish effective coordination with the state and federal government, other municipalities, Barnstable County, Fire Districts, not-for-profit organizations, and others where necessary.
- D. In order to effectuate this policy, the Town should ensure consistency in the application of all other administrative policies which have a direct interrelationship to the property management policy of the Town.

§ 241-64. Trust fund management.

- A. It is the policy of the Town of Barnstable that trust fund management be consistent with the legal requirements, including Town ordinances, and spirit of each respective trust document and, to the maximum extent possible, realize the purposes the trusts were intended to achieve.
- B. Trust fund management will be conducted with the primary objectives of:
- (1) Conformance to each trust document's specified purpose, legal requirements, and administrative guidelines;
 - (2) Adherence to the Town of Barnstable general ordinance providing for the administration of Town trusts;²⁵
 - (3) Preservation of capital;
 - (4) Maintenance of security of trust funds and investments;
 - (5) Maximization of total return for each trust fund;
 - (6) Efficient disbursement of funds on an equitable basis; and
 - (7) Effective collection of all due monies.

§ 241-65. Volunteer.

The Town of Barnstable recognizes that volunteers are an integral part of the Town's government. Their participation in the process of government contributes to the uniqueness of the Town's quality of life. Volunteers choose to act in recognition of social responsibility and without concern for monetary gain, going beyond what is necessary to one's physical well-being. A citizen may choose to be a policy-making volunteer or a service volunteer. The Town of Barnstable is committed to providing adequate support, training, leadership, and recognition for all its volunteers. It expects commitment and excellence from the volunteers. The Town has the right to determine duties, authorities and appropriateness of volunteers. Following established volunteer management protocol, the Town has the right to both select and remove volunteers.

25. Editor's Note: See Ch. 86, Funds.

ARTICLE VI

Town Manager Implementation and Reporting Responsibilities**§ 241-66. Authority to promulgate regulations.**

The Town Council expressly authorizes the Town Manager to develop and promulgate regulations and procedures for the efficient and effective implementation of the Town Council administrative policies. No such regulation or procedure shall be inconsistent with the provisions of these policies, the ordinances of the Town, the Charter, state or federal law.

§ 241-67. Publication of procedures.

The publication of these regulations and procedures shall be a part of the Administrative Code of the Town, but shall not be considered an ordinance of the Town, in order to require the Town Manager the necessary ability to maintain a current system of administration.²⁶

§ 241-68. Annual report on attainment of policy goals. [Added 10-7-1993 by Order No. 93-028]

The Town Manager shall report on an annual basis the Town's progress in attaining these policy goals and where the Town deviates from the stated policies with a stated rationale for any deviation(s).

26. Editor's Note: The Town Manager's administrative procedures are in Chapter 401 of the Code of the Town of Barnstable.

ADMINISTRATIVE CODE

241 Attachment 1

Town of Barnstable

**Designations of Town Officers/Positions As “Special”
for Purposes of the Conflict of Interest Law¹**

**[Adopted 9-6-1990 by Order No. 91-015; amended 11-16-1995 by
Order No. 96-065; 12-02-1999 by Order No. 00-052; 12-16-2004 by
Order No. 2005-049; 8-18-2005 by Order No. 2006-014; 4-17-2008 by
Order No. 2008-126; 2-25-2010 by Order No. 2010-079; 3-21-2013 by
Order No. 2013-69]**

The persons who are, from time to time, incumbents of the following offices and/or positions of the Town are hereby designated as special municipal employees for the purposes of the Conflict of Interest Law, Chapter 268A of the General Laws, with respect to the office or positions designated:

Multiple-member bodies

Ad Hoc School Building Committee
Affordable Housing/Growth and Development Trust Fund Board
Council on Aging
Airport Commission
Cultural Council
Board of Assessors
Building Code Appeals Board
Cable Television Advisory Committee
Citizens Advisory Committee
Comprehensive Financial Advisory Committee
Community Preservation Committee
Conservation Commission
Economic Development Commission
Elected and appointed boards of the respective Fire and Water Districts of the Town
Housing Committee
Hyannis Main Street Waterfront Historic District Commission
Appeals Board of the Hyannis Main Street Waterfront Historic District Commission
Golf Course Committee
Disability Commission
Government Study Committee
Board of Health

¹ Note: This list is updated and published from time to time as an appendix to the Administrative Code, under Section 5-1(c) of the Charter, but shall not be construed to be an ordinance for the purpose of adding or deleting designations of offices or positions.

BARNSTABLE CODE

Multiple-member bodies

(cont'd)

Historical Commission
Housing Authority
Industrial Development Finance Authority
Town Library Committee
JFK Memorial Trust Fund Committee
Land Acquisition and Preservation Committee
Licensing Authority
Old Kings Highway Historic District Committee
Personnel Board
Problem Properties Appeals Committee
Planning Board
Public Works Commission
Recreation Commission
Appointed members of the Registrars of Voters
Renewable Energy Commission
Roads Committee
Sandy Neck Advisory Board
Scholarship Committee
School Committee
School Superintendent Search Committee
Shellfish Committee
Trust Fund Advisory Committee
Water Pollution Control Board
Waterways Committee
Water Quality Committee
Youth Commission
Zoning Board of Appeals

Individual Officers

Inspector of Animals
Constables
Consumer Affairs Hearing Officer
Fence Viewers
Forest Fire Warden
Assistant Harbor Masters
Special Legal Counsel
Licensing Inspector
All lifeguards and attendants at Town Beaches
All police officers serving without pay

Chapter 242

PERSONNEL

§ 242-1. Applicability; purpose.

§ 242-2. Definitions.

§ 242-3. Personnel Board establishment,
structure and organization.

§ 242-4. Powers and duties of Personnel
Board.

§ 242-5. Personnel Director.

§ 242-6. Personnel Code.

§ 242-7. Continuing review.

§ 242-8. Repeal and validity.

[**HISTORY: Adopted by the Town of Barnstable _____ (Art. I of Ch. V of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.**]

GENERAL REFERENCES

Personnel administration — Charter, Sec. 5-2.
Administrative Code — See Ch. 241.

Administrative procedures — See Ch. 401.

§ 242-1. Applicability; purpose.

- A. All Town departments and all positions in the Town service, excepting elected officials and excepting employees appointed by the School Committee shall be subject to the provisions of this chapter, in pursuance of the provisions of §§ 108A and 108C of Chapter 41 of the General Laws. To the extent that any provision of an approved collective bargaining agreement conflicts with any provisions of this chapter, with respect to employees covered under such labor agreement, the provisions of the approved collective bargaining agreement shall prevail.
- B. The general purpose of this chapter is to establish a system of public personnel management based on merit that meets the social, economic and program needs of Town government. It is the intent of this chapter to provide means to recruit, select and develop and maintain a responsive work force. All personnel actions in the Town service shall be made without regard to sex, race, religion, color, age, handicap, political affiliation or other non-job-related factors, and shall be based on merit and fitness.

§ 242-2. Definitions.

As used in this chapter, the words and phrases listed below shall have the following meanings, unless a different construction is clearly required by the context or by the laws of the commonwealth:

CLASS — A position or group of positions sufficiently similar with respect to the duties and responsibilities, so that the same descriptive title may be used to designate each position allocated to the class, that the same qualification shall be required of the incumbents, that the

same tests of fitness may be used to choose qualified employees and that the same scale of compensation can apply with equity.

CLASSIFICATION PLAN — A schematic list of classes supported by classification criteria and class specifications of job descriptions.

COMPENSATION PLAN — A salary or wage schedule keyed to classification grade levels, the rules for administration of salaries, provisions on travel and provisions on all forms of fringe benefits.

DEPARTMENT — Any department, board, committee, commission or other agency of the Town subject to this chapter.

EMPLOYEE — A person appointed to a positions in the Town service.

PERSONNEL CODE — A written document describing the personnel policies and regulations adopted by the Town Manager.

POSITION — A group of current duties and responsibilities assigned or delegated by appropriate authority to one person.

TOWN — The Town of Barnstable.

§ 242-3. Personnel Board establishment, structure and organization.

- A. There is hereby established a Personnel Board consisting of five members to be appointed by the Town Council. Each member shall serve for an overlapping term of three years. Appointees hereunder shall continue to hold their offices until the appointment and qualification of their successors. No person shall serve upon said Board who is not a registered voter of the Town. In making these appointments, the Town Council shall give consideration to the personal qualifications of those citizens who will best meet the responsibilities of the Board to represent the interest of Town government and taxpayers. The Board shall consist of members who are familiar with the principles and experienced in the methods and practices of personnel administration. If any member of the Personnel Board shall resign or otherwise vacate his/her office before the expiration of his/her term, his/her successors shall be appointed by the Town Council to serve for the balance of the unexpired term.
- B. The Personnel Board shall elect its own Chairman, Vice Chairman, and Secretary; and in the absence or incapacity of the Chairman, the Vice Chairman shall act as Chairman. The Board shall keep a record of its official proceedings and actions, may establish its own rules of procedure and may, subject to appropriation therefor, make such expenditures as may be deemed necessary to the performance of its duties. Three members shall constitute a quorum for the transaction of the business of the Board, and the affirmative vote of three members shall be necessary to any official act of the Board.
- C. The Town shall furnish the Board with such office space as it may require for the performance of its duties and the storage of its property and, upon application of the Board, shall provide it with an adequate place for the holding of public hearings.

§ 242-4. Powers and duties of Personnel Board.

- A. The Personnel Board shall, from time to time, formulate personnel policy in the form of a Personnel Code, or sections thereof including amendments, for the purpose of proposing to the Town Manager such changes as will give effect to the provisions of this chapter and votes of the Town Council with respect to personnel management. Town Manager shall consider and take action on all such proposals, and may adopt such sections and amendments as he deems necessary or advisable for the furtherance of sound personnel practices in Town government. The Town Manager is authorized to initiate policy in his own right, in which instance, it shall inform the Personnel Board prior to adoption, permitting the Personnel Board the right of review and comment. With regard to any personnel policy or change thereof which incorporated any increase in funding, such policy or change may be adopted, contingent upon favorable action of the Town Council with respect to the approval of necessary monies to support such change or changes.
- B. The duties of the Personnel Board shall also include the following:
- (1) To advise the Town Manager on problems arising in personnel management and be available to the Town Manager for discussion of critical personnel policy decisions;
 - (2) To hear appeals, receive evidence and determine facts, and affirm, modify or reverse the administrative action appealed from and direct proper action taken;
 - (3) To make any investigation which it may consider necessary or desirable concerning personnel management in Town government.
 - (4) To conduct any special study or studies it deems advisable for the improvement of personnel management in Town government;
 - (5) To render assistance to the Town Manager in his role in collective bargaining, by providing information and data on matters related to the collective bargaining process; and
 - (6) To prepare and render to the Town Manager an annual report of its activities on or before January 1 of each calendar year.

§ 242-5. Personnel Director.

- A. There shall be a Personnel Department headed by a Personnel Director. The Personnel Director shall be experienced in personnel management and public administration and shall be in sympathy with merit principles. The Director shall be appointed by the Town Manager to serve at the pleasure of the Manager in the same manner as other appointive department heads.
- B. The Personnel Director shall direct the administrative and technical activities of the Department and shall:

- (1) Encourage and exercise leadership in the development of effective personnel management within the several departments in Town government, and make the services and facilities of the Department available to all Town departments.
- (2) Advise the Personnel Board and Town Manager in human resource planning and utilization.
- (3) Administer the personnel management system of Town government under the Town Manager.
- (4) Establish and maintain records of all employees in Town service.
- (5) Apply and carry out the provisions of this chapter, the Personnel Code and perform any lawful acts which may be necessary or desirable to carry out the purposes and provisions of applicable laws and regulations.
- (6) Provide advice and services to both the Personnel Board and Town Manager in all matters pertaining to personnel management, to the extent of available resources.
- (7) Render an annual report of the Department's activities and operations to both the Personnel Board and Town Manager on or before January 1 of each calendar year.

§ 242-6. Personnel Code.

- A. The Town Manager, in consultation with the Personnel Director and the Personnel Board, is empowered and authorized by this chapter to establish a Personnel Code, consisting of personnel policies and regulations for the maintenance of a public personnel management system, based on merit and consistent with these principles:
- (1) Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment;
 - (2) Providing equitable and adequate compensation;
 - (3) Training employees, as needed, to assure high quality performance;
 - (4) Retraining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
 - (5) Assuring fair treatment of applicants and employees in all aspects of personnel management without regard to political affiliation, race, color, national origin, age, sex, handicap or religious creed and with proper regard for their privacy and constitutional rights as citizens; and
 - (6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

- B. The Personnel Code may be amended by the Town Manager from time to time. Such amendments shall be referred to the Personnel Board for its review and comment, if any, prior to its adoption. Relative to its approval of the code or any amendments thereto, pertaining specifically to any proposal or proposals entailing any increase in Town funding, such approval may be given by the Town Manager, contingent upon favorable action by the Town Council which action shall be limited to the matter of funding. The substance of any proposed change may be discussed by the Town Council, provided that the vote is on the basis of funding, and not on the substance of the Personnel Code, or any change(s) thereto.

§ 242-7. Continuing review.

- A. The Town Manager from time to time, with the assistance of the Personnel Board and Personnel Director, shall initiate reviews and evaluations of the operation of the personnel system for conformance with the provisions of this chapter. Such reviews shall be scheduled as often as the Town Manager finds necessary to improve and maintain the personnel system consistent with the provisions of this chapter. The Town Manager shall see to it that classification reviews are conducted as often as he finds necessary to reflect changes in the classification as established or to establish new classifications as warranted. The Town Manager shall likewise direct studies of compensation and fringe benefits in effect for comparable positions outside of the service of the Town at least annually.
- B. The Town Manager, following consultation with the Personnel Board and Personnel Director, shall make recommendations to the Town Council for adjusting compensation and fringe benefits in conformance with such studies.

§ 242-8. Repeal and validity.

- A. The Personnel Ordinance currently in effect and any parts of other ordinances which conflict with the provisions of this chapter are hereby repealed. The provisions of the Personnel Code in effect immediately prior to the effective date of this chapter shall remain in effect subject to modification, amendment or repeal as provided in § 242-4A.
- B. If any part of this chapter is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of the remaining parts.

PART III

**BOARD OF HEALTH
REGULATIONS**

Chapter 307

BODY ART ESTABLISHMENTS

- | | |
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| § 307-1. Purpose. | § 307-10. Application for body art practitioner permit. |
| § 307-2. Definitions. | § 307-11. Grounds for permit denial, revocation or refusal to renew. |
| § 307-3. Exemptions. | § 307-12. Grounds for suspension of permit. |
| § 307-4. Prohibited practices. | § 307-13. Procedure for hearings. |
| § 307-5. Operation of body art establishments. | § 307-14. Unauthorized practice of body art. |
| § 307-6. Standards of practice. | § 307-15. Severability. |
| § 307-7. Injury reports. | |
| § 307-8. Complaints. | |
| § 307-9. Application for body art establishment permit. | |

[HISTORY: Adopted by the Town of Barnstable Board of Health 2-20-2001, effective 3-1-2001 (Section 2.00 of Part VI of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.]

GENERAL REFERENCES

Fee schedule — See Ch. 318.

Massage establishments — See Ch. 346.

§ 307-1. Purpose.

Body art is becoming prevalent and popular throughout the commonwealth; and the knowledge and practice of universal precautions, sanitation, personal hygiene, sterilization, and aftercare requirements on the part of the practitioner should be demonstrated to prevent the transmission of disease or injury to the client and/or practitioner; now, therefore the Board of Health of the Town of Barnstable adopted these regulations for the practice of body art in the Town of Barnstable as part of the mission to protect the health, safety, and welfare of the public. These regulations are promulgated under the authority granted to the Board of Health under Massachusetts General Law Chapter 111, § 31.

§ 307-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AFTERCARE — Written instructions given to the client, specific to the body art procedure(s) rendered, about caring for the body art and surrounding area, including information about when to seek medical treatment, if necessary.

APPLICANT — Any person who applies to the Board of Health for either a body art establishment permit or practitioner permit.

AUTOCLAVE — An apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.

AUTOCLAVING — A process which results in the destruction of all forms of microbial life, including highly resistant spores, by the use of a steam autoclave for a minimum of 30 minutes at 20 pounds of pressure (psi) at a temperature of 270° F.

BLOODBORNE PATHOGENS STANDARD — OSHA Guidelines contained in 29 CFR 1910.1030, entitled "Occupational Exposure to Bloodborne Pathogens."

BOARD OF HEALTH or BOARD — The Board of Health that has jurisdiction in the community in which a body art establishment is located.

BODY ART — The practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which are prohibited.

BODY ART ESTABLISHMENT or ESTABLISHMENT — A location, place, or business that has been granted a permit by the Board, whether public or private, where the practices of body art are performed, whether or not for profit.

BODY ART PRACTITIONER or PRACTITIONER — A specifically identified individual who has been granted a permit by the Board to perform body art in an establishment that has been granted a permit by the Board.

BODY PIERCING — Puncturing or penetrating the skin of a client with presterilized single-use needles and the insertion of presterilized jewelry or other adornment into the opening. This definition excludes piercing of the earlobe with a presterilized single-use stud-and-clasp system manufactured exclusively for ear piercing.

BRANDING — Inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.

CLIENT — A member of the public who requests a body art procedure at a body art establishment.

CONTAMINATED WASTE — Waste as defined in 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code, Chapter VIII.

DEPARTMENT — The Department of Public Health or its authorized representatives.

DISINFECTANT — A product registered as a disinfectant by the U.S. Environmental Protection Agency (EPA).

DISINFECTION — The destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

EAR PIERCING — The puncturing of the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.

EQUIPMENT — All machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances, used in connection with the operation of a body art establishment.

HAND SINK — A lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.

HOT WATER — Water that attains and maintains a temperature 110° to 130°F.

INSTRUMENTS USED FOR BODY ART — Hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during any body art procedure.

INVASIVE — Entry into the client's body either by incision or insertion of any instruments into or through the skin or mucosa, or by any other means intended to puncture, break, or otherwise compromise the skin or mucosa.

JEWELRY — Any ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel; solid 14k or 18k white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

MINOR — Any person under the age of 18 years.

MOBILE BODY ART ESTABLISHMENT — Any trailer, truck, car, van, camper or other motorized or nonmotorized vehicle, a shed, tent, movable structure, bar, home or other similar facility.

OPERATOR — Any person who individually, or jointly or severally with others, owns, or controls an establishment, but is not a body art practitioner.

PERMIT — Board approval in writing to either (1) operate a body art establishment or (2) operate as a body art practitioner within a body art establishment. Board approval shall be granted solely for the practice of body art pursuant to these regulations. Said permit is exclusive of the establishment's compliance with other licensing or permitting requirements that may exist within community or political subdivision comprising the Board's jurisdiction.

PERSON — An individual, any form of business or social organization or any other nongovernmental legal entity, including but not limited to corporations, partnerships, limited-liability companies, associations, trusts or unincorporated organizations.

PHYSICIAN — An individual licensed as a qualified physician by the Board of Registration in Medicine pursuant to MGL C. 112, § 2.

PROCEDURE SURFACE — Any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

SANITARY — Clean and free of agents of infection or disease.

SANITIZE — The application of a U.S. EPA registered sanitizer on a cleaned surface in accordance with the label instructions.

SCARIFICATION — Altering skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

SHARPS — Any object, sterile or contaminated, that may intentionally or accidentally cut or penetrate the skin or mucosa, including, but not limited to, needle devices, lancets, scalpel blades, razor blades, and broken glass.

SHARPS CONTAINER — A puncture-resistant, leakproof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the international biohazard symbol.

SINGLE USE ITEMS — Products or items that are intended for one-time, one-person use and are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.

STERILIZE — The use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

TATTOO — The indelible mark, figure or decorative design introduced by insertion of dyes or pigments into or under the subcutaneous portion of the skin.

TATTOOING — Any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.

ULTRASONIC CLEANING UNIT — A unit approved by the Board, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high frequency oscillations transmitted through the contained liquid.

UNIVERSAL PRECAUTIONS — A set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC), as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) to Health-Care and Public-Safety Workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures" in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood- and body-fluid-contaminated products.

§ 307-3. Exemptions.

- A. Physicians licensed in accordance with MGL C. 112, § 2, and any person registered as a qualified nurse under MGL C. 112, § 74, who perform body art procedures as part of patient treatment are exempt from these regulations.

- B. Individuals who pierce only the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system are exempt from these regulations.

§ 307-4. Prohibited practices.

- A. No person shall establish or operate a mobile body art establishment or temporary body art establishment.
- B. No tattooing, piercing of genitalia, branding or scarification shall be performed on a person under the age of 18.
- C. Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18, provided that the youth provides photographic identification and is accompanied by a properly identified parent who also provides photographic identification (or legal guardian with photographic identification) who has signed a form consenting to such procedure.
- D. The following body piercings are hereby prohibited: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called "deep" piercing of the penis, meaning piercing through the shaft of the penis, or "trans-penis" piercing in any area from the corona glandis to the pubic bone; so called "deep" piercing of the scrotum — meaning piercing through the scrotum, or "transcrotal" piercing; so called "deep" piercing of the vagina.
- E. The following practices are hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; branding; three dimensional/beading/implementation, tooth filing/fracturing/removal/tattooing; cartilage modification; genital modification; introduction of saline or other liquids. [**Amended 2-28-2006**]

§ 307-5. Operation of body art establishments.

Unless otherwise ordered or approved by the Board, each body art establishment shall be constructed, operated and maintained to meet the following minimum requirements:

- A. Physical plant.
- (1) Walls, floors, ceilings, and procedure surfaces shall be smooth, nonporous, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.
 - (2) Solid partitions or walls extending from floor to ceiling shall separate the establishment's space from any other room used for human habitation, any food

establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.

- (3) The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.
- (4) Each body art station shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a divider or partition at a minimum.
- (5) The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 footcandles three feet off the floor, except that at least 100 footcandles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.
- (6) Light bulbs shall be shielded, coated, or otherwise shatter-resistant in each body art station.
- (7) A separate, readily accessible hand sink with hot and cold running water under pressure, preferably equipped with wrist- or foot-operated controls and supplied with liquid soap, and disposable paper towels stored in fixed dispensers shall be readily accessible within the establishment. Each operator area shall have a hand sink.
- (8) There shall be a minimum of one toilet room containing a toilet and sink with running water. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser.
- (9) At least one covered, foot-operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leakproof, rodent-resistant containers and shall be removed from the premises at least weekly.
- (10) At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of noncontaminated liquid wastes in accordance with all applicable federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.
- (11) All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.
- (12) The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit.
- (13) The establishment shall have a customer waiting area, exclusive and separate from any workstation, instrument storage area, cleaning area or any other area in the body art establishment used for body art activity.

- (14) No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., Seeing Eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.
 - (15) Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of fluids being offered to a client during or after a body art procedure.
- B. Requirements for single use items including inks, dyes and pigments.
- (1) Single-use items shall not be used on more than one client for any reason. After use, all single-use sharps shall be immediately disposed of in approved sharps containers pursuant to 105 CMR 480.000.
 - (2) All products applied to the skin, such as but not limited to body art stencils, applicators, gauze and razors, shall be single-use and disposable.
 - (3) Hollow bore needles or needles with a cannula shall not be reused.
 - (4) All inks, dyes, pigments, solid core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.
 - (5) Inks, dyes or pigments may be mixed and may only be diluted with water from an approved potable source. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic caps. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded.
- C. Sanitation and sterilization measures and procedures.
- (1) Only sterilized disposable single-use-type needles shall be used for body art.
 - (2) All other nondisposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water (to remove blood and tissue residue) and shall be placed in an ultrasonic unit operated in accordance with manufacturer's instructions.
 - (3) After being cleaned, nondisposable instruments used for body art shall be packed individually in sterilizer packs and subsequently sterilized in a steam autoclave. All sterilizer packs shall contain either a sterilizer indicator or internal temperature indicator. Sterilizer packs must be dated with an expiration date not to exceed six months.
 - (4) The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Board. Autoclaves shall be located away from workstations or areas frequented by the public.
 - (5) Each holder of a permit to operate a body art establishment shall demonstrate that the autoclave used is capable of attaining sterilization by monthly spore destruction

tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three years and made available to the Board upon request.

- (6) All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. After sterilization, the instruments used in body art procedures shall be stored in a dry, clean, locked cabinet or other tightly covered container reserved for the storage of such instruments.
- (7) Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing.
- (8) When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.
- (9) Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

D. Posting requirements. The following shall be prominently displayed:

- (1) A disclosure statement, which shall be available from the Public Health Division Office. A disclosure statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures.
- (2) The name, address and phone number of the local Board of Health that has jurisdiction and the procedure for filing a complaint.
- (3) An emergency plan, including:
 - (a) A plan for contacting police, fire or emergency medical services in the event of an emergency;
 - (b) A telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and
 - (c) A sign at or adjacent to the telephone indicating the correct emergency telephone numbers.
- (4) An occupancy and use permit as issued by the local building official.
- (5) A current establishment permit.
- (6) Each practitioner's permit.

E. Establishment recordkeeping. The establishment shall maintain the following records in a secure place for a minimum of three years, and such records shall be made available to the Board upon request:

- (1) Establishment information, which shall include:
 - (a) Establishment name;
 - (b) Hours of operation;
 - (c) Owner's name and address;
 - (d) A complete description of all body art procedures performed;
 - (e) An inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;
 - (f) A material safety data sheet, when available, for each ink and dye used by the establishment; and
 - (g) A copy of these regulations.
- (2) Employee information, which shall include:
 - (a) Full names and exact duties;
 - (b) Date of birth;
 - (c) Home address;
 - (d) Home /work phone numbers; and
- (3) Client information, which shall include:
 - (a) Name;
 - (b) Date of birth;
 - (c) Address of the client;
 - (d) Date of the procedure;
 - (e) Name of the practitioner who performed the procedure(s);
 - (f) Description of procedure(s) performed and the location on the body;
 - (g) A signed consent form as specified by § 307-6D(2); and
 - (h) If the client is a person under the age of 18, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian and a copy of the photographic identification of the client.
- (4) Client information shall be kept confidential at all times.

- F. The establishment shall require and ensure that all body art practitioners obtain hepatitis B vaccination series. Records documenting compliance with this requirement shall be provided to the Board upon request.

§ 307-6. Standards of practice.

Practitioners are required to comply with the following minimum health standards:

- A. A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S. Centers for Disease Control and Prevention.
- B. A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.
- C. Practitioners who use ear-piercing systems must conform to the manufacturers directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear-piercing system on any part of the client's body other than the lobe of the ear.
- D. Health history and client informed consent. Prior to performing a body art procedure on a client, the practitioner shall:
- (1) Inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:
 - (a) History of diabetes;
 - (b) History of hemophilia (bleeding);
 - (c) History of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants etc.;
 - (d) History of allergies or adverse reactions to pigments, dyes, or other sensitivities;
 - (e) History of epilepsy, seizures, fainting, or narcolepsy;
 - (f) Use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and
 - (g) Any other conditions such as hepatitis or HIV.
 - (2) Require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents him or her from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by § 307-6K.
- E. A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash his or her hands in hot running water with liquid soap, then rinse hands and dry

with disposable paper towels. This shall be done as often as necessary to remove contaminants.

- F. In performing body art procedures, a practitioner shall wear disposable single-use gloves. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with Subsection E before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for handwashing procedures as part of a good personal hygiene program.
- G. The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
- H. Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.
- I. Preparation and care of a client's skin area must comply with the following:
 - (1) Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
 - (2) Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
 - (3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.
- J. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded.
- K. The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:
 - (1) On the proper cleansing of the area which received the body art;
 - (2) To consult a health care provider for:

- (a) Unexpected redness, tenderness or swelling at the site of the body art procedure;
 - (b) Any rash;
 - (c) Unexpected drainage at or from the site of the body art procedure; or
 - (d) A fever within 24 hours of the body art procedure; and
- (3) Of the address, and phone number of the establishment. A copy shall be provided to the client. A model set of aftercare instructions shall be made available by the Department.
- L. Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waster, State Sanitary Code, Chapter VIII.

§ 307-7. Injury reports.

A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded by the operator to the Board which issued the permit, with a copy to the injured client within five working days of its occurrence or knowledge thereof. The report shall include:

- A. The name of the affected client;
- B. The name and location of the body art establishment involved;
- C. The nature of the injury, infection complication or disease;
- D. The name and address of the affected client's health care provider, if any;
- E. Any other information considered relevant to the situation.

§ 307-8. Complaints.

- A. The Board shall investigate complaints received about an establishment or practitioner's practices or acts, which may violate any provision of the Board's regulations.
- B. If the Board finds that an investigation is not required because the alleged act or practice is not in violation of the Board's regulations, then the Board shall notify the complainant of this finding and the reasons on which it is based.
- C. If the Board finds that an investigation is required, because the alleged act or practice may be in violation of the Board's regulations, the Board shall investigate and if a finding is made that the act or practice is in violation of the Board's regulations, then the Board shall apply whatever enforcement action is appropriate to remedy the situation and shall notify the complainant of its action in this manner.

§ 307-9. Application for body art establishment permit.

- A. No person may operate a body art establishment except with a valid permit from the Board.
- B. Applications for a permit shall be made on forms prescribed by and available from the Board. An applicant shall submit all information required by the form and accompanying instructions. The term "application" as used herein shall include the original and renewal applications.
- C. An establishment permit shall be valid from the date of issuance and shall automatically expire on the last day of February each year, unless revoked sooner by the Board.
- D. The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:
 - (1) Name, address, and telephone number of:
 - (a) The body art establishment;
 - (b) The operator of the establishment; and
 - (c) The body art practitioner(s) working at the establishment.
 - (2) The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;
 - (3) A signed and dated acknowledgment that the applicant has received, read and understood the requirements of the Board's body art regulations;
 - (4) A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process; and
 - (5) Such additional information as the Board may reasonably require.
- E. The Board shall set a reasonable fee for such permit.
- F. A permit for a body art establishment shall not be transferable from one place or person to another.

§ 307-10. Application for body art practitioner permit.

- A. No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board. The Board shall set a reasonable fee for such permits.
- B. A practitioner shall be a minimum of 18 years of age.
- C. A practitioner permit shall be valid from the date of issuance and shall automatically expire on the last day of February each year, unless revoked sooner by the Board.
- D. Application for a practitioner permit shall include:

- (1) Name;
- (2) Date of birth;
- (3) Residence address;
- (4) Mailing address;
- (5) Phone number;
- (6) Place(s) of employment as a practitioner; and
- (7) Training and/or experience as set out in Subsection E below.

E. Practitioner training and experience.

- (1) Training for all practitioners shall be approved by the Board and, at a minimum, shall include the following:
 - (a) Bloodborne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; handwashing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques. (Examples of courses approved by the Board include "Preventing Disease Transmission" [American Red Cross] and "Bloodborne Pathogen Training" [U.S. OSHA]. Training/courses provided by professional body art organizations or associations or by equipment manufacturers may also be submitted to the Board for approval.
 - (b) First aid and cardiopulmonary resuscitation (CPR).
 - (c) The applicant for a body art practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction of the integumentary system (skin).
- (2) Practitioner experience. The applicant for a practitioner permit shall submit evidence satisfactory to the Board of at least two years actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner to perform, whether such experience was obtained within or outside the commonwealth.

§ 307-11. Grounds for permit denial, revocation or refusal to renew.

- A. The Board may deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for revocation or refusal to renew:
- (1) Any actions which would indicate that the health or safety of the public would be at risk;

- (2) Fraud, deceit or misrepresentation in obtaining a permit, or its renewal;
 - (3) Criminal conduct which the Board determines to be of such a nature as to render the establishment, practitioner or applicant unfit to practice body art as evidenced by criminal proceedings resulting in a conviction, guilty plea, or plea of nolo contendere or an admission of sufficient facts;
 - (4) Any present or past violation of the Board's regulations governing the practice of body art;
 - (5) Practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
 - (6) Being habitually drunk or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
 - (7) Knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;
 - (8) Continuing to practice while his/her permit is lapsed, suspended, or revoked;
 - (9) Having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in the Board's regulations; and
 - (10) Other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice body art.
- B. The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board intends to deny, revoke, or refuse to renew a permit. The applicant, establishment or practitioner shall have seven days after receipt of such written notice in which to comply with the Board's regulations. The Board may deny, revoke or refuse to renew a permit, if the applicant, establishment or practitioner fails to comply after said seven days.
- C. Applicants denied a permit may reapply at any time after denial.

§ 307-12. Grounds for suspension of permit.

The Board may summarily suspend a permit pending a final hearing on the merits on the question of revocation if, based on the evidence before it, the Board determines that an establishment and/or a practitioner is an immediate and serious threat to the public health, safety or welfare. The suspension of a permit shall take effect immediately upon written notice of such suspension by the Board.

§ 307-13. Procedure for hearings.

- A. Suspension of a permit.

- (1) After a Board suspension of a permit, a hearing shall be initiated pursuant to 801 CMR 1.00 et seq. (Standard Adjudicatory Rules of Practice and Procedure), no later than 21 calendar days after the effective date of the suspension.
- (2) Upon written request to the Board of Health, the establishment or practitioner shall be afforded an opportunity to be heard concerning the suspension of the permit by the Board.
- (3) In cases of suspension of a permit, the Board of Health shall determine, by a preponderance of the evidence, that there existed immediately prior to or at the time of the suspension an immediate and serious threat to the public health, safety or welfare. The Board of Health shall issue a written decision, which contains a summary of the testimony and evidence considered and the reasons for the decision.

B. Denial, revocation, or refusal to renew a permit.

- (1) If the Board determines that a permit shall be denied, revoked, or not renewed pursuant to the Board's regulations, the Board shall initiate a hearing in accordance with 801 CMR 1.00 et seq.
- (2) Following the hearing, the Board of Health shall issue a written decision that contains a summary of the testimony and evidence considered and the reasons for the decision.

§ 307-14. Unauthorized practice of body art.

The Board shall refer to the appropriate District Attorney, Attorney General, or other law enforcement official any incidents of unauthorized practice of body art.

§ 307-15. Severability.

If any provision contained in the model regulations is deemed invalid for any reason, it shall be severed and shall not affect the validity of the remaining provisions.

Chapter 318

FEE SCHEDULE

§ 318-1. Fees enumerated.

[HISTORY: Adopted by the Town of Barnstable Board of Health 12-16-2003, effective 7-1-2004 (Section 1.00 of Part I of the 1991 Codification as updated through 6-1-1996); amended in its entirety 3-10-2009. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Schedule of Fees — See Ch. 76, Art. I.

§ 318-1. Fees enumerated. [Amended 6-18-2013]

Type	Fee	Surcharge Fees
Application fee/plan review: new establishment, renovation, or new applicant (motel, food establishment, body art, camp, swimming pool, whirlpool, disposal installer license, horse stable), for establishments 8,000 square feet or less in floor space	\$100.00	
Application fee/plan review: new establishment or renovation (motel, food establishment, body art, camp, massage establishment, horse stable), for establishments larger than 8,000 square feet in floor space	\$200.00	
Bed-and-breakfast permit	\$55.00	
Body art establishment permit	\$100.00	Late charge for renewals: Add \$10 if received after March 1.
Body art practitioner permit	\$50.00	
Burial permits	\$5.00	
Camp permit	\$75.00	
Computer print-out copies (page)	\$0.50	
Continental breakfast permit	\$30.00	
Disposal system construction permit (new)	\$150.00	
Disposal works construction permit plan review fee: additional \$50 each time plan requires a revision due to failure to meet 310 CMR 15.220, Preparation of Plans and Specifications (two or more errors or omissions on plan)	\$50.00	

Type	Fee	Surcharge Fees
Disposal system construction permit (repair) [repair of conditionally passed systems and failed systems]	\$100.00	
Disposal system abandonment permit	\$25.00	
Disposal system construction permit reinspection	\$25.00	
Disposal system installer's license	\$75.00	Late charge for renewals: Add \$10 if received after January 1.
Faxing a copy of an as-built card	\$3.00	File search fee
Mailing a copy of an as-built card	\$3.00	File search fee
Fishing boat registration	\$60.00	
Food/cold storage permit	\$20.00	
Food service permit		
0 to 49 seats	\$200.00	Late charge for renewals: Add \$10 if received after January 1; also
50 or more seats	\$250.00	surcharge fee of \$35 for each additional reinspection applies after one inspection plus one reinspection.
Food service permit (temporary): preapproved events only, maximum four days	\$35.00	
Food service permit (temporary): pre-approved events only, once/week/18 weeks maximum/same location, same vendors with same menus only		
Only during business hours (held during daytime hours on weekdays)	\$180.00	
Held during nonbusiness hours (i.e., during Saturdays, Sundays, holidays, nighttime)	\$100 per vendor	
Food service permit (charity)	\$5.00	
Frozen dessert license	\$30.00	
Funeral director license	\$40.00	
Garbage packer license (per truck)	\$35.00	
Hazardous materials use/storage (111 gallons or more)	\$100.00	Late charge for renewals: Add \$10 if received after July 1.

Type	Fee	Surcharge Fees
Housing inspection (rental registration)	\$90.00 for the first dwelling unit or rooming unit plus \$25.00 for each additional unit on same property, only when the inspections can be consolidated with the applicant(s) to be scheduled and inspections conducted on the same business day	Late charge for renewal: Add \$10 if received after Jan 1.
Ice cream trucks (per truck)	\$35.00	
Influenza vaccination (flu shot)	\$3.00	
Mobile canteen (per truck)	\$50.00	
Motel license	\$50.00	Late charge: Add \$10 if received after January 1.
Photocopy (per page)	\$0.20	
Pneumonia vaccination	\$3.00	
Residential kitchen: bed-and-breakfast	\$55.00	
Residential kitchen: continental breakfast	\$30.00	
Residential kitchen: food for retail sale	\$75.00	
Retail food store		Late charge for renewals: Add \$10 if received after January 1.
Less than 8,000 square feet	\$100.00	
More than 8,000 square feet	\$285.00	
Less than 1,000 square feet of food display area; only where the selling of food is kept in one area of the business and is incidental to the primary business	\$20.00	
Retail food store and food service combination applies only to stores of less than 8,000 square feet with limited food preparation	\$200.00	
Sauna and vapor bath license	\$30.00	
Septage hauler (per truck)	\$35.00	
Septic system inspection report processing	\$25.00	
Site assessment (21E Report) file search	\$40.00	Plus \$8.75 per every 15 minutes after one hour

Type	Fee	Surcharge Fees
Soil evaluation and percolation test witnessing	\$100.00	Plus \$65 for each additional hour (charged at a rate of \$10.83 per every 10 minutes)
Stable permit		License renewal surcharge: \$50 for each additional reinspection (after one inspection plus one reinspection). Late charge for renewals: \$10 if received after July 1.
No horses (zero)	\$25.00	
1 to 5 horses	\$50.00	
6 to 10 horses	\$75.00	
11 or more horses	\$100.00	
Subdivision review	\$60.00	
Swimming pool	\$75.00	Pool inspection fee: Add \$50 for each additional preoperation inspection after one.
Whirlpool	\$75.00	
Special needs pool	\$75.00	
Exercise (aerobics) pool	\$75.00	
Tanning facility	\$75.00	Late charge for renewals: \$10 if received after January 1.
Tobacco sales permit	\$85.00	
Variance request	\$95.00	
Vending machine (per vending machine used for selling potentially hazardous foods only)	\$20.00	
Well construction permit	\$45.00	
Well destruction permit	\$35.00	

Chapter 322

FOOD ESTABLISHMENTS

ARTICLE I Minimum Sanitation Standards

- § 322-1. Adoption of state standards.
- § 322-2. Buffet-style food service.
- § 322-3. Grease traps.
- § 322-4. Toilet facilities.
- § 322-5. Outdoor dining.
- § 322-6. Mobile food service.
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ARTICLE II Certificate of Merit Award

- § 322-11. Purpose.
- § 322-12. Eligibility; criteria for award.
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ARTICLE III Grease Contamination

- § 322-16. Findings.
- § 322-17. Grease barrels required.
- § 322-18. Monthly cleaning required.
- § 322-19. Monthly checking required; maintenance records.
- § 322-20. Violation of state law; enforcement.

ARTICLE IV Fishing Boat Retail Sales Regulations

- § 322-21. Regulations.
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ARTICLE V Use of Low-Temperature Dishwashers

- § 322-23. Standards.
- § 322-24. Testing.
- § 322-25. Log book.

[HISTORY: Adopted by the Town of Barnstable Board of Health as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fee Schedule — See Ch. 307.

ARTICLE I Minimum Sanitation Standards

[Adopted 2-21-1975; revised 12-17-2002, effective 1-1-2003 (Section 1.00 of Part II of the 1991 Codification as updated through 6-1-1996)]

§ 322-1. Adoption of state standards.

The provisions of the State Sanitary Code (105 CMR 590.000 through 105 CMR 590.021 Minimum Sanitation Standards for Food Establishments, State Sanitary Code, Article X,

inclusive and dated October 13, 2000) are hereby adopted as the provisions of this Article I of Chapter 322.

§ 322-2. Buffet-style food service.

All food served buffet style shall be enclosed in such a manner to prevent contamination from patrons.

§ 322-3. Grease traps.

Grease traps must be provided at restaurants, nursing homes, schools, hospitals, bakeries, or similar establishments as determined by the Board of Health. The capacity of the grease trap shall be calculated by the kitchen flow rate of 15 gallons per seat or chair, per day, but in no case shall be less than 1,000 gallons. This applies to establishments connecting to Town sewer, or establishments with on-site sewage systems.

§ 322-4. Toilet facilities. [Amended 11-15-2005; 2-28-2006]

All food-service establishments shall provide adequate, conveniently located toilet facilities for their employees. All food-service establishments shall provide adequate, conveniently located toilet facilities for their patrons at any locations where seating is provided. Each food-service establishment with a seating or standing capacity of over 50 patrons shall provide toilet facilities for employees that are separate from the toilet facilities provided for patrons. Separate facilities must be provided for male and female employees and male and female patrons. All restroom sinks shall be equipped with touchless sensor-operated plumbing fixtures. Each food-service establishment shall be provided with adequate, conveniently located hand-washing facilities for its employees equipped with touchless sensor-operated plumbing fixtures, hot and cold or tempered running water, hand cleansing soap or detergent from a dispensing unit, and sanitary towels or other hand-drying devices. Common towels are prohibited. This handwashing facility shall be located in the food preparation area.

§ 322-5. Outdoor dining.

A. No person, corporation, or firm shall provide outdoor dining or an outdoor cafe at a food establishment until after all of the following requirements are met:

- (1) The applicant shall file a written request for outside dining or for an outside cafe on a form prescribed by the Town and shall submit plans of the proposed dining area. The seating capacity shall be determined by the Board of Health after a determination is made whether requirements of Subsection A(2) through (14) below will be met and after a visual inspection is conducted by an agent of the Board of Health. A replacement food establishment permit shall be issued by the Board of Health indicating outside dining is permitted and listing the overall seating capacity, only after it is determined by an agent of the Board of Health that all of the requirements Subsection A(2) through (14) of this section are met.
- (2) A menu shall be submitted to the Board at the time of application.

- (3) The dining area must be appurtenant and contiguous to the restaurant property. The dining area must be mentioned on the described premises as in the case of a common victualler's license.
- (4) Sufficient restrooms, both for customers and employees, must be furnished counting the additional outside seating as required by the State Plumbing Code and Town of Barnstable Health regulations.
- (5) A grease trap shall be of sufficient capacity, based upon 15 gallons per seat, as required by the State Environmental Code, Title V, and Town of Barnstable Health regulations. A grease recovery device may be installed to supplement an existing in-ground grease trap, after receiving the approval of the Board of Health.
- (6) All entrance and exit doors used by food service personnel and customers must be screened and provided with air curtains meeting National Sanitation Foundation standards. All windows or openings used for the transfer of food will be screened and provided with air curtains. Food cannot be stored or kept outside. All food must be prepared inside the facility's kitchen and kept inside until served.
- (7) A drainage system designed to eliminate odors will be required for all outdoor dining areas. Hose bibs with vacuum breakers must be available for washing down the dining area.
- (8) Trash dumpsters shall be situated no closer than 50 feet from an outdoor dining area. If such a dumpster is in the line of sight from the dining area, it must be hidden from view. The area around the dumpster and stockade must be kept clean and free of litter. Dumpsters must be closed with adequate covers designed to prevent entrance of rodents and birds and sealed to control odors.
- (9) The patio or other ground surface must be of constructed of material readily cleanable and not susceptible to dust, mud, or debris. (Brick, tile, and concrete are examples of acceptable materials.)
- (10) Table tops must be smooth, nonporous, easily cleanable and durable, and readily maintained in a clean and sanitary condition.
- (11) Food-service personnel must constantly police the dining area for wastepaper, garbage and other trash. Placement clips, cup holders and other such devices must be utilized to prevent blowing paper. Covered trash receptacles must be provided in close proximity to the dining area and must be emptied as needed to prevent overflowing.
- (12) Strict cleanup practices must be adhered to. Waitstaff and buspersons must clean up after each patron as in indoor dining. Each establishment must abide by all regulations contained in Article X, Minimum Sanitation Standards for Food Service Establishments, of the Commonwealth of Massachusetts, Department of Health Sanitary Code.
- (13) Outside food handlers must have easy access to handwash sinks and cleaning cloths. Facilities for preparation and disposal of sanitizing solutions must be accessible.

- (14) Hair nets or other effective hair restraints, such as hats covering exposed hair, shall be worn by all outside food or drink handlers. Beards and mustaches must be neatly trimmed.
- B. Exemption from doorway air curtain requirement in Subsection A(6) above: The Board of Health may waive the requirement to provide air curtains at the doorways only if no waitstaff services will be provided to the outside dining area (self-service only).

§ 322-6. Mobile food service.

- A. Push-cart-type food-service vendors will not be permitted in the Town of Barnstable.
- B. Mobile food units shall operate from a commissary, or other fixed food-service establishment that is constructed and operated in compliance with Article X of the State Sanitary Code and Town of Barnstable Health Regulations.
- C. Mobile food units serving foods not packaged for individual servings and/or involving the use of utensils shall provide a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing. A double-compartment sink must be provided for washing and sanitizing utensils. A separate handwash sink must also be provided.
- D. Mobile units garaged outside of the Town of Barnstable must furnish written certification from their local Board of Health verifying that they operate from a licensed food-service establishment.

§ 322-7. Vending machines. [Amended 11-15-2005]

Any establishment with vending machines dispensing potentially hazardous food or drink must be licensed by the Board of Health.

§ 322-8. Violations and penalties. [Amended 11-15-2005; 2-28-2006]

- A. This regulation may be enforced by the provisions of MGL Chapter 40, § 21D.
- B. The fine for any violation under this regulation shall be \$100.
- C. Each day shall constitute a separate violation.

§ 322-9. Severability.

If any section, paragraph, sentence, clause, or phrase of these rules and regulations should be decided invalid for any reason whatsoever, such decision shall not affect the remaining portions of these regulations, which shall remain in full force and effect; and to this end the provisions of these regulations are hereby declared severable.

§ 322-10. When effective.

This regulation is to take effect on the date of publication of this notice.

ARTICLE II

Certificate of Merit Award

[Adopted 2-20-1975, revised 12-9-1993 (Section 2.00 of Part II of the 1991 Codification as updated through 6-1-1996)]

§ 322-11. Purpose.

The purpose of this chapter is to establish a program for awarding certificates of merit to food-handling establishments in the Town of Barnstable.

§ 322-12. Eligibility; criteria for award.

The certificate of merit is an award given only to restaurant businesses classified as food service establishments as defined in Article X, Minimum Standards for Food Establishments, State Sanitary Code, with seating provided for patrons. The award will not be awarded to churches, public schools, and retail food stores that may have, or subsequently obtained, a food-service permit. The award, when given to an establishment, will inform the public that the establishment has attained and maintained high sanitation standards over a period of time thereby serving as a stimulus for other members of the food industry to accomplish the same thing. The certificate is intended to be displayed prominently and publicly. The award is based upon sanitary criteria alone and does not reflect aesthetic qualities, standards of service, menu, price, or any other nonsanitary criteria.

§ 322-13. Qualifications for award.

- A. The certificate is given only to food establishments as defined in § 322-2 above, which have maintained a high degree of sanitation (a score of 90 or above with no critical violations) for three or more regularly scheduled consecutive inspections performed on a biannual basis and covering a period of 18 months. "Regularly scheduled inspections" means routine inspections scheduled by the Department and not those performed by special request of the licensee.)
- B. Nominees for the award shall have received a minimum sanitation rating of 90 with no critical violation as determined on the Food Establishment Inspection Report Form, in accordance with Subsection A above.
- C. No establishment shall be eligible for an award that has within the past 24 months received:
 - (1) A rating of less than 75;
 - (2) Has been recommended for summary suspension due to overt imminent danger; or
 - (3) Had a verified case of food-borne illness affecting two or more people.
- D. The Board of Health will consider nominations for the certificate of merit award that have been prepared by the Health Inspector at its regular bimonthly meeting.

§ 322-14. Withdrawal of certificate.

- A. The certificate, although awarded to a food-service establishment for maintaining a high level of sanitation, remains the property of the Town of Barnstable Health Department and may be withdrawn at any time by the Board of Health. Withdrawal shall be but is not limited to the following:
- (1) Change of location of establishment.
 - (2) Verified cases of food-borne illness.
 - (3) Subsequent score below 90.
 - (4) Subsequent observation of any critical violations.
- B. Misuse of the certificate that tends to reflect adversely upon the Board of Health of the Town of Barnstable.

§ 322-15. Control of certificates.

- A. A registry shall be established for the purpose of keeping a record of certificates awarded. The registry shall contain the address of the food establishment awarded the certificate, the name of the person licensed to operate the food-service establishment, the date the certificate was awarded, and the number of the certificate.
- B. Certificates shall be numbered consecutively beginning with the number one preceded by the last two numbers of the calendar year, e.g., the number for the first certificate issued in 1994 will appear as 94-1.
- C. Certificates may not be transferred from one owner to the other without approval of the Board of Health. In determining whether a certificate may be transferred, the Board of Health shall consider as binding any contrary recommendation introduced by the Health Inspector.
- D. An up-to-date list of all restaurants scoring 90 or above on their last inspection will be posted on the Health Department bulletin board.

ARTICLE III**Grease Contamination**

[Adopted 12-9-1982 (Section 3.00 of Part II of the 1991 Codification as updated through 6-1-1996)]

§ 322-16. Findings.

Excessive grease received at the Town sewer plant continues to be a serious problem. We have continually notified restaurant owners since 1975 of this problem and requested their cooperation, but the same condition persists. This is a serious Town problem and management of all food establishments must cooperate fully.

§ 322-17. Grease barrels required.

All food-service establishments must have grease barrels to store their grease. All grease must be poured into these barrels and the grease sold or given to rendering companies. All employees must be instructed to use the barrels and not dispose of grease in sinks, toilets, drains, etc.

§ 322-18. Monthly cleaning required.

All inside grease interceptors must be opened and cleaned on a monthly basis. Management must maintain a maintenance record signed by the food-service manager attesting that this cleaning has been done.

§ 322-19. Monthly checking required; maintenance records. [Amended 1-20-2005 by Order No. 2005-040]

All outside grease interceptors shall be checked monthly and pumped, if necessary. All grease interceptors must be pumped at an interval not to exceed three months. Maintenance records must be available to the Health Inspector at all times.

§ 322-20. Violation of state law; enforcement.

- A. Problems with grease at individual establishments constitute a violation of 105 CMR 595.000, State Sanitary Code Article X: Minimum Sanitation Standards for Food Service Establishments.
- B. The Board of Health intends to vigorously enforce any grease violations and offenders will be awarded a hearing to show cause as to why their food-service permit should not be suspended or revoked.

ARTICLE IV

Fishing Boat Retail Sales Regulations

[Adopted as Section 4.00 of Part II of the 1991 Codification (as updated through 6-1-1996)]

§ 322-21. Regulations.

- A. All boats selling fish on a retail basis must be registered with the Board of Health of the Town of Barnstable prior to issuance of the state permit.
- B. All boats or persons selling fish retail must get approval from the Harbormaster of the Town of Barnstable.
- C. All fish sold must be whole. No cleaning or processing of fish is allowed.
- D. All fish sold must be freshly caught and kept on ice or properly cooled until sold. All fish must be sold on the same day as caught.
- E. All boats must be inspected by the Health Department before each annual registration.

§ 322-22. Violations and penalties.

Any violations of these regulations will result in immediate revocation of registration and reported to the Director of Marine Fish and Fisheries for further action.

ARTICLE V
Use of Low-Temperature Dishwashers
[Adopted 4-26-2005]

§ 322-23. Standards.

All chemical dishwashers must be National Sanitation Foundation (NSF) approved retrofit machines and NSF-approved new units.

§ 322-24. Testing.

- A. A test kit or other device that accurately measures the parts per million concentration and the pH must be available and used.
- B. The pH and sanitized rinse must be tested every four hours when the machine is in use.

§ 322-25. Log book.

A log book must be maintained. The pH and sanitized rinse results of each testing must be recorded. This log must be made easily available at all times to a health inspector.

Chapter 326

FUEL AND CHEMICAL STORAGE TANKS

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| § 326-1. Purpose and scope. | § 326-13. Location of tanks. |
| § 326-2. Definitions. | § 326-14. Underground tank installation. |
| § 326-3. Regulations more stringent than or in addition to state regulations. | § 326-15. Leak detection equipment, testing and/or inventory requirements for underground storage. |
| § 326-4. Pressure vessels. | § 326-16. Inventory methods for underground tanks. |
| § 326-5. Aboveground fuel storage tanks. | § 326-17. Testing for tightness of underground tanks. |
| § 326-6. Material and construction for all tanks and containers. | § 326-18. Response to leaks. |
| § 326-7. Soil vapor analysis test contamination found; order to remove. | § 326-19. Tank repair and relining. |
| § 326-8. Design and construction of new or replacement underground tanks. | § 326-20. Tanks abandoned or temporarily out of service. |
| § 326-9. Fill and vent pipes for all tanks and containers. | § 326-21. Tank removal. |
| § 326-10. Piping for all tanks and containers. | § 326-22. Enforcement and appeals. |
| § 326-11. Underground piping. | § 326-23. Permits. |
| § 326-12. Pumping system. | § 326-24. Varying of provisions by Board of Health. |
| | § 326-25. Severability. |
| | § 326-26. When effective. |

[HISTORY: Adopted by the Town of Barnstable Board of Health (Part III of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.]

GENERAL REFERENCES

Hazardous Materials — See Ch. 108.

Toxic and Hazardous Materials — See Ch. 381.

§ 326-1. Purpose and scope.

This regulation shall apply to the design, construction, installation, testing, and maintenance of tanks and containers. The intent is to protect our drinking water and other water resources from contamination. The Town's entire drinking water supply is derived from groundwater, and the United States Environmental Protection Agency has designated all of Cape Cod as a "sole source aquifer" requiring special care and protection. The regulation is also intended to protect the public from the dangers of fire and/or explosion due to tank or container leakage of flammable liquids. This regulation is based on and derived from 527 CMR 9.00, but

regulates matters not covered in 527 CMR 9.00, and regulates some matters more stringently than 527 CMR 9.00.

§ 326-2. Definitions.

For the purpose of this regulation, the following terms shall have the meanings assigned to them:

ABANDONED — Out of service for a continuous period in excess of six months in the case of storage facility for which a license from the local licensing authority is required under the provisions of MGL C. 148, § 13, and for a period in excess of 24 months in the case of any other storage facility.

APPROVED — Approved by the Board of Health and Fire Chief.

BOARD — The Board of Health.

CATHODIC PROTECTION — A system which inhibits the corrosion of a tank or its components either through the sacrificial anode or the impressed current method of creating a corrosion-inhibiting electrical current. (Reference: API (American Petroleum Institute) Publication 1632, First Edition 1983)

COMMERCIAL TANK — Any tank utilized for nonconsumptive purposes.

COMPONENTS — Piping, pumps, and other related storing, conveyancing and dispensing elements which, together with one or more tanks any cathodic protection or monitoring system, constitute a storage facility.

ENGINEER — A Massachusetts registered professional engineer.

EXISTING FACILITY — A facility whose construction, installation, or operation began prior to the effective date of this regulation.

FIRE CHIEF — The chief of the fire district in which a tank is or is to be located.

FLAMMABLE LIQUID — Any liquid occurring at normal temperature and pressure which will emit a vapor which can be ignited by a flame or spark. (Reference: 527 CMR 14.00)

FUEL OIL — Oil of grade Nos. 1, 2, 4, 5, and 6 established in accordance with MGL C. 94, § 249H.

LEAKAGE or LEAK — Any uncontrolled movement, measurable by a final or precision test, as described in the current Pamphlet No. 329 of the National Fire Protection Association, which can accurately detect a leak of 0.05 gallon per hour or any uncontrolled movement of water into a tank or its components.

MONITORING SYSTEM — A full-time approved system installed for the purpose of early detection of leaks, such as observation wells, visual or audible alarms, or their equivalent. Minimum standards of in-tank monitoring systems shall consist of in-tank equipment which provides continuous monitoring of any liquid from the tank at a minimum rate of 0.05 gallons per hour or equivalent leakage over a longer period of time.

OBSERVATION WELL — A dug or drilled cased well which can be used for detecting the presence of flammable liquids, which is drilled to a depth intercepting the water table, and which is installed and maintained in an approved manner.

OPERATOR — The lessee of a storage facility, or the person or persons responsible for the daily operation of a storage facility.

OUT OF SERVICE — Not in use in that no filling or withdrawal is occurring.

OWNER — The person or persons or government entity having legal ownership of a storage facility.

PERSON — Any agency or political subdivision of the federal government or Commonwealth of Massachusetts; any state, public or private corporation or authority, individual, trust, firm, joint-stock company, partnership, association or other entity; and any officer, employee or agent of said person, and any group of said persons.

PRODUCT LINE LEAK DETECTOR — A device designed to detect product or pressure losses in a pressurized product line of a remote pumping system.

PSI — Pounds per square inch gauge.

QUALIFIED PERSON — A representative certified by the manufacturer of the product being installed or tested.

REMOTE PUMPING SYSTEM — A pressurized product line system in which flammable liquids are supplied to a point away from the tank by means of a pumping unit.

REPLACEMENT AND SUBSTANTIAL MODIFICATION — The construction of any additions to an existing storage facility, or any restoration, refurbishment, or renovation which significantly impairs or affects the physical integrity of the storage facility or its monitoring system.

SECONDARY CONTAINMENT or EQUIVALENT PROTECTION — Techniques that may include impervious liners, double-walled tanks, or equivalent methods approved by the Board of Health and the Fire Chief.

STORAGE FACILITY — One or more tanks at a particular site, together with all components thereof, used or designed to be used for the underground storage of toxic, hazardous or flammable liquids.

TANK — Any structure above- or below ground used or designed to be used for the storage of any liquids other than water.

UL-LISTED — Included in a current list or report of approved equipment, materials, or methods published by Underwriters Laboratories, Inc.

UNDERGROUND STORAGE — Where 10% or more of the tank volume and piping is buried below the ground surface but which shall not include storage in a freestanding container within a building.

WATER SUPPLY — Any existing or potential source of potable water as identified by the local water authority.

ZONE OF CONTRIBUTION — Designated area contributing to public supply wells, on a map showing state-approved Zone II locations and Town-designated zones of contributions, entitled "Zones of Contribution to Public Water Supply Wells, Town of Barnstable, Massachusetts," dated February 1, 2006, and prepared by Town of Barnstable G.I.S. Unit. **[Amended 2-28-2006]**

§ 326-3. Regulations more stringent than or in addition to state regulations.

This section is intended to be in addition to and more restrictive than the provisions of 527 CMR 9.00 et seq.

A. Documentation.

- (1) The design, construction and history of every tank shall be completely documented. On or before May 31, 1988, every owner of an underground fuel or chemical storage system shall file with the Board of Health and the Fire Chief a notice disclosing the size, type, age and location of each tank and the type of material stored. Evidence of date of purchase and installation, including the permit from the Fire Chief, shall be included, along with a sketch map showing the location of such tanks on the property. See Regulation 22.
- (2) In zones of contribution, tanks without complete documentation shall be removed forthwith. Outside of zones of contribution, tanks without complete documentation shall be properly tested forthwith and annually thereafter. If any such test reveals leakage or at the end of five years from the effective date of this regulation, whichever occurs first, such tank shall be removed.

B. Existing tanks. This subsection shall apply to tanks in place on the effective date of this regulation and for which complete documentation as described in Subsection A is available. Within zones of contribution, such tanks, that do not satisfy the construction requirements of Subsection D of § 326-8, may be maintained for 20 years, provided that proper testing reveals no leakage. Outside of zones of contribution, such tanks, that do not satisfy the construction requirements of Subsection D of § 326-8, may be maintained for 30 years, provided that proper testing reveals no leakage. **[Amended 2-28-2006]**

C. No tanks. No underground tank shall be installed after the effective date of this regulation without the permission of the Board of Health. Such permission shall be granted only with respect to commercial tanks outside zones of contribution.

D. Replacement tanks. No underground tank shall be installed without the permission of the Board of Health. Such permission shall be granted only with respect to commercial tanks.

E. All applicants proposing installation of the underground fuel or chemical storage tanks shall file plans therefor with the Board of Health prior to obtaining a permit from the Fire Department or the Board of Selectmen.

- F. All tanks shall be properly tested according to these regulations. Any tank which fails a test shall be removed forthwith.
- G. All suppliers of fuel oil or other petroleum products shall provide a listing of the names and addresses of customers with underground fuel tanks upon the request of the Board of Health or the Fire Chief.
- H. All underground fuel or chemical tanks must have a permanent tag issued by the Board of Health affixed to the fill pipe.
- I. All suppliers of fuel oil or other petroleum products shall notify the Board of Health and the Fire Chief whenever they are required to fill an underground tank which is not identified by a tag.
- J. Any spill or loss of fuel shall be reported immediately to the Fire Department and within two hours to the Board of Health.
- K. New tank installations shall not be permitted within five feet of the maximum high-water table or within 500 feet of a surface water body. The maximum groundwater elevation shall be determined by utilizing the formula contained in the United States Geological Survey publication, "Estimating Highest Groundwater Levels for Construction and Land Use Planning — a Cape Cod Massachusetts Example," dated September 1983, or by observing the height of the groundwater table when it is at its maximum level or elevation. Maximum groundwater determinations shall be made during the wettest season of the year normally March or April. Allowances shall be made for high water level if the Board of Health permits the determination to be made outside the wettest season. Replacement tanks shall comply with this section insofar as practicable.
- L. Underground fuel or chemical storage tanks are prohibited in zones of contribution to public supply wells, except as permitted in Subsection M.
- M. Zones of contribution include those land areas which contribute recharge (precipitation which has percolated to the water table) to public water supply wells. The boundaries of zones of contribution shall be determined by the Board.
- N. Underground fuel and chemical storage systems are prohibited within 500 feet of a private water supply.
- O. Underground fuel and chemical storage tanks and systems, in place on the effective date of this regulation and 20 years of age or older, located in zones of contribution to public supply wells, that do not satisfy the construction requirements of Subsection D of § 326-8, shall be removed under the direction of the Fire Chief. **[Amended 2-28-2006]**
- P. Underground fuel and chemical storage tanks and systems 30 years of age or older, that do not satisfy the construction requirements of Subsection D of § 326-8, shall be removed under the direction of the Fire Chief. **[Amended 2-28-2006]**

§ 326-4. Pressure vessels.

The construction of any tank subject to pressure in addition to the static head pressure shall conform to good engineering practice. NOTE: A tank built in accordance with the requirements of the current American Society of Mechanical Engineers Unfired Pressure Vessels Code will be approved by the Commissioner. A tank to be used for storage of petroleum products built in accordance with the requirements of the American Society of Mechanical Engineers Unfired Pressure Vessels Code or the American Petroleum Institute Unfired Pressure Vessels Code will be approved by the Commissioner.

§ 326-5. Aboveground fuel storage tanks.

All above-ground fuel storage tanks shall have the following:

- A. Provisions shall be made to protect the tanks from the elements. Rustproofing must be applied to all tank surfaces.
- B. Every aboveground fuel and chemical storage tank shall be placed and secured onto a foundation capable of supporting the tank. The foundation must be larger than the size of the tank in length and width to prevent spillage and leakage onto pervious surfaces.
- C. The tanks shall be securely anchored. [Added 7-5-1988, effective 7-6-1988]

§ 326-6. Material and construction for all tanks and containers.

- A. All materials used in the construction of any tank shall be suitable for the purpose, and such tank or container shall be designed and constructed to withstand any normal stress to which it may be subjected.
- B. Every tank shall be supported by a foundation capable of supporting the tank.
- C. Any vertical metal tank of over 10,000 gallons capacity shall be of such material and construction as to give a factor of safety of not less than 2.62. The thickness of any shell or bottom plate shall be not less than 3/16 inch and the thickness of any roof plate not less than 1/8 inch. The thickness of shell plates shall be figured in accordance with the following formula:

$$t = 2.604 \times (H - 1) \times D \times F \times S / T \times E$$

in which

- t = Thickness of plate in inches.
- H = Height of tank in feet above the center line of the lower horizontal joint of the ring under construction.
- D = Diameter of tank in feet.
- F = Factor of safety.
- S = One or the specific gravity of the fluid, whichever is the greater.

- T = Tensile strength of plate psi.
- E = Efficiency of vertical joint. (For double-welded butt joint E shall not exceed 0.75.)

- D. Tanks may be constructed of other than standard open-hearth steel tank plate when approved by the Fire Chief. Such approval will specify minimum gauges, lengths, diameters, and materials of the tanks. The requirements of the manufacturer shall be closely followed when said tanks are installed. All piping connected thereto shall otherwise comply with all pertinent sections of this regulation as they would apply to steel tanks.

§ 326-7. Soil vapor analysis test contamination found; order to remove. [Added 11-26-1991, effective 12-5-1991]

- A. Once a tank owner receives notification that contamination was found and that his/her underground fuel storage may be leaking, the owner has the option to:
- (1) Have the tank removed within 21 days of receipt of the contamination notification; or
 - (2) Have the tank precision tested within 14 days of receipt of the contamination notification; or
 - (3) The tank owner shall prove the tank is not leaking by some other means approved by the Board of Health within 14 days of receipt of the contamination notification.
- B. If the tank is found to be leaking, the tank contents shall be emptied immediately. The tank shall be removed within six months, if the Town requires a license to own said tank. The tank shall be removed within 24 months if no license is required to own the tank or if the tank is located above ground and has a capacity under 10,000 gallons.

§ 326-8. Design and construction of new or replacement underground tanks.

- A. All new and replacement tanks must be equipped with a metallic or nonmetallic striker plate attached to the bottom of the tank at each opening. Such striker plate shall be at least 12 inches by 12 inches in area and at least 1/4 inch thick.
- B. Underground tanks shall be designed and built in accordance with approved engineering standards for the materials of construction being used, and in accordance with § 326-6 of this regulation.
- C. A tank having a capacity of over 10,000 gallons shall be provided with a manhole. A full-face cover gasket shall be provided on the manway cover. An opening in the shell plate of a vertical tank for a manhole, nozzle or other similar opening shall be reinforced to compensate for the metal removed. Such an opening in the shell plate of a horizontal tank shall likewise be reinforced when the tank is subject to any pressure in addition to head pressure.
- D. All tank shall be designed and constructed to minimize the risk of corrosion and leakage. The following tank construction shall be approved:

- (1) UL-listed double-walled steel tank with cathodic protection or bonded fiberglass coating and with electrical isolation, a vacuum or air pressure in the interstitial space with continuous monitoring of the vacuum or air pressure.
 - (2) UL-listed fiberglass reinforced plastic (FPR) double-walled with a hydrostatic pressure monitoring system approved by the Board and the Fire Chief. The tank must be constructed using materials compatible with the product stored therein.
 - (3) Any other state-of-the-art type of tank construction providing equal or better protection against leakage other than the above-mentioned tanks if approved by the Fire Chief and the Board of Health.
- E. The owner of any underground fuel or chemical storage tanks that do not satisfy the construction requirements of Subsection D of this section shall have each tank and its piping tested at the owners' expense during the 10th, 13th, 15th, 17th and 19th year after installation and annually thereafter. Results of the testing will be filed with the Board of Health and the Fire Department. The owner of a new or existing tank which satisfied all the construction requirements of Subsection D of this section shall have the tank and its piping tested at the owners' expense during the 15th and 20th year following the date of installation and at two-year intervals thereafter.
- F. All tanks shall be tested by any final or precision test not involving air pressure, which can accurately detect a leak of 0.05 gallon per hour or less after adjustment for relevant variables such as temperature change and tank deflection and which has been approved by the Fire Chief and the Board of Health.
- G. Horizontal steel tanks located underground shall not exceed the capacities, diameter, or lengths for the corresponding gauges of metal outlined in the following table and shall be equipped with cathodic protection:

Table 1
Underground Horizontal Tanks

Capacity Over (gallons)	Not Over (gallons)	Maximum Diameter (inches)	Maximum Length (feet)	Thick-ness of Shell	Thick-ness of Hoods
10	270	42	6	10 USS gauge	14 USS gauge
270	560	48	11	10 USS gauge	12 USS gauge
560	1,100	64	14	10 USS gauge	10 USS gauge
1,100	4,000	84	24	3/16 inch	3/16 inch
4,000	12,000	126	32	1/4 inch	1/4 inch
12,000	20,000	132	42	5/16 inch	5/16 inch
20,000	35,000	132	50	3/8 inch	3/8 inch

- H. Vertical steel tanks located underground shall not exceed the maximum capacities, diameters, or heights for the corresponding gauges of metal outlined in the following table and shall be equipped with cathodic protection:

Table 2
Underground Vertical Tanks

Capacity Over (gallons)	Not Over (gallons)	Maximum Diameter (inches)	Maximum Length (feet)	Thickness of Shell	Thickness of Hoods
10	60	24	4	24	10 USS gauge
60	270	36	6	36	10 USS gauge
270	560	54	10	43	10 USS gauge
560	1,100	68	12	54	10 USS gauge
1,100	4,000	105	18	72	3/16 inch
4,000	12,000	132	24	96	1/4 inch
12,000	20,000	132	30	120	5/16 inch
2,000	25,000	132	35	132	3/8 inch

- I. Standard open-hearth steel tank plate shall be used for steel tank construction.

§ 326-9. Fill and vent pipes for all tanks and containers.

- A. Each storage tank shall be provided with a filler pipe, a draft pipe and a vent pipe, and may have a gauge pipe. If gauge pipe terminates within a building, the opening to same shall be protected.
- B. Filler pipes of tanks shall be not less than 1 1/4 inches in diameter, and shall extend down to within three inches of the bottom of the tanks.
- C. The receiving end of the filler pipe of a storage tank shall be designed to provide for a tight connection between a discharge hose and inlet. A filler pipe shall be located outside the building and shall be provided with a screw plug or cap which shall be kept wrench-tight when not in use.
- D. Where a filler pipe runs to a sidewalk, alley, private way, or public highway, it shall terminate in a metal box with a metal cover set flush with the surface of the sidewalk at the curb, alley, private way, or highway; and it shall be provided with a screw plug or cap which shall be kept wrench-tight when not in use.
- E. Vent pipes of tanks shall not be less than 1 1/4 inches in diameter shall be carried up to a point not less than 12 feet above the ground level at the filling point of the tank, shall terminate not less than five feet from any door or window opening, and shall be fitted with an approved weather hood screened with noncorrosive wire not coarser than 30 mesh. (Reference: Subsection F of this section)

- F. The provisions of Subsection E and § 326-110A of this regulation notwithstanding, the vent pipes of underground storage tanks may be manifolded for the purpose of effecting a vapor recovery system, provided that the pipe size shall be such as to discharge, within the maximum pressure limitations of the system, the vapors they may be required to handle when manifolded tanks are filled simultaneously. The use of pressure vacuum valves on vent pipes shall not be permitted as the underground storage system must be able to vent to atmosphere during periods of static storage. The person supplying the vapor recovery system shall specify the minimum vent pipe size to conform to these requirements, and such specifications shall be followed by the installer.
- G. All tanks shall have one or more vents large enough to relieve any undue pressure to which they may be subjected. The vent pipe shall be arranged to discharge to the open air and to pitch toward the storage tank. If such tanks are used for the storage of any flammable liquid with a flashpoint below 100° Fahrenheit, such vents shall be protected with fire-protective devices.

§ 326-10. Piping for all tanks and containers.

(Reference: 527 CMR 4.00 where applicable)

- A. All metallic piping, fittings, valves, and tanks used in connection with approved nonmetallic piping, fittings, valves, and tanks shall be grounded in the following manner:
- (1) By means of an approved driven ground rod in accordance with the provisions of the current Massachusetts Electrical Code, 527 CMR 12.00.
 - (2) The ground rod and all metallic piping shall be bonded together by means of approved ground fittings and a copper conductor not smaller than No. 4 AWG (American Wire Gauge).
- B. Cast-iron valves or fittings shall not be used in any pipe connection to the tank.
- C. All piping, fittings, and valves shall be constructed of materials that are compatible with the product to be stored in the tank to which the piping is connected.

§ 326-11. Underground piping.

- A. All new and replacement piping shall be constructed of noncorrodible materials such as fiberglass reinforced plastic (FRP) or its equivalent, or shall be protected against corrosion by use of a steel system cathodically protected by impressed current or sacrificial anodes or by some other type of equivalent protection. All piping shall be provided secondary containment approved by the Board and the Fire Chief . (Reference: § 326-9F of this regulation)
- B. Product lines shall be installed in a trench between the tank area and the pump island. Similarly, underground vent lines shall be installed in a trench.
- C. Before underground piping is installed, the trench shall receive a minimum six-inch-deep bed of well-compacted noncorrosive material such as clean washed sand or gravel. All

trenches shall be wide enough to permit at least six inches of noncorrosive backfill material around all lines.

- D. All pipes connected to such tanks shall lead from the tops of tanks, and tops of all tanks shall be below the level of the lowest horizontal pipe used in connection therewith.
- E. All pipes used for the conveyance of flammable liquid shall decline to tanks without traps or pockets and shall be protected against injury.

§ 326-12. Pumping system.

- A. No flammable liquid shall be delivered to any storage tank by means of a pump or under pressure unless such storage tank is designed to withstand the additional stress to which it may be subjected or unless the vent pipe for such tanks is of sufficient size to relieve the tank of any undue pressure.
- B. No suction pumping system shall be equipped with more than one check valve, and any such check valve shall be installed at the tank end only and shall be so installed that it may be tested or replaced without disturbing other elements of the storage facility. In no case shall there be a return waste pipe from the pump to the tank which has any opening to the atmosphere. When a pump is located within a building, it shall be in a well ventilated portion thereof.
- C. Remote pumping systems shall be designed or equipped so that no part of the system will be subjected to pressures above its allowable working pressure.
- D. All remote pumping systems shall be equipped with a product line leak detector.
- E. On a remote pumping system, a listed rigidly anchored emergency shutoff valve incorporating a fusible link or other thermally actuated device designed to close automatically in event of severe impact or fire exposure shall be properly installed in the supply line at the base of each individual island-type dispenser. The automatic closing feature of this valve shall be checked by a qualified person at the time of initial installation and at least once a year thereafter by manually tripping the hold open linkage.
- F. The operator shall immediately advise the owner should a leak detector signal a suspected product loss or a suction product system indicate a potential symptom of a leak (i.e., meter display jumping or skipping, liquid not being pumped when pump is on, initial pump overspeed followed by slow pumping, erratic liquid flow indicating air and liquid mixture, continued loss of prime in the pumping unit, etc.).
- G. The owner and/or operator shall take immediate action to verify the operation of the pumping system when advised of a suspected leak by the operator. Should a loss be determined, the owner and/or operator shall take immediate corrective action. The affected pumping system shall be taken out of service until the necessary corrective action has been taken.

§ 326-13. Location of tanks.

An underground tank used for the storage of Class A flammable liquid, if within 10 feet of a building having a cellar or basement, shall be placed below the level of the floor of such cellar or basement.

§ 326-14. Underground tank installation.

- A. No new or replacement tank or piping shall be installed, whether as part of a new or existing storage facility, unless the owner has given notice of its installation to the head of the local Fire Department and the Board of Health after submitted plans are approved indicating the location and design of the tank and its monitoring system, and no new or replacement tank or piping shall be buried or concealed until it has been inspected for damage and external defects, tested for tightness under § 326-17 of this regulation, and approved by the head of the local Fire Department or his designee.
- B. No new or replacement tank shall be installed except by a contractor who has been certified in writing by the manufacturer or a petroleum equipment association as qualified for the purpose. The contractor shall, prior to any installation, submit to the head of the local Fire Department and the Board a copy of such certificate.
- C. The installation of a new replacement tank, including anchoring of the tank whenever water saturation of any part of the excavation reasonably be anticipated, shall be carried out in accordance with the manufacturer's recommendation, accepted engineering practices, and the provisions of § 326-14 of this regulation, provided that the backfill material for FRP (fiberglass reinforced plastic) tanks shall be pea, gravel or crushed stone and that the backfill material for all other tanks shall be either pea, gravel or clean noncorrosive sand free of cinders, stones, and any other foreign material, with the material under the tank to be compacted and contoured to the shape of the tank before the tank is installed, and the balance to be thoroughly compacted.
- D. Any damage to the exterior of a tank or its coating shall be repaired before the tank is covered.
- E. Every new or replacement tank and its piping shall be tested separately, at the owner's expense, prior to its being buried. The tank shall be tested by air pressure at not less than three pounds and not more than five pounds per square inch. The piping shall be tested hydrostatically to 150% of the maximum anticipated pressure of the system but not less than 50 pounds per square inch gauge at the highest point of the system. After the tank and piping have been fully buried, all subsequent testing of underground tanks shall be done by the precision test in accordance with the provisions of Pamphlet No. 329, Chapter 4 - 3.10, of the National Fire Protection Association, or other test of equivalent or superior accuracy. The owner shall furnish the head of the local Fire Department with a certified copy of the results of all testing required by § 326-14 of this regulation, which the head of the local Fire Department shall keep with the records of the storage facility.
- F. Steel tanks completely underground shall be covered with a minimum of two feet of earth or shall be covered with not less than one foot of earth, on top of which shall be placed a slab of reinforced concrete not less than four inches thick. When they are or are

likely to be subjected to traffic, they shall be protected against damage from vehicles passing over them by at least three feet of earth cover, or 18 inches of well-tamped earth plus six inches of reinforced concrete or eight inches of asphaltic concrete. When asphaltic or reinforced concrete paving is used as part of the protection, it shall extend at least one foot horizontally beyond the outline of the tank in all directions.

§ 326-15. Leak detection equipment, testing and/or inventory requirements for underground storage.

All tanks excepting those used for storing heating oil for consumptive use on the premises where stored shall satisfy the following options:

- A. Mandatory inventory recordkeeping as defined in § 326-16 of this regulation, in addition to periodic tightness testing as defined in § 326-17 of this regulation.
- B. The installation and maintenance of an approved monitoring system installed by a qualified person.
- C. The installation of an approved double-walled tank with interstitial space monitoring system and liquid removal port. Secondary containment and an approved in-tank or interstitial space monitoring system shall be required for new or replacement tanks in sole source aquifer areas. The Environmental Protection Agency mandates this requirement in all sole source aquifer areas such as the Town of Barnstable. Tanks storing heating oil for consumption on the premises are exempt from Subsection A.

§ 326-16. Inventory methods for underground tanks.

- A. The operator of every, new and existing storage facility shall prepare, reconcile and maintain daily inventory control records for each tank and for each combination of interconnected tanks with a common level of product (hereinafter, a "combination"), for the purpose of prevention and early detection of leaks. The preparation, reconciliation, and maintenance of such records shall be done in accordance with the provisions of 527 CMR 5.05 (3) as amended, with the following additions and modifications:
 - (1) At the close of each calendar month, the operator shall determine, for that month and for each tank or combination, the number of days in which any amount of product was dispensed and the number of days in which a loss of product was recorded. These records shall include the inspection details on monitoring wells and leak-detection systems.
 - (2) An abnormal loss of product shall mean a loss not explainable by spillage, temperature variations or other causes, as provided in CMR 5.05(3)(d).
 - (3) In the event of any abnormal loss of product, the following steps shall be taken, with the investigation not to stop until the source of the discrepancy has been found, the tank has been tested, repaired or replaced, or the entire procedure has been completed:

- (a) Inventory input and output records shall be checked by the owner of the tank for arithmetical error.
 - (b) Inventory shall be checked by the owner of the tank for error in measurement.
 - (c) If abnormal loss is not reconcilable by Steps 1 and 2 in Subsections (a) and (b) above, or cannot be affirmatively demonstrated to be the result of theft, the accessible parts of the storage system shall be checked for damage or leaks.
 - (d) Monitoring wells and leak detection systems shall be checked for signs of a discharge.
 - (e) Calibration of the inventory measuring system and any dispensers shall be checked.
 - (f) The entire storage system, excluding the vent but including joints and remote fill lines, shall be tested in accordance with the applicable sections of this regulation.
 - (g) If a discharge, leak, or threat of release is discovered, the requirements of the applicable paragraphs of § 326-18 shall be met by the owner of the tank.
- (4) An abnormal gain of water shall be a gain in the water level inside any tank of more than one inch in a twenty-four-hour period.
 - (5) In the event of any abnormal gain of water, the owner shall, at the owner's expense, have the water removed from the tank and disposed of in a manner as directed by the Department of Environmental Quality Engineering (DEQE) and have the water checked 24 hours later, during which time no product shall be added.
 - (6) Apart from abnormal gains of water, the owner of any tank in which water has accumulated to a depth of three inches or more shall, at the owner's expense, have the water removed and disposed of in a manner as directed by DEQE.
- B. For failure to comply with § 326-16 of this regulation, see § 326-17C of this regulation.
 - C. Tanks used for storing heating oil for consumptive use on the premises are exempt from § 326-16 except for subsections deemed pertinent by the Board.

§ 326-17. Testing for tightness of underground tanks.

- A. If any of the testing discloses a leak or a loss which is not reconcilable, the operator and the owner shall comply immediately with the requirements of § 326-18 of this regulation, and the local Fire Department, or the Board, may direct the owner, at the owner's expense, to have all other tanks on the premises and their components tested in the same manner.

- B. If the owner of any existing storage facility, pursuant to the provisions of §§ 326-8 and 326-11 of this regulation, provides cathodic protection and electrical isolation for each tank in the facility, subsequent testing requirements shall be in accordance with the provisions of § 326-8E of this regulation.
- C. With respect to any tank to which the inventory control requirements of § 326-16 of this regulation are applicable, the head of the local Fire Department or the Board shall require the operator to have it and its piping promptly tested, at the owner's expense, whenever the operator fails to prepare, reconcile, and maintain the daily inventory records or fails to perform the required monthly calculations. With respect to any tank to which the inventory control requirements of § 326-16 of this regulation are not applicable, the head of the local Fire Department or the Board may if they have probable cause to believe that such tank is leaking, require the owner to have it and its piping promptly tested at the owner's expense.
- D. The head of the local Fire Department or the Board of Health may require the owner of any existing tank to have it and its piping tested, at the owner's expense, in any case in which the owner has failed to make timely application for a permit as required under § 326-23 of this regulation.
- E. Except for testing performed on a tank and its piping prior to their being covered, a tank shall be tested by any final or precision test not involving air pressure which can accurately detect a leak of 0.05 gallon per hour or less after adjustment for relevant variables such as temperature change and tank-end deflection, and which has been approved by the Marshal, the Board of Health and Fire Chief.
- F. All tests shall be approved and administered by qualified persons, and any such person shall notify the head of the local Fire Department prior to administering a test.
- G. The person performing any test under § 326-17 of this regulation shall promptly supply the owner and the head of the local Fire Department and the Board of Health with certified copies of all test results for a tank and its piping. The head of the local Fire Department shall keep his copy with the records of that storage facility.

§ 326-18. Response to leaks.

- A. In the event of a leak, whether determined by testing or otherwise, the following steps shall be taken:
 - (1) The operator shall immediately notify the owner.
 - (2) The owner or operator shall immediately notify the head of the local Fire Department, the Board and the Office of Incident Response of the Department of Environmental Quality Engineering (OIR-DEQE).
 - (3) If testing has confirmed that the source of the leak is the piping for a particular tank, the operator shall take that tank out of service immediately.
 - (4) If testing has confirmed that the source of the leak is a particular tank, the owner shall within 24 hours cause that tank to be emptied of all its product.

- B. The head of the local Fire Department shall take charge of all emergency containment procedures, and shall take whatever measures are necessary to prevent fire and explosion, or, in the case of a fire or explosion, to protect the persons and property within the vicinity from such hazards.
- C. The head of the local Fire Department shall verify that the requirements of § 326-18A of this regulation are complied with.
- D. Upon the arrival of the representative of OIR-DEQE, the head of the local Fire Department shall advise him of the conditions at the site and the results of the investigations required by § 326-18A of this regulation.
- E. The owner and the operator shall cooperate with the representative of OIR-DEQE in all efforts to locate the source of the leak, to contain it, etc.
- F. The head of the local Fire Department shall have the responsibility of the containment procedures as long as, in his opinion, a fire or explosion hazard exists. During this period, the elimination of the fire/explosion hazard will have priority over all other concerns, at all times. Once such hazards cease, the representative of OIR-DEQE shall assume all responsibility.

§ 326-19. Tank repair and relining.

- A. No underground tank can be relined but must be replaced.
- B. If the head of the local Fire Department or the Board determines that a tank and its components shall be removed, the owner shall first obtain a permit the Fire Department, pursuant to MGL C. 148, § 38A. Any removal shall be completed within 90 days after the head of the local Fire Department has notified the owner of his decision.

§ 326-20. Tanks abandoned or temporarily out of service.

- A. If the owner decides to abandon a tank which is either located under a building and cannot be removed from the ground without first removing the building or which is so located that it cannot be removed from the ground without endangering the structural integrity of another tank, the owner shall promptly notify the head of the local Fire Department of this decision. Under the direction of the head of the local Fire Department, the owner shall have all product removed from the tank, by hand pump if necessary, and shall have the tank filled with sand or other inert material as prescribed by the head of the local Fire Department. Requirements of § 326-20 of this regulation shall be in accordance with 527 CMR 10.12(2). The owner shall be required to have a soil vapor analysis test performed in order to prove the underground fuel or chemical storage tank did not leak prior to permanent abandonment approval from the Fire Department. All the contents of the tank, including oil and sludge, shall be removed from the tank under the supervision of a Fire Department inspector. **[Amended 11-26-1991, effective 12-15-1991]**
- B. Except as provided in § 326-20A of this regulation, no tank may be abandoned in place. Any owner of a tank who has decided to abandon it and any owner of a tank which has

in fact been out of service for a period of time constituting abandonment, as defined in § 326-2 of this regulation, shall immediately obtain a permit from the head of the local Fire Department pursuant to MGL C. 148, § 38A, and, subject to the directions of the head of the local Fire Department, shall have any product removed from the tank, all tank openings properly secured, and the tank removed from the ground. The product and tank shall be disposed of in accordance with 310 CMR 30.00 "Hazardous Waste Regulations," at the owner's expense, as directed by the head of the local Fire Department. The owner shall return the metal identification tag to the Board.

- C. The owner of a tank licensed under MGL C. 148, which the owner has decided to take out of service for a period of less than six months, shall promptly notify the head of the local Fire Department of the decision, and shall have all product removed from the tank and disposed of in accordance with 310 CMR 30.00 "Hazardous Waste Regulations," as directed by the head of the local Fire Department, and shall have all tank openings properly secured and the tank rendered inert. The metal identification tag must be returned to the Board. Before any such tank may be restored to service, the owner of the tank shall notify the head of the local Fire Department, who may require that the owner have the tank and its piping tested, at the owner's expense, in accordance with the provisions of § 326-17 of this regulation.

§ 326-21. Tank removal.

- A. Any person granted a permit by the Fire Chief to remove a tank under the provisions of MGL C. 148, or this regulation, shall within 72 hours provide the permit-granting authority with a receipt for delivery of said tank to the site designated on the permit.
- B. Before any person is granted a permit by the Marshal or the head of a local Fire Department to remove a tank under the provisions of MGL C. 148, or this regulation, and said tank is not being transported to an approved tank yard, the person requesting the permit shall provide the permit-granting authority with written approval for the designated site of disposition. (Reference: 502 CMR 3.00 for tank removal and disposal procedure)

§ 326-22. Enforcement and appeals.

- A. Any owner or operator who violated any provision of this regulation shall be subject to the penalties provided under MGL C. 111 § 31, as amended. Each day during which such violation continues shall constitute a separate offense. Upon request of the head of the local Fire Department or the Board of Health, the licensing authority and the Town counsel shall take any such legal action as may be necessary to enforce the provisions of this regulation.
- B. In the event of the violation of this regulation by the owner or operator of a storage facility, the head of the local Fire Department or the Board of Health, instead of or in addition to requesting enforcement under § 326-22A of this regulation, may recommend revoking or suspend the owner's permit or may require more frequent testing than would otherwise be required under § 326-17 of this regulation; and if a permit is revoked or if a storage facility has been installed or maintained without a permit, the head of the local

Fire Department may order that the storage facility be removed from the ground. Before revoking or suspending an owner's license or requiring removal of a storage facility from the ground, the licensing authority shall hold a public hearing on the proposed action, and shall be certified mail give the owner at least 10 days, advance notice of the hearing and shall render its decision in writing with a brief statement of the reasons therefor.

- C. After a public hearing, the Board of Health may, with the concurrence of the Fire Chief, vary the application of any provision of this regulation, not in conflict with 527 CMR 9.00 unless otherwise required by law when in their opinion the applicant has demonstrated that an equivalent degree of protection will still be provided to public and private water supplies.
- D. All tanks used for the storage of flammable liquids shall be subject to the rules and regulations of the Board of Fire Prevention Regulations.
- E. All tanks and their appurtenances shall be maintained in a safe condition at all times.
- F. No tank for which a permit has been issued for the storage of any liquid with a specific gravity of one or less shall be used for the storage of any liquid with a specified gravity of more than one.
- G. No wooden tank shall be used for the storage of any flammable liquid.
- H. No open tank shall be used for the storage of flammable liquid.

§ 326-23. Permits.

- A. Either the original or photographic copy of all permits granted under the provisions of this regulation shall be conspicuously posted or kept on the premises.
- B. New storage facilities:
 - (1) No storage facility shall be installed unless the owner shall first have obtained a permit from the head of the local Fire Department after approval of the Board of Health. This permit shall be in addition to any license or any other permit required by MGL C. 148, or by any regulations issued thereunder.
 - (2) The application for a permit shall be on a form obtained from the Board of Health and shall include the following information and any other information the Board may require:
 - (a) Name, address, and telephone numbers (day and night) of the owner.
 - (b) Name, address, and telephone numbers (day and night) of the operator.
 - (c) The number of tanks in the proposed facility and the capacity and contents of each proposed tank.
 - (d) The proposed type of construction of each tank and its piping, together with the tank's approval number, taken from the tag issued, if any, and a

description of any provisions made for cathodic protection, electrical isolation and early detection of leaks through a monitoring system.

(e) The depth below ground level of the lowest and highest points of each proposed tank.

(3) In a storage facility with more than one proposed tank, the applicant shall furnish the Board of Health and the appropriate Fire Chief, with a certificate signed by a qualified person stating that the proposed facility meets all the design and construction requirements of 527 CMR 9.00 and this regulation.

(4) The applicant shall also furnish a plot plan of the site and the area surrounding it, showing the location of each proposed tank and its components and of any building on the site, and the approximate location of any public or private well and of any body of surface water within 1,000 feet of the proposed storage facility.

C. Existing storage facilities:

(1) Owners of single-family and duplex dwellings need not comply with Subsection C(1)(a) and (b).

(a) Name, address, and telephone numbers (day and night of the owner.

(b) Name, address, and telephone numbers (day and night) of the operator.

(c) The number of tanks in the facility and the capacity and contents of each tank.

(d) The type of construction for each tank and its piping, together with a description of any provisions made for cathodic protection, electrical isolation, and early detection of leaks through a monitoring system.

(e) The depth below ground level of the lowest and highest points of each tank.

(f) The date of installation of each tank.

(2) The owner shall furnish evidence of the date of installation. Such evidence may include, but is not limited to, a copy of any license or permit issued by the local licensing authority and the head of the local Fire Department. If no substantial evidence of the date of installation is supplied, the tank shall be presumed to have been installed 20 years prior to the effective date of this regulation. See § 326-3A.

(3) Replacement and substantial modification:

(a) If the head of the local Fire Department or Board of Health determines that the proposed replacement or modification constitutes a danger to a public or private water supply because of its proximity to any public or private well, aquifer, recharge area or body of surface water, or for any other reason the head of the local Fire Department or the Board may deny the application or approve it subject to conditions that he may determine are necessary to protect such public or private water supply.

- (b) The head of the local Fire Department or the Board of Health may require that existing tanks other than those used for heating purposes shall be equipped with observation wells or other detection system if in his opinion the location of the tanks could jeopardize the safety of the public.
- (4) Renewal of permits and changes of ownership:
- (a) The owner of any new or existing facility for which a permit has been issued under § 326-23B or C must apply to the head of the local Fire Department and the Board of Health for renewal of the permit at five-year intervals from the date on which the original permit was granted. The application for renewal must include any changes required under § 326-23B(2) and C.
 - (b) The owner of any storage facility, except individual homeowners, shall within seven working days notify the head of the local Fire Department and the Board of any change in the name, address, or telephone numbers of the owner or of the operator. In the case of any transfer of ownership, the new owner shall be responsible for the notification.

§ 326-24. Varying of provisions by Board of Health.

The Board of Health may vary the application of any provision of this regulation except where expressly forbidden in 527 CMR 9.00 if in its opinion strict enforcement thereof would do manifest injustice to the applicant, and the applicant has proved that the same amount of environmental protection required under this regulation can be achieved without strict application of the particular provision.

§ 326-25. Severability.

Each regulation shall be construed as separate to the end if any regulation or sentence, clause, or phase thereof shall be held invalid for any reason, the remainder of that regulation and all other regulations shall continue in full force.

§ 326-26. When effective.

This regulation is to take effect on the date of publication of this notice.

Chapter 332

HERBICIDES

§ 332-1. Findings.

§ 332-2. Definitions.

§ 332-3. Use of herbicides restricted.

§ 332-4. Approval required; application information.

§ 332-5. Regulations.

[HISTORY: Adopted by the Town of Barnstable Board of Health 7-6-1982, effective 4-24-1985 (Part IV of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.]

§ 332-1. Findings.

The extensive use of herbicides presents a potential public health hazard that includes a risk of ground- and surface water contamination.

§ 332-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

HERBICIDE — Any substance or mixture of substances intended for use as a plant regulator, defoliant, or dessicant.

§ 332-3. Use of herbicides restricted.

The use of herbicides is prohibited along easements, rights-of-way, railroads, power lines, or similar uses, within the Town borders, unless the Board of Health approves a written application for such use in accordance with the provisions of § 332-4 hereof.

§ 332-4. Approval required; application information.

All applicants desiring to use said herbicides must submit to the Board of Health an application for the approval of such uses. A map of the area shall be included with the application showing distances to private and public wells, wetlands, watercourses, dwellings, and property lines within 400 feet of the area proposed for herbicide treatment.

§ 332-5. Regulations.

- A. The spraying of herbicides is prohibited within 400 feet of public or private wells.
- B. The spraying of herbicides is prohibited within 100 feet of any wetlands, streams, ponds, brooks or any other watercourse.
- C. The spraying of herbicides is prohibited within 300 feet of any dwelling, barn, or similar structure, and cultivated land.

- D. There shall be no spraying of herbicides if the wind velocity exceeds five knots as measured on site by an anemometer, or other approved wind-testing device. The applicator will test the wind velocity every hour while spraying.
- E. Easily visible warning signs will be posted every 200 feet along the sprayed area. These signs shall not be removed for a minimum of five days.
- F. The use of any vehicle engaged in the dispensing of pesticides (including herbicides, insecticides and fungicides) for obtaining water from any watercourse as defined by 310 CMR 15.00, Title 5, State Environmental Code, or the flushing of any pesticide residue or the cleaning of any vehicles by the use of any watercourse is hereby prohibited.

Chapter 335

HOUSING

ARTICLE I Sanitary Standards

§ 335-1. Adoption of standards.

[HISTORY: Adopted by the Board of Health of the Town of Barnstable as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Nuisances — See Ch. 353

Wells — See Ch. 397.

On-site sewage disposal systems — See Ch. 360.

ARTICLE I Sanitary Standards [Adopted 1-13-2009]

§ 335-1. Adoption of standards.

The provisions of the State Sanitary Code, Chapter II (105 CMR 410.000 through 105 CMR 410.960, Minimum Standards of Fitness for Human Habitation, State Sanitary Code, Chapter II), inclusive and dated January 26, 2007, including any future amendments, deletions or corrections, are hereby adopted as the provisions of this Article I of Chapter 335.

Chapter 346

MASSAGE ESTABLISHMENTS

§ 346-1. Application for license.

§ 346-2. Definitions.

§ 346-3. Exceptions.

§ 346-4. Expiration date of license.

§ 346-5. Requirements for personal
licensure.

§ 346-6. Requirements for licensure of an
establishment.

§ 346-7. Violations and penalties.

§ 346-8. Severability.

[**HISTORY: Adopted by the Town of Barnstable Board of Health 2-20-1975, effective 6-3-1996 (Section 1.00 of Part VI of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.**]

GENERAL REFERENCES

Body art — See Ch. 307.

Fee Schedule — See Ch. 318.

§ 346-1. Application for license.

Application for licenses shall be made to the Board of Health, on blanks furnished by said Board of Health, and shall supply in proper form all information called for by the blank so furnished. On the approval of any application by the Board of Health, and on the payment by the applicant of the established fees for each license (see Chapter 318) a license will be issued authorizing the licensee to continue in business until the 31st day of May next following the issue of the license, unless such license is sooner revoked.

§ 346-2. Definitions.

For the purpose of these regulations, the following terms shall have the meanings indicated:

APPROVED — Approved by the Board of Health of the Town of Barnstable or its agent in accordance with accepted standards.

APPROVED COURSE OF MASSAGE — A course on the art and science of massage which includes both theory and practice and is approved by the Board of Health of the Town of Barnstable in accordance with accepted standards.

ESTABLISHMENT FOR GIVING MASSAGE, VAPOR, POOL, SHOWER, OR OTHER BATHS — The office, place of business, or premises where massage is practiced or where therapeutic or conditioning baths of water, vapor, or other substance are given.

MASSAGE — Manipulation or conditioning of part or parts of the body by manual, mechanical, or other means as a beauty treatment, for purported health or medical treatment, or for the purposes of invigoration.

§ 346-3. Exceptions.

Those persons excepted by Massachusetts General Laws.

§ 346-4. Expiration date of license.

Licenses shall automatically expire on May 31, each year.

§ 346-5. Requirements for personal licensure.

No person shall be licensed to practice massage or conduct an establishment for giving massage, vapor, pool, shower, or baths unless he meets the following requirements:

- A. Be 18 years of age or older.
- B. Submit to the Board of Health a completed application form containing all information requested by said form.
- C. Be a high school graduate.
- D. Submit evidence of training experience evaluated as equivalent to a five-hundred-hour course of study in massage therapy; body work and movement education.
- E. Character references (at least three), one must be a physician.
- F. Submit evidence of having passed the National Certification Examination for Therapeutic Massage and Body Work.
- G. Submit proof of a skin test for tuberculosis within the last two years. A new skin test for tuberculosis shall be required every three years thereafter.

§ 346-6. Requirements for licensure of an establishment.

Every establishment for the giving of massage or vapor, pool, shower, or other baths shall meet the following standards:

- A. All rooms shall be well lighted, ventilated, and be maintained in a sanitary manner at all times.
- B. All rooms used for the giving of vapor baths or body massage shall be provided with an ample supply of hot and cold water.
- C. Adequate means shall be provided for the cleansing and sterilizing of all instruments and utensils and, if necessary, for the cleansing and sterilizing of the skin or flesh of the patrons.
- D. All instruments and devices used by any person licensed to practice under this act, for direct applications to any parts of the bodies of patrons, or for holding materials to be applied to any parts of the bodies, shall so far as practicable, be such as can readily be kept clean and as nearly sterile as circumstances permit.

- E. Robes, sheets, blankets, and pillow cases, which come into direct contact with the bodies of the patrons, and all towels and napkins, shall after having been used and before being used again be laundered in such a manner as to insure effective sterilization.
- F. No unsterilized part of a percussor, vibrator, or other mechanical appliance shall be applied directly to the skin of the patron, but the part of the body being treated shall be covered with a clean towel or else the instrument shall be covered in similar manner.
- G. No sponge, nor stick alum, nor any other article liable to convey infection shall be used to make application direct to the skin or to any cut or wound.
- H. No person licensed under this act shall treat any person afflicted with any skin-eruption disease unless such person shall have furnished a certificate from a physician to the effect that the eruption or disease is not of a contagious or transmissible character.
- I. Every person licensed to practice body massage shall thoroughly cleanse his hands by washing immediately before serving any patron.
- J. No establishments licensed under this chapter shall be kept open except between the hours of 7:00 a.m. and 10:00 p.m., unless specially authorized by the Board of Health.
- K. Every licensed person, when requested, shall show such license to a legally authorized public officer.
- L. No license will be issued to conduct an establishment for the giving of vapor baths unless or until adequate arrangements have been made for the separation of the sexes, and then only in accordance with such conditions as may be prescribed in the license to accomplish this end.
- M. A license is not transferable without the permission of the Board of Health.

§ 346-7. Violations and penalties.

Whoever violates any provision of these rules or regulations shall be punished by a fine of not more than \$100 or imprisonment for not more than six months, or both, in accordance with § 53, Chapter 140, of the General Laws.

§ 346-8. Severability.

If any section, paragraph, sentence, clause, or phrase of these rules and regulations should be decided invalid for any reason whatsoever, such decision shall not affect the remaining portions of these regulations, which shall remain in full force and effect; and to this end the provisions of these regulations are hereby declared severable.

Chapter 353

NUISANCES

ARTICLE I Storage of Garbage and Refuse

- § 353-1. Responsibilities of owners and occupants.
- § 353-2. Storage of garbage and rubbish.
- § 353-3. Definitions.
- § 353-4. Minimum setback to abutting property line.
- § 353-5. Screening of refuse storage areas in other than single-family dwellings.

§ 353-6. (Reserved)

ARTICLE II Maintenance of Private Sewage Systems

- § 353-7. Maintenance of systems required.
- § 353-8. Prevention of objectionable conditions and pollution.
- § 353-9. Discharge onto ground prohibited.
- § 353-10. Craigville Beach District implementing regulation: pumping requirements.

[HISTORY: Adopted by the Town of Barnstable Board of Health as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Storage of Garbage and Refuse [Adopted 5-21-1980; revised 8-24-1999, effective 9-2-1999 (Section 1.00 of Part VII of the 1991 Codification as updated through 6-1-1996)]

§ 353-1. Responsibilities of owners and occupants.

The occupant of any building used for business or habitation shall be responsible for maintaining in a clean and sanitary condition and free of garbage, rubbish, other filth or causes of sickness in that part of the building and outside area which he occupies or controls. The owner of any building, vacant or otherwise, or parcel of land shall be responsible for maintaining such building or land in a clean and sanitary condition, free from garbage, rubbish, or other refuse.

§ 353-2. Storage of garbage and rubbish.

Garbage, or mixed garbage and rubbish, shall be stored in watertight receptacles with tight-fitting covers. Said receptacles and covers shall be constructed of metal or other durable, rodentproof material.

§ 353-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

GARBAGE — The animal, vegetable, or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food, and containers and cans which have contained food unless such containers and cans have been cleaned or prepared for recycling.

RUBBISH — Combustible or noncombustible waste materials, except garbage, including but not limited to such material as paper, rags, cartons, boxes, wood, bottles, plastic, rubber, leather, tree branches, yard trimmings, grass clippings, tin cans, metals, mineral matter, glass, crockery, dust, and residue from the burning of wood, coal, coke, and other combustible materials.

§ 353-4. Minimum setback to abutting property line.

No person shall store any rubbish or garbage less than 10 feet away from an abutter's property line. Where compliance with this provision is not possible due to existing physical constraints of the property, the refuse container(s) shall be set back away from the property line to the maximum separation distance feasible.

§ 353-5. Screening of refuse storage areas in other than single-family dwellings.

Storage of refuse from commercial buildings, lodging houses, multiple-family dwellings, municipal buildings and other business establishments (excluding single-family dwellings) shall be as follows: All outdoor rubbish and garbage storage areas shall be located in an area which is screened from the neighbor's view and from public view. Said screening may be in the form of fencing, evergreen trees or other plants capable of providing year-round screening, located around the refuse storage area in such a manner to block the view of the rubbish and garbage storage area from the neighbors and from other persons passing-by.

§ 353-6. (Reserved) ¹

ARTICLE II

Maintenance of Private Sewage Systems

[Adopted 8-19-1986, effective 8-25-1986 (Section 2.00 of Part VII of the 1991 Codification as updated through 6-1-1996)]

§ 353-7. Maintenance of systems required.

Every owner, or agent, of premises in which there are private sewers, individual sewage disposal systems, or other means of sewage disposal, shall keep the sewers and disposal sewage systems in proper operational condition and have such works cleaned or repaired at such time as ordered by the Board of Health.

1. Editor's Note: Former § 353-6, Violations and penalties, was repealed 3-1-2005. See § 1-4 for the fine for violations of Board of Health regulations.

§ 353-8. Prevention of objectionable conditions and pollution.

Sewage disposal works shall be maintained in a manner that will not create objectionable conditions or causes the works to become a source of pollution to the waters of the Commonwealth.

§ 353-9. Discharge onto ground prohibited.

No sanitary sewage shall be allowed to discharge or spill onto the surface of the ground or to flow into any gutter, street, roadway, or public place, nor shall such material discharge onto any private property.

**§ 353-10. Craigville Beach District implementing regulation: pumping requirements.
² [Adopted 1-19-2011 by Order No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]**

Within the Craigville Beach District, all property owners or other responsible parties are required to remove the septage from their on-site sewage disposal systems at least once in every four years unless otherwise required under Title 5 or any valid Town of Barnstable permit, or unless an extension is granted by the Health Agent. A septic tank or cesspool shall be pumped when the total thickness of solids (sludge plus scum) is equal to or exceeds 33% of the liquid depth of the tank or cesspool. If a property owner, agent, or tenant believes that the septage removal is not necessary within the four years, an inspection by an agent of the Board of Health may be requested. If, in the opinion of the Health Agent, the system does not require pumping or other maintenance, the septage removal may be postponed for up to two years. Further extensions of up to two years at a time may be granted as often as is reasonable in the opinion of the Health Agent after reinspections. Nothing in this section should be construed to suggest that septage may not be removed more often than once in four years.

2. Editor's Note: Former § 353-10, Violations and penalties, was repealed 3-1-2005. See § 1-4 for the fine for violations of Board of Health regulations.

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[HISTORY: Adopted by the Town of Barnstable Board of Health as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Sewers — See Ch. 184.
Solid waste — See Ch. 202.

Wastewater discharge — See Ch. 232.
Sewer connections — See Ch. 901.

ARTICLE I

Setback Requirements

[Adopted 5-27-2003, effective 6-13-2003 (Section 1.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-1. Location of components with respect to water bodies.

Unless otherwise specified by the Board of Health, all soil absorption systems, leaching facilities, septic tanks, disposal fields, or other sewage disposal system components hereafter constructed shall be so located that a distance of not less than 100 feet shall intervene between any bordering vegetated wetland (as defined within 310 CMR 15.002 of the State Environmental Code, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage) and/or watercourse including brooks, ponds, salt and fresh water marshes, bogs, streams, coastal banks, lakes or spring high water mark of tidal waters and any portion of any soil absorption system, leaching facility, septic tank, disposal field, or other sewage disposal system component.

ARTICLE II

Soil Stability

[Adopted 7-19-1973, effective 8-3-1973 (Section 2.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-2. Installation of septic systems in shifting sand prohibited.

Septic sewage systems shall not be installed in any area where there is active shifting of sands or earth. This would include sand dunes, some areas of coastal beach and other areas subject to windborne free-moving soil.

ARTICLE III

Floodplain Sewage Regulation

[Adopted 11-8-1977, effective 11-29-1977 (Section 3.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-3. Approval of systems in flood zones contingent on minimizing contamination. [Amended 12-10-2013]

Permits for on-site sewage disposal or water supply may be approved for construction when located within Zones A and V as designated on the most up-to-date FIRM Flood Insurance Rate Map on file with the Building Commissioner, when it is demonstrated by the applicant that in the event of flooding to base elevations, such facilities are designed to minimize contamination.

§ 360-4. New and replacement systems.

Any new or replacement water supply system or sanitary sewerage system within such area shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.

§ 360-5. Compliance with other laws required.

The applicant shall also comply with all provisions of the Massachusetts Department of Environmental Quality Engineering, Title V, and all Town of Barnstable health regulations.

ARTICLE IV

Change in Use

[Adopted 8-18-1981, effective 8-27-1981 (Section 4.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-6. Change from seasonal to year-round use.

No person shall change the use of an existing building from seasonal to year-round use unless the on-site disposal system has the capacity to properly dispose of sewage generated by year-round use and unless the building conforms to minimum standards of fitness for human habitation. The conversion of a building, or buildings, constituting a cottage colony, hotel, inn or rooming house, or of a facility required to be licensed as a recreational camp, overnight camp or cabin, motel, or mobile home park under § 32A to I of Chapter 140, of the General Laws, to condominium-type ownership, or the sale of a unit within such a condominium, shall be deemed to be a change in use from seasonal to year-round use.

§ 360-7. Inspection of premises; issuance of certificate of occupancy.

The health agent, upon becoming aware of the recording or registration of a master deed for such a condominium, or for a unit within such a condominium, at the Barnstable Registry of Deeds or on request of a property owner proposing to convert to condominium-type ownership, shall inspect the premises conveyed thereby to ascertain whether they conform with all applicable state and local laws and regulations relating to septic systems and fitness for human habitation. If the premises do not so conform the health agent shall enforce said laws and regulations according to their terms with respect to the premises. If the premises do conform, the health agent shall issue a certificate of compliance.

ARTICLE V

Upgrading of Substandard Systems

[Adopted 11-10-1998, effective 1-1-1999 (Section 5.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-8. Authority; intent and findings. [Amended 2-19-2008]

- A. In accordance with Chapter 111, § 31, of the Massachusetts General Laws, and in order to further clarify the State Environmental Code, Title V, Subsection 310, CMR 15.303

Septic Systems Failing to Protect the Public Safety and the Environment, the Board of Health hereby adopts this article.

- B. Also, the possible contamination to the environment by substandard on-site sewage disposal systems presents a serious threat to public health. In addition, these systems may pose a threat to the sole source aquifer and/or areas designated as wetlands affecting the environment and public health.

§ 360-9. Upgrading systems consisting of one cesspool.

This regulation is adopted pursuant to the power of the Board of Health conferred by Chapter 111, § 31, of the General Laws: Septic systems consisting of one cesspool shall be upgraded

to conform to 310 CMR 15.00, the State Environmental Code, Title V, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, and the Town of Barnstable Board Health regulations.

§ 360-9.1. Upgrading systems consisting of leaching pit with high liquid level. [Added 2-19-2008; 4-9-2013]

Septic systems consisting of a leaching pit or cesspool(s) with a liquid depth of less than 12 inches below the invert shall be upgraded to conform to 310 CMR 15.00, the State Environmental Code, Title V, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, and Town of Barnstable Board of Health Regulations.

§ 360-10. Inspections conducted in accordance with state law.

This regulation shall apply to any septic system inspection conducted in accordance with 310 CMR 15.301 of the State Environmental Code, Title V.

§ 360-11. Enforcement during building permit process.

This regulation shall also be strictly enforced during the building permit application process.

ARTICLE VI

Groundwater Protection

[Adopted 9-6-1983; revised 12-17-2002, effective 3-7-2003 (Section 6.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-12. Purpose and findings.

- A. The purpose of this article is the protection of groundwater in the Town of Barnstable.
- B. The ground resources of the Town of Barnstable are its sole source of water supply. It is now known and demonstrable that public supply wells draw water from a substantial land area. It is known from experience that high-density housing can, over time, cause serious deterioration of ambient groundwater by nitrate contamination. It has been proven that nitrate contamination in drinking water can be a serious public health problem.
- C. Calculations performed by Cape Cod Planning and Economic Development Commission indicate that individual residential housing units placed on one -acre parcels will produce the maximum recommended planning limit of five parts per million (ppm) nitrate-nitrogen in groundwater.

§ 360-13. Connection of certain structures to public sewers when available.

- A. The owner of any commercial structure located within an area of concern as defined in the Town of Barnstable Area of Concern Map, dated January 16, 2003 (FILE: sewer_aocs2.dgn D.S.T.P.), will be subject to connecting said structures to public sewer when available.

- B. The owner of any multifamily structure located within an area of concern as defined in the Town of Barnstable Area of Concern Map, dated January 16, 2003 (FILE: sewer_aocs2.dgn D.S.T.P.), will be subject to connecting said structures to public sewer when available.
- C. The owner of any subdivision located within an area of concern as defined in the Town of Barnstable Area of Concern Map, dated January 16, 2003 (FILE: sewer_aocs2.dgn D.S.T.P.), will be subject to connecting all dwellings/buildings within the subdivision to public sewer when available.
- D. The owner or occupant of any building upon land abutting on a public or private way, in which there is a common sewer, shall connect the same therewith by a sufficient drain.

§ 360-14. Variances.

Variances to the regulation may be granted by the Board of Health after a hearing during which the applicant proves that the installation of on-site sewage disposal system will not have a significant adverse effect on surface or subsurface public or private water resources. The Board in granting variances will consider if strict interpretation of this regulation would do manifest injustice to the applicant; however, the applicant must demonstrate that the same degree of environmental protection required by this regulation can be achieved by other means.

ARTICLE VII

Disease-Prevention Regulation

[Adopted 5-1-1984, effective 5-3-1984 (Section 7.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-15. Purpose.

The purpose of this article is to protect ground- and surface waters from contamination and prevent the spread of disease.

§ 360-16. Spilling and discharge of sewage prohibited.

No sanitary sewage, septage, treated or untreated sewage effluent shall be allowed to discharge or spill onto the surface of the ground or to flow into any gutter, street, roadway, right-of-way, public place or watercourse, nor shall such material discharge onto any private property.

ARTICLE VIII

Installation of On-Site Sewage Disposal Systems on Marginal Lots
[Adopted 12-17-1985, effective 12-22-1985 (Section 9.00 of Part VIII of the 1991
Codification as updated through 6-1-1996)]

§ 360-17. Findings.

The filling of marginal lands in close proximity to groundwater in order to provide for sufficient area to make it suitable for the installation of a sewage disposal system is not considered an acceptable practice and such lands are considered as not suitable from a sanitary point of view for human habitation and for the protection of groundwater and watercourses. Watercourses are defined in Regulation 15.01, of 310 CMR 15.00, the State Environmental Code, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage.

§ 360-18. Restrictions.

- A. Subsurface sewage disposal systems shall be located in an area where there is at least a four-foot depth of naturally occurring pervious soil below the entire area of the leaching

facility and the designated leaching reserve area. This four-foot depth of naturally occurring pervious soil must be above maximum groundwater elevation.

- B. The maximum groundwater elevation shall be determined by utilizing the formula contained in the United States Department of Interior Geological Survey publication, "Estimating Highest Groundwater Levels for Construction and Land Use Planning - a Cape Cod, Massachusetts, Example," dated September 1983, or by observing the height of the groundwater table when it is at its maximum level or elevation. Maximum groundwater determinations shall be made during the wettest season of the year, normally March or April. Allowances shall be made for high water level if the Board of Health permits the determination to be made outside the wettest season.

ARTICLE IX

Criteria for Determining System Repair or Replacement

[Adopted 6-11-1991, effective 6-11-1991 (Section 11.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-19. Purpose.

To protect the public health against potential sources of contamination of the ground- and surface waters in the Town of Barnstable, the Board of Health adopts the following regulation.

§ 360-20. Criteria.

The Board of Health may require the repair or replacement of an on-site sewage disposal system if any of the following apply:

- A. There is evidence of sewage flow to the surface of the ground.
- B. There is structural damage to the components of the system which prevent it from functioning as required.
- C. The bottom of the cesspool or leaching facility is less than four feet from the observed maximum groundwater elevation.
- D. The system was pumped more than two times in a ninety-day period (excluding maintenance pumping of grease traps).
- E. There is evidence of breakout.
- F. There was sewage backup into the house because of a nonfunctioning leaching area.
- G. The edge of a leaching area is less than 100 feet from a well or less than 50 feet from a watercourse, as defined in 310 CMR 15.00: The State Environmental Code, Title 5: Minimum Requirements for the Subsurface Disposal of Sanitary Sewage.
- H. The standing liquid level in the leaching facility(ies) is at or above the invert pipe elevation.

- I. According to current local regulations, the system is not properly sized to accommodate a proposed change in use or expansion of a building or dwelling.
- J. Any other condition deemed by the Board of Health to require maintenance as defined under 310 CMR 15.02 the State Environmental Code Title V, Section (19).

§ 360-21. Variance procedures.

Variations may be granted only as follows:

- A. The Board of Health may vary the application of any provisions of this regulation with respect to any particular case when, in its opinion the enforcement thereof would do manifest injustice and the applicant has proved that the same degree of environmental protection required under this article can be achieved without strict application of the particular provision.
- B. Every request for a variance shall be made in writing and shall state the specific variance requested and the reasons therefor. Any variance granted by the Board of Health shall be in writing. Any denial of a variance shall also be in writing and contain a brief statement of the reasons for the denial. A copy of any variance granted shall be available to the public at all reasonable hours in the office of the Town Clerk or the Board of Health while it is in effect.
- C. Any variance or other modification authorized to be made by these regulations may be subject to such qualification, revocation, suspension or expiration as the Board of Health expresses in its grant. A variance or modification authorized to be made by these regulations may otherwise be revoked, modified or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with the requirements of 310 CMR 11.00 for orders and hearings.

§ 360-22. Enforcement.

The provisions of Title 1 of the State Environmental Code (310 CMR 11.00) shall govern the enforcement of these regulations.

§ 360-23. Violations and penalties.

- A. Penalty for failure to comply with any provision of this regulation shall be governed by Massachusetts General Laws, Chapter 111, § 31. Each day's failure to comply with an order shall constitute a separate violation.
- B. Further, the Board of Health, after notice to and after a hearing thereon, may suspend, revoke, or modify any license issued hereunder for cause shown.

§ 360-24. Severability.

Each section of these rules and regulations shall be construed as separate. If any section, regulation, paragraph, sentence, clause, phrase or word of these rules and regulations shall be declared invalid for any reason, the remainder of these rules and regulations shall remain in full force and effect.

ARTICLE X

Monitoring of Alternative Technologies

[Adopted 4-1-1995; revised 11-4-1997, effective 11-5-1997 (Section 12.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-25. Local circumstances may require conditions more stringent than state.

In considering permitting the use of various alternative septic treatment technologies in the Town of Barnstable, the Board of Health of the Town of Barnstable recognizes that there may be specific local circumstances which warrant the Board to require more stringent conditions for the installation and monitoring of these alternative systems than may be required by the Massachusetts Department of Environmental Protection.

§ 360-26. Right to impose additional conditions reserved.

As allowed under MGL C. 11, § 31, and as required by the revised 310 CMR 15.00 Sections 15.285(2d), 15.286(5), 15.288(4) which became effective November 10, 1994, the Board of Health of the Town of Barnstable hereby reserves the right to impose any additional conditions, effluent water quality standards, and/or monitoring requirements it views as necessary to ensure the safe and effective performance of any alternative septic system which the Board agrees to permit in the Town of Barnstable.

ARTICLE XI

Protection of Areas Served by Private Wells

[Adopted 8-24-1999, effective 9-2-1999 (Section 13.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-27. Purpose.

The purpose of this article is to protect groundwater from contamination, prevent the spread of disease and protect long-term potability of drinking water in areas served by private wells.

§ 360-28. Restrictions.

- A. No on-site sewage system serving new construction in areas where the use of both on-site systems and drinking water wells serve or are proposed to serve the facility or facilities on abutting parcels shall be designed to receive or shall receive more than 440 gallons of design flow per acre per day from residential or commercial uses except and set forth in 310 CMR 15.216 (aggregate flows) or 15.217 (enhanced nitrogen removal).

- B. In addition, no on-site sewage system serving new construction in areas where the user of both on-site systems and drinking water wells serve or are proposed to serve the facility or facilities on abutting parcels shall be designed to accept or shall accept a total sewage design flow of more than 2,000 gallons per day unless provided with a recirculating sand filter or equivalent alternative technology approved by DEP in accordance with 310 CMR 15.280 to 15.289.

§ 360-29. Definitions.

For purposes of this regulation, the definition of new construction shall be the same as that defined in 310 CMR 15.002 and the design flow for a system shall be determined according to 310 CMR 15.203.

§ 360-30. Variances.

Variances may be granted when in the opinion of the Board of Health:

- A. The person requesting a variance has demonstrated that enforcement of the regulation would be manifestly unjust, considering all of the relevant facts and circumstances of the individual case; and
- B. The person requesting a variance has demonstrated that a level of environmental protection, that is at least equivalent to that provided by this regulation, can be achieved without strict application of this regulation from which a variance is sought.

ARTICLE XII

Registration of Septic System Inspectors

[Effective 9-1-2001 (Section 14.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-31. Authority.

This regulation is adopted in accordance with the applicable provisions of 310 CMR 11.00, Title 1 of the State Environmental Code and under the authority of Chapter 111, § 31 of the Massachusetts General Laws as a supplement to Title V of the Environmental Code of the Commonwealth of Massachusetts.

§ 360-32. Purpose.

The purpose of this regulation is to provide a greater degree of protection to environmental and public health and to afford homeowners a greater degree of protection during and after the real estate transfer process.

§ 360-33. Approval and registration.

- A. No person shall conduct a septic system inspection pursuant to 310 CMR 15.301 of the State Environmental Code Title V:

- (1) Unless he/she is approved as a system inspector as defined within 310 CMR 15.340, the State Environmental Code, Title V, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage; and
 - (2) Unless he/she is registered as a septic system inspector with the Town of Barnstable Board of Health.
- B. The Town of Barnstable Board of Health shall maintain a registration list of approved septic system inspectors. The list shall be available for inspection or examination by any person.

§ 360-34. Completion and submission of inspection form.

- A. The septic system inspector shall complete every applicable section of the "Title 5 Official Inspection Form - Not For Voluntary Assessments, Subsurface Sewage Disposal System Form," supplied by the Massachusetts Department of Environmental Protection. Also at the bottom of the last page of this official inspection form, the septic system inspector shall provide a sketch diagram showing the vertical separation distance between the bottom of the soil absorption system and the groundwater table along with any high groundwater elevation adjustments determined.
- B. The septic system inspector shall submit a copy of the completed septic system inspection report along with the required processing fee to the Public Health Division Office within 30 days of the inspection date.

§ 360-35. Revocation or suspension of registration.

The Town of Barnstable Board of Health may revoke or suspend the registration and/or listing of a septic system inspector after opportunity for a hearing is conducted pursuant to MGL C. 30A and after the Board of Health determines that the inspector has

- A. Falsified an inspection report;
- B. Fraudulently altered a septic system inspection report;
- C. Misrepresented the results of an inspection;
- D. Failed to properly inspect a septic system as required in Section 310 CMR 15.302 of the State Environmental Code, Title V; or
- E. Failed to meet the provisions contained within this Board of Health regulation.

ARTICLE XIII

Innovative and Alternative Systems

[Adopted 12-18-2001 (Section 15.00 of Part VIII of the 1991 Codification as updated through 6-1-1996)]

§ 360-36. Authority; effective date.

In accordance with the provisions of Chapter 111, § 31 of the General Laws of the Commonwealth of Massachusetts, 310 CMR 15.003(3), and for the protection of the public health, safety and welfare, the Town of Barnstable Board of Health adopted the following regulation after a public meeting of the Board of Health on December 18, 2001.

§ 360-37. Applicability.

- A. This regulation shall apply to residential and nonresidential development meeting or exceeding the following criteria:
- (1) Residential development of single-family or multifamily homes, lots and/or residential dwelling units held or controlled in common ownership with a Title 5 design flow of 1,650 gallons per day or more of wastewater; and
 - (2) Nonresidential development with a Title 5 wastewater design flow of 1,650 gallons per day or more, and the expansion or change of use of existing nonresidential developments that generate a wastewater design flow above the existing approved design capacity of the system; and
 - (3) In the case of residential condominium developments with a total wastewater design flow of 1,650 gallons per day or more, this regulation shall apply in the case of an expansion or change of use upon a determination by the Board that the existing system does not protect the public health, safety and welfare, or, upon a change of ownership or routine inspection if, upon inspection, the system fails inspection as defined in 310 CMR 15.00.
- B. This regulation shall not apply to lots serviced by the municipal sewer.
- C. In assessing whether homes, lots and dwelling units are in common ownership on or after the effective date of this regulation, the Board of Health shall consider the factors set forth in 310 CMR 15.011, in effect on September 11, 2001.

§ 360-38. Innovative/alternative systems and shared system requirements.

- A. Consistent with the applicability provisions set forth above, the Board of Health may require any new development, and the expansion, alteration or modification or change in use of an existing development, to utilize an on-site innovative/alternative septic system or a shared innovative/alternative septic system.
- B. Nitrogen reduction requirement.
- (1) Consistent with the applicability provisions set forth above, the Board of Health may require the construction, use and maintenance of a Massachusetts Department

of Environmental Protection approved innovative/alternative system capable of nitrogen removal for one or more development(s). In making its determination, the Board of Health may consider, but is not limited to, the following criteria:

- (a) The location of the proposed wastewater disposal system within the watershed to fresh water or marine water resource(s); and
 - (b) The proximity of the proposed wastewater disposal system to fresh water and marine water resources and to sensitive environmental receptors.
- (2) In cases where flows render additional nitrogen removal feasible, the Board of Health may require additional nitrogen removal (i.e. the Board may require use of an innovative/alternative septic system approved by the Massachusetts Department of Environmental Protection at an effluent discharge limit that does not exceed an effluent concentration of 10 mg/l or less of total nitrogen).
- (3) The Board of Health may permit the connection of existing development(s) to a shared innovative/alternative system in order to further the goals of this regulation.
- (4) Shared system requirement. Consistent with the applicability provisions set forth above, the Board of Health may require the construction, use and maintenance of a shared innovative/alternative septic system for development(s) held in common ownership, as determined by the Board. The applicant shall have the burden of proving that lots and/or dwelling units are not held in common ownership. In making its determination, the Board of Health may consider, but is not limited to, the following criteria:
- (a) The proximity of the proposed development to existing and proposed municipal sewer services; and
 - (b) The potential for utilizing municipal wastewater disposal and the amount of time anticipated before municipal services may be provided; and
 - (c) The capacity of municipal wastewater treatment works, now or in the future, to accept the proposed flows from the proposed wastewater disposal system; and
 - (d) Site design, sensitive environmental resources on and off site, and proximity of lots to the proposed shared system.
- C. With respect to shared systems, the applicant shall demonstrate to the satisfaction of the Board of Health that the design flow from the proposed development does not exceed the design flow that could have been constructed in compliance with 310 CMR 15.00, Title 5, without the use of a shared system.

§ 360-39. Review criteria.

- A. The Board of Health may allow use of innovative/alternative and shared innovative/alternative systems, subject to conditions, when it determines, in its sole discretion, the following:

- (1) For innovative/alternative systems:
 - (a) The proposed system satisfies all technical concerns of the Board of Health;
 - (b) The applicant provides an acceptable operation and maintenance plan;
 - (c) The applicant provides a copy of an acceptable contract with an independent monitoring entity;
 - (d) For new construction, as defined by 310 CMR 15.00, Title 5, the minimum vertical separation distance of the bottom of the stone underlying the soil absorption system above the high groundwater elevation shall be [1] four feet in soils with a recorded percolation rate of more than two minutes per inch, or [2] five feet in soils with a recorded percolation rate of two minutes or less per inch. This calculation must consider an adjustment for maximum high groundwater conditions as required by Title 5, as well as groundwater mounding below the leaching facility.
 - (2) For shared systems:
 - (a) The applicant demonstrates to the satisfaction of the Board of Health that the design flow from the proposed development does not exceed the design flow which could have been constructed in compliance with 310 CMR 15.100 without the use of a shared system;
 - (b) The applicant proposes acceptable institutional arrangements;
 - (c) The applicant provides acceptable financial assurance;
 - (d) The applicant provides an acceptable Grant of Title 5 Covenant and Easement.
- B. No approval of a shared system shall be final prior to Massachusetts Department of Environmental Protection review and approval.
- C. The Grant of Title 5 Covenant and Easement shall be recorded and/or registered with the Barnstable County Registry of Deeds and/or Land Registration Office within 30 days of MADEP final approval.
- D. The Board of Health may impose any conditions on the use of innovative/alternative and shared systems that it deems necessary to protect the public health, safety and welfare and to carry out the purposes of the Barnstable Local Comprehensive Plan.

§ 360-40. Enforcement.

- A. The Board Health, its agent or designee may inspect and sample the innovative/alternative or shared system and/or the facility served by the innovative/alternative or shared system.

- B. The Board of Health may require the owner or operator of a shared or innovative/alternative system to cease operation of the system and/or to take any other action necessary to protect public health, safety welfare and the environment.

§ 360-41. Definitions.

The following definitions shall apply to this regulation:

CMR — Code of Massachusetts Regulations.

INNOVATIVE/ALTERNATIVE SYSTEM — Including but not limited to:

- A. Any system designed to chemically or mechanically aerate, separate or pump the liquid, semisolid or solid constituents in the system; or
- B. Any system designed specifically to reduce, convert, or remove nitrogenous compounds, phosphorus, or pathogenic organisms (including bacteria and viruses) by biological, chemical, or physical means.

MADEP — Massachusetts Department of Environmental Protection.

SHARED SYSTEM — A system sited and designed in accordance with 310 CMR 15.100 through 15.293 which serves, or is proposed to serve, more than one facility or more than one dwelling. A system serving a condominium unit or units is not a shared system.

§ 360-42. Monitoring of innovative/alternative on-site sewage treatment systems of less than 10,000 gallons per day. [Added 5-10-2005]

As allowed under MGL c. 111, § 31, the Board of Health of the Town of Barnstable hereby requires that owners and operators of all innovative/alternative sewage treatment technologies and all systems where the soil absorption system is designed for pressure distribution of effluent must report the results of all operation, maintenance, and monitoring activities to the Barnstable County Department of Health and Environment. Such reporting must be performed in the manner specified by Barnstable County Department of Health and Environment and must occur within 30 days after each maintenance or monitoring event. Further, when a system operator performs a system inspection and finds that a sewage treatment technology has malfunctioning components which have compromised the system's ability to treat sewage as designed, the operator shall report on the system's status and any planned corrective actions to the Board of Health and Barnstable County Department of Health and Environment within 48 hours of inspection.

ARTICLE XIV
Additional Regulations
[Adopted 5-10-2005]

§ 360-43. Septic System Risers.

Risers shall be installed to within six inches of grade in order to provide easier access to inlet and outlet covers to septic tanks, distribution boxes, and chambered soil absorption systems.

Four-inch observation ports shall be installed on all plastic chambered style soil absorption systems.

§ 360-44. Deadlines to repair failed septic systems. [Added 7-17-2007]

- A. Authority. Under the authority of M.G.L. c. 111, § 31, and 310 CMR 15.305, the Board of Health, for the purpose of the protection of public health, promulgates these regulations providing deadlines for upgrades of septic systems with a design flow of less than 10,000 gpd determined to be failing to protect public health.
- B. General requirements. If the following criteria are met, the system is deemed to be creating an imminent health hazard and shall be upgraded within the stated time periods:
- (1) Within 60 days of the determination that one or more of the following conditions is occurring:
 - (a) Discharge or ponding of effluent to the surface of the ground;
 - (b) Pumping more than four times during the last year not due to clogged or obstructed pipe; or
 - (c) Backup of sewage into the house due to an overloaded or clogged SAS or cesspool.
 - (2) Within one year of the determination that one or more of the following conditions is occurring:
 - (a) Static liquid level in the distribution box above outlet invert due to an overloaded or clogged SAS or cesspool; or
 - (b) Any portion of the SAS, cesspool, or privy below high groundwater elevation; or
 - (c) Any portion of the cesspool within a Zone 1 to a public well; or
 - (d) Any portion of a cesspool within 50 feet of a private water supply well with no acceptable water quality analysis. (This system passes if the water analysis indicates the well is free from pollution.)
- C. Variance requests.
- (1) All requests for variances from this regulation shall be submitted at least 15 calendar days prior to the scheduled Board meeting. The variance hearing may be held at a later date if the Board has scheduled eight hearings prior to submission of the request.
 - (2) The variance request shall be made on a form prescribed by the Board of Health.
- D. Penalties.

- (1) The Barnstable Board of Health reserves the right to make any decision of situations or problems that arise in regard to environmental and/or public health conditions that are not covered by this set of regulations.
- (2) The fine for any violation of this section shall be \$100 per violation. Each day shall constitute a separate violation with the same fines assessed as per this section.

ARTICLE XV
Protection of Saltwater Estuaries
[Adopted 6-30-2008]

§ 360-45. Interim regulations. [Amended 2-10-2009]

A. Purpose.

- (1) The findings of a state-wide estuary investigation indicate that a substantial portion of the Town's saltwater estuaries are in jeopardy from the long-term buildup of nitrate-nitrogen, primarily from the subsurface discharge of sewage effluent. These findings have caused the Massachusetts Department of Environmental Protection to establish total maximum daily loads (TMDL) for nitrogen for the watershed areas of these estuaries. "Watershed" is defined as the area of land from which water flows downhill into a particular body of water. In these nitrogen-impaired estuaries the TMDL will require an actual reduction in the amount of nitrate-nitrogen discharged into these embayments. Since most of the nitrate-nitrogen in these watersheds is from subsurface discharge of sewerage effluent into the groundwater that flows to these embayments, and since it is likely that a plan for corrective action will take years to formulate and implement, the Board is adopting the following interim regulations to mitigate the adverse impact to these estuaries from such discharges. The Town has long recognized the need to protect its water resources and has imposed discharge limits on subsurface disposal of sewage in other nitrogen-sensitive areas. The restrictions proposed herein are similar to those imposed by Town ordinance and/or Board of Health regulation in other nitrogen sensitive areas in the Town. These regulations are temporary and will be in effect only until the Town adopts and implements a Comprehensive Plan to address the nitrogen reduction required in these estuary systems by the proposed TMDL.
- (2) To date, final reports have been produced for Popponesset Bay, Three Bays and the Centerville River watersheds. All three of these estuary systems will require a reduction in total nitrogen discharge in order to meet the state-mandated TMDL. Further reports are expected on Lewis Bay and Barnstable Harbor.

B. Restrictions. No permit for the construction of an individual sewage disposal system on any building lot shall be granted within the watersheds for the estuaries that have been identified as requiring a reduction in the current TMDL of nitrate-nitrogen as identified by the map entitled "Massachusetts Estuary Project, Zones of Contribution to Saltwater Estuaries, Town of Barnstable, March 10, 2008," unless the following standards are met:

- (1) The maximum allowable discharge of sanitary sewage, based on the sewage design flow criteria listed in 310 CMR 15.203, Title 5, of the State Environmental Code,

shall not exceed 440 gallons per 40,000 square feet of lot area, with the following exceptions:

- (a) For approved building lots on which no building currently exists and that are less than 30,000 square feet in area, the maximum allowable sewage discharge shall be 330 gallons.
 - (b) For parcels with existing buildings, the maximum allowable flow shall be either 440 gallons per 40,000 square feet, except as described in Subsection B(1)(a) above or whatever is currently permitted, whichever is greater.
- (2) Nothing in this regulation shall prohibit the approval by the Board of Health of any application involving the maintenance, repair or alteration of an existing individual sewage disposal system, provided that said application does not involve an increase in design flow as defined by existing Board of Health regulations. Where an increase in design flow is involved, the applicant must demonstrate compliance with this regulation.
- C. Variances. A variance from this regulation may be granted by the Board of Health only if the applicant can demonstrate that:
- (1) Connection to Town sewer is not available; and
 - (2) That enforcement thereof would do manifest injustice; and
 - (3) The alternative proposal will provide the same degree of environmental protection as a design in full conformance with this regulation. This standard shall be met by a site/septic design which results in equilibrium concentrations of nitrate/nitrogen at the down-gradient property line not exceeding five ppm, utilizing the Cape Cod Commission formulas found in its Technical Bulletin 91-001 (final). In undertaking this calculation, the applicant may utilize off-site lands located elsewhere in the Estuaries Contribution Area as defined by the map entitled "Massachusetts Estuary Project, Zones of Contribution to Saltwater Estuaries, Town of Barnstable, March 10, 2008," provided that:
 - (a) The existing nitrogen loading for the off-site property is included in the calculations; and
 - (b) A deed restriction limiting the off-site property to the current nitrogen loading as stated in the calculations and running to the Barnstable Board of Health or other entity suitable to that Board is recorded at the Barnstable Registry of Deeds in the titles to both the subject property and the off-site property. The restriction shall be in a form suitable to the Barnstable Town Attorney. Proof of recording shall be provided to the Board of Health, the Town Assessing Department and the Town Building Department prior to the issuance of a DWIP for the subject property.
- D. Craigville Beach District implementing regulation. Notwithstanding anything to the contrary contained in Subsections A through C above, this interim regulation shall apply to all properties within the Craigville Beach Zoning District as a Craigville Beach District implementing regulation unless and until a property is connected by a building

sewer to the public sewer system. In all other respects, the provisions of Subsections A through C above shall apply to all properties within the Craigville Beach District.
[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

ARTICLE XVI

Craigville Beach Implementing Regulations

[Adopted 1-19-2011 by Ord. No. 11-01 of the Barnstable County Assembly of Delegates pursuant to Ch. 716 of the Acts of 1989 (Cape Cod Commission Act)]

§ 360-46. Reporting requirements for septage haulers.

Septage haulers, who pump or transport septage from any source located within the Craigville Beach District, as a condition of licensure by the Board of Health, shall provide the Board with such information as is reasonably obtained on any on-site sewage disposal system they service. Said information must include, but is not limited to, the owner and address of the system serviced, date of service, volume of septage or other waste pumped or transported, name and location of the receiving disposal facility, and the type, size, location, and condition of key components of the system. Said information shall be submitted to the Board or its agents no later than the seventh Town of Barnstable working day following the date of service, shall be on a form approved by the Board, and shall be complete and accurate. Any septage handler, or other individual, firm, business, partnership, corporation, association, group, or government agency, who pumps or transports septage from any source located within the Craigville Beach District regardless of the disposal location, shall comply with these requirements.

ARTICLE XVII

Septic System Components

[Adopted 12-10-2013]

§ 360-47. Abandonment of septic system components.

- A. Whenever the use of a septic system is discontinued following connection to a municipal or private sanitary sewer or shared on-site system or following condemnation or demolition of a building served by the system, the system shall be considered abandoned, and any further use of the system for any purpose shall be prohibited unless, after inspection, the Board of Health determines the system is in compliance or can be brought into compliance with 310 CMR 15.000, State Environmental Code, Title V.
- B. Continued use of a septic tank or any other septic system component, where the component is to become an integral part of a drainage system or other sanitary system, requires prior written approval from the Board of Health.
- C. Any component of the septic system with a depth of one foot or greater shall be considered as a component which shall be properly abandoned in accordance with this Section.
- D. The following procedure shall be used to abandon septic system components:

- (1) Within 14 days prior to discontinuance of use of a septic system, the facility owner shall apply to the Public Health Division to abandon the existing septic system components citing the reason(s) abandonment is necessary, and where connection to a municipal or private sanitary sewer has been made, a copy of the sewer connection permit shall be submitted with the application;
- (2) Upon receipt of a permit from the Public Health Division to abandon the system, the septic system components shall be pumped of their contents by a licensed septage hauler; and
- (3) The septic system components shall be excavated and removed from the site, or the bottom of the septic system components shall be opened or ruptured, after being pumped of their contents so as to prevent retainage of water and the components shall be completely filled with clean sand or other suitable material approved, in writing, by the Board of Health.

Chapter 365

SALE OF TOBACCO PRODUCTS, RESTRICTING THE

ARTICLE I Health Care Institutions

§ 365-1. Findings and purposes.

§ 365-2. Legislative authority.

§ 365-3. Definitions.

§ 365-4. Prohibited acts.

§ 365-5. Posting of signs.

§ 365-6. Violations and penalties;
enforcement.

§ 365-7. Severability.

§ 365-8. Effective date.

[HISTORY: Adopted by the Town of Barnstable Board of Health 1-15-2013.
Amendments noted where applicable.]

GENERAL REFERENCES

Smoking — See Ch. 371.

ARTICLE I Health Care Institutions

§ 365-1. Findings and purposes.

A. Findings.

- (1) There exists conclusive evidence that tobacco use causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat.
- (2) The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin.
- (3) The sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication.

B. Pursuant to MGL c. 111, § 31, the Town of Barnstable Board of Health adopts the following regulation, to be adopted for the following express purposes:

- (1) To protect the public health and welfare by restricting the sale of tobacco in all health care institutions within the Town of Barnstable.
- (2) To eliminate the incompatibility of the mission of health care institutions to treat and prevent disease with the spread of diseases caused by the use of tobacco by those afflicted with related diseases and to those not so afflicted but at risk for exposure by the availability of tobacco at health care institutions, including, without limitation, youths.

§ 365-2. Legislative authority.

The Town of Barnstable, pursuant to MGL c. 111, § 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

§ 365-3. Definitions.

As used in this article, the following terms shall have the meanings indicated:

HEALTH CARE INSTITUTION — An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under MGL Ch. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, and dentist offices.

SALE/SELL/SOLD — The passing of ownership for a price or as a gift.

TOBACCO — Cigarette, cigar, pipe tobacco, chewing tobacco or other tobacco product.

§ 365-4. Prohibited acts.

- A. No health care institution located in the Town of Barnstable shall sell or allow the sale of tobacco products or cause tobacco products to be sold.
- B. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or allow the sale of tobacco products or cause tobacco products to be sold except as provided in Subsection C.
- C. Those wholesalers licensed under MGL c. 62, § 67, may sell tobacco for wholesale only to resellers who possess a valid Massachusetts tobacco retailer license and who are registered through the Department of Revenue to collect sales tax. Additionally, tobacco products sold by wholesalers shall be stored away from the retail sales area and not visible to non-resellers.

§ 365-5. Posting of signs.

Every health care institution and retail establishment that operates or has a health care institution within it where tobacco sales are prohibited by this regulation shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Tobacco Products Not Sold Here."

§ 365-6. Violations and penalties; enforcement.

- A. Violations of this tobacco sales prohibition regulation may be enforced by the provisions of MGL c. 40, § 21D et seq., noncriminal disposition, and by Chapter 1, General Provisions, Article I, regarding noncriminal disposition.

- B. A warning shall be issued for a first offense. A fine of up to \$100 may be issued for the second offense, up to \$200 for a third offense, up to \$300 for a fourth offense, and up to \$300 for any subsequent offense.
- C. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting any Town of Barnstable department or board from suspending or revoking licenses or permits issued by and within the jurisdiction of such departments for repeated violations of this regulation.
- D. In addition to the remedies provided by Subsections B and C above, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a health care institution to comply with any provision of this article may apply for injunctive relief to enforce the provisions of this article in any court of competent jurisdiction.
- E. The Board of Health or its designee(s) shall enforce this regulation.

§ 365-7. Severability.

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

§ 365-8. Effective date.

These regulations shall become effective on Tuesday, March 26, 2013, which is 60 days after publication.

Chapter 371

SMOKING

ARTICLE I Smoking in Public Places

- § 371-1. Findings and purpose.
- § 371-2. Authority.
- § 371-3. Definitions.
- § 371-4. Smoking in public places prohibited.
- § 371-5. Workplace regulations.
- § 371-6. Posting of signs.
- § 371-7. Sale and distribution of tobacco products.
- § 371-8. Violations and penalties.
- § 371-9. Inspection procedures.
- § 371-10. Severability.
- § 371-11. Other applicable laws.

§ 371-12. Effective date.

ARTICLE II Smoking at Food Service Establishments, Lounges and Bars

- § 371-13. Findings and purpose.
- § 371-14. Authority.
- § 371-15. Definitions.
- § 371-16. Smoking prohibited.
- § 371-17. Smoking permitted.
- § 371-18. Preexisting smoking bars.
- § 371-19. Posting of signs.
- § 371-20. Violations and penalties.
- § 371-21. Severability.
- § 371-22. Effective date.

[**HISTORY:** Adopted by the Town of Barnstable Board of Health as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Alcoholic beverages — See Ch. 20.

Fee for tobacco sales permit — See Ch. 318.

ARTICLE I Smoking in Public Places

[Adopted 5-7-1996; amended 6-11-2002, effective 7-1-2002 (Section 1.00 of Part IX of the 1991 Codification as updated through 6-1-1996)]

§ 371-1. Findings and purpose.

- A. The 1986 Surgeon General's Report on "The Health Consequences of Involuntary Smoking" clearly documents that nonsmokers are placed at risk for developing disease as a result of exposure to environmental tobacco smoke or secondhand smoke. In 1993, the Environmental Protection Agency classified environmental tobacco smoke as a known human carcinogen. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers.

- B. Exposure to environmental tobacco smoke presents a serious and substantial public health risk. Of particular concern is the workplace environment of nonsmokers, where they may be subjected to sustained, involuntary exposure. At special risk are children, the elderly, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
- C. Studies have shown that vending machines afford an opportunity for unauthorized sale of cigarettes to minors. Evidence further demonstrates that tobacco is extremely addictive. Approximately 80% of all smokers begin smoking before age 18 and more than 3,000 young people begin smoking every day in this nation.
- D. The Cape Cod Regional Tobacco Control Program Advisory Panel (comprised of representatives of the Boards of Health from the Towns of Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Nantucket, Orleans, Provincetown, Sandwich, Truro, Wareham, Wellfleet and Yarmouth) urges all public places and workplaces to become voluntarily smokefree before November 1, 1996.
- E. These regulations are an integral part of the efforts by the 17 Boards of Health comprising the Cape Cod Regional Tobacco Control Program to adopt uniformly, to the extent possible, regulations to protect the residents of our communities from the dangers of tobacco use and secondhand smoke. The intent of a uniform regulation is to minimize any potential economic impact to the business community which might result from varying regulations throughout the region.

§ 371-2. Authority.

The Town of Barnstable pursuant to Massachusetts General Laws Chapter 111, § 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

§ 371-3. Definitions.

As used in this article, the following terms shall have the meanings indicated:

EMPLOYEE — A person who performs services for wages or other consideration.

EMPLOYER — A person, partnership, association, corporation, trust, or other organized group, including the County of Barnstable and any department or agency thereof, and any municipal entity, which utilizes the services of two or more employees.

MINOR — A person under 18 years of age.

PUBLIC PLACE — An enclosed, indoor area that is open to and used by the general public, including but not limited to the following facilities: licensed child-care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, lobbies and entranceways accessible to the public; common areas (not including actual sleeping quarters) of guesthouses, bed-and-breakfasts, inns, hotels and motels; public rest rooms; laundromats; hair salons, barbershops; libraries; municipal buildings; museums; retail food establishments; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities;

and any function rooms/halls when used for public meetings or public social functions. A function room/hall used for a private social function, in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

SMOKING — The lighting of or having in one's possession any lighted cigarette, cigar, pipe, or other tobacco product.

TOBACCO — Cigarettes, cigars, snuff, chewing tobacco or tobacco in any of its forms.

TOBACCO VENDING MACHINE — A mechanical or electrical device which dispenses tobacco products by self-service, with or without the assistance of a clerk or operator.

WORKPLACE — Any area within a structure or portion thereof in which two or more employees perform services for their employer. It also includes employee lounges, rest rooms, dining areas, conference rooms, hallways, stairways, and entranceways.

§ 371-4. Smoking in public places prohibited.

Smoking shall be prohibited in all public places (as defined in § 371-3) as of June 1, 1996.

§ 371-5. Workplace regulations.

- A. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas as described in Subsection B below.
- B. Each employer may specifically designate enclosed areas in which employees may smoke; provided, however, that comparable nonsmoking areas of adequate size and capacity are available and provided, further, that physical barriers and separate ventilation systems, vented directly to the outside, are used to segregate smoking areas from nonsmoking areas. Smoking areas shall be such that smoke is not able to seep into nonsmoking areas. Common areas, including hallways, elevators, entranceways, stairwells, rest rooms, and waiting areas listed in the definition of "public place" in § 371-3, may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.
- C. Each person having control of premises upon which smoking is prohibited by this regulation shall not knowingly permit a violation of this regulation.

§ 371-6. Posting of signs.

Every person having control of a premises where smoking is prohibited by this regulation shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be deemed as compliance.

§ 371-7. Sale and distribution of tobacco products.

- A. Permit. To monitor compliance of the sale of tobacco products, permits will be issued. No person, firm, corporation, establishment, or agency, shall sell tobacco products within the Town of Barnstable without a valid tobacco sales permit issued by the Board of Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits must be renewed annually at a time and fee set forth by the Board of Health.
- B. Sales to minors. In conformance with Massachusetts General Laws Chapter 270, § 6, no person, firm, corporation, establishment, or agency shall sell tobacco products to a minor. Each employee working in an establishment licensed to sell tobacco products shall be required to receive a copy of the Board of Health regulations and state laws regarding the sale of tobacco and sign a form indicating that such regulations/laws have been received and understood, a copy of which must be placed on file in the office of the employer and retained. Such signed forms must be made available for inspection, during the license holder's normal business hours upon request of an agent of the Board of Health.
- C. Distribution of tobacco products. No person, firm, corporation, establishment, or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Barnstable. Such endeavors include, but are not limited to, product "giveaways," or distribution of a tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals, or attached to packaging. All distributors/retailers of tobacco products or tobacco merchandise must require that, if a customer appears to possibly be under 25 years of age, the customer present a valid state-issued picture identification card or drivers license with appropriate photograph to confirm that the customer is of a legal age to purchase the tobacco product.
- D. All self-service displays of tobacco products are prohibited.

§ 371-8. Violations and penalties.

- A. Violations of this smoking regulation will be subjected to the provisions of the regulation of the Town of Barnstable regarding noncriminal disposition.¹
- B. Any person who knowingly violates any provision of this regulation, or who smokes in a municipal area subject to regulation, in which a "Smoking Prohibited By Law" sign or its equivalent is conspicuously displayed, shall be punished by a fine of \$50 for each offense.
- C. Any proprietor(s) or other person(s) in charge of a public place or workplace, including municipal entities, who fail(s) to comply with these regulations shall be subject to the following actions for each offense:

1. Editor's Note: See Ch. 1, Art. I.

- (1) A warning shall be issued for a first offense. A fine of \$100 may be issued for the second offense, \$200 for a third offense, \$300 for a fourth offense, and \$300 for any subsequent offense; and
 - (2) Following the second offense the Board of Health may, after a public hearing, suspend any license for that public place for a period of up to two days for each day of noncompliance or withhold renewal of license. Following a third offense, the Board of Health may suspend an existing permit/license for a period of time determined by the Board of Health until compliance is achieved.
- D. Persons, firms, corporations, or agencies selling tobacco products to minors or selling tobacco products without a tobacco sales permit shall be punished by a fine of not more than \$300 per day for each day of such violation and/or suspension of the tobacco sales permit.
- E. In addition to the remedies provided by Subsection B, C and D above, the Board of Health may apply for injunctive relief to enforce the provisions of this article in any court of competent jurisdiction.

§ 371-9. Inspection procedures.

- A. Refusal, notification of right to access, and final request for access. If a person denies access to the Board of Health or its agent, the Board of Health or its agent shall:
- (1) Inform the person that:
 - (a) The permit holder is required to allow access to the Board of Health or its agent;
 - (b) Access is a condition of the acceptance and retention of a tobacco sales permit; and
 - (c) If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, will be obtained according to law; and
 - (2) Make a final request for access.
- B. Refusal, reporting. If, after the Board of Health or its agent presents credentials and provides notice, explains the authority upon which access is requested, and makes a final request for access, the permit holder continues to refuse access, the Board of Health or its agent shall provide details of the denial of access on an inspection report form.
- C. Tobacco sales compliance checks, inspections and investigations.
- (1) All permitted premises shall be subject to an inspection or to a tobacco sales compliance check by the Board of Health or its agent.
 - (2) Any person who hinders or delays the Board of Health or its agent in the performance of the his/her duties or who refuses to admit to, or locks out any such agent from any place which such agent is authorized to conduct a compliance

check or inspection or who refuses to give to such agent such information as may be required to give to proper enforcement of the General Laws, shall be punished by a fine of not less than \$50 and not more than \$200.

- D. Inspection order to gain access. If denied access to an establishment which sells tobacco products for an authorized purpose, and after complying with Subsection A, the Board of Health or its agent may issue, or apply for the issuance of, an inspection order to gain access as provided by law.
- E. Responsibilities of tobacco sales permit holder. The tobacco sales permit holder is responsible for the proper management of the premises so that unlawful acts do not occur on the premises and so that the premises does not become a threat to the public welfare or public safety. When violations of the permit or of the law are brought to the attention of the Board of Health, a disciplinary hearing will be held and, as a result of evidence brought to the attention of the Board of Health at the hearing, the Board of Health may modify, suspend, or revoke the permit.
- F. Issuing noncriminal ticket citation or inspection report and obtaining acknowledgement of receipt. At the conclusion of the tobacco sales compliance check or tobacco sales establishment inspection and according to law, the Board of Health or its agent shall provide a copy of the completed noncriminal ticket citation or notice of the violations to the permit holder or the person in charge, and request a signed acknowledgement of receipt.
- G. Refusal to sign acknowledgement. The Board of Health or its agent shall:
 - (1) Inform a person who declines to sign an acknowledgement of receipt of a noncriminal ticket citation or inspectional findings as specified in Subsection F that:
 - (a) An acknowledgement of receipt is not an agreement with findings;
 - (b) Refusal to sign an acknowledgement of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified; and
 - (c) A refusal to sign an acknowledgement of receipt is noted in the inspection report and conveyed to the Board of Health's historical record for the establishment; and
 - (2) Make a final request that the person in charge sign an acknowledgement receipt of a noncriminal ticket citation or inspectional findings.

§ 371-10. Severability.

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

§ 371-11. Other applicable laws.

- A. The Board of Health or its agent shall enforce this regulation. Any violation of these regulations may be enforced and punished by the provisions of Chapter 1, General Provisions, Article I, Noncriminal Enforcement of Violations, as adopted by the Town of Barnstable.
- B. Any citizen who desires to register a complaint of noncompliance under this regulation may do so by contacting the Public Health Division.

§ 371-12. Effective date.

These amended regulations shall be effective as of July 1, 2002.

ARTICLE II

Smoking at Food Service Establishments, Lounges and Bars

[Adopted 2-10-2000, effective 4-3-2000 (Section 2.00 of Part IX of the 1991 Codification as updated through 6-1-1996)]

§ 371-13. Findings and purpose.

- A. Findings.
 - (1) Environmental tobacco smoke is a leading public health problem in the Town of Barnstable and throughout the United States; and
 - (2) There exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears nose and throat of both smokers and nonsmokers; and
 - (3) The Environmental Protection Agency (EPA) has designated environmental tobacco smoke to be a Class A carcinogen, similar to radon and asbestos, with no known safe level of exposure; and
 - (4) Children, the elderly, individuals with cardiovascular disease, individuals with impaired respiratory function, and asthmatics are among those people who are particularly susceptible to the harmful effects of inhaling environmental tobacco smoke.
- B. Pursuant to Massachusetts General Laws, Chapter 111, § 31, the Town of Barnstable Board of Health adopts the following regulation, to be adopted for the following express purposes:
 - (1) To protect the public health and welfare by restricting smoking in all restaurants, bars, and lounges; and
 - (2) To assure smoke-free air for nonsmokers; and
 - (3) To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke in an enclosed public area.

§ 371-14. Authority.

The Town of Barnstable, pursuant to Massachusetts General Laws Chapter 111, § 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

§ 371-15. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BAR/LOUNGE — An establishment with a food service license, devoted primarily to serving alcoholic beverages for consumption by guests on the premises, in which the consumption of food is only incidental to the consumption of such beverages.

EMPLOYEE — A person who performs services for wages or other consideration.

EMPLOYER — A person, partnership, association, corporation, trust, or other organized group, including the County of Barnstable and any department or agency thereof, and any municipal entity, which utilizes the services of two or more employees.

FOOD-SERVICE ESTABLISHMENT — An establishment having one or more seats, in which food is served to the public, that is a covered area and/or located within a permanent structure. A food-service establishment is further defined as an establishment devoted primarily to serving food for consumption by guests, where the consumption of alcoholic beverages is only incidental to the consumption of food.

FUNCTION ROOM/HALL — A separate, enclosed room used for private functions within a food-service establishment. A function room/hall used for a private social function, in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements, is exempt from this regulation.

SMOKING — The lighting of or having in one's possession any lighted cigarette, cigar, pipe, or other tobacco product.

SMOKING BAR — An establishment whose business is primarily devoted to the selling of tobacco products for consumption by patrons on the premises and in which the serving of limited foods is incidental to the consumption of such products. An establishment which serves full meals is not considered a smoking bar for the purposes of this regulation. An establishment which serves appetizers and snacks may be considered a smoking bar for the purposes of this regulation.

TOBACCO — Cigarettes, cigars, snuff, chewing tobacco or tobacco in any of its forms.

§ 371-16. Smoking prohibited.

Smoking shall be prohibited in all food service establishments, lounges and bars as of April 3, 2000.

§ 371-17. Smoking permitted.

Notwithstanding § 371-16 above, smoking may be permitted in the following places or circumstances:

- A. Function rooms/halls used for private social functions, provided that the sponsors of the private functions have control over the seating arrangements; and
- B. Outdoor seating areas of food-service establishments, provided that:
 - (1) Such an outdoor area is not enclosed except for the one side which adjoins the establishment; and
 - (2) The smoking section of an outdoor seating area shall not be located within 10 feet of any doorway, any mechanical ventilation intake fixture, and/or any window of the establishment.

§ 371-18. Preexisting smoking bars.

Any smoking bar in existence as of the first date of publication of the notice of the public hearing regarding this regulation may apply for a variance before the Board of Health from this regulation.

§ 371-19. Posting of signs.

Every person having control of a premises where smoking is prohibited by this regulation shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be deemed as compliance.

§ 371-20. Violations and penalties.

- A. Violations of this smoking regulation may be enforced by the provisions of MGL Chapter 40, § 21D et seq. noncriminal disposition and by Chapter 1, General Provisions, Article I, regarding noncriminal dispositions.
- B. Any person who knowingly violates any provision of this regulation, or who smokes in a food-service establishment, bar, or lounge as defined in this regulation in which a smoking-prohibited-by-law sign or its equivalent is conspicuously displayed, shall be punished by a fine of up to \$50 for each offense.
- C. Any proprietor(s) or other person(s) in charge of a food-service establishment, lounge, and/or bar, who fail(s) to comply with these regulations shall be subject to the following actions for each offense:
 - (1) A warning shall be issued for a first offense. A fine of up to \$100 may be issued for the second offense, up to \$200 for a third offense, up to \$300 for a fourth offense, and up to \$300 for any subsequent offense;

- (2) No provision, clause or sentence of this paragraph of this Regulation shall be interpreted as prohibiting any Town of Barnstable Department or Board from suspending or revoking licenses or permits issued by and within the jurisdiction of such Departments for repeated violations of this regulation.
- D. In addition to the remedies provided by Subsections B and C above, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a public place or workplace to comply with any provision of this article may apply for injunctive relief to enforce the provisions of this article in any court of competent jurisdiction.
- E. The Board of Health or its designee(s) shall enforce this regulation.

§ 371-21. Severability.

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

§ 371-22. Effective date.

These regulations shall be effective as of April 3, 2000.

Chapter 373

SOLID WASTE

- | | |
|---|------------------------------------|
| § 373-1. Solid waste disposal services. | § 373-5. General regulations. |
| § 373-2. Solid waste disposal facility. | § 373-6. Fees. |
| § 373-3. Residential transfer station stickers. | § 373-7. Violations and penalties. |
| § 373-4. Weighing. | § 373-8. Severability. |

[HISTORY: Adopted by the Town of Barnstable Board of Health 2-18-1997 (Section 2.00 of Part V of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.]

GENERAL REFERENCES

Solid waste — See Ch. 202.

§ 373-1. Solid waste disposal services.

The following solid waste disposal services are provided to the residents and property owners of the Town of Barnstable and for licensed commercial trash haulers collecting solid waste from properties located within the Town of Barnstable:

- A. For Barnstable residents and property owners at the Solid Waste Disposal Facility:
- (1) A residential transfer station for the disposal of household trash contained in tied plastic bags, sealed paper bags, or small sealed cardboard boxes;
 - (2) A recycling center for the disposal of recyclable materials such as paper, glass, plastic containers, metal/iron products, appliances, etc., certain of which may be disposed of at no charge and others of which may require payment of a nominal fee;
 - (3) A yard waste disposal area limited to the disposal of grass clippings and leaves for composting;
 - (4) A demolition and builder's trash disposal area for the disposal of small quantities of building materials and waste from the construction/demolition of structures located within the Town of Barnstable and disposed of by residents and contractors in vehicles restricted to a size no larger than a full-sized pickup or a four-foot by eight-foot utility trailer; and
 - (5) A bulky items disposal area for items such as furniture, mattresses, box springs, and sofas.
- B. For licensed commercial trash haulers.

- (1) A solid waste transfer station is operated jointly by the Towns of Barnstable and Yarmouth and located in the Town of Yarmouth for the disposal of solid waste picked up from residential and commercial properties located within the Town of Barnstable.
- (2) Special regulations governing the delivery of solid waste to the Yarmouth Solid Waste Transfer Station are issued by the Town of Yarmouth.
- (3) Any hauler authorized to dispose of solid waste at the Barnstable/Yarmouth Solid Waste Transfer Station and who disposes of at least 50 tons of material per month at the transfer station may apply for authorization from the Department of Public Works to be billed on a monthly basis.
- (4) The vehicle permit issued by the Board of Health to a hauler to remove, transport and dispose of garbage or other offensive substances shall be affixed to the visor in the front window of the truck.

§ 373-2. Solid waste disposal facility.

- A. The Department of Public Works is responsible for the proper operation and maintenance of the Solid Waste Disposal Facility located in Marstons Mills.
- B. The Department of Public Works shall publish not less frequently than annually a complete listing of specific materials/items deemed acceptable and those deemed nonacceptable for disposal at the facility's disposal areas. The listing shall identify which of the acceptable items may be disposed of at no charge and those for which a nominal fee is charged.
- C. The days and hours of operation of the facility are established by the Department of Public Works and shall be posted at the entrance to the facility and published periodically in local newspapers and on Television Channel 19.

§ 373-3. Residential transfer station stickers.

Residential transfer station stickers shall be issued for a fee by the Department of Public Works annually to properly identified residential property owners and tenants of residential dwellings located within the Town of Barnstable for use of the residential transfer station pursuant to the following conditions:

- A. Occupants of residential units are entitled to purchase a total of two stickers per residential dwelling unit.
- B. Stickers are nontransferable and may be issued only for passenger vehicles, pickup trucks and vans. A utility trailer pulled by a vehicle bearing a transfer station sticker does not require a sticker.
- C. Stickers entitle the resident to dispose of their household trash only. Disposal of another resident's trash is an unauthorized use of the sticker.

- D. Stickers issued for a calendar year shall be honored at the solid waste facility through December 31 of that year or until the stickers for the following year become effective in the following year.
- E. Household trash transported by a vehicle that does not have a valid sticker permanently affixed to the vehicle as required for that year shall be charged a disposal fee.
- F. Residential property owners and year-round tenants of residential dwellings located within the Town of Barnstable may also dispose of bagged household trash at the residential transfer station without a sticker but will be charged a fee for each time they do so.
- G. Residential property owners and year round tenants of residential dwellings located within the Town of Barnstable who use the solid waste facility for the purpose of disposing of recyclable materials, yard waste, demolition and builders trash and bulky items will not be required to purchase a sticker. Depending on the material/item to be disposed of, however, a disposal fee may be required. As a general rule, basic recycling materials such as paper, glass, tin cans, plastic containers, waste oil, paints, water based stains, etc., may be disposed of at no cost.
- H. If any person attempts to use the residential transfer station using a vehicle with a sticker affixed to it that was issued to another vehicle, the sticker shall be subject to confiscation by the Town.

§ 373-4. Weighing.

- A. In those cases where a fee is charged for disposal, all trucks including standard pickup trucks, vans and utility trailers shall be weighed prior to disposal.
- B. The driver of any vehicle requiring weighing who leaves the solid waste facility after disposing of trash without having paid the applicable fee shall be subject to criminal prosecution.
- C. The operator of each vehicle weighed shall be furnished a weigh bill at the time of weighing to keep as a receipt of the transaction.
- D. As a service to the public, any vehicle not disposing of waste materials may be weighed for a fee.
- E. If the scale becomes inoperative due to the loss of electric power or due to some other reason, all vehicles normally requiring weighing shall be charged based on the fee contained in the fee schedule published for the current year.

§ 373-5. General regulations.

- A. All loads entering the solid waste facility must be covered.
- B. Only wastes generated within the boundaries of the Town of Barnstable may be disposed of in the Solid Waste Disposal Facility.

- C. No waste of any type shall be disposed of in a recycling station bin, container, tank, or disposal area other than that type of waste for which it is specifically designated as the collection site.
- D. Anyone tampering with or damaging the entrance gate and/or the fencing around the Solid Waste Disposal Facility or disposing of waste of any type in the vicinity of the facility shall be subject to prosecution.
- E. No indiscriminate dumping, salvaging or foraging shall be permitted.
- F. In the event the residential transfer station becomes inoperative for any reason, the supervisor of the Solid Waste Disposal Facility shall have the authority to direct vehicles carrying bagged trash to deliver those bags to an alternate disposal site within the facility.
- G. As a condition of using the Solid Waste Disposal Facility, the owner, operator or person in charge of the vehicle transporting the waste material shall, upon request of a facility attendant, provide proof of the origin or nature of the materials to be disposed of.
- H. Continuous and flagrant disregard for the rules and regulations contained herein and/or posted at the facility shall be deemed sufficient cause for the supervisor of the Solid Waste Disposal Facility to bar the entrance of any vehicle, or to revoke a residential transfer station sticker and issue the owner a prorated rebate.

§ 373-6. Fees.

The solid waste fee schedule for the current year is approved by the Town Manager and published separately from these rules and regulations. Copies of the fee schedule may be obtained at the Solid Waste Disposal Facility office, 45 Flint Street, Marstons Mills and the Department of Public Works Office at Barnstable Town Hall.

§ 373-7. Violations and penalties.

Whoever, himself, herself or by his or her agent, or as the agent of any other person or any firm or corporation, violates the above regulations shall be punished by a fine of not more than \$300.

§ 373-8. Severability.

If any article, regulation, paragraph, sentence, clause, or phrase of these regulations shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of these regulations which shall remain in full force and effect; and to this end the provisions of these regulations are hereby declared severable.

Chapter 376

STABLES

ARTICLE I Authority

§ 376-1. Statutory authority.

ARTICLE II License Requirements

§ 376-2. License required.

§ 376-3. Agricultural license.

§ 376-3.1. License term.

ARTICLE III General Requirements

§ 376-4. Site and management plan required.

§ 376-5. Building ventilation, size, drainage and flooring requirements.

ARTICLE IV Outside Area Requirements

§ 376-6. Fenced enclosures required.

§ 376-7. Runoff management.

ARTICLE V Waste Management

§ 376-8. Waste removal.

§ 376-9. Waste disposal.

ARTICLE VI Composting

§ 376-10. Composting restricted.

ARTICLE VII Setbacks

§ 376-11. Distance between dwellings and stables.

§ 376-12. Distance between dwellings and manure storage and waste containment.

§ 376-13. Distance between water wells and manure storage.

§ 376-14. Distance between water wells and pastured horses.

§ 376-15. Distance between water wells and stables.

ARTICLE VIII Variance Requests

§ 376-16. Submission of variance request; scheduling of hearing.

§ 376-17. Form of request.

§ 376-18. Sketch plans required.

§ 376-19. Revisions to required plans.

§ 376-20. Notification of abutting landowners.

ARTICLE IX Penalties

§ 376-21. Board of Health discretion.

§ 376-22. Violations and penalties.

§ 376-23. Suspension or revocation of licenses; abatement of violations.

[HISTORY: Adopted by the Town of Barnstable Board of Health 4-26-2005.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 240.

Fee for stable permit — See Ch. 318.

ARTICLE I
Authority

§ 376-1. Statutory authority.

Under the authority of MGL c.111, §§ 31 and 155, the Board of Health, for the purpose of the protection of public health, promulgates these regulations, and any guidelines or orders established for their implementation from time to time, governing the erection, occupation and use for a stable of any building or land for the housing of horses and/or ponies in the Town of Barnstable, and drainage, ventilation, size, character of stalls, bedding, number of animals and storage and handling of animal waste.

ARTICLE II
License Requirements

§ 376-2. License required.

No person shall erect, occupy or use buildings or land for a stable without first being authorized and licensed by the Board of Health in compliance with MGL c.111, § 155, these regulations, any guidelines or orders, and applicable provisions of the Zoning Ordinance of the Town of Barnstable.²

§ 376-3. Agricultural license. [Amended 11-14-2006]

- A. For purposes of these regulations, "agriculture" includes the raising or keeping of horses, whether as a commercial enterprise or incident to farming as defined in MGL c. 111, § 1, in a manner consistent with normal, generally accepted farming practices and not injurious to the public health. If a person (the "owner") provides satisfactory evidence to the Board that the owner is engaged in agriculture, then the owner:
- (1) Will enjoy a rebuttable presumption that the owner is so engaged in a manner that is not injurious to the public health;
 - (2) Will be conditionally exempt from having to demonstrate compliance with §§ 376-5 through 376-16 of the Board of Health regulations; and

1. Editor's Note: This enactment superseded former Ch. 376, Stables, adopted 4-1-1972, effective 4-12-1972; revised 7-15-1993 (Part X of the 1991 Codification as updated through 6-1-1996).

2. Editor's Note: See Ch. 240, Zoning.

- (3) Will be issued a stable license.
- B. Notwithstanding the foregoing, if the Board is presented with sufficient evidence that the owner has failed to act in a manner consistent with normal, generally accepted farming practices and finds that such failures may possibly be injurious to the public health, then the presumption set forth in Subsection A(1) and (2) above and the conditional exemption set forth in Subsection A(3) above will be suspended, whereupon the Board will forthwith convene a hearing.
- C. If, after the hearing, the Board finds that the owner is engaged in practices that are injurious to the public health, then the conditional presumptions in Subsection A(1) above shall be deemed rebutted, the conditional exemption in Subsection A(2) above will be lost, and the practices shall cease until the owner is in full compliance.
- D. The Board or its agents and employees may from time to time request and receive information and material from the Commonwealth of Massachusetts Department of Agriculture describing normal, generally accepted framing practices for handling equine waste.

§ 376-3.1. License term.

The license shall be effective December 1 of each calendar year and shall expire on November 30 of the succeeding calendar year.

ARTICLE III
General Requirements

§ 376-4. Site and management plan required.

No stable license shall be granted or renewed until the applicant has submitted a site and management plan on a form approved by the Board of Health and such plan has been approved by the Board of Health or its designee as a condition of the license.

§ 376-5. Building ventilation, size, drainage and flooring requirements.

Stables shall conform to the following:

- A. There shall be adequate ventilation in every stable.
- B. Each stall shall be of adequate size so that any horse and/or pony shall have room to comfortably lie down and stand up.
- C. There shall be adequate drainage, either natural or artificial, as described in the site and management plan.
- D. All flooring shall be level and shall be limed as often as necessary to control odors.

ARTICLE IV**Outside Area Requirements****§ 376-6. Fenced enclosures required.**

When outside and unattended, all animals shall be kept in fenced enclosures suitable to provide their secure containment completely within the property boundaries. Measures such as fencing and signage shall be provided to minimize public access to the fenced animals, and animals shall be fenced in such a manner as to prevent any damage to abutting property, trees or shrubbery.

§ 376-7. Runoff management.

Runoff from paddocks, manure storage and composting areas shall be retained on site and, wherever possible, directed and infiltrated to the subsurface through a grass buffer strip. Construction of paddock areas shall provide adequate drainage to prevent accumulation of standing liquids.

ARTICLE V**Waste Management****§ 376-8. Waste removal.**

Owners of stables housing horses or ponies must clean and remove waste from the stable and turnouts at least once each day and dispose of it in accordance with the approved site and management plan.

§ 376-9. Waste disposal.

- A. Owners of stables must dispose of the solid and liquid waste removed from the stable in accordance with the site and management plan approved by the Board of Health or its designee. Such site and management plan must demonstrate the elimination of health hazards by including, without limitation, the following:

- (1) A plan that realistically accounts for disposition of all of the waste produced by removal or composting or a combination (the Board may, but need not, consider spreading on a crop or pasture) based on:
 - (a) The number of horses;
 - (b) Waste produced at an assumed rate of 2.5 cubic feet of waste and bedding per day per 1,000 pounds of animal (unless another rate is established);
 - (c) The acreage owned by the licensee, its characteristics and the acreage and characteristics of surrounding properties;
 - (d) The location of storage and composting facilities on the stable owner's property so as to eliminate health hazards and minimize odors to surrounding properties;
 - (e) A realistic disposition schedule based on Subsection A(1) through (5).
 - (2) Containment or storage of waste material prior to removal or composting in a manner which:
 - (a) Minimizes infiltration of the waste load by precipitation;
 - (b) Minimizes or controls fly breeding conditions;
 - (c) Minimizes odor discharge to surrounding properties; and
 - (d) Minimizes harborage for rodents.
- B. Waste containment areas must be located at least 50 feet from property lines unless greater distances are necessary to eliminate health hazards and minimize odors outside the stable owner's property. The Board may require additional measures when, in its opinion, they are required to eliminate health hazards or minimize odors, provided that the Board may not effectively deny a stable license based on the elimination of all impacts from odors alone.

**ARTICLE VI
Composting**

§ 376-10. Composting restricted.

No person, company, or corporation shall compost any stable waste on site except in a manner described in the approved site and management plan.

**ARTICLE VII
Setbacks**

The following setbacks shall apply unless otherwise permitted by the Board of Health:

§ 376-11. Distance between dwellings and stables.

No stable or shelter for horses or ponies shall be erected within 50 feet of a dwelling on an abutting property.

§ 376-12. Distance between dwellings and manure storage and waste containment.

Manure storage, waste containment, and compost areas must be located at least 50 feet from the property lines on which the abutting property has a dwelling.

§ 376-13. Distance between water wells and manure storage.

No person shall store, dispose, or stockpile manure within 100 feet of a private water well per an approved site and management plan.

§ 376-14. Distance between water wells and pastured horses.

No person, company, or corporation shall allow a horse or pony to be pastured or paddocked on any land unless said area is 50 feet away from a private water supply well.

§ 376-15. Distance between water wells and stables.

No person shall erect, occupy or use a building for a livery or horse or pony stable for the keeping of horses or ponies unless such stable or building is more than 50 feet from a private water supply well.

ARTICLE VIII
Variance Requests

§ 376-16. Submission of variance request; scheduling of hearing.

All requests for variances from the Stable Regulation shall be submitted at least 15 calendar days prior to the scheduled Board meeting. The variance hearing may be held at a later date if the Board has scheduled eight hearings prior to submission of the request.

§ 376-17. Form of request.

The variance request shall be made on a form prescribed by the Board of Health.

§ 376-18. Sketch plans required.

Neatly drawn sketch plans clearly showing the details of the request must be attached. The plans shall show the locations of the existing or proposed stable, paddock(s), property lines, neighboring dwellings, manure storage area(s), private well locations, defined drainage, and composting area. The plans shall be submitted at least 15 days prior to the scheduled Board meeting.

§ 376-19. Revisions to required plans.

Any applicant who submits revisions to plans, required under § 376-18 above, less than two days prior to the scheduled Board meeting, shall be required by the Public Health Division to postpone the variance hearing to a later date.

§ 376-20. Notification of abutting landowners.

No request for variances from the Stable Regulation shall be heard for a new stable except after the applicant has notified all abutters by certified mail at his own expense at least 10 days before the Board of Health meeting at which the variance request will be on the agenda.

ARTICLE IX
Penalties

§ 376-21. Board of Health discretion.

The Barnstable Board of Health reserves the right to make any decision of situations or problems that arise in regard to health or housing conditions that are not covered by this set of regulations.

§ 376-22. Violations and penalties.

Under MGL c.111, § 157, anyone who violates the provisions of these regulations shall be punished by a fine of \$5 for each day such violation continues. This regulation and any guidelines and orders may be enforced pursuant to the provisions of MGL c.40, §§ 21 and 21D. The fine for any violation of this regulation shall be \$100 per violation. Each day shall constitute a separate violation with the same fines assessed as per this section.

§ 376-23. Suspension or revocation of licenses; abatement of violations.

The Barnstable Board of Health also reserves the right, in addition to any other enforcement actions, to suspend or revoke licenses previously issued and abate violations at the stable owner's expense if continued violations of these regulations occur.

Chapter 378

SWIMMING POOLS

§ 378-1. Testing for coliform bacteria.

§ 378-3. Closure.

**§ 378-2. Testing for pseudomonas
bacteria.**

**[HISTORY: Adopted by the Board of Health of the Town of Barnstable 4-26-2005.
Amendments noted where applicable.]**

GENERAL REFERENCES

Swimming pools — See Ch. 210.

§ 378-1. Testing for coliform bacteria.

All public and semi-public swimming pools, hot tubs, jacuzzis and whirlpools shall be tested monthly for coliform bacteria.

§ 378-2. Testing for pseudomonas bacteria.

All public and semi-public hot tubs, jacuzzis and whirlpools are required to be tested for pseudomonas at least once every two months.

§ 378-3. Closure.

The operator shall immediately close the pool if at any time the swimming, wading, or special purpose pool water does not conform with the bacteriological quality, chemical standards and water clarity requirements set forth within 105 CMR 435.000, the State Sanitary Code Chapter V, "Minimum Standards for Swimming Pools."

Chapter 381

TOXIC AND HAZARDOUS MATERIALS

ARTICLE I Floor Drains

§ 381-1. Findings.

§ 381-2. Purpose.

§ 381-3. Scope of authority.

§ 381-4. Definitions.

§ 381-5. Discharge prohibited; exception.

§ 381-6. Requirements for existing facilities.

§ 381-7. Deadlines for compliance by existing and new facilities.

§ 381-8. Violations and penalties.

§ 381-9. Severability.

[**HISTORY: Adopted by the Town of Barnstable Board of Health as indicated in article histories. Amendments noted where applicable.**]

GENERAL REFERENCES

Hazardous materials — See Ch. 108.

ARTICLE I Floor Drains

[**Adopted 9-28-1999, effective 10-8-1999 (Section 1.00 of Part XI of the 1991 Codification as updated through 6-1-1996)**]

§ 381-1. Findings.

- A. Floor drains in industrial and commercial facilities are often tied to a system leading to a leaching structure (e.g., dry well, cesspool, leach field) or a septic system.
- B. Poor management practices and accidental and/or intentional discharges may lead petroleum and other toxic or hazardous materials into these drainage systems in facilities managing these products.
- C. Improper maintenance or inappropriate use of these systems may allow the passage of contaminants or pollutants entering the drain to discharge from the leaching structure or septic system to the ground.
- D. Discharges of hazardous wastes and other pollutants to floor drains leading to leaching structures and septic systems have repeatedly threatened surface and ground water quality throughout Town of Barnstable.
- E. Surface and ground water resources in the Town of Barnstable contribute to the Town's drinking water supplies.

§ 381-2. Purpose.

The Town of Barnstable adopts the following regulation, under its authority as specified in § 381-3, as a preventive measure for the purpose of preserving and protecting the Town of Barnstable's drinking water resources from discharges of pollutants to the ground via floor drains, and minimizing the threat of economic losses to the Town due to such discharges.

§ 381-3. Scope of authority.

The Town of Barnstable Board of Health adopts the following regulation pursuant to authorization granted by MGL C. 111 §§ 31 and 122. The regulation shall apply, as specified herein, to all applicable facilities, existing and new, within the Town of Barnstable.

§ 381-4. Definitions.

For the purposes of this regulation, the following words and phrases shall have the following meanings:

COMMERCIAL AND INDUSTRIAL FACILITY — A public or private establishment where the principal use is the supply, sale, and/or manufacture of services, products, or information, including but not limited to, manufacturing, processing, or other industrial operations; service or retail establishments; printing or publishing establishments; research and development facilities; very small or large quantity generators of hazardous waste; laboratories; hospitals.

DEPARTMENT — The Massachusetts Department of Environmental Protection.

DISCHARGE — The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, incineration, or placing of toxic or hazardous material or waste upon or into any land or water so that such hazardous waste or any constituent thereof may enter the land or waters of the commonwealth. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site leaching structure or sewage disposal system.

FLOOR DRAIN — An intended drainage point on a floor constructed to be otherwise impervious which serves as the point of entry into any subsurface drainage, treatment, disposal, containment, or other plumbing system.

LEACHING STRUCTURE — Any subsurface structure through which a fluid that is introduced will pass and enter the environment, including, but not limited to, dry wells, leaching catch basins, cesspools, leach fields, and oil/water separators that are not watertight.

OIL/WATER SEPARATOR — A device designed and installed so as to separate and retain petroleum-based oil or grease, flammable wastes as well as sand and particles from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity. Other common names for such systems include MDC traps, gasoline and sand traps, grit and oil separators, grease traps, and interceptors.

TOXIC OR HAZARDOUS MATERIAL — Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies

or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Barnstable. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as toxic or hazardous under Massachusetts General Laws (MGL) Chapter 21C and 21E or Massachusetts hazardous waste regulations (310 CMR 30.000), and also include such products as solvents, thinners, and pesticides in quantities greater than normal household use.

USE OF TOXIC OR HAZARDOUS MATERIAL — The handling, generation, treatment, storage, or management of toxic or hazardous materials.

§ 381-5. Discharge prohibited; exception.

With the exception of discharges that have received (or have applied and will receive) a Department-issued permit prior to the effective date of this regulation, no floor drain(s) shall be allowed to discharge, with or without pretreatment (such as an oil/water separator), to the ground, a leaching structure, or septic system in any industrial or commercial facility if such floor drain is located in either:

- A. An industrial or commercial process area;
- B. A petroleum, toxic, hazardous materials, or waste storage area; or
- C. A leased facility without either A or B of this section, but in which the potential for a change of use of the property to a use which does have either A or B is, in the opinion of the Board of Health, sufficient to warrant the elimination of the ground discharge at the present.

§ 381-6. Requirements for existing facilities.

- A. The owner of a facility in operation prior to the effective date of this regulation with a prohibited (as defined under § 381-5) floor drain system shall:
 - (1) Disconnect and block all applicable inlets to and outlets from applicable leaching structures, oil/water separators, and/or septic systems, in accordance with the Massachusetts Plumbing Code and after obtaining permit to conduct plumbing work;
 - (2) Remove all existing sludge in oil/water separators, septic systems, and, where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations (310 CMR 30.000). Remedial activity involving any excavation and soil or groundwater sampling must be performed in accordance with appropriate Department policies (310 CMR 27.00);
 - (3) Alter the floor drain system so that the floor drain shall be either:
 - (a) Connected to a holding tank that meets all applicable requirements of Department policies and regulations, with hauling records submitted to the Barnstable Board of Health at the time of hauling;

- (b) Connected to a municipal sanitary sewer line with all applicable Department and local permits including a permit from the Town of Barnstable Department of Public Works Engineering Division; or
 - (c) Permanently sealed. Any facility sealing a drain shall be required to submit for approval to the Board of Health a hazardous waste management plan detailing the means of collecting, storing, and disposing of any hazardous waste generated by the facility, including any spill or other discharge of hazardous materials or wastes.
- B. Any oil water separator remaining in use shall be monitored monthly, cleaned not less than every 90 days, and restored to proper conditions after cleaning so as to insure proper functioning. Records of the hauling of the removed contents of the separator shall be submitted to the Board of Health at the time of hauling.
- C. Compliance with all provisions of this regulation must be accomplished in a manner consistent with Massachusetts Plumbing, Building, and Fire Code requirements and Chapter 108, Hazardous Materials, of the Code of the Town of Barnstable.
- D. Upon complying with one of the options listed under Subsection A(3) of this section, the owner/operator of the facility shall notify the Department of the closure of said system by filing the Department's UIC Notification Form with the Department, and sending a copy to the Barnstable Board of Health.

§ 381-7. Deadlines for compliance by existing and new facilities.

- A. Existing facilities.
 - (1) Owners/operators of a facility affected by this regulation shall comply with all of its provisions within 90 days of the effective date.
 - (2) All applicable discharges to the leaching structures and septic systems shall be discontinued immediately through temporary isolation or sealing of the floor drain.
- B. New facilities.
 - (1) As of the effective date of the regulation, all new construction and/or applicable change of use within the Town of Barnstable shall comply with the provisions of this regulation.
 - (2) Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits.
 - (3) The use of any new oil/water separator shall comply with the same requirements as for existing systems, as specified above in § 381-6B.

§ 381-8. Violations and penalties.

Failure to comply with provisions of this regulation will result in the levy of fines of not less than \$200, but no more than \$1,000. Each day's failure to comply with the provisions of this regulation shall constitute a separate violation.

§ 381-9. Severability.

Each provision of this regulation shall be construed as separate to the end that, if any provision, or sentence, clause or phrase thereof, shall be held invalid for any reason, the remainder of that section and all other sections shall continue in full force and effect.

Chapter 385

VARIANCE REQUESTS

§ 385-1. Deadline for submission of requests; timing of variance hearing.

§ 385-2. Use of special forms required.

§ 385-3. Plans showing details and for on-site disposal systems; deadline for submission.

§ 385-4. Hearing postponement for untimely submission of plan revisions.

§ 385-5. Notification of abutters prior to scheduling of hearing.

§ 385-6. Filing fee.

§ 385-7. Hiring of outside consultants.

[**HISTORY: Adopted by the Town of Barnstable Board of Health 11-1-1983; revised 1-1-1994, effective 1-1-1994 (Part XII of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.**]

GENERAL REFERENCES

On-site sewage disposal systems — See Ch. 360.

§ 385-1. Deadline for submission of requests; timing of variance hearing.

All requests for variances from the Board of Health or state regulations will be submitted 15 calendar days prior to the scheduled Board meeting. The variance hearing may be held at a later date if the Board has scheduled eight hearings prior to submission of the request.

§ 385-2. Use of special forms required.

The variance request shall be made on a form prescribed by the Board of Health.

§ 385-3. Plans showing details and for on-site disposal systems; deadline for submission.

Plans clearly showing the details of the request must be attached. Plans for on-site sewage disposal systems must be prepared and certified by professional engineer or registered sanitarian for all new construction and shall be submitted at least 15 days prior to the scheduled Board meeting.

§ 385-4. Hearing postponement for untimely submission of plan revisions. [Amended 2-19-2008]

Any applicant who submits revisions to plans, required under § 385-3 above, less than ten days prior to the scheduled Board meeting shall be required by the Health Department to postpone the variance hearing to a later date.

§ 385-5. Notification of abutters prior to scheduling of hearing.

No request for variances from 310 CMR 15.00, Title 5, of the State Environmental Code, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, nor from any other Board of Health regulation listed under Chapter 360, On-Site Sewage Disposal Systems, shall be heard for a new sewage disposal system, nor for an enlargement to an existing system which increases capacity to accommodate additional flows except after the applicant has notified all abutters by certified mail at his own expense at least 10 days before the Board of Health meeting at which the variance request will be on the agenda.

§ 385-6. Filing fee.

A nonrefundable filing fee of \$85 is required. No fee will be required for filing a variance request upgrading existing on-site sewage disposal systems unless the upgrading involves approval of a building permit.

§ 385-7. Hiring of outside consultants. [Added 4-26-2005]

- A. As provided by MGL c.44, § 53G, the Barnstable Board of Health may impose reasonable fees for the employment of outside consultants, engaged by the Board of Health, for specific expert services deemed necessary by the Board to come to a final decision on an application submitted to the Board of Health pursuant to the requirements of the State Environmental Code, Title 5 (310 CMR 15.000), the Town of Barnstable Codes (Chapter 322, 326, 332, 346, 353, 360, 373, 376, 381, 385, 392, and 397), or any other state or municipal statute, code, bylaw or regulation, as they may be amended or enacted from time to time. It is the intention of the Board to use this authority judiciously, generally limited to complex technical matters as those of substantial impact to the Town of Barnstable.
- B. Funds received by the Board of Health pursuant to these rules shall be deposited with the Town of Barnstable Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board of Health without further appropriation as provided in MGL c. 44, § 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant. Unexpended funds, if any, will be returned to the applicant at the conclusion of the proceedings.
- C. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of impacts on protected resources, areas, values and functions, hydrogeologic and drainage analysis, impacts on groundwater, public water supply wells, private wells, watercourses, coastal banks, wetlands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Board and/or its agent.
- D. The Board of Health shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is sent by certified mail or hand delivered. No such costs or expenses shall be incurred by the

applicant if the application or request is withdrawn within five days of the date notice is given.

- E. The fee must be received in its entirety prior to the initiation of consulting services. The Board may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Board within 10 business days of the request for payment shall be cause for the Board to determine the application is administratively incomplete. The Board shall state such in a letter to the applicant. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Board within 10 business days of the request for payment shall be cause for the Board to deny the permit application.
- F. The applicant may appeal the selection of the outside consultant to the Barnstable Town Council, which may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or related field. Such an appeal must be in writing and received by the Town Council and a copy received by the Board of Health, so as to be received within 10 days of the date consultant fees were requested by the Board of Health. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

Chapter 392

WATERFOWL

§ 392-1. Purpose.

§ 392-2. Feeding prohibited; definitions.

§ 392-3. Exceptions.

§ 392-4. Emergency feeding.

§ 392-5. Violations and penalties.

§ 392-6. Enforcement.

[HISTORY: Adopted by the Town of Barnstable Board of Health 1-20-1987, effective 1-26-1987 (Part XIII of the 1991 Codification as updated through 6-1-1996). Amendments noted where applicable.]

GENERAL REFERENCES

Animals — See Ch. 24.

— See Ch. .

§ 392-1. Purpose.

The purpose of this regulation is the protection of water quality for shellfishing, public swimming and recreational uses from pollution caused by unnatural harborage of waterfowl, due to feeding and baiting by the public.

§ 392-2. Feeding prohibited; definitions.

- A. No person, except the Director of the Division of Fisheries and Wildlife or his agent or designee, as authorized pursuant to Chapter 131 of the General Laws, shall feed or bait, any waterfowl of the family Anatidae (including but not restricted to ducks, geese and swans) at any place within the Town of Barnstable.
- B. As used in this section, the following terms shall have the meanings indicated:

FEEDING AND BAITING — The placing, exposing, depositing, distributing, or scattering, directly or indirectly, of shelled, shucked, or unshucked corn, wheat, or other grain, bread, salt, or any other feed or nutritive substances, in any manner or form, so as to constitute for such birds a lure, attraction, or enticement to, on, or over any such areas where such feed items have been placed, exposed, deposited, distributed, or scattered.

§ 392-3. Exceptions.

Nothing in this regulation shall be construed to limit the feeding of domesticated waterfowl, as defined by the Division of Marine Fisheries and Wildlife, by a farmer as defined in § 1A of Chapter 128 on property owned or leased by him, or the feeding of waterfowl or other birds by propagators licensed under § 23 of Chapter 131 of the General Laws when such waterfowl or other birds are confined in such a manner as may be required pursuant to said § 23 and rules and regulations issued under authority thereof; or the feeding by any person or his agents, or licensees of waterfowl lawfully kept as a pet by that person.

§ 392-4. Emergency feeding.

Notwithstanding any of the above, the Director of the Division of Fisheries and Wildlife or his agent or designee may authorize the emergency feeding of waterfowl and other birds when, in his opinion, such action is necessary in order to alleviate undue losses and suffering of such birds due to unusual weather conditions and other circumstances. The Director may authorize such action by such means as he deems necessary and expedient, but such means shall include the immediate notification of the Selectmen thereof by first-class mail.

§ 392-5. Violations and penalties.

Any person who violates any provision of this regulation shall be subject to a ticketed fine of \$25 for each offense thereof.

§ 392-6. Enforcement.

This regulation may be enforced by police officers, Natural Resource Officers, Shellfish Constables, agents of the Board of Health, Environmental Police Officers, and other enforcement officers of the Division of Law Enforcement and by Deputy Environmental Police Officers.

Chapter 397

WELLS

ARTICLE I Private Well Water Analysis Certification

§ 397-1. Issuance of certification.

ARTICLE II Private Supply on Lots of 40,000 Square Feet or Less

§ 397-2. Building prohibited; location restrictions.

§ 397-3. Variances.

ARTICLE III Private Well Protection

§ 397-4. Definitions.

§ 397-5. Registration of well drillers.

§ 397-6. Installation, alteration, and repair by registered driller; location of wells.

§ 397-7. Requirements for wells not intended for human consumption.

§ 397-8. Requirements for wells intended for human consumption.

§ 397-9. Connection to municipal water.

§ 397-10. Nonapplicability.

§ 397-11. Variance and enforcement procedure.

§ 397-12. Severability.

[**HISTORY:** Adopted by the Town of Barnstable Board of Health as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

On-site sewage disposal systems — See Ch. 360.

ARTICLE I Private Well Water Analysis Certification

[Adopted 6-21-1973, effective 7-5-1973 (Section 1.00 of Part XIV of the 1991 Codification as updated through 6-1-1996)]

§ 397-1. Issuance of certification.

When Town water is not provided, building permits will not be approved by the Board of Health on individual lots until the well is installed and certification submitted as to the bacteriological and mineral content of the water by a state-approved laboratory.

ARTICLE II

Private Supply on Lots of 40,000 Square Feet or Less

[Adopted 10-16-1974, effective 10-22-1974 (Section 2.00 of Part XIV of the 1991 Codification as updated through 6-1-1996)]

§ 397-2. Building prohibited; location restrictions.

The installation of a private water supply and a private sewage disposal system on a lot containing an area less than 40,000 square feet of buildable land is prohibited, and in no case shall a private water supply and a private sewage disposal system be located within 150 feet of each other.

§ 397-3. Variances.

- A. Variance to this regulation may be granted by the Board of Health, after a hearing, during which the applicant proves that the installation of the private sewage disposal system will not adversely affect surface or subsurface public or private water resources of:
- (1) The lot subject to the application;
 - (2) The adjacent land (whether developed or not); or
 - (3) A defined aquifer recharge area.
- B. In granting variances, the Board will take into consideration population density of the area, the size and shape of the lot, slope, the suitability of the soil for drainage and percolation, existing and known future water supplies, depth to groundwater and impervious material and area reserved for expansion of sewage system and relocation of water supply in case of failure.

ARTICLE III

Private Well Protection

[Adopted 5-23-1989, effective 6-1-1989 (Section 3.00 of Part XIV of the 1991 Codification as updated through 6-1-1996)]

§ 397-4. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ABANDONED WELL — A well that has not been used for water supply for a period of one year or more, unless the owner declares his intention to use the well again for supplying water within one year.

BOARD OF HEALTH — The Board of Health or its agent.

POLLUTION — Adverse effect on water quality created by the introduction of any matter.

POTABLE — Water which is pure, wholesome and free from impurities that may cause disease or harmful physiological effects such that the water is safe for human consumption.

RENTED OR LEASED PROPERTY — Any dwelling used for habitation or business purposes by an occupant other than the owner, for the use of which a fee is paid. This includes, but is not limited to, campgrounds, motels, bed-and-breakfasts, inns, and other accommodations used on a transient basis, as well as community-type buildings which are rented to community groups.

WELL — Any pit, pipe, excavation, spring, casing, drill hole, or other source of water to be used for any purpose of supplying water, and shall include dug wells, driven or tubular wells, drilled wells (artesian or otherwise) and springs, gravel packed, gravel walled wells, gravel developed and wash borings and as further described in the U.S. EPA Manual of Individual Water Supply Systems. For the purpose of these regulations, it shall include both private potable wells, and nonpotable wells.

WELL INTENDED FOR HUMAN CONSUMPTION — Any well supplying water for human consumption, bathing, or washing purposes, which is not otherwise regulated as a public water system (community or noncommunity water supply) under 310 CMR 22.00.

WELL DRILLER — Any person, firm, or corporation drilling, constructing, or destroying a water supply well.

YIELD — Quantity of water delivered per unit time which may flow or be continuously pumped from the well.

§ 397-5. Registration of well drillers.

All well drillers doing business in the Town of Barnstable shall annually file with the Board of Health a copy of their current well driller registration certificate issued by the Commonwealth of Massachusetts under Massachusetts General Laws Chapter 21 § 16 and Massachusetts Regulations 313 CMR 3.00.

§ 397-6. Installation, alteration, and repair by registered driller; location of wells.

- A. No well shall be installed, altered, or repaired except by a well driller who is registered with the Water Resources Commission, Division of Water Resources under MGL Chapter 2, § 16, and 313 CMR 3.00, except wherein an owner chooses to install or to have installed a hand-driven well to be used for nonpotable purposes.
- B. All wells shall be located on the same lot as the building they serve.

§ 397-7. Requirements for wells not intended for human consumption.

- A. Well construction permit.
 - (1) No well or group of wells with a yield greater than five gallons per minute shall be installed, altered, or repaired until a well construction permit has been obtained from the Board of Health. A permit so granted shall expire six months from the date of issue unless construction has begun.
 - (2) The fee for this permit shall be set by the Board of Health.

- (3) An application for a well construction permit shall be submitted by the drilling contractor or his agent to the Board of Health on forms furnished by the Board of Health. The well driller is responsible for obtaining said permit prior to construction.
 - (4) The location and design of the water well must be approved by the Board of Health prior to issuance of a well construction permit. Prior to approval, the Board of Health requires the following information to be submitted:
 - (a) The Assessor's map, parcel, and lot number of the property on which the well will be located.
 - (b) Design and capacity of the water system, as described under § 397-8G, Well yield and water system design.
 - (c) Purpose for which well is to be used.
 - (5) Every well used for nonpotable purposes and permanently equipped with pump piping and appurtenances shall be clearly labeled: "Nonpotable water supply not for human consumption."
 - (6) Permit conditions. All permits issued shall be subject to the conditions that all facilities shown shall be constructed in the location approved by the Board of Health. All permits issued shall be subject to the requirements of these regulations and to such further conditions as the Board of Health shall prescribe.
- B. Well construction (wells not intended for human consumption).
- (1) The Board of Health recommends that well construction meet the guidelines outlined in the New England Water Well Drillers Association Ground Water Quality Control Well Construction Code.
 - (2) All nonyielding holes which are installed in the process of constructing the well shall be filled so as not to act as a conduit to the groundwater.
 - (3) A metal tag shall be affixed to the top of the well casing at the time of installation, so that the well may later be located if necessary by a metal detector.
- C. Well drillers report. Within 30 days after completion of the construction of any well requiring a permit, the well driller shall submit to the Board of Health a copy of the water well completion report.
- D. Well destruction.
- (1) Prior to destruction of any well, a well destruction permit must be obtained by the owner or his agent from the Board of Health. The Board of Health will require a site plan showing the well location, including information on the Assessor's map, parcel and lot number for the property on which the well is located, prior to issuance of the well destruction permit.

- (2) Any abandoned well shall be filled and sealed with clean puddled clay, neat cement grout, or concrete grout in such a manner as to prevent it from acting as a channel for pollution to the groundwater.
- (3) Within 30 days after completion of the destruction of any private well, the well owner or well driller acting as agent for the well owner shall submit to the Board of Health a report containing the following:
 - (a) The name of the owner of the well;
 - (b) The geographic location of the well;
 - (c) Any preliminary cleaning or redrilling;
 - (d) Types, depths, and materials of seals used.

§ 397-8. Requirements for wells intended for human consumption.

A. Well construction permit.

- (1) No well shall be installed, altered, or repaired until a well construction permit has been obtained from the Board of Health, which shall expire six months from the date of issue unless construction has begun.
- (2) The fee for this permit shall be set by the Board of Health; the fee for each well construction permit shall be \$45.
- (3) An application for a well construction permit shall be submitted by the drilling contractor or his agent to the Board of Health on forms furnished by the Board. The well driller is responsible for obtaining said permit prior to well construction.
- (4) The location, and design of the water well must be approved by the Board of Health prior to issuance of a well construction permit. Prior to approval, the Board of Health requires the following to be submitted:
 - (a) The Assessor's map, parcel and lot number of the property on which the well will be located.
 - (b) Design and capacity of the water system, as described under well yield and water system design (§ 397-8G).
 - (c) A site plan, drawn by a registered professional civil engineer, registered sanitarian, or registered land surveyor showing the proposed location of the well in relation to building foundations, property lines, building sewer lines, the subsurface sanitary disposal systems serving the lot, all other septic systems within 200 feet, and any other known potential sources of contamination within 200 feet which could affect the well. Such sources of contamination shall include sanitary landfills; auto junkyards; municipal sewage treatment facilities with on-site disposal of primary or secondary effluent; car washes; road salt stockpiles; dry-cleaning establishments; boat and motor vehicle service and repair; cabinetmaking; electronic circuit

assembly; metal plating, finishing, and polishing; motor and machinery service and assembly; commercial paint, wood preserving, and furniture stripping; sites where pesticides and herbicides are regularly applied, including golf course and cranberry bogs (but not including pesticide application at single-family dwellings); photographic processing; printing; chemical and bacteriological laboratories; transportation terminals; funeral homes; any principal use involving the sale, storage, or transportation of fuel or oil; and any use which involves as a activity the manufacture, storage, use, transportation or disposal of toxic or hazardous materials. To meet this requirement, well location shall be shown on the same plot plan submitted to the Board of Health for approval of septic systems installation.

- (d) A registered civil engineer or registered land surveyor must determine and mark the location of the well on the lot prior to its installation.
 - (5) For emergency repair, alteration, or replacement of an existing well, the Board of Health may waive the requirements that a site plan be submitted and that the location of the well be staked on the lot.
 - (6) Permit conditions. All permits issued shall be subject to the conditions that all facilities shown shall be constructed in the location approved by the Board of Health. All permits issued shall be subject to the requirements of these regulations and to such further conditions as the Board of Health shall prescribe.
- B. Well construction (wells intended for human consumption).
- (1) The Board of Health recommends that well construction meet the guidelines outlined in the New England Water Well Drillers Association Ground Water Quality Control Well Construction Code.
 - (2) The top of a well shall be above ground that is higher than any surface sources of contamination and above any known conditions of flooding by drainage or runoff from the surrounding land, unless located in a floodproofed well house.
 - (3) Wells must be constructed so as to maintain existing natural protection against all known or potential pollution of the groundwater and to exclude all known sources of pollution from entering the well.
 - (4) All nonyielding holes which are installed in the process of constructing a well must be filled so as to not act as a conduit to the groundwater.
 - (5) A metal tag shall be affixed to the top of the well casing at the time of installation so that the well may later be located if necessary by a metal detector.
 - (6) In areas where salt water or other pollutant intrusion is known or likely to occur, the Board of Health, working with a designing engineer, may specify the well screen level, pumping rate, water storage capacity, or any other construction parameter which must be used to ensure that water of adequate quality is obtained.
- C. Well driller's report. Within 30 days after completion of the construction of any well, the well driller shall submit to the Board of Health a copy of the water well completion

report. The Board of Health will not issue a certificate of approval for the well until this report has been received.

D. Well destruction.

- (1) Prior to destruction of any well, a well destruction permit must be obtained by the owner or his agent from the Board of Health. The Board of Health will require a site plan showing the well location, including information on the Assessor's map, parcel and lot number for the property on which the well is located, prior to issuance of the well destruction permit.
- (2) Any abandoned well shall be filled and sealed with clean puddled clay, neat cement grout, or concrete grout in such a manner as to prevent it from acting as a channel for pollution to the groundwater.
- (3) Within 30 days after completion of the destruction of any private well, the well owner or well driller acting as agent for the well owner shall submit to the Board of Health a report containing the following:
 - (a) The name of the owner of the well;
 - (b) The geographic location of the well;
 - (c) Any preliminary cleaning or redrilling;
 - (d) Types, depths, and materials of seals used.

E. Well location.

- (1) In general, wells intended for human consumption shall be located as far as possible from potential sources of contamination. The following minimum distances are required:
 - (a) Property line: 10 feet.
 - (b) Roadway: 10 feet from edge of road layout (not edge of pavement).
 - (c) Leaching catch basin/dry well: 50 feet, but recommend that this distance be maximized.
 - (d) Utility rights-of-way: 50 feet, but recommend that this distance be maximized.
 - (e) Septic tank: 100 feet.
 - (f) Septic leaching facility: 150 feet.
 - (g) Septic distribution box: 100 feet.
 - (h) Subsurface drains: 25 feet, but recommend that this distance be maximized, as pollutants frequently travel along the outside of subsurface drain pipes.

- (2) Where, in the opinion of the Board of Health, adverse conditions exist, the above distances may be increased. In certain cases, the Board of Health may require the owner to provide additional means of protection. Where possible, the well shall be located up the groundwater gradient from sources of contamination.

F. Water quality.

- (1) Prior to approval of the well and approval of a disposal works construction permit application, the owner or his agent shall take a water sample(s) from the well and submit it to a state certified testing laboratory for analysis, with the cost to be borne by the owner. The results of all analyses shall be submitted to the Board of Health. At a minimum, water must be tested for the following chemical and bacteriological standards: total coliform, nitrate-nitrogen, pH, conductivity, sodium, iron, and EPA methods 502.1/503 or 502.2 or 524.1 or 524.2. These tests include analyses for purgeable halocarbons and purgeable aromatics, as well as analyses for petroleum hydrocarbons or pesticides.
- (2) The Board of Health will determine potability of the well water using as guidelines the National Interim Primary and Secondary Drinking Water Standards and the U.S. EPA Maximum Contaminant Levels (MCLs). The water quality standards for common parameters are as follows:

Primary Standards

Total coliform	0 colonies/100 ml MF
Nitrate	10 ppm

Secondary Standards

pH	Recommend pH above 5.0
Sodium	20 ppm
Iron	0.3 ppm

- (3) When the Board of Health deems it necessary, the Health Agent or other agent of the Board of Health may be present to witness the taking of a water sample and/or may take the water sample and deliver it to the testing laboratory him/herself.
- (4) The Board of Health further recommends that all well owners have their wells tested at a minimum of every two years, and at more frequent intervals when water quality problems are known to exist.

G. Well yield and water system design.

- (1) Before approval, every well shall be pump tested to determine yield. The pump test shall include a drawdown test at a minimum pumping rate of five gallons per minute for one hour.

- (2) The design of the water system, including well, pump, storage tank, and other accessories must be adequate to provide a water capacity in gallons per minute which equals the number of water fixtures installed; in addition, capacity (in gpm) must not be less than the peak demand for the largest fixture installed. For the purposes of this regulation a fixture is defined as a water outlet, and includes faucets, sinks, toilets, bathtubs, washing machines, dishwashers, and the like.
- (3) In areas where salt water or other pollutant intrusion exists or is believed likely, and where the Board of Health (in conjunction with a designing engineer, as outlined under well construction) has determined a well pumping rate which must be used to prevent further contamination, the Board of Health may specify design criteria for the building and water system served by the well, so that the water storage tank, number of fixtures and habitable space are compatible with the pumping capacity of the well.

H. Submission of well water test results.

- (1) Prior to issuance of a certificate of approval for a well intended for human consumption, the results of all water quality and yield tests shall be submitted to the Board of Health. The owner of the property which the well will serve, or the well driller acting as agent for the owner, shall certify, on a form provided by the Board of Health, the following:
 - (a) The location, and date the sample was taken, and the laboratory at which it was analyzed;
 - (b) That the water sample whose analysis results were submitted to the Board of Health was taken from the well for which approval is being sought; and
 - (c) The results of the yield test performed by the well driller.

I. Well approval.

- (1) New wells shall not be placed into use for human consumption until the Board of Health has approved the potability and quantity of the water provided and issued a certificate of approval for the well to the owner of the property which the well serves.
- (2) A certificate of approval for a well will not be issued until:
 - (a) The well water has been shown to meet the water quality criteria outlined in the regulations; and
 - (b) The capacity of the water system, in gallons per minute, has been demonstrated to equal the number of fixtures installed.
- (3) In addition, for wells installed at newly constructed buildings, the Board of Health shall require that a certified plot plan, drawn by a registered land surveyor or registered professional civil engineer, be submitted to the Board of Health. Such plot plan must show the actual location of the well on the lot as cross tie distances from lot corners, and must show the location of the septic system, as installed, in

relation to the well. The plot plan must also identify, by Assessor's map, parcel and lot number, the property on which the well is located. This information may be included in the certified plot plan required by the Building Commissioner which shows the location of the foundation on the lot. ¹

- (4) The Board of Health shall not approve a building permit or a certificate of occupancy until it has issued a certificate of approval for the well serving that building.
- (5) Wells which fail to meet some or all of the requirements in these regulations may be approved by the Board of Health after a hearing at which a variance from these standards may be granted.

J. Existing wells serving rental properties.

- (1) The owner of every well intended for human consumption serving property which is rented or leased shall have its water tested at a state certified laboratory for the following chemical and bacteriological standards at a minimum of once every two years: total coliform, nitrate-nitrogen, pH, conductivity, sodium, and iron; and for EPA Methods 502.1/503 or 502.2 or 524.1 or 524.2 at a minimum of once every five years. Where water quality problems are known or suspected to exist, the Board of Health may require more frequent testing or testing for additional parameters.
- (2) Results of all water quality tests shall be made available to all tenants of the property and to the Board of Health, by the owner of the property.
- (3) In cases where the well water does not meet the water quality standards outlined above, the Board of Health may require the property owner to provide an alternative approved source of drinking water for the tenants.

K. Test of water quality upon transfer of real estate.

- (1) Prior to selling, conveying, or transferring title to real property in the Town of Barnstable, the owner thereof shall have tested the water of every private potable well serving that property. A water sample from each well shall be submitted to a state certified laboratory for testing for the parameters outlined under water quality above in Subsection F. This water quality test shall be performed not more than one year prior to transfer of the property. Results of the water test shall be submitted to the Board of Health prior to property transfer on a form provided by the Board of Health on which the owner will certify that the sample was taken from the well serving the property being transferred.
- (2) In addition, the owner shall give copies of all water test results of which he has knowledge (regardless of age of results) for the private potable well in question to any buyer and/or broker identified with the transfer. In the event that there is no buyer at the time the water is tested, a copy of all water test results must be given by the owner to the buyer before the property is put under agreement.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

- (3) This regulation shall not apply to the conveyance or devise of a property to a surviving spouse or to any of the heirs or devisees of the property owner, and further, shall not apply to a sale under power of sale in a bona fide mortgage affecting the property.

§ 397-9. Connection to municipal water.

The Board of Health may, at its discretion, require single-family, multifamily, or commercial structures located within 300 feet of a municipal waterline to connect to municipal water.

§ 397-10. Nonapplicability.

Any well regulated pursuant to the Water Management Act, MGL Chapter 21G, which governs any well that withdraws an average volume of water in excess of 100,000 gallons of water per day, is exempt from the regulations established herein.

§ 397-11. Variance and enforcement procedure.

- A. The Board of Health may vary the application of any provision of this article with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, provided that the decision of the Board of Health shall not conflict with the spirit of these minimum standards nor with the protection of human health and environmental quality.
- B. Every request for a variance shall be made in writing and shall state the specific variance requested and the reasons therefor. Any variance granted by the Board of Health shall be in writing. Any denial of a variance shall also be in writing and shall state the reasons for the denial. A copy of any variance granted shall be available to the public at all reasonable hours in the office of the Town Clerk or the Board of Health while it is in effect.
- C. Any variance or other modification authorized to be made by these regulations may be subject to such qualification, revocation, suspension or expiration as the Board of Health expresses in its grant. A variance or modification authorized to be made by these regulations may otherwise be revoked, modified or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with the requirements of 310 CMR 11.00 for orders and hearings.
- D. As a condition of granting a variance, the Board of Health may require a restriction to be recorded at the Registry of Deeds when, in the opinion of the Board of Health, knowledge that the well does not meet minimum standards would benefit future potential consumers of water supplied by the well.
- E. The provisions of Title 1 of the State Environmental Code (310 CMR 11.00) shall govern the enforcement of these regulations.

§ 397-12. Severability.

Each section of these rules and regulations shall be construed as separate. If any section, regulation, paragraph, sentence, clause, phrase or word of these rules and regulations shall be declared invalid for any reason, the remainder of these rules and regulations shall remain in full force and effect.

PART IV

**TOWN MANAGER
REGULATIONS**

Chapter 401

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ARTICLE II Code of Ethics

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ARTICLE III Communication Procedures

- § 401-11. Purpose.
- § 401-12. Applicability.
- § 401-13. Communications Officer.
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- § 401-18. Requests for assistance (RFA).
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ARTICLE IV Financial Management Procedures

- § 401-21. Purpose.
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- § 401-30. User fees and special districts.
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Documents for Bidders for Supplies and Services (7)

Attachments A and B

Computation of Fringe Benefit for

Employer-Provided Vehicles (2)

Hyannis Water Rates

[HISTORY: Adopted by the Town Manager of the Town of Barnstable. Amendments noted where applicable.]

GENERAL REFERENCES

Boards, committees and commissions — See Ch. 37.
Administrative Code — See Ch. 241.

Personnel — See Ch. 242.

ARTICLE I
Offices and Standards

§ 401-1. Jurisdiction of Town Manager.

Administrative procedures of the Town are under the jurisdiction of the Town Manager and are described in this chapter.¹ The description of administrative procedures provides the general provisions and policy, authority, functions, and guidelines for each said procedure. The procedures also contain avenues for change or alteration.

ARTICLE II
Code of Ethics

§ 401-2. Applicability.

This Code of Ethics applies to all Town officials after the effective date of these procedures.

§ 401-3. Effective date.

This Code of Ethics becomes effective on June 30, 1993.

§ 401-4. Distribution.

The Town Clerk shall cause a copy of the Code of Ethics to be distributed to every public official and employee of this Town within 30 days after enactment. Each public official and employee engaged thereafter shall be furnished a copy at the time of his/her appointment or election.

§ 401-5. Severability.

If the application of this chapter to any person or circumstance is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Code of Ethics.

§ 401-6. Procedures and guidelines.

- A. Professionalism. Public officials and employees shall demonstrate dedication to effective democratic local government and shall commit to a belief that professional administration is essential to the achievement of this objective.

1. Editor's Note: This chapter was originally Part IV of the Administrative Code.

- B. Integrity. Public officials and employees shall demonstrate the highest standards of personal integrity and honesty in all public activities in order to inspire public confidence and trust in Barnstable's local government.
- C. Interest in contract or transaction. No public official or employee shall perform or participate in an official act with regard to a transaction in which he or she has an interest.
- D. Gifts. No public official or employee shall accept from any person involved in any transaction with the Town any present or future gift in excess of \$50, or thing of value, as an inducement for an official act or action. Any such gift shall be conclusively presumed to have been accepted as an inducement for an official act or action unless accepted for and promptly surrendered to the sole use and benefit of the Town.
- E. Disclosure of information. No public official or employee with respect to any transaction which is or which is reasonably expected to become the subject of an official act or action shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the Town or use such information to advance the interest as defined above of such public official or employee or his or her family members.
- F. Appearances. No public official or employee and no member of any agency, board, committee or commission shall appear on behalf of any private person or business entity, other than himself or herself or a family member, before any Town agency, board, committee or commission.
- G. Merit-based decisions. Public officials and employees shall manage all personnel matters on the basis of merit so that fairness and impartiality govern the Town's decisions pertaining to appointments, pay adjustments, promotions and discipline. No appointment to or employment in any Town position shall be dependent on political activity.
- H. Political activity. No employee shall be required to engage in any political activity as a condition of employment. Employees should refrain from participating in the election of members of the Town Council, and from all partisan political activities which would impair performance as a professional administrator/employee.
- I. Discrimination, fraud, and mismanagement. Public officials and employees are encouraged to eliminate all forms of illegal discrimination, fraud, mismanagement of public funds and to support colleagues if they are in difficulty because of responsible efforts to correct such discrimination, fraud, mismanagement or abuse.
- J. Information. Public officials and employees shall respect and protect the privileged information to which employees have access in the course of official duties.

§ 401-7. Disclosure.

Any public official or employee who has (or whose family members have) an interest in a transaction which is the subject of an official act or action shall disclose on the record of the agency, board, committee or commission which performs such official act, or to the Town Manager in the case of employees, the nature and extent of such interest.

§ 401-8. Economic Interest.

All members of the Town Council, Planning Board and Zoning Board of Appeals shall file a Statement of Economic Interest with the Town Clerk annually at such time as shall be established by the Town Council. Such statement will be a form as shall be approved by the Town Council (upon recommendation of its Rules and Ethics Committee) and provided by the Town.

§ 401-9. Interpretation.

It is recognized that no written code of this nature can provide specifically for all possible contingencies. Any questions regarding the propriety of any transaction or the proper interpretation of this Code of Ethics may be brought to the attention of the Town Attorney at any time. The Town Attorney shall maintain a record of all hypothetical and actual instances considered under this Code of Ethics which shall serve as a guide for future compliance with and enforcement of this policy. The Town Attorney shall, consistent with his responsibilities under the law, maintain confidentiality in said consultation and shall exercise his responsibilities as appropriate.

§ 401-10. Other references and guides.

In order to augment these provisions, public officials and employees are encouraged to refer to Chapter 268A of the Massachusetts General Laws, the International City/County Management Association Code of Ethics, the American Society of Public Administration's Code of Ethics, and ethics guidelines offered by other professional associations to which either public officials or employees belong.

ARTICLE III Communication Procedures

§ 401-11. Purpose.

These procedures establish the guidelines for effective communications within the Town of Barnstable organization and with its various constituencies.

§ 401-12. Applicability.

These procedures apply to all Town of Barnstable administrative functions.

§ 401-13. Communications Officer.

The Town Manager shall serve as Communications Officer of the Town of Barnstable.

§ 401-14. Delegation of authority.

Subject to regulations of the Town, the Town Manager may delegate authority to designees or to any department, agency, or official.

§ 401-15. Media and public relations procedures.

Productive and effective media relations are developed through fair, ethical, truthful and systematically implemented media management systems. Certain basic elements of a media management system include conduct with media, goal setting, marketing, staff training, evaluation of relationship, review of story, assignment of staff responsibility.

A. Conduct.

- (1) **Be yourself:** The most important element is to be yourself. Cameras and reporters are like truth serums, they can tell when you are not truthful. Avoid technical jargon or fancy, pretentious language, it does not impress anyone and may confuse them.
- (2) **Be comfortable and confident:** Relax; remember that your knowledge of the story is why you are being interviewed. Take control; say what you want to say, not what someone wants you to say. Do not jump or react to a story or a question.
- (3) **Be honest:** If you do not know the answer to a question, admit it. Do not lie to a reporter. Your credibility is crucial, never jeopardize it.
- (4) **Be brief:** Short, clear answers are most effective in communicating an idea on television or radio. Get right to the point. Simple talk is less prone to being quoted out of context.
- (5) **Use of humor:** Used properly, it can promote a friendly and confident image.
- (6) **Be personal:** Personal stories and anecdotes can help get across an idea or concept, and are better remembered.
- (7) **Be positive and consistent:** Keep your goals in mind and stick to them. Approach each question in a positive way.
- (8) **Concentrate:** Put your full attention on the interviewer. Look directly at the person asking the question. Do not become distracted by outside interference. Listen carefully to questions asked; if unclear, ask that it be restated.
- (9) **Show energy:** Be animated; use gestures, facial expressions, body language to add vitality to your response. Keep a conversational voice, but remember that it has a "face" which can show different emotions and expressions. Lean forward and be alert. An effective interview is hard, physical work.
- (10) **Show sincerity and concern:** In any interview it is important. Be careful; consider your message; don't be afraid to pause. Avoid stating "no comment." It can be detrimental to your image or the public's understanding of your situation. Every

time you speak, look and sound as if you mean it. Speak convincingly, saying what you mean and meaning what you say.

B. Goal setting.

- (1) Mass media communications mailing list: available in office of Town Manager; also available on Information Systems FAX machine; to be utilized in notifying media of information.
- (2) Media is important: The Town represents the public through the media. Public issues discussed shall include the media, in order that the public can be informed of administrative and legislative discussions and decisions.

C. Marketing.

- (1) Standard press release: Utilize format enclosed. It should be disseminated one week prior to event, or publication need, at earliest convenience.

Press Release Format

TO: News Media Contact:

Phone:

FROM:

DATE:

Media Advisory:

WHO:

WHAT:

WHERE:

WHEN:

BACKGROUND:

For further information, please call:

- (2) Response to media inquiry: If a reporter calls, talk with him/her. Reporter calls are based upon assignment orders. Every call should be considered a priority by Town officials.
- (3) Anticipate a problem: If you believe that an issue will develop which can be adverse to the Town, do not wait for it; be proactive and contact media with elements of issue so that they can become more comprehensive in their reporting.
- (4) Develop work products for publication: Anticipate questions; use existing data for a story.

- (5) Professional conduct: Dress and act professional. Sexual, racist, ignorant remarks are prohibited. Maintain professional relationship. Don't speak off the record; if you speak, it is always considered on the record.

D. Media communications staffing:

- (1) Department managers are responsible for screening marketable department news. Managers shall determine who to send it to, who should be contacted in the department, and are responsible for meeting with media representatives and determining how Town can better accommodate media. This is to be coordinated with the office of the Town Manager. Responsible for developing a pro forma "story idea sheet," that would include the What-Who-When-Where-Why of a story.
- (2) Responsible for ensuring all written guidelines are available for utilization by Town staff.

E. Training: Department managers to train employees on manners and methods of interrelating with media.

F. Evaluation: Department managers should evaluate departmental media relations by semiannually surveying media representatives to determine effectiveness of program.

§ 401-16. Administrative communications.

The office of the Town Manager will oversee communications on a regular basis to analyze performance and variances with these procedures.

§ 401-17. Town Manager reports.

A. Town Manager reports.

- (1) The purpose of a Town Manager report is to provide the Town Council with information about an issue, problem or subject that is not appropriately conveyed by memorandum. This situation may be due to its length or the need to supplement it with a formal presentation. Town Manager reports may originate at Town Council, Town Manager or Assistant Town Manager direction. Departments may originate Town Manager reports with the approval of the Town Manager or Assistant Town Manager.
- (2) Town Manager reports need to be submitted to the Town Manager or Assistant Town Manager for review. All Town Manager reports need to be accompanied by a bullet sheet of the key issues for the Assistant Town Manager or Town Manager. If a formal presentation will be made, then the report also needs to be accompanied by a detailed outline of the presentation. The outline should list if any audio/visual materials are to be used. Exhibit A represents the format for Town Manager reports.²

2. Editor's Note: Exhibit A is included at the end of this chapter.

- B. Agenda item summary. This is the form which provides a brief summary of an item on the Town Council Agenda. Exhibit B shows an agenda item summary.³

§ 401-18. Requests for assistance (RFA).

- A. Written requests for assistance (RFA).
- (1) A request for assistance is a request for information or assistance regarding a Town function that is generated by a citizen contact with a Councilor, department, Town Manager or Assistant Town Manager.
 - (2) All department responses to President, Councilor or Town Manager requests are to be sent through the Town Manager's office.
 - (3) All RFAs are due to the Town Manager's office by 4:30 p.m. on the workday before the Town Manager due date.
 - (4) If a deadline extension is needed, call the appropriate staff person in the Town Manager's office. If a RFA is such that the amount of work necessitates a longer time frame, then a memo needs to be prepared for the Town Manager or Assistant Town Manager's signature within the original due date. This memo shall explain the scope of the project and the date the response will be ready. That date must be met.
 - (5) The body of the letter/memo should address all concerns of questions contained in the request. You may need to contact other departments for information in order to provide a complete response by the designated date. Information should be concise and complete.
 - (6) Put all pertinent information in the letter/memo instead of referencing attachments. Attachments should be used for documentation.
- B. Exhibit D is a sample form used by departments as a control document to ensure timely responses to RFAs.⁴

§ 401-19. Telephone requests for assistance.

- A. Send a short memo to the Town Manager's office explaining phone contacts as a result of RFAs.
- B. Staff comments on telephone responses should note the date when the resident was contacted and when the issue was resolved.
- C. Avoid submitting handwritten responses to the Town Manager's office — please type. Give details of the disposition. If the issue is complex, name the area of concern, i.e.,

3. Editor's Note: Exhibit B is included at the end of this chapter.

4. Editor's Note: Exhibit D is included at the end of this chapter.

"answered questions regarding shellfishing license." Electronic mail is an acceptable form of communication and is highly encouraged.

- D. Make initial contact with resident within 24 hours of receipt of RFA. State on whose behalf you are calling, be positive, and provide assistance. Provide resident the name and telephone number of person to contact should they have additional questions.

§ 401-20. Citizen access.

This section describes how citizens (and residents) can access the Town of Barnstable organization. The Town of Barnstable Citizen's Guide to Barnstable Town Government (June 1990) can also be consulted for more information regarding this subject.

A. How to access the Town Council.

- (1) Point of contact. Council staff can be accessed at the New Town Hall, Monday through Friday, from 8:30 a.m. to 4:30 p.m. Council staff is available to assist residents by manner of responding to inquiries or information, either directly or by referral to an individual Councilor or the Town Manager's office (see previous section).
- (2) Council meetings. Regular meetings of the full Town Council are held the first and third Thursdays of each month, except in the months of July and August, when the Council is scheduled to meet on the third Thursday. Meetings commence at 7:00 p.m. and are held in the hearing room on the second floor of New Town Hall. Committees of the Council meet as needed, usually during alternate weeks from the regular Council meeting.
- (3) Items of business. Individuals and community organizations may submit items of business for Council action by delivering in writing such items to the Clerk of the Town Council no later than 12:00 noon on the Monday preceding the regular Council meeting.
- (4) Public testimony. In order for the Town Council to operate effectively and efficiently both when meeting as a whole and in committee, public testimony concerning particular proposals is encouraged to occur at committee hearings. When matters that require a formal public hearing are referred to committee, notice of the date, time and place of such hearing will be published in a local newspaper. It is at these committee meetings where public input regarding specific items is encouraged.
- (5) Public testimony during Council meetings. At each regular meeting of the Council there will be a period set aside for public comment. Members of the public desiring to address the Council may reserve a place during public comment with the Council Staff by 4:30 p.m. on the day of the Council meeting. Other members of the public may also be heard at this time after those who have reserved time have spoken.
- (6) Supporting documentation. Council agendas and supporting documentation are available in the Town Council office 48 hours in advance of each regular Council

meeting. In addition to being posted on the Town Bulletin Board, on the first floor of Town Hall, Council agendas are distributed to all of the village libraries prior to each Council meeting for public review.

ARTICLE IV
Financial Management Procedures
[Amended 8-14-2006; 12-7-2010]

§ 401-21. Purpose.

The underlying purposes of these procedures are:

- A. To develop effective financial management within the Town;
- B. To simplify, clarify, and modernize the financial systems of the Town of Barnstable;
- C. To permit continued development of financial management policies and practices;
- D. To provide for increased public confidence in the procedures followed in public financial management;
- E. To provide increased economy and financial performance and to maximize to the fullest extent practicable the use of public funds of the Town of Barnstable; and
- F. To provide safeguards to ensure quality and integrity of the financial systems.

§ 401-22. Applicability.

This policy applies to every revenue source and expenditure of public funds irrespective of their source, including federal and state assistance monies.

§ 401-23. Effective date.

This policy becomes effective on June 30, 1993.

§ 401-24. Definitions.

The words defined in this section have the meanings set forth below whenever they appear in this policy:

ADVANCE REFUNDING — The issuer of bonds may sell new bonds at lower rates to replace a prior issue.

ARBITRAGE — Using existing debt proceeds and investing at a higher rate so as to generate a profit.

BASIS POINT — 1/100 of 1%.

BETTERMENT — A special and local imposition upon the property in the immediate vicinity of municipal improvements, which is necessary to pay for the improvement, and is laid with reference to the special benefit which the property is supposed to have derived therefrom.

BOND ANTICIPATION NOTES (BANS) — Short-term interest-bearing notes issued by the Town in anticipation of bonds to be issued at a later date. The notes are retired from proceeds of the bond issue to which they are related.

BOND COUNSEL — An attorney retained by the Town to give a legal opinion that the issuer is authorized to issue proposed bonds, has met all legal requirements necessary for issuance, and that interest on the bonds is, or is not, exempt from federal and state income taxation.

CALL PROVISIONS — Permitting the issuer of bonds to repurchase the bonds before maturity at a predetermined price.

CAPITAL APPRECIATION BONDS (CAB) — Long-term securities on which the investment return is reinvested at a state compound rate until maturity. The investor receives a single payment at maturity representing both the principal and investment return.

CAPITAL BUDGET — Outlays for equipment, for construction or for purchase of land or a facility that provides services over an extended period of time.

CERTIFICATES OF PARTICIPATION — Documents, in fully registered form, that act like bonds. However, security for the certificates is the government's intent to make annual appropriations during the term of a lease agreement. No pledge of full faith and credit of the government is made. Consequently, the obligation of the government to make basic rental payments does not constitute an indebtedness of the government.

DEBT SERVICE — The sum of all interest payments in a period plus the dollar amount of any principal due that same period.

DOUBLE-BARRELED BONDS (COMBINATION BONDS) — Those that are payable from the revenues of a governmental enterprise and are also backed by the full faith and credit of the Town.

ENCUMBRANCE ACCOUNTING — Recording expenditures that intend to purchase a particular object, even prior to incurring a definite liability.

EXCISE TAX — Those levied by local government on a wide variety of individual products and services, but the major taxes are those on automobiles, boats and the rental of hotel/motel rooms.

FREE CASH or BUDGETARY FUND BALANCE — The amount of municipal funds not obligated for any expense or surplus funds.

GAAP — Generally accepted account principles established by the Federal Accounting Standards Board (FASB).

GENERAL OBLIGATION BONDS — Those whose payments are financed by all taxpayers and are secured by the full faith, credit, and taxing power of the issuer.

OPERATING BUDGET — A financial document setting forth expenditures for personnel, services, materials, supplies, contractual services, utilities, and other resources necessary to provide public services for the fiscal year.

PAR VALUE — The bond principal payable at maturity.

PROGRAM BUDGET — A format where government activities are organized in a series of services and activities that have clearly defined goals and objectives.

PUT BOND — A bond in which the bondholder has the right to sell the bond back to the issuer or a third party at a fixed price.

RATINGS — Evaluations of the credit quality of notes and bonds, usually made by independent rating services, which generally measure the probability of the timely repayment of principal and interest on municipal bonds.

REFUNDING BONDS — Those issued to retire bonds already outstanding.

REVENUE BONDS — Those whose payments are financed by the users of projects which benefit a specific group.

SECURITIES — Those available for local government investment such as Treasury securities, government agency securities, repurchase agreements, and negotiable certificates of deposit.

SPREAD — The difference between the underwriter's bid on a bond issue and the resale price; includes bid preparation expenses, selling commission, underwriter's fee, management fee, and profit.

TAX ANTICIPATION NOTES (REVENUE ANTICIPATION NOTES) — Notes issued in anticipation of collection of taxes, usually retireable only from tax collections, and frequently only from proceeds of the tax levy whose collection they anticipate.

USER FEES/CHARGES — Prices charged for voluntarily purchased, publicly provided services that benefit specific individuals or groups.

§ 401-25. Public access to financial information.

Financial information is public information to the extent provided in the Massachusetts General Statutes and Section 8-9, Open Meeting of the Voters, of the Town Charter and shall be available to the public as provided in these statutes and Charter.

§ 401-26. Organization.

- A. Appointment, tenure, and removal of the Finance Director. The Town Manager shall appoint the Finance Director. The Finance Director should be a person with demonstrated executive and organizational ability. The Finance Director shall be a full-time employee of the Town and can be removed by the Town Manager only upon showing of just cause.
- B. Functions.

- (1) Chief Financial Officer of the Town. Financial services shall include accounting, assessments, treasury, procurement, risk management and budgeting. The Finance Director supervises and coordinates the administration of these services, and also serves as an advisor on fiscal policy and other related concerns such as debt and investment management.
 - (2) Power to adopt operational procedures. Consistent with the provisions of this policy, the Finance Director may adopt operational procedures governing the internal functions of the Finance Department.
 - (3) Service area. The Finance Director shall oversee a consolidated financial operation that includes the Barnstable Public Schools as approved by the School Committee and Town Council
- C. Delegation of authority. The Director of Finance may delegate authority to designees as he or she sees fit.

§ 401-27. Financial tools.

- A. Short-term forecasts. The Finance Department shall use short-range forecasts (up to one year) to principally prepare the annual budget and to project cash flow.
- B. Long-term forecasts. Consistent with the Town Charter, the Finance Department shall annually prepare and recommend to the Town Manager a ten-year financial forecast of Town revenue, expenditures, and general financial condition of the Town. The long-term forecast shall also include:
- (1) Identification of factors which impact financial condition;
 - (2) Revenue and expenditure trends;
 - (3) Potential sources of new or expanded revenue; and
 - (4) Actions necessary to enhance the financial condition of the Town.
- C. Operating budget. The operating budget serves the role of harnessing financial and organizational resources of the Town in order to attain its goals and objectives. The operating budget may consist of the following funds (Their definitions are included in the accounting section below.):
- (1) The general fund.
 - (2) Special revenue funds.
 - (3) Special assessment funds.
 - (4) Capital project funds.
 - (5) Enterprise funds.
 - (6) Fiduciary funds.

- D. Budget cycle. The budget cycle for a fiscal year shall have four phases and operate as follows:
- (1) Preparation of estimated expenditures and projected revenues;
 - (2) Adoption;
 - (3) Implementation or execution throughout the fiscal year; and
 - (4) Evaluation and assessment of attainment of goals and objectives and performance which includes monthly reports to the Town Manager and quarterly reports to the Town Council.
- E. Budget approaches. Several approaches may be used in the operating budget. Their usefulness varies dependent on the goals to be achieved. These approaches consist of line-item, programmatic, performance, total quality management, and zero-based budgeting (ZBB). It is the current policy of the Town Manager to use the programmatic budget format.
- F. Capital budgeting. A "capital expenditure" is defined as an outlay for the construction or purchase of a facility that is expected to provide services over a considerable period of time. Capital expenditures usually are large compared with expenditures for items in the operating budget. The Capital Improvements Plan (CIP) and the Capital Improvements Budget should be developed through the following steps: selection of projects, forecasting of resources, and determining the financing method.
- (1) Determining worthwhile projects. A public investment is desirable when the present value of its estimated flow of benefits, discounted at the community's cost of capital, exceeds or equals its cost. A public investment is also desirable when the project rates highly with community values. The latter criteria may include, but not limited to:
 - (a) Preservation of capital;
 - (b) Legal conformance;
 - (c) Town goals and objectives;
 - (d) Health, safety, general welfare;
 - (e) Cost effectiveness;
 - (f) Environmental quality;
 - (g) Quality of life;
 - (h) Economic development;
 - (i) Financial leverage; and
 - (j) Special needs of the community.

- (2) Forecasting fiscal resources. These resources should be projected in terms of normally anticipated sources of revenues, normal expenditures, and existing debt service obligations. Future revenues may be projected by studying past data on existing revenue sources. Projections should be based on existing tax rates and applied to a forecast of the growth of the existing tax base. As with expenditure trends, questions should be posed about significant deviations from past trends to learn whether special factors are likely to affect expenditure patterns in the future. Then, the capital improvements budget should be formulated by detailing the costs of the selected projects for the next five years, and should be summarized in a table including the following:
 - (a) A complete list of major capital improvements;
 - (b) Estimates of the total cost of each improvement;
 - (c) Outside sources of financing, such as state or federal grants and private gifts; and
 - (d) The scheduling of construction starts and annual expenditures.
- (3) Determine financing method. The next step in capital budget preparation is to develop a financial plan and its effects on the tax structure. The plan should outline financing needs and recommended sources (e.g., bonding, fees, grants, etc.)

§ 401-28. Accounting, reporting and auditing.

These policies and procedures are based on the premise that good accounting provides timely information as to when expenses will exceed budget plans, when capital funds are diverted to operations, when expenditures are outpacing revenues, and when the local government is incurring financial obligations beyond its fiscal capacity.

- A. Accounting standards. Standards for accounting are guided by GAAP and are described by a subcommittee of the FASB as follows: Generally accepted accounting principles are primarily conventional in nature. They are the result of decisions; they represent the consensus at any time as to how the financial accounting process should operate and how financial statements should be prepared from the information made available through the financial accounting process. Inasmuch as generally accepted accounting principles embody a consensus, they depend heavily on notions such as "general acceptance" and "substantial authoritative support," which have not been and probably cannot be precisely defined. There is concurrence, however, that the notions of "general acceptance" and "substantial authoritative support" relate to the propriety of practices, as viewed by informed, intelligent, and experienced accountants in the light of the purposes and limitations of financial accounting process.
- B. Fund basis of accounting. The various types of funds for accounting are as follows:
 - (1) General fund: for resources not devoted to specific activities and finances many of the basic municipal functions;

- (2) Special revenue funds: account for the receipts from revenue sources that have been earmarked for specific activities;
 - (3) Special assessment fund: financing and construction of public improvements that benefit a specific group of properties;
 - (4) Enterprise fund: business-type activities supported by user fees;
 - (5) Internal service funds: similar to enterprise funds, but the services are rendered to other departments within the Town; and
 - (6) Trust and agency funds: assets held for others or nontax resources under trust instructions.
- C. Encumbrance accounting. This accounting technique shall be used with the purpose of ensuring conformance with budget specifications.
- (1) The steps for encumbrance accounting as part of the Town's purchase order system are:
 - (a) Submission of a purchase order by the requesting department; all information must be completed by the requesting department.
 - (b) Purchase order signed by the appropriate department manager.
 - (c) Verification of funds availability by the Town Accountant's office.
 - (d) Entry of data into the accounting system by the Town Accountant's office staff; funds are encumbered at this point.
 - (2) These first four steps open an account for future purchases; actual purchases are made through requisitions from the requesting department or invoices from vendors, which will draw down on the account opened by the purchase order.
- D. Financial reporting. This activity shall consist of three types:
- (1) General purpose financial statements that provide an overview of the financial position and the results of operations of all fund types (Reporting format should be similar to that of budget and conducted on a monthly basis.);
 - (2) Comprehensive annual financial reports that contain the general purpose financial statements, an introductory section, management's discussion and analysis, supporting statements, and a statistical section; and
 - (a) Annual audit report as described in Subsection D(2) above. It shall also contain the significant accounting policies of the Town summarized as "notes to financial statements," statistical information; current liabilities; and the arbitrage rebate amount due to the federal government.
 - (b) Annual long-term debt report (ALTDR), which shall contain specific details of all long-term debt of the Town, including refunding. The ALTDR shall include, but not be limited to, a schedule of changes in bonds, notes and loans payable; annual principal and interest payments due until maturity; total

debt outstanding by purpose; annual charter bond limitations and issues; debt issue call provisions; and the legal debt margin.

- (c) Annual fiscal indicators and financial forecast (See § 401-27B.), which should summarize the Town's financial condition by describing the necessary economic indicators, financial trends and credit ratios for the past 12 months. The information for this section should include, but not be limited to, assessed value of real property; ratio of net bonded debt to assessed value; net bonded debt per capita; bond coverage ratios current fund balance; ratio of annual debt service expenditures to general government expenditures; per capita income; population; revenue and expenditures trends; rapidity of principal repayment; and other financial and economic graphs and narrative.
- (d) The Capital Improvements Plan (CIP) as described in § 401-27F. The current version of the CIP should be included in the AFIR.

§ 401-29. Property tax administration.

A. Objectives. Administration of the property tax shall have the following objectives:

- (1) Fairness. A tax should reflect the ability to pay of those who bear its burden, or the tax burden should be matched by the benefits taxpayers receive.
- (2) Certainty. The rules of taxation should be clearly stated and evenly applied (i.e., reflect market value without bias).
- (3) Convenience. The tax should be convenient to pay.
- (4) Efficiency. Administration and collection costs should not be out of proportion to the revenues, and the tax should be neither easy to avoid nor too costly to enforce.
- (5) Productivity. A tax should produce sufficient, stable revenue.
- (6) Neutrality. A tax should not distort the way a community would ordinarily use its resources unless it is overtly desired.

B. Administration. Fundamental to the task of property tax administration is the establishment of a highly qualified staff and organization and efficient systems. The property tax administration process should consist of the following steps:

- (1) Discovery;
- (2) Inventory;
- (3) Appraisal and assessment;
- (4) Periodic assessment;
- (5) Evaluating the assessment; and
- (6) Applying exemptions where allowable.

- C. Determining the levy. This step is conducted by subtracting the forecasted amounts of local revenues (sources other than the property tax) from the total estimated expenditures. The property tax rate is then obtained by dividing the required levy by the total value of property assessments and adjusting for anticipated delinquencies and estimated tax collections from past delinquencies. The resulting tax rate is expressed in mills per dollar (tax dollars per thousand dollars) of assessed value.
- D. Collection. Tax collections may be performed through quarterly installments. The Tax Collection Office shall also levy penalties and interest charges for late payments.

§ 401-30. User fees and special districts.

User fees and special assessment districts shall be designed to relieve burdens on the general revenue system by extracting greater contributions from service beneficiaries by resembling an enterprise pricing system. User fees and special districts shall be based on several principles which include:

- A. Total costs. These costs include direct costs (personnel and benefits, expenses) and indirect costs (general administration and facility costs).
- B. Comparability. Prices for services should be competitive and/or consistent with the market for the particular service.
- C. Consistency with community priorities. Prices for services should reflect the priorities of the Town of Barnstable.
- D. Conscientious subsidy policy. Subsidies should be established in an overt manner and directed only to the targeted services or users.
- E. Periodic review. A periodic review shall be conducted in order to assess whether user fees are in line with adopted policy.

§ 401-30.1. Recommended changes in usage rates.

- A. The recommended changes in the usage rates are:

Current Block Structure Per Month	Current Monthly Rate per 100 Cubic Feet or 748 Gallons (Barnstable Water Co. rates)	Proposed Monthly Rate per 100 Cubic Feet or 748 Gallons (Hyannis Water System)
0 to 10,000 cubic feet	\$1.45	\$1.45
0 to 74,800 gallons		
10,001 to 30,000 cubic feet	\$1.36	\$1.45
74,801 to 224,000 gallons		

Current Block Structure Per Month	Current Monthly Rate per 100 Cubic Feet or 748 Gallons (Barnstable Water Co. rates)	Proposed Monthly Rate per 100 Cubic Feet or 748 Gallons (Hyannis Water System)
Over 30,000 cubic feet	\$1.08	\$1.45
Over 224,401 gallons		

- B. Rates are effective for water used September 1, 2006, forward.
- C. For those billed monthly, the rates will be first shown on the bill on or after October 1, 2006.
- D. For those billed quarterly, the rates will first be shown on the bill on or after December 1, 2006.

§ 401-30.2. through § 401-30.4. (Reserved)

§ 401-30.5. Hyannis water rates. ⁵

§ 401-31. Debt management procedures.

- A. Debt management. The Town faces continuing capital infrastructure requirements to meet the increasing needs of its citizens and visitors. The purpose of this policy is to provide a functional tool for debt management and capital planning, as well as to enhance the Town's reputation for managing its debt in a conservative fashion. In the following section, the Town shall pursue the following goals:
 - (1) The Town shall endeavor to attain the highest possible credit rating for each debt issue.
 - (2) The Town shall take all practical precautions to avoid any financial decision which will negatively impact current credit ratings on existing or future debt issues.
 - (3) Effectively utilize debt capacity in relation to Town growth and tax burden to meet long-term capital requirements.
 - (4) When planning for issuance of new debt, the Town shall consider the impact of such new debt on overlapping debt and the financing plans of taxing entities which overlap, or underlie, the Town.
 - (5) When issuing debt, the Town shall assess financial alternatives to include new and innovative financing approaches, including whenever feasible, categorical grants, revolving loans or other state/federal aid.

5. Editor's Note: The Hyannis water rates are included at the end of this chapter.

- (6) Minimize debt interest costs.
 - (7) The Town's financial management policies shall seek to improve the overall well-being of the citizens, maintain and improve essential municipal services, and enhance the financial capability of the Town.
- B. Debt issuance in general. The laws of the Commonwealth of Massachusetts authorize the issuance of debt by the Town Treasurer. The law (MGL c. 44, §§ 1 through 28C) confers upon municipalities the power and authority to contract debt, borrow money, and issue bonds for public improvement projects as defined therein. Under these provisions, the Town may contract debt to pay for the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, and equipping such projects or to refund bonds. The Town Charter authorizes the Town Council to establish by ordinance reasonable standards relating to the management of financial systems and practices.
- C. Financing strategy. A financing strategy shall be adopted and periodically reviewed for appropriateness given the economic and fiscal environments. These strategies may consist of:
- (1) Pay-as-you-go. This includes expenditures, typically out of operating expenditures, made over a short period of time, even for benefits that may accrue over a longer period.
 - (2) Pay-as-you-use. This strategy allows payment over a period of time that is approximately the same as the benefits. This strategy may include bonding which should proceed with the following steps:
 - (a) Obtain legal opinion in order to see if statutory permission exists to borrow for the intended purpose.
 - (b) Determine the cost of the intended project.
 - (3) Bond issuance.
 - (a) Determine the type and amount of bonds to be issued, period of time for maturity, and intention to sell or float the bonds. This analysis should include:
 - [1] Economic factors;
 - [2] Financial factors;
 - [3] Debt factors;
 - [4] Project risk;
 - [5] Management risk; and
 - [6] Structuring risk.
 - (b) Insurance should be obtained in order that in the event of a default by the issuer, the insurance company pays the investors.

- (c) About one month before the scheduled sale of the bonds, the issuer should publish a prospectus describing the provisions of the bond issue and providing information that will permit investors to price the bonds properly.
- (d) Determine the role of an underwriter, either through a competitive sale or negotiated sale. Awards made with a competitive sale should be consistent with the process outlined in the Town's Procurement Policy.⁶

D. Types of debt issued.

- (1) Short-term. The Town may issue short-term debt which would include grant anticipation notes, tax anticipation notes, special assessment anticipation notes and bond anticipation notes. Such instruments will allow the Town to meet its cash flow requirements or provide increased flexibility in its financing programs.
- (2) Long-term. The Town may only issue long-term debt general obligation bonds. The Town may also enter into long-term leases for public facilities, property, and equipment with a useful life greater than five years.
- (3) Variable rate. The Town may issue debt that has variable interest rates in order to achieve interest savings. Periodically, the Director of Finance and Treasurer shall analyze each outstanding variable rate issue to determine if the issue should be converted to fixed rate debt.

E. Capital Improvements Plan. The Capital Improvements Plan (CIP), prepared by the Town Manager and reviewed by the Comprehensive Finance Advisory Committee (CFAC), shall determine the Town's capital needs. The program shall be a five-year plan for acquisition, development and/or improvement of the Town's facilities. Projects included in the CIP shall be prioritized, and the means for financing each shall be identified. The first year of the program shall be the Capital Budget, which shall become the basis for debt issuance. The CIP shall be revised and supplemented each year keeping with the Town's stated policies on debt management. The planning aspects of CIP development are found in § 401-27F, Capital budgeting.

F. Useful life. The CIP shall specify the period of usefulness for each project or capital asset to be acquired, built, and/or improved, and financed with bonds or other debt securities. The useful or reasonable life shall be computed from the anticipated date of the bonds, and this period shall not exceed the guidelines specified by state law. The Town shall not authorize the issuance of bonds or other long-term debt obligations for any improvements or capital purpose with a useful life of less than five years.

G. Structure of debt issues. The duration of a debt issue shall not exceed the economic or useful life of the improvement or asset that the issue is financing. The Town shall design the financing schedule and repayment of debt so as to take best advantage of market conditions and, as practical, to recapture or maximize its credit capacity for future use. In keeping with the stated goals of this debt management policy, the Town shall structure each general obligation issue (except refunding and minibond issues) to comply with the rapidity of debt repayment provisions in § 401-32F following.

6. Editor's Note: See Art. IX, Procurement Policy and Procedures.

- H. Sale of securities. All debt issues shall be sold through a competitive bidding process based upon the lowest offered net interest cost (NIC), unless the Treasurer deems a negotiated sale the most advantageous to the Town.
- I. Markets. The Town shall make use of both domestic and international capital markets as the products and conditions of each best fits the Town's financing needs. When practical in its financing program, the Town shall consider local or regional markets.
- J. Credit enhancements. The Town may enter into agreements with commercial banks or other financial entities for the purpose of acquiring letters of credit, municipal bond insurance, or other credit enhancements that will provide the Town with access to credit under terms and conditions as specified in such agreements when their use is judged cost effective or otherwise advantageous.

§ 401-32. Legal constraints and other limitations on issuance of debt.

- A. State law: General Laws of Massachusetts, Chapter 44, Sections 1 through 28C et seq. The short title is "Municipal Finance."
- B. Authority for debt. The Town may incur indebtedness or borrow money, and authorize the issuance of negotiable obligations, including refunding bonds, for any capital improvement or property, or any other lawful purpose except current expenses and permanent obligation.
- C. Debt limitation. No bond issue shall be authorized that will cause the percentage of indebtedness to exceed 2 1/2% of the equalized valuation. The Town may authorize indebtedness in excess of 2 1/2%, but not in excess of 5% of the equalized valuation, provided that the Town gains approval from the Municipal Finance Oversight Board, which approval may be given either before or after such authorization. All authorized debts, except those expressly authorized by law to be incurred outside the debt limit, shall be considered in determining the limit of indebtedness under this section.
- D. Certification. An annual debt statement shall be filed with the Director of Accounts in the Department of Revenue. The annual debt statement certifies the amount of gross debt, deductions from gross debt, net debt, equalized valuation and net debt expressed as a percentage of the equalized valuation as of the end of the previous fiscal year.
- E. Debt issued to finance operating costs. The Town shall not finance general operating costs as a portion of a debt issue having maturities greater than one year. General operating costs include, but may not be limited to, those items normally funded in the Town's annual operating budget and having a useful life of less than one year.
- F. Credit implications. Each annual version of the CIP shall be included in an annual fiscal indicators report (AFIR) that computes the absolute amounts of key economic indicators and the year-to-year trends for important financial ratios, including Moody's Selected Indicators of Municipal Performance ("medians") or other recognized industry standards. When issuing new debt, the Town should endeavor to neither cause a major deterioration in these key financial trends nor exceed credit industry benchmarks where applicable. Therefore, the following factors should be considered in developing debt issuance plans:

- (1) Ratio of net bonded debt to estimated full value. The formula for this computation is net bonded debt, which is the total outstanding debt divided by the current estimated full value as determined by the Director of Accounts in the State Department of Revenue.
- (2) Net bonded debt per capita. The formula for this computation is net bonded debt divided by the current population as determined by the Director of Planning.
- (3) Ratio of net bonded debt to equalized value. The formula for this computation is net bonded debt, which is the total outstanding debt divided by the current assessed value as determined by the Director of Assessing.
- (4) Ratio of annual debt service to general government expenditures. The formula for this computation is annual debt service expenditures divided by general government (i.e., general and special revenue funds) expenditures.
- (5) Rapidity of debt service repayment. Exclusive of refunding and minibond issues, the Town's general obligation general improvement bond issues shall be structured whereby at least 25% of the principal and interest for each issue is repaid in five years and 50% in 10 years.
- (6) General fund balance. The Town shall maintain a minimum general fund budgetary fund balance (free cash) equal to 4% of total annual appropriations, exclusive of inter-fund transfers.
- (7) Coverage ratios. The Town shall maintain legal and adequate debt service coverage ratios for any double-barreled bonds in each applicable fiscal year. The maintenance of the coverage ratios shall be consistent with preserving the credit rating for each particular issue while conducting ongoing cost of service studies to determine adequate user rate charges.

§ 401-33. Debt administration.

- A. Financial disclosures. The Town shall prepare appropriate disclosures by the Securities and Exchange Commission, the federal government, the Commonwealth of Massachusetts, rating agencies, underwriters, investors, agencies, taxpayers, and other appropriate entities and persons to ensure compliance with applicable laws, regulations, and Table III herein (Credit implications).⁷ These disclosures shall be reported in appropriate financial documents as enumerated in Appendices B and C.⁸
- B. Review of financing proposals. All capital financing proposals involving a pledge of the Town's credit through the sale of securities, execution of loans or lease agreements or otherwise involving directly the lending or pledging of the Town's credit shall be referred to the Director of Finance who shall determine the financial feasibility of such proposal and make recommendations accordingly to the Town Manager.

7. Editor's Note: See § 401-32F, Credit implications.

8. Editor's Note: Appendices B and C are included at the end of this chapter.

- C. Establishing financing priorities. The Directors of Finance and Treasury shall administer and coordinate the Town's debt issuance program and activities, including timing of issuance, method of sale, structuring the issue, and marketing strategies. The Directors of Finance and Treasury along with the Town's financial advisor shall meet, as appropriate, with the Town Manager regarding the status of the current year's program and to make specific recommendations.
- D. Rating agency relations. The Town shall endeavor to maintain effective relations with the rating agencies. The Director of Finance and Treasurer, with the Town's financial advisor, shall meet with, make presentations to, or otherwise communicate with the rating agencies on a consistent and regular basis in order to keep the agencies informed concerning the Town's capital plans, debt issuance program, and other appropriate financial information.
- E. Investment community relations. The Town shall endeavor to maintain a positive relationship with the investment community. The Director of Finance and Treasurer, and the Town's financial advisor shall, as necessary, prepare reports and other forms of communications regarding the Town's indebtedness, as well as its future financing plans. This includes information presented to the press and other media.
- F. Refunding policy. The Town shall consider refunding outstanding debt when legally permissible and financially advantageous. A net present value debt service savings of at least 3% or greater must be achieved. As required by law, the refunding plan will be submitted to the Director of Accounts in the Department of Revenue for its positive findings.
- G. Investment of borrowed proceeds. The Town acknowledges its ongoing fiduciary responsibilities to actively manage the proceeds of debt issued for public purposes in a manner that is consistent with Massachusetts statutes governing the investment of public funds and with the permitted securities covenants of related bond documents executed by the Town. The management of public funds shall enable the Town to respond to changes in markets or changes in payment or construction schedules so as to optimize returns, insure liquidity, and minimize risk.
- H. Federal arbitrage rebate requirement. The Town shall maintain or cause to be maintained an appropriate system of accounting to calculate bond investment arbitrage earnings in accordance with the Tax Reform Act of 1986, as amended or supplemented, and applicable United States Treasury regulations related thereto. Such amounts shall be computed annually and transferred from the general fund (interest earnings revenue account) to a federal arbitrage rebate agency fund, or other appropriate account, for eventual payment to the United States Treasury.

§ 401-34. Insurance reserve funds.

- A. A self-insurance reserve fund will be established and maintained to cover workers' compensation as authorized by Chapter 40, § 13A, of the Massachusetts General Laws and property losses as authorized by Chapter 40, § 13, of the Massachusetts General Laws.

- B. In order to cover losses arising out of this fund, an amount will be appropriated to cover the stop-loss premium and a sum to establish the fund for future losses.
- C. It is the intention of this fund to cover all losses arising out of employment injury, fire, vandalism, burglary, theft and repairs. A stop-loss insurance through an insurance carrier will be provided for catastrophic losses.

ARTICLE V

Capital Improvements Plan (CIP) Procedures

[Added 12-7-2010]

§ 401-35. Overview.

- A. As stated in the Town of Barnstable Charter, Section 6-5, Capital Improvements Plan, the capital improvement plan shall include:
 - (1) A clear summary of its contents;
 - (2) An itemization of all capital improvements, including those of the School Department, proposed to be undertaken during the next five fiscal years with supporting data;
 - (3) Cost estimates, method of financing, and recommended time schedules; and
 - (4) The estimated annual cost of operating and maintaining the facilities included.
- B. In addition, accordingly, § 401-27F, Capital budgeting, of this document states that the Capital Improvements Plan (CIP) and the Capital Improvements Budget are developed through the following steps: selection of projects, forecasting of resources, and determining the financing method.

§ 401-36. Identification and documentation of capital needs.

- A. Irrespective of the perceived potential for funding, it is most important that all known capital requirements over the five-year plan period be included in any submittals. Unless all needs are identified, the value of the plan will be seriously diminished. Furthermore, it is essential that the Town Manager, Town Council and the public be kept informed of all of the Town's capital needs.
- B. Existing capital projects review. Department heads shall review all previously authorized capital projects for which there is an existing available balance for the purpose of validating their continued need. To assist in this review, a schedule of capital appropriations requiring reauthorization will be prepared by the Finance Division. Unencumbered balances for all capital projects authorized more than two years prior shall be terminated effective at the end of this fiscal year. Where a justifiable need for these projects continues, they should be included in the current submission for reauthorization by the Town Council.

- C. New projects. All projects must be documented using the Capital Project Data Sheet. This documentation must include a detailed Project Description, a well-thought-out project justification, defined impact of denial/postponement, time and cost estimates, including current year and subsequent years if multiyear, identification of the source of funding, definition of operating budget impact (costs and expected savings must be explained), and any supplemental information for clarification. Each project must be assigned a department/division priority and must be signed by the department or division manager. Prioritization of projects must be consistent with the Town Council's current strategic plan. A summary listing of all capital projects submitted will be prepared by the Finance Division in a spread sheet format for distribution/viewing by the appropriate reviewers.
- D. Definitions for capital project eligibility.
- (1) Major capital project: a capital project that has a total cost of \$250,000 or more and an expected service life of five years or longer will normally be funded from the Capital Trust Fund as a borrowing authorization. The only exception to the foregoing threshold are projects dealing with roads that, subject to funding availability, will normally be funded from cash reserves. In some instances, where the cost is beyond the capacity of the Capital Trust Fund (e.g., new building, etc), the project will be considered for bonding by debt exclusion or financed by another identified source of funds.
 - (2) Capital/maintenance project: Repair or replacement of existing buildings or equipment, construction of new buildings, land acquisitions, any nonrecurring capital expenditure, or other capital purchase that costs \$50,000 or more and has a life expectancy greater than three years. Except in special cases (e.g. reauthorization of a previously approved project, increase to a previously authorized project, etc.), projects or items estimated to cost less than the \$50,000 will only be considered within the operating budget under operating capital. These project will be funded from cash reserves within the Capital Trust Fund.

§ 401-37. Evaluation of capital projects.

- A. Review teams. A Town CIP Task Force consisting of 10 members will evaluate each of the projects. The task force shall be comprised of the department managers of the Airport, Community Services, Growth Management, Police, Public Works, Regulatory Services, Finance, Information Systems, the Assistant Director of the Department of Public Works and a senior manager of the School Department. In addition, a CFAC subcommittee consisting of no fewer than three members of CFAC will also evaluate each submitted project. Standard forms for evaluation and scoring shall be forwarded to the evaluators at the time the capital project data sheets for all of the projects are distributed. All projects must be scored regardless of the year they are to be funded.
- B. Evaluation criteria. The evaluation criteria shall be consistent with identified strategic plan areas and shall, at a minimum, include impact on public health and safety, education, economic development, infrastructure and protection of capital assets,

environment and natural resources, quality of life, financing, operating cost, planning and relationship to existing plans, and usage and service demand.

- C. Evaluation approach. The impact of each project on the criteria elements shall be ranked on a scale of 0 (no impact) to 4 (highest impact) independently by each evaluator. The results will be consolidated for each team (Town Task Force and CFAC) by developing an average score for each criteria element for each project and an overall total score for each project. The results of the ranking will be provided to the Town Manager for his consideration in preparing the Capital Improvements Plan. The CFAC rankings will also be included in the final CFAC CIP report prepared for the Town Manager and the Town Council.

§ 401-38. through § 401-44. (Reserved)

ARTICLE VI
Insurance Policies and Procedures
[Amended 12-7-2010]

§ 401-45. Authority.

- A. Any transaction involving the purchase, sale or transfer of any Town-owned real or personal property, whether vehicles, buildings, land, equipment, etc., must be forwarded to the Finance Director in order to determine the requirements of insurance.
- B. When a contract contains an insurance requirement, that portion of the contract must be submitted to the Finance Director and the Town Attorney for review and approval of coverages.
- C. When a department engages a vendor and requires insurance coverage, the limits should meet those minimally set forth in the Town's coverages. No direct transactions are to be conducted by department personnel with the insurance broker or the insurance company. All transactions shall be directed through the Finance Director or his or her designee.
- D. If there are questions, they should be directed to the Finance Director.

§ 401-46. Delegation of authority.

The Town Manager has assigned the Finance Director as the person responsible for coordination of the Town's insurance. The Finance Director shall be responsible for ensuring that the Town Attorney is apprised of legal issues pertaining to litigation representation and control, pursuant to applicable Town ordinances. The Town Manager reserves the right to modify and amend the procedure and policy outlined, as necessitated by coverage changes. It is intended to promulgate annual updates to this policy.

§ 401-47. Procedure for processing self-insurance payments.

- A. Purpose: to establish the criteria for the payment of losses under the Town self-insurance program, effective June 30, 1993.
- B. Applicability. This program applies to property, physical damage, automobile and general liability claims for damages within the Town of Barnstable. The claims for damages under the Town's property policy will be made from the Municipal Building Insurance Fund in accordance with Town ordinance and MGL c. 40, § 13. The claims for damages under the Town's automobile and general liability policies will be made in accordance with the procedure specified below.
- C. Rationale. The Town cannot continue to rely upon the insurance industry to stabilize the increase in insurance premiums. The coverage obtained will vary from areas previously covered. Policy deductibles are introduced where previously the Town enjoyed no deductible or a small deductible. It is therefore adopted as policy by the Town of Barnstable, to instruct departments subject to these policies in the following manner.
- D. Procedure. In general, the following procedures apply. Specific exceptions may be found under the description of each major insurance policy.
- (1) To apply for reimbursement under this program, the department manager or claimant must submit the claim for alleged damages to the Finance Director as soon as possible from its known occurrence, in writing. Failure to make such notification may result in its denial.
 - (2) Initial report of a potential claim should be made by telephone and followed up by a written report to the Finance Director.
 - (3) The claim notice, if the standard ACORD form is not used, should provide information relative to: nature of claim; date of accident/loss, time of same; location (specific) of claim; name, address, phone number of person making claim; full description of accident or loss; estimate of dollar loss on claim; names, addresses, phone numbers of witnesses; relationship to Town of Barnstable (insured party).
 - (4) Estimates of damages alleged should be developed by the department manager/claimant, and submitted to the Finance Director as soon as possible.
 - (5) Deductibles for policies will vary; consult with the Finance Director for current deductibles in the following policies:
 - (a) Automobile.
 - (b) Property.
 - (c) Building and contents.
 - (d) Fine arts.
 - (e) Portable radios.

- (f) Contractor equipment.
 - (g) Flood and earthquake.
 - (h) General liability.
 - (i) Boiler and machinery.
- (6) It is the policy of the Town that losses for various coverages apply as follows:
- (a) Automobile: Losses up to \$499 payable by department incurring loss; balance through the Auto Insurance Account, if funds are available.
 - (b) Property: Losses up to \$999 payable by department; losses from \$1,000 to policy deductible processed through the Municipal Building Insurance Fund.
 - (c) Building and contents: Losses up to \$999 payable by department; losses from \$1,000 to policy deductible processed through the Municipal Building Insurance Fund.
 - (d) Fine arts: Losses up to \$250 payable by department; losses above deductible processed through the Municipal Building Insurance Fund.
 - (e) Portable radios: Losses up to \$250 payable by department.
 - (f) Contractor equipment: Losses up to \$999 payable by department; losses over \$1,000 payable through the Municipal Building Insurance Fund.
 - (g) General liability: Losses up to \$999 payable from either department liability reserve fund (i.e., sewer maintenance), the General Liability Loss Fund (GLLF), or both.
 - (h) Boiler and machinery: up to \$999 payable by department; balance through boiler and machinery policy.
- (7) In regard to notices of loss for property: in excess of \$1,000 up to deductible, general liability under \$1,000; the Town may elect to use the services of an insurance appraisal firm. These will be utilized on a per-occurrence basis. Since a fee is charged for these services, the Town will be selective in using same.
- (8) Upon approval of claim, the department manager/claimant will be notified and payment processed.
- (9) The use of a release for claims made paid for amounts under appropriate deductible will establish relinquishment of Town to make any additional payments after receiving any additional claims for damages. This will establish a payment without prejudice provision and be enforced by the Town Attorney.

§ 401-48. Workers' compensation.

- A. The claimant reports the accident to his/her supervisor.

- B. The supervisor completes the first report of the accident, supervisor's report of injury, and medical authorization form, within 48 hours of notification. The supervisor submits the completed form to the workers' compensation agent in the Personnel Department. If the claimant is to be out five days or more, a wage statement form must be completed and submitted to the workers' compensation agent in the Personnel Department.
- C. Action by agent.
 - (1) The agent remits the original report of injury to the Industrial Accident Board, 100 Cambridge Street, Boston, MA 02109.
 - (2) Copies of the report of the accident and original supervisor's report of injury and medical authorization are forwarded to the Town's claims administrator.
 - (3) The agent maintains a file copy of three forms for each claim by claimant name, department, date of injury.
- D. All bills received from the claimant are forwarded by the agent to the claims administrator; copy of bill is maintained in the claimant file.
- E. Reports of accident are reviewed quarterly with records to determine if reserves are warranted.
- F. Bills or claims made by a claimant on a previous claim over one year from date of initial claim should be forwarded from the claimant to the supervisor to the agent. The agent will forward to the claims administrator.
- G. Claimants shall seek treatment at: physician of Town's choice for industrial accidents. They should identify themselves as Town of Barnstable employees. A physician will conduct evaluations on behalf of the Town.
- H. In order to stabilize reserves in the Worker's Compensation Trust Fund, the Town will debit the departmental salary account for that portion of salary due the employee for accidents qualifying for lost time payments to the extent that the departmental salary account can sustain such debits and not interfere unreasonably with accomplishment of the department's goals and objectives.

§ 401-49. Automobile, property damage/liability damage.

- A. The operator must complete blue ACORD Form No. 2 and Registry of Motor Vehicles accident report for any incident involving any vehicle, whether registered or not. All reports are to be given to the department supervisor for delivery to the insurance coordinator within 48 hours of the incident.
- B. The Finance Director will forward the form as follows:
 - (1) Broker of record.
 - (2) Finance Director files.

- C. Estimates of damage to be obtained and submitted to the Finance Director; Director to forward estimate to the broker.
- D. Damages to Town-owned vehicles which are recoverable under the Town insurance plan must be submitted to the broker of record.
- E. Damages coming under the Town self-insurance program are to be submitted to the Finance Director.
- F. Damages to Town-owned vehicles which are recoverable, but not paid by the other party, must be turned over to the Town Attorney for collection.
- G. Operators and/or supervisors shall not contact the broker directly, except as previously arranged through the Finance Director. All notice of damage shall route through the Finance Director. Failure to do so may result in denial of the claim.

§ 401-50. Damage to property caused by others.

- A. Where person/persons are known, an ACORD Form No. 2 must be completed and forwarded to the Finance Director. Estimates of repair are to be submitted to the Finance Director.
- B. The Finance Director will distribute as follows:
 - (1) Broker of record.
 - (2) Town Attorney.
 - (3) Finance Director files.
- C. The Town Attorney shall proceed with recovery from the other party, if the other party refuses to pay.

§ 401-51. Property damage (fire and windstorm, etc.).

- A. The initial report is to be completed on green ACORD Form No. 1 and submitted to the Finance Director.
- B. The Finance Director will forward as follows:
 - (1) Broker of record for assignment of adjuster.
 - (2) Finance Director files.
- C. Estimates of repair in detail shall be submitted to the Finance Director for forwarding to the broker of record.
- D. All correspondence relating to the claim shall be forwarded to the Finance Director.

§ 401-52. Injury to other than Town employees.

- A. Upon notification of injury, the Finance Director will complete blue ACORD Form No. 2 as completely as possible.
- B. The Finance Director will dispense as follows:
 - (1) Broker of record with copies of all correspondence.
 - (2) The Town Attorney with copies of all correspondence.
 - (3) Finance Director files.
- C. All correspondence relating to the claim is to be forwarded to the Finance Director.

ARTICLE VII
Investment Procedures
[Amended 12-7-2010]

§ 401-53. General policy and objectives.

- A. It is the policy of the Town of Barnstable that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with legal and administrative guidelines and maximize yields with the minimum of risk and utilization of collateralization when requested.
- B. Effective cash management is recognized as essential to good fiscal management. An aggressive cash management and investment policy will be pursued to take advantage of investment interest as a viable revenue source. The Town's portfolio shall be designed and managed in a manner responsive to the public trust and consistent with state and local law. Investments shall be made with the primary objectives of:
 - (1) Preservation of capital;
 - (2) Maintenance of sufficient liquidity to meet operating needs;
 - (3) Security of Town funds and investments;
 - (4) Diversification of investments to avoid unreasonable or avoidable risks; and
 - (5) Maximization of return on the portfolio.
- C. Massachusetts General Laws, Chapter 44, Section 55B, requires the municipal treasurer to invest all public funds except those required to be kept uninvested for purposes of immediate distribution. The state law further requires that invested funds are to be placed at the highest possible rate of interest reasonably available, taking into account the acceptable levels of safety, liquidity and yield. Therefore, these guidelines are intended to further the objective of securing the highest reasonable return available that is consistent with safety of principal while meeting the daily cash requirements for the operation of the entity's business.

§ 401-54. Investment instruments.

- A. Many public investments in Massachusetts are not protected by federal or state law and many investments are uncollateralized. It is the policy of the Town to retain the option to require full collateralization of all Town investments other than obligations of the United States government and its agencies. Certificates of deposit plus accrued interest up to the amount covered by FDIC insurance do not need to be collateralized pursuant to this policy. Collateralization should be held by a third party where possible.
- B. The Treasurer may invest in the following instruments:
- (1) The Massachusetts Municipal Depository Trust (MMDT), an investment pool for state, local and other independent governmental authorities, is under the auspices of the State Treasurer and currently managed by Fidelity Investments. It invests in bankers acceptances, commercial paper of high quality, bank certificates of deposit, repurchase agreements and United States Treasury Obligations.
 - (2) United States Treasury notes and bonds: obligations of the United States government issued with a fixed coupon rate and original maturities.
 - (3) United States agency obligations, provided that such United States agency obligations are backed by the full faith and credit of the federal government.
 - (4) Bank accounts or certificates of deposit which are fully collateralized through a third party agreement.
 - (5) Bank accounts and certificates of deposit (CDs) insured by FDIC up to the coverage limit, including CDAR eligible CDs. All bank accounts and CDs in one institution are considered in the aggregate for the insurance coverage limit. In some cases banking institutions carry additional insurance, Depository Insurance Fund (DIF).
 - (6) Unsecured bank deposits of any kind such as other checking, savings, money market or certificates of deposit accounts at banks that do not fit the above categories. These investments are subject to the following limitations: No more than 5% of an institution's assets and no more than 25% of a municipality's cash may be comprised of unsecured bank deposits. This percentage may be increased for not more than 30 days during times of heavy collection or in anticipation of large payments that will be made by the Town in the near future. These payments may be for items such as debt service payments, assessments or other large authorized expenditures. The institution's creditworthiness will be tracked by Veribanc, or other bank creditworthiness reporting systems. They will be diversified as much as possible and consistent with this policy.
 - (7) Money market mutual funds that are registered with the Securities and Exchange Commission and referenced in MGL c. 44, § 55.
 - (8) Common and preferred stock that are listed in the List of Legal Investments pursuant to MGL c. 167, § 15A, and MGL c. 167F, § 3.

- (9) Investment grade corporate bonds, with a minimum investment risk rating of A/A2 Standard & Poor's/Moody's at the time of purchase.
- (10) Investment funds that are listed in the List of Legal Investments.
- (11) Mutual funds that are registered under the Investment Company Act of 1940.
- (12) All other items not separately identified here that are listed in the List of Legal Investments.

§ 401-55. Risk tolerance.

A. Credit risk.

- (1) "Credit risk" is the risk that an issuer or other counterparty to an investment will not fulfill its obligations.
- (2) There will be no limit to the amount of United States Treasury and United States Government agency obligations, as they carry "AAA" ratings.
- (3) In regards to other investments, the Town will only purchase investment grade securities with a high concentration in securities rated "A" or better.

B. Custodial risk.

- (1) The "custodial credit risk" for deposits is the risk that, in the event of the failure of a depository financial institution, a municipality will not be able to recover deposits or will not be able to recover collateral securities that are in possession of an outside party. The custodial risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, a municipality will not be able to recover the value of investment or collateral securities that are in the possession of an outside party. For securities not covered by FDIC insurance, the institution should maintain Securities Investor Protection Corporation (SIPC) coverage and sufficient additional insurance to cover the amount of the Town's deposits with that institution.
- (2) The Town will review the financial institution's financial statements and the background of the advisor. The institution should have at least \$100 million in asset management. The intent of this qualification is to limit the Town's exposure to only those institutions with a proven financial strength, capital adequacy of the firm and overall affirmative reputation in the municipal industry.
- (3) Further, all securities not held directly by the Town, will be held in the Town's name and tax identification number by a third-party custodian approved by the Treasurer and evidenced by safekeeping receipts showing individual CUSIP numbers for each security.

C. Concentration of credit risk.

- (1) "Concentration of credit risk" is the risk of loss attributed to the magnitude of a government's investment in a single issuer.

- (2) The Town will minimize concentration of credit risk by diversifying the investment portfolio so that the impact of potential losses from any one type of security or issuer will be minimized. In terms of the total amount of Town investments at any point in time, there shall be 10% or less exposure for any one type of security or issuer with the exception of instruments backed by the full faith and credit of the United States Government or bank instruments or investment vehicles fully insured by FDIC or DIF. For more specific information relating to diversification percentages, refer to § 401-56, below.

D. Interest rate risk.

- (1) "Interest rate risk" is the risk that changes in interest rates will adversely affect the fair value of an investment.
- (2) The Treasurer will manage interest rate risk by managing the duration in the account. For general Town funds, the weighted average days to maturity for the overall Town portfolio should be 365 days or less.

E. Foreign currency risk. "Foreign currency risk" is the risk that changes in foreign monetary exchange rates will adversely affect the fair value of an investment or a deposit.

§ 401-56. Diversification.

- A. Diversification should be interpreted in two ways: in terms of maturity as well as instrument type and issuer. The diversification concept should include prohibition against over-concentration of maturities, as well as concentration in a specific issuer. With the exception of United States Treasury obligations or investments fully collateralized by United States Treasuries or agencies and state pools (MMDT), no more than 10% of the Town's investments or an amount equal to the maximum amount of FDIC and DIF insurance coverage, whichever is greater, shall be invested in a single security issuer.
- B. In order to enhance total yield and fulfill the objectives of this policy, the investment management style will be directed towards an active rather than passive portfolio. The following maximum limits are established for the Town's total portfolio:
 - (1) Certificates of deposit: 50%.
 - (2) United States Treasury notes/bonds/bills: 100%.
 - (3) United States agencies: 100%.
 - (4) Common and preferred stock: 10%.
 - (5) Investment grade corporate bonds: 10%.
- C. In the Town's attempt to obtain its yield objectives, the policies set forth in this section shall be exercised in such a manner as to maintain the liquidity necessary to ensure that the next projected disbursement date and payroll dates are covered.

- D. In the event of the creation of a new or previously unavailable type of investment vehicle, upon the recommendation of the Treasurer and upon the written approval of the Town Manager and Finance Director, the Treasurer may invest in such an instrument to the extent permitted by this policy.

§ 401-57. Ethical and prudent action.

- A. The Town will establish a system of internal controls over the investment activities of the Town and document such controls in writing.
- B. The standard of prudence to be used by the Treasurer shall be the prudent person standard and shall be applied in the context of managing an overall portfolio. The Treasurer, acting in accordance with written procedures and this IPS and exercising reasonable due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that the purchases and sale of securities are carried out in accordance with the terms of this IPS.
- C. The Treasurer and Assistant Treasurer shall refrain from any personal activity that may conflict with the proper execution of the investment program or which could impair or appear to impair ability to make impartial investment decisions. Said individuals shall disclose to the Chief Executive Officer any material financial interest in financial institutions that do business with the Town.
- D. It is the Town's policy that investment officers perform their duties in accordance with the policies and procedures set forth in this manual and according to the prudent person rule: Investments shall be made with judgment and care under prevailing circumstances which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment considering the probable income to be derived. The standard of prudence to be used by investment officials shall be the "prudent person" and shall be applied in the context of managing an overall portfolio. Investment officers acting in good faith and in accordance with these policies and exercising due diligence shall be relieved of personal responsibility for an individual security's performance, provided that deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.
- E. All brokers, dealers and advisors to the Town of Barnstable are required to sign a statement of disclosure as presented in Appendix E.⁹

§ 401-58. Authorization.

The Treasurer has authority to invest municipal funds, subject to the statutes of the Commonwealth of Massachusetts MGL c. 44, §§ 55, 55A and 55B and in accordance with the Town of Barnstable's Investment Policy.

9. Editor's Note: Appendix E is included at the end of this chapter.

§ 401-59. Investment operating procedures.

The investments of the Town of Barnstable are administered according to an investment program. The program is formulated by the Treasurer. The Treasurer will evaluate the program at least monthly. The investment program is developed by the Treasurer through the following procedures:

- A. Evaluate economic and market analyses.
- B. Forecast available cash for investment.
- C. Formulate and execute strategies concerning:
 - (1) Asset mix.
 - (2) Investment instruments.
 - (3) Maturities.
 - (4) Target yields.

§ 401-60. Reporting requirements.

- A. On a quarterly basis, a report containing the following information will be prepared by the Treasurer and distributed to the Finance Director and/or his/her designee as appropriate. The quarterly report will include the following information, as a minimum requirement:
 - (1) A listing of the individual accounts held at the end of the reporting period identifying the name of the account, the type of security(ies) and the market value of each account.
 - (2) A summary of the income earned on a monthly basis and year-to-date basis shall be reported.
 - (3) A brief statement of general market and economic conditions and other factors that may affect the Town's cash position.
- B. Notwithstanding the foregoing, the Treasurer shall immediately bring to the attention of the Finance Director any matter of consequence related to the investment portfolio. Such matters include, but are not limited to, SEC or other federal or state investigations of any entity which is an issuer of an instrument found in the Town's investment portfolio, failure by an entity to pay timely expected dividends, interest payments or other items of value, defaults in the terms or conditions of any investment purchase contract by the issuer of the instrument and any conduct in violation of § 401-57 of this policy.

§ 401-61. through § 401-72. (Reserved)

ARTICLE VIII
Personnel Regulations

§ 401-73. Purpose and policies.

It is the purpose of this article to provide to all employees the policies and procedures for assuring maintenance of an equitable personnel management system in the Town of Barnstable. The policies and procedures for personnel administration set forth herein have, as their purpose, to promote the efficiency and economy of government; to promote the morale and well-being of Town employees; and to promote equal employment opportunity for all employees and candidates for employment. The personnel policies are based on the following principles:

- A. Recruiting, selecting, and developing employees on the basis of their abilities, knowledge, and skills.
- B. Providing equitable compensation.
- C. Training employees as needed to assure high-quality performance in delivering quality services to the public.
- D. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose performance does not adequately improve.
- E. Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, age, sex, creed, handicap, disability, or any other nonmerit factor, except where such factor is a bona fide occupational requirement, and with proper regard for their privacy and constitutional rights as citizens; prohibiting discrimination against any person on the basis of such nonmerit factors, and
- F. Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for any purpose other than those duties and responsibilities directly associated with their positions in Town government.

§ 401-74. Equal employment opportunity.

Discrimination against any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action because of political affiliation, race, creed, color, national origin, age, sex, handicap, disability, or any other nonmerit factor will be prohibited except where such factor is a bona fide occupational requirement. Any employee who feels aggrieved may process an appeal in accordance with the discrimination complaint procedure in § 401-97, Grievances and discrimination complaint procedures.

§ 401-75. Applicability.

Except as provided in § 401-97, Grievances and discrimination complaint procedures, these personnel regulations and procedures apply to all employees, except that if the terms of a collective bargaining agreement provide to the contrary the terms of the collective bargaining agreement shall prevail, and further provided that the grievance procedure contained in § 401-97 does not apply to probationary, seasonal, or temporary employees. These policies shall serve as a guide to the administration of a personnel system of the Town of Barnstable in keeping with basic merit principles. The policies are not all-inclusive; final discretion as to interpretation and as to the appropriate course of action concerning a particular personnel matter shall vest with the Town Manager. Failure to comply with these personnel regulations will be cause for appropriate corrective action.

§ 401-76. State civil service law and rules.

Nothing in this Personnel Code shall be construed to conflict with Chapter 31, Massachusetts General Laws, and the rules of the Civil Service Commission adopted in conformance with said chapter.

§ 401-77. Other state statutes and local laws.

Nothing in this Personnel Code shall be construed to conflict with any special law enacted for the Town of Barnstable or any permissive state statute accepted by the Town of Barnstable, the Barnstable Town Charter, Town ordinances, Administrative Code, or any provision of the Massachusetts State Constitution. To the extent that any apparent conflict exists, it shall be determined in favor of the higher state statute or provision of the Massachusetts State Constitution.

§ 401-78. Collective bargaining agreements.

If any provision of this article is in conflict with a provision of an applicable collective bargaining agreement, the terms of the collective bargaining agreement shall prevail. Where this article contains provisions which are not contained within collective bargaining agreements, the Personnel Regulations provisions shall govern.

§ 401-79. Personnel Board.

The Town Council will establish a Personnel Board whose primary duty is to advise the Town Manager, Personnel Director, and the Town Council on proper personnel practices within the Town.

§ 401-80. Town Manager.

The Town Manager delegates the day-to-day operations involved in administering these policies to the Personnel Director. The Town Manager shall have final decision-making authority and approval over all personnel matters, except where otherwise provided in these policies and procedures, for all employees covered by this article, consistent with the Town Charter, Section 5-2.

§ 401-81. Personnel Director.

The Personnel Director shall:

- A. Prepare and recommend position classification and pay plans and direct the continuous administration of these plans.
- B. Compute for budgetary purposes the annual salary costs of all municipal employees.
- C. Direct the recruitment, testing, selection, and hiring of all employees.
- D. Prepare and administer competitive assembled and unassembled examinations, whenever practicable, for all original appointments and promotions in the Town service in conjunction with the appropriate department manager.
- E. Enforce policies and procedures for personnel administration.
- F. Supervise, develop, and maintain personnel systems, forms, procedures, and methods of recordkeeping.
- G. Maintain official personal work history records. Records shall be maintained on inactive employees for at least three years after termination. An employee's records are available for inspection in the Personnel Department by the employee, any individual authorized in writing by the employee, or the employee's department manager. (Personal work history records maintained within each department are subject to the same provisions as those records maintained by the Personnel Department, but duplication is not encouraged).
- H. Maintain a roster of all persons in the Town service except for persons under the control of the School Committee.
- I. Certify appointments, promotions, demotions, discipline, and other actions.
- J. Direct employee orientation, training, counseling, and career development in conjunction with department managers.
- K. Administer these personnel policies, including the employee grievance procedure.

- L. Assure timely performance appraisal reviews.
- M. Perform any other lawful acts which are considered necessary or desirable to carry out the purpose of the central personnel system and the provisions of these personnel policies.

§ 401-82. Department managers.

- A. Department managers, with the approval of the Town Manager, shall have responsibility to select, retain, transfer, and promote personnel in accordance with established Town policies. They are expected to effectively supervise their employees; evaluate performance of their subordinates; to notify the Personnel Director of changes in duties of their employees in order that the classification plan will be maintained; and to recommend salary increases which will be acted upon by the Personnel Department.
- B. All recommendations for appointments must be verified with the Personnel Department for compliance with established procedures and with equal employment opportunity/affirmative action guidelines before any candidate may be offered a position. Department managers may recommend to the Personnel Board, or to the Town Manager, any desirable changes in personnel policies and procedures to improve the personnel management system.

§ 401-83. Employees.

It shall be the responsibility of all employees to acquaint themselves thoroughly with the material in these personnel policies and any subsequent revisions. Employees are also encouraged to submit suggestions for changes in personnel policies and procedures for improvement of the personnel administration.

§ 401-84. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALLOCATION — The assignment of an individual position to an appropriate grade on the basis of kind of work, duties, and the responsibilities of the position.

APPOINTING AUTHORITY — The Town Manager is the Appointing Authority, except as provided for in Section 4-2 of the Charter.

APPOINTMENT — The placement of a person in a position.

CERTIFICATION — The act of supplying a Department with the names of applicants deemed eligible for appointment to a vacant position.

CLASSIFICATION — A group of positions sufficiently similar in duties and responsibilities such that the same title may be used to designate each of the positions, that the same employment standards may be applied to all incumbents or applicants and that the same pay grade may be applied with equity under comparable employment conditions.

CLASSIFICATION STUDY — The collection, analysis and evaluation of data by the Personnel Department to determine the proper value of a classification and/or the proper classification of an individual position.

COMPENSATION — The salary or wages earned by any employee by reason of service in the position, but does not include allowances for expenses authorized and incurred as incidents to employment.

COMPENSATION PLAN — See “pay plan.”

DEMOTION — The movement of an employee from a position in one grade to a position in another grade with a lower maximum pay rate.

DEPARTMENT — A major functional unit of the Town government.

DEPARTMENT MANAGERS — Department managers shall be taken to mean any employee who has authority to recommend personnel actions to the Town Manager, including but not limited to selection, transfer or promotion.

DISCHARGE or DISMISSAL — The permanent, involuntary termination of a person from Town service.

DISCIPLINARY ACTION — An oral warning, written reprimand, suspension, demotion, or dismissal taken for cause by the appropriate authority.

DIVISION — A major functional unit of a department.

EFFECTIVE DATE — The first workday of a pay period following the eligibility date for a change in pay to be implemented.

ELIGIBLE — A person who has met the minimum requirements established for a position and whose name has been placed on an eligible list.

ELIGIBLE LIST — A list of persons who have met the requirements for a given position in the Town service and who are eligible for appointment.

EMPLOYEE — A person occupying an appointive position, or an appointive person who is on authorized leave of absence, who is not an exempt official.

EMPLOYEE, PROBATIONARY — An employee who has not completed six months of continuous service with the Town in one or more permanent budgeted positions.

EMPLOYEE, TEMPORARY — Any individual employed for a period of time not to exceed six months or for some longer temporary period approved by the Town Manager.

EMPLOYMENT DATE — The date on which an employee commences performance of duties and is placed on the payroll.

EXAMINATION — All of the tests of fitness taken together that are applied to determine the fitness of applicants for positions of any class.

EXEMPT OFFICIAL — Any person exempt from the provisions of this Personnel Code. Exempt officials include elected officials, Town Manager, or any persons hired under an

individual employment contract, persons under control of the School Committee, persons under control of the Airport Commission and members of boards, commissions and committees.

GRADE — A position or group of positions which are sufficiently similar with respect to duties, responsibilities, and authority that they may be properly compensated within the same pay range under substantially the same employment conditions.

GRIEVANCE — A misunderstanding or disagreement between an employee and a supervisor that relates to policies, rules, and regulations of the Personnel Code.

INCUMBENT — The current occupant of a position.

JOB DESCRIPTION — The written description of a position, approved by the Personnel Department, including the title, a statement of the nature of the work, examples of duties and responsibilities, and the minimum qualification requirements that are necessary for the satisfactory performance of the duties of the position.

LATERAL REASSIGNMENT — Reassignment of an employee to a position in the same pay grade but having different duties and responsibilities.

LAYOFF — The separation of an employee because of lack of work or funds or other reasons not related to fault, delinquency, or misconduct on the part of the employee.

LEAVE — An authorized absence from regularly scheduled work hours which has been approved by proper authority.

ON CALL — Available to be called back to work outside officially scheduled work hours.

OPEN COMPETITIVE EXAMINATION — An examination open to any person who meets and complies with prescribed requirements for admission.

ORIGINAL APPOINTMENT — The competitive appointment of a person from outside Town employment to a continuing position in Town government.

OVERTIME — Time an employee is directed and authorized to work in excess of the normal workweek.

PART-TIME POSITION — The incumbent in such a position is one who works each week but less than a full workweek.

PAY PLAN — A schedule of compensation for all grades in the classification plan, including any successive pay rate steps established for each grade. All positions allocated to one grade will be paid according to the salary range established for that grade.

PAY STATUS — A period of active employment, including vacation and sick leave.

PERFORMANCE PLANNING AND REVIEW — The process of assessing an individual's past performance and present capabilities against established performance standards and objectives for the purpose of improving organizational effectiveness and developing individual potential.

PERMANENT EMPLOYEE — An employee who has satisfactorily completed an individual probationary period, who is in an approved position in Town service, and who works 20 hours or more each week.

PERSONNEL ACTION — Any and all activities affecting any aspect of an employee's status which includes appointments and changes in appointments, original hiring, reemployment, transfer, promotion, demotion, changes in hours, reallocation, resignation, suspension, discharge, placement on leave, step increases, etc.

PERSONNEL BOARD — A five-member board whose primary role is to advise the Personnel Director, Town Council and the Town Manager in establishing and maintaining a system of public personnel management based on merit that meets the social, economic and program needs of Town government; and which makes use of modern concepts of personnel management.

POSITION — A group of current duties and responsibilities assigned or delegated by appropriate authority to one person.

PROBATIONARY PERIOD — A working test period, following an appointment, during which an employee is required to demonstrate, by conduct and actual performance of the duties, fitness for the position to which appointed.

PROBATIONARY EMPLOYEE — An employee selected from an eligible list who has not yet completed a probationary period of service, but who is otherwise entitled to the same benefits as a permanent employee.

PROMOTION — The movement of an employee from a position of one grade to a position of another grade with a higher maximum pay rate.

PROVISIONAL APPOINTMENT — A noncompetitive appointment, to a civil service position, authorized by the appropriate official when, due to unforeseen circumstances, no appropriate eligible list is available. The person appointed provisionally must meet the minimum qualifications set forth in the position specification.

REALLOCATION or RECLASSIFICATION — The assignment of a position to a grade different from the one to which it was previously assigned.

SEASONAL/CASUAL EMPLOYMENT — An individual who works limited periods of time (i.e., lifeguards, beach supervisors, gatepersons, etc.).

SENIORITY — An employee's uninterrupted, continuous length of service as a permanent employee with the Town.

STEP INCREASE — An increase in pay from one step to a higher step in the pay range for an employee who meets the eligibility conditions specified in these policies.

SUSPENSION — An involuntary absence without pay imposed on an employee for disciplinary action or pending final outcome of appeal.

TEMPORARY APPOINTMENT — A noncompetitive appointment authorized by the appropriate official for a period not to exceed six months when, due to unforeseen circumstances, no appropriate eligible list is available, or the appointment of an employee for

the term of a specific project (i.e., Clerk of the Works appointed to oversee the completion of a specific project). The person appointed temporarily must meet the minimum qualifications for the job to be performed.

TEMPORARY POSITION — A specific position which is time limited, not to exceed six months unless authorized by the Town Manager.

TRANSFER — The movement of an employee from one position to another position of the same grade or of another grade having the same maximum pay rate involving the performance of similar duties and requiring essentially the same basic qualifications.

WORKWEEK — The workweek shall be 40 hours except as may be otherwise established by this article or by any collective bargaining agreement.

§ 401-85. Classification system.

A. Purpose. The purpose of the classification plan is:

- (1) Establish desirable qualification standards for recruiting and examining purposes.
- (2) Provide a means of analyzing work distribution, area of responsibility, lines of authority, and other relationships between positions.
- (3) Assist in determining budget requirements.
- (4) Provide a basis for developing standards of work performance.
- (5) Establish lines of promotion.
- (6) Indicate training needs.
- (7) Provide uniform titles for positions.

B. Administration of classification plan. Each classified position is allocated to a grade. The Director of Personnel is responsible for classifying all positions. The Personnel Board will review all classifications acted upon by the Personnel Director and recommend changes to the Town Manager for approval. When a new position is established or when a position has changed substantially as to the kind and/or level of work, the Town Manager, a department manager, an employee, or a recognized labor union may initiate a request for a change in classification by submitting a written request to the Personnel Department accompanied by a position description questionnaire. The Personnel Director shall document any changes in the position, its duties and/or responsibilities, evaluate the position and present the documentation to the Personnel Board for review. The Personnel Board shall review the request and may meet with the individual making the request. The Personnel Board shall make a recommendation concerning the reclassification request to the Town Manager. The Town Manager's decision concerning the classification or reclassification request shall be final.

C. Certification of classification change. No employee shall be paid in any circumstance until the Town Treasurer is presented with proper authorization on an appropriate form, signed by the Personnel Director, Town Accountant, and the Town Manager.

§ 401-86. Compensation system. [Amended 8-17-2006]

- A. Pay policy. The Personnel Director shall be responsible for the maintenance of a uniform and equitable pay plan which shall consist, for each grade of positions, of minimum and maximum rates of pay and such intermediate steps as are deemed appropriate. Insofar as it may be practical, the Town Manager shall prepare a schedule of revisions to the compensation plan, whether negotiated or otherwise, and include said schedule of revisions for funding through the annual budget process.
- B. Maintenance of the plan. The Personnel Director shall prepare an analysis of prevailing rates of pay for comparable public and private employment in the area and at large, taking into consideration cost of living factors, budget affects of various alternative pay plans, and other factors which may be pertinent in recommending changes in the plan.
- C. Pay administration and appointment rates. An employee appointed to a position should be normally compensated at the minimum rate of pay assigned to the grade to which the position is assigned, however, subject to the approval of the Town Manager, original employment at a salary above the minimum step may be made upon written certification by the recommending official and Personnel Director that such action is justified by the lack of qualified applicants available at the minimum rate.
- D. Step increases.
- (1) Step increases within an established range are not automatic but require certification by the immediate supervisor that the employee is performing at an acceptable level of competence, as demonstrated in the performance appraisal system. All employees in an approved position shall be evaluated every six months. An annual evaluation shall be due in June of each year. Step increases based on a satisfactory evaluation shall be effective July 1.
 - (2) Employees hired in an approved position between July 1 and December 31 will be evaluated the following June and eligible for a step increase July 1; employees hired in an approved position between January 1 and June 30 will be eligible for a step increase on July 1 of the next calendar year.
 - (3) Employees promoted between July 1 of one year and the following March 31 will be eligible for consideration for a step increase (based on satisfactory evaluation or better) the following July 1. Employees promoted between April 1 and June 30 of a calendar year will be eligible for a step increase on July 1 of the next calendar year.
 - (a) The following factors shall not affect eligibility for a step increase:
 - [1] Overall pay adjustment resulting from any pay survey.
 - [2] Transfer within grade, providing supervisory responsibility remains intact.
 - [3] A period of paid leave.
 - (b) An employee receiving workers' compensation will not be eligible for a step increase until the employee returns to work; and the increase will become

effective on the date of return to work, provided that the employee has worked a minimum of six months during the evaluation period.

- E. Denial of step increases. The denial of a step increase may not always connote less than satisfactory service of an employee. If funding is not available, step increases may be denied. Written notice of any denial of a pay raise and the reasons therefor shall be submitted to the employee at least 10 calendar days after the due date for the step increase. The employees' eligibility date for future increases shall remain unchanged.
- F. Reappointment rate. Persons receiving reemployment or reinstatement appointments may be paid at any step within the pay range not to exceed the step attained at the time of the separation.
- G. Promotion. Upon promotion, the employee's salary shall be set at the rate of the higher grade which at least provides an increase in pay.
- H. Transfer. When an employee is transferred from a position in one grade to a position in another grade at the same pay rate, or is transferred with no change in grade, he/she shall continue to be paid at the same rate.
- I. Demotion. When an employee is demoted to a lower grade, his/her salary shall be set at:
 - (1) The rate in the lower grade which provides the smallest decrease in pay; if the action is not for cause; or
 - (2) Any appropriate rate, as determined by the appointing authority, in the lower grade which is less than the existing salary if the action is for cause.
- J. Reclassification of position to a grade of a lower pay range. When a position is reallocated to a grade of a lower pay range, the salary of the incumbent shall be set as follows:
 - (1) If the employee's salary in the higher range is above the top step of the lower range, his/her pay shall remain unchanged. The employee shall not receive any step increase in pay until the maximum of the pay range exceeds the employee's rate of pay.
 - (2) If the employee's salary in the higher range falls within the lower range, his/her pay shall remain unchanged.
- K. Merit bonuses for nonaffiliated personnel. The Town Manager may, from time to time, grant a one-time annual merit bonus to nonaffiliated employees who have attained an outstanding performance appraisal. Such bonus shall not exceed 5% of the employee's base pay.

§ 401-87. Employee benefits.

- A. Health insurance. Permanent employees of the Town of Barnstable are currently covered for medical and hospitalization insurance under an agreement with Cape Cod Municipal Health Group. Both the Town and the individual employee pay 50% of the cost.

- B. Life insurance. Permanent employees of the Town of Barnstable are covered under an optional plan for life insurance in the sum of \$2,000. An additional \$10,000 of life insurance may be purchased by the employee. Both the Town and the individual employee pay 50% of the cost of the first \$2,000.
- C. Retirement. Permanent employees of the Town of Barnstable are currently covered under a state-approved retirement system. That system is currently administered by Barnstable County for the Town of Barnstable. The current payment is on the basis of base pay. Eligibility depends upon the rules and/or regulations of the Retirement Board.
- D. Workers' compensation. The Town carries workers' compensation insurance benefiting employees injured on the job. Details of this program may be obtained from the Personnel Department.
- E. Unemployment compensation. Employees of Town government are covered under state statute, which provides for the payment of unemployment compensation in the event of displacement from work. Details of the program may be obtained from the Personnel Department.
- F. Cafeteria plans/deferred compensation. Employees of the Town are eligible to join various deferred compensation or similar benefit plans. Details of the programs may be obtained from the Personnel Department.

§ 401-88. Minimum and overtime pay.

- A. Overtime. The provision of overtime is governed by collective bargaining agreements. However, amusement and recreational employees, employed on a seasonal basis, are exempt from overtime. All employees, with the exception of those managerial and supervisory employees not covered by a labor agreement and amusement and recreational employees exempt under Section 13(a) of the Fair Labor Standards Act shall be paid time and 1/2 the regular rate of pay for all hours worked over 40 in a workweek.
- B. Compensatory time. Compensatory time off in lieu of overtime pay shall be permitted at the discretion of the department manager; provided that, for each hour of overtime worked, the employee shall be credited with 1 1/2 hours compensatory time. Compensatory time may be accrued up to a maximum of 240 hours; however, every effort shall be made to allow compensatory time off within one year of the time it was earned. When compensatory leave is taken, it may be at the request of the employee, but final approval rests with the department manager so that it will not interfere with the department operations. Any department that has compensatory time owed to any employee shall submit a list on the first day of each month, to the Personnel Director, indicating the employees who are owed compensatory time and the number of hours of compensatory time owed.
- C. Actual hours worked. For the purpose of this Personnel Code, actual hours worked include all time an employee is required to be on duty either on the premises of the employer or at a designated work site. It is the intent of this provision that the department manager or his/her designee shall bear the responsibility for notifying the employee of any divergence from this rule. If any question should arise regarding pay or

hours worked, it should be addressed with the Personnel Director, and, after appropriate or necessary review with the Legal Department, a decision will be rendered as it relates to the issue.

D. Longevity pay.

- (1) Employees, as of their anniversary date of employment with the Town of Barnstable, shall receive annually a longevity increment for continuous years of service as follows, whichever is greater; provided, however, that employees covered by a union contract shall receive the increment as specified in the union contract.

Years of Continuous Service	Longevity Award
3	\$100 or 1/4 of 1% of salary
5	\$250 or 1/2 of 1% of salary
10	\$350 or 3/4 of 1% of salary
15	\$450 or 1% of salary
20	\$600 or 1.25% of salary

- (2) An employee, while receiving workers' compensation benefits, is not entitled to receive a longevity increment until after he/she returns to work with the Town.

§ 401-89. Leave.

- A. General policy. Leave is any authorized absence during regularly scheduled work hours that is approved by the proper authority. Leave may be authorized with or without pay and shall be granted in accordance with these rules on the basis of the work requirements of the departments and, whenever possible, the personal wishes of the employee.
- B. Procedure for requesting leave.
 - (1) For all leave other than holiday, sick, disability, injury and emergency leave, a timely request indicating the kind of leave, duration, and dates of departure and return must be approved by the department manager prior to the taking of leave. In the case of sick, disability, injury or emergency leave, an employee shall notify the immediate supervisor or his/her designee, within two hours of the regular starting time of the workday. Unless an absence is approved by the immediate supervisor or designee, an employee shall not be paid for any absence from scheduled work hours.
 - (2) Any unauthorized absence in excess of three days shall be considered as an abandonment of a position, unless extenuating circumstances are present.
- C. Holiday leave. The following days shall be recognized as holidays, and such other days as may be declared holidays for the conduct of public business by the state government:

New Year's Day	Columbus Day
Martin Luther King Day	Veterans Day
Presidents' Day	Thanksgiving Day
Patriots Day	Day after Thanksgiving

Memorial Day	1/2 day before Christmas
Independence Day	Christmas Day
Labor Day	

- (1) Saturday and Sunday holidays. Whenever any of the above-named holidays falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be a holiday, unless another day is established by law.
- (2) Work on holidays.
 - (a) On the designated holidays, employees not otherwise covered by labor agreement shall be excused from all duty not required to maintain essential services.
 - (b) Seasonal, temporary, or casual employees who are of necessity required to work on holidays (i.e., Recreation, Sandy Neck, Golf Course, Natural Resources, Harbormaster, etc.) who are non-bargaining-unit employees will be paid the regular rate of pay for holiday work.
 - (c) Holiday during vacation. If a designated holiday occurs while an employee is on vacation leave, no charge for the holiday will be made against vacation leave.

D. Vacation leave. The Town provides vacation leave to permanent, provisional, and probationary employees. Annual leave may be taken as earned after completion of six months of employment. Temporary, seasonal, and casual employees shall not accrue vacation time.

- (1) Unless provided otherwise pursuant to union contract, or as further noted under Subsection D(7) below, each such employee shall be granted annual vacation leave for the period January 1 to December 31 as follows:
 - (a) For any employee hired after May 20, 1998, the vacation accrual for the calendar year in which they were hired will be as follows:

January hire date:	10 days	July hire date:	5 days
February hire date:	9 days	August hire date:	4 days
March hire date:	8.5 days	September hire date:	3 days
April hire date:	7.5 days	October hire date:	2.5 days
May hire date:	6.5 days	November hire date:	1.5 days
June hire date:	6 days	December hire date:	1 day

- (b) Ten days after the first year of employment;
- (c) Fifteen days after five years of employment; and
- (d) Twenty days after 10 years of employment.

- (e) Twenty-five days after 15 years of employment.
- (2) Part-time employees shall accrue and take vacation leave based on 50% of the above schedule, or a percentage of time prorated in accordance with hours or days worked.
- (3) Scheduling of vacations shall be determined by the department manager or designee with due regard to the needs of the service, seniority and to the employee's wishes. Department managers and management officials' requests for vacation leave shall be submitted to the Personnel Department after approval by the Town Manager. The Personnel Department shall be notified of all leave taken, on forms provided for such purpose.
- (4) Vacation leave should be taken within the calendar year. As above any carryover of such leave, to not exceed five days, must be requested in writing from and may be approved by the appointing authority only if as a result of departmental necessity. Any such request and approval must be filed with the Personnel Director.
- (5) Payment for unused vacation leave. An employee with more than six months of service whose employment is terminated is entitled to payment for unused accrued annual leave.
- (6) Vacation as sick leave. Vacation time may be used by employees in addition to, or in lieu of, sick time with the approval of the department manager.
- (7) Employees covered by this article shall accrue vacation leave as indicated under Subsection D(1); however, subject to the approval of the Town Manager, upon commencement of original employment, annual vacation leave at a schedule above the minimum may be made upon written certification by the appointing authority that such action is justified by exceptional circumstances.

E. Sick leave.

- (1) Purpose. Sick leave shall not be considered a privilege which an employee may use at the employee's discretion, but shall be allowed only in case of actual sickness or disability of the employee, to meet dental appointments, to take physical examinations, or for other sickness prevention measures. Sick leave may be taken by any eligible employee unable to work due to pregnancy, childbirth and recovery therefrom.
- (2) Eligibility. Sick leave shall be available to all permanent, provisional, and probationary employees. Seasonal, temporary, and casual employees are not eligible for sick leave. Permanent, part-time employees shall accrue sick leave time based on 50% of the above schedule or a percentage of time prorated in accordance with hours or days worked. Deliberately self-inflicted injury or injury occurring while in the employ of others shall not be considered a proper claim for sick leave.
- (3) Certification of illness. For sick leave in excess of three days, or if the department manager or designated supervisory official suspects an abuse of sick leave, the

department manager or supervisory official may require a certificate from the attending physician stating that such illness prevented the employee from working. The Town Manager or designee may, at any reasonable time, require that a medical examination by a physician of his/her own choosing, be made of any employee. The cost of such examination shall be borne by the Town.

- (4) Sick leave allowance. Unless provided by labor agreement, effective July 1, 1998, a permanent, full-time employee shall accrue sick leave on the basis of 1.25 days for each month in a pay status up to 15 days per calendar year, and shall be credited with the unused portion up to a maximum of 150 days. Up to seven days of sick leave may be used to care for an immediate family member living within the employee's household. Permanent part-time employees shall accrue sick leave on a prorated basis in accordance with the hours and days worked per week, and shall be credited with the unused portion up to a maximum of 150 days.
 - (a) During the first month of employment, an employee whose effective date of employment is after the 15th day of the month shall not receive any sick leave credit for that month.
 - (b) Effective July 1, 1998, after having accumulated 120 of days of sick leave, an employee shall have the right to receive an amount equal to one full week's pay after any full calendar year of service during which the employee has used no more than three days of sick leave during that calendar year.
 - (5) Advance of sick leave. Upon written request and under exceptional circumstances, the Town Manager may advance a specific number of sick leave days to an employee. It is understood that such additional days constitute a deficit in accrued sick leave for the employee and must be repaid by subsequent accrual, where applicable. Under no circumstances shall such advance leave be granted to any employee who has accrued sick leave, accrued vacation, or personal leave available.
 - (6) Reporting. The department manager or designee shall file, on forms provided for such purpose, information regarding the accrual and taking of any and all leave with the Personnel Director.
 - (7) Buy-back. Effective July 1, 1998, an employee, upon retirement, will be paid \$35 per day for any unused sick leave to a maximum of 150 days.
- F. Injury leave. An employee injured on the job, however slightly, must report that fact to his immediate supervisor at once. Such supervisor must give a full report of the incident on the same day or as soon thereafter as possible and report the incident on appropriate forms to the Personnel Department.
- (1) Injury leave shall mean leave due to absence from duty caused by an accident, injury or occupational disease that occurred while the employee was engaged in the performance of his/her duties.
 - (2) Employees covered by workers' compensation insurance may be paid stated amounts due to injuries sustained on the job; the Town, in such cases, shall

supplement any such payments, at the election of the employee, so that the employee will receive full pay during his/her absence (appropriate deductions shall continue to be made) and such remuneration shall be charged against accrued sick leave and/or vacation leave until such leave has been exhausted, at which time such supplementary remuneration shall cease.

- (3) An injured employee eligible to receive payment under workers' compensation may have a waiting period of up to four weeks before receiving his/her first compensation check. In such case, the employee may continue to receive pay, provided that the employee has sufficient accrual of sick leave or vacation leave to charge such payment against. The employee, upon receipt of the first compensation check, may elect to buy back any sick leave or vacation time used during the initial waiting period.
- (4) Employees in a workers' compensation status for a period in excess of 30 days will not earn or accumulate vacation or sick leave time.

G. Bereavement leave.

- (1) The purpose of bereavement leave is to enable an employee to take care of personal arrangements and problems caused by death of a member of his/her immediate family and to relieve him/her of the concern over loss of earnings on the regularly scheduled workdays immediately following the death. Permanent employees other than those scheduled for another type of leave are eligible for bereavement leave, and any such leave granted shall be reported to the Personnel Director by the appropriate department manager.
- (2) Effective July 1, 1998, upon the death of employee's spouse, child, parents, significant other, sister, brother, grandparents, grandchild, mother- and father-in-law, the employee shall request and the appointing authority or designee shall grant emergency leave of up to five working days immediately following such death without loss of pay. Under exceptional circumstances and upon application approved by the appointing authority, the department manager may extend this period.

H. Military leave. An employee entering the regular military service will be provided a leave of absence without pay as required by federal law. It is the employee's responsibility to notify his/her department manager of the dates he/she is leaving for military service and to provide written proof from military or selective service officials to the department manager indicating the date of departure and length of service required. A copy of such proof must be filed with the Human Resources Department. **[Amended 3-2006]**

- (1) Return to work. If an employee requests reinstatement within 90 days after honorable discharge from military service or hospitalization resulting from military service, he/she will be rehired with full rights of his/her former job or its equivalent.
- (2) Seniority and benefits. Employees in the military service will continue to receive credit for seniority accrual.

- (3) Military reserve duty. An employee in the military reserve or the National Guard shall be paid the difference between total compensation received while on reserve or Guard duty and regular compensation rates paid the employee by the Town, not to exceed 15 workdays in any given calendar year, upon submission of substantiating documentation as may be required by the Human Resources Department. An employee in the military reserve or the National Guard who is ordered into the active military service shall be paid the difference between total compensation received while on active duty and his/her base pay, excluding all other compensation, paid by the Town for the length of his/her activation.
- I. Jury leave. A permanent, full-time employee summoned to jury duty will be excused from his/her work for the period necessary to perform jury duty and shall receive the difference in pay between his/her regular total compensation and jury duty compensation, upon submission of substantiating documentation as may be required by the Personnel Department.
- J. Family medical leave policy. In compliance with the Family Medical Leave Act of 1993, the Town of Barnstable adopts the following policy for eligible employees, effective August 5, 1993. All eligible employees are entitled to take up to 12 weeks of unpaid family medical leave during a twelve-month period under the following definitions and procedures:
 - (1) Definitions.
 - (a) Eligible employee: an employee who has worked for the Town for at least 12 months and provided at least 1,250 hours of service during the 12 months preceding the start of the leave. (Eligible part-time employees' leave will be prorated.)
 - (b) Family medical leave includes:
 - [1] The birth, placement for adoption, or foster care of a child;
 - [2] The serious health condition of a spouse, child, or parent;
 - [3] The employee's own serious health condition.
 - (c) Twelve-month period: a "rolling" period measured backward from the date an employee uses any family medical leave.
 - (d) Serious health condition: an illness, injury, impairment or physical or mental condition that involves:
 - [1] Incapacity or treatment as in-patient in a hospital, hospice, or residential medical-care facility; or
 - [2] Incapacity requiring absence from work or other activities for more than three calendar days and involves continuing treatment of a health-care provider; or

- [3] Continuing treatment by a health-care provider for chronic or long-term health condition which is incurable or if left untreated would result in incapacity for more than three calendar days.
- (e) Health-care provider: a doctor of medicine or osteopathy authorized to practice within located state, or any person determined by the Secretary of

Labor, or others capable of providing health-care services as defined by the Department of Labor Family and Medical Leave Act rules.

- (f) Intermittent leave: time away from the job taken in separate blocks of time due to a single illness or injury.
- (g) Reduced-leave schedule: reduction in the number of hours per workday or workweek.

(2) Procedure.

- (a) Notice. Eligible employees will provide written notice of their intent to use family medical leave to the Director of Personnel 30 days in advance when the leave is foreseeable for the birth or placement of a child or planned medical treatment. When unforeseen events occur that require family medical leave, the employee (spouse or family member) must provide notice as soon as practicable. This would ordinarily mean at least verbal notification within one or two business days of when the need for leave becomes known to the employee. The notice will include the reason for the leave, the date the leave shall begin, and the intended date of return. The Town Manager or designee will provide a written response to the employee within a reasonable amount of time. Leave for the birth or placement of a child must be taken and concluded within the 12 months following the birth or placement.

(b) Medical.

- [1] Leave for serious medical conditions must be supported by certification by a health-care provider. Certification shall include:

- [a] Identification of the practitioner and the type of medical practice.
- [b] The date the serious health condition commenced and the probable duration of the condition.
- [c] Diagnosis of the serious health condition.
- [d] Statement of the regimen of treatment prescribed for the condition (including estimated number of visits, nature, frequency and duration of treatment, including referred or ordered treatment of other health-care providers).
- [e] In instances of the employee's serious health condition:
 - [i] Statement that the employee is unable to perform work of any kind; or
 - [ii] Statement that employee is unable to perform the essential functions of position (based on statement of essential functions of the position by the Director of Personnel or employee's department head, using job descriptions whenever possible).

- [f] Instances of care for a family member:
 - [i] Statement that the family member is in need of the employee's assistance for basic medical, hygiene, nutritional needs, safety, or transportation; or
 - [ii] Statement that the employee's presence would be beneficial or desirable for the care of the family member.
- [2] The employee must certify the care he/she will provide and an estimate of the time period. The certification must be received with the notice of intent to use family medical leave or within 15 days of being asked to do so. If the need for leave was not foreseeable, the employee must still attempt to provide the certification within 15 days or as soon thereafter as practical. Certification forms are available through Personnel.
- [3] If administration has reason to doubt the validity of a medical certification, the employee may be required to obtain a second opinion from a health-care provider designated by administration at the Town's expense. If the two opinions differ, administration may require a third opinion, which will be final and binding, from a health-care provider mutually agreed to and at the Town's expense.
- [4] Recertification by the health-care provider may be required every thirty days. Recertification must include the employee's explicit intent to return to work and a probable date of return. Recertification may be required more frequently if:
 - [a] The employee requests an extension of leave
 - [b] Significant changes from original certification circumstances
 - [c] Administration's reception of information which casts doubts upon the continuing validity of the certification, and
 - [d] The inability of the employee to the continuation, reoccurrence, or onset of a serious health condition.
- (c) Intermittent leave/reduced schedule. Serious health condition (employee or family member) family medical leave may be taken intermittently or on a reduced schedule. Employees requesting intermittent or reduced schedule family medical leave must make a reasonable effort to schedule treatment so as not to disrupt the Town's operations and administration. The Town may require a temporary transfer to an alternative position to better accommodate the reoccurring periods of leave. In no case will the increment of leave be less than one hour.
- (d) Paid leave and benefits.
 - [1] In all circumstances, accrued sick, vacation, and personal leave, as well as compensatory time, must be used for qualified family medical leave.

Upon depletion of the available accrued paid leave, the family medical leave becomes unpaid family medical leave. It is the total of this time which will equal the twelve weeks of family medical leave. During any portion of the family medical leave to which the accrued paid leave is applied, the employee will continue to accrue benefits and seniority. During any portion of the family medical leave which is unpaid, the employee will not accrue same.

- [2] The Town will continue the contribution to the employee's group health plan during the family medical leave. The employee will have his/her contribution deducted from the applied paid leave. Upon the depletion of said leave, the employee must make arrangements to pay his/her contribution to the health premiums. If the employee fails to make his/her premium payment within 30 days of the depletion of available paid leave, the Town will cease the maintenance of health coverage. The Town will recover from the employee premiums paid during any period of unpaid family medical leave if the employee fails to return to work after the family medical leave entitlement has expired, except in instance of continuation, reoccurrence, or onset of qualifying family medical leave circumstances or other circumstances beyond the control of the employee.
- (e) Restoration to position.
- [1] Employees not required to submit medical certification must submit a report regarding the employee's status and his/her intent to return to work on a probable date every 30 days. Employees on family medical leave due to their own serious health condition must submit certification from the health-care provider that the employee is able to resume work, i.e., is fit for duty.
 - [2] On return from family medical leave, the employee will be returned to the same or an equivalent position (equivalent benefits, pay and other terms and conditions of employment). The employee has no "right" to be returned to the same position. The Town may deny restoration to a key employee (one who is salaried and among the highest paid 10% of employees) if it is necessary to prevent substantial and grievous economic injury to the operations of the Town. Key employees will be notified of this status by administration as soon as practicable, and administration will notify said employees if restoration is denied.
- (f) Denial.
- [1] Conditions under which family medical leave and/or reinstatement may be denied include (but are not limited to):
 - [a] Ineligibility of employee;
 - [b] Unqualified leave under the Family Medical Leave Act;

- [c] Employee fails to give timely advance notice for foreseeable leave temporary denial up to 30 days after employee provides notice of need);
 - [d] Employee fails to provide in a timely manner requested medical certification (temporary denial up to time of submittal);
 - [e] Employee fails to supply fitness-for-duty certificate (up to time of submittal);
 - [f] Employee would not otherwise have been employed if leave had not been taken;
 - [g] Employee unequivocally advises Town of intent not to return to work;
 - [h] "Key" employee status;
 - [i] Fraudulent acquisition of family medical leave; and
 - [j] Employment with another employer while on family medical leave.
- [2] All notifications, certifications, and questions must be submitted to the Director of Personnel. Deliberation, interpretation, and determination will be based on the Department of Labor Family Medical Leave Act Rules and Regulations.
 - [3] The decisions of the administration are final. Aggrieved employees may pursue remedies through the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, or through civil suit.
- K. Leave without pay. Upon approval of the appointing authority, or his/her designee, an employee may be granted leave without pay for a specified period of time. At the expiration of a leave without pay, the employee shall return to the position or to a similar position. Failure of the employee to report promptly at the expiration of such leave shall be considered a resignation. Leave without pay shall not constitute a break in service. However, during leave without pay in excess of 30 calendar days, vacation and sick leave shall not accrue. A copy of any such approved leave shall be submitted at once to the Personnel Department.
- L. Personal leave.
- (1) A permanent, provisional or probationary employee may be granted time off with pay to conduct personal business provided such leave is approved in advance by the immediate supervisor and properly recorded on the weekly attendance sheets submitted to the Personnel Department.
 - (2) Unless pursuant to a union contract, such personal leave shall not exceed three days in any one calendar year and is not cumulative from year to year. Personal leave for employees during the first calendar year of employment only shall not

exceed two calendar days if hired on or after May 1 of that calendar year. Personal leave for employees, during the first calendar year of employment only, shall not exceed one calendar day if hired on or after September 1 of that calendar year.

- (3) Temporary, seasonal, and casual employees are not entitled to personal leave.
 - (4) Personal leave shall not be granted in conjunction with vacation leave without the prior written consent of the appointing authority.
- M. Administrative leave. Administrative leave may be granted by the appointing authority for, but not limited to, power failure, blood bank donations, bomb threat, snow removal emergencies, etc. When certain nonessential employees of the Town are notified not to report to work in the event of severe weather conditions, etc., they may be granted administrative leave and will receive their regularly scheduled rate of pay for these hours. Essential employees who are required to report to work will also be paid their regular rate of pay for their regularly scheduled hours of work.

§ 401-90. Recruitment and selection of employees.

- A. Policy. To assure a high quality of service to the public, selection will be from among the most competent individuals. Selection and appointment to all positions will be based solely upon job-related requirements and the applicant's demonstration that he/she possesses the skills, knowledge, abilities and other characteristics necessary for successful job performance. The procedures covered in this section shall be considered minimum and shall not be construed to conflict with special requirements as may be necessary and usual to a particular department insofar as such special requirements exceed these minimum procedures.
- B. Recruitment procedures.
- (1) When a vacancy occurs, the Personnel Department along with the department manager will review the functions, duties, responsibilities and the organizational needs of the department to ascertain whether the job description is still accurate or the job is to be redefined. Changes to current job descriptions should be discussed with the Personnel Director, who will revise the job description and determine the minimum qualification requirements necessary for the successful performance of the job.
 - (2) Initial consideration in the selection process for a position shall be given to qualified in-house employees, as a method of advancement and upward mobility. "In-house employee" means any permanent full-time or part-time employee. Vacancies will be posted for in-house consideration for five days.
 - (3) If no in-house candidate is selected for a vacant position, permanent employees who are laid off shall be given consideration, prior to recruitment efforts, for vacancies in the grade from which laid off for a period of one year.
 - (4) If no in-house or laid-off candidate is selected for a vacant position, the Personnel Director will be responsible for advertising the vacancy:

- (a) The Personnel Director will publicize the vacancy in such manner as to assure that all interested and qualified individuals, including current employees, are informed of the position title, duties, responsibilities, and salary range; minimum and special qualifications for the job; the time, place and manner of making application; and any other information which may be useful to applicants.
 - (b) The methods of advertising vacancies will vary depending upon the nature and requirements of the position being filled. The following methods are typical of those which may be used for recruitment: posting notices on public bulletin boards, advertising in professional journals and newspapers with local and statewide circulation. Additionally, recruitment efforts will be directed to all segments of the community, including veterans and disadvantaged and minority individuals.
 - (c) To allow sufficient time for candidates to apply for the position, recruitment efforts will be conducted for at least 10 days, unless otherwise provided for in any labor agreement.
- C. Application for employment. Deliberately false or misleading statements and deception in attempting to secure employment will be grounds for rejecting an applicant.
- D. Selection procedures.
- (1) The Personnel Director shall determine the validity of the examining device or combination of devices used to evaluate the relative fitness of each candidate for the position.
 - (a) The devices selected will relate to the duties and responsibilities of the position for which candidates are being examined and shall fairly appraise and determine the merit, fitness, ability and qualifications of competitors to perform the duties of the position.
 - (b) A variety of devices may be employed, including but not limited to: assessment of training, education and work experience; written, oral and performance tests; physical exams; and reference checks. Each device utilized will be administered and scored on a standardized basis to insure equity.
 - (2) Candidate review. The Personnel Director will review the applications of all candidates who have applied for the position to determine whether each candidate meets the minimum requirements established for the position.
 - (3) Interview/selection.
 - (a) The department manager in conjunction with, or with the guidance and direction of, the Personnel Director will interview selected applicants certified for the position.
 - (b) The department manager will document the recommendation for selection or nonselection, and a copy of this documentation shall be filed with the Personnel Department. It is the responsibility of the Personnel Department, in

conjunction with the appointing authority, to determine the starting salary of all people hired by the Town.

- (c) For the purposes of complying with the Town's affirmative action and E.E.O. policy, no selection may be announced until approved by the Town Manager.
- (d) Selection process documentation. All department managers are required to submit the following information to the Personnel Department before a job offer can be made.
 - [1] Interview questions.
 - [2] Reference check sheets.
 - [3] Interview report sheets.
 - [4] Race/gender breakdown of those interviewed.
 - [5] Recommendations for hire, reasons.
- (4) Preemployment physical. No candidate or applicant tentatively selected to fill a vacant position may begin employment until the applicant has received a physical examination by a Town-appointed physician and it is determined that the person is physically able to fully perform all functions of the position. Such procedures may be waived for seasonal or temporary appointments.
- (5) Notification to applicants. All candidates interviewed for the position will be informed by the selecting official, in a timely manner, of their selection or nonselection.
- (6) Documenting the selection process. A record of the recruiting, examining, and appointing procedures used will be retained after the vacancy is filled. This record will include: the job description; vacancy announcements; a listing of the source and methods of recruitment; the applications of all those who applied or their names and addresses; and the reasons for selection.
- E. Hiring of relatives. The appointing authority, including the Town Manager, Town Clerk and Town Collector, shall not hire a person related to him/her for any position. For purposes of this section, a relative is defined as a husband, wife, mother, father, mother-in-law, father-in-law, son, daughter, brother, sister, daughter-in-law, son-in-law, aunt, uncle, or first cousin.
- F. Seasonal employees. All requests to hire individuals on a seasonal basis must be submitted to Personnel on a timely basis. Every position must be requested annually. No individuals are guaranteed a position in any subsequent season. All individuals must reapply every year.

§ 401-91. Probationary period.

- A. Objective. The probationary period is an integral part of the selection procedure allowing the supervisor, department manager and appointing authority to train, observe, and

evaluate an employee's work in order to determine fitness for permanent status in the position.

- B. Duration of probationary period. Each person promoted or appointed to a permanent position shall be required to complete successfully a probationary period which shall be of sufficient length to enable the department manager to observe the employee's ability to perform the various principal duties of the position. The probationary period shall begin immediately upon original appointment and continue for six months or, upon promotion, shall continue for three months from the date of the appointment. Throughout the probationary period the department manager will observe the employee's performance, and any strengths or weaknesses in the employee's performance will be discussed with the employee.
- C. Probation expiration. At least one month prior to completion of the employee's probationary period the department manager or designee will notify the Personnel Director in writing that:
 - (1) The employee's performance is satisfactory and that the individual should be retained as a permanent employee in his position; or
 - (2) The employee's performance or conduct is unsatisfactory, and that his/her removal is proposed as of a specific date prior to the end of the probationary period. The department manager will furnish reasons for the recommended dismissal.
- D. Removal of an employee.
 - (1) An employee may be removed during the probationary period if the employee is unwilling or unable to perform required duties or if his/her habits or dependability do not merit continuance in the position. The employee will be notified in writing why he/she is being terminated and the effective date of the action. Such notification will be transmitted by the Town Manager.
 - (2) An employee may also be removed at any time if it is determined that information submitted prior to appointment was falsified.

§ 401-92. Promotion, demotion, transfer and separation.

- A. Promotion policy. Employees are encouraged to develop new skills, expand knowledge of their work, assume greater responsibilities, and make known their qualifications for promotion to more difficult and responsible positions.
 - (1) Vacancy announcements shall be distributed and posted in appropriate Town buildings.
 - (2) Current employees are encouraged to apply for any vacancy for which they meet the requirements of the position.
 - (3) No supervisor shall deny an employee permission to apply for a vacancy.
 - (4) When a Town employee's qualifications are judged to be equal to or higher than outside applicants, the Town employee shall be given preference.

- (5) When a person is promoted to a higher position, whether temporary or permanent, a certificate attesting to that action must be signed by the appointing authority, the Personnel Director, and the Director of Finance together with acceptance of the promotion by the employee. Such employee shall receive a rate of pay at not less than one full increment above his/her current rate of full pay, but in no event greater than the maximum step, provided funds are available.
- B. Demotion. An employee may be demoted to a position of a lower grade for which he/she is qualified for any of the following reasons:
 - (1) When an employee would otherwise be laid off because that employees position is being abolished.
 - (2) When the employee voluntarily requests a lower classification.
 - (3) When the employee can no longer fulfill the requirements of the position.
- C. Transfer. A position may be filled by transferring an employee from another position of the same or similar grade having the same maximum pay rate, involving the performance of similar duties, and requiring essentially the same basic qualifications. Interdepartmental transfers must be approved by the department mangers so affected with the concurrence of the Town Manager.
- D. Separation.
 - (1) Retirement is the separation of an employee in accordance with the provisions of the retirement system under which the employee is eligible to receive benefits.
 - (2) Resignation is the separation of an employee by his/her voluntary act. An employee may resign in good standing from the jurisdiction by submitting in writing the reasons therefor and the effective date to the appointing authority or designee preferably at least 14 calendar days in advance. The appointing authority or designee may permit a shorter period of notice because of extenuating circumstances. The resignation shall be forwarded to the Personnel Director with pertinent information concerning the reason for resignation. The Personnel Director shall make every effort to conduct an exit interview with each employee who resigns and will verify the employee's reasons for leaving. Copies of the employee's letter of resignation will be placed in the employee's personnel record.
 - (3) Layoff. In the case of layoff or reduction of personnel for lack of work or by reason of fiscal cutback, the laying off or demotion of employees within each job title shall be determined first by type of appointment in the following order: emergency, temporary, provisional, probationary and then permanent. Within the type of appointment, the order of layoff shall be determined by length of continuous service with the Town, unless provided for otherwise in any labor agreement. In no case shall such layoff or demotion be construed as a dismissal for unsatisfactory performance. Permanent employees who are laid off shall be given first consideration for subsequent vacancies in the grade from which laid off, if no in-house candidate is selected, for a period of one year. A layoff reemployment list will be maintained in the Personnel Department.

- (4) Vacation pay or any other accrued leave remuneration due upon separation shall, upon submission of written application by the department manager, and verification by the Personnel Director, be approved by the Town Manager.

§ 401-93. Performance appraisals.

A. Purpose. The Town recognizes the need for an operating performance appraisal system to:

- (1) Assess fairly and accurately an employee's strengths, weaknesses, and potential for growth;
- (2) Encourage and guide the employee's development of his/her special skills and work interests;
- (3) Assure the granting of increases and consideration for more complex work based on merit;
- (4) Provide a method of improving operational programs through employee input; and
- (5) Identify training needs.

B. Procedures. The Personnel Director with the approval of the Town Manager shall be responsible for the establishment and maintenance of the employee performance appraisal system. Employee appraisal is the continuing day-to-day responsibility of the supervisor. Each year, prior to effecting a step increase, the employee's supervisor will make a written evaluation of each employee's performance.

- (1) Evaluation for step increase. Prior to an employee's eligibility for a step increase, the supervisor will review the employee's overall work performance and certify that the employee is performing either at an acceptable or unacceptable level of competence for his/her position. This certification will serve as the basis for granting or denying the step increase. Certification will be filed with the Personnel Director, who will forward step raise approval (if any) to the Town Manager for approval.
- (2) Annual employee appraisals. The annual appraisal is the summary of the supervisor's observations of the employee during the past year and a summary of the performance in terms of a variety of job-related factors. The appraisal will also include a plan to develop strengths, identify and improve weak areas, and record the employee's observations of work assignments in the last year. Proper use of the performance appraisal serves as a means for identifying training needs, helping improve individual performance, recognizing outstanding accomplishments, helping to strengthen employee/supervisor relationships, emphasizing the employee's contribution to the Town's programs, helping to identify strengths and weaknesses in the Town's programs.
- (3) Procedure for annual evaluation.

- (a) The supervisor will make a written evaluation of the employee's job performance considering any changes that have occurred in the job or other factors which might affect job performance and noting strengths and capabilities worthy of special mention and areas where improvement is needed. The employee and supervisor will then meet to conduct the annual employee-supervisor discussion.
- (b) Employee-supervisor discussion. The employee and supervisor will begin the discussion with a review of the employee's current job description to review and clarify job requirements and duties assigned, and to note any major changes which have taken place in the employee's job. The supervisor and employee should also discuss the employee's career development plans, special work interests, projects or assignments of interest, and particular training interests or needs. The employee's general observations of the department's programs and especially suggestions for improving assignments, functions, and work procedures should be particularly encouraged. The employee should have the opportunity to discuss any other points and may attach comments to the supervisor's evaluation. The employee will then certify that he/she has reviewed the appraisal and that it has been discussed with him/her.
- (c) In some instances a second supervisory level will also review the written evaluation, sign it, and make comments if desired. The employee will have the opportunity to review and comment.
- (d) The evaluation will then be forwarded to the Personnel Director to become a part of the employee's personnel record, and be removed two years after the appraisal year. Supervisors are encouraged to bring significant program observations and career development plans of employees to the attention of the appropriate official.

C. Performance appraisals.

- (1) Newly hired employees who are in a probationary period shall be evaluated at least thirty days prior to the expiration of the probationary period. The supervisor or appropriate management official shall make a positive determination that the employee is performing in a satisfactory manner prior to the end of the probationary period; and shall file a copy of this determination with the Personnel Department.
- (2) Permanent employees who receive a less than satisfactory performance rating shall have their step increase, which is due in July of each calendar year, delayed for six months, at which time it will be granted if performance is brought up to a completely satisfactory level, or denied if performance remains below satisfactory.
- (3) If an employee is rated unsatisfactory, the step increase will be denied for the year.

D. Performance counseling. Any employee who exhibits substandard work performance should be counseled in the following manner:

- (1) Initial counseling. For the first indication of substandard work performance the supervisor should advise the employee of his/her unsatisfactory performance and recommend specific areas for improvement and establish a specific time period for improvement. A written record may be retained within the employee's department.
- (2) Written documentation. If performance continues to be substandard, the supervisor will state in writing:
 - (a) The specific deficiencies observed in the employee's performance;
 - (b) The necessary improvement;
 - (c) The period of time in which improvement must occur, and
 - (d) What further action will result if the employee fails to show satisfactory improvement.
- (3) Signatures. The written counseling memo should be signed by both the employee and the supervisor and shall be maintained within the department. If the employee refuses to sign, the supervisor should have a witness sign that a copy was given to the employee. The employee's signature indicates receipt of the document only, not necessarily acceptance of its contents.
- (4) Responses to continued substandard performance. If an employee continues to exhibit substandard work performance beyond the established time limits and below the expected level, the options available to the employee and supervisor will include reassignment, demotion, or termination.

§ 401-94. Training.

- A. Policy. It shall be the joint responsibility of the appointing authority or designee and Personnel Director to foster and promote employee training programs, contingent upon funding, for the purpose of improving the quality of personal service rendered to citizens and aiding employees to equip themselves for advancement in the service.
- B. Administration of the employee training program. The Personnel Director, with the approval of the Town Manager, shall be responsible for:
 - (1) Establishing standards for training programs.
 - (2) Providing assistance to department managers in developing and conducting training to meet the specific needs of their departments and in developing and utilizing other techniques for increasing employee efficiency.
 - (3) Developing supervisory and management training and other types of training and employee development programs common to all departments.
 - (4) Providing assistance to department managers in establishing standards of performance and procedures for evaluating employee performance, potential for growth, and identifying training needs.

- (5) Keeping records of all approved training courses and programs and record of employees who successfully complete such courses and programs.
 - (6) Evaluating the effectiveness of training programs.
- C. Identifying training needs. At the time of the annual supervisor-employee appraisal discussion, the supervisor and employee should discuss areas where training is needed or desirable for performance in the employee's present job, or would be helpful in developing additional skills for growth into other positions in the Town service. The supervisor should forward a written report of training needs, through department managers to the Personnel Director. Department managers should, through contact with the Personnel Director and the public community, keep themselves apprised of training programs that may be of help or interest both to themselves and to their employees, and should nominate employees for appropriate training courses.
- D. Educational tuition reimbursement policy. To encourage Town employees to further their educational, professional, and vocational development, the Town will reimburse the cost of tuition and nonrefundable fees for courses related to the employee's current position taken from an accredited college, university, or technical school according to established reimbursement rate schedules and budget limitations.
- (1) Eligibility. All regular, full-time employees are eligible to participate in the tuition reimbursement program. It is not the policy of the Town to reimburse the cost of tuition and fees for any individual who is receiving or is eligible to receive assistance from such other sources as scholarships, grants, and other subsidy programs (e.g., GI. Bill).
 - (2) Limitations. Effective July 1, 1998, employees are limited to three courses per fiscal year with a maximum allowance of \$500 per course.

§ 401-95. Safety.

- A. Policy. The Town reaffirms its strong commitment and intent to provide a safe and healthful work environment. The Town of Barnstable mandates that the personal safety and health of each employee is of primary importance. The Town will strive to provide the safest physical facilities for personal safety in keeping with the highest standards, and will maintain a safety and health program, embodying proper attitudes towards injury and illness prevention.
- B. Guidelines. The Town will be responsible for leadership in the safety and health program and for providing safe facilities and guidelines for ensuring the safety of personnel. It is understood that safety is also the responsibility of each employee. Supervisors are encouraged to develop proper attitudes toward safety and health in themselves and in those they supervise to ensure that all operations are performed with the utmost regard for the safety of all personnel involved including themselves. Employees are expected to accept safety and health guidelines to prevent injuries in the workplace. Departments are encouraged to establish safety guidelines addressing any safety concerns unique to their work site.

C. Safety guidelines for municipal employees.

- (1) Learn the right way to do your job. Ask questions about things you do not understand.
- (2) Use the correct tools and equipment for the job. If not sure, ask.
- (3) Observe and follow recommended work procedures developed by your supervisor.
- (4) Keep your work area in good order.
- (5) Avoid horseplay and so-called practical jokes. There is nothing funny about an injury.
- (6) Report any unsafe conditions to your supervisor immediately.
- (7) Wear personal protective equipment as required including:

- | | |
|------------------|--------------------|
| Visibility vests | Eye protection |
| Hard hat | Face shields |
| Gloves | Hearing protection |
| Safety shoes | |

D. Safety Committee.

- (1) Composition. The Personnel Director will work with the Safety Committee consisting of department managers, directors and such functional employees as may be necessary to provide constructive input and to assure firsthand communication and action.
- (2) Purpose and function. The purpose of the Safety Committee will be:
 - (a) To arouse and maintain the interest of administration, management, supervision and functional workers in accident and injury prevention and keep them informed on safety matter.
 - (b) To meet on a regular basis to discuss accident and injury prevention, formulate safety policies for submittal and approval of top level administration.
 - (c) To review all accidents and injuries and develop preventive measures.
 - (d) To encourage all departments, divisions, and sections to actively participate in safety activities in their own enlightened self-interest.
 - (e) To provide a valid, two-way communication system between the Committee and administration and the workforce.
 - (f) To provide an opportunity for free discussion of accident and injury problems for the purpose of devising solutions and preventive measures.

- (g) To disseminate safety information to all departments and divisions along with their individual accident/injury records.
- (h) To receive reports from department or division managers concerning accident/injury investigation and to evaluate such reports for proper corrective action.
- (i) To report the findings, discussions and recommendations of the Committee to top level administration for information and action.
- (j) To assist all departments and divisions in developing and implementing a safety training and education system.
- (k) To encourage all departments and divisions to institute a planned system of hazard discovery and control through systematic observations of the workplace, job site or function.

§ 401-96. Disciplinary action.

- A. Discipline. It is the responsibility of all employees to observe the policies and regulations necessary for the proper operation of the departments in Town government.
- (1) Departmental responsibilities. The Manager of each department is responsible for the proper and efficient operations of their department for enforcing all policies and regulations. Supervisors are authorized to apply, with the approval of the appropriate departmental official, such disciplinary measures as may be necessary.
 - (2) Reasons for disciplinary action. Disciplinary action may be imposed upon an employee for conduct or actions which interfere with or prevent the Town from effectively and efficiently discharging its responsibilities to the public. The following shall be sufficient cause for disciplinary action:
 - (a) Neglect in the performance of the duties of the position to which the employee is assigned.
 - (b) Disregard for or frequent violations of Town department policies and regulations.
 - (c) Willful misuse, misappropriation, negligence, or destruction of Town property or conversion of Town property to personal use or gain.
 - (d) Frequent tardiness or absence from duty without prior approval.
 - (e) Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a proper supervisor, or other acts of insubordination.
 - (f) Habitual use of intoxicating beverages to excess or abuse of narcotics, drugs, or other controlled substances so as to interfere with job performance or the efficiency of Town service.

- (g) Use of alcoholic beverages, narcotics, drugs or other controlled substances while on duty.
- (h) Unsuitable conduct which interferes with effective job performance or has an adverse effect on the efficiency of the Town service.
- (i) Disregard for or frequent violations of Town bylaws or state laws.
- (j) Violation of privileged information or its use for private gain.
- (k) Failure to observe safety practices, including use of safety equipment such as eye protection or hearing conservation devices or any other safety equipment deemed necessary by the supervisor or appointing authority or designee.
- (l) Sexual harassment.
- (m) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

B. Procedures for disciplinary action.

- (1) Oral reprimand. Whenever grounds for disciplinary action exist, including but not limited to abuse of leave, absenteeism, insubordination, misconduct, or failure to follow established safety rules, and the supervisor determines that more severe action is not immediately necessary, the supervisor should orally communicate to the employee the supervisor's observation of the deficiency and offer assistance in correcting the deficiency. At this point some specific time period should be established between the supervisor and the employee during which the problem should be corrected before any further action is taken. Whenever possible, sufficient time for improvement should precede formal disciplinary action. No notation in the employee's personnel file is necessary. If no incidents of the behavior which gave cause for the oral reprimand occurs in a twelve-month period of time, the reprimand will be considered nullified.
- (2) Written reprimand. A written reprimand shall be addressed to the employee and will include: the charge; the specific behavior and the dates of the behavior (where appropriate) that support the charge; the warning that continuance of this behavior will result in more severe disciplinary action; an offer of assistance in correcting the behavior; any circumstances affecting the severity of the discipline; and advice on right of appeal. (See § 401-97.) A signed copy of the reprimand shall be sent to the Personnel Director and shall be included in the employee's personnel file, and the employee will have the opportunity to submit comments for the personnel folder. Both documents will be purged from an employee's file at the end of 12 months.
- (3) Suspension. The manager of a department or designee (division supervisors) may suspend an employee, without pay, for up to, but not exceeding, 30 calendar days. On or before the effective date of the suspension, the employee will be furnished with a written statement setting forth reasons for suspension, the effective dates of the suspension, and the date the employee should return to work. The statement will also include the charge; the specific behavior and the dates of the behavior

(where appropriate) that support the charge; the warning that continuance of this behavior will result in more severe disciplinary action; and offer of assistance in correcting the behavior; any circumstances affecting the severity of the discipline; and advice on right to appeal. (See § 401-97.) In certain instances, an immediate suspension may be warranted. (i.e., intoxication, assault, etc.) When this occurs, the employee may immediately be suspended, provided that the matter is coordinated with the Personnel Department prior to the suspension. The employee will be notified within one working day regarding the length, terms, and reasons for the suspension as well as advice on rights of appeal. (See § 401-97.)

- (4) Dismissal. The Town Manager or designee may terminate an employee after due consultation with the Personnel Director and the departmental manager recommending the dismissal. The employee must be given a written notice signed by the Town Manager specifying the effective date of the termination, the charge, the specific behavior and the dates (where appropriate) that support the charge, any circumstances affecting the severity of the discipline, and advice on right of appeal. (See § 401-97.)
 - (5) Disciplinary action is generally a progressive procedure; however, suspension or dismissal may be the initial step taken in a disciplinary action depending upon the severity of the grounds for disciplinary action.
 - (6) When any formal disciplinary action is taken, a copy will be forwarded to the Personnel Department and placed in the employee's official personnel file.
- C. Privacy and information. In all instances, both the employee's right to privacy and the right of the public to have access to public information shall be preserved, by observance of the appropriate statutes and laws governing both.

§ 401-97. Grievance and discrimination complaint procedures.

- A. Grievance and discrimination complaint rights. Any employee who feels that he/she has received inequitable treatment because of some condition of employment or who feels he/she has been discriminated against on the basis of race, color, national origin, age, sex, creed, handicap or any other nonmerit factor may personally, or through his/her representative, appeal for relief from that condition. A nonselected applicant for employment who believes he/she was unlawfully discriminated against in the examining and selection may also appeal. It is understood that issues involving the increase or decrease of general wage rates or salaries and issues not having to do directly and primarily with the day-to-day working life of the employee and relationships with his/her supervisor shall not be considered the subject of a grievance. The employee or applicant may be represented by a party of his/her choosing at any step in the procedure. Failure by the employee or applicant or his/her representative to proceed to a higher step within the time period specified will terminate the grievance. Failure by management to render a decision within the allotted time at any step constitutes denial, and the employee may then proceed to the next step.
- B. Grievance procedure. Unless otherwise provided for in an applicable labor agreement and except for probationary, seasonal or temporary employees, all grievances shall be

handled in accordance with the following procedures. Related grievances may be consolidated and processed as a single issue. Every effort will be made to resolve the grievance at the lowest possible level. The steps follow:

- (1) Informal procedure: When an employee feels aggrieved, he/she should contact his/her supervisor within three days of the incident causing the alleged grievance. The supervisor should discuss the issues and make a determination within one working day of being contacted.
 - (2) Step 1: If the issue remains unresolved, the employee may present his/her grievance to his/her department head. If the department head cannot make an immediate solution satisfactory to both parties, the employee shall resume his/her regular duties. If the dispute involves the employee's workload or schedule, he/she shall continue to work as assigned until the dispute shall be resolved. If the grievance is not resolved, the employee shall prepare a written statement of the grievance, which shall be submitted to the Personnel Board within seven working days of the immediate supervisor's decision.
 - (3) Step 2: The Personnel Board shall accept, review, and hear all such grievances, timely appealed; shall require and receive such documents as may pertain to the grievance; and may require the attendance of any Town official or employee it believes to have information; and may hold a hearing and receive testimony and recommend a disposition of the grievance to the appointing authority within 10 days of the completion of its investigation of the matter.
 - (4) Step 3: The appointing authority shall render a final decision on the matter within 10 working days after receipt of the Personnel Board's recommendation.
- C. Discrimination complaint procedure. All discrimination complaints shall be handled in accordance with the following procedure;
- (1) Step 1: An employee who feels that she/he has been discriminated against should report it to her/his supervisor. If the issue is not resolved to the satisfaction of the employee, or if the employee for any reason does not feel comfortable reporting said complaint to her/his supervisor, she/he should submit a written statement of the discrimination complaint within 10 working days of the date he/she becomes cognizant of the discrimination. The complaint must be submitted to the appointing authority or designee. The complaint must state the basis of the discrimination, the actions giving rise to the discrimination. An applicant who believes she/he has been discriminated against should report her/his complaint to the appointing authority or designee.
 - (2) Step 2: The appointing authority or designee is authorized to conduct the investigation and to require all employees of the department to cooperate with the investigation. Every attempt shall be made to complete the investigation within 15 workdays of receipt of the complaint. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group identified by his/her complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred; and any policies and practices related to

the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Sufficient information should be gathered through a survey of the general environment out of which the complaint arose, so that any improper discrimination in the organizational segment involved in the complaint can be detected, wherever possible, so that remedial action can be taken; and any allegation of discrimination not supported in any way by the facts can be identified as such so that the alleged discriminatory official can be exonerated. The scope of this survey may vary from case to case, depending on the circumstances encountered. Some cases may point up the need for a broad survey, covering the full range of significant personnel actions with which the alleged discriminatory official was involved (such as appointments, details, disciplinary actions, performance evaluations, promotions, and training assignments) in, for example, the two-year period immediately preceding the complaint. As a general rule, when the results of the investigation are inconclusive, additional investigation should be undertaken where this is feasible.

- (3) Step 3: The Equal Employment Officer will receive and consider the results of investigation and will render a written decision to the complainant and other involved parties within five workdays of receipt of the investigator's findings.
 - (4) Step 4: If the complaint is not resolved, the complainant may appeal to the Massachusetts Commission Against Discrimination and/or the Equal Employment Opportunity Commission, in accordance with approved procedures of such agency.
- D. Sexual harassment policy. It is the policy of the Town that no employee shall be subjected to sexual harassment. Sexual harassment is defined as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.
- E. Procedures for handling sexual harassment complaints. Every employee of the Town of Barnstable has the right to work in an environment free from sexual harassment. The Town has designated a Sexual Harassment Officer who will promptly and thoroughly investigate all complaints. The following sexual harassment complaint procedure has been developed specifically to insure an orderly and fair investigation process which protects the civil rights of all parties involved.
- (1) An employee who feels that she/he has been sexually harassed should report a sexual harassment complaint to her/his supervisor as soon as possible. If the issue is not resolved to the satisfaction of the employee, or if the employee for any reason does not feel comfortable reporting said complaint to his/her supervisor, she/he should report the complaint to the Sexual Harassment Officer. The employee will have a private meeting with the officer, at which time the officer will document the complaint. The officer's account of the incident(s) is meant as supporting documentation. The individual should prepare her/his own written

account of the occurrence. Both accounts should include a description of the incident(s), the name of the alleged harasser, times, locations, specific words/actions, and any witnesses to the occurrence(s). Both accounts will be considered part of the investigation.

- (2) The Sexual Harassment Officer will meet privately with the alleged harasser and inform him/her of the complaint. The alleged harasser should respond to the allegations, and the officer shall follow the procedures set forth in Subsection E(4) and (5) below. If the alleged harasser denies the charges, the Sexual Harassment Officer shall continue the investigation.
- (3) All investigation will be as thorough as necessary. All witnesses will be contacted as required during the course of the investigation. If the Sexual Harassment Officer determines that additional witnesses need to be contacted, such witnesses will be contacted after discussion with the complainant. Witnesses should be interviewed privately and individually, and neither the alleged harasser nor the complainant should be present. The statements of each witness should be documented.
- (4) Upon completion of the investigation, the Sexual Harassment Officer shall draft a report outlining her/his findings and suggesting a resolution. If sexual harassment is found to have occurred, the Sexual Harassment Officer will meet with the Town Manager to recommend appropriate disciplinary action. Appropriate disciplinary action to confirmed charges includes an oral warning or reprimand, a written warning or reprimand to be placed in a personnel file, sensitivity training, suspension, demotion, termination, or some combination of the above. The investigation report and all documentation shall be kept in the Sexual Harassment Officer's confidential files.
- (5) The Sexual Harassment Officer will write a summary of the investigation and the disciplinary action decided upon by the appointing authority. Both the complainant and the harasser shall receive the summary. If a complaint is substantiated, the summary shall go in the personnel file of the harasser. If the complaint is unsubstantiated, the summary shall be kept only in the Sexual Harassment Officer's confidential file.

F. Responsibilities of the Sexual Harassment Officer.

- (1) The Sexual Harassment Officer should make all efforts to publicize his/her availability and to maintain an accessible office.
- (2) The Sexual Harassment Officer shall handle each situation with discretion, sensitivity and due concern for the dignity of all parties involved.
- (3) In all instances involving alleged sexual harassment, the Sexual Harassment Officer is a neutral fact-finder. The officer should take care to set aside personal feelings towards the individuals and issues involved.
- (4) When an individual consults with the officer, the officer should provide the individual with a copy of the agency's sexual harassment policy. The officer should explain applicable grievance procedures in detail.

- (5) The Sexual Harassment Officer should inform each complainant that the officer will conduct an investigation of the complaint on behalf of the Town, but that the complainant also has the right to file a complaint with other forums which handle sexual harassment complaints. The officer may explain the differences between the forums. The officer should inform the complainant of the need to check on filing deadlines, as each agency has a specific time limit within which to file a complaint from the date of the alleged incident. The following agencies handle sexual harassment complaints:
 - (a) Massachusetts Commission Against Discrimination: MCAD is authorized by law to investigate complaints and to order appropriate remedies.
 - (b) Equal Employment Opportunity Commission: EEOC is authorized by law to investigate complaints and to order appropriate remedies.
 - (c) State Office of Affirmative Action: SOAA is authorized by executive order to investigate grievances of state employees.
 - (d) An individual may also file a complaint through the grievance procedure, if covered, in her/his collective bargaining agreement.
- (6) The Sexual Harassment Officer shall make available to all employees informational materials on sexual harassment policy. The officer should also have information from the agencies that handle sexual harassment complaints. The Sexual Harassment Officer should have such materials available for those persons filing an allegation as well as materials which can be used for general educational purposes for Town employees.
- (7) All investigations must be conducted as expeditiously as possible.
- (8) The Sexual Harassment Officer should keep an investigation as private as possible and should not discuss the complaint or the investigation with nonauthorized persons. Authorized persons shall include only the officer's supervisor and appointing authority, unless such individuals are parties to the complaints.
- (9) When conducting an investigation, the Sexual Harassment Officer shall maintain accurate and complete documentation of all conversations and correspondence regarding the complaint. The investigation file shall be kept in a safe, confidential location separate from regular personnel files.
- (10) When discussing the incident with the complainant, be sure to include the following questions:
 - (a) What happened?
 - (b) When did it happen?
 - (c) Who is the alleged harasser?
 - (d) How long have you known this individual?
 - (e) Where did the incident occur?

- (f) Did anyone see or hear the incident?
 - (g) Has something happened before?
 - (h) What did you do?
 - (i) What did you say?
 - (j) Did you talk with anyone about this incident?
 - (k) Did you document the incident? If not, the officer shall request that the complainant write down exactly what happened, where, when, with whom, etc., and submit it to the officer as soon as possible, preferably within a day or two.
 - (l) What remedy do you suggest?
- (11) When discussing the complaint with the alleged harasser, be sure to include the following:
- (a) Ask the alleged harasser to describe the incident:
 - [1] Where did the incident occur?
 - [2] When did the incident occur? (time/day)
 - [3] What did you do?
 - [4] What did you say?
 - [5] What did (complainant) do?
 - [6] What did (complainant) say?
 - (b) Did anyone see or hear the incident?
 - (c) Has something happened before with (complainant)?
 - (d) Have you spoken with anyone at work about this incident?
 - (e) Did you document the incident? If not, the officer shall request that the alleged harasser write down exactly what happened, where, when, with whom, etc., and submit it to the officer as soon as possible, preferably within a day or two.
- (12) The Sexual Harassment Officer shall make a determination following and investigation of the complaint. Possible findings include: a substantiated complaint, an unsubstantiated complaint, or a knowingly false claim. Upon completion of an investigation, the Sexual Harassment Officer shall draft a report outlining: the alleged incident(s) of harassment; the response of the alleged harasser to the complaint; the details of the investigation, including who was interviewed, what each interviewee said and how each reacted; supporting documentation; and the Sexual Harassment Officer's findings and recommended resolution.

- (13) If the officer finds that sexual harassment occurred, the officer shall meet with the appointing authority to recommend appropriate disciplinary action.
- (14) The officer shall send to the parties to the complaint a letter summarizing the investigation and the outcome, as well as any disciplinary action that will be taken. The officer's investigation report outlining the results of the investigation, the disciplinary action taken, and any supporting documentation shall remain in the Sexual Harassment Officer's confidential files.

§ 401-98. Records.

- A. Financial records. The Personnel Director shall be responsible for the maintenance of a financial record for each employee. This record shall include: position classification, annual salary, date of last increment, salary deductions, Workers' compensation or injury claims or payments, and any other financial records that may be necessary.
- B. Personnel records. The Personnel Director shall be responsible for the maintenance of personnel records, including the original application and resume for employment, the results of all tests and examinations taken to demonstrate qualifications, the employment history, current employment status, commendations, record of disciplinary actions, training records, required licenses and other records pertinent to the employee's service, including accumulated sick leave, vacation and other leave.
- C. Retention of records. Such records shall be maintained on a current basis for each employee. Records of former employees shall be maintained for at least three years following separation from the service. Records of disciplinary actions shall be purged from the personnel records as provided in § 401-81.
- D. Employee's right to see records. Any employee may arrange to see his/her personnel and financial records upon request to the Personnel Director and at reasonable intervals.
- E. Documentation of personnel actions. All personnel actions will be documented to insure accurate maintenance of personnel records relative to leave, employment, and personal status changes. Responsibility for documentation is as follows:
 - (1) Status changes.
 - (a) Requests for personnel actions such as changes in classification (i.e., reallocation of a position, abolishment of position or class, revision of a grade, or creation of new position, step increases, appointment, completion of probationary period, dismissal, suspension, or transfer (temporary or permanent) should be initiated by the department manager or other authorized official, generally at least two weeks prior to the effective date of such action, and forwarded to the Personnel Department. Signatures of the department manager, Director of Personnel, Director of Finance, and the Town Manager must be obtained on the personnel action form must appear on any personnel action, prior to becoming effective.
 - (b) Notices of personnel action such as resignations or changes in address, name, telephone number, marital status, dependents, etc., should be initiated by the

employee and submitted to the supervisor two weeks prior to the effective date of such action or as soon as possible. Department managers will forward the notice to the Personnel Department. Department managers should advise employees to report such changes, as well as adjustments in education and skills, whenever such changes occur to assure proper maintenance of records and personnel files.

- (c) The Personnel Director will document all personnel actions effected in the employee's personnel record.
- (2) Leave. Notices of use of leave or requests for leave should be initiated by the employee and submitted to their supervisor or designee prior to the commencement of the leave, as indicated in § 401-89.

§ 401-99. Conduct of employees.

- A. General policy. All employees are prohibited from engaging in any conduct which could reflect unfavorably upon the Town. Employees must avoid any action which might result in or create the impression of using public office for private gain, giving preferential treatment to any person, or losing complete impartiality in conducting Town business. Additional information can be found in the ethical guidelines of the Administrative Procedures.¹³
- B. Receipt of gifts.
 - (1) Employees are expressly prohibited from soliciting or accepting gifts, gratuity, favors, entertainment, loans, or any other item of monetary value from any person who has or may be seeking to obtain business with or privilege from the Town, or from any person within or outside Town employment whose interests may be affected by the employee's performance or nonperformance of official duties.
 - (2) Acceptance of nominal gifts in keeping with special occasions, such as marriage, retirement, or illness; food and refreshments in the ordinary course of business meetings; or unsolicited advertising or promotional material, e.g., pens, notepads, calendars of nominal intrinsic value, is permitted.
 - (3) Flower funds or gifts for fellow employees. Contributions made for such funds or special gifts are not prohibited. However, participation in such activities, including contributions for even nominal gifts to supervisors must be wholly voluntary on the part of each employee, and any gifts should be of minimal value.
 - (4) Supervisors and department managers. The policies described in all above sections shall apply to supervisors and department managers, appointed or otherwise. In addition, supervisors and department managers must avoid placing themselves in a position which could interfere with, or create the impression of interfering with, the objective evaluation and direction of their subordinates. No supervisor shall accept gifts from subordinates other than those of nominal value for special

13. Editor's Note: See Art. II, Code of Ethics.

occasions, and no supervisor or department manager shall borrow money or accept favors from any subordinate.

- C. Business activities and solicitation. No employee shall engage in any business other than his/her regular duties during working hours; this regulation specifically excludes such activities as solicitation of fellow employees, lending of money for profit or any similar activity.
- D. Outside employment. Upon proper notification to and at the discretion of the appointing authority or designee, an employee may engage in outside employment,. However, no employee may engage in additional employment which in any manner interferes with proper and effective job performance, results in conflict of interest, or may subject the Town to public criticism or embarrassment. If the appointing authority or designee determines that such outside employment is disadvantageous to the Town, then he/she shall so notify the employee in writing that the employee must terminate either outside employment or Town employment.
- (1) Preference of Town employment. Employees who engage in employment outside of regular working hours shall be subject to call to perform regular Town duties first.
 - (2) Injury and illness. The Town shall in no respect be liable nor grant injury leave in case of injury to any employee while engaged in outside employment, nor any occupational illness attributed to the outside employment.
- E. Privileged information. Employees may deal with plans and programs of significant public interest. Employees must not use this privileged information for their own financial advantage or to provide friends and acquaintances with financial advantages, or with information which could be used for financial advantage. If an employee finds that he/she has an outside financial interest which could be affected by Town plans or activities, he/she must immediately report the situation to his/her supervisor. Each employee is charged with the responsibility of insuring that he/she releases only information that should be made available to the general public. Violation of privileged information or use for private gain is just cause for discharge of the employee. (Freedom of information and privacy laws are to be observed.)
- F. Use of property. Employees, supervisors and department managers will not, directly or indirectly, use or allow the use of Town property of any kind for other than official activities.
- G. Political activity.
- (1) All employees are entitled to exercise their rights as citizens to express their opinions and to cast their votes. Town employees may not:
 - (a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
 - (b) Directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

- (c) Use Town resources, equipment, or money for any election or campaign purposes while on Town time or in a Town uniform. Supervisors and managers may not at any time participate or contribute money, labor, time, or other valuable thing to any person campaigning for a position on the Town Council of the Town of Barnstable.
- (2) Town employees may: unless prohibited or restricted by the Charter, statute or ordinance, seek election to any elective office, provided that the employee shall resign or take an unpaid leave of absence if the campaign for the office or service in it causes, in the judgment of the appointing authority, any articulable adverse effects in the employee's performance of duty. **[Amended 8-28-2007]**

§ 401-100. Employee incentive: BEST program.

A. Barnstable Employee Suggestions for Teamwork (BEST).

- (1) BEST is an initiative that solicits and reviews employee suggestions and awards cash or recognizes employees for ideas that save money, generate revenue or benefits the Town in some other way. BEST is created to tap the resourceful ideas of employees and to encourage teamwork. Barnstable's employees are the experts at what they do and probably have seen or know of a way to make this organization the best it can be. The BEST program is designed to meet certain organization objectives:
 - (a) Ensure the level of quality service being delivered to the residents of Barnstable;
 - (b) Reduce the cost of operation or production whenever possible;
 - (c) Increase the amount of communication between and among employees and management;
 - (d) Increase the level of job satisfaction among all employees;
 - (e) Increase employee morale, safety, health, and productivity;
 - (f) Recognize employees for their creativity;
 - (g) Allow employees to participate in the decision-making process of the organization and encourage bottom-up process;
 - (h) Create an environment which encourages innovation and creativity.
- (2) Program operation. The BEST program will be administered by a program coordinator and a BEST Committee. The following is a brief outline of how the program operates:
 - (a) All suggestions will be submitted on the standard BEST suggestion form.¹⁵ All suggestions will be forwarded directly to the program coordinator,

15. Editor's Note: The BEST suggestion form is included at the end of this chapter.

who will immediately date and time stamp each suggestion, make preliminary determination concerning eligibility, immediately notify the employee appropriately, and thank the employee for participating in the program.

- (b) The program coordinator will study the suggestion following the procedures outlined in these procedures. The program coordinator then completes a standard BEST evaluation form listing all tangible and intangible benefits of the suggestion and stating whether or not the suggestion can be implemented. Finally, the program coordinator will report his/her findings back to the department manager for review.
 - (c) The program coordinator will then forward the suggestion to the appropriate department manager to be evaluated.
 - (d) The department manager will check the evaluation for thoroughness and fairness. He or she will then sign and return the evaluation to the program coordinator with appropriate comments or further information.
 - (e) The program coordinator will schedule review and evaluation of the suggestion at the next BEST Committee meeting.
 - (f) The BEST Committee will review the findings relating to each suggestion, evaluate the suggestion and recommend an award, if appropriate. The Committee may request additional information if further information proves necessary to determine the merits of a suggestion.
 - (g) The Finance Department will review any suggestions recommended for award.
 - (h) The department manager and the suggester will be notified of the decision made by the BEST Committee. The award will then be presented to the suggester. Awards shall require final approval by the Town Manager. Awards will be presented to employees by the Town Manager and department manager.
 - (i) An entire cycle with a suggestion must be completed within 122 calendar days of initial submittal.
- B. Program coordinator. The BEST program coordinator has the following duties and responsibilities:
- (1) To notify employees of the disposition of suggestions;
 - (2) To develop policy and procedures;
 - (3) To serve as chairperson on the BEST Program Committee;
 - (4) To train employees to be suggesters;
 - (5) To develop and maintain records and an automated recordkeeping system;

- (6) To continually promote and maintain the program; and
 - (7) To prepare management reports or presentations to the Town Manager on a quarterly basis.
- C. Program Committee. The BEST Program Committee has the following duties and responsibilities:
- (1) To meet on a monthly basis;
 - (2) To review and process all suggestions recommended for award by the program coordinator within 34 calendar days from the date the suggestion is returned to the BEST office;
 - (3) To review policy and procedures and make the necessary revisions; and
 - (4) To hear all requests for appeal by suggesters and decide on their merits.
- D. Definitions. As used in this section, the following terms shall have the meanings indicated:
- AWARD — The monetary or nonmonetary settlement presented to the suggester for a suggestion that is accepted and implemented.
- ELIGIBILITY — Refers to the immediate acceptance or rejection of a suggestion or suggester.
- EVALUATION — The action taken to determine the feasibility and benefits of implementing a suggestion.
- IDEA and SUGGESTION — Are used interchangeably.
- SUGGESTER — The employee, a current or potential participant in the suggestion program.
- SUGGESTION — An idea which poses a problem, potential problem or opportunity; presents a solution; is written on the prescribed suggestion form; is signed by the suggester(s); and has been received and date/time stamped in the appointed suggestion office.
- E. Forms.
- (1) The program requires that all suggestions be submitted on a standard BEST suggestion form.¹⁵ The form will include instructions for submitting a suggestion and the pertinent rules of the program. Space will also be provided to describe the present procedures or methods of operation and sufficient space to write the new method or improvement.

15. Editor's Note: The BEST suggestion form is included at the end of this chapter.

- (2) A BEST suggestion evaluation form will be completed and attached to all eligible suggestions. This form will be signed by the program coordinator and the department manager.
- (3) The program coordinator can develop and install additional forms into the BEST program.

F. Eligibility.

- (1) The suggestion. The general eligibility criteria for suggestions are as follows:
 - (a) A suggestion may be entirely new or may be a new application of an old idea which can be adapted for the Town of Barnstable's benefit. All suggestions will be accepted for review.
 - (b) All suggestions must pertain to conditions over which the Town of Barnstable has control and not to those regulated by political or private concerns and businesses.
 - (c) Suggestions relating to any activity of the Town of Barnstable may be submitted.
 - (d) In case of duplications, the suggestion that is received first will be considered for award.
 - (e) Suggestions may be submitted by a group of employees or by individuals.
 - (f) The eligibility of unusual or borderline suggestions will be determined by the BEST Committee and the program coordinator.
 - (g) The following items are ineligible for suggestions:
 - [1] Those ideas suggested which are currently under active consideration by the department affected.
 - [2] Those ideas which are duplicates of suggestions submitted within a two-year period.
 - [3] Those suggestions which express personal grievances, positions classification, or salary recommendations.
 - [4] Those which do not propose a method or way to make the improvement.
 - [5] Those which correct a condition that exists only because established procedure is not being followed.
 - [6] Matters which are the result of assigned or contracted auditing, studies, surveys, reviews, or research.
 - [7] Those that propose method or materials that require costly testing prior to acceptance and implementation, that is, the suggestions must be cost-effective.

[8] Changes in legislated fees or taxes.

- (2) The suggester. All current employees of the Town of Barnstable, with certain exceptions as described below, are eligible to participate in this program.
 - (a) Divisional supervisors are responsible for planning and developing ideas relating to their operations as a part of their regular duties. Therefore, divisional supervisors will be eligible to submit only suggestions which do not apply to their areas of responsibility.
 - (b) Those employees serving on the BEST Committee and are directly connected with the BEST program are not eligible to submit suggestions.
 - (c) Assistant department managers, department managers, the Assistant Town Manager(s), and the Town Manager are ineligible to participate in the program.
 - (d) A determination as to the eligibility of a suggester will be made by the program coordinator. Any employee may appeal this determination to the program coordinator and the Personnel Director, in that order.
 - (e) Any eligible employee submitting a suggestion which is placed into effect shall not lose his/her eligibility for a monetary award by reason of termination of employment or by becoming ineligible subsequent to submission for the suggestions, if the suggestion is implemented within two years of submittal.

G. Responsibilities of the suggester:

- (1) Submit the signed suggestion to BEST using the proper form(s).
- (2) Describe a problem, its solution, and the benefits to be gained, in as much detail as possible.
- (3) Report safety hazards immediately to the proper person, then submit the safety suggestion.

H. Rights of the suggester:

- (1) To receive a fair, thorough evaluation of an idea.
- (2) To remain anonymous until an award has been granted, unless indicated otherwise on the suggestion form.
- (3) To request a reinvestigation if the suggester feels that the tangible benefits are greater than that determined by the evaluation.
- (4) To request reinvestigation of a nonadopted suggestion, if the suggester feels the suggestion has not received a fair hearing or that additional information will clarify the idea and make acceptance more likely.
- (5) To obtain patent rights to the idea, although the Town of Barnstable has the right to use the idea at no further cost.

- (6) To appear before the BEST Committee or program coordinator.

I. Determining awards.

- (1) Suggestions deemed eligible for award will be evaluated by the benefit received.
 - (a) Tangible benefits: cost savings or revenue generating. The award will be based on 15% of the first year's net cost savings or revenue generated, with a maximum of \$5,000 dollars per suggestion.
 - (b) No final award will be given until the suggestion's savings have been actualized. The actualized savings report will be reviewed by the Finance Department.
 - (c) The award shall be made from the account to which the savings or revenue accrue.
- (2) If the first year's net estimated benefits were incorrect and the error resulted in the underpayment to the employee, the employee will be paid the appropriate additional award amount, upon an audit conducted annually by the Finance Department, in consultation with the BEST Committee and program coordinator. In the case of group suggestions all eligible suggesters who have signed the suggestion form will receive an equal share of the cash award.
- (3) The Town of Barnstable reserves the right to amend the BEST program award structure at any time and without prior notice.
- (4) BEST awards made to Town of Barnstable employees for suggestions are subject to FICA and income tax withholding.

J. Evaluation and implementation.

- (1) The evaluation process will answer the following questions concerning any suggestion:
 - (a) Is the suggestion an improvement over what currently exists?
 - (b) Can the suggestion be implemented?
 - (c) What are the benefits (tangible and/or intangible)?
 - (d) If the suggestion is not an improvement or cannot be implemented, why not?
- (2) Although each suggestion is different and will have to be evaluated for each specific situation, an overview of the evaluation process is as follows:
 - (a) All suggestions will be evaluated in accordance with the policy and procedures established by the BEST coordinator.
 - (b) The program coordinator will send a copy of each suggestion, with a blank evaluation form, to the department manager in the affected department(s).

- (c) Once the evaluation by the department manager has been completed, a report will then be forwarded to the BEST program coordinator.
 - (3) BEST program guidelines allow 60 calendar days to evaluate any suggestion. If the program coordinator determines that additional time is required to evaluate or test the suggestion, he/she must notify the BEST Committee immediately with an approximate date of completion.
 - (4) BEST Program guidelines allow 28 calendar days for the initial implementation of approved suggestions. It is important that this time period be adhered to as closely as possible since no suggesters will be paid awards until the suggestion has been implemented and evaluated. If additional time is needed for implementation it should be coordinated through the BEST program coordinator.
- K. Role of the program coordinator. The program coordinator's responsibility is to gather facts, make a decision on the facts and, if appropriate, have the suggestion implemented. The program coordinator shall give careful consideration to the following:
- (1) Be objective, do not let personalities influence the evaluation;
 - (2) Approach the evaluation in a positive manner and look for ways the idea can be used rather than way it cannot;
 - (3) Thoroughly investigate all possibilities for adoption;
 - (4) Review records, files, and other background documentation pertaining to the suggestion;
 - (5) Talk to the employees involved in the current process, operation or activity;
 - (6) Be factual. A factually complete evaluation reveals to the suggester that the idea received a professional and objective review.
- L. Legal aspects.
- (1) The Town of Barnstable has the exclusive right to determine award policy and structure, and retains the right to revise the terms and conditions of the program, or to terminate it any time without notice.
 - (2) The decisions and actions of the BEST Committee are final and conclusive, including eligibility of employees, acceptance or rejection of a suggestion, the value or benefit of a suggestion, and the amount and type of award.
 - (3) All suggestions must be signed, in the space allotted at the bottom of the suggestion form, to show that the suggester has read and agrees to the terms printed on the back of the form and in the space just above the signature.
 - (4) In case of duplications, the suggestion that is received first will be considered for award. In case duplicated suggestions are received at the same exact time, the award will be divided equally.

- (5) The life of a suggestion is 24 months from the date it was stamped in as received by the BEST office. The suggester may ask for a two-year extension by sending a memorandum or a suggestion form with the number of the suggestions and a request for extension.
- (6) A suggester is eligible and will receive any awards due, regardless of employment status at the time of implementation; i.e., the suggester may be on leave of absence or terminated and still be eligible to receive the award.
- (7) In case of a suggester's death prior to adoption and implementation, the award will be made to his or her beneficiary.
- (8) The suggester is free to seek patent or copyright protection for his or her suggestion, but the Town of Barnstable has the right to use the idea without further cost, once it has been awarded.

§ 401-101. Vacancy saving initiative.

(Reserved)

ARTICLE IX

Procurement Policy and Procedures ¹³

[Amended 12-7-2010]

§ 401-102. General statement of policy.

It is the policy of the Town of Barnstable to procure goods and services that help the organization deliver quality, competitively priced services to the citizens and visitors of Barnstable. This set of procurement policies and procedures is intended to minimize risks and realize efficiencies by way of superior management consistent with the Commonwealth of Massachusetts Chapter 30B of the General Laws: Uniform Procurement Act; Chapter 30, § 39M; and Chapter 149, §§ 44A through 44M. The Town of Barnstable's management of procurement will be conducted with the primary objectives of purchasing competitively priced, quality goods and/or services in quantities necessary to accomplish service delivery objectives. The Town of Barnstable recognizes that the use of taxpayer funds deserves the greatest care in procuring goods and services which enable the Town to attain its objectives in a cost-effective manner.

§ 401-103. Purpose; supplemental principles.

A. Purpose. The underlying purposes of this policy are:

13. Editor's Note: Included at the end of this chapter are documents required for procurements, such as Notice to Bidders, General Specifications for Supplies and Services, Detailed Specifications for (Supply/Service Item), Bid Sheet, Certificate of Noncollusion, State Taxes Certification Clause, and Agreement Between Contractor and Owner.

- (1) To foster effective broad-based competition within the marketplace;
 - (2) To simplify, clarify, and modernize the law governing procurement by the Town of Barnstable;
 - (3) To permit the continued development of procurement policies and practices;
 - (4) To make the procurement policies consistent with Chapter 30B of Massachusetts General Laws, Uniform Procurement Act; Chapter 30, § 39M; Chapter 149, §§ 44A through 44M; Chapter 7, § 8, State Designer Selection Board Law, and other applicable laws;
 - (5) To provide for increased public confidence in the procedures followed in public procurement;
 - (6) To ensure the fair and equitable treatment of all persons who interact with the procurement system of the Town of Barnstable;
 - (7) To ensure compliance with Minority Business Enterprise/Women Business Enterprise purchasing goals, as well as compliance with the Town's Contract Compliance/MBE Work Plan;
 - (8) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Town of Barnstable; and
 - (9) To provide safeguards for the maintenance of a procurement system of quality and integrity.
- B. Supplementary general principles of law applicable. Unless displaced by the particular provision of the Town Charter, ordinances, and Administrative Code, the principles of law and equity, and law relative to capacity to contract, agency, fraud, misinterpretation, duress, coercion, mistake, or bankruptcy shall supplement the provision of this policy.

§ 401-104. Good-faith requirement.

This policy requires all parties involved in the negotiation, performance, or administration of Barnstable contracts to act in good faith.

§ 401-105. Application of policy.

- A. General application. This policy applies only to contracts solicited or entered into after the effective date of this policy unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- B. Application of this policy to expenditures. This policy applies to expenditures of all public funds, including federal and state assistance monies, except acting through a governmental body as defined in this policy, under any contract, except that this policy applies to either grants or contracts with other governments, except as provided in § 401-143, Intergovernmental relations. This policy does not prevent the Town from

complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

§ 401-106. Effective date.

This policy becomes effective on June 30, 1993.

§ 401-107. Determination.

Written determination required by this policy shall be retained in the appropriate official contract file of the Chief Procurement Officer.

§ 401-108. Definitions.

- A. The words defined in this section have the meanings set forth below whenever they appear in this policy:

ASSISTANT PROCUREMENT OFFICER — Any person duly authorized by the Chief Procurement Officer to exercise certain procurement responsibilities and make written determinations with respect thereto pursuant to this policy and further pursuant to and in accordance with Massachusetts General Laws, Chapter 30B, Chapter 30, Section 39M, and Chapter 149. The term also includes an authorized representative acting within the limits of authority.

AWARDING AUTHORITY — The Town Manager, Airport Commission and/or School Committee of the Town of Barnstable, or their duly authorized procurement officers.

CHANGE ORDER — A written order approved and signed by the awarding authority, directing the contractor to make changes which the changes clause of the contract authorizes the awarding authority to order without the consent of the contractor.

CHIEF PROCUREMENT OFFICER — The person holding the position created in § 401-110, Appointment, tenure, and removal of Chief Procurement Officer, as manager of the central procurement function of the Town, and possessing all the authorities vested in chief procurement officers generally and specifically under MGL c. 30B, § 39M, or Chapter 149.

CONSTRUCTION — The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

CONTRACT — All types of Town agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

CONTRACT MODIFICATIONS — Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

CONTRACTOR — Any person having a contract with the Town of Barnstable.

GRANT — The furnishing by the Town of Barnstable, whether financial or otherwise, to any person to support a program authorized by law of money or anything of value. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

IFB — The acronym for "invitation for bid" and means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

LPA — The acronym for "limited purchase allowance."

PURCHASE ORDER — A contractual commitment by a using agency to encumber funds for future use with the purpose of procurement of goods or services. Also referred to as a "PO."

PURCHASING AGENCY — Any department other than the awarding authority which is authorized by this policy or its implementing regulations, or by way of delegation from the awarding authority, to enter into contracts.

PURCHASING AGENT — The Town Manager, or his or her designee, who is authorized and responsible for the procurement of supplies and services for the Town.

SUPPLIES — All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

TOWN — The Town of Barnstable, Massachusetts.

USING AGENCY — Any governmental body of the Town which utilizes any supplies, services, or construction procured under this policy.

VENDOR — Any person or company that sells goods or services to the Town.

- B. Other definitions of terms can be found in the Model Procurement Code for State and Local Governments (1987) published by the American Bar Association.

§ 401-109. Public access to procurement information.

Procurement information is public information except as provided in the Massachusetts General Laws and Section 8-9, Open Meeting of the Voters, of the Town Charter and shall be available to the public as provided in these statutes and ordinances.

§ 401-110. Appointment, tenure and removal of Chief Procurement Officer.

The Town Manager shall appoint the chief procurement officer, pursuant to this policy and consistent with Massachusetts General Laws, Chapter 30B. The Chief Procurement Officer shall be any person with demonstrated executive and organizational ability. The Chief Procurement Officer shall be a full-time employee of the Town and serve at the pleasure of the Town Manager.

§ 401-111. Authority of Chief Procurement Officer.

- A. Principal procurement officer of the Town. The Chief Procurement Officer (CPO) shall serve as the central procurement officer of the Town of Barnstable, exercising those authorities and responsibilities vested in chief procurement officers pursuant to Massachusetts General Laws, Chapter 30B. The CPO shall ensure compliance of all aspects of Town purchasing, by Assistant Procurement Officers, as well as compliance with this policy by all departments of the Town.
- B. Promulgation of operational procedures. Consistent with the provisions of this policy, the Chief Procurement Officer may adopt operational procedures governing the internal functions of procurement.
- C. Duties. Except as otherwise specifically provided in this policy, the Chief Procurement Officer shall:
 - (1) Supervise the procurement, leasing, renting, and sale of all supplies, services, and construction needed by the Town;
 - (2) Exercise general supervision and control over all inventories of supplies belonging to the Town;
 - (3) Recommend to the awarding agency the sale, trade, or disposition of surplus supplies belonging to the Town; and
 - (4) Establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction.
 - (5) Sign all contracts to certify compliance with all Massachusetts General Laws Chapter 30B requirements.

§ 401-112. Delegation of authority.

The Chief Procurement Officer, with the approval of the Town Manager, may delegate authority to designees or to any department, agency, or official.

§ 401-113. Centralization of procurement authority.

In respect to all departments under the jurisdiction of the Town Manager, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in, or exercised by, any Town governmental body are transferred to the Chief Procurement Officer, as provided in this policy.

§ 401-114. Authority to contract for certain services.

- A. General authority. For the purpose of procuring the services of medical, legal, and financial services, only the specified departments may act as purchasing agency and contract on its own behalf for these services. The purchasing agency should consult with

the Chief Procurement Officer or a designee of such officer when procuring such services.

- B. Approval of contract for legal services. No contract for the services of legal counsel may be awarded without the approval of the Town Attorney and the Town Manager.
- C. Approval of contract for financial services. No contract for the services of financial counsel may be awarded without the approval of the Director of Finance.

§ 401-115. Duties of Town Attorney.

The Town Attorney or his/her designee shall serve as legal counsel and provide necessary legal services to the Chief Procurement Officer, including but not limited to approval of contracts for goods and services as to form and monitoring compliance of contract agreements with relevant laws.

§ 401-116. Common state law references.

The four most commonly used references for municipal procurement are MGL c. 7, § 38; MGL c. 30B; MGL c. § 39M; and MGL c. 149, §§ 44A through 44M. Procurements of various types shall be governed by these Massachusetts General Laws.

§ 401-117. Source selection and contract formation.

- A. Methods of source selection. Unless otherwise authorized by law, all Town contracts shall be awarded by competitive sealed bidding, pursuant to § 401-118, Competitive sealed bidding for supplies and services for bid values over \$10,000, except as provided in:
 - (1) Section 401-119, Competitive sealed and selection proposals for bid values over \$10,000;
 - (2) Section 401-120, Small purchases (contracts under \$10,000);
 - (3) Section 401-121, Sole source procurements;
 - (4) Section 401-122, Emergency procurements; and
 - (5) Section 401-138, Acquiring real property.
- B. These procurement procedures can also be used for the purchase of construction materials up to \$25,000.

§ 401-118. Competitive sealed bidding for supplies and services for bid values over \$10,000.

- A. Conditions for use. Contracts shall be awarded by competitive bidding except as otherwise provided in § 401-117, Source selection and contract formation.

- B. Invitation for bids. An invitation for bid (IFB) shall be issued and shall include a purchase description, all contractual terms and conditions applicable to the procurement, and set minimum requirements for bidders.
- C. Public notice. Adequate public notice of the IFB shall be given a reasonable time prior to the date set for the opening of bids. The minimum amount of time is two weeks before bids are due. Such notice shall include publication in a newspaper of general circulation a reasonable time prior to bid opening. If the contract value will be \$100,000 or more, the Town must also publish in the Goods and Services Bulletin published by the Office of the State Secretary (Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108). Consistent with MGL c. 30, § 39M, the notice for the purchase of construction materials, public works projects, and building projects with a value more than \$25,000 shall also be published in a newspaper of general circulation, and the Central Register. The public notice should include:
- (1) A statement of where, when, and for how long bids may be obtained;
 - (2) A description of the supply or service;
 - (3) A notice that the Town reserves the right to reject any or all bids; and
 - (4) The identification of any board, committee, commission or other body which must approve the award.
- D. Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection.
- E. Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as allowed in this policy. Bids shall be evaluated based on the requirement set forth in the IFB, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the IFB.
- F. Correction or withdrawal of bids. Correction or withdrawal of inadvertently erroneous bids before bid opening, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulation promulgated by the Chief Procurement Officer. Correction or modifications must also be sealed when submitted. A bidder who wishes to withdraw his/her bid must do so in writing before the bid opening. After bid opening no changes in bid prices or other provision of bids shall be permitted.
- G. Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. The following approval procedures must be followed for award:

- (1) Procurements under \$10,000. The purchase order, made out to the desired vendor, shall be forwarded to the manager of the purchasing agency for acceptance of the quote and signing of the purchase order. The signed forms must be returned to and kept on file in the purchasing agency.
 - (2) Procurements of \$10,000 or more. Prior to issuance of the IFB or RFP, all associated documentation, including the public notice, shall be forwarded to the department purchasing officer for review and forwarding to the CPO for approval prior to release. The bids received in response to an IFB shall be opened in the presence of at least an Assistant (or department) Procurement Officer. The head of the purchasing agency shall then evaluate the bids and provide the Assistant Procurement Officer with a recommendation for award. The Assistant Procurement Officer shall then forward it to the Chief Procurement Officer for his/her review and approval of the notice of award. All contracts shall be signed by the Chief Procurement Officer.
- H. Contract execution. Following notification of the award to the successful bidder, the Town must execute a written contract containing all the terms and conditions stated in the bid proposal.
- I. Recordkeeping. A file of written documents required by Massachusetts General Laws Chapter 30B must be maintained for a period of six years from the date of final payment of the contract. These documents should include:
- (1) Invitation for bids, including any amendments;
 - (2) Justification, if any, for use of proprietary specification;
 - (3) Public notice and advertisement;
 - (4) Goods and Services Bulletin notice, if different from the advertisement;
 - (5) Record of the bid opening;
 - (6) All bids received, including the certified statement of each bidder that the bid was made in good faith;
 - (7) Any bid corrections, modifications, withdrawals, and notices of bid corrections, etc.;
 - (8) Any notice of bid rejections or cancellation;
 - (9) Notice of award; and
 - (10) The executed contract.

§ 401-119. Competitive sealed and selection proposals for bid values over \$10,000.

- A. Conditions for use. If the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer above the level of Assistant Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not

advantageous to the Town, a contract may be entered into by sealed proposals. The Chief Procurement Officer may decide that it is either not practical nor advantageous to the Town to procure specified types of supplies, services, or construction by competitive sealed bidding.

- B. Request for proposals. Proposals shall be solicited through a request for proposals (RFP).
- C. Proposal requirements. The RFP should state the requirement for bid bonds, certifications, transmittal letters, warranty information, insurance information, references, etc. The proposer must submit separate price and nonprice (or technical) proposals. A proposal which fails to meet the submission requirements should be considered nonresponsive.
- D. Public notice. Adequate public notice of the RFP shall be given in the same manner as provided in § 401-118C, Public notice.
- E. Receipt of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerers during the process of negotiations. A register of proposals shall be prepared, in accordance with regulations promulgated by the Chief Procurement Officer, and shall be open for public inspection after contract award.
- F. Evaluation factors. The RFP shall state the relative importance of the evaluation factors.
- G. RFP distribution. The RFP must be made available on an equal basis to all who request a copy. A record should be kept of who received the documents.
- H. Designation of individuals responsible for evaluation. The Chief Procurement Officer shall select one or more individuals responsible for evaluating the nonprice, or technical, proposals.
- I. Discussion with responsible offerers and revisions to proposals. As provided in the RFP, and under regulation promulgated by the Chief Procurement Officer, discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no discussion of price nor disclosure of any information derived from proposals submitted by competing bidders.
- J. Negotiation. The contract may be conditioned on successful negotiation of revisions to the plan of service identified by the evaluators during the proposal evaluation phase of the process. Only the plan of services is subject to negotiation.
- K. Award. Award shall be made to the responsible offerer whose proposal is determined in writing to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. A written explanation must be prepared if the proposal with the lowest price is not selected.

- L. Multistep sealed bids. When it is deemed impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- M. Execution and recordkeeping. Execution of the RFP and recordkeeping shall be the same as stated in § 401-118H and I.

§ 401-120. Small purchases (contracts under \$10,000).

Any procurement not exceeding the amount established by regulation may be made in accordance with small purchase procedures promulgated by the Chief Procurement Officer; provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

- A. Procurements of \$1,000 to \$10,000. Procurements between \$1,000 and \$10,000 in value must be made by seeking telephone or written quotes from at least three prospective suppliers. The contract must be awarded to the lowest responsible and responsive bidder/offerer.
- B. Procurements of less than \$1,000. Procurements of less than \$1,000 should be based on sound business practice. The law does not require competition for these small purchases, but it is encouraged. In addition, some basis for determining that supplies and services are being purchased at reasonable prices should exist.

§ 401-121. Sole source procurements.

A contract with a value under \$10,000 may be awarded for a supply, service, or construction item without competition when, under regulations promulgated by the Chief Procurement Officer, the manager of a purchasing agency, or a designee of either officer above the level of the Procurement Officer, determines in writing that there is only one source for the required supply, service, or construction item.

§ 401-122. Emergency procurements.

Notwithstanding any other provision of this policy, the Chief Procurement Officer, the manager of a purchasing agency, or a designee of either officer, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Chief Procurement Officer, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The record of an emergency procurement must be submitted as soon as possible to the Goods and Services Bulletin for publication.

§ 401-123. Cancellation of invitations for bid or request for proposals.

An invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the Town in accordance with regulations promulgated by the Chief Purchasing Officer. The reasons therefor shall be made part of the contract file.

§ 401-124. Responsibility of bidders and offerers.

- A. Determination of nonresponsibility. A written determination of nonresponsibility of a bidder or offerer shall be made in accordance with regulations promulgated by the Chief Procurement Officer. The unreasonable failure of a bidder or offerer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offerer.
- B. Right of nondisclosure. Information furnished by a bidder or offerer pursuant to this section shall not be disclosed outside of the office of the Chief Procurement Officer or the purchasing agency without prior written consent by the bidder or offerer.

§ 401-125. Prequalification of suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction based on historical performance and financial standing. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

§ 401-126. Security.

More specific requirements can be found in MGL c. 30, § 39M, and MGL c. 149, §§ 44A through 44H.

- A. Requirement for security.
 - (1) Bid security may be required for competitive sealed bidding, and is required for construction/building contracts. Bid security shall be a bond provided by a surety company authorized to do business in Massachusetts, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Town.
 - (2) Performance security is required on building projects.
 - (3) Payment security is required on all public works and building projects.
- B. Amount of bid security.
 - (1) Bid security shall be in an amount equal to at least 5% of the bid price for construction contracts as required by MGL c. 30, § 39M, and MGL c. 149, §§ 44A through 44H. Requirements for other types of contracts should be similar.
 - (2) Performance security shall be equal to 100% of the contract price for building projects.

- (3) Payment security shall be equal to 50% of the contract price for public works projects, and equal to 100% of the contract price on all building projects.
- C. Rejection of bids for noncompliance with bid security requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

§ 401-127. Withdrawal of bids.

After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in § 401-118F, Correction or withdrawal of bids. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

§ 401-128. Types of contracts.

Subject to the limitations of this section, any type of contract which will promote the best interests of the Town may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Town than any other type or that it is impractical to obtain the supplies, services, or construction required except under such a contract.

§ 401-129. Approval of accounting system.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Chief Procurement Officer, the manager of a purchasing agency, or a designee of either officer, that:

- A. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- B. The proposed contract's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

§ 401-130. Multi-term contracts.

- A. Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the Town, provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. Any contract in excess of three years including any renewal, extension, or option provision must be authorized by the Town Council prior to the solicitation for bids or proposals.

- B. Determination prior to use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
- (1) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (2) That such a contract will serve the best interest of the Town by encouraging effective competition or otherwise promoting economies in Town procurement.
- C. Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

§ 401-131. Right to inspect facilities of contractors and subcontractors .

The Town may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Town.

§ 401-132. Right to audit records.

- A. Audit of cost or pricing data. The Town may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data, to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- B. Contract audit. The Town shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

§ 401-133. Finality of determination.

The determinations required by § 401-132 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§ 401-134. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerers, a notice of the relevant facts shall be transmitted to the Attorney General.

§ 401-135. Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved the Town Attorney. All retained documents shall be made available to the Town Attorney or a designee upon request and proper receipt therefor.

§ 401-136. Record of procurement actions.

- A. Maintenance of records; duration. The Chief Procurement Officer shall maintain a record listing all contracts made under § 401-121, Sole source procurements, or § 401-122, Emergency procurements, for a minimum of five years.
- B. Contents of record. The record shall contain:
 - (1) Each contractor's name;
 - (2) The amount and type of each contract; and
 - (3) A listing of the supplies, services, or construction procured under each contract.

§ 401-137. Real property acquisition and disposition.

Guidelines set by Massachusetts General Laws, Chapter 30B. Real property includes land and buildings, and fixtures attached to land and buildings. Chapter 30B does not apply to eminent domain and tax title takings, nor to a redemption or auction of tax title property authorized under the provisions of Chapter 60 of the General Laws. The Town, authorized by Charter, may acquire or dispose of real property; Chapter 30B has no effect on who may undertake or approve a real property transaction. Under Chapter 30B, the Town must acquire and dispose of real property by soliciting proposals. The Town of Barnstable's Procurement Policy should be consulted for particular procedures.

§ 401-138. Acquiring real property.

The following procedures apply to the acquisition of real property or an interest in real property by rental or purchase when the cost of the acquisition exceeds \$500:

- A. Determine the Town's needs.
- B. Develop the request for proposal (RFP). An RFP must include what is desired (the specifications), evaluation criteria, submission requirements and contract terms and conditions.
- C. Advertise for proposals.

- (1) The advertisement must be placed in a newspaper with a circulation sufficient to inform the residents of Barnstable. It must be published at least once a week for two consecutive weeks preceding the day established for the opening of proposals. The advertisement must:
 - (a) Specify the geographical area desired for acquisition;
 - (b) Define the terms and conditions of the proposed transaction; and
 - (c) State the time and place for submission of the proposals.
 - (2) In acquisitions involving more than 2,500 square feet, an advertisement must also be published, at least 30 days before the opening of proposals, in the Central Register published by the Secretary of State.
- D. Exceptions to advertising requirements. The advertising period can be shortened, or waived, under the following conditions:
- (1) An emergency exists and the time needed to comply with the requirements would endanger the health or safety of people or their property; or
 - (2) That advertising will not benefit the Town of Barnstable's interests because of the unique qualities or location of the property needed.
- E. Distribute the RFP. Guidance for distributing the RFP can be found in the Town of Barnstable's Procurement Policy.

§ 401-139. Disposing of real property.

These procedures apply to disposition of real property with a value greater than \$500. Subsections A through C, as well as publishing disclosure in the Central Register, apply to any such disposition, regardless of its value.

- A. Determine whether the property is surplus. A written assessment should be conducted consisting of identification of the property, a description of its current use, efforts to identify current or future needs, current needs you identified, alternatives considered, and the recommendation.
- B. Declare surplus property available for disposition and identify reuse restrictions. This declaration should be in writing, and restrictions on the property must be specified as part of the declaration.
- C. Determine the value of the property. The value of the property must be accepted by the appraising profession as valid.
- D. Develop the RFP. The RFP must include: a description of the property, the evaluation criteria, submission requirements, and contract terms and conditions. The Town of Barnstable's Procurement Policy should be consulted for specific guidance.
- E. Distribute the RFP. See the same section above for acquiring property.

§ 401-140. Specifications.

- A. "Specifications" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- B. Duties of the policy. The CPO shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by the Town.
- C. Relationship with using agencies. The Chief Procurement Officer shall obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.
- D. Maximum practicable competition. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs and shall not be unduly restrictive.
- E. Specifications prepared by architects and engineers. The requirement of this section shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

§ 401-141. Modification and termination of contracts for supplies and services.

- A. Contract clauses. The Chief Procurement Officer may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provision as appropriate covering the following subjects:
 - (1) The unilateral right of the Town to order in writing if monetary impact is less than 10% of the contract award:
 - (a) Minor changes in the work within the scope of the contract; and
 - (b) Temporary stopping of the work or delaying performance.
 - (2) Variations occurring between estimated quantities of work in a contract and actual quantities by no more than 10%. Larger increases require the award of a new contract.
- B. Price adjustments. Adjustments in price less than 10% pursuant to clauses promulgated under Subsection A of this section shall be computed by unit prices specified in the contract or unless otherwise agreed.
- C. Additional contract clauses. The Chief Procurement Officer may promulgate regulations, including, but not limited to, regulations, permitting or requiring the inclusion in Town contracts of clauses providing for appropriate remedies and covering the following subjects:

- (1) Liquidated damages as appropriate;
 - (2) Specified excuses for delay or nonperformance;
 - (3) Termination of the contract for default; and
 - (4) Termination of the contract in whole or in part for the convenience of the Town.
- D. Modification of clauses. The Chief Procurement Officer or the manager of a purchasing agency may vary the clauses promulgated by the Town under Subsections A and C of this section for inclusion in any particular Town contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation, and provided that notice of any such material variation is stated in the invitation for bids or request for proposals.

§ 401-142. Cost principles.

The Chief Procurement Officer shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that if a written determination is approved at a level above the Procurement Officer, such cost principles may be modified by contract.

§ 401-143. Intergovernmental relations.

- A. Cooperative purchasing authorized. Any Town department may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public agencies or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public agencies and blanket contracts available to municipalities through the State Purchasing Agent.
- B. Sale, acquisition, or use of supplies by a Town purchasing agency. Any Town purchasing agency may sell to, acquire from, or use supplies belonging to another public agency independent of the requirements of § 401-117, Source selection and contract formation.
- C. Cooperative use of supplies or services. Any Town purchasing unit may enter into an agreement, independent of the requirements of § 401-117, Source selection and contract formation, with any other public agency for the cooperative use of supplies or services under the terms agreed upon between the parties.
- D. Joint-use facilities. Any Town department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

§ 401-144. Supply of personnel, information, and technical services.

- A. Supply of personnel. Any Town purchasing agency is authorized, in its discretion, upon written request from another public agency, to provide personnel to the requesting public agency. The public agency making the request shall pay the Town agency providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.
- B. Supply of services. The information, technical, and other services of any Town Department may be made available to any other public agency, provided that the requirements of the Town of Barnstable shall have precedence over the requesting public agency. The requesting public procurement unit shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

§ 401-145. Review of procurement requirements.

To the extent possible, the Chief Procurement Officer may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public procurement units. The Chief Procurement Officer may make available all such information to any Town department upon request.

§ 401-146. Contract controversies.

Under a cooperative purchasing agreement, controversies arising between an administering Town agency and its bidders, offerers, or contractors shall be resolved in accordance with Massachusetts General Laws.

§ 401-147. Legal and contractual remedies.

- A. Right to protest. Any actual prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer or the manager of a purchasing agency. The protest shall be submitted in writing within 14 days after such aggrieved person knows or should have known of the facts giving rise thereto.
- B. Authority to resolve protests. The CPO, the manager of a purchasing agency, or a designee of either officer, shall have the authority to settle and resolve a protest of an aggrieved bidder concerning the solicitation or award of a contract.
- C. Decision. If the protest is not resolved by mutual agreement, the CPO, the manager of a purchasing agency, or a designee of either, shall promptly issue a decision in writing. The decision shall:
 - (1) State the reasons for the action taken; and
 - (2) Inform the protestant of its right to judicial or administrative review as provided in this article.

- D. Finality of decision. A decision under Subsection C of this section shall be final and conclusive, unless fraudulent or any person adversely affected by the decision commences an action in court.
- E. Stay of procurements during protests. In the event of a timely protest under Subsection A, the Town shall not proceed further with the solicitation or with the award of the contract until the CPO, after consultation with the manager of the using agency or the manager of a purchasing agency, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the Town.

§ 401-148. Authority to debar or suspend.

- A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CPO or the manager of a purchasing agency, after consultation with the using agency and the Town Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years or consistent with state law. The same officer shall also have the authority to suspend from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.
- B. Causes for debarment or suspension. The causes for debarment or suspension include the following:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town contractor;
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (4) Violation of contract provision, as set forth below, of a character which is regarded by the CPO to be so serious as to justify debarment action:
 - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis of debarment.
 - (c) Any other cause the CPO or the manager of a purchasing agency determines to be so serious and compelling as to affect responsibility as a Town

contractor, including debarment by another governmental entity for any cause listed in this section.

- C. Remedies prior to an award. If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled or revised to comply with the law.
- D. Remedies after an award. If after an award it is determined that a solicitation or award of a contract is in violations of law, then:
- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) The contract may be ratified and affirmed, provided that it is determined that doing so is in the best interests of the Town; or
 - (b) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination.
 - (2) If the person awarded the contract acted fraudulently or in bad faith:
 - (a) The contract may be declared null and void; or
 - (b) The contract may be ratified and affirmed if such action is in the best interests of the Town, without prejudice to the Town's rights to such damages as may be appropriate.
- E. Time limitations on actions. Any court action shall be initiated as follows:
- (1) Within 30 days after the aggrieved person knows or should have known of the facts giving rise to the action; or
 - (2) Within 14 days after receipt of a final administrative decision.

§ 401-149. Assistance to minority and women-owned business enterprises; federal assistance or contract procurement requirements.

A. Statement of policy.

- (1) It shall be the policy of the Town of Barnstable to assist minority- and women-owned enterprises (MBE/WBE) in learning how to do business with the Town. In addition, it is the Town's policy that:
 - (a) No person shall be discriminated against in any manner whatsoever because of race, color, national origin, sex, age, religion, or handicap;
 - (b) No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded entirely or in part by the Town, state, or federal government; and
 - (c) The Town of Barnstable comply with all federal and state laws.

- (2) Additional information can be found in the Town of Barnstable's Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program.¹⁴
- B. Implementation. The Chief Procurement Officer shall implement the policy set forth in Subsection A of this section in accordance with policies promulgated by the Town Council, including the Town of Barnstable's Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program.
- C. Objectives. It is the objective of the Town of Barnstable that 10% of minority-owned companies and banks and 5% for female-owned companies and banks be utilized in the purchases and investments of the Town on all projects \$50,000 and over where there is available expertise.

§ 401-150. Duties of Chief Procurement Officer regarding MBEs/WBEs.

- A. Assistance within Town departments. Where feasible, the Chief Procurement Officer shall provide appropriate staff who shall be responsible to the Chief Procurement Officer and who shall serve within designated Town departments to assist MBEs/WBEs in learning how to do business with the Town.
- B. Special publications. The Chief Procurement Officer shall give special publicity to procurement procedures and issue special publications designed to assist MBEs/WBEs in learning how to do business with the Town.
- C. Source lists. The Chief Procurement Officer shall compile, maintain, and make available source lists of MBEs/WBEs for the purpose of encouraging procurement from MBEs/WBEs.
- D. Solicitation and mailing lists. To the extent deemed by such officer to be appropriate and as may be required by regulation, the Chief Procurement Officer shall include MBEs/WBEs on solicitation mailing lists.
- E. Solicitation of MBEs/WBEs. The Chief Procurement Officer shall assure that MBEs/WBEs are solicited on each procurement for which such businesses may be suited.
- F. Prebid and preconstruction conferences. The Chief Procurement Officer and his/her designees shall conduct prebid and preconstruction conferences (where applicable) to explain MBE/WBE requirements to prospective bidders, MBEs/WBEs and other interested organizations.
- G. Monitoring. The Chief Procurement Officer shall monitor contractors and subcontractors compliance with MBE/WBE commitments through the life of a contract.
- H. Other. The CPO is also responsible as outlined in the Town of Barnstable's AA/EEO Program.

14. Editor's Note: See § 401-74, Equal employment opportunity.

§ 401-151. Discretionary duties of Chief Procurement Officer regarding MBEs/WBEs.

- A. Bonding. Notwithstanding other provisions of this chapter, the Chief Procurement Officer may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from MBEs/WBEs.
- B. Progress payments. The Chief Procurement Officer may make such special provisions for progress payments as such officer may deem reasonably necessary to encourage procurement from small businesses and MBEs/WBEs.

§ 401-152. Compliance with federal requirements.

Where a procurement involves the expenditure of federal assistance or contract funds, the Chief Procurement Officer shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this chapter.

§ 401-153. Certification of MBEs/WBEs.

The State Office of Minority Business Assistance maintains a listing of certified MBEs/WBEs. A bidder must include a copy of its SOMBA certification with its schedule for participation to have its prospective MBE/WBE considered certified. Unlisted minority- and female-owned businesses shall be referred to SOMBA for certification.

§ 401-154. Bona fide MBEs/WBEs.

A bona fide MBE/WBE is a business whose minority group ownership interests are real and continuing and not created solely to meet the MBE/WBE requirements. A bona fide MBE/WBE must meet the following criteria:

- A. Control. Minority participation in a joint venture must be based on sharing the real economic interest and must include 51% proportionate control over management, interest in capital, and interest in earnings.
- B. Availability. MBEs/WBEs shall be considered if the project is located in the market area of the MBE/WBE. The market for the Town of Barnstable is eastern Massachusetts. Efforts to locate MBEs/WBEs, however, shall not be limited to this area.
- C. Competence. MBEs/WBEs are considered bona fide if they can perform the services or deliver goods that are necessary. Prime contractors will be encouraged to use MBEs/WBEs with less experience and provide technical assistance to them as necessary.

§ 401-155. Reporting.

The Chief Procurement Officer or his/her designee shall maintain records that allow evaluation of progress towards meeting MBE/WBE goals. These records will show procedures which have been adopted and implemented to insure compliance with federal, state, and local requirements and will include, but not be limited to:

- A. Affirmative action techniques.
- B. Technical assistance efforts and referrals.
- C. Communications.
- D. Relevant correspondence; minutes of meetings.
- E. List of prebid, preconstruction attendees.
- F. Awards to MBEs/WBEs, including:
 - (1) Names of MBEs/WBEs.
 - (2) Nature of work.
 - (3) Total value.
 - (4) Total value of contract or subcontract.
 - (5) Total amount of MBE/WBE awards as a percentage of all contracts and subcontracts awarded.
 - (6) Number of MBE/WBE contracts and those invited to bid by contract.
 - (7) Number of MBEs/WBEs responding to each solicitation.
- G. Performance in achieving MBE/WBE goals.

§ 401-156. Bidder responsibilities and compliance.

The bidder shall submit a Schedule for Participation by Minority Business Enterprises with accompanying letter of intent. A separate letter of intent shall be signed by each MBE/WBE proposes to be used by the bidder. The letter of intent shall include the contract items the minority contractor is proposing to perform and the prices that the MBE/WBE proposed to charge for the work. The schedule for participation shall list MBEs/WBEs with whom the contractor intends to subcontract and state the total price to be paid each MBE/WBE as taken from each letter of intent submitted with the bid, and a copy of SOMBA certification. Noncompliance with the schedule for participation shall constitute reason for rejection of the entire bid. Noncompliance exists with the following:

- A. Incompleteness: if the schedule or any letter of intent is materially incomplete.
- B. Lack of MBE/WBE participation: if the Town finds that the percentage of MBE/WBE participation does not meet or exceed the percentage of MBE participation prescribed by these policies.
- C. Change in subcontractor: The contractor shall not perform with its own organization, or subcontract to any other contractor, any work designated for the MBE/WBEs named in the schedule of letter of intent without the approval of the Town and SOMBA.

- D. Change in the MBE/WBE management: Any change or substitution of the officer or stockholders in the MBE/WBE that reduces the minority ownership or control to less than the requisite percentage will result in the automatic revocation of the MBE's/WBE's certified status.
- E. Notification: The contractor shall notify the Town of any facts which come to his attention, indicating that he will be unable to comply with these policies.
- F. Inability to meet MBE/WBE guidelines: If the contractor cannot meet subcontract work to MBEs/WBEs as required by these policies, he may submit to the Town and to SOMBA the reasons for his inability to comply with his schedule, stating how he intends to meet his obligations consistent with this policy. If approved by the Town and SOMBA, such revised schedule shall govern the contractor's performance in meeting his obligations under this special provision.

§ 401-157. Sanctions.

If the contractor does not comply with the terms of these special provisions, the Town may:

- A. Recover from the general contractor 1/100 of 1% of the contract award price or \$1,000, whichever is greater, in the nature of a liquidated damages; or, if a subcontractor is in noncompliance, recover from the general contractor (which is then backcharged to the subcontractor) 1/10 of 1% of the subcontract price or \$400, whichever sum is greater, in the nature of liquidated damages for each week of noncompliance.
- B. Suspend any payment for that portion of the work that should have been performed by the MBE/WBE.
- C. Require specific performance of the contractor's obligation under these policies by requiring the contractor to subcontract with a SOMBA-certified MBE/WBE for any contract or specialty item at the contract price established for that item in the bid proposal submitted by the contractor.
- D. Terminate, suspend, or cancel a contract and/or the contractor consistent with § 401-148.
- E. Deny the general contractor or any subcontractor the rights to participate in any future contracts awarded by the Town of Barnstable for up to three years.

§ 401-158. Ethics in contracting and purchasing.

Public employment is a trust. It is the policy of the Town of Barnstable to promote and balance the objective of protecting government integrity and the objective of facilitating recruitment and retention of personnel needed by the Town. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Town procurement function. To achieve the purpose of this article, it is

essential that those doing business with the Town also observe the ethical standards prescribed herein.

§ 401-159. General standards of ethical conduct.

- A. General ethical standards for employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of public trust. In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in the Town of Barnstable's Ethics Policy and Guidelines.¹⁵
- B. General ethical standards for nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section and the Town of Barnstable's Ethics Policy and Guidelines is also a breach of ethical standards.

§ 401-160. Criminal sanctions.

To the extent that violations of the ethical standards of conduct set forth in this article constitute violations of the Massachusetts General Laws, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in the Town of Barnstable's Ethics Policy and Guidelines.¹⁶

ARTICLE X

Property Management Procedures

§ 401-161. General statement of policy.

- A. It is the general policy of the Town of Barnstable to manage its real assets in order to maximize the desired return from a real estate holding over the life of the property through the implementation of the appropriate strategies. Another important purpose of property management is to ensure that tenants live in a safe and clean environment and have their property-related problems resolved promptly. Property management is structured to generate one or more of several objectives:
 - (1) Cash flow to the Town;
 - (2) Maintenance of the Town's current property portfolio; and
 - (3) Appreciation of the Town's real assets.
- B. The Town of Barnstable recognizes that the keys to successful property management are policies on rent collection, income and expenses, adaptability to the market and attention to the environment.

15. Editor's Note: See Art. II, Code of Ethics.

16. Editor's Note: See Art. II, Code of Ethics.

§ 401-162. General provisions.

The underlying purposes of these policies are to:

- A. Adequately manage the Town's physical assets;
- B. Adequately manage leases;
- C. Institute appropriate reporting and controls; and
- D. Develop effective administrative procedures.

§ 401-163. Effective date.

This policy becomes effective on December 1, 1993.

§ 401-164. Final determinations.

Written determination required by this policy shall be retained in the appropriate official contract file of the Town Manager's office.

§ 401-165. Public access to property management information.

Property information is public information to the extent provided in the Massachusetts General Laws and Section 8-9, Open meeting of the voters, of the Town Charter and shall be available to the public as provided in these statutes and ordinances. The Town shall also disseminate these policies in the following manner:

- A. Distribution. This policy shall be publicized and distributed to the greatest extent possible; distribution will include but not be limited to Town employees, the general public, and minority organizations. Reference to this policy shall be included in all notices and advertisements for bids distributed by the Town.
- B. Inspection. A copy of this policy shall be available for inspection and will be maintained by all departments involved in the management of property. A copy of this policy shall also be available in the Town Manager's office.

§ 401-166. Appointment, tenure and removal of Property Manager.

The Town Manager shall appoint the Property Manager. The Property Manager should be a person with demonstrated executive and organizational ability. The Property Manager shall be a full-time employee of the Town and may be removed by the Town Manager only upon a showing of just cause.

§ 401-167. Authority of Property Manager.

Consistent with the provisions of this policy, the Property Manager may adopt operational procedures governing the internal functions of property. Except as otherwise specifically

provided in this policy, the Property Manager shall exercise general supervision and control over all property inventories belonging to the Town. These inventories include:

- A. Sandy Neck cottages.
- B. Municipal properties.
- C. Open space and land reserved for conservation purposes.
- D. Village Green; village parks.

- E. Shooting range.
- F. Recreations facilities, lands, playgrounds and parks.
- G. Lombard Trust properties.
- H. Municipal buildings and facilities.
- I. Beaches.
- J. Municipal parking lots.
- K. Municipal leaseholds with private parties.
- L. Municipal easements and rights-of-way.

§ 401-168. Delegation of authority.

The Property Manager may delegate authority to designees or to any department, agency, or official.

§ 401-169. Managing physical assets.

- A. Custodial maintenance.
 - (1) Custodial maintenance encompasses all day-to-day maintenance activities. Custodial maintenance includes, but is not limited to, the following tasks:
 - (a) Trash removal;
 - (b) Policing the grounds, including property entrance and parking areas;
 - (c) Basic landscaping care;
 - (d) Cleaning common areas, including stairwells, elevators, halls;
 - (e) Checking that light bulbs and smoke detectors are working; and
 - (f) Snow removal from sidewalks, in season.
 - (2) Custodial maintenance will be performed by the Structures and Grounds Division of the Public Works Department. In addition, maintenance tasks may be contracted out.
- B. Corrective maintenance. Corrective maintenance is performed to repair and restore items after problems are identified, but before major breakdowns or emergencies occur. The following information should be recorded on all corrective maintenance assignments:
 - (1) Name of individual requesting work;
 - (2) Location of problems;
 - (3) Time and date of service request;

- (4) Phone number where individual requesting service can be reached;
 - (5) Nature of problem and its priority;
 - (6) Amount of time spent on repairs and materials used; and
 - (7) Cost of labor and materials.
- C. Preventive maintenance. Preventive maintenance is performed on a regular basis to keep the level of services at the property high and to reduce equipment breakdowns and service interruptions. The preventive maintenance program should address the following areas:
- (1) Building exterior;
 - (2) Building interior and unit (if applicable); and
 - (3) Major equipment and grounds inspection.
- D. Deferred maintenance. Deferred maintenance is needed maintenance that is performed at a later date. The reasons for delay include budget limitations, management plan, or negligence. The Property Manager should document which large maintenance projects are being deferred and to estimate, if possible, additional costs that may be incurred later when repairs are finally made.

§ 401-170. Lease rates.

The objective of the Town of Barnstable is to set leases consistent with the marketplace and sensitive to any special objectives that some properties may contain. The Town shall use appraisals on a regular basis to assess how current its leases are and should account for any items that go over budget. The rent schedule should be reviewed and approved by the Town Manager and should reflect the Town's income objectives.

§ 401-171. Lease increases.

The existing lease schedule should be reviewed once each quarter or at least semiannually. Lease increases should be reviewed on an annual basis and occur once each year if necessary. For leases exceeding one year, rent increases should be provided for in the lease. A lease increase letter shall be used to notify tenants of a lease payment increase.

§ 401-172. Leasing.

These procedures apply to long-term property leases. Once a satisfied prospect has been identified through a RFP process, the Town shall follow careful selection procedures as part of the RFP:

- A. Make a credit and reference check of the prospect;
- B. Make the property ready for use;

- C. Process the necessary paperwork; and
- D. Follow orientation procedures and explain rules.

§ 401-173. Leasing information.

The following information should be obtained from all prospective lessees for all properties:

- A. Names and ages of all lessors;
- B. Social security numbers;
- C. Premises: unit or space to be leased;
- D. Lease term with start date;
- E. Amount of monthly rent, security deposit and other charges (e.g., application, credit check, and/or cleaning fees);
- F. Rent adjustment, if any;
- G. Real estate taxes owed, if any;
- H. Responsibility for utilities;
- I. Responsibility for repairs and maintenance;
- J. Responsibility for refuse and disposal;
- K. Procedures for enacting alterations to the property;
- L. Provision for the Town's access;
- M. Commitment to indemnify the Town;
- N. Responsibility and amount for liability and fire insurance;
- O. Provision for subleasing;
- P. Responsibilities in the event of damage and destruction;
- Q. Provision for permission to mortgage, sell premises;
- R. Responsibilities in the event of default by lessee;
- S. Employment history for past three years;
- T. Current address and previous addresses for past three years;
- U. Name, address, and telephone number of closest relative (if applicable);
- V. Warranty that information is correct, and permission to verify; and
- W. Signature of all adult occupants (if applicable).

§ 401-174. Lease renewals.

Lease renewals are encouraged versus advertising and marketing properties on a recurring basis. A lease renewal option must be included in the original lease, or the lease must be solicited through the RFP process as dictated by Chapter 30B of the State Procurement Laws. The following steps should be followed to ensure renewals are handled effectively:

- A. A lease expiration report and renewal log. This report should contain the lease expiration dates for a minimum of three months in advance.
- B. Review. The rental rates should be reviewed and new rates set 90 days prior to lease expiration. The lease expiration report should be reviewed and approved indicating which residents management would like to renew and which will not be renewed.
- C. Notice. Lease expiration and renewal letters should be sent 70 days prior to lease expiration. Nonrenewal letters should be sent no sooner than 45 days prior to lease expiration in order to minimize nonpayment of rent.
- D. Contact with residents. The Property Manager should meet with residents not later than 45 days prior to lease expiration to execute lease renewals. This contact can also be performed by mail.

§ 401-175. Property management systems.

Applicants must submit a detailed request 30 days prior to the desired use of Town-owned land which shall entail proposed use; purpose of proposed use; and organization/individual seeking to use Town-owned property along with address, telephone number, and contact person. The following steps shall be followed for the short-term lease/rental of Town-owned land:

- A. Approvals. The Police, Health, Recreation, Planning, and Public Works Departments must provide their consent for the use of Town-owned property so that appropriate support services are made available.
- B. Obtain Town Manager approval;
- C. Distribute the Town policies for trash removal, alcohol, parking, particular property uses, and other regulations; and
- D. Obtain vehicular access permission from Public Works, if necessary.

§ 401-176. Collection policy.

The development and maintenance of a good collection system requires the establishment of sound collection policies. Policy statements are required for the following:

- A. Property lease requirements. Depending upon the use of particular properties, the Town shall ensure appropriate permits for food, toilet facilities, rubbish disposal, and animal control are made available.

- B. Rental due date. To reduce the likelihood of conflicts, rental due dates should be set accordingly.
- C. Date rent is considered delinquent.
- D. Schedule of late penalties/charges and other fees. Late charges are \$10 for each day late. Returned checks are assessed a charge of \$15 for additional administration costs.
- E. Repository of payment (e.g., Tax Collector, Town manager's office).
- F. Payee (e.g., Town of Barnstable, Lombard Trust).
- G. Acceptable form of payment (cash, check, money order). Cash collection should be limited to local banking hours, and staff should be instructed to issue a receipt as proof of payment.

§ 401-177. Lease roll.

- A. The monthly lease roll serves as a recordkeeping journal that accounts for each property. Items to be included in the lease roll include:
 - (1) Property identification;
 - (2) Lessee's name (if applicable);
 - (3) Past due balance;
 - (4) Current lease;
 - (5) Other amounts due;
 - (6) Amounts and dates paid;
 - (7) Total balance due for the period covered.
- B. Automation of this information is encouraged. Additional statistical information that might be recorded for comparative and decision-making purposes includes:
 - (1) Total number of property units;
 - (2) Occupied/vacant;
 - (3) Percentage occupied;
 - (4) Average market lease per square foot;
 - (5) Average billed lease per square foot;
 - (6) Vacancy loss.

§ 401-178. Eviction.

- A. Lessees can be evicted for the following reasons:

- (1) Nonpayment of lease for 10 days, or
 - (2) If the lessee shall default in the observance or performance of any other of the lessee's covenants, agreements or obligations for 30 days; or
 - (3) The lessee is declared bankrupt or insolvent according to law; and
 - (4) Termination of tenancy (i.e., lease expiration or holdover).
- B. In general, the eviction process begins with the filing of a complaint for eviction in a court of jurisdiction after a notice to pay or quit has been served.

§ 401-179. Financial reporting and controls.

- A. Budgeting. Budgeting for property management will be part of the Town of Barnstable's operating budget process. The budget will consist of estimating revenues from rents and expenditures for maintenance and other administrative costs.
- B. Reporting. A system of reporting is essential for monitoring and controlling operations and is an integral part of the budgeting process. The reporting system should include an operating budget and the following items:
- (1) Lease roll. The lease roll is a detailed listing of properties, residents, lease, and other amounts due and received from residents.
 - (2) Schedule of disbursements. The schedule of disbursements lists expenses for the reported period and the reason they were incurred.
 - (3) Management summary. This summary contains certain indicators of management effectiveness on a comparative basis. This may include rent loss and occupancy, etc.

§ 401-180. Safeguarding assets.

Assets under management of the Town of Barnstable should be protected against three types of losses: losses from casualty, losses from theft; and losses from conversion of an asset to another form (e.g., cash). Safeguarding of assets also includes:

- A. Internal controls. The Town of Barnstable should ensure the following controls are in place:
- (1) Clearly defined goals and objectives;
 - (2) Formal code of conduct (see Town of Barnstable Code of Ethics);
 - (3) Administrative Code;²⁰
 - (4) Accurate and timely recordkeeping;

²⁰ Editor's Note: See Ch. 241, Administrative Code.

- (5) Effective budgeting;
 - (6) A policy requiring senior management to review and formally discuss the results of all internal control audits.
- B. Insurance. The Town of Barnstable shall carry the appropriate insurances for the protection of the Town and the properties under its control. The Town shall also require tenants to carry the appropriate insurances depending on use of property.

ARTICLE XI

Trust Fund Management Policy

§ 401-181. General statement of policy.

It is the policy of the Town of Barnstable that trust fund management be consistent with the legal requirements, including Town ordinances, and the spirit of each respective trust document and, to the maximum extent possible, realize the purposes the trusts were intended to achieve. Trust fund management will be conducted with the primary objectives of:

- A. Conformance to each trust document's specified purpose, legal requirements, and administrative guidelines;
- B. Adherence to Town of Barnstable general ordinance providing for the administration of Town trusts;
- C. Preservation of capital;
- D. Maintenance of security of trust funds and investments;
- E. Maximization of total return for each trust fund;
- F. Efficient disbursement of funds on an equitable basis; and
- G. Effective collection of all due monies.

§ 401-182. General provisions.

These procedures provide the basic principles for establishing and maintaining effective management of the Town's trusts. The procedures are structured to facilitate protection of capital, maximum yield, and efficient disbursement and collection of funds in an effort to realize the terms set forth in the respective trusts. The procedures supplement but do not supersede applicable provisions of state or federal law, Town Charter or ordinances.

§ 401-183. Applicability.

These procedures apply to all trust funds left for the benefit and/or administration of the Town of Barnstable by a trust document listed in Attachment A.²¹

21. Editor's Note: Attachment A is included at the end of this chapter.

§ 401-184. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADMINISTRATION — The day-to-day operations exercised by the Trustee.

MANAGEMENT — The day-to-day financial operations of the trust funds themselves.

MAXIMIZATION OF RETURN — The attainment of income possible by a financial instrument.

§ 401-185. Authority.

Upon authority granted by the Town Council, the Town Manager shall serve as Trustee for all Town trusts unless a trust document explicitly and exclusively assigns control to another person or agency.

§ 401-186. Delegation.

Subject to regulations of the Town, the Trustee may delegate authority to designees or to any department, agency, or official.

§ 401-187. Authority of Trust Fund Advisory Committee.

- A. The Trust Fund Advisory Committee shall be responsible for advising the Trustee on issues regarding trust fund procedures, including, but not limited to:
- (1) Investments;
 - (2) Disbursements; and
 - (3) Compliance with trust terms.
- B. The Trust Fund Advisory Committee shall be available to meet with and discuss with individuals who wish to make gifts of money or property in trust to the Town, and shall advise the trustee as to the acceptability of said gifts.

§ 401-188. Public access, information and outreach.

Trust fund information shall be of public record to the extent provided in the Massachusetts General Laws and Ordinances and shall be available to the public as provided in such statutes. The Trust Fund Advisory Committee, in conjunction with the Trustee and the Town Council Human Resource Committee, shall distribute information to the public regarding each trust, the eligibility and procedures to gain benefit from these trusts.

§ 401-189. Prudence and ethical standards.

Except as it may be modified by law with respect to particular trusts, the standard of prudence used by the Town of Barnstable shall be the "prudent person standard" and shall be applied in

the context of managing the trusts. The prudent person rule is restated below: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property of any trust heretofore or hereafter created, the Town of Barnstable will exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety for their capital. Specific procedures describing the Town's prudence and ethical standards are found in Article II, Code of Ethics, of the Administrative Policies and Procedures.

§ 401-190. Investment policy.

Trust fund investment procedures are based upon MGL c. 44, § 54. It is the policy of the Town to secure investment services only from those institutions included on the Town's approved list of broker/dealers and banks. To be included on the approved list, financial institutions and brokers must meet the standards set forth in § 401-69, Selection criteria for banks and broker/dealers, in Article VII, Investment Procedures. Other requirements for banks and brokers/dealers are also found in Article VII, Investment Procedures. In addition, the Investment Procedures also provides guidelines for acceptable investments, safekeeping of securities, delivery versus payment, collateralization, portfolio diversification, letters of credit, and limiting interest rate risk. The Town Investment Procedures should also be referred to for:

- A. Investment responsibilities;
- B. Investment objectives;
- C. Policies to ensure adequate liquidity;
- D. Organizational structure;
- E. Investment operating procedures; and
- F. Performance evaluation and reporting.

§ 401-191. Expenditures.

Except where an individual instrument dictates otherwise, it is Trustee policy to expend monies for each trust that are only in surplus of inflation as measured by the most recent consumer price index for Boston metropolitan area furnished by the U.S. Federal Reserve Bank as of the end of the Town of Barnstable's fiscal year. Funds within the inflation rate shall be reinvested as part of the principal.

§ 401-192. Funding for social service agencies.

Trust income may be used to fund the activities of social and human service agencies that direct their services to the Town of Barnstable. Disbursement of funds should be on a competitive basis and be consistent with the terms of the respective trust(s).

§ 401-193. Trust fund procedures.

Trust fund administration of the Town of Barnstable is managed according to the terms of the respective trust documents and sound management principles. Trust fund management is formulated by the Town Manager and evaluated by the Town Council in the same manner as other financial and operating reports.

§ 401-194. Organization.

The office of the Town Manager will review trust funds on a regular basis to analyze performance and variances from policy.

§ 401-195. Trust fund administration.

Trust fund administration is a function of the Trustee and shall include, and not be limited to, the following:

- A. Review and maintain terms of each trust;
- B. Establish principal amount for each trust;
- C. Secure investment instrument(s);
- D. Forecast available cash for future disbursement;
- E. Formulate strategies concerning operating/programmatic needs;
- F. Establish fund distribution criteria;
- G. Make awards or disburse funds for award consistent with expressed intent;
- H. Monitor performance against trust procedures;
- I. Collect all due monies and receipts; and
- J. Establish terms for nonpayment of due monies

§ 401-196. Outreach.

The Trustee shall periodically distribute information to the public concerning the objectives and eligibility for various trust funds. This information shall be sent to, at least, Barnstable area human services organizations. Attachment B lists the area agencies which the Trustee will contact.²²

22. Editor's Note: Attachment B is included at the end of this chapter.

§ 401-197. Enforcement.

It is the general rule that the Attorney General of the commonwealth, in addition to the beneficiaries of the various trusts, is the only party who has standing to enforce the respective trusts.

§ 401-198. Reporting.

Trust fund performance shall be continually monitored and evaluated by the Trustee. Financial and programmatic performance reports shall be generated as part of the Town's financial and performance evaluation systems. The Trustee will produce summary reports on an annual basis for the Town Council. These reporting requirements apply to all Trustees and their relationship with the Town Council.

- A. Performance analysis. The annual report shall include, but not limited to:
- (1) Cash availability/income yield;
 - (2) Rent/loan payment performance;
 - (3) Management fee comparison;
 - (4) Disbursement amounts by type, purpose, and beneficiary; and
 - (5) Service delivery effectiveness analysis.
- B. Annual review of policy. An annual review will be made of the trust funds by the Trustee.
- C. Changes to the trust fund policy. The Trust Advisory Committee, after adoption of this policy, must be notified of any revisions to the policy. The Trust Advisory Committee shall be apprised of policy changes in the following areas:
- (1) Trust intent and need for change through court action;
 - (2) Return on investment objectives;
 - (3) Expenditure trends; and
 - (4) Annual review.

ARTICLE XII
Municipal Vehicle Procedure

§ 401-199. General policy.

It is the policy of the Town of Barnstable to authorize the acquisition and utilization of vehicles for use by officials of the Town, in the conduct of their employment responsibilities, consistent with the municipal vehicle procedure, as provided for herein, and as may be modified from time to time. Municipal employees are obligated to comply with the provisions of this procedure, when their employment responsibilities require use of a municipal vehicle.

§ 401-200. General procedures for use of vehicles.

- A. Garaging of vehicles. All municipal vehicles not utilized by control or emergency employees shall be garaged at the end of each day in assigned municipal parking lots. No vehicles, excepting those of control and emergency employees, are to be taken home at the end of the workday, nor are vehicles available for personal use of any kind. The only exception to this procedure is made when an occurrence is anticipated where an employee is expected to be available for a particular emergency event.
- B. Authority to assign vehicle for use. Department managers are responsible for assignment of personnel to vehicles. Managers are responsible for the vehicle use, maintenance, including cleanliness, and storage. Managers shall ensure that the vehicle is routinely washed, the interior cleaned, and the preventive maintenance schedule is observed. Managers are responsible to the Town Manager for a full accounting of all municipal vehicle usage.
- C. Operation of vehicle.
- (1) All employees are required to adhere to the following minimum rules of operation of municipal vehicles:
 - (a) Speed limits. Strictly observed, excepting emergency vehicle operation.
 - (b) Use of safety restraints. Seat belts, shoulder harnesses, and other restraints should be worn by driver and all passengers at all times vehicle is in motion.
 - (c) Rules of the road. All traffic, driving and road regulations are to be strictly observed. Courtesy is to be extended to all entering and exiting traffic, whenever vehicle is operated within the Town of Barnstable.
 - (d) Use of controlled substances is strictly prohibited by driver and all passengers.
 - (2) Dependent upon department of origin, additional rules of operation shall apply.
- D. General vehicle use regulations. No vehicle shall be operated by any Town employee who does not hold a valid Massachusetts operator's license of the class required for the specific vehicle being operated, except when the employee is in a training status and then only under the immediate close supervision of a qualified licensed operator.
- (1) No vehicle shall be operated by a person who is not an employee of the Town of Barnstable.
 - (2) No employee shall be assigned or permitted to operate a vehicle without the express authorization of the supervisor responsible for the vehicle.
 - (3) No vehicle shall be used for any purpose other than the performance of official duties.
 - (4) No vehicle shall be operated outside the boundaries of the Town of Barnstable, except when necessary to reach other sections of the Town, without the express

permission of the responsible supervisor. Exceptions to this rule shall apply when travelling to meetings being held outside of the Town.

- E. Reporting of accidents. Whenever a municipal vehicle is involved in an accident, or subject to damage, the employee operating the vehicle is required to immediately notify his/her immediate supervisor, and to then file an accident incident report at the Barnstable Police Station. The supervisor is responsible for notifying his/her department manager of the incident. The appropriate supervisory personnel, as determined by the department manager, shall notify the Finance Department of the accident, by completion and submittal of an accident incident report.
- F. Registering and insuring a vehicle. All vehicle registrations, renewals, trade-ins, insuring, and purchases shall be coordinated through the Finance Department. No activity shall be conducted with the Town's insurance agent without first receiving approval for processing of insurance from the Finance Department.
- G. Annual vehicle activity report. Annually, on or before January 31, each department manager shall submit to the Town Manager a comprehensive report on the vehicles utilized by his/her department in the preceding fiscal year. The report shall provide, at a minimum, the following information:
 - (1) Total number of vehicles in the department, classified by department division if appropriate.
 - (2) Personnel assigned to vehicle, if applicable.
 - (3) Total annual mileage for each vehicle.
 - (4) Manufacturer vehicle year, and date of purchase.
 - (5) Assessment of vehicle condition.
 - (6) Status of vehicle for next fiscal year (maintain in use, trade/replacement, dispose as surplus/junk).
 - (7) Massachusetts vehicle registration plate.
 - (8) Vehicle identification number.
 - (9) Title number and location for recording.
 - (10) Accidents during prior year for each vehicle.

§ 401-201. Vehicle replacement procedure.

Each department shall establish a vehicle replacement procedure which seeks to substantiate the replacement of municipal vehicles on a regular basis. Included within the procedure for replacement shall be:

- A. Vehicle purchase price, straight-line depreciation over the vehicle's anticipated useful life, fair market value of vehicle upon replacement request.

- B. Total mileage prior to replacement. Mileage will vary dependent upon use conditions.
- C. Use conditions of vehicle affecting replacement schedule.
- D. Annual maintenance costs, averaged, anticipated should replacement not occur, including major repairs, vehicle operating problems.
- E. Vehicle insurance cost and fuel cost, both annually.

§ 401-202. Personal use of municipal vehicles.

Effective as of January 1, 1985, municipalities are required to monitor and tax employees' personal use of employer-provided vehicles, pursuant to Internal Revenue Service rules. The following procedure will establish the Town of Barnstable's compliance with this federal regulation.

- A. Definitions and use of terms. As used in this article, the following terms shall have the meanings indicated:

CONTROL EMPLOYEES — Elected officials (Town Council, Town Clerk, Town Collector); appointed local officers (executive) - Town Manager.

EMERGENCY OFFICIALS — Those employees whose responsibilities require 24-hour response to emergency situations, specifically law enforcement functions.

FRINGE BENEFITS — Includes an employer-provided automobile, excludes such items as meals and lodging, provided for convenience of employer.

RECIPIENT — Person performing services in connection with which fringe benefits are provided. An employer-provided fringe would be received by the person who was provided the vehicle.

VALUATION — Employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the amount which the employee pays for benefit.

- B. Special valuation rules summary:
 - (1) Annual lease rule: based on fair market value.
 - (2) Vehicle cost/mile: \$0.22/mile - 15,000 miles over \$0.11/mile.
 - (3) Commuting rule: Not applicable to contract employees.
- C. Exclusion from gross income. Working condition fringe benefits and de minimus fringe benefits are excluded from gross income (i.e., any property or service provided to an employee to the extent that, if the employee paid for it himself, the amount would be deductible as a business expense). Substantiation requirements apply to working condition fringe benefits, such as an employer-provided automobile. Non-personal-use vehicles are exempted.

- D. Safe harbor rules for substantiation requirements. To allow for working condition fringe exclusion vehicle not used for personal purpose. Policy statement that prohibits personal use of employer-provided vehicles. Commuting to and from work for control and emergency employees excluded from fringe benefits as a de minimus usage.
- E. Withholding and reporting requirements. The Town is required to withhold federal income tax and social security taxes, if applicable, on the value of the fringe benefit to be included in the employee's gross income. Where personal use of vehicle is permitted, records must be kept to substantiate the business use of the vehicle in order to deduct that portion from income on his/her personal income tax by employee. Method of inclusion of benefit in employee's gross income can be:
- (1) Enforcement of nonpersonal use of vehicle rule: no withholding required.
 - (2) Include availability of vehicle value in employee's gross income, then employee must keep records to substantiate business use of vehicle.
- F. Valuation of employer-provided vehicles.
- (1) ALV: fair market value; safe harbor rules for fair market value.
 - (2) Owned by employer: employer's cost of buying auto = fair market value.
 - (3) Leased: retail value = fair market value.
 - (4) Fuel cost: average fleet evaluation as well as gallon. Random sample: 10% or 20 cars in fleet.
 - (5) Cents/mile rate: allowed \$0.22 per mile to be used to determine value of personal use of employer-provided vehicle regularly used for business or is driven at least 10,000 miles per year. Employer-provided, but no gas: \$0.22/mile can be reduced by \$0.055. Vehicle cost \$12,000 or less.
 - (6) Commuting: \$1.50 one way; \$3 round trip. Not used by control employee - elected/appointed officials.
 - (7) Control employees authorized to utilize vehicles for personal use: Town Manager.
 - (8) Employees authorized to take home vehicle after work: Town Manager, Chief of Police, Superintendent of Public Works, Airport Manager, Assistant Airport Manager, Airport Environmental Field Supervisor, Sandy Neck Ranger, other departmental supervisors or staff, when the Town Manager or department manager has authorized same in order to facilitate performance of the employee's work responsibilities, on a per-occurrence basis.
- G. Substantiation requirements for personal use. [Note: This section subject to modification to conform with IRS regulation updates.] Commuting to and from work for control and emergency employees is excluded from fringe benefits as a de minimus usage, per IRS regulations. Commuting to and from work for all other employees is considered a fringe benefit and commute is calculated at \$1.50 one way; \$3 round trip. Employees are required to submit to Town Treasurer the form entitled "Computation of Fringe Benefit of Employer Provided Vehicle." Employees eligible to take vehicle home may request

waiver from Town Manager to this requirement, provided that commuting use of vehicle ceases. Personal use for control and regular employees is considered a fringe benefit and calculated at \$0.22/mile for each personal use mile. Employees are required to submit monthly to the Town Treasurer the form entitled "Computation of Fringe Benefit for Personal Use of Employer Provided Vehicle." Employees authorized to use employer-provided vehicle for personal use include: Town Manager.

- H. Emergency use of employer-provided vehicles. As necessary, the Town Manager or department manager responsible for municipal vehicles may authorize a subordinate employee to take a vehicle home, after work, for anticipated emergency use. Such emergency use would include police operations, snowstorm, natural disaster, flooding, electrical or building inspections on a weekend, when done in conjunction with the Fire District, and airport emergency operations. When such emergency use is less than three consecutive days in duration, no requirement for computation of commuting use is required. Personal use of the emergency vehicle is prohibited in this instance.

ARTICLE XIII Volunteer Procedures

§ 401-203. General statement of policy.

- A. The Town of Barnstable recognizes that volunteers are an integral part of the Town's government. Their participation in the process of government contributes to the uniqueness of the Town's quality of life. Volunteers choose to act in recognition of social responsibility and without concern for monetary gain, going beyond what is necessary to one's physical well-being. A citizen may choose to be a policy-making volunteer or a service volunteer.
- B. The Town of Barnstable is committed to providing adequate support, training, leadership, and recognition for all its volunteers. It expects commitment and excellence from the volunteers. The Town has the right to determine duties, authorities and appropriateness of volunteers. Following established volunteer management protocol, the Town has the right to both select and remove volunteers.

§ 401-204. General purpose.

The underlying purposes of these policies are to:

- A. Enable service levels to be maintained and/or enhanced as necessary;
- B. Be informed about the needs of the community and develop ways to meet the needs;
- C. Have Barnstable residents share their knowledge and experience for the common good;
- D. Have volunteers gain workplace satisfaction.

§ 401-205. Effective date.

This policy becomes effective on June 30, 1993.

§ 401-206. Final determinations.

Written determination required by this policy shall be retained in the appropriate official file of the Personnel Director.

§ 401-207. Public access to property information.

Volunteer information is public information to the extent provided in the Massachusetts General Laws and Section 8-9, Open meeting of the voters, of the Town Charter and shall be available to the public as provided in these statutes and ordinances. The Town shall also disseminate these policies in the following manner:

- A. Distribution. This policy shall be publicized and distributed to the greatest extent possible; distribution will include but not be limited to Town employees, the general public, and community organizations.
- B. Inspection. A copy of this policy shall be available for inspection and will be maintained by all departments involved in the management of property. A copy of this policy shall also be available in the Town Manager's office and the Personnel Department.

§ 401-208. Appointment, tenure and removal of Volunteer Coordinator.

The Town Manager shall appoint the Volunteer Coordinator. The Volunteer Coordinator should be a person with demonstrated executive and organizational ability and knowledge of volunteer management. The Volunteer Coordinator shall be a full-time employee of the Town and may be removed by the Town Manager.

§ 401-209. Types of volunteers.

There are two types of volunteers: policy-making and service. Methods of appointment and responsibilities for policy-making volunteers are described in Parts I and II of the Administrative Code.²³ There are three types of service volunteers, depending on the length of service:

- A. Regular volunteer. These volunteers are assigned a continuing task for a part of or the duration of a fiscal year.
- B. Short-term volunteer. These volunteers have many special projects which require volunteers to "see them through" from start to finish. Individual volunteers can be called in to help in their most effective manner, and then can be reserved for the next project when help is needed again.
- C. One-time volunteer. These are volunteers with special talents or skills who contribute on a one-time basis.

23. Editor's Note: See Ch. 241, Administrative Code.

§ 401-210. Authority of Volunteer Coordinator.

- A. Power to adopt operational procedures. Consistent with the provisions of this policy, the Volunteer Coordinator may adopt operational procedures governing the functions of volunteers.
- B. Duties. Except as otherwise specifically provided in this policy, the Volunteer Coordinator shall ensure that departments have implemented and practice effective volunteer procedures.
- C. Responsibilities. These include meeting periodically with department managers, assisting with job description development, monitoring all assignments, providing mediation and evaluation assistance to departments, and maintaining accurate records, including: mediate problems, help evaluate service volunteers, and maintain accurate records, including hours of volunteer service.

§ 401-211. Centralization of Volunteer Coordinator authority.

All rights, powers, duties, and authority relating to the management of volunteers, and the control, selection and removal of service volunteers now vested in, or exercised by, any Town governmental body are transferred to the Volunteer Coordinator and department managers who supervise volunteers as provided in these procedures.

§ 401-212. Delegation of authority.

The Volunteer Coordinator works closely with host departments to ensure high standards of volunteer administration throughout the Town and may delegate routine functions to host departments to accomplish this end.

§ 401-213. Duties of Town Attorney.

The Town Attorney or his/her designee shall serve as legal counsel and provide necessary legal services to the Volunteer Coordinator and volunteer supervisors.

§ 401-214. Privacy and information.

Information regarding volunteers will be managed in the same manner as the Town handles information on Town employees.

§ 401-215. Recruitment, selection and training.

- A. Volunteers will be recruited in a manner consistent with Town of Barnstable personnel policies and procedures. Volunteers may also be recruited through informal means. Volunteers will be selected based on the degree of adaptability between skills and job requirements. The process for selection is as follows:

- (1) Identify candidates. Individuals fill out applications describing their interests and skills.
 - (2) Interview. The Volunteer Coordinator and/or the host department interviews the candidate(s).
 - (3) Match skills with openings. The Volunteer Coordinator matches preferences, skills, and times available with a request from a department manager for volunteer assistance.
 - (4) Assignment preparation. An initial meeting with the department manager where goals and assignments, expectations are clarified. A commitment should be made at this time.
- B. Volunteers should receive training necessary to satisfactorily perform their assigned duties. Training by the department manager or his or her designee should address:
- (1) Work requirements.
 - (2) Identification and discussion of tasks.
 - (3) Review of schedule.
 - (4) Orientation: introduce volunteer(s) to staff and facilities.
 - (5) Counseling on problem areas when needed.
 - (6) Supervision.

§ 401-216. Termination.

Volunteers may be excused from their duties when their performance hinders the staff or other volunteers from meeting their objectives. The volunteer will be notified in writing as to why he or she is being terminated and the effective date of the action. The termination must specify the reasons, specify behavior, and dates that support the reasons. Efforts should be taken to reexamine the matching of skills with other volunteer openings in the municipal organization or in the community at large.

§ 401-217. Responsibilities of volunteers.

Volunteers are responsible for the following:

- A. Attend training.
- B. Dependability. Volunteers should be available and on time. Arrangements should be made ahead of time if attendance cannot be assured.
- C. Professionalism. The relationship between the volunteer and staff and other volunteers is a professional one: one of mutual respect, honesty, and confidence.

- D. Abide by Town procedures. Volunteers are governed by the same rules of conduct as Town employees.
- E. Participate in evaluation when asked to do so.
- F. Serve as an ambassador of the Town.
- G. Advocate effective change when deemed necessary.

§ 401-218. Responsibilities of host department.

The following responsibilities of the host department and its staff help ensure an effective relationship with volunteers:

- A. Understand the volunteer's background. Be knowledgeable of the volunteer's educational background, work experience, and desire to help.
- B. Be responsive to the volunteer's needs. Orient the volunteer, set up a mutually agreed schedule, and keep the volunteer informed.
- C. Treat the volunteer as a coworker and team member.
- D. Provide effective guidance and direction to the volunteer.
- E. Provide professional challenges to the volunteer as their skills may warrant.
- F. Recognize dedication and performance of volunteers on a regular basis through formal and informal means.

§ 401-219. Liability.

The Town of Barnstable understands that effective orientation and training of volunteers limits liability exposure. However, in the event work-related injuries occur, procedures outlined in Article VI, Insurance Policies and Procedures, should be consulted. In all other respects concerning volunteer liability, the Town's insurance policies will provide indemnification for volunteers, consistent with the terms and conditions of each appropriate policy.

ADMINISTRATIVE PROCEDURES

401 Attachment 1

EXHIBIT A

TOWN MANAGER REPORT TO THE TOWN COUNCIL (Leave Date Blank) TITLE OF THE REPORT

I. EXECUTIVE SUMMARY (suggested maximum length is one paragraph)

This paragraph should provide an abstract of the report to follow.

II. ISSUES SUMMARY (suggested maximum length is one to two paragraphs)

This section should provide the reader with a brief, succinct statement of the problem or information to be conveyed.

The reader should leave this section with a knowledge of why this report is necessary. It should list out all the relevant issues and questions concerning the topic/problem/information that will be provided in the report.

Indicate the problem or idea that is to be conveyed. Make this description succinct and to the point.

This section should not include a request for action or a summary statement of outcomes.

III. BACKGROUND (suggested maximum length is one page)

This section provides a detailed synopsis no more than one page in length. The objective of this section is to provide the reader with an understanding of why the issue has developed to its current status.

This section should begin with a direct statement concerning the problem/issue/data. For example: Competition from extra-national producers of clam chowder will/will not adversely affect Barnstable's economy.

It should address each issue identified in the Issues Summary. The key information about each issue and its development. It should answer all the questions raised.

It should provide relevant fiscal or budgetary background information.

The final paragraph should be a statement of the report's findings or the point that it is supposed to make.

The next section should build toward those findings.

BARNSTABLE CODE

IV. ANALYSIS (organize material into topics)

The analysis should include a detailed description of the information/concept of which the Town Council is to be made aware.

If appropriate, options or solutions should be identified and discussed. The pros and cons of each should be discussed. All discussion in this section should be based on supportable/documentable fact rather than supposition and personal opinion.

Known or expected difficulties associated with implementation of each options should be addressed.

Budgetary impact and fiscal analysis of each option should be discussed. Refer to the Manager's response checklist below as a guide for the analysis section.

If the purpose of the report is only to convey information (i.e., for some reason not intended to be analytical), it should include logical, detailed support for the information given.

The information provided in this section should be presented in such a manner that it builds on the findings identified in Section III. The reader should have no doubt that the recommendations/conclusions presented in the next section follow logically from the information that she/he has just finished reading. All questions raised need to be answered.

V. CONCLUSIONS/RECOMMENDATIONS

This section should contain requests for specific Town Council action.

The recommendations should be direct, complete, and follow from the information presented in the Analysis section of the report.

Recommendations should be presented in a "bullet" format.

This section should contain a work plan and/or timeline for completing the recommendations.

Concluding statements

PREPARED BY (Department Manager signature)

REVIEWED BY (Assistant Town Manager's signature if necessary)

ISSUED BY (Town Manager's signature)

ADMINISTRATIVE PROCEDURES

401 Attachment 2

EXHIBIT B

AGENDA ITEM SUMMARY

ORDER: _____-_____.

TO: Town Council

FROM: Warren J. Rutherford, Town Manager

DATE: (Leave Blank)

SUBJECT: (Use brief caption)

I. PURPOSE

The purpose of the Agenda Item Summary is to provide Councilors with a brief summary of an item on the Council agenda. All requests for Town Council action shall include an Agenda Item Summary completed by the originating department and approved by the appropriate clearing authorities and the Assistant Town Manager and/or Town Manager. The outline below describes the type of information to be included in each section. All information should be included in a one- or two-page Agenda Item Summary whenever possible. Attachments to the Agenda Item Summary should be kept to a minimum and only include items essential to the Town Council's understanding of the issue. All other relevant information should be incorporated into the Agenda Item Summary. Departments submitting an Agenda Item Summary should provide hard copy and floppy disc copy to the Manager.

II. BACKGROUND/DESCRIPTION

This is a general discussion of the agenda item. Summarize the background and purpose of the item, and all key points in the support material. Include discussion of critical issues and objectives. Identify the specific Town needs(s) that will be satisfied by the proposed action. Address the who, what, where, when, and why questions.

III. ANALYSIS

The analysis should include a detailed description of the information/concept of which the Town Council is to be made aware. If appropriate, options or solutions should be identified and discussed. The pros and cons of each should be discussed. All discussion in this section should be based on supportable/documentable fact rather than supposition and personal opinion. Known or expected difficulties associated with implementation of each options should be addressed. The information provided in this section should be presented in such a manner that it builds on the findings identified in Section II. The reader should have no doubt that the

BARNSTABLE CODE

recommendations/conclusions presented later follow logically from the information that she/he has just finished reading. All questions raised need to be answered. Refer to the Manager's response checklist below as a guide for the analysis section.¹

IV. FISCAL IMPACT

Summarize the financial impact of the proposed action. State the amount to be expended. Indicate whether the funds were budgeted in the CIP or operating budget. Indicate whether there are matching funds required and, if so, their amount. If there is no fiscal impact, explain why.

V. TOWN MANAGER'S RECOMMENDATION

This is in fact the recommendation of the originating department. No requests will be made of Council unless accompanied by staff recommendations. State very clearly and specifically the action requested of Council and the reasons for recommending approval or disapproval.

VI. BOARD AND COMMISSION ACTION

Specify actions taken by boards and commission or N/A if not applicable. State the official vote and recommendation. If action is not expected until after the agenda item must be submitted, state the expected action date and follow up immediately after that date with a memorandum to the Council (for the Town Manager's signature) describing any action taken.

VII. ADDITIONAL MATERIAL

If applicable, list any forms or support material attached. Additional material should be limited to fiscal analyses, maps, field notes, ordinances, resolutions, confidential summaries, work force reports, etc. Do not include interdepartmental memoranda, grants, lease agreements, and actual legal agreements.

¹ Editor's Note: See Exhibit C, Manager's Response Checklist for Analysis.

ADMINISTRATIVE PROCEDURES

401 Attachment 3

EXHIBIT C

MANAGER'S RESPONSE CHECKLIST FOR ANALYSIS

- _____ 1. Provide a brief history of the issue/problem.
- _____ 2. Identify the critical issues/problems.
- _____ 3. Develop goals or objectives and performance measures
- _____ 4. Identify alternatives.
- _____ 5. Develop an action plan. Include action steps and a timeframe.
- _____ 6. Identify any benefits, costs, and problems.
- _____ 7. Analyze fiscal/budgetary impacts.
- _____ 8. Is action/recommendation consistent with current policies?
If no policy exists, determine if one should be developed.
- _____ 9. Explain basis for recommendation. Include decision matrix where applicable.
- _____ 10. Identify the concept's applicability to Barnstable.

ADMINISTRATIVE PROCEDURES

401 Attachment 4

EXHIBIT D

RFA CONTROL PROCEDURES

- () 1. Runner picks up RFA from Town Manager's office and takes back to department, makes a copy of RFA for department manager's information, then gives RFA to designated staff person for assignment.
- () 2. Assessment of RFA is made and it is forwarded to appropriate staff person for action.
- () 3. Designated staff person completes RFA and gives to appropriate person for word processing.
- () 4. Clerical staff processes RFA, proofreads, corrects any mistakes, and gives back to Department Manager.
- () 5. Department Manager reviews response and notes any followup indicated in response and signs off on RFA.
- () 6. Approved RFA is distributed as needed within department, and original RFA is put in envelope to the Town Manager's office.
- () 7. Completed RFA is delivered to the Town Manager or Assistant Town Manager.

ADMINISTRATIVE PROCEDURES

401 Attachment 5

[Former Appendix A, Acceptable Investments, was repealed 12-7-2010]

ADMINISTRATIVE PROCEDURES

401 Attachment 6

APPENDIX B

PRIMARY DEALERS

LIST OF THE PRIMARY GOVERNMENT SECURITIES DEALERS REPORTING TO THE MARKET REPORTS DIVISION OF THE FEDERAL RESERVE BANK OF BOSTON

Bank of America, NT and SA
Bankers Trust Company
Bear, Stearns and Co., Inc.
Brophy Gestal, Knight and Co., L.P.
Carroll McEntee and McGinley Incorporated
Chase Manhattan Government Securities, Inc.
Chemical Bank
Citibank N.A.
Continental Illinois National Bank and Trust
Company of Chicago
Daiwa Securities America, Inc.
Dean Witter Reynolds, Inc.
Discount Corporation of New York
Donaldson, Lufkin and Jenrette Securities Corp.
Drexel Burnham Lambert Government Securities, Inc.?
The First Boston Corporation
First Interstate Capital Markets, Inc.
First National Bank of Chicago
Goldman, Sachs and Co.
Greenwich Capital Markets, Inc.
Harris Trust and Savings Bank
E. F. Hutton and Company, Inc.
Irving Securities, Inc.
Kidder, Peabody and Co., Inc
Kleinwort Benson Government Securities, Inc.
Aubrey G. Lanston and Co., Inc.
Manufacturers Hanover Trust Company
Merrill Lynch Government Securities, Inc.
Midland-Montagu Government Securities Inc.
J. P. Morgan Securities, Inc.

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Morgan Stanley and Co., Inc.
Nomura Securities International, Inc.
Paine Webber, Inc.
Prudential-Bache Securities, Inc.
L. F. Rothschild and Co.
Salomon Brothers, Inc.
Security Pacific National Bank
Shearson Lehman Government Securities, Inc.
Smith Barney, Harris Upham and Co., Inc.
Thomson McKinnon Securities, Inc.
Westpac Pollock Government Securities, Inc.

NOTE: This list has been compiled and made available for statistical purposes only and has no significance with respect to other relationships between dealers and the Federal Reserve Bank of New York. Qualification for the reporting list is based on the achievement and maintenance of reasonable standards of activity.

Market Reports Division
Federal Reserve Bank of Boston, 1991

ADMINISTRATIVE PROCEDURES

401 Attachment 7

APPENDIX D

BROKER DEALER CERTIFICATION

I hereby certify that I have personally read and understand the investment policies and master repurchase agreement conditions of the Town of Barnstable and have implemented reasonable procedures and controls designed to fulfill those objectives and conditions. Transactions between this firm and the Town of Barnstable will be directed towards precluding imprudent investment activities and protecting the Town from credit or market risk.

All the sales personnel of this firm dealing with the Town of Barnstable's account have been informed and will be routinely informed of the Town's investment horizons, limitations, strategy and risk constraints, whenever we are so informed.

This firm pledges due diligence in informing the Town of foreseeable risks associated with financial transactions connected to this firm.

(Firm)

Primary Representative (Signature)

(Name)

(Title)

(Date)

ADMINISTRATIVE PROCEDURES

401 Attachment 8

APPENDIX E

STANDARD DISCLOSURE STATEMENT

I, _____, have been engaged by the Town of Barnstable, to provide the following service(s) referred to hereafter as "the services":

I hereby state under the penalties of perjury the following:

- (1) In addition to the fee which I will receive from the Town of Barnstable, I will also receive a commission of \$_____ and/or a fee of \$_____ from _____ in connection with the services to be provided.
- (2) I am / am not a Director or Trustee of any entity from which I will receive, either directly or indirectly, a fee, commission or anything of value in connection with the provision of the services stated above.
- (3) I (including members of my family) have / do not have a direct or indirect beneficial interest in any entity from which I will receive, either directly or indirectly, a fee, commission or anything of value in connection with the provision of the services.
- (4) If I have indicated in (2) or (3) above that I am a Director or Trustee or that I have an interest in any entity, the identity of and relationship with that entity is explained below:

Date

Signature

Print Name

- (a) Advise it with regard to and/or to purchase on its behalf excess loss coverage or reinsurance;
- (b) Provide financial management [or investment] services.

ADMINISTRATIVE PROCEDURES

401 Attachment 9

BARNSTABLE EMPLOYEE SUGGESTIONS FOR TEAMWORK (BEST)

SUGGESTION FORM

Instructions:

1. Be sure to read the eligibility requirements and rules in the brochure explaining this program before you fill out this form.
2. Please type or write legibly.
3. You may attach additional pages if necessary.
4. Put only one suggestion on each form.
5. If you need help, ask your direct supervisor or department manager.
6. Sign and date your suggestion.
7. Return this to the Town Manager's office, Attention: Assistant Town Manager.

NAME _____
 (Your name will be held confidentially until award is made)

DEPARTMENT _____

TITLE OF SUGGESTION _____

Briefly describe the problem, situation, procedure, etc., to be improved. What is wrong? Be specific. How much does the problem cost the Town annually?

Explain your solution/suggestion to improve the problem or situation. Again, be specific. Please use additional pages if necessary.

BARNSTABLE CODE

Quantify your suggestion if possible. What are the total costs of the suggestion? What are the unit costs? For example, cost per hour? per day? How do these costs compare with the costs of the problem? **Please state the savings in annual costs.**

- 1. Unit costs: \$ _____ per unit
- 2. Number of units _____
- 3. Total costs \$ _____
- 4. Cost of problem (from above) \$ _____
- 5. Annual savings \$ _____

Signature _____ Date _____

FOR PROGRAM COORDINATOR USE ONLY

Suggestion: ____ Tangible ____ Intangible

Recommended for Implementation: ____ Yes ____ No

Projected Savings: \$ _____

Reason(s) for NO recommendation.

Program Coordinator's Signature _____

Date: ____/____/____

ADMINISTRATIVE PROCEDURES

401 Attachment 10a

TOWN OF BARNSTABLE

DEPARTMENT

NOTICE TO BIDDERS

The () Department, Town of Barnstable, is soliciting bids for furnishing the following (brief description of supply or service required):

During the period () to ()

or

Within () days following signing of contract.

Specifications and bid forms will be available at (name of office and full address), telephone number (508- -), for two weeks immediately preceding the bid opening between the hours of 7:00 a.m. and 3:30 p.m. Monday through Friday excluding holidays. Bids will be opened and read at the Town Hall in the office of () 367 Main Street, Hyannis, MA 02601 at () a.m. / p.m. on (month, day, year). All bids must be received prior to the bid opening. The Town of Barnstable reserves the right to reject any or all bids when it deems it to be in the best interest of the Town of Barnstable. Contract award will be made by the Town Manager, Town of Barnstable, within 30 days of bid opening.

Instructions for Posting and Publishing

The notice to bidders must be posted in a conspicuous place on the bulletin board located on the first floor of Town Hall for a minimum of two weeks immediately preceding the time specified in the IFB for receipt of bids.

The notice must be published at least once, not less than two weeks prior to the time for receipt of bids in at least one newspaper of general circulation in the Barnstable area.

If the contact value is estimated to be \$100,000 or more, the notice must be published in the *Goods and Services Bulletin* published by the office of the State Secretary, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108. There is no charge for advertising in the Bulletin.

ADMINISTRATIVE PROCEDURES

401 Attachment 10b

TOWN OF BARNSTABLE

DEPARTMENT

GENERAL SPECIFICATIONS FOR SUPPLIES AND SERVICES

- A. Attention of all bidders is directed to Chapter 30B of the General Laws of the Commonwealth of Massachusetts and to all other applicable sections of the General Laws as most recently amended which govern the award of this contract.
- B. The bidder shall submit the bid upon forms (bid sheets) furnished by the awarding authority. All bids shall be in ink or typewritten and the bid form must be filled out completely. The prices shall, without exception, include all royalties and costs arising from patents, trademarks and copyrights in any way involved in the equipment and accessories supplied.
- C. All bids shall be signed correctly in ink by the individual or in the case of a firm, partnership or corporation, by a person having the legal authority from said firm, partnership, or corporation to sign the bid.
- D. All bids shall be submitted to the (title of Town official) Town of Barnstable, 367 Main Street, Hyannis, MA 02601, on or before the date and time stated in the Bid Notice. Each bid shall be in a sealed envelope, clearly marked on the outside of the envelope to indicate the contents, and the name and address of the bidder.
- E. Bids which are incomplete, conditional or obscure, or which contain additions not called for, will be rejected. Use the pages of this document when submitting bid and submit contract document intact.
- F. Bidders may correct, modify or withdraw the original bids on or before the date and time stated in the Bid Notice. Corrections or modifications shall be in sealed envelopes, clearly marked to indicate the contents, with the name and address of the bidder. A bidder who wishes to withdraw a bid must make the request in writing.
- G. Any bid received after the date and time stated in the Bid Notice shall not be opened. Unopened bids will be returned to the bidder.
- H. Bids will be publicly opened and read at the date and time stated in the Bid Notice. All interested parties are invited to be present.
- I. A bidder may withdraw a bid after the public opening of the bid only if a mistake is clearly evident on the face of the bid document, but the intended correct answer is not evident.
- J. No award will be made to any bidder who cannot satisfy the awarding authority that he/she has sufficient ability and experience in this class of work and sufficient capital and

BARNSTABLE CODE

plant to enable him/her to prosecute and complete the work successfully within the time named. The awarding authority's decision or judgment on these matters shall be final, conclusive and binding. Conditional bids will not be accepted.

- K. At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the contract documents. The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his/her bid.
- L. Each bidder shall acknowledge receipt of any and all addendum issued to the invitation for bids by so indicating on the bid sheet. Failure to do so shall be cause to reject the bid as being nonresponsive.
- M. The contract will be awarded, subject to the availability of funds, to the responsive responsible bidder who offers the lowest price for the supply or service bid, provided it complies with all conditions and requirements set forth in the bid document and further provided that the bid, in the opinion of the awarding authority, is reasonable and it is in the best interest of the Town of Barnstable to accept it. The Town reserves the right to reject any and all bids.
- N. All bids shall be based on delivery of the items to the location(s) determined by the awarding authority within the Town of Barnstable unless otherwise specified in the bid specifications. Deliveries must be made during normal business hours, Monday through Friday, in the presence of an authorized agent of the using agency.
- O. If at any time the bidder is unable to furnish materials or services as ordered by the awarding authority the Town may order such materials or services from such places as are available and the bidder shall pay to the Town all expenses incurred above the contract price.
- P. Unless otherwise specified in the bidding documents, the contract length shall be one year, July 1 through and including June 30.
- Q. The contractor will bill each Town agency separately for its purchases. Payments for purchases will be processed after the using Town agency received the original statement and a signed delivery slip. The bidder will receive payment within a 30-day period after the agency received the statement.
- R. If services of the contractor are subsequently deemed to be unsatisfactory to the Town and are in violation of these specifications, the Town shall notify the said bidder in writing. If mutually agreeable arrangements can not be achieved between the Town and the contractor, the contract will be terminated. Notice of termination shall be in writing and notification will be sent by registered or certified mail. Termination will become effective three days after mailing said notification.
- S. The bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over

ADMINISTRATIVE PROCEDURES

bid/purchase shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

- T. Certificate of noncollusion. The bidder MUST sign and submit a Certificate of Noncollusion with the Bid Sheet.
- U. State taxes certification clause. The bidder MUST sign and submit a State Taxes Certification Clause with the Bid Sheet.
- V. Small quantity and emergency purchases. Purchases of contract items, for emergency or other reasons, may be made from other sources.
- W. Right-to-know. The firm/individual receiving a bid award from the Town of Barnstable will, at no expense to the Town of Barnstable, adhere to the Massachusetts General Law Chapter 111F, Right-to-Know Law, as it shall apply to the items contained in the award notice.
- X. Quantities. Maximum quantity to be purchased under this contract may not exceed 10% of the quantities bid.

ADMINISTRATIVE PROCEDURES

401 Attachment 10c

TOWN OF BARNSTABLE

DEPARTMENT

DETAILED SPECIFICATIONS FOR (SUPPLY/SERVICE ITEM)

Preparation of Detailed Specifications. Each supply or service must be listed and described in sufficient detail for all vendors to understand what you need. If you have photographs, pictures or drawings of the supply item they may be appended to the detailed specifications. When purchasing a service, clearly specify the service or services the vendor will be required to deliver. Remember that if you fail to include something you want in the detailed specifications, the vendor will not be required to supply it. You may use a proprietary specification (brand name, etc.) ONLY if no other manner of description suffices. If you intend to use a proprietary specification, you must explain in writing to the Chief Procurement Officer why it is necessary to do so.

The following is a list of items for inclusion in the detailed specifications. Others should be added as appropriate:

Detailed description of supply.

Quantity required. Bear in mind that under Chapter 30B you may not increase the quantity of supplies or services called for in the contract by more than 10%.

Schedule of performance. Identify when you require the supplies or service. If the contract covers an extended period, either specify the times or frequency of delivery or state that deliveries shall be made on demand of the owner.

Delivery terms. Specify whether the vendor is to deliver the supplies or you will pick them up. Specify the location(s) where the service is to be performed.

Warranties. If considered appropriate, specify the period which the vendor will be required to warranty the supply or service.

Term of Contract. Specify the length of the contract if deliverables are to be received over a period of time.

Bid deposits and/or bonds. A bid deposit in the form of a certified check, bank treasurer's or cashier's check, or cash may be specified to ensure that the bidder offering the best price does not withdraw after the bids are opened. The amount of the bid deposit must be specified, usually a percentage of the bid. A performance bond may also be required to protect the Town from deficient work or default under the contract.

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References. If you plan to verify information about a bidder's work, the specifications should call for reference information, e.g., client names, contact persons, telephone numbers, project descriptions and contract amounts.

ADMINISTRATIVE PROCEDURES

401 Attachment 10d

TOWN OF BARNSTABLE

DEPARTMENT

BID SHEET (SUPPLY/SERVICE ITEM)

BID ITEM _____

APPROXIMATE QUANTITY _____

UNIT PRICE PER () \$ _____

BID EVALUATION CRITERIA

A contract will be awarded to the responsive and responsible bidder who submits the lowest price for (supply/service item).

CERTIFICATION OF PRODUCT

The bidder certifies that the item(s) to be supplied meets the detailed specifications for () dated (month, day, year) which is a part of the bid package.

RECEIPT OF ADDENDUM NUMBER(S)

is acknowledged and reflected in the bid price entered above.

BIDDER IDENTIFICATION AND SIGNATURE

Firm: _____ Signature: _____

Address: _____ Name (print): _____

_____ Title: _____

Telephone: _____ Date: _____

- REQUIRED ATTACHMENTS:
- (1) Certificate of Noncollusion
 - (2) State Taxes Certification Clause
 - (3) Bid deposit (if required)
 - (4) References (if required)

NOTE: The Town of Barnstable reserves the right to reject any and all bids when it deems it to be in the best interest of the Town.

All bids must be received at the office of () prior to () (a.m.) (p.m.) (hour, day, month, year).

See General Specifications for bid submission requirements.

ADMINISTRATIVE PROCEDURES

401 Attachment 10e

TOWN OF BARNSTABLE

CERTIFICATE OF NONCOLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

Firm: _____ Signature: _____

Address: _____ Name (print): _____

_____ Title: _____

Telephone: _____ Date: _____

ADMINISTRATIVE PROCEDURES

401 Attachment 10f

TOWN OF BARNSTABLE

STATE TAXES CERTIFICATION CLAUSE

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes under law.

by: _____
Signature of individual or corporate officer (mandatory)

Corporate name (mandatory, if applicable)

**Social Security No. (voluntary)
or Federal Identification No.

Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their nonfiling or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of MGL c.62, § 49A.

ADMINISTRATIVE PROCEDURES

401 Attachment 10g

TOWN OF BARNSTABLE, MASSACHUSETTS

AGREEMENT BETWEEN CONTRACTOR AND OWNER

THIS AGREEMENT, made this _____ day of _____, 20 _____, by and between the TOWN OF BARNSTABLE, Massachusetts, hereinafter called the OWNER, and

with legal address and principal place of business at

hereinafter called the CONTRACTOR.

WITNESSETH: That for and in consideration of payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to supply up to (number) (unit of measurement) of (supply item), hereinafter called "the product," upon demand of the OWNER, made as hereinafter provided, at a unit price of (\$) per (unit of measurement) delivered at the (delivery location) within () days of the execution of this Agreement in accordance with the following requirements:

1. **Notice to Deliver and Delivery of Product.** The OWNER will notify the CONTRACTOR by mail, telephone, or facsimile, of the times and quantities of deliveries to be made under this Agreement. All deliveries to the (department/office) shall be made during normal business hours, Monday through Friday, in the presence of and receipted for by an authorized employee of the (department). Deliveries shall be coordinated with the (title of receiving official), as to times, amounts and locations for delivery.
2. **Billings.** The CONTRACTOR shall bill the (ordering activity) separately for each delivery of the product.
3. **Availability of Product.** If the CONTRACTOR is unable to furnish the entire quantity of the product within () days of the signing of this contract, the OWNER may order the remaining quantity from such supplier who can supply the product and the CONTRACTOR shall pay to the OWNER all expenses incurred which exceed the CONTRACTOR'S bid price.

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The bid specifications entitled "General Specifications for Supplies and Services" and "Detailed Specifications for (_____)," both of which are dated _____ 20____, and the bid are made a part hereof and collectively evidence and constitute the contract.

The OWNER agrees to pay the CONTRACTOR for performance of the contract and to make payments based on the quantities and related prices specified in the bid and as provided for herein.

CONTRACT UNIT PRICE \$ _____.

CONTRACT AMOUNT IF TOTAL ESTIMATED QUANTITY IS ORDERED AND DELIVERED \$ _____.

IN WITNESS HEREOF, the parties to these present have executed this contract in the year and day first above mentioned.

By: _____
CONTRACTOR

Approved as to form _____
OWNER'S ATTORNEY

By: _____
OWNER

This is to certify that the Town of Barnstable, Massachusetts, has an appropriation which is adequate to cover the cost of this contract.

OWNER'S ACCOUNTANT _____

ADMINISTRATIVE PROCEDURES

401 Attachment 11

ATTACHMENT A

LISTING OF TOWN TRUSTS

1. Village Improvement Fund
2. Enoch T. Cobb Trust (David Cole, Trustee)
3. Sidney A. Kirkman and Mary Lewis Kirkman Fund
4. John F. Kennedy Memorial Trust Fund
5. William and Elida Lovell College Loaning Fund
6. William and Elida Lovell Christmas Tree Fund
7. William Lovell Fund
8. Howard Marston Trust (Marstons School)
9. Ellen Wayles Coolidge Trust
10. Catherine Sturgis Trust
11. Gustavius A. Hinckley Free Scholarship Fund (Boston University, Trustee)
12. Gustavius Hinckley Free Scholarship II (State Board of Education, Trustee)
13. Gustavius A. Hinckley Free Bed (St. Luke's Hospital, Trustee)
14. Jean G. Hinckle Memorial Athletic Award
15. Carl G. Hallgren Memorial Scholarship
16. Lombard Trust
17. Jennie McShane Trust (First National Bank of Boston, Trustee)
18. Beechwood Cemetery
19. MacGrotty Trust
20. Thompson Scholarship Fund
21. Doris Eldridge Harlow Cosmetology Scholarship
22. Town of Barnstable Scholarship Fund

ADMINISTRATIVE PROCEDURES

401 Attachment 12

ATTACHMENT B

HUMAN SERVICE AGENCIES TO BE CONTACTED FOR OUTREACH EFFORTS

BARNSTABLE HOUSING AUTHORITY

146 South Street
P.O. Box 452
Hyannis, MA 02601

BARNSTABLE WELFARE DEPARTMENT

460 West Main Street
Hyannis, MA 02601

BIG BROTHERS-BIG SISTERS OF CAPE COD

100 West Main Street
Hyannis, MA 02601

CAPE COD CHILD DEVELOPMENT

83 Pearl Street
Hyannis, MA 02601

COMMUNITY ACTION COMMITTEE

583 Main Street
P.O. Box 954
Hyannis, MA 02601

SENIOR CITIZENS CENTER

Town of Barnstable
198 South Street
Hyannis, MA 02601

FUEL ASSISTANCE PROGRAM

Town of Barnstable
397 Main Street
Hyannis, MA 02601

HOUSING ASSISTANCE CORPORATION

Town of Barnstable
460 West Main Street
Hyannis, MA 02601

INDEPENDENCE HOUSE

105 Pleasant Street
Hyannis, MA 02601

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LEGAL SERVICES FOR CAPE COD AND ISLANDS, INC.
460 Main Street
Hyannis, MA 02601

DEPARTMENT OF SOCIAL SERVICES
467B Station Avenue
South Yarmouth, MA 02664

DAY STAR PLACE
100 North Street
Hyannis, MA 02601

SALVATION ARMY
100 North Street
Hyannis, MA 02601

ELDER SERVICES
68 Route 134
South Dennis, MA 02660

OFFICE FOR CHILDREN
298 Main Street
Hyannis, MA 02601

ADMINISTRATIVE PROCEDURES

401 Attachment 13

COMPUTATION OF FRINGE BENEFIT OF EMPLOYER-PROVIDED VEHICLE

TOWN OF BARNSTABLE, MASSACHUSETTS

Employee Name: _____

Position: _____

Department: _____

Vehicle Description: _____

Information Required for Computation by \$3 per day (\$1.50 one-way).

Commute Method:

1. Number of days in year:	365
2. Less Saturdays and Sundays	- 104
3. Less vacation days taken	- _____
	subtotal _____
4. Less paid holidays	- 11.5
	subtotal _____
5. Less sick days taken	- _____
	subtotal _____
6. Less all other vehicle use days (explain)	

_____	- _____
7. Net total days vehicle used to commute:	_____

Employee Signature _____

Approved by: _____
Department Manager

Value of this fringe benefit to be computed by Town Treasurer only:

Multiply figure in # 7 by \$3 = Value of taxable fringe benefit.

7 x \$3 = \$_____.

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COMPUTATION OF FRINGE BENEFIT FOR PERSONAL USE OF EMPLOYER-PROVIDED VEHICLE

TOWN OF BARNSTABLE, MASSACHUSETTS

Employee Name: MONTHLY REPORT #:
Position: MONTH:
Department: DATE:
Vehicle Description:

Table with columns MILES and PERCENTAGE. Rows include: A. ODOMETER READINGS (1. Month Ending Mileage, 2. Month Beginning Mileage), B. TOTAL MILEAGE DRIVEN (100%), C. PERSONAL MILES DRIVEN (3-9 Log #, Mileage Add lines 3 thru 9, Lines D ÷ B), D. TOTAL PERSONAL MILES DRIVEN, BUSINESS MILES DRIVEN (B-D).

I certify that the above summary is a true and accurate record of my personal use based on contemporaneous records maintained on a daily basis and attached as a part hereof.

Employee Signature

**The above beginning mileage must agree with last month's ending mileage for this vehicle.

A SEPARATE MONTHLY SUMMARY REPORT MUST BE PREPARED FOR EACH VEHICLE USED DURING THE MONTH.

OFFICE USE ONLY

Monthly Fair Market Rate = \$ P/R Date
Less: Business Use ()% = \$ Initials
Payroll Adjustment ()% = \$

ADMINISTRATIVE PROCEDURES

401 Attachment 14

Town of Barnstable

Hyannis Water System Recommended One-Time Service Fees
Effective September 1, 2006
[Added 8-14-2006]

Services Provided	Recommended Fee	Current Fee	Labor Time	Number of Personnel	Comments
Field Services: Funds received to be used to offset the operating costs.					
Seasonal turn on/off	Replaced	\$20	1 hour	2	Replaced by the requested turn on or off fees below.
Seasonal turn on/off	Replaced	\$90	1 hour	2	Replaced by the requested turn on or off fees below.
Requested turn on or off					
During normal working hours	\$25	\$10	1 hour	2	
After-hour rates	\$150	\$90	1 hour	2	
General labor rate					
During normal working hours	\$60	\$60	Hourly	1	Plus materials
After-hour rates	\$90	\$90	Hourly	1	Plus materials
Hydrant meters	\$15	\$15	Daily	N/A	Charged per day for every day used
Labor to set hydrant meter	\$25	\$25	1 hour	1	During normal working hours
Labor to remove hydrant meter	\$25	\$25	1 hour	1	During normal working hours
Hydrant meter deposit					Covers the cost of replacement of hydrant meter
1-inch meter	\$500				Will be refunded in total if meter is returned undamaged
2-inch meter	\$3,000				Otherwise cost of repair or replacement will be deducted from deposit before return
Cross connection tests	\$50 / \$30	\$50 / \$30	1 hour	1	First device tested: \$50; each additional device at same location: \$30 per device
Cross connection survey	No charge	No charge			

BARNSTABLE CODE

Services Provided	Recommended Fee	Current Fee	Labor Time	Number of Personnel	Comments
Customer requested samples	To be determined	\$0	2 hours	1	
Frozen meter charges					
Originally a repair of meter was included	\$60 plus parts	\$25	1 hour		
Originally a replacement with a rebuilt meter was included	See above.	\$50	1 hour		
Meter test by customer request					
If meter is correct (97% - 103%)	\$50	\$50			
If meter is deficient, pro-rated billing reimbursement or additional charges (in usage bill)	No charge	No charge			
Administration Services: Funds received to be used to offset the operating costs					
Property transfer, real estate closing	\$60	\$0	1 hour	2	
Large information request	\$0	\$0	Varies	Varies	
Demolition permit approval	\$60	\$0	1 hour	2	
Returned check fee	\$25	\$25			
Interest on late payments	12% per annum	12% per annum			Accruing daily on delinquent accounts starting the first day after the due date of the bill.
New Development Services: Funds to be credited to the capital improvement fund of the water system.					
Field Services:					
Hydrant fire flow tests (per hydrant set)	\$100	\$0	Varies	2	During normal working hours; requestor of test must supply all needed equipment
Construction inspections					
Residential	\$25	\$0	Varies	1	During normal working hours
Large jobs	N/A	N/A			Developer pays for construction inspection.

ADMINISTRATIVE PROCEDURES

Services Provided	Recommended Fee	Current Fee	Labor Time	Number of Personnel	Comments
New water meter	Varies	N/A			Cost is dependent on size of meter; ownership will reside with the water system
Labor to set new meter	\$60	\$60	1 hour	2	
Meter set and remote, materials	Varies	Varies	N/A	N/A	Cost is dependent on size of service and meter
New sewer deduct meter (remote)	\$85	\$85	N/A	N/A	Cost of the 5/8-inch meter plus mark-up of 15%
Labor to set sewer deduct meter	N/A	N/A			Customer hires licensed plumber to do install; when completed, call Hyannis Water System
Inspect and remote an installed sewer deduct meter	\$60	\$60	1 hour	2	
Administration Services					
Design plan review and first rereview	\$0	\$0	Varies	3	Covers initial review, comments and resubmittal
Repeat reviews	\$3/linear foot	\$0	Varies	3	Covers additional review of submittal from the third review on
For the following fees, owner pays for all labor, materials, inspections, police details and other costs associated with the installation. New fees will be based on service line size; current fees are based on meter size					
New service SDC 5/8"	N/A	\$150	N/A	N/A	System development charge based on 5/8-inch meter
New service SDC 3/4"	N/A	\$225	N/A	N/A	System development charge based on 3/4-inch meter
New service SCD 1"	\$2,000	\$375	N/A	N/A	System development charge based on 1-inch (meter) service line
New service SDC 1 1/4"	N/A	\$375	N/A	N/A	System development charge based on 1-1/4 inch meter
New service SDC 1 1/2"	\$3,000	\$750	N/A	N/A	System development charge based on 1-1/2 inch (meter) service line
New service SDC 2"	\$4,000	\$1,200	N/A	N/A	System development charge based on 2-inch (meter) service line

BARNSTABLE CODE

Services Provided	Recommended Fee	Current Fee	Labor Time	Number of Personnel	Comments
New service SDC 3"	N/A	\$2,400	N/A	N/A	System development charge based on 3-inch meter
New service SDC 4"	\$10,000	\$3,750	N/A	N/A	System development charge based on 4-inch (meter) service line
New service SDC 6"	\$15,000	\$7,500	N/A	N/A	System development charge based on 6-inch (meter) service line
New service SDC 8"	\$20,000	\$12,000	N/A	N/A	System development charge based on 8-inch (meter) service line
Tapping fee	\$30,000	\$0	N/A	N/A	A fee charged to tap into a water-main for a new service or water main.
Tie-in fee fire sprinkler service					
6-inch line	\$15,000	\$0	N/A	N/A	Fee charged per connection of 6-inch fire sprinkler service
8-inch line	\$20,000	\$0	N/A	N/A	Fee charged per connection of 8-inch fire sprinkler service
10-inch line	\$30,000	\$0	N/A	N/A	Fee charged per connection of 10-inch fire sprinkler service
12-inch line	\$35,000	\$0	N/A	N/A	Fee charged per connection of 12-inch fire sprinkler service

Water Supply Division
 47 Old Yarmouth Road
 Hyannis, MA 02601
 Tel (508) 778-9617, 3502
 Fax (508) 790-1313

Chapter 402

CEMETERIES

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| <p>§ 402-1. Enumeration of active and inactive Town cemeteries.</p> <p>§ 402-2. Management and enforcement.</p> <p>§ 402-3. Cemetery administrative office.</p> <p>§ 402-4. Service/business hours.</p> <p>§ 402-5. Visiting hours.</p> <p>§ 402-6. Special prohibitions.</p> <p>§ 402-7. Decorative items allowed.</p> <p>§ 402-8. Cemetery maintenance and repair.</p> | <p>§ 402-9. Burial lot licensing.</p> <p>§ 402-10. Cemetery fees.</p> <p>§ 402-11. Interments and disinterments.</p> <p>§ 402-12. Monuments, markers and foundations.</p> <p>§ 402-13. Specifications for foundations and markers.</p> <p>§ 402-14. Violations and penalties.</p> <p>§ 402-15. Copies of current rules.</p> <p>§ 402-16. When effective.</p> |
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[HISTORY: Adopted by the Town Manager of the Town of Barnstable 6-2-1997. Amendments noted where applicable.]

§ 402-1. Enumeration of active and inactive Town cemeteries.

The Town of Barnstable maintains and operates 14 active and inactive cemeteries. Active cemeteries are those in which burial lots remain available for licensing assignment to residents of the Town. Inactive cemeteries are those in which no lots remain available for licensing assignment.

A. Active cemeteries.

- (1) Beechwood Cemetery, corner of Route 28 and Main Street, Centerville.
- (2) Crocker Park Cemetery, Church Street, Barnstable.
- (3) Cummaquid Cemetery, Mary Dunn Road, Barnstable.
- (4) Hillside Cemetery, Old Mill Road, Osterville.
- (5) Lothrop Hill Cemetery, Route 6A, Barnstable.
- (6) Marstons Mills Cemetery, Route 149, Marstons Mills.
- (7) Mosswood Cemetery, Putnam Avenue, Cotuit.
- (8) Oak Grove Cemetery, Sea Street, Hyannis.
- (9) Oak Neck Cemetery, Oak Neck Road, Hyannis.

B. Inactive (ancient) cemeteries.

- (1) Centerville Ancient Cemetery, Phinney's Lane, Centerville.
- (2) Cobb Hill Cemetery, Millway Road, Barnstable.
- (3) Hyannis Ancient Cemetery, South Street, Hyannis.
- (4) Old West Barnstable Cemetery, corner of Routes 149 and 6A, West Barnstable.
- (5) Sandy Street Cemetery, Route 6A, West Barnstable.

§ 402-2. Management and enforcement.

Under the administrative direction of the Town Manager, the Director, Department of Public Works (DPW), shall have overall responsibility for the proper management of Town cemeteries in accordance with these rules and regulations and applicable federal and state laws. Under the general direction of the Supervisor, DPW Structures and Grounds Division, the Foreman of the Cemeteries Section shall have direct responsibility for the day-to-day administration, operation and maintenance of Town cemeteries. As such, the Cemeteries Section staff, under the direction of the Foreman, shall be responsible for the enforcement of these rules and regulations.

§ 402-3. Cemetery administrative office.

The cemetery office, located in the Mosswood Cemetery, 280 Putnam Avenue (west side of the road), Cotuit, is open weekdays from 7:00 a.m. to 12:00 noon and 12:30 to 3:30 p.m. It is closed all day on Saturdays, Sundays and the following holidays:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
President's Day	Veteran's Day
Patriot's Day	Thanksgiving
Memorial Day	Christmas Eve Day (closes at 12:00 p.m.)
July 4th	Christmas

§ 402-4. Service/business hours.

Persons seeking information and/or services covered by these rules and regulations shall be guided by the hours of operation specified for the cemetery office. Except where special arrangements are made at least 48 hours in advance through the Cemeteries Section Foreman, no services shall be provided beyond normal working hours or on Saturdays, Sundays or holidays.

§ 402-5. Visiting hours.

Town cemeteries are open to visitors seven days a week throughout the year. Visitors are requested to bear in mind that the cemeteries are consecrated to the memories of those who

are buried within. Anyone who violates these rules and regulations shall be required to leave the grounds.

§ 402-6. Special prohibitions.

- A. Vehicles shall proceed cautiously but at no time shall they exceed 15 miles per hour in any cemetery. Violators shall be subject to a speeding fine.
- B. Use of any cemetery driveway or cart path as a thoroughfare shall be prohibited.
- C. Parking is limited to driveways only.
- D. Bicycling, horseback riding, motorcycling, skateboarding, or any other type of recreational sport or similar activity shall be prohibited.
- E. Children under 14 are not permitted within cemeteries for any reason except when accompanied by a parent or guardian.
- F. The disposal of flowers and other debris is prohibited except in receptacles provided by the DPW.
- G. Animals of any type shall be prohibited except for those which provide assistance to and are accompanied by a physically impaired person.
- H. No grading, seeding, mowing, or fertilizing shall be allowed other than by authorized DPW personnel.
- I. No sod or ground shall be broken without specific authorization of the Cemeteries Section Foreman.
- J. No in-ground planting of any kind shall be permitted. No urns, flower boxes or fences, curbing, hedges, trees, shrubs or any other similar type of planting shall be placed around or planted upon any grave or lot in a Town cemetery.
- K. No vigil light, crushed stone, or bark shall be placed around a monument or marker. Glass containers or ornaments of any type are prohibited.
- L. No signs or lettered wooden boards of any kind shall be allowed.
- M. The Cemeteries Section staff may remove from cemetery lots anything it considers objectionable or injurious to the uses, purposes and uniform esthetics of any cemetery or in violation of any of the rules and regulations governing its operation.

§ 402-7. Decorative items allowed.

- A. Flower containers that do not project above the surrounding ground shall be permitted.
- B. Flowers in movable lined clay pots with a maximum of 12 inches in diameter shall be permitted.
- C. Wreaths and Christmas greens shall be allowed from December 1 to February 1.

- D. Artificial flowers properly secured shall be allowed from November 1 to May 1.
- E. Donated plant material will only be allowed in designed memorial planting areas where available and upon approval of the Cemetery Foreman.
- F. Except for that portion of Mosswood Cemetery west of Putnam Avenue, Cotuit, veterans' flags and holders shall be allowed throughout the year, provided that they are installed flush with the front base of the grave monument and maintained in proper, presentable conditions by the installer.
- G. Veterans' flags and holders shall be allowed in that portion of Mosswood Cemetery west of Putnam Avenue during the period one week preceding Veterans' Day through March first of the following year and during the weeks preceding and following Memorial Day and the Fourth of July. Flags and holders must be installed in proper, presentable condition by the installer.
- H. All items subject to restricted dates shall be removed by the lot owner or responsible organization on or before the specified removal date. Flags not removed on the specified day and those which become faded, frayed or torn shall be removed and disposed of by the Cemeteries Section staff. Flag holders shall also be removed at the time the flag is removed and disposed of if not claimed within 60 days. Other items shall be removed by the Cemeteries Section staff if, in their judgment, they have become wilted, decayed or unsightly.
- I. Funeral floral arrangements shall be removed by Cemetery Section personnel seven days following their placement. Lot owners wishing to keep any part or all of the floral arrangement should retrieve them within the seven-day period.
- J. The Town shall not be responsible for damage to flowers, flags, containers or holders due to weather, vandalism, theft or maintenance procedures.

§ 402-8. Cemetery maintenance and repair.

- A. Cemetery Section personnel and such other DPW employees as may be authorized by the Director or Supervisor, Structures and Grounds Division shall have the right to enter upon any lot or other part of any Town-maintained cemetery to inspect, view or perform such work as may be deemed appropriate.
- B. The DPW may, at any time, lay out, alter, or eliminate sections of driveways, cartways, or change grades in a manner which in its opinion will maximize on the appropriate usage of the cemetery property without jeopardizing its aesthetic qualities.
- C. Gravestone repairs or rubbings shall be prohibited without the specific authorization of the Cemeteries Section Foreman or his representative.
- D. The Town shall reserve to itself the exclusive control, without further recourse or notice, over every tree, shrub, vine, or other plant growth within the boundaries of all Town cemeteries, whether having been planted previous to these rules and regulations by licensee or otherwise, including the right of removal without notice, when it considers such removal necessary.

§ 402-9. Burial lot licensing.

- A. Subject to the availability of space, persons who have been bona fide residents of the Town of Barnstable for a period of two years or more are entitled to be issued a license to a burial lot in an active cemetery. Additionally, nonresident taxpayers and residents with less than two years' residency may be issued a license to a burial lot in Mosswood Cemetery at 150% of the total fee currently in effect for residents with two or more years' residency. No association, group, or organization shall be issued a license. Grave lots are as follows:
- (1) One grave lot: 3.5 feet by 10 feet.
 - (2) Two-grave lot: seven feet by 10 feet.
 - (3) Three-grave lot: 10 feet by 10 feet (where available).
 - (4) One cremation lot: 3.5 feet by five feet.
- B. Lots larger than four graves, when available, may be licensed by special arrangement through application to the Town Manager. Price lists for licenses are available at the Town Manager's Office or the Cemetery Office.
- C. Application for a right of burial license shall be obtained from the Town Manager's Office, 367 Main Street, Town Hall, Hyannis 02601. Residency shall be verified based on the Town Clerk's lists of persons and voter registration list at the time of application. Nonresident taxpayers must present a current real estate tax bill at the time of application.
- D. Town-maintained cemeteries are nondenominational, and all burial lots are available to qualified Town residents regardless of religious affiliation.
- E. The right granted to the licensee of any lot or grave is a sole and exclusive right of burial of the human dead and of the erection of monuments or markers, subject to the terms, conditions and regulations as they may exist from time to time. Licenses are not transferable. Arrangements shall be made with the Town Manager's Office, should a licensee wish to relinquish his/her rights to one or more graves. Compensation shall be no greater than the total of the fees paid at the time the license was issued.

§ 402-10. Cemetery fees.

- A. License fee. A license fee, based on the number of graves contained in a burial lot, shall be paid at the time of the license application.
- B. Perpetual care fee.
- (1) A perpetual care fee covering the following services shall be paid at the time of the license applications:
 - (a) Maintaining grade of a grave.
 - (b) Maintaining grass on a grave.

- (c) Removal of dead flowers and debris.
- (2) Landscape maintenance of burial lots is the sole responsibility of the Cemeteries Section. Relandscaping of burial lots by private individuals is prohibited.
- C. Administrative fee. An administrative fee shall be charged for all interments performed by the Town or its private interment companies. The administrative fee shall be charged at the time of interment.
- D. Marker, monument and foundation installation fee. This fee shall be paid at the time arrangements are made with the Cemeteries Foreman for the installation.
- E. Fee schedule. The current schedule covering the license fee, perpetual fee, administrative fee and installation of monuments and markers may be obtained from either the Town Manager's Office or the Cemeteries Office during regular business hours. Additionally, a fee schedule for those grave opening and closing services performed by private contractor may be obtained at these offices.

§ 402-11. Interments and disinterments.

- A. All interments and disinterments are made subject to the orders and laws of the properly constituted authorities of the Town, county and state.
- B. Forty-eight hours' notice shall be provided to the Cemeteries Section Foreman when making arrangements for interments. Sunday and holiday interments shall not be permitted except in cases where an extreme hardship would result.
- C. Grave orders must be placed before 12:00 noon on the Saturday preceding a Monday burial. Grave orders received after noon on Saturday shall be scheduled no earlier than the following Tuesday.
- D. Disinterments from the cemetery may be made upon final order of a court having jurisdiction. In the absence of such an order, no disinterment from the cemetery shall be made without the consent of the Town Manager and the written authorization of the persons entitled thereto.
- E. The Cemeteries Section Foreman shall have the right to refuse a funeral when, in his best judgment, conditions within the cemetery make the burial unsafe and/or impossible.
- F. All burials shall be performed in coordination with and under the general direction of the Cemeteries Section Foreman. All burials will be subject to an administrative fee.
- G. The number of burials allowed in one grave is three cremations or one full burial.
- H. Only single-depth interments shall be allowed.
- I. No interments shall be made until the Cemeteries Section Foreman has been furnished with a burial permit, as required by laws of the commonwealth, and an interment order which has been signed by the owner or legal representative of the lot. Additionally, no grave shall be opened by any person not so authorized by the Town of Barnstable. Each grave shall be staked by the Cemeteries Section staff prior to the opening. All interments

and disinterments shall be made by the Town's approved contractor under the coordination of the Cemeteries Section Foreman.

- J. All interments shall be made in a concrete box (liner) of one-piece construction with one- or two-piece cover sufficient to permanently support the weight above it. Liners shall be placed into the grave prior to graveside ceremonies. Aboveground self-sealing devices are prohibited in Town cemeteries.
- K. The Town shall not be responsible for disinterments of remains that have not been interred in a permanent container.
- L. The Town reserves the right to correct any errors that may be made when making interments or disinterments and shall not be held liable due to the failure of any device to operate normally or to conditions which may develop beyond its control.
- M. The Town shall not be held responsible for any order given by telephone, or for any mistake occurring from the want of precise and proper instructions as to the particular grave where interment is desired.
- N. Records of each interment shall be maintained at the Cemeteries Section Office in Cotuit and also recorded on the Town records as required by law.

§ 402-12. Monuments, markers and foundations.

- A. The licensee shall have the right to erect a memorial monument and/or flush marker, but all such memorials shall not exceed the dimensions specified in the cemetery specifications for foundations and markers and shall be set on suitable foundations.
- B. All foundation work and marker placement shall be performed by, or in special circumstances under the direction of, an employee(s) of the Cemeteries Section and at the discretion of the Cemetery Section Foreman.
- C. All monuments or markers shall be placed in accordance with cemetery specifications. Memorial benches will not be permitted as substitutes for monuments.
- D. Only one flush marker shall be allowed on single grave lots.
- E. Only one flush marker shall be allowed on designated cremation lots.
- F. Only a flush marker will be allowed on that portion of Mosswood Cemetery west of Putnam Avenue, Cotuit. This has been designated as a "flush marker section."
- G. In cemeteries other than those designated as "flush marker," one upright monument will be allowed per family lot consisting of at least two full interment grave sites. Any other foot marker or corner bounds shall be flush with the ground.
- H. All upright monuments shall have foundations constructed in accordance with cemetery specifications.

- I. Markers and monuments shall be set as weather and frost conditions permit. The Cemeteries Section shall not be held responsible for stone-setting delays due to weather conditions beyond its control.
- J. While the Cemeteries Section shall exercise all care to protect raised lettering, carving or ornaments on any monument or marker, it shall not be held responsible for any damage or injury thereto during routine maintenance or when caused by vandalism
- K. All monuments or markers shall conform to cemetery specifications. Nonconforming monuments or markers shall not be allowed and will be rejected.

§ 402-13. Specifications for foundations and markers.

- A. The Cemetery Section Foreman, or his designated supervisor, will be available to contractors by appointment for meetings or information in any of the Town cemeteries with suitable advance notice.
- B. The licensee having the right to erect memorial stones or monuments shall not exceed the following dimensions and shall be set on suitable foundations:

Maximum Dimensions for Monuments and Markers

Flush single marker	2' long by 1'2" wide x 4" thick*
Flush double marker	36" long x 1'2" wide x 4" thick
Cremation lot marker	2' long x 1'2" wide x 4" thick
Upright monument	3'6" long x 1'2" wide x 8" thick**

NOTES:

- * All flush markers shall be at least four inches in thickness.
- ** All bases shall have an exposed edge of two inches at the sides and three inches at the length. The maximum overall height of three feet on all monuments is equal to the base plus the die (headstone).

- C. The Town reserves the right to construct all monument foundations at the expense of the licensee. No memorial monuments and/or markers shall be installed without the approval of the Cemetery Foreman.
- D. No less than 30 days' notice in advance shall be provided the Cemetery Foreman for construction of monument foundations.
- E. Cemetery will not be responsible for any errors made by improper inscription on any memorial monument or markers.
- F. Foundations shall be a minimum of three-foot depth and match the horizontal dimensions on the monument base.

- G. All foundation work, monument placement and marker placement shall be performed by, or under the direction of, the Cemetery Foreman.
- H. Foundations shall be made of poured concrete.
- I. Monument companies will be allowed to perform lettering and cleaning of monuments or markers (except ancient grave stones) during regular work hours. No work is to be done on weekends, holidays or evenings without permission of the Cemeteries Section Foreman
- J. Only one flush marker shall be allowed on single -grave lots.
- K. Only one flush marker will be allowed on designated cremation lots.
- L. Only flush markers will be allowed on the portion of Mosswood Cemetery west of Putnam Avenue, Cotuit, designated a flush marker section.
- M. One upright monument will be allowed per family lot consisting of at least two grave sites. Any other foot markers (or corner bounds) shall be flush to the ground.
- N. All markers shall be delivered to the maintenance building at Mosswood Cemetery, 280 Putnam Avenue, Cotuit, MA 02635, Monday through Friday, 7:00 a.m. to 4:30 p.m. Holiday and weekend deliveries will not be accepted. The delivery of monuments or markers shall be accompanied by a work order showing the name and address of the lot owner and lot number where installation is to occur. A check, made payable to the Town of Barnstable, in the amount determined by the then current rates for monument foundation or marker installation shall accompany each work order.

§ 402-14. Violations and penalties.

Any person who violates these rules and regulations and/or willfully or neglectfully damages, defaces or destroys cemetery property including fences, gates, grounds, markers and monuments shall be subject to prosecution.

§ 402-15. Copies of current rules.

Copies of the most current rules and regulations may be obtained during normal working hours at the Town Manager's Office in Town Hall, the DPW Structures and Grounds Division Office at the corner of Pitcher's Way and Route 28, Hyannis, and the Cemeteries Section Office at 280 Putnam Avenue, Cotuit.

§ 402-16. When effective.

These rules and regulations are effective as of the date of approval and shall remain in effect until such time as they are amended or rescinded by the Town Manager.

Chapter 403
DOG CONTROL

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| § 403-1. Authority; intent. | § 403-10. Property damage; appraisal; reimbursement. |
| § 403-2. Licenses and tags. | § 403-11. Liability of dog owner. |
| § 403-3. Kennel licenses. | § 403-12. Vaccination against rabies. |
| § 403-4. Restriction on number of dogs per residence. | § 403-13. Quarantine of dogs suspected of having contagious disease. |
| § 403-5. Kennel inspection and regulation. | § 403-14. Adoption policy. |
| § 403-6. Leashing and restraint of dogs. | § 403-15. Complaint investigation; order to restrain or remove. |
| § 403-7. Nuisances committed by dogs; removal by owner; exception. | § 403-16. Violations and penalties. |
| § 403-8. Dogs on beaches and in recreation areas. | |
| § 403-9. Barking dogs. | |

[HISTORY: Adopted by the Town Manager of the Town of Barnstable 5-11-1993. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Regulation of dogs — See Ch. 24, Art. I.

License jurisdiction — See Ch. 121, § 121-6I.
Dogs at Sandy Neck Beach — See Ch. 601, § 601-3G.

§ 403-1. Authority; intent.

- A. The following regulations, relative to the regulation, control and disposition of dogs within the Town of Barnstable are adopted by the Town Manager under the authority of Chapter 24, Article I, Regulation of Dogs of the Code of the Town of Barnstable.
- B. These regulations are intended to guide those persons owning or keeping dogs within the Town of Barnstable in their role as responsible pet owners. Although it is hoped these regulations will act as an educational tool, it must also be understood that enforcement of same is necessary to protect the rights and safety of the public. Any owner/keeper seeking relief from any portion of these regulations may file or appeal for same with the Town Manager.

§ 403-2. Licenses and tags.

- A. The owner or keeper of a dog kept within the Town of Barnstable, said dog being six months of age or older, shall cause that dog to be licensed annually. The license year shall be from July 1 to the following June 30, inclusive.

- B. The Town Clerk shall issue dog licenses and tags on a form as prescribed by the Town Manager. The Clerk shall record for each license issued, the name, address and telephone number of the owner or keeper of each dog so licensed, the tag number issued, date of last rabies vaccination, breed, age, color, or other description of the dog. Each tag shall contain the tag number, the name "BARNSTABLE" and the year of issue.
- C. The owner or keeper shall cause said dog to wear around its neck or body a collar or harness to which he/she shall securely attach the tag issued. In the event that any tag is lost, defaced or destroyed, substitute tags shall be obtained by the owner or keeper from the Town Clerk, at a cost of \$2 each.
- D. The owner or keeper of any dog shall provide proof of said license upon request of the Animal Control Officer, police officers or other authorized officials.
- E. The fee for each dog licensed shall be \$10, unless a certificate of a veterinarian stating that the dog has been spayed or neutered has been presented to the Town Clerk, in which case the fee shall be \$7. No license fee or part thereof shall be refunded because of a subsequent death, loss, spaying or neutering, or removal from the Town of such dog. A late fee of \$5 will be assessed to individuals who license the animal from August 1 of each year to December 31 of each year. Any person who licenses the animal from January 1 to June 30 for the prior year will be assessed a late fee of \$10. This does not apply for newly acquired dogs or for individuals who have moved into Town less than 30 days prior to licensing. License fees shall be reviewed annually in accordance with the Town of Barnstable ordinances. All dogs must be licensed every year. If a dog owner fails to license or relicense a dog for one or more years, the dog owner must pay the license fee and late fee for the year(s) missed, before obtaining the current year's license. **[Amended 12-30-2005]**
- F. A license shall not be issued for any dog unless the owner or keeper provides the Clerk with a veterinarian's certificate verifying that the dog is currently vaccinated against rabies or indicating that, because of infirmity, other physical condition or regimen of therapy, said vaccination is deemed inadvisable. The rabies vaccination date shall be recorded on the license record.
- G. No fee shall be charged for a dog specially trained to lead or serve a handicapped person, upon presentation of certification of said training.
- H. The owner or keeper of any dog shall provide proof of said license upon request of the Animal Control Officers, police officers or other authorized officials.
- I. The penalty for violation of this section, in addition to any other penalties provided by law, shall be \$50. The penalty for failure to license said dog within 30 days of notification of violation of this section shall be \$75.
- J. The provisions of this section shall not apply to any domestic charitable corporation incorporated in the commonwealth, exclusively for the purpose of protecting animals from cruelty, neglect or abuse; or stray dogs housed in a kennel operated under contract with the Town of Barnstable for the purpose of housing stray dogs; or pet shops licensed under Chapter 129, § 39A, of the General Laws and where otherwise provided by law.

§ 403-3. Kennel licenses.

- A. Any owner or keeper of four or more dogs, three months of age or over, may elect to secure a kennel license in lieu of licensing such dogs under § 403-2. Such license shall be in a form prescribed by the Town Manager and issued by the Town Clerk. Such license shall be in lieu of any other license for any dog while kept at such kennel during any portion of the period for which such kennel license is issued. The holder of a license for a kennel shall cause each dog kept therein to wear, while it is at large, a collar or harness of leather or other suitable material, to which shall be securely attached a tag upon which shall appear the number of such kennel license, the year of issue, and the inscription "BARNSTABLE." Such tags shall be in a form prescribed by the Town Manager and issued by the Town Clerk.
- B. In order to obtain a kennel license: **[Amended 2-17-2006]**
- (1) The applicant must apply to site plan review, and then to the Zoning Board of Appeals to see if the property meets the requirements of § 240-27 (Service and Distribution District); and if so, under Subsection C, Conditional uses, Subsection C(2), kennels subject to § 240-125C, the Zoning Board of Appeals would grant a special permit.
 - (2) Once a special permit is obtained, then the Town Manager, or his designee, shall hold a public hearing and may impose conditions or restrictions as he or she may deem necessary for the public good; since kennels are considered a commercial use, and not allowed under § 240-46, Home occupation.
 - (3) Upon approval, the Manager, or his designee, will forward a notification to the Town Clerk for the license and payment of the annual fee as defined in Subsection D below. Failure of the Zoning Board of Appeals to issue a special permit as required under Chapter 240, Zoning, will cause a kennel license not to be issued at such location by the Town Clerk.
- C. The Town Manager may impose such conditions or restrictions on the issuance of a kennel license as he deems necessary for the public good.
- D. The fee for each license for a kennel shall be: \$50 for less than 10 dogs; and \$100 for 10 or more dogs; provided that, for the purpose of determining the amount of such fee for any kennel, dogs under the age of six months shall not be counted in the number of dogs kept therein. The name and address of the owner of each dog kept in any kennel, if other than the person maintaining the kennel, shall be kept on file thereat and available for inspection by any authorized agent of the Town Manager. The Town Clerk shall, upon application, issue without charge a kennel license to any domestic charitable corporation, incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse, and for the relief of suffering among animals. **[Amended 2-17-2006]**
- E. A veterinary hospital shall not be considered a kennel unless it contains an area for the selling or boarding of dogs for other than medical purposes, in which case it shall apply for a kennel license. The license period for a kennel license shall be from July 1 to the following June 30, inclusive.

- F. Failure to obtain or keep current the kennel license will result in a fine of \$100 per day; each day will be considered to be a separate offense. [Added 2-17-2006]

§ 403-4. Restriction on number of dogs per residence.

No person shall keep more than six dogs, said dogs being over the age of six months, at any single-family residence within the Town of Barnstable, unless a kennel license has been first obtained. Those persons who kept more than six dogs at a single-family residence, said dogs being properly licensed and recorded in the Town of Barnstable during 1992, may keep said dogs in excess of the six-dog limit. Said dogs may not be replaced so as to exceed the six-dog limit. Penalty for violation of this section shall be \$25 per dog in excess per day of violation

§ 403-5. Kennel inspection and regulation.

The Town Manager, or his authorized agent, may at any time inspect or cause to be inspected any kennel and if, in their or his judgment, the kennel is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the Town Manager may by order revoke or suspend, and in the case of suspension may reinstate, such license. Upon written petition of 25 residents, filed with the Town Manager, setting forth that they are aggrieved, or annoyed to any unreasonable extent, by one or more dogs at a kennel, because of excessive barking or vicious disposition of said dogs or other conditions connected with such kennel constituting a public nuisance, the Town Manager, or his authorized agent, within seven days after the filing of such petition, shall give notice to all parties in interest of a public hearing to be held within 14 days after the date of such notice. Within seven days after such public hearing the Town Manager shall make an order either revoking or suspending such kennel license or otherwise regulating said kennel, or dismissing said petition. The holder of such license may petition the District Court for relief in accordance with Massachusetts General Law Chapter 140, § 137C. Any person maintaining a kennel after the license therefor has been so revoked, or while such license is so suspended, may be punished by a fine of \$50 for each day in violation of said revocation or suspension.

§ 403-6. Leashing and restraint of dogs.

- A. No person owning or keeping a dog in the Town of Barnstable shall permit such dog to be kept at large in the Town of Barnstable elsewhere than on the premises of the owner or keeper, except if on the premises of another person with the knowledge and permission of such other person. Such owner or keeper of a dog in the Town of Barnstable which is not on the premises of the owner or upon the premises of another person with the knowledge and permission of such person shall restrain such dog by a suitable means.
- B. In any prosecution hereunder, the presence of such dog at large upon premises other than the owner or keeper of such dog shall be prima facie evidence that such knowledge and permission was not had.
- C. Any dog found to be at large in violation of this section may be caught and confined by an officer authorized to do so, or returned to the owner or keeper of record forthwith.

The Animal Control Officer, or authorized agent, shall attempt to notify the owner/keeper of record of a confined dog. The owner/keeper of said dog shall have a period of time, not to exceed 10 days, within which to recover said dog. Return of the dog to the owner/keeper of record shall be dependent upon admission of ownership or the keeping of said dog, and assumption of responsibility by the owner or keeper. If said dog is unlicensed, a current license shall be obtained and all impound fees paid prior to release of the dog. In addition to fees charged by the kennel for boarding, medical or other care costs, there shall be an impound fee paid to the Town of Barnstable of \$20 for licensed dogs and \$30 for dogs unlicensed at time of impound.

- D. This section shall not be construed to limit or prohibit the use of hunting dogs during the hunting season, the conducting of field trials for hunting dogs or the training or use of police K-9 units.
- E. The penalty for violations of this section shall be \$25 for each offense.

§ 403-7. Nuisances committed by dogs; removal by owner; exception.

No person owning or having the care, custody or control of any dog shall permit such dog to soil or defile or commit any nuisance upon any sidewalk, street, thoroughfare, beach or wetland, in or upon any public property, or in or upon the property of persons other than the owner or persons having the care, custody or control of such dog, unless said person picks up any such waste and disposes of same in a sanitary manner. This section shall not apply to physically handicapped persons in sole custody or control of said dog. The penalty for violation of the section shall be \$15 per offense.

§ 403-8. Dogs on beaches and in recreation areas.

No person owning or having the care, custody or control of any dog shall allow said dog on any Town beach or recreation area from May 15 to September 15 without the written authorization of the Town Manager or official in control of said beach or recreation area.

§ 403-9. Barking dogs.

No person owning, keeping or otherwise responsible for a dog shall allow or permit said dog to annoy another persons reasonable right to peace or privacy by making loud or continuous noise, where such noise is plainly audible at a distance of 150 feet from the building, premises, vehicle or conveyance housing said dog, or such noise is continuous in excess of 10 minutes. The fact that such noise is plainly audible at said distance or continuous in excess of 10 minutes shall be prima facie evidence of a violation. The penalty for violation of this section shall be \$25 for each offense.

§ 403-10. Property damage; appraisal; reimbursement.

- A. Whoever suffers loss by the worrying, killing or maiming of his livestock or fowl by dogs shall inform the Animal Control Officer who shall forthwith proceed to the scene to view the damage, who shall determine if the damage was done in fact by dogs and, if so, appraise the amount of damage if it does not exceed \$50.
- B. If in the opinion of the Animal Control Officer the damage exceeds \$50, the damage shall be appraised on oath by three persons, one of whom shall be the Animal Control Officer, one shall be appointed by the person alleged to have suffered the loss and the third appointed by the other two.
- C. Said appraisers shall consider and include in such damages the number and kind of animals damaged, the extent of the damage and the approximate weight of the killed animals. The appraisers will also note in their report whether or not any animals were sent for medical treatment in an effort to save them, the number and kind of such animals. Such report shall be filed in the office of the Town Manager and the office of the Director of Natural Resources within 10 days of said appraisal. The Town Manager or the Director may require the appraisers to provide any additional information that they deem appropriate. The appraisal will be reviewed and submitted for payment as deemed appropriate. Reimbursement may be denied or limited in accordance with Chapter 140, § 161A, of the Massachusetts General Law.

§ 403-11. Liability of dog owner.

- A. The owner or keeper of a dog which has done damage to livestock or fowl shall be liable for such damage, and the Town Manager may order the owner or keeper to pay such damages after an investigation by the Animal Control Officer of the facts of the matter and appraisal conducted as outlined in § 403-10.
- B. In the event that the owner or keeper of such dog known to have done damage to livestock or fowl refuses to pay upon the order of the Town Manager, the Animal Control Officer shall enter or cause to be entered a complaint in District Court for the enforcement of the order.

§ 403-12. Vaccination against rabies.

- A. The owner or keeper of a dog three months of age or older, housed or sheltered in the Town of Barnstable, shall cause such animal to be vaccinated against rabies by a licensed veterinarian using a vaccine approved by the Massachusetts Department of Public Health. Such owner or keeper shall procure a veterinarian's certification that such animal has been so vaccinated and setting forth the date of such vaccination and the duration of immunity, or a notarized letter from a veterinarian that a certification was issued, or a metal rabies tag bearing an expiration date indicating that such certification is still in effect.
- B. Vaccinated animals shall be revaccinated periodically in accordance with rules and regulations adopted and promulgated by the Massachusetts Department of Public Health.
- C. The owner or keeper of a dog shall present certification of rabies vaccination upon demand of the Animal Control Officers, police officers or other authorized officials of the Town.
- D. The penalty for violation of this section shall be \$50 for each offense. The penalty for failure to vaccinate said animal within 30 days of notification of a violation of this section shall be \$75.

§ 403-13. Quarantine of dogs suspected of having contagious disease.

- A. The Town Manager, or his authorized agent, may order any dog which said person has reason to believe is affected with a contagious disease, to be quarantined or isolated for at least 10 days upon the premises of the owner or of the person in whose charge it is found, or in such other place as the Town Manager or agent may designate.
- B. A dog which has been quarantined or isolated by order of the Town Manager or his agent shall, during the continuance of such quarantine or isolation, be deemed to be affected with a contagious disease. The owner or keeper shall be responsible for any fees incurred for any off-premises quarantine. Whoever knowingly breaks or authorizes or causes to be broken a quarantine so imposed; or whoever contrary to such order of quarantine or isolation knowingly removes a dog or authorizes or causes it to be removed from a building, place or enclosure where it is quarantined or isolated; or whoever contrary to an order or notice of quarantine knowingly places or causes or authorizes to

be placed any other animals within a building, place or enclosure where a dog is quarantined or in contact therewith; or knowingly causes or authorizes to be concealed, sold, removed or transported a dog, knowing or having reasonable cause to believe that it is affected with a contagious disease; or whoever knowingly authorizes or permits such dog to go at large within the Town of Barnstable shall be punished by a fine of \$200. Any such dog found at large by the Animal Control Officer, or other authorized agent of the Town, shall be captured and confined at the expense of said owner or keeper. This section shall not apply to authorized Town officials in the performance of their duties.

§ 403-14. Adoption policy.

It shall be the policy of the Town of Barnstable to attempt to make available for adoption those impounded dogs which have gone unclaimed and are deemed healthy and suitable for pets. The kennel holding a contract with the Town of Barnstable for impound services may offer said adoption service in accordance with Massachusetts General Laws, Chapter 140, § 139A, acting in the capacity of a "shelter" as defined in MGL Ch. 140, § 136A. Alternatively, the Town may place unclaimed dogs, suitable for adoption, with the Animal Rescue League of Boston, Brewster facility, the MSPCA or other breed-specific rescue organization. The Town of Barnstable will not assume financial responsibility for the upkeep and boarding of said dogs beyond the initial required ten-day holding period.

§ 403-15. Complaint investigation; order to restrain or remove.

If any person shall make a complaint in writing to the Town Manager that a dog owned or kept in the Town of Barnstable is a nuisance by reason of vicious disposition or excessive barking or other disturbance, the Town Manager shall cause to be investigated such complaint, including an examination on oath of the complainant, and may make such order concerning the restraint or disposal of such dog as may be deemed necessary. Within 10 days after such order the owner or keeper of such dog may petition for relief of said order in accordance with the provisions of Massachusetts General Law, Chapter 140, § 157. Any person owning or keeping a dog subject to any order of the Town Manager, who shall fail to comply with said order of the Town Manager, shall be punished by a fine of \$100 for each offense. The owner/keeper of any dog subject to an order of the Town Manager shall be responsible for any and all costs of carrying out said order.

§ 403-16. Violations and penalties.

Unless otherwise stated, violation of any provision of these regulations shall be punished by a fine not to exceed \$300. The provisions of these regulations may be enforced utilizing the procedures contained in Massachusetts General Law Chapter 40, § 21D, as a noncriminal alternative. The fine for violations pursued utilizing the provisions of Chapter 40, § 21D, shall be \$50 unless otherwise specified within the regulation.

Chapter 404
EXCAVATIONS

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Authority; Purpose; Definitions

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- § 404-24. Breaking through pavement, backfilling, and patching.

[HISTORY: Adopted by the Town Manager of the Town of Barnstable 1-23-1995; approved by DPW Commission 1-17-1995. Amendments noted where applicable.]

GENERAL REFERENCES

Scenic roads — See Ch. 180.

Tree work permits — See Ch. 221.

ARTICLE I
Authority; Purpose; Definitions

- § 404-1. Authority, scope and applicability.

The Town Manager acting by virtue of the authority granted by Chapter 121, Licensing, Article II, of the Code of the Town of Barnstable hereby adopts and makes the rules and

regulations governing excavation and construction within the layout of a public way or public place controlled and maintained by the Town of Barnstable.

§ 404-2. Purpose.

While public ways are established and maintained for the purpose of facilitating communication and safe and unrestricted travel of persons and vehicles of various types from one place to another within the Town, property owners and public utilities may be granted authority to utilize portions of a public way for certain other bona fide purposes such as access to their property and the installation and maintenance of utility services and related appurtenances. The rules and regulation set forth herein establish controls and standard procedures for permitted excavation, construction, and reconstruction within the layout of public ways and other public places in order to prevent unnecessary or unacceptable interference with their intended use and to protect the significant investment made by the Town in improving and preserving public property.

§ 404-3. Definitions.

For the purpose of these rules and regulation, the words and phrases used herein shall have the following meanings except in those instances where the text clearly indicates a different meaning:

APPLICANT — Any person, firm, partnership, association, corporation, company, or organization of any kind, including public utilities, licensed to undertake excavation, within the layout of a public way who applies for a permit to excavate or in any way make a change to existing conditions within the layout of a public way or in a public place within the Town.

DEPARTMENT — Town of Barnstable Department of Public Works.

DIRECTOR — The Director of the Department of Public Works of the Town of Barnstable. The Director may delegate from time to time certain duties described in these rules and regulations to designees who will act on his behalf.

ENGINEERING DIVISION — Engineering Division of the Town of Barnstable, Department of Public Works.

EXCAVATION — Any opening in the surface within the layout of a public way or public place within the Town made in any manner whatsoever, either planned or in an emergency, or any disturbance of nonpaved areas to a depth greater than one foot when done by means other than by hand digging except an opening in a lawful structure below the surface of said locations the top of which is flush with the adjoining surface and is so constructed as to permit frequent openings without injury or damage to said locations.

LAYOUT OF PUBLIC WAY — The land encompassing a public way that has been laid out on a plan showing the boundaries and measurements and accepted by the legislative body of the Town or the county for purposes of easement of passage and dedicated to public use or is otherwise recognized by the Town of Barnstable as being a public way.

LICENSED CONTRACTOR — Any person, firm, partnership, association, corporation municipal or private, company, or organization of any kind, including public utilities, who or which is qualified and has appropriate equipment to do the type of work described herein, and has been granted a license to do such work within the Town by the Town of Barnstable Department of Public Works.

NEWLY CONSTRUCTED, RECONSTRUCTED OR REPAVED — Any road, bike path or other hard surfaced area which has been newly constructed, reconstructed, or sealed within the last five years preceding the date of application for permit.

PERMITTEE — Any person, firm, partnership, association, corporation, company, or organization of any kind, including public utilities, who or which has been granted a permit to undertake excavation or in any way disturb existing conditions within the layout of a public way or in a public place within the Town.

PUBLIC PLACE — Any parking lot, park, square, traffic circle, recreation facility, plaza, or any other property, other than as defined as a public way, owned or controlled by the Town and dedicated to public use.

PUBLIC WAY — Any highway, street, road, land, sidewalk, bike path, rotary or traffic island within the layout of a way accepted by the legislative body of the Town or of Barnstable County for easement of passage and dedicated to public use or is otherwise recognized by Town of Barnstable as being a public way.

PUBLIC UTILITY — Any private company or corporation, quasi-municipal corporation, or municipal organization that provides electric, water, gas, telephone, sewer, natural gas, or cable television.

SUBSTRUCTURE — Any pipe, pipeline, sleeve, tube, main, conduit, tunnel, duct, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, guy wire, pole line anchor, cable, wire, junction box, and/or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left placed, or maintained in, upon, along, across, or under any public way or public place.

TOWN — The Town of Barnstable.

TOWN MANAGER — The chief administrative officer of the Town of Barnstable. The Town manager may delegate from time to time certain duties described in these rules and regulations to designees who will act on his/her behalf.

WORKING DAY — Monday through Friday, exclusive of legal holidays, between the hours of 7:00 a.m. and 4:00 p.m.

§ 404-4. Operations requiring permits.

- A. All construction and/or installation operations within the limits of Town roads and rights-of-way require a permit signed by the Director before any work can be performed, including but not limited to the following types operations:

- (1) To construct repair, install, and/or maintain sanitary sewers, storm drains, water mains and appurtenance, or direct buried cables, gas mains, telephone and electrical cables or conduits and service connections thereto, roadways, driveways, pavement extensions, manholes, inlets, catch basins, fire hydrants, sidewalks, curbs or steps.
 - (2) To erect and maintain poles, wire, guys, cables, and other overhead structures where excavation is required in a public place.
 - (3) Any other construction operations, other than Town-contracted projects, which may cause abnormal wear to or deface or damage existing structures, pavement, curbs, sidewalks bike paths, or vegetation areas.
- B. The issuance of a permit to an applicant to perform any of the above operations does not relieve the applicant in any way from complying with rules, regulation, laws, and acts or other local, regional, state or federal departments or agencies.
- C. applicants, if not the licensed contractor intending to do the work, shall identify on the permit application the name of the contractor or subcontractor who would do the work. No permittee, contractor, or subcontractor shall perform work unless it is licensed to do so by the Engineering Division and has an up-to-date performance bond on file with the Town.

ARTICLE II

Permit Application Requirements

§ 404-5. Establishment of requirements.

The following requirements are established under the purview of these regulations.

§ 404-6. Permit procedures.

- A. No person shall make any excavation in any public way or place without first obtaining a permit granted for the specific work issued by the Director; except as otherwise provided in these rules.
- (1) Filing application. An application for permit must be filed with the Department's Engineering Division at least five days (Saturdays, Sundays and holidays excluded) prior to any planned excavation. Standard application forms for this permit may be secured from the Engineering Division. Each application form shall be completely filled in, signed, and mailed or delivered to the Engineering Division, Town Hall, 367 Main Street, Third Floor, Hyannis, MA 02601. The applicant shall provide an explanation of the proposed work on the application and a dimensioned sketch or diagram either in the space provided on the application or on a separate sheet attached to the application. The sketch/diagram shall show the location of the work to be done in relation to the outstanding features of the road such as property lines, intersections, pavement lines, sidewalks, trees drainage structures, and utility poles (by number) and shall also show the nature and extent of the work proposed. The completed application form shall contain the Dig-Safe Identification Number that

is issued by that agency upon notification of proposed activity. (It shall be noted that water, sewer and cable TV substructure locations must be arranged for separately.)

- (2) Disclosure of methods and materials. The applicant will be required to disclose the methods and materials proposed to be used on unusual or complex projects. In the event the permittee discovers that additional work or repairs not identified in the original permit must be performed at the same location, the permittee must apply to the Department for a permit amendment to authorize the additional work.
 - (3) Requirement for plans and specifications. When applications are made for permits involving work of major scope, they must include duplicate sets of complete plans and specifications. The plans shall be detailed so that the exact location of various parts of the work clearly indicates the risk of injury to road users, and the possibility of damage to trees, road structures, and private property may be readily determined.
- B. When it appears that the work proposed in an application does not conform to Town regulations and standards or may cause substantial or needless damage to a road, or create excessive disturbance to traffic, or create exceptionally dangerous conditions not commensurate with the benefits to the applicant or Town the requested permit will be denied. The applicant shall be informed of such rejection and the reasons for the decision.
- C. The Director may refuse to issue a permit to any applicant when, in the Department's opinion, work performed under a previous permit issued to the applicant was not properly executed, or when said applicant has failed to reimburse the Town for recoverable charges billed under terms governing the previous permit.

§ 404-7. Emergency permits.

Nothing in these regulations shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property, or for making emergency repairs, provided that the utility or person making the excavation applies to the Town for such a permit on the first working day after such work in commenced. The application shall contain a written statement of the conditions which necessitated the work. Contractors performing emergency work must have a certificate of insurance on file with the Department prior to performing any work within public places. If, in the judgment of the Director, traffic conditions, the safety or inconvenience of the traveling public, or other public interest require that the excavation be performed in the most expeditious manner, the Director shall have full power to require that an adequately sized crew of men and equipment be employed by the permittee so that the excavation work will be completed in a safe manner and the shortest possible time.

§ 404-8. Issuance of permits.

- A. A permit shall be issued for a period not exceeding one year. If the permitted project has not begun within one year a new permit must be applied for. A permit will only be issued after:
- (1) Completion of all aspects of the application for the permit.
 - (2) Receipt of surety and proof of insurance in the required amounts.
 - (3) Payment of fees as then required by the fee schedule approved by the Town Manager.
 - (4) Payment for permanent repair costs, if applicable.
- B. A permit must be signed by the Director, or his designee, before it becomes valid. Approved permits will be issued within five working days after completion of the requirements of Subsection A(1), (2), (3) and (4) above. The permittee is prohibited from performing any portion of the work until the above-mentioned items have been complied with and the permittee has provided the Engineering Division with written notice, at least 24 hours in advance, prior to commencement of the actual work. The permittee shall notify the Engineering Division in writing of the completion of the project within two days following its completion.

§ 404-9. Hold harmless condition.

The applicant shall agree as a condition governing the issuance of a permit that he/she will hold harmless the Town, the Town Manager, the Director, and/or his agents from any and all claims and actions whatsoever arising, from the exercising of said permit.

§ 404-10. Certificate of completion.

- A. Upon receipt of written notification of the completion of a project as required in § 404-8, the Director will have the site inspected and if it is agreed that all aspects of the project are indeed complete, a certificate of completion will be issued the permittee stating that the project has been completed in accordance with the requirements of the permit.
- B. If the project does not meet all criteria specified in the permit regarding the completeness of the project, a notice will be issued to the permittee outlining those things that still need to be done in order to complete the project.

§ 404-11. Revocation of permits.

Any permit issued by the Town under this regulation is revocable immediately upon written notification to the permittee. Written notification shall be considered to have been given when it has been mailed by certified mail to the address provided on the permit application or hand delivered to the permittee, contractor or subcontractor and shall be effective as of the date of mailing or hand delivery.

ARTICLE III
Financial Requirements

§ 404-12. Establishment of requirements.

The following requirements are established under the purview of these regulations.

§ 404-13. Schedule of fees.

The Department of Public Works shall levy charges and fees based on the most current schedule of fees approved by the Town Manager. The fees shall be charged for obtaining contractor licenses, excavation or construction permits, and for infrared patch treatments contracted for by the Town. The Director may waive the payment of fees in those instances when it is determined that doing so is in the public interest.

§ 404-14. Bonds.

Prior to the issuance of a permit, the applicant shall deposit with the Department a satisfactory bond in the name of the Town of Barnstable from a surety company authorized to do business in the Commonwealth of Massachusetts (or alternatively a certified check payable to the Town of Barnstable) in an amount and form as shall be determined by the Director. The bond shall be conditioned substantially that the permittee shall guarantee the faithful and satisfactory performance of the work in all respects, and shall replace or restore that portion of any public place in which said applicant, his/her employees or agents shall disturb. The amount of the bond shall be computed on the basis of cost estimated by the Director to be sufficient to make proper restoration or repairs and shall be established separately for each permit so that the Town will be protected against loss in the event of the failure of the permit holder to complete the work or make required repairs or restoration of damages involving work or encroachment authorized by the permit. The Director shall advise the applicant as to the amount of the bond required immediately upon preliminary approval of the application. All bonds shall be written so as to allow the Town without further recourse, to instruct the Department to perform work deemed necessary by the Director to correct any deficiencies and all costs incurred by the Town shall be applied against the bond if they are not recovered within 30 days following the permittee's receipt of a bill from the Town, state and federal agencies are exempt from this requirement when they are the permit applicant.

§ 404-15. Insurance requirements.

- A. An applicant or his/her agent who is to do the work shall provide the Department, prior to issuance of a final permit, proof of insurance coverage including automobile, property damage liability, bodily injury liability issued by an insurance company authorized to issue such insurance in Massachusetts, and if appropriate, workmen's compensation insurance as follows:
- B. The permittee shall supply at the time of filing of the application certified documents from his insurer confirming present coverage in the following insurance categories:

- (1) Workmen's compensation. Statutory limits as provided by Massachusetts General Laws, Chapter 152, with minimum limit of \$1,000,000.
 - (2) Public liability insurance. The permittee shall maintain during the life of the permit public liability in the amount not less than \$1,000,000 for injuries, including wrongful death, to any one person, and, subject to the same limits for each person, is an amount not less than \$2,000,000 on account of one accident.
 - (3) Property damage insurance shall be in the amount not less than \$500,000 for each accident and not less than \$1,000,000 aggregate.
- C. The permittee shall furnish evidence to the Director that, with respect to the operations performed for them by subcontractors, they carry in their own behalf, regular permittee's protective public liability insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to or death of \$2,500,000 for all damages arising out of bodily injuries or death of two or more persons in any one accident, and regular permittee's protective property damage liability insurance providing a limit of not less than \$1,000,000 for all damages arising out of injury to or destruction of property in any one accident and subject to that limit per accident of total (or aggregate) limit of \$5,000,000 unless limits are stipulated in the special provisions for all damages arising out of injury to or destruction of property during the policy period.
- D. The aforementioned insurance coverage shall remain in full force and effectiveness throughout the period of the permit. Similar insurance coverage shall be provided by or for or in behalf of any subcontractor to cover their operations with the same minimum limits as required of the permittee.
- E. The Director may, at his discretion, require increased limits for property damage. The policy shall name the Town of Barnstable as a co-insured and must be issued by an insurance company authorized to issue such insurance in Massachusetts. The period of insurance coverage must extend through the guaranteed period of the permit. Cancellation of insurance endorsement automatically cancels the permit.

§ 404-16. Fines.

- A. Performing nonemergency work without permit. Any person, or partnership, association, corporation, political/legal subdivision, or organization of any kind including utility companies who perform nonemergency excavation work without a permit or who continues to perform excavation work of any kind after a permit has expired shall be fined \$200 a day until a permit or permit extension has been approved.
- B. Failure to obtain permit within one day following emergency work. Any person who performs emergency work and fails to apply for a permit within one working day following start of the work shall be fined \$200 a day until a permit has been applied for and approved.
- C. Unjustified emergencies. Anyone who performs work without a permit on the basis that it is an emergency and subsequent documentation as required in these regulations fails to

justify the emergency shall be fined \$200 a day until a permit has been applied for and approved.

- D. All repairs shall be done in accordance with the requirements outlined in the performance standards contained in Article V of these regulations and which are the specifications of the Department of Public Works.

ARTICLE IV Utilities and Contractors

§ 404-17. Notification of utilities.

Before an application for a permit is initiated, the applicant or his/her contractor must contact Dig Safe and all other appropriate utilities and Town agencies. Proof of that notification must be provided with the application for a permit.

§ 404-18. Contractor licensing procedures.

All contractors wishing to perform excavation work in public ways and places within the Town (not including state-controlled areas) must be licensed to do such work by the Department. Contractors seeking such licenses should request application forms from the Engineering Division of the Department of Public Works. The completed application, certified as to authenticity/validity, shall then be filed with the Engineering Division together with the following items:

- A. A copy of a valid construction supervisors license issued by the Commonwealth of Massachusetts, Department of Public Safety
- B. A valid certificate of insurance pursuant to the requirements of § 404-15 of these regulations.
- C. An application fee pursuant to the requirements of § 404-13 of these regulations

ARTICLE V Performance Standards

§ 404-19. Work safeguards.

- A. General requirements. The permittee shall be responsible for the safety of the public and property from the time work is started to the end of his guarantee period.
- B. Traffic protection. The permittee shall maintain safe passage for two lanes of vehicle traffic whenever possible at all public intersections as well as safe crossings for pedestrians at intervals of not more than 300 feet. If an excavation is made across a public way, it shall be made in sections to assure maximum safe passage for vehicles and pedestrians. If the way is not wide enough to hold excavated material for temporary storage, the material shall be immediately removed from the location.

- C. Routing of traffic. The permittee shall take appropriate measures to assure that during the performance of the excavation, so far as practicable, normal traffic conditions shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public. Upon receipt of approval from the Director and the Chief of Police, a permittee may close off streets and walks to all traffic for a period of time prescribed by the Director if, in the Director's opinion, it is necessary. When the Director or the Chief of Police deems it necessary, the permittee shall engage a police officer or police officers to maintain traffic control and public safety of a project.
- D. Traffic control devices. The permittee shall furnish and install necessary traffic control devices to insure the safe and expeditious movement of vehicular and pedestrian traffic through the construction area. Traffic control devices include among others signs, warning lights, cones, barricades and hand-signaling devices. All such devices shall be in accordance with the provisions of the Massachusetts Manual on Uniform Traffic Control Devices for Streets and Highways. Additional devices may be required by the Director and/or Chief of Police. Detour signs shall clearly mark the alternate route and shall be of sufficient number and clarity of instruction to avoid confusion. Any warning device that is to be left in place after dark shall be equipped with a functioning warning light.
- E. Access to vital structures. The excavation work shall be performed so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, catch basins, or any other vital public necessity as designated by the Director or designee.
- F. Noise. The permittee shall conduct and perform excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. Except in the case of an emergency, no work shall be performed between the hours of 7:00 p.m. and 7:00 a.m.¹
- G. Erosion control. The permittee shall take whatever precautions are necessary to insure that runoff will not create erosion and siltration problems. In particular, the permittee shall protect drainage structures from siltation by whatever means are necessary, including but not limited to the piling of excavated material away from drainage structures, the covering of excavated materials with impervious membrane, and the installation of hay bales or filter fabric fences. In the event that drainage facilities do become damaged by siltation, the permittee will be required to clean or replace damaged drainage structures as determined by the Department, at the expense of the permittee.

§ 404-20. Driveways.

- A. Construction. Driveway entrances onto public ways shall be constructed or reconstructed according to the conditions existing in the immediate area and shall where possible have a positive pitch to the street and a minimum of three inches of Type I asphalt in the area of the drive located within the public way. Driveway entrances in areas which have concrete sidewalks shall have a minimum thickness of eight inches of portland cement

1. Editor's Note: See Ch. 133, Noise.

concrete with six inches by six inches, Number 8 wire reinforcing placed on six inches of three-quarter-inch dense grade material. All openings shall be bituminous concrete or cement concrete extending for a minimum of 10 feet back from the existing roadway pavement. If openings are to be constructed through existing sidewalks, the requirements as stated above will extend through the full width of sidewalk or for 10 feet whichever is greater. In addition, all sidewalk construction will comply with the standards set forth in the Rules and Regulations of the Architectural Barriers Board of the Commonwealth of Massachusetts and the Americans with Disabilities Act.

- B. Location. Driveways shall enter onto roadways on small radius curves and shall be positioned so as to provide maximum sight distance and safety. Tree removal will be permitted only when an adequate driveway entrance cannot be established in a location where such removal could be avoided.
- C. Abandoned entrances. Abandoned entrances shall be reconstructed to match the existing surrounding area to include the installation of granite curbing where applicable. Entrances to be abandoned will be so noted on the plans submitted with the application.
- D. Wheelchair ramps. Existing wheelchair ramps which are damaged or removed shall be reconstructed of portland cement concrete or bituminous concrete with appropriate curb edges in accordance with specifications and details available from the Engineering Division.

§ 404-21. Sidewalks and bike paths.

These following shall apply to all sidewalks and bike paths owned or maintained by the Town:

- A. Pavement restoration. Full-width pavement restoration shall be required for all sidewalk and bike path excavations.
- B. Bituminous concrete sidewalks and bike paths. Sidewalks and bike paths constructed of this material shall be repaired using the specifications required for roadway backfilling and patching, with the exception that the existing base may be reused if the material is suitable in the opinion of the Director or his/her designee. The thickness of the bituminous material will be a minimum of two inches in one course.
- C. Concrete sidewalks. Sidewalks constructed of concrete shall be repaired by making a new concrete section or sections through which the trench passes. Preformed expansion joints, when deemed necessary, will be installed against buildings, walls, steps, foundations or existing concrete sections. Specifications and details are available from the Engineering Division.
- D. Brick sidewalks. Sidewalks constructed of brick shall be repaired in accordance with specifications and details available from the Engineering Division.

§ 404-22. Curbs and berms.

The following shall apply to all curbs and berms owned or maintained by the Town:

- A. Precast concrete and granite curbs. Concrete or granite curbing which in any way is damaged shall be replaced with granite curbing unless otherwise approved by the Director and shall conform to standards, specifications and details available from Engineering Division.
- B. Bituminous curbs and berms. Existing bituminous curbs and berms which are damaged shall be replaced in a manner which matches the cross section of existing surrounding curbs and berms unless otherwise directed by the Director. Installation shall be in accordance with standards, specifications and details available from the Engineering Division.
- C. Poured concrete curb. The use of poured in place concrete curb is prohibited without specific written approval of the Director.
- D. Disposition of existing granite curb. All salvageable granite curb recovered from a public way shall be delivered to the Department of Public Works Highway Division located at 382 Falmouth Road (Route 28), Hyannis, Massachusetts.

§ 404-23. Protection of property.

- A. Vital structures. All excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, police stations, fire escapes, catch basins, or any other vital public necessity as designated by the Director.
- B. Adjoining property. The permittee shall at all times and at his/her own expense preserve and protect from injury the adjoining property by providing proper foundations and by taking such other precautions as may be necessary for the purpose. The permittee shall, at his/her own expense, shore up and protect buildings, trees, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or roads resulting from its failure to property protect and carry out said work. All protective work carried out or deemed necessary to protect buildings, foundations and the like must be approved by the Town Building Commissioner.
- C. Dust and cleanup. During and upon completion of work, all public ways shall be thoroughly cleaned, at the permittee's expense, of all rubbish, excess earth, rock and other debris. The permittee shall take necessary precautions to prevent and avoid dust and to keep gutters free and unobstructed for the full depth of the adjacent curb.
- D. Catch basins. The permittee shall keep all catch basins clear and serviceable. The permittee shall make provisions to take care of all surface/ground water, muck, silt, residue, or other runoff pumped or removed from the excavations and shall be responsible for any damages resulting from his/her failure to so provide.
- E. Utilities, sewers and drains.
 - (1) The permittee shall, in accordance with Massachusetts General Laws, give proper and timely notice to public utilities before making any excavation in a public way. The permittee shall not interfere with any utility. If it becomes necessary to relocate an existing utility, this shall be done by its owner, and the cost of such

work shall be paid for by the permittee. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage. The permittee shall adequately support and protect by timbers, sheeting, shoring, etc., all pipes, conduits, poles, wires, cables or other appurtenance which may be, in any way, affected by the excavation work, and do everything necessary to support, sustain and protect those facilities under, over, along or across the proposed work area.

- (2) In the event any of said pipes, conduits, poles, wires, cables or appurtenances are damaged, and for this purpose pipe coatings or outer encasements or similar type protective devices are to be considered as part of a substructure, such damage shall be repaired by the agency or persons owning them, and the cost of such repairs paid for by the permittee. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water, sewer, drains or gas pipes, wire, conduits or other such similar type appurtenance.
- F. Monuments. The permittee shall engage the services of a registered land surveyor to reset any survey boundary monuments disturbed during the course of work. All disturbed monuments shall be reset within 30 days of the completion of construction activities. The registered land surveyor shall certify in writing to the Director that the monuments have been properly placed.
 - G. Trees. The permittee shall not remove, even temporarily, any trees or shrubs which exist within the public right-of-way without first obtaining permission from the Town Tree Warden. In the event that a tree or a shrub is damaged, destroyed or is authorized for removal, the permittee shall replace the tree or shrub at his/her expense. The species, size and place of relocation shall be determined by the Tree Warden. In addition, if three or more trees are involved in a permit all chipable material including branches and slash up to four inches in diameter shall be reduced to chips and delivered to the Department of Public Works, Highway Division, located at 382 Falmouth Road (Route 28), Hyannis. All tree stumps and debris resulting from such work will be removed from the work site at permittee's expense.
 - H. Scenic roads. On roads which have been designated as scenic roads, the tearing down, displacing or destruction of stone walls, cutting or removal of trees and the repair, maintenance and reconstruction or paving work done within the right-of-way, including the construction of new driveways or alterations of those existing, insofar as they affect stone walls or trees within the right-of-way, shall require the written approval of the Planning Board in accordance with Chapter 180, Scenic Roads, of the Code of the Town of Barnstable.
 - I. Traffic signs. No traffic regulating, warning, directional or street signs shall be removed from the area or relocated therein unless so indicated on the plans or unless so indicated by the Director. Signs shall be removed and replaced as directed by the Director.
 - J. Violations. Any condition at the work site which, in the opinion of the Director, the Police Department, Fire Department or Building Inspector adversely affects the safety of the public or property shall be immediately corrected by the permittee. If the permittee fails to take corrective action the Department of Public Works will take whatever action

is deemed necessary to correct the problem, and the permittee shall be charged for the cost of the correction. Repeated violation shall result in revocation of the permit and, if applicable, the loss of the contractors' or subcontractors' certification.

§ 404-24. Breaking through pavement, backfilling, and patching.

A. Breaking through pavement.

- (1) Approved cutting of bituminous pavement surface prior to excavations is required in order to confine pavement damage to the limits of the trench. Pavement will be saw cut unless otherwise approved by the Director.
- (2) Sections of bituminous or cement concrete sidewalks shall be removed to the nearest score line or approved saw cut edge.
- (3) Unstable pavement shall be removed over cave-outs and over-breaks and the subgrade shall be treated as the main trench.
- (4) Pavement edges shall be trimmed to a vertical face and neatly aligned parallel with the center line of the trench.
- (5) Cutouts outside of the trench lines must be regular and aligned parallel and/or perpendicular to the center line of the trench.
- (6) Trenches and excavations shall be braced and sheathed when necessary as required to comply with OSHA specifications.
- (7) Road surface openings shall be restricted for a period of five years after a new permanent surface is laid, except in cases of extreme emergency. When in the opinion of the Director an extreme emergency does not exist, driving, dry boring, coring or jacking methods may be used to accomplish the installation subject to the approval of the Director. Extreme care must be taken to protect existing underground utilities at all times.
- (8) When excavation is permitted in roads resurfaced within the past three years, the permittee must install a bituminous concrete patch the full width of the roadway and at least 30 feet beyond the affected area with one inch of dense graded bituminous concrete unless otherwise authorized by the Director. Utility companies placing utilities in a shallow trench (zero feet to five feet) in depth and narrow trenches (one foot to three feet) in width may in certain instances be exempt from the bituminous concrete patch at the discretion of the Director.

- B. Backfilling. The excavation in the road must be filled and resurfaced during the same day it is opened unless otherwise allowed by the Director or his/her designee. The trench shall be backfilled with clean gravel in no more than six-inch mechanically tamped layers. Excavated material may be used if determined suitable by the Director, to within 10 inches of the finished grade with approved material, and then six inches of three-quarter-inch dense graded material shall be placed and compacted into the trench, and the remaining four inches shall be filled with the bituminous concrete patch. The road surface shall be precut to avoid damaging surfaces surrounding the trench. The

backfill and dense graded material in the trench must be mechanically tamped to 95% of maximum dry density as determined by the Modified Procter Test in accordance with ASTM-I557 method.

C. Patches/repairs.

- (1) Permanent patching. The permanent patching of bituminous concrete base and top shall be laid and rolled in two courses and shall be done within six months of the initiation of excavation. The binder (base course) shall be 2 1/2 inches in compacted thickness, and the top course shall be 1 1/2 inches in compacted thickness. The minimum total thickness of both courses, measured after rolling, shall be four inches. The base course of the permanent pavement shall be placed, carefully raked and thoroughly rolled to the required thickness. Before placing the base course of the pavement, the edge of the original pavement surface shall be cleaned of all dirt, dust and debris and then received an application of approved asphalt emulsion so that the new pavement material may be properly bonded to the old. The joint between the old and new pavement at the road surface intersection will then have an application of asphalt emulsion of at least one foot in width applied to it. The permanent paving shall not overlap the existing pavement and will not have to be applied with a mechanical spreader unless otherwise directed. The permittee shall furnish, place, grade and compact bituminous concrete pavement of Class I Type 1-1 as shown and specified in the latest Massachusetts Department of Public Works Standard Specifications for Highways and Bridges. The permittee shall maintain permanent patches for a period of 18 months or until infrared patching treatment is completed.
- (2) Infrared patch treatment. Between six months and 18 months after the permanent patch is placed, the patch shall be heated up utilizing an infrared machine, and the patch surface reconstructed and blended with the existing surrounding pavement. The result shall be a smooth rideable surface. During the process additional bituminous concrete material will be added as required. The infrared equipment used must be approved by the Director. This work will be contracted for by the Department and paid for from part of the fees levied as part of the permit process.
- (3) Temporary patches. Under certain conditions, the Director may authorize the installation of a temporary patch. Temporary patches shall preferably be hot Class I Type 1-1 bituminous concrete but may be substituted for with cold mix if hot mix is unavailable and the substitution is authorized by the Director. The patch shall be laid and compacted in two courses to a minimum of four inches total of compacted thickness to a finished grade matching the existing road surface. Temporary patches shall be removed and replaced with permanent patches within 180 days following placement of the temporary patch. The permittee shall maintain temporary patches and within 24 hours of notification by the Town fill with similar material any depressions and holes that may occur so as to maintain the surface in a safe and satisfactory condition.

D. Pavement overlay. Under certain circumstances a one-inch thick bituminous overlay for the full section of the road, and extending 30 feet beyond the area affected by the road patch may be required. Generally, this will be required when the patch was made on a

road that was resurfaced in the last five years or when a patch is fairly extensive. Where overlays are required they will be noted on the permit.

- E. Testing. If required by the Director the applicant will engage at no cost to the Town a certified testing company acceptable to the Department, to sample and test materials and/or compaction. Any deficiencies will be corrected by the applicant. Testing and sampling may include but will not be limited to compaction tests, soil sieve analysis, bituminous concrete density tests, pavement corings and nuclear density testing.
- F. Trenches. Unless a shorter length is specified by the Director the maximum length of open trench permissible at any one time shall be limited to no more than 300 feet. No greater length shall be open for pavement removal, excavation, construction or backfilling without written permission of the Director.
- G. Restoration of pavement markings. All permanent pavement markings, crosswalks, traffic center lines etc., which are obliterated or damaged during construction shall be repainted by or under the direction of the Department at the expense of the permittee.
- H. Lawn surfaces and plantings. All grassed surfaces which are disturbed shall be replaced with six inches of screened loam, limed, fertilized and reseeded with a good quality perennial lawn seed or sodded. Likewise any areas containing plantings shall be restored to their original condition with the same or similar plantings. Special care shall be taken to insure the areas are relandscaped to meet the conditions which existed before the excavation. The permittee shall water and otherwise maintain grass and other vegetation and shall guarantee its survival for a period of 12 months.
- I. Shoulders. Shoulders which are disturbed shall be reconstructed to previously existing grade and, regardless of its prior existing condition, shall be loamed with six inches of loam, limed, fertilized and seeded with good quality perennial lawn seed.

Chapter 405

MARINAS

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[HISTORY: Adopted by the Town Manager of the Towns of Barnstable 5-29-2008¹. Amendments noted where applicable.]

1. Editor's Note: These regulations also superseded former Ch. 405, Marinas, adopted by the Town Manager 3-11-2004.

GENERAL REFERENCES

Beaches and waterways — See Ch. 32.
Boats — See Ch. 40.

Mooring — See Ch. 406.

ARTICLE I
Administration and Enforcement

§ 405-1. Authority.

These rules and regulations are made by the Town Manager of the Town of Barnstable, under the authority of Chapter 32, Article II, § 32-7, of the Town of Barnstable Code. These regulations shall supersede any former marina regulations and shall continue in force until rescinded or replaced by the Town Manager, or until the authority to make and enforce marina regulations has been repealed. The Town Manager, using his or her discretion, may deviate from the regulations noted below if deemed to be in the best interest of the Town of Barnstable.

§ 405-2. Slipholder agreement provisions.

The following subsections are hereby made part of these regulations and shall appear in every application for berth executed by a boat owner:

- A. The intent of these regulations is to operate the marinas of the Town in a manner which is fair and uniform to all slipholders, including potential slipholders whose names appear on the wait list for a slip. Any interpretation of these regulations by the Town, or agents of the Town, shall be made with the basic premise that a slip is to be used for the personal and sole use of the slipholder and that the rental value of the slips themselves is an asset of the Town that must not be diverted by private parties. Therefore, the slipholder hereby agrees that any deviation from this premise by the slipholder shall result in the termination of any slip rental agreement and further, the Town may recover any amounts received by the slipholder from other parties which are essentially in the nature of payment for the use of the slip.
- B. The slipholder also understands and agrees that if it is the opinion of the Town of Barnstable, or its agents, that there may be a violation of any of the marina rules and regulations, or their intent, it shall be at the option of the Town to require the slipholder to provide any and all testimony or documentation which may be necessary to prove to the satisfaction of the Town that they are not in violation of the rules and regulations. Any slipholder who does not respond and show evidence on his behalf within two weeks of receipt of such request, or any slipholder who fails to meet to the Town's satisfaction all marina regulations or their intent, shall relinquish the rights to the slip and all fees shall be forfeited to the Town.
- C. Furthermore, the slipholder hereby agrees that any violations of these regulations shall constitute reason for the removal of the vessel to a place away from the slip, such as a mooring, other anchorage, or dry storage. The slipholder agrees to indemnify and hold the Town, and its agents, harmless for any damage to his vessel or for the cost of towage or storage in connection herewith.

§ 405-3. Violations and penalties.

All directives of the Harbormaster or his deputies must be complied with immediately and in full. Failure to comply with the directives and the above rules and regulations can be cause for the loss of the slip, its fees, and the removal of the vessel from the marina at the owner's expense. Furthermore, any violation of these rules and regulations shall be considered a violation of the provisions of Chapter 32, Article II, § 32-7, of the Code of the Town of Barnstable, and is punishable by a fine not to exceed \$200 for each offense. Each day such offense continues constitutes a separate offense. Any boat owner shall have the right of appeal to which he/she feels aggrieved and said appeals process may continue through the office of the Town Manager and/or any other avenue available through due process of law.

§ 405-4. Slip application; waiting list; fees.

- A. Individuals desiring to lease dock space at any Town-owned marina must make application in writing to the Harbormaster's Department. All vacancies occurring in dock space shall be filled from the established waiting list. A waiting list for dock space has been established and is maintained indefinitely. Applicants for dock space have been recorded in chronological order, and the awarding of dock space shall follow this order. In order for an applicant to maintain his/her status on the list, he/she must notify the Harbormaster's office in writing between January 1 and March 15 of each year of his/her desire to remain on the list. A nonrefundable initiation fee of \$15 for Town of Barnstable residents and a fee of \$25 for nonresidents must accompany the applicant's request to be placed on the waiting list. An annual, nonrefundable maintenance fee of \$5 for residents, and a fee of \$10 for nonresidents must accompany the applicant's request to remain on the waiting list. For the purpose of these regulations, a taxpaying real estate owner shall be considered a resident as well. All fees collected on behalf of the applicant shall be applied to the first year's dockage. Failure to comply with the above will result in the removal of the applicant's name from the list and all fees will be forfeited.
- B. Effective May 15, 1994, no additional applications will be accepted for the waiting list. A moratorium shall be in effect until the present waiting list has been diminished and all applicants have either been awarded a dock or have been removed from the list for failure to perform. From that time forth, the waiting list shall be filled through a lottery system, open to all, and placement upon the list shall be in the order by which the name of the applicant was drawn. The Town, at its discretion, shall determine the number of applicants to be placed upon the waiting list. All applicants, upon their selection through the lottery system, shall be subject to the fee system as above, and all other rules and regulations as they pertain to this document. When an appropriate slip becomes available, the Harbormaster will notify the applicant of the vacancy, and the applicant shall have first right of refusal on leasing the slip. Should the applicant not accept the offer of the slip, the applicant may waive that slip but elect to remain on the top of the wait list for the next available slip. The vacant slip shall then be offered to the next eligible applicant until the vacancy is filled. It shall be the responsibility of the applicant to notify the Harbormaster's Office of any change in the address or phone number or any other significant changes to the application.

ARTICLE II
Slip Usage Regulations

§ 405-5. Reassignment of slips.

Boat owners assigned slips shall not allow any other vessel to occupy said slip, and no vessel may enter any other than assigned. Slips assigned by the Harbormaster may not be reassigned by the owner to any other person or legal entity. A slip may not be reassigned by the owner to any other vessel other than the vessel originally assigned the slip, including any vessel purchased by the owner. The Town's Harbormaster, however, using his/her discretion and after a receipt of a written recommendation of approval from the Town's Waterways Committee, may permit such assignment as in the case of a vessel change request.

§ 405-6. New vessels.

- A. If a lessee wishes to purchase a new vessel, he/she must complete and submit an application for berth of new vessel to the Town's Waterways Committee and to the Harbormaster for consideration. The application for berth of new vessel must be completed in its entirety, and all required documents as noted on the application must be submitted at the time of submittal. Failure to comply shall result in the immediate denial of the application for berth of new vessel request.
- B. The Harbormaster or agent of the Town of Barnstable and/or the Town's Waterways Committee shall have the authority to request any financial or related document pertaining to the purchase and/or operation of the requested new vessel, including, but not limited to, a purchase and sales agreement, bill of sale, abstract of title, sales tax payment, insurance certificate, mortgage contract, corporate minutes/papers.
- C. The applicant also shall agree to and understands that his/her vessel shall not be operated through a management company and must be able to substantiate, by documentation, that he/she is in fact the sole owner and sole beneficiary of any business or recreational use of the slip.

§ 405-7. Approval of changes in slip assignment; guidelines.

- A. If a boat owner desires a change in slip assignment he/she must secure approval of the Town's Harbormaster after receipt of a recommendation from the Town's Waterways Committee.
- B. Guidelines for reassignment of slips.
 - (1) The Town of Barnstable reserves the right to reassign slips within its marinas in a fashion which is deemed to be in the best interest of the Town and reserves the right to vary this policy in any fashion which would better serve the interest of the Town. As a general guideline, it shall be the policy of the Town to consider any request for a change in slip assignment by a slipholder to be acted upon according to the following policy:

- (a) Any request for a change in slip assignment shall be made in writing by the slip holder and shall state in full the reason for the request.
 - (b) All requests received shall be time stamped by the Harbormaster Division.
 - (c) All requests shall only be effective from the date of receipt until all slips have been assigned for the forthcoming season.
 - (d) Upon declaration by the Harbormaster that all slips have been properly filled for the season, all requests shall be deemed null and void.
- (2) The request of a current slip holder to change his/her slip assignment, may be considered for the following reasons, prioritized and weighted according to the following order:
- (a) The present slip is incompatible with the present vessel.
 - (b) The purchase, or intended purchase, of a larger or smaller vessel within the calendar year.
 - (c) The request of the slipholder for a change in slip assignment for personal preferences.
- (3) The request for a change in slip assignment, may be granted, but not guaranteed, provided that:
- (a) A slip has been vacated by a prior lease holder.
 - (b) The vessel owned by the next person on the wait list is not compatible with the vacated slip but is compatible with the intended vacated slip by the lease holder requesting a slip change.
 - (c) The requested vessel offers better maximization of the vacated slip.
 - (d) A mutual agreement has been established between two slipholders for a swap.

§ 405-8. Boat ownership restrictions.

Boat slips will be leased to individuals only. No boat slip shall be leased to any corporation, company, partnership, association or any form of combination of persons. It is the intent of this regulation to provide the periodic turnover in boat slips. No survivorship rights are allowed or intended. The lessee and the owner of the vessel shall be one and the same. The full name(s) of the owner or owners of the vessel and the percent of ownership each owner claims to said vessel must be accurately stated upon the application. Proof of the vessel's documentation or state registration and the ownership or corporate status must be verified by the ship's papers and the current ownership or corporate papers. Said papers must show the ownership or corporate principals and percent of ownership and they will remain on file. Any change in percent of ownership of the vessel must be approved by the Town's Harbormaster after receipt of a recommendation from the Town's Waterways Committee. Any unapproved change in percent of ownership of the vessel shall be grounds for termination of the slip, and

the contract shall be deemed null and void with all fees forfeited. It shall remain the prerogative of the Harbormaster to review these papers at any time to insure compliance.

§ 405-9. Re-renting of vacated space for temporary use.

The owner or operator shall advise the Harbormaster/Dockmaster when leaving for a cruise of one day or more. The Town may re-rent the space for a temporary period during the absence of the craft regularly occupying the space. No credit for such temporary use of space shall be granted the craft regularly occupying the space.

§ 405-10. Slip rental fees.

Slip rentals shall be on a seasonal basis only, from May 1 to October 31, and November 1 to April 30, and shall be leased for a fee as set forth by the fees established by the Town of Barnstable. The option for renewal for the following season is at the discretion of the Town of Barnstable and is not in any manner required of the Town, nor will it be considered unless the following conditions exist:

- A. That there have been no unapproved changes in the application.
- B. That the applicant has submitted documents as required by the application for annual review.
- C. That the applicant has shown proof of the payment of the Town of Barnstable excise tax (if applicable).
- D. That the seasonal dockage fee has been paid in full.
- E. That the lessee has proved to be a good and cooperative tenant during the preceding years.

ARTICLE III

Dock and Marina Use Regulations

§ 405-11. Loading and unloading zones.

- A. The designated loading, off-loading zone is the only area where transient vessels may off-load fish. All vessels must be attended to while berthed at the loading zone and shall be made to move if another vessel wishes to unload. All vessels are responsible for the cleanliness of the designated zone and shall clean, sweep and wash down before departure. No vessel may remain tied up to the bulkhead in such a zone. Failure to abide by the above rules and regulations shall result in the revocation of this privilege.
- B. Slipholders who are engaged in casual, recreational, or limited commercial fishing may, at the discretion of the Harbormaster, unload fish at their respective dock. All other commercial boats shall be required to land their catch at the designated loading/unloading zones.

§ 405-12. Discharge of sewage, waste, oil and fuel prohibited; proper disposal required.

Federal, state and Town statutes prohibit the discharge of sewage, waste material, oil, fuel or refuse of any kind or description into any river, pond, stream or tidal waters. Heavy fines and/or imprisonment are the penalties for violation. Trash and/or garbage shall be placed in a container provided by the Town. Oil, oil filters or any other flammable substance may not be placed in such containers and must be disposed of according to federal, state and Town statutes.

§ 405-13. Obstruction of docks.

Boat owners shall not place supplies, materials, accessories or debris on any pier or walkway and shall not construct or place thereon any lockers, chests, cabinets or containers without written permission of the Harbormaster/Dockmaster. Boats having tenders on davits, boarding ladders, bow and/or stem sprits, etc., shall be secured in such a manner that none of these will be a hazard or block free passage along any pier or walkway. Stairways, boarding ladders, or gangways that provide access to boats and take up more than 1/2 the width of the pier cannot be left on the pier when the vessel is not in the process of loading or unloading passengers or provisions.

§ 405-14. Condition of vessels.

All vessels shall be maintained in a safe and seaworthy condition. Vessels' owners/captains are responsible for proper lines, fenders, etc. Any vessel which is unsightly in appearance, badly deteriorated, a menace to navigation (On the opinion of the Harbormaster/Dockmaster) or likely to damage property shall be removed by the owner at the owner's expense upon request of the Harbormaster's Division. In the event that the owner is unavailable, or available but refuses to act upon such a request, the Town shall have the right to cause removal at the owner's expense.

§ 405-15. Dangerous devices.

No vessel may have on board any dangerous devices, equipment, or materials.

§ 405-16. Noise.

Noise shall be kept to a minimum at all times, and any noise, loud talk or radio, musical instruments, prolonged running of engines, auxiliary generators, and any other disturbing noise after 8:00 p.m. is prohibited.

§ 405-17. Marina decorum.

No part of the marina shall be used for the conducting or solicitation of business of any kind except for the necessary business of the boat, and its soliciting must be confined to the immediate area of the berth assigned, by the written lease agreement, to the boat. No business shall be conducted at a transient, vacant, or unassigned slip. No booths, signs, or other advertising material will be permitted without the written permission of the

Harbormaster/Dockmaster, who can control size, placement, etc., of such material. In any event, there shall be no more than one sign permitted per slip (to be attached to either the assigned berth or assigned vessel, but not both); such sign shall not measure greater than two feet by two feet, and such sign shall be professionally crafted and maintained. Slipholders should understand that Bismore Park is within the Hyannis Waterfront Historic District, and therefore, all signs are also subject to the regulations of the District. Also, in accordance with Town ordinance,² any sign which is set in motion by movement including pennants, banners or flags (except official flags of nations or administrative or political subdivisions thereof) shall be expressly prohibited.

§ 405-18. Prohibited acts at docking spaces, facilities and certain premises.

The following acts are prohibited by all persons using dockage space, the facilities, or the premises at Bismore Park, Barnstable Marina, Gateway Marina or The Marina at Prince Cove.

- A. Pumping out bilges containing oil or the pumping out of toilets.
- B. Overhauling or remodeling of any watercraft unless written permission is granted by the Harbormaster or an Assistant Harbormaster.
- C. Hanging washing or clothing when tied up to berth.
- D. Fueling of gasoline.
- E. Running of engines in gear while tied up.
- F. Allowing dogs or pets on marina property unless restrained by leash.
- G. Swimming in the bulkhead area.
- H. Hibachis, grills, or any open fire in the marina area.

§ 405-19. Fueling.

The fueling of diesel-powered vessels shall be permitted at designated areas only and shall be restricted to commercial vessels. Owners declaring their vessel to be commercial in nature shall, upon request, produce satisfactory evidence of the commercial status.

§ 405-20. Disclaimer.

The owner/captain/master shall hold harmless the Town of Barnstable, its agents, or employees from any liability or damage which may occur to the assigned vessels by virtue of the interruption of services provided at Bismore Park Bulkhead, Gateway Marina, Barnstable Marina or The Marina at Prince Cove areas.

2. Editor's Note: See Ch. 240, Zoning, Art. VII, Sign Regulations.

§ 405-21. Parking.

Parking shall be in the designated boat-owners parking area only.

§ 405-22. Occupancy deadline.

Slips shall be occupied by the assigned vessel by July 1. If slips are not occupied by said date, the owner shall forfeit the assigned slip, and the slip will be awarded to the first person on the waiting list. If for some reason this is impossible, the owner shall notify the Harbormaster, in writing, explaining the circumstances surrounding the situation. The Harbormaster may, using his discretion, permit an extension of this date, but in no case shall this extension be greater than one season.

§ 405-23. Insurance requirements.

The owner of a vessel agrees to have his/her vessel covered by a full marine insurance package, including, but not necessarily limited to, personal injury, fire, and property damage indemnity and liability coverage naming the Town of Barnstable as additional insured, and shall provide proof of same to the Town and as noted on the application for berth form.

§ 405-24. Damage to facilities.

The owner of any vessel found causing or having caused damage to any portion of a Town marina shall be responsible for providing prompt payment to the Town of Barnstable for such repairs. Failure to comply with the provisions of this section may result in the termination of the slip agreement or use of the facility until such time as the party responsible for the damage has arranged for payment.

§ 405-25. Transient use of marina.

Transient use (defined as any vessel secured at a Town marina for which no slip agreement or written contract exists) by recreational vessels and/or noncommercial fishing vessels shall be limited in duration to no more than one week. At the end of one week, the transient vessel must depart the marina and may not return to the marina until after one week of the departure date.

ARTICLE IV
Special Regulations

§ 405-26. Bismore Park.

- A. Because of structural limitations, no vessel over 75 feet length overall (LOA) may use the facilities at Bismore Park Marina. The Harbormaster or his agent, reserves the right to measure and/or request a survey of measurement of any vessel that may appear longer than 75 feet LOA.

- B. Cars or trucks shall only be permitted to enter the roadway along the face of the bulkhead for delivery and pickup of materials such, as oil, groceries, etc. Parking along the bulkhead shall be in the turnout areas only. Use and parking will be limited to the time needed for discharge or pickup only. All others shall be in the designated boat-owners parking area.
- C. There shall be a fee of \$25 per use of the loading/off-loading zone for the commercial unloading of fish, or an annual (May 1 to October 31) permit for \$500. Additionally, there shall be a fee of \$25 per occurrence for any other use of the area, including, but not limited to, the stepping of masts, the loading and unloading of dunnage or similar activities. If, in the opinion of the Harbormaster or designee, the use of this area is casual in nature, such as the boarding or disembarking of passengers from recreational boats or similar activities, the fees may be waived at the discretion of the Harbormaster or designee. Each use shall require the prior approval of the Harbormaster or designee.
- D. The fueling of diesel-powered commercial vessels permanently docked at Bismore Bulkhead may be fueled in their respective slips between the hours of 4:00 to 8:00 a.m. daily. The fueling of diesel powered commercial vessels at the loading/off-loading zone shall be allowed between the hours of 4:00 a.m. through 10:00 p.m. daily. Transient commercial vessels at the Bismore loading area must possess a seasonal pass for the use of the loading/off-loading zone or have paid the daily fee for the use of this zone. Bismore Park slipholders shall not be required to pay a fee for fueling in the loading/off-loading zone.
- E. Any vendor wishing to dispense fuel to commercial vessels at Bismore Park must obtain a permit from the Town of Barnstable. Said permit shall be valid for a period of two years at a fee of \$10. Licensed fuel vendors shall familiarize themselves with the special regulations for Bismore Park as it pertains to fueling and agree to dispense fuel in a manner consistent with said regulations, as well as any and all state, federal, and/or local law. The vendor understands that from time to time the Harbormaster may issue directives for the orderly and safe fueling within the Park. Any vendor who fails to abide by the Harbormaster's orders or who violates any of the aforementioned federal, state, and/or local laws shall be subject to revocation of said permit with all fees forfeited. Any revoked permit may be reinstated at the discretion of the Town Manager.

§ 405-27. The Marina at Prince Cove.

- A. Parking for slipholders will be in designated areas only. One parking pass per slip will be issued upon receipt of the required dock fee and approved slip agreement.
- B. The daily parking fee will be \$8 per car per day.
- C. The purchase of a seasonal parking pass will be available for \$150 for parking other than slipholder parking from May 1 to October 31. All parking, with the exception of slipholder pass, will be on a first-come-first-served basis.
- D. Overnight parking will be at the owner's risk at the daily fee, season pass, or a slip pass with the Marina Manager's permission only.

- E. Vehicle with trailer: daily fee or seasonal pass plus \$8 per day.
- F. There will be no fueling of vessels of any kind at the Marina.
- G. There will be no passenger-carrying commercial vessels allowed.
- H. To establish a new wait list there will be a lottery as outlined in these regulations § 405-4 with a maximum of 25 names to be added. Each applicant must be a real estate tax payer of the Town of Barnstable.
- I. All wait list fees collected will be considered a nonrefundable, administration fee and not to be applied to the first year's dockage.
- J. All other slip wait list regulations will be in effect as it pertains to resident applications.

**ARTICLE V
Fee Schedule**

§ 405-28. Nonrefundable deposit for slip renewal applications.

Effective January 2005 a nonrefundable deposit of \$200 will be required by all slip renewal applicants to maintain eligibility for consideration of a slip agreement for the upcoming season. Deposits shall be due between January 1 through January 31.

§ 405-29. Fee schedule. [Amended 1-21-2009]

- A. Slip rental fees.

Location	Resident	Nonresident	
*Bismore Park (2009)	\$181 per foot	\$208 per foot	30-foot minimum
*Barnstable Harbor (2009)			
1-34	\$166 per foot	\$191 per foot	25-foot minimum
35-53	\$2,531	\$2,911	
54-70	\$1,624	\$1,813	
Small craft	\$759	\$873	
*Gateway (2009)	\$2,531	\$2,911	
*The Marina at Prince Cove (2009)	\$172 per foot	\$201 per foot	20-foot minimum
Winter storage			\$30 per foot

NOTE:

* Where the fee is based upon a per-foot charge, the rate is based upon the length overall (LOA) which is measured from the top of the transom to the foremost extension, including pulpits or sprits (except anchor pulpits under three feet). Tuna pulpits shall be measured to the foremost extension, unless such pulpit is folded when berthed, and in such case shall be measured to the pivot point. The length overall noted above shall pertain only to the fee schedule and is not to be construed as the length used for slip assignment where said assignment shall be inclusive of all appendages including pulpits, swim platforms, etc.

- B. Transient fees. [NOTE: Where the fee is based upon a per-foot charge, the rate is based upon the length overall (LOA) which is measured from the top of the transom to the foremost extension, including pulpits or sprits (except anchor pulpits under three feet). Tuna pulpits shall be measured to the foremost extension, unless such pulpit is folded when berthed, and in such case shall be measured to the pivot point. The length overall noted above shall pertain only to the fee schedule and is not to be construed as the length used for slip assignment where said assignment shall be inclusive of all appendages including pulpits, swim platforms, etc.]

- (1) May 1 to October 31:

- (a) \$2.75 per foot per day.
- (b) \$1.50 per foot per day commercial offshore fisherman only. (NOTE: Commercial, commercial offshore fishermen does not include party/charter fishing boats.)

- (2) November 1 to April 30:

- (a) Bismore Park/Gateway:

- [1] \$6 per foot per month.
- [2] \$5 per foot per month, commercial fisherman. (NOTE: Commercial, commercial offshore fishermen does not include party/charter fishing boats.)

- (b) Barnstable Harbor:

- [1] \$1.50 per foot per month.
- [2] \$1.25 per foot per month, commercial fisherman. (NOTE: Commercial, commercial offshore fishermen does not include party/charter fishing boats.)

- (3) Marina at Prince Cove: \$1.50 per foot per month.

- C. Electrical service.

- (1) May 1 to October 31:
 - (a) Fifty-amp service: \$690.
 - (b) Thirty-amp service: \$415.
- (2) November 1 to April 30:
 - (a) Fifty-amp service: \$690
 - (b) Thirty-amp service: \$415
- (3) Transient: \$ 7.25 per day.

§ 405-30. Pro rate fee schedule.

- A. With the understanding that Town slips might be offered/awarded to a waiting list applicant late in the season for a number of reasons, the Town of Barnstable adopts the following pro rate fee schedule for slips awarded after June 30 and prior to November 1 of the calendar year:
 - (1) July 1 to July 31: 1/3 off seasonal rate.
 - (2) August 1 to October 31: 1/2 off seasonal rate.
- B. The slip with the pro rated fee will be offered to all waiting list applicants in chronological order, beginning at the top. This policy is adopted with fairness in mind for both the person accepting the slip offer and those on the established waiting lists.
- C. Prior to July 1 of the calendar year, the full fee as noted in the fee schedule shall apply.
- D. Furthermore, for those slips that are vacated by an assigned slipholder after September 15 and prior to November 1 (with the expectation that he/she will be renewing his/her slip application for the following season), the Harbormaster Division may prorate the slip rental fee commensurate to the balance of the season and to the seasonal fee for the slip.

Chapter 406

MOORING

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| § 406-1. Purpose. | § 406-13. Fees. |
| § 406-2. Definitions. | § 406-14. Winter stakes. |
| § 406-3. Mooring specifications. | § 406-15. Anchoring. |
| § 406-4. Mooring permits. | § 406-16. Waiting list procedure. |
| § 406-5. Boat stickers. | § 406-17. Grace period. |
| § 406-6. Mooring tag. | § 406-18. Mooring servicers. |
| § 406-7. Placement of moorings. | § 406-19. Enforcement. |
| § 406-8. Moorings in Aquaculture Zone. | § 406-20. Violations and penalties. |
| § 406-9. Change of ownership of vessel. | § 406-21. Severability. |
| § 406-10. Change of vessel. | § 406-22. Compatibility with other governmental regulations. |
| § 406-11. Mooring inspection. | § 406-23. Appeals process. |
| § 406-12. Termination of use. | § 406-24. Authority to make regulations. |

[HISTORY: Adopted by the Harbormaster of the Town of Barnstable 1-6-2006; approved by the Town Manager 1-6-2006.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Beaches and waterways — See Ch. 32.

Marinas — See Ch. 405.

Operation of boats and houseboats — See Ch. 40.

§ 406-1. Purpose.

The Town of Barnstable mooring regulations have been established in order to provide efficient utilization of harbor areas, to improve the safety of moored vessels, and to provide adequate space for the enjoyment of all the users of the harbors. This shall be done by controlling the placement of moorings, by establishing standards for mooring tackle, and by establishing regular, systematic mooring inspections.

§ 406-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOAT/VESSEL — Every description of watercraft, used or capable of being used as a means of transportation on the water, including seaplanes, amphibious vehicles, and any other variable use craft when navigating or moored on the water.

1. Editor's Note: These regulations also superseded former Ch. 406, Mooring, adopted 2-26-2003.

BOW CHOCK — A rigging fitting on the bow of a vessel, normally mounted on deck or in the toe rail, to control a rigging or mooring line.

MOORING — Semipermanent ground tackle placed by a vessel owner or mooring servicer on or beneath (helix mooring) the bottom on behalf of a vessel owner; a place where vessels are kept at anchor.

MOORING BUOY — A buoy marking a mooring.

MOORING PERMIT — Written authorization issued by the Harbormaster's Office to moor a vessel.

- A. Individual: moorings placed for the private use of the vessel owner.
- B. Commercial: commercial moorings that are not for sale or rent but used by a commercial establishment for the holding of boats for sale, repair, or the like.
- C. Rental: moorings installed for which any type of user fee is charged.
 - (1) Seasonal: moorings offered for rent for periods exceeding three weeks.
 - (2) Transient: moorings offered for rent for periods of up to three weeks.

MOORING SERVICER — Person(s) licensed by the Harbormaster's Office to perform mooring service, installation, inspection and maintenance services.

MOORING YEAR — January 1 to December 31. New mooring applications and permits will be available during the posted hours at the Harbormaster's Office, from the time mooring permit renewals are mailed until November 1 of each year. **[Amended 3-4-2013]**

OWNER — Shall include individuals, corporations, societies, partnerships, associations, etc.

PENNANT — A line, cable, or chain by which a vessel is made fast to a mooring buoy.

RESIDENT — Resident real estate taxpayers, year-round tenants, nonseasonal tenants (six months or more of the calendar year) of residential dwellings located within the Town of Barnstable. Proof of residency: Current real estate tax bill, nonseasonal lease or valid Massachusetts operator's license, or any other ID issued by the Massachusetts Registry of Motor Vehicles, in combination with Massachusetts motor vehicle registration, both listing a residential dwelling within the Town of Barnstable. The address of a post office box is not acceptable as proof of residency.

§ 406-3. Mooring specifications.

All moorings shall meet the minimum standards as set forth below prior to placement. These standards are set for normal weather conditions. In the event of gale winds or stronger and/or extreme tides, it is the mooring owner's responsibility to ensure certain precautions are taken. (See storm precautions below.) The Town of Barnstable realizes that mooring loads are variable, that it is impossible to say that all boats of equal length require the same size mooring, and such standards cannot be applied to all boats. The Harbormaster's Office reserves the right to require a boat owner to increase the minimum mooring standard for any vessel should it feel the minimum standard would be inadequate for the vessel because of

unusual design, such as but not limited to, excessive weight, windage, or draft. Furthermore, the Town of Barnstable shall not be held liable for any damage inflicted if a minimum standard mooring fails.

A. Mushroom anchor. [Amended 1-8-2008]

- (1) Saltwater.

Boat Size (feet)	Mooring Weight (pounds)	Bottom Chain (inches)	Top Chain (inches)	Pennant (inches)
00-13	50	1/2	3/8	1/2
14-17	75	1/2	3/8	5/8
18-21	150	1/2	3/8	5/8
22-25	200	5/8	1/2	5/8
26-31	250	5/8	1/2	3/4
32-35	300 plus sw	5/8	1/2	3/4
36-40	500 plus sw	3/4	1/2	3/4
Over 40	Harbormaster approval			

- (2) Freshwater.

Boat Size (feet)	Mooring Weight (pounds)	Bottom Chain (inches)	Top Chain (inches)	Pennant (inches)
00-17	50	1/2	3/8	1/2
18-21	100	1/2	3/8	5/8
22-25	150	5/8	1/2	5/8
26 over	Harbormaster approval			

B. Helix anchor. The following specifications shall be considered the minimum allowable specifications of a helix mooring system.

- (1) The shaft must be a minimum of 1 1/2 inches thick and at least six feet in length.
- (2) The shaft and helix must be of galvanized or other noncorrosive metal, such as stainless steel.
- (3) The shaft must be designed to allow the bottom chain to swivel around the shaft and to be replaced when necessary.
- (4) There shall be a minimum of two helixes attached to each shaft with the lower helix being a minimum of eight inches in diameter and the top helix being a minimum of 10 inches in diameter.

- (5) All chain and pennant specifications will remain consistent with the mushroom anchor chart.
- (6) Helix moorings shall be placed/installed at the discretion and direction of the Harbormaster. No helix mooring is to be placed without written approval of the Harbormaster. Installation of helix moorings must be done by a mooring servicer. **[Amended 3-4-2013]**
- (7) It shall be the responsibility of the mooring servicer to assure that the proper size and length helix is used according to subsoils within a given mooring area and for the vessel to be moored.
- (8) The mooring servicer shall record the position of the helix mooring by a GPS fix and record all the mooring specifications, including the length of shaft, depth of mean high water, torque reading at set, all sizes and length of ground tackle. All information shall be filed with the Harbormaster's Office within 10 days of work.
- (9) All helix moorings shall be installed as close to flush with the bottom surface as possible with no more than six inches protruding above the bottom surface.

C. All moorings.

- (1) No vessel shall be moored, and no mooring shall be placed, by a vessel owner or mooring servicer except in compliance with these regulations.
- (2) Any mooring other than a mushroom anchor or helix mooring shall be at the discretion of the Harbormaster's Office.
- (3) Pennants shall be made of nylon or Harbormaster-approved-type line.
- (4) All mushroom moorings of 300 pounds or greater shall also be required to have a Harbormaster's-Office-approved shaft weight (sw) collar bolted or cast into the mushroom anchor as noted above.
- (5) The chain length shall be three times the water depth at high tide. Maximum length of chain in closed areas shall be no more than four times the water depth at high tide.
- (6) The bottom chain shall be 1/3 of the total length of the chain.
- (7) Pennant lengths shall be two times the distance from the water to the bow plus the distance from the bow to the mooring cleats.
- (8) All pennants shall have proper chafe gear attached so as to cover an area of one foot on either side of the bow chocks.
- (9) Moorings found to be inadequate with regard to the Town specifications as detailed above shall be corrected by the owner within seven days of notice by those empowered to enforce these regulations. Written notice to the Harbormaster's Office detailing the corrective action taken by the owner and the date corrective action was taken shall be required.

- (10) Mooring buoys shall be round and a minimum of 11 inches in diameter; inflated, formed, molded or fabricated from rubber, plastic or fiberglass. Each buoy shall be white with a blue horizontal stripe. Mooring buoys shall carry the permanently assigned mooring permit number in no less than three-inch block letters to be read from above along with the permit holder's last name in at least two-inch block letters. Additionally, mooring buoys shall be at least 50% above the water surface at all times. Any additional pickup buoys shall carry the permit holder's last name.
[Amended 3-4-2013]

* Buoys shall be replaced and in compliance with this section at their next full inspection (starting in 2014 and by June 30, 2015).

§ 406-4. Mooring permits. [Amended 1-8-2008; 3-4-2013]

A Town of Barnstable mooring permit is required for all moorings placed in the waters of the Town of Barnstable. Falsifying information on a mooring permit application or failure to submit a fully completed mooring permit application shall be cause for nonconsideration of such application. All mooring permits are issued for the use of the vessel indicated on the permit. The use of the mooring by any other vessel without the written consent of the Harbormaster will be grounds for revocation of the mooring permit and/or citation(s) may be issued to the vessel owner. All mooring permits shall be annually renewed by March 31, 2013, and all subsequent years by February 28. There shall be a late renewal period subject to an additional fee from April 1, 2013, to May 15, 2013, and all subsequent years from March 1 to March 31. All renewals must be received by the Harbormaster's Office no later than 4:15 p.m. of the deadline day. If a permit is not renewed before the late period ends, the vessel owner will be required to reapply as required for a new permit.

A. Individual mooring permit.

- (1) Vessel owners wishing to moor their vessel in the waters of the Town must obtain an annual mooring permit and are solely responsible for obtaining an individual mooring permit. Vessel owners may elect to install and maintain their mooring, provided they fully comply with these regulations. Vessel owners who elect not to install and maintain their mooring must annually identify their mooring servicer on their permit application.
- (2) No mooring servicer shall inspect, place or service a mooring for a vessel owner without proof of a current mooring permit from their customer or the Harbormaster's Office.
- (3) For all new mooring applications and changes of vessels: Vessels must be owned by the mooring permit holder. Further, all vessels must be registered or documented with and in the same name of the mooring permit holder as listed on the mooring permit.
- (4) Individual mooring permits are issued on the basis of one boat, one mooring (primary mooring). For a vessel owner requesting more than one mooring per boat

(secondary mooring), consideration of the mooring application will only be given if such moorings are not in an area for which a waiting list has been established pursuant to § 406-16.

- (5) The ownership of waterfront property in no way guarantees or implies any right of the property owner to obtain a mooring permit.
 - (6) Vessel owners are required to submit the following documents with new applications and renewals:
 - (a) Proof of current registration or documentation of the vessel.
 - (b) Proof of payment of latest Town of Barnstable boat excise tax or acknowledgment of responsibility for the same to the Town Assessor's Office.
 - (c) Completed mooring application.
 - (d) For all new mooring applications, a completed mooring inspection form. All mooring renewals shall submit by September 1 a completed mooring inspection report for every full inspection required. It shall be the ultimate responsibility of the mooring permit holder to ensure said inspection report is submitted. Failure to submit a full inspection report will terminate the mooring permit.
 - (7) The owner of a vessel shall be as listed on the certificate of registration or documentation. Additional confirmation of ownership may be required by:
 - (a) Sales tax receipt.
 - (b) Current insurance policy.
 - (c) Boat title.
 - (8) If the vessel is owned by a partnership, corporation, or association, all owners shall be listed on the mooring application as well as percent of ownership.
 - (9) Permitted individual moorings are transferable within the immediate family. The immediate family shall include brother, sister, children, father, mother, or spouse. No more than one transfer may occur per year (365 days).
 - (10) A second vessel of the same or lesser length, draft, and size may be permitted as a (secondary vessel) at the discretion of the Harbormaster's Office. Such vessel must be solely owned by the mooring permit holder. This in no way would allow for an additional mooring, only the use of the mooring by an alternate vessel permitted by the Harbormaster's Office. Only one vessel may be attached to the mooring at one time and rafting shall be forbidden.
- B. Rental moorings. Applicants for any type of rental mooring permit for the current season must, in addition to the requirements of these regulations, submit proof of a permit from the Army Corps of Engineers, or proof that the rental mooring applicant has submitted all the correct information as required by the Army Corps of Engineers to show they are

in substantial compliance with the federal application process. Failure to comply with the above will result in denial of the application.

- (1) The maximum number of rental mooring permits allowed shall be:
 - (a) Seasonal: 165.
 - (b) Transient: 30.
- (2) Seasonal rental moorings.
 - (a) Seasonal rental mooring owners must obtain an annual seasonal rental mooring permit for each seasonal rental mooring.
 - (b) A one-year grace period shall be allowed for unused seasonal rental moorings. If the rental mooring is not rented for the subsequent mooring year, the owner must remove such mooring and the mooring permit shall be revoked.
 - (c) Seasonal rental moorings may not be sold, transferred, or assigned to any person, corporation, partnership, organization or entity other than the lessee of such mooring in the previous season. Should the mooring owner transfer ownership of such mooring in the manner noted above, the rental mooring permit shall be revoked, and the number of seasonal rental mooring permits originally allowed shall be reduced accordingly.
 - (d) Seasonal rental mooring permit holders shall be required to keep complete and accurate records of each rental, and submit to the Harbormaster's Office by May 14 of each year:
 - [1] Name and address of person renting mooring.
 - [2] Proof of current registration or documentation where applicable.
 - [3] Proof of payment of Town boat excise tax, or acknowledgment of responsibility for the same to the Town Assessor's Office, for the vessel occupying the mooring.
 - (e) If the original user of a seasonal rental mooring relinquishes use, the owner of the rental mooring must notify the Harbormaster's Office by April 1. A vacated rental mooring shall be offered to all individuals on the rental mooring waiting list, beginning at the top.
- (3) Transient rental mooring permits.
 - (a) Transient rental mooring owners must obtain an annual transient rental mooring permit for each transient rental mooring. In addition to the required blue horizontal stripe on the mooring buoy, a four-inch orange horizontal stripe shall be on the top of the buoy.
 - (b) Transient rental mooring permit holders shall submit annually the days/dates of use of each transient mooring by November 1.

C. Commercial yard mooring permits.

- (1) Commercial yard mooring owners must obtain an annual commercial yard mooring permit for each commercial yard mooring.
- (2) The maximum length of stay for a vessel on a commercial yard mooring (if permitted) shall be 14 days, except with the expressed written consent of the Harbormaster's Office.
- (3) All mooring balls shall be marked with a minimum eight-inch letters with the yard initials followed by a space and "C."
- (4) The number of commercial yard mooring permits allowed shall be strictly controlled and issued on a proven-needs basis only.

D. Special event permit.

- (1) A private mooring permit holder may loan his/her mooring for a "special event," subject to the terms, conditions, and prior approval of the Harbormaster (or his/her assistant), by permit to the organizer of the event - and for periods of no longer than four days. The organizer of the "special event" shall be solely responsible for ensuring the terms and conditions of the special events permit, for getting approval of the private mooring permit holder, and for any liability incurred associated with the special event as it relates to this section/regulation.
- (2) "Special events" may include but are not limited to Yacht Club regattas, special races, organized boat shows/events, or events that require a marine event permit issued by the USCG.
- (3) No one shall assign or allow the use of any mooring for any event without a special event permit issued by the Harbormaster.

§ 406-5. Boat stickers. [Amended 1-8-2008]

Each vessel for which a mooring permit has been issued, and each vessel occupying a permitted seasonal rental mooring shall have attached on the hull in a visible location an annual sticker issued by the Harbormaster's Office. Stickers shall not be attached to any vessel other than that which is permitted. It shall be the responsibility of the mooring owner to ensure compliance with this section.

§ 406-6. Mooring tag.

Each permitted mooring shall have attached, above the waterline and visible at all times, an annual mooring tag issued by the Harbormaster's Office. Mooring tags shall be affixed by the mooring servicer or mooring permit holder as applicable prior to June 30.

§ 406-7. Placement of moorings.

- A. Moorings shall not be placed, altered, shifted or interfered with except under the direction of the Harbormaster's Office.
- B. The Harbormaster's Office may require the relocation of permitted moorings that are in the water, and any expense thereof shall be the mooring owner's responsibility.
- C. The Harbormaster's Office may limit the size and lengths of vessels moored in the waters of the Town if, in its opinion, this is warranted due to congestion, to ease navigation, or as a measure of public safety.
- D. The mooring permit may be suspended or revoked by the Harbormaster whenever, in his opinion, the boat and/or mooring unduly threatens the safety of the mooring area or the reasonable use of that area by other boats.
- E. Moorings that are placed in a location other than that as permitted by the Harbormaster's Office shall be grounds for revocation of the mooring permit.
- F. A permit holder's mooring and mooring buoy must be placed and maintained in the water in its permitted location on or before July 1 of each year and remain in the water until September 1 of each year. Failure to comply with the placement requirements set above shall be grounds for revocation or nonrenewal of the mooring permit. **[Added 1-26-2009]**

§ 406-8. Moorings in Aquaculture Zone.

- A. Barges and/or other vessels permanently moored within the so-called "Aquaculture Zone" of the Town of Barnstable and whose use shall be specifically for the purpose of shellfish propagation within the Aquaculture Zone of Barnstable Harbor may be granted permission to moor said vessel after obtaining an annual mooring permit from the Harbormaster's Office and after the review of the Waterways Committee.
- B. The Town will allow no more than one barge/vessel for every 10 shellfish grants, and the applicant must show proof that the barge is being shared on a cooperative basis with at least five additional grant holders.
- C. All permits shall be granted on an annual basis and are renewable upon favorable recommendation of the Waterways Committee and by permission of the Harbormaster.
- D. No barge/vessel shall be larger than 30 feet, waterline length, and 20 feet in width.
- E. All barges/vessels shall be removed from the area during the winter months.
- F. All barges/vessels shall have the owner's name affixed to at least one side of the barge with at least four-inch letters.
- G. All barges/vessels shall be lit at night with a three-hundred-sixty-degree anchor light.

- H. All barges/vessels shall be moored according to specifications of the Town of Barnstable Mooring Regulations and according to any special specifications as may be required from the Harbormaster.
- I. It shall be encouraged that barge/vessel owners make every effort to minimize the height and size of any superstructure and to paint the vessel in natural colors that will blend into the surroundings.

§ 406-9. Change of ownership of vessel.

A change of ownership of a vessel moored within the Town must be reported to the Harbormaster's Office. The new owner must obtain an individual mooring permit from the Harbormaster's Office and, as such, the mooring will be considered a new mooring and all rules and regulations pertaining to new moorings shall be applicable.

§ 406-10. Change of vessel. [Amended 1-8-2008]

Written permission must be obtained from the Harbormaster's Office before a permit holder changes vessels and desires to retain his mooring location. The Harbormaster's Office, using its discretion, may or may not permit such change. Violation of this section may be subject to revocation of the mooring permit.

§ 406-11. Mooring inspection.

- A. Mushroom anchors.
 - (1) Before a new mooring permit will be issued, the mooring owner must submit his/her mooring for an out-of-the water inspection by the Harbormaster's Office or mooring servicer.
 - (2) Each year the mooring buoy, pennant, chafing gear, and top chain with connecting hardware on each mooring must be inspected visually by the Harbormaster's Office or mooring servicer. For freshwater mooring permits, the permit holder may complete this inspection him- or herself. **[Amended 1-8-2008]**
 - (3) Each mooring must be inspected every three years, out of the water, by the Harbormaster's Office or mooring servicer starting with the year in which it was first permitted or last inspected, whichever is later. The expense of such inspection shall be the mooring owner's.
- B. Helix moorings.
 - (1) Before a new mooring permit will be issued, the helix owner must submit his/her helix for an out-of-the water inspection by the Mooring Officer or mooring servicer.
 - (2) All inspections must be approved by the Mooring Officer or a mooring servicer.

- (3) The swivel, top chain, pennant, chafe gear, and buoy shall be inspected annually. **[Amended 1-8-2008]**
 - (4) The bottom chain and associated tackle shall be replaced every third year by diver or by a complete haul out. In the event that a diver is used to replace the tackle, he or she must certify that the condition of the top section of the helix at that time is in good and proper condition.
 - (5) A full out-of-the water inspection of the mooring and tackle shall take place every 12 years. **[Amended 3-4-2013]**
- C. All moorings. If as a result of such inspection, the Harbormaster's Office or mooring servicer determines that any link of chain, shackle, swivel or other piece of mooring gear has become damaged or worn by 1/3 of its normal diameter, all such chains, shackles, swivels or other pieces of mooring tackle shall be replaced accordingly. Failure to replace worn or damaged gear shall be grounds for revocation of the mooring permit by the Harbormaster's Office.

§ 406-12. Termination of use.

- A. Upon the termination of use, the mooring owner must remove the mooring from the waters at his/her expense.
- B. The owner of any mooring may not transfer the use or ownership of said mooring to another while in place. If the owner of a mooring sells his/her mooring tackle to another, the location of said mooring may not be assumed by the buyer. It shall remain at the discretion of the Harbormaster's Office to assign the location of any mooring. Should a mooring owner abandon the mooring, the mooring may be hauled by the Town, and all costs of the removal shall be the responsibility of the owner of record. Any abandoned or unclaimed mooring, removed by the Town, may be auctioned off in accordance with Town ordinances.²

§ 406-13. Fees.

- A. Fees are based upon one boat, one mooring. Fees for one boat, more than one mooring are as noted below.
 - (1) Individual mooring permits:
 - (a) Primary mooring: \$70.
 - (b) Secondary mooring: \$150.
 - (2) Rental mooring permits: \$150.
 - (3) Commercial yard permits: \$150.
 - (4) Reissue of a mooring tag or sticker: \$5.

2. Editor's Note: See Ch. 40, Boats.

- (5) Second vessel \$25.
- (6) Late fee: \$50. **[Added 3-4-2013³]**

§ 406-14. Winter stakes.

All moorings not being used for the holding of a vessel shall be required to have a winter stake correctly attached prior to January 1. Moorings 500 pounds or greater located in Tim's Cove, North Bay or the Oyster Company shall be exempt. All winter stakes shall be painted white with a blue horizontal stripe and the mooring owner's name. The winter stake shall be upright at all times and not less than 40° with relationship to the surface of the water at any period of the tide, and no less than 18 inches exposed at all times. Winter stakes shall not be set before September 15 of each year and must be removed by June 1. Any winter stake not removed by June 1 shall be considered abandoned and may be removed by the Harbormaster Division at the owner's expense.

§ 406-15. Anchoring. [Amended 1-8-2008]

No vessel may be anchored in the waters of Barnstable more than eight days total, per year, without the consent of the Harbormaster's Office. Anchoring shall be prohibited within all designated mooring areas. Anchorage may be at the discretion of the Harbormaster's Office.

§ 406-16. Waiting list procedure.

In areas that have, in the opinion of the Harbormaster in consultation with the Town Manager, reached maximum mooring capacity, the Department may establish waiting lists. The following shall serve as guidelines for the waiting list procedures:

- A. For areas where no additional space is available, individual applicants for mooring space shall be placed on a waiting list at the office of the Harbormaster. Additionally there shall be a separate seasonal rental mooring waiting list covering all rental moorings. Once established, the rental mooring waiting list shall be published once per year on March 1. All those wishing to rent for the year must be on the rental mooring waiting list on February 28. **[Amended 3-4-2013]**
- B. Entries shall be kept in chronological order according to the date the application is received.
- C. The waiting list shall be renewable at the beginning of each calendar year. It shall be the responsibility of the applicant to notify the Harbormaster's Office, in writing, between January 1 and by March 15, 2013, and all subsequent years between January 1 and February 15 of each year of his/her desire to remain on the waiting list. The Harbormaster's Office must receive said notice on forms approved by the Harbormaster by 4:15 p.m. on March 15, the deadline date, along with the fee of \$10 outlined in Subsection I. **[Amended 3-4-2013]**

3. Editor's Note: These regulations also repealed former Subsection B, providing a renewal application late fee, which immediately followed, was repealed 3-4-2013.

- D. When a mooring space becomes available, the Harbormaster's Office shall assign the mooring space to the first individual on the waiting list with a vessel appropriate for that particular location.
- E. The person at the top of the waiting list shall have priority to obtain the next available location but may waive the right to the next available location if it is not in a place convenient to him/her without losing his/her place at the top of the list. In the event of a waiver, the next person on the list shall be offered the location; and if that person waives the right to the location, the next successive person shall be offered the location, etc., until someone in succession on the list takes it and registers a mooring there. Notice to the person entitled to the next available mooring shall be in writing or by any other reasonable method established by the Harbormaster.
- F. Only individual and commercial yard mooring permits may be applied for in full areas; no new rental permit applications will be accepted.
- G. Owners of seasonal rental moorings shall make notice to the Harbormaster's Office of any vacancies by April 1. Vacancies shall be filled by the rental permit holder from the rental waiting list maintained by the Harbormaster's Office as provided in these sections except that rental moorings shall be subject to payment as required by the owner. If such mooring is not taken by June 15, the mooring shall be removed by the owner with the seasonal rental mooring permit being forfeited. The Harbormaster has the right to review all aspects of rental waiting list placements at all times. **[Amended 1-8-2008; 3-4-2013]**
- H. The following waiting lists shall be in effect and considered closed until the respective waiting list has been diminished and all applicants have either been awarded a mooring or have been removed for failure to perform: Cotuit Town Dock/Ropes, Cotuit Bay Shores, North Bay, North Bay Channel, Prince Cove, West Bay, Tim's Cove, Centerville River, East Bay, Cotuit Ropes/Cordwood, West Bay Flats and Fish Hills. From that time forth, the wait list shall be filled through a lottery system, open to all, and placement upon the list shall be in the order by which the name of the applicant is drawn. The Town, at its discretion, shall determine the number of applicants to be placed upon the list. All applicants, upon their selection through the lottery system, shall be subject to all rules and regulations as they pertain to this document. **[Amended 3-4-2013]**
- I. A ten-dollar annual, nonrefundable administration fee will be charged for each request to be added to or remain on a waiting list for a mooring. **[Amended 3-4-2013]**
- J. No new waiting list applications will be accepted between December 1 and December 31.
- K. Establishment of a rental mooring waiting list: The Harbormaster's Office shall conduct a lottery to include all those who are on a current Town mooring waiting list as of April 1, 2013, that desire to be on the rental waiting list. All above rules and fees shall apply. Once the lottery has been conducted and the results posted, the rental waiting list shall be considered open as all other open areas. **[Amended 3-4-2013]**

§ 406-17. Grace period.

At the discretion of the Harbormaster's Office, a grace period not to exceed one mooring year may be allowed to maintain a mooring location for a permitted mooring, unless otherwise noted. This does not excuse the mooring owner from the responsibility of obtaining a mooring permit.

§ 406-18. Mooring servicers.

- A. No one shall place, maintain, service, repair, or replace any mooring without a valid mooring servicers license issued by the Harbormaster's Office. This license shall not apply to individual mooring permit holders who maintain their own moorings and have annual inspections by the Harbormaster's Office.
- B. Mooring servicers shall abide by all federal, state, and local laws, rules, regulations, conditions, and lawful orders of the Harbormaster and/or his assistants.
- C. No mooring servicer shall place, maintain, service, repair, or replace any mooring that is not permitted by the Town of Barnstable.
- D. All mooring and mooring buoys (tackle) must be placed and in the water in its permitted location on or before July 1 of each year and remain in the water until September 1 of each year. [Added 1-26-2009⁴]
- E. All mooring inspections must be fully completed by July 1 of each year; however, the Harbormaster may grant an extension to September 1 for moorings 500 pounds or greater upon request. Inspection reports shall be on forms approved by the Harbormaster's Office and submitted by July 15 unless extension has been granted.
- F. Any changes to mooring tackle after the inspection report has been submitted to the Harbormaster's Office shall require a new inspection report to be submitted within 10 days of said changes.
- G. The Town of Barnstable and its employees accept no responsibility or liability.
- H. Mooring inspection and service work shall not be subcontracted unless written permission is granted by the Harbormaster's Office. Upon permission, the servicer of record shall be responsible for all mooring inspection reports.
- I. Each mooring servicer shall submit to the Harbormaster's Office a complete, alphabetical list of all mooring service customers serviced within the Town by September 1 of each year.
- J. It shall be the responsibility of the mooring servicer to place all mooring tags to the moorings they service by the appropriate deadline.
- K. Minimum applicant requirements:

4. Editor's Note: This amendment also provided for the redesignation of Subsections D through L as Subsections E through M, respectively.

- (1) One year of experience in mooring service work.
- (2) Documented proof of knowledge and experience in Barnstable mooring gear and regulations.
- (3) Local knowledge.
- (4) Three business references.
- (5) Proper mooring service vessel or platform, as approved by the Harbormaster's Office.

L. Application procedure.

- (1) Existing mooring servicers shall reapply for authorization yearly by January 1, on forms provided by the Harbormaster's Office. The Harbormaster's Office will issue a decision within 30 days.
- (2) New applicants shall apply on forms supplied by the Harbormaster's Office. The Harbormaster's Office will issue a decision within 60 days.
- (3) Applications that are incomplete and do not contain all required information will not be processed. The Town of Barnstable assumes no liability for lost, late, or incomplete applications or documents.
- (4) There shall be an annual application fee of \$50 for each mooring servicer's license application.

M. Penalties.

- (1) Failure of a licensed mooring servicer to abide by these regulations or the direction of the Harbormaster's Office may result in the revocation or nonrenewal of said license. However, no such revocation shall take place without written notification of the violation to the servicer.
- (2) Depending on the severity of the offense, a progressive approach will be utilized:
 - (a) First offense: verbal-type warning.
 - (b) Second offense: written warning.
 - (c) Third offense: revocation of license.
- (3) Anyone aggrieved by a license revocation may appeal to the Waterways Committee.

§ 406-19. Enforcement. [Amended 1-8-2008]

Unless otherwise specified, these rules and regulations shall be enforced by the Harbormaster's Office, Assistant Harbormaster's, Natural Resource Officers, and by police officers empowered to patrol the waters of the Town.

§ 406-20. Violations and penalties. [Amended 3-4-2013]

These regulations establish the procedures in which moorings may be approved in the Town of Barnstable under § 40-14 of the Code of the Town of Barnstable. Therefore, whoever violates any provisions of these regulations or neglects to obey the lawful and reasonable orders of those empowered to enforce the same, or resists them in the discharge of their duties, shall be considered in violation of Chapter 40 of the Town Ordinances and fined pursuant to § 1-3 (Schedule of Fines) of the Code of the Town of Barnstable.

§ 406-21. Severability.

In the event that any provisions, section or clause of these regulations is hereafter found to be invalid, such invalidity shall not affect the validity of the remaining portions of these regulations.

§ 406-22. Compatibility with other governmental regulations.

Nothing contained herein shall be held or construed to supersede or conflict with or interfere with or limit jurisdiction of the United States government or the Commonwealth of Massachusetts.

§ 406-23. Appeals process. [Amended 1-8-2008]

Any person aggrieved by a refusal to permit a mooring, or any condition or restriction imposed relative thereto, may appeal without prejudice, waiver or stay of any other appeals in writing to the Town of Barnstable's Waterways Committee within 15 days after receiving notice of such refusal or imposition. The Town of Barnstable's Waterways Committee shall consider such appeal and render a written determination as soon as practical. In the event the appeal of a refusal to permit is granted, the petitioner must pay any and all mooring fees that may be in arrears in addition to a granted appeal fee of \$25.

§ 406-24. Authority to make regulations. [Amended 1-8-2008; 3-4-2013]

These regulations are promulgated under the authority of MGL Chapter 91 by the Harbormaster and approved by the Town Manager. The Harbormaster, using his/her discretion and after consultation with the Town Manager and the Waterways Committee, may deviate from the regulations noted above if deemed to be in the best interest of the Town of Barnstable.

Chapter 407

SHELLFISH

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BARNSTABLE CODE

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ARTICLE X
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- § 407-69. Enforcing persons.
- § 407-70. Violations and penalties.
- § 407-71. Revocation or suspension of Town permit.

§ 407-72. Missing signs.

[HISTORY: Adopted by the Town Manager of the Town of Barnstable 4-6-1995; revised 11-21-1996, 1-8-1998, 2-18-1999, 12-5-2000, 1-31-2003, January 2004. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

ARTICLE I
General Provisions

§ 407-1. Adoption of regulations; posting of changes.

- A. These regulations are made by the Town Manager of the Town of Barnstable, under the authority of General Laws, Chapter 130, and the Charter of the Town of Barnstable. These regulations shall supersede any former shellfish regulations and shall continue in force until rescinded or replaced by the Town Manager, or until the authority to make and enforce shellfish regulations has been repealed.
- B. These regulations are subject to change from time to time and said changes will be posted at the Town Clerk's Office bulletin board, the Natural Resources Office (1189 Phinney's Lane, Centerville, MA), and Natural Resources bulletin boards located at Town landings commonly used for shellfishing.

§ 407-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPRENTICE COMMERCIAL SHELLFISHING PERMIT — Granted under the authority of the Town Manager or Shellfish Constable to a resident child under the age of 16 for the purpose of assisting a sponsor Town of Barnstable commercial shellfish permit holder.

BATCH — All shellfish in each separate container.

BUSHEL — Except as otherwise noted, the quantity contained in a tote basket measuring 2,746 cubic inches in volume. Shellfish shall be level with the top of said tote basket.

CALENDAR WEEK — Seven full days beginning on any Sunday and ending on the following Saturday.

COMMERCIAL FISHERMAN — Any person who sells or offers for sale, shellfish, sea worms or eels, for cash or other consideration.

COMMERCIAL SHELLFISH PERMIT, TOWN OF BARNSTABLE — Granted under the authority of the Town Manager, for the taking of shellfish for sale or other consideration.

COMMONWEALTH OF MASSACHUSETTS COMMERCIAL SHELLFISHING PERMIT — A permit issued by the Division of Marine Fisheries and defined in General Laws, Chapter 130, § 80.

CONCH — Those species of whelk known as *Busycon carica* (knobbed whelk) and *Busycotypus canaliculatus* (channeled whelk).

CULL — To sort and measure shellfish; separate seed from adult stock and replant seed.

DOMICILE — That place where (a person) has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning (Black's Law Dictionary, revised 4th ed.).

FAMILY — All those persons of the immediate family (husband, wife and any unmarried children and grandchildren under the age of 18) domiciled and living under the same roof.

HARVEST — To catch, dig, take or attempt to catch, dig or take any fish, shellfish or bait.

HINGE WIDTH — The distance between the convex apex of the right shell and the convex apex of the left shell.

HYDRAULIC METHOD — The taking or attempt to take shellfish by means of water pressure pumped through a single pipe (wand), manifold or other device approved by Natural Resources, said pressure being supplied by a mechanical pump. The hydraulic method includes the raking or collection of shellfish dislodged from the bottom via said water pressure.

LAND or LANDING — To transfer the catch of fish or shellfish from any vessel to any other vessel or from the waters, flats or any vessel onto any land, pier, wharf, dock or other artificial structure.

MANAGER — The Town Manager of the Town of Barnstable.

MASTER PERMIT — A permit allowing the commercial harvest of scallops, clams, mussels and eels.

PECK — The quantity contained in a standard metal wire peck basket, level with the top of said peck basket. Said quantity shall not exceed 10 quarts (672 cubic inches) dry measure. The said peck basket shall be the only authorized container allowed to recreationally harvest and contain shellfish. **[Amended 9-21-2004]**

RECREATIONAL PERMIT — A permit granted under the authority of the Town Manager for the taking of shellfish for noncommercial domestic use only.

RESIDENT — Resident real estate taxpayers, year-round tenants, nonseasonal tenants (six months or more of the calendar year) of residential dwellings located within the Town of Barnstable.

PROOF OF RESIDENCY — Current real estate tax bill, nonseasonal lease or, valid Massachusetts operator's license, or any other ID issued by the Massachusetts Registry of Motor Vehicles, in combination with Massachusetts motor vehicle registration, both listing a

residential dwelling within the Town of Barnstable. The address of a post office box is not acceptable as proof of residency.

SEED CLAM — Soft shell clams measuring less than two inches in the longest diameter.

SEED OYSTER — Oyster measuring less than three inches in the longest diameter.

SEED BAY SCALLOP — Bay scallops which do not have a well-defined raised annual growth line on the shell.

SEED QUAHOG — Quahog measuring less than one inch shell thickness (hinge width).

SHELLFISH — Includes, but not limited to, clams, quahogs, mussels, oysters, scallops, razor clams or razor fish, sea clams, sea scallops, sea quahogs, conchs and whelks

TOTE BASKET — The quantity contained in a tote basket measuring 2,746 cubic inches in volume. Shellfish shall be level with top of said tote basket.

ARTICLE II Recreational Shellfishery

§ 407-3. Classes of recreational shellfishing permits, licensing requirements and conditions.

- A. Resident recreational permits: Those who pay real estate taxes or are residents, as defined, of the Town of Barnstable are entitled to a Town of Barnstable recreational shellfishing permit. This permit also allows the taking of sea worms, herring and eels for noncommercial purposes. Fee: \$30. **[Amended 9-30-2010; 1-5-2011]**
 - (1) Family recreational permit: issued on the basis of one per resident family, as defined.
 - (2) Individual recreational permit: issued to unmarried resident individuals over the age of 18.
- B. Nonresident recreational permit: issued to an individual, regardless of residency. The same conditions as resident recreational permits apply, with the exception of Town of Barnstable residency. Fee: \$120. **[Amended 9-30-2010; 1-5-2011]**
- C. Senior recreational permit: issued to an individual who has attained the age of 65 and is a legal resident of, or pays real estate taxes to, the Town of Barnstable; one permit per family. Fee: \$20. **[Amended 9-30-2010; 1-5-2011]**
- D. Seasonal recreational permit: issued to an individual, regardless of residency. The permit shall be effective from June 1 through August 31 for the year it was issued. The same conditions as resident recreational permits apply. Fee: \$60. The permit may be upgraded to a nonresident recreational permit, for the year it was issued, for an additional \$60. **[Amended 9-30-2010; 1-5-2011]**
- E. Permit conditions.

- (1) Permit expiration date: Recreational permits expire on March 1, each year, except as otherwise noted.
- (2) Unlawful harvest without a recreational permit: No person shall take or attempt to take shellfish or sea worms within the Town of Barnstable, unless he or she is in possession of a valid Town of Barnstable shellfish permit.
- (3) Prohibition of sale of shellfish: No person shall sell or offer for sale, for money or other consideration, any shellfish, sea worms, herring or eels, taken under a recreational permit.
- (4) Transfer of permit: The Town of Barnstable shellfish permit is not transferable without the written permission of the Town Manager or Shellfish Constable. An illegally transferred permit shall be considered invalid.
- (5) Child under 12: No person (child) under the age of 12 years shall be allowed to use the recreational permit unless accompanied by an adult with a valid shellfish permit.
- (6) Guests of a recreational permit holder: A recreational permit holder may take guests to dig with them as long as only one weekly limit is taken. One limit per permit is allowed. The permit holder must be present and is responsible for any violations against the shellfish rules and regulations by the guest(s).
- (7) The Town of Barnstable shellfish permit shall be visibly displayed on the person while shellfishing and transporting ashore.
- (8) Landing restriction: All shellfish harvested under a recreational permit shall be landed in the Town of Barnstable.

§ 407-4. Harvest time restrictions.

- A. Harvest days. Shellfish taken under a recreational permit may be harvested on Sunday, Wednesday and Saturday and on Commonwealth of Massachusetts recognized holidays as adopted by the Town of Barnstable only, except as otherwise stated. The shellfishing calendar week consists of seven full days beginning on any Sunday and ending on the following Saturday.
- B. Other harvest day restrictions.
 - (1) Blue mussels may be harvested daily in Barnstable Harbor.
 - (2) Sea clams may be harvested daily in the area east of a line extending from Salten Point to the Eastern Bank of Great Thatch Island, Barnstable Harbor.
 - (3) Sea worms may be taken daily.
 - (4) Scallops. (See scallop regulations.)¹

1. Editor's Note: See §§ 407-9 and Art. VI of this chapter.

- (5) Oysters. Season dates will be posted annually. The harvest of oysters shall be closed (prohibited) effective April 1 annually.
- C. Harvest hours. No person shall take or attempt to take shellfish or sea worms during the nighttime hours, between sunset and 1/2 hour before sunrise.

§ 407-5. Harvest limits.

- A. With the exception of scallops, the total amount of shellfish taken on a recreational permit in any one week shall not exceed one bushel. The recreational weekly limit for the following species of shellfish, worms and eels, in season, shall be:
- (1) Soft shell clams: one level peck, as defined.
 - (2) Quahogs: one level peck, as defined.
 - (3) Blue mussels: **[Amended 9-21-2004]**
 - (a) One level bushel, as defined, in Barnstable Harbor and Northside waters.
 - (b) One peck, as defined, in all Southside areas of the Town.
 - (4) Bay scallops: one level bushel. (See also scallop regulations.)
 - (5) Sea scallops: one level bushel.
 - (6) Sea clams: one level bushel.
 - (7) Oysters: limits will be posted annually.
 - (8) Razor clams: one level peck, as defined.
 - (9) Jackknife clams: one level peck, as defined.
 - (10) Sea worms: not more than 100.
 - (11) Eels: no limit.
- B. Authorized recreational shellfish container: All shellfish harvested under a recreational shellfishing permit shall be harvested and contained in a standard ten-quart metal wire peck basket as defined. No other containers are allowed. **[Added 9-21-2004]**

§ 407-6. Minimum size limits.

Shellfish shall be culled and all seed returned to the waters and flats immediately. Persons shall not take or have in their possession (in basket, bucket, bag or other container):

- A. Soft shell clams less than two inches in longest diameter to the amount of more than 5% of any batch.
- B. Quahogs less than one inch shell thickness (hinge width) to the amount of more than 5% of any batch.
- C. Bay scallops without a well-defined raised annual growth ring to the amount of more than 5% of the total catch remaining. (See scallop regulations.)
- D. Sea scallops less than 3 1/2 inches in diameter from the hinge to the outer edge to the amount of more than 10% of the entire lot. This tolerance of 10% shall be determined by

numerical count taken at random of not less than one peck nor more than four pecks of the entire lot.

- E. Sea clams less than five inches in longest diameter to the amount of more than 5% of any batch.
- F. Oysters less than three inches in longest diameter to the amount of more than 5% of any batch.
- G. Eels or elvers less than four inches in total length.

§ 407-7. Gear restrictions and regulations.

- A. Clams and razor clams may be taken with a standard clam hoe (rake) or hand plunger in areas designated by the Town Manager. No shovels, forks or other devices or materials shall be used, unless approved by the Natural Resources Office. **[Amended 5-2005]**
- B. Quahogs and oysters may be taken by hand, rakes, tongs, dipnet and bull rake. No other device may be used, unless approved by Natural Resources.
- C. Eels and elvers may be taken by pots, spears or angling. A recreational shellfish permit must be in possession; the limit for recreational permit holders is 10 pots; all pots and buoys are to be marked with the permit holder's name, and buoys must be painted bright green. A permit is not required to take eels for recreational use by spears or angling.
- D. Skin or scuba diving. All persons skin or scuba diving for shellfish shall display the diver-down flag and, upon request, produce a Town of Barnstable shellfish permit.

§ 407-8. Shellfishery conservation and management.

- A. Temperature restriction. Dry digging for soft shell clams and quahogs is prohibited when the air temperature is 28° F. or below.
- B. Backfilling of dig holes. All dig sites shall be backfilled when digging soft shell clams, razor clams or sea worms.
- C. Mainland thatch conservation. The digging of shellfish in the thatch (grass) on the mainland shore is prohibited. Dig sites in the thatch on flats and islands shall be repaired.
- D. Shucking restriction. All shellfish harvested shall be brought ashore in the shell.
- E. Wet storage prohibition. The wet storage of shellfish in the Town of Barnstable waters is prohibited.
- F. Transport of seed restriction. No person shall transport or move seed clams, quahogs, oysters or scallops, except that a five-percent (by count) of seed shall be allowed as a margin of error.
- G. Area closures. No person shall take or attempt to take shellfish from a closed area with the exception of scallops. Shellfishing for any purpose is prohibited in these areas. (See

also shellfish area status.²) Areas may be posted closed from time to time by Natural Resources or the Board of Health due to high concentrations of seed, point source pollution or health hazard, propagation projects or other purpose. The taking of shellfish from these areas is prohibited. Also, the taking of shellfish from any shellfish culturing gear or tampering with said gear deployed by public and/or private entities on approved designated areas is prohibited. Said approved designated areas shall be considered closed areas.

- H. Inspections. All shellfish and sea worms harvested in the Town of Barnstable are subject to inspection. Failure to display shellfish upon demand of enforcement personnel shall be a violation.
- I. Destruction of shellfish or shellfish habitat. The willful destruction of shellfish and/or shellfish habitat is prohibited and shall be punishable by a fine not to exceed \$1,000 per incident, and \$1,000 per day for any such destruction which continues over more than a twenty-four-hour period of time.

§ 407-9. Recreational scallop regulations.

- A. Closed season. The harvest of scallops shall be closed (prohibited) effective April 1 annually, MGL C. 130, § 71. Open season will be posted annually.
- B. Recreational harvest limit. One bushel per week may be harvested daily.
- C. Minimum size limit. Only scallops with a well-defined raised annual growth ring may be taken; all other scallops will be considered seed scallops and must be returned to the water immediately. However, it shall not be unlawful to have in possession seed scallops unavoidably left in the catch after it has been culled, to the amount of not more than 5% of the total catch remaining.
- D. Gear restriction. Scallops may be taken by hand, rake, dipnet and dragging in all areas that are not closed to dragging. In such areas closed to dragging, they may be taken by hand, dipnet, rakes and diving. No other devices may be used.
- E. Dredge size restriction. No drags, dredges shall exceed 32 inches in width.
- F. Dredging area restrictions.
 - (1) No dragging shall be permitted north of a line marked by buoys, running from the way to water at the end of Estey Avenue, to the southerly end of east jetty, and in the above area, only one bushel per permit holder may be taken per calendar week. No boats permitted in this area. **[Amended 11-8-2004]**
 - (2) No dragging shall be allowed between Calves Pasture Point and the Barnstable Yacht Club pier.
- G. Sale restriction. No scallops taken on a recreational permit shall be sold or offered for sale.

2. Editor's Note: See Art. VIII of this chapter.

- H. Storm policy. In the event of a storm depositing scallops on the beach, where there is no chance of said scallops being returned to the waters by tidal actions, scallops may be harvested by Town of Barnstable residents and all Town of Barnstable shellfish permit holders. Residents must provide proof of residency. Ten-bushel per day limit. Note: The harvest of any shellfish is prohibited during the nighttime hours, sunset to 1/2 hour before sunrise.

§ 407-10. Herring and alewife rules and regulations.

- A. Resident and real estate taxpayer requirement: Residents and real estate taxpayers of the Town of Barnstable are required to have a Town of Barnstable herring permit, or resident shellfish permit, to take herring or alewives. The fee for said herring permit shall be \$5. A senior citizen permit shall be \$3. Said permit holders are entitled to one pail containing not more than 15 herring or alewives per calendar week, per household. **[Amended 11-8-2004]**
- B. Nonresident requirement. Residents of the Commonwealth of Massachusetts are required to have a Town of Barnstable herring permit, or nonresident shellfish permit, to take herring or alewives. The fee for said herring permit shall be \$25. Said permit holders are entitled to one pail containing not more than 15 herring or alewives per calendar week, per household. **[Amended 11-8-2004]**
- C. Unlawful harvest. No person shall take or attempt to take herring or alewives from Town of Barnstable waters unless said person is a Town of Barnstable resident or real estate taxpayer or holds a Town of Barnstable herring permit or shellfish permit.
- D. Harvest days and times. Herring and/or alewives may be taken on Mondays, Wednesdays, Fridays and Saturdays; hours: 6:00 a.m. to 7:00 p.m. only. **[Amended 11-8-2004]**
- E. Harvest method. Herring and alewives shall be taken by dipnet or by hand only.
- F. Harvest containers. All herring and alewives taken from the water shall be placed in a suitable box, pail or basket and removed from the area. Paper and cardboard containers are not considered suitable.
- G. Conservation. Throwing objects into the water and/or malicious destruction of the herring and alewives is prohibited.
- H. Unauthorized alteration of herring runs. No person shall tamper with, adjust or destroy any structure provided for the passage of herring and alewives unless authorized by the Supervisor of Natural Resources.
- I. Designated harvest areas. Herring and alewives shall be taken from designated areas only. Herring and alewives shall not be disturbed outside of designated harvest areas.
- J. Restricted areas. The Town of Barnstable anadromous fishways, the embankments of said fishways and the area within 100 feet of said embankments shall be considered restricted areas. All persons, with the exception of property owners or legal occupants of

the property, are prohibited from entering these restricted areas. The taking of anadromous fish is prohibited within these areas.

K. It shall be unlawful for any person to harvest, possess or sell river herring in the Town of Barnstable or in the waters under the jurisdiction of the Commonwealth of Massachusetts. **[Added 3-14-2006]**

- (1) Exceptions. The Director of the Massachusetts Division of Marine Fisheries may authorize the harvest and possession of river herring from a particular spawning run for personal use based on documentation that the spawning run from which herring are harvested is not depleted.
- (2) Tolerance for bait fisheries. No person shall possess any batch of fish where more than 5% of the total is comprised of river herring species by count.
- (3) Expiration. These measures shall expire on January 1, 2009.

§ 407-11. Regulations pertaining to other species.

For recreational rules and regulations pertaining to other species including conch, whelk, ocean quahog, sea scallop, lobster, crabs and sea urchins, refer to Massachusetts General Laws Chapter 130 and Code of Massachusetts Regulations 322.

ARTICLE III **Commercial Shellfishing**

§ 407-12. Classes of permits and permit conditions.

A. Town of Barnstable commercial shellfishing permits are granted under the authority of the Town Manager for the taking of shellfish for sale or other consideration, issued to persons, other than aliens, having attained their 16th birthday and who are domiciled in the Town of Barnstable. When the holder of a Town of Barnstable commercial shellfish permit is no longer domiciled in the Town of Barnstable, said Town of Barnstable commercial shellfish permit shall be void. **[Amended 9-21-2004; 11-23-2005; 9-30-2010]**

- (1) Limitation of available licenses. Commercial shellfishing licenses shall be issued each year only to commercial shellfish license holders of the preceding year who apply for license renewal. Commercial shellfish license renewals must be applied for between January 1 and January 31.
- (2) New commercial shellfishing license procedure:
 - (a) New commercial shellfishing permits may be issued at the rate of one new permit for every one nonrenewed permit or permit that is void as a result of other causes (i.e., forfeiture, death, etc).
 - (b) To become eligible for a new commercial permit you must apply, pursuant to these regulations, between January 1 and January 31 and pay the

nonrefundable application fee of \$5. Upon the hand delivery of a completed legitimate application, and payment of the fee, the applicant's name will be entered into a lottery. On February 1, the applicant names will be drawn by lottery to determine the sequential chronological order that applicants acquire a permit. On February 1, the Natural Resources Office shall post on the bulletin board outside its building, on Phinney's Lane, a chronological list of applicants as determined by lottery eligible for a commercial permit as determined by vacancy.

- (c) If an existing commercial permit becomes void, during the calendar year (January 1 through December 31) for which the permit was issued, the next eligible applicant as determined by the lottery will be notified, by mail, of the availability of a permit. The applicant shall have 10 days from the date of notification to pay the balance of the permit fee or the permit will be offered to the next eligible applicant as determined by the lottery. The new permit shall be available within 10 days, thereafter, to be picked up. New permits shall be issued for a given commercial shellfishing permit year (April 1 through March 31). The applicant list shall be dissolved each year as of December 31.
- (3) Note: If any dates stated in § 407-12A fall on a Saturday, Sunday or holiday recognized by the Town of Barnstable the next Marine and Environmental Affairs Division business day shall apply.
- B. Commonwealth of Massachusetts commercial shellfishing permit. This permit is required by Massachusetts General Law to dig or take shellfish within the Commonwealth of Massachusetts for commercial purposes and required prior to issuance of the Town of Barnstable commercial shellfish permit.
 - C. Apprentice commercial shellfishing permit. The Town Manager or Shellfish Constable may issue an apprentice commercial shellfishing permit to a resident child who is sponsored by a Town of Barnstable commercial shellfishing permit holder. Said child must be under the age of 16, and said apprentice commercial shellfishing permit shall expire on the child's 16th birthday. The apprentice shall assist only the sponsor, and only in the harvest of the sponsor's catch limit. The apprentice shall not harvest shellfish without the accompaniment of the sponsor. Upon the expiration of the apprentice commercial shellfishing permit the holder of said permit may apply for a Town of Barnstable commercial shellfishing permit pursuant to these rules and regulations only if the child had held the apprentice commercial shellfishing permit for two years prior to their 16th birthday, can demonstrate having worked in the shellfish industry for at least 400 hours, and has successfully completed a Coast Guard boaters safety course. The allowances to an apprentice permitted under this regulation are distinct and separate from the stipulations that apply to new applicants under Subsection A(2) above.
 - D. Permit conditions.

- (1) Commercial shellfishing permit fees:
 - (a) Master: \$500.
 - (b) Age 65 or older, master: \$300.
- (2) Commercial shellfishing permits expire on March 31 each year.
- (3) Unlawful harvest without a commercial shellfishing permit. No person shall take or attempt to take shellfish for sale or other commercial purpose, unless said person is the holder of a valid Town of Barnstable commercial shellfish permit. It shall be prima facie evidence that persons shellfishing on a Town of Barnstable commercial shellfish permit are utilizing said permit for commercial purposes, and are subject to all regulations governing such use. This shall not apply to grant holders while on their licensed grant.
- (4) Catch report. A catch report for the calendar year shall be submitted to Natural Resources, on forms provided, no later than January 15 annually. Failure to submit a catch report will result in a fine of no more than \$500 as per the determination of Natural Resources, and may result in a suspension of the Town of Barnstable commercial shellfish permit for one year, commencing the next commercial permit year (April 1 to March 31).
- (5) Assisting in commercial harvest prohibited. A person shall not assist in the commercial harvest or culling of shellfish unless said person holds a Town of Barnstable commercial shellfish permit, unless otherwise stated.

§ 407-13. Commercial shellfishing permit application procedure. [Amended 9-30-2010]

- A. Each applicant for a Town of Barnstable commercial shellfish permit shall fill out and submit an application form, provided by Natural Resources, and an application fee of \$5; said fee is not refundable but will be applied to the permit fee when said permit is picked up. Attached to the application shall be a copy of:
 - (1) Commonwealth of Massachusetts commercial shellfish permit, valid for the year being applied for.
 - (2) Documentation to verify the applicant is domiciled in the Town of Barnstable. This may be current real estate tax, mortgage or lease and copy of motor vehicle registration. (A driver's license is not proof of domicile.) The burden of proof is on the applicant.
 - (3) Validated catch report stub from the year previous to the year being applied for.
 - (4) Note: Chapter 121, Article I, of the Code of the Town of Barnstable provides that any license or permit may be denied or revoked for nonpayment of taxes, fees, assessments, betterments or other municipal charges.
- B. Application window. Each applicant for a Town of Barnstable commercial permit must apply for said permit between January 1 and January 31 annually. Applications will not be accepted after January 31. After paying the initial application fee of \$5 for the

commercial permit, the applicant must pick up and pay in full for said permit within 90 days after closing of the application window. Note: If any dates stated in § 407-13B fall on a Saturday, Sunday or holiday recognized by the Town of Barnstable, the next Marine and Environmental Affairs Division business day shall apply.

- C. Address change. Should any commercial permit holder's address change during the commercial permit year, he/she must contact Natural Resources in writing with said address change.

§ 407-14. General commercial shellfishing.

- A. Harvest hours. No person shall take or attempt to take shellfish or seaworms during the nighttime hours, between sunset and 1/2 hour before sunrise, except as otherwise noted utilizing the hydraulic method (see hydraulic method restrictions).
- B. Tagging shellfish and display of shellfish permit.
 - (1) All shellfish harvested under a commercial shellfish permit shall be placed in a suitable container during transport. The container shall bear a label or tag legibly marked with:
 - (a) Date of harvest.
 - (b) Place of harvest.
 - (c) Digger's state permit number.
 - (d) Name and address of digger.
 - (2) All shellfish, commercial permits and licenses shall be displayed upon demand of a Shellfish Constable or Town of Barnstable police officer.
- C. Possession of shellfish. No person shall possess shellfish in excess of daily commercial limit in or on the waters of the Town of Barnstable, or while landing their catch.
- D. Landing of shellfish. After the completion of harvest, all shellfish harvested in the Town of Barnstable under a commercial permit shall be landed at a Town landing. The word "landed" as used herein shall mean the location where shellfish are removed from the shoreline to any point of land above the mean high-water line. This regulation shall not apply when ice conditions prevent the use of a boat.
- E. Shall not take family limit in addition. A commercial shellfish permit holder shall not take in any one day shellfish in excess of the commercial quantity allowed by statute or regulation, regardless of the fact that he or a member of his family may hold a family shellfish permit.
- F. Wet storage. The wet storage of shellfish in Town of Barnstable waters is prohibited, except with the written permission of Natural Resources.

- G. Skin or scuba diving. All persons skin or scuba diving for the commercial harvest of shellfish shall display the diver-down flag and, upon request, produce a Town of Barnstable commercial shellfish permit.
- H. Northside commercial shellfishing area restriction. The commercial harvest of shellfish shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck, except as otherwise noted or amended.
- I. Hydraulic method or hand plunger shall be used to harvest subtidal soft shell clams, jackknife clams and common razor clams only on the Southside of the Town. The harvest of other species of shellfish utilizing the hydraulic method is prohibited.

§ 407-15. Shellfishery conservation and management.

- A. Temperature restrictions. Dry digging for soft shell clams and quahogs is prohibited when the air temperature is 28° F. or below. However, the commercial harvest of mussels, the subtidal harvest of quahogs and the use of the hydraulic method or a hand plunger to subtidally harvest soft shell clams, jackknife clams (*Tagelus plebeius*) and common razor clams (*Ensis directus*) on the Southside will be allowed.
- B. Backfilling of dig holes. All dig sites shall be backfilled when digging soft shell clams, razor clams or sea worms.
- C. Mainland thatch conservation. The digging of shellfish in the thatch (grass) on the mainland shore is prohibited. Dig sites in the thatch on flats and islands shall be repaired.
- D. Shucking restriction. All shellfish harvested shall be brought ashore in the shell.
- E. Transport of seed restriction. No person shall transport or move seed clams, quahogs, or scallops, except that a five-percent (by count) of seed shall be allowed as a margin of error.
- F. Area closures. No person shall take or attempt to take shellfish from a closed area with the exception of scallops. Shellfishing for any purpose is prohibited in these areas (see also shellfish area status). Areas may be posted closed from time to time by Natural Resources or the Board of Health due to high concentrations of seed, point source pollution or health hazard, propagation projects or other purposes. The taking of shellfish from these areas is prohibited. Also, the taking of shellfish from any shellfish culturing gear or tampering with said gear deployed by public and/or private entities on approved designated areas is prohibited. Said approved designated areas shall be considered closed areas.
- G. Inspections. All shellfish and sea worms harvested in the Town of Barnstable are subject to inspection. Failure to display shellfish upon demand of enforcement personnel shall be a violation.
- H. Destruction of shellfish or shellfish habitat. The willful destruction of shellfish and/or shellfish habitat is prohibited and shall be punishable by a fine not to exceed \$1,000 per

incident, and \$1,000 per day for any such destruction which continues over more than a twenty-four-hour period of time.

ARTICLE IV
Commercial Soft Shell Clam Shellfishing

§ 407-16. Other applicable regulations; minimum size limit; harvest limit.

- A. All commercial shellfishing permit conditions, general commercial shellfishing rules and regulations and shellfishery conservation and management regulations apply. In addition, the following conditions, rules and regulations apply.
- B. Minimum size limit. Shellfish shall be culled and all seed returned to the waters and flats immediately. Persons shall not take or have in their possession (in basket, bucket, bag or other container) soft shell clams less than two inches in longest diameter to the amount of more than 5% of any batch.
- C. Commercial soft shell clam harvest limit. The total daily limit of soft shell clams, commercial harvest, shall not exceed three level tote baskets, as defined, whether harvested in the Northside or Southside areas, open for commercial harvest.

§ 407-17. Southside harvest restrictions.

- A. Harvest restrictions in the intertidal zones. The commercial harvest of soft shell clams by dry digging on the Southside of the Town of Barnstable is prohibited. The commercial harvest of soft shell clams from the intertidal area, that area between mean low-water line and the mean high-water line, or any flat or beach area which is exposed at low tide, is strictly prohibited, unless otherwise stated.
- B. Harvest days/hours. The commercial harvest of soft shell clams on the Southside of the Town of Barnstable shall be allowed on Monday through Saturday, November 1 through May 31; and Monday through Friday, June 1 through October 31. The harvest of shellfish by the hydraulic method is prohibited from 1/2 hour before sunset until 7:30 the following morning.
- C. Hydraulic method or hand plunger shall be used for the commercial subtidal harvest of soft shell clams, jackknife clams and common razor clams only on the Southside of Town. The harvest of other species of shellfish utilizing the hydraulic method is prohibited.
 - (1) Tide/depth restriction. The harvest of subtidal soft shell clams by either method is prohibited from two hours after low tide to two hours prior to the next low tide, based on Boston Tide Calendar issued by Natural Resources. The harvest of subtidal soft shell clams is prohibited in less than two-foot depth of water, unless otherwise stated.
 - (2) Harvest of subtidal soft shell clams, shoestring and popponesset bays (subject to state closures). Subject to current hydraulic/plunging regulations, except that the harvest of subtidal soft shell clams is prohibited in less than one-foot depth of

water and is prohibited on any flat or beach area which is exposed at low tide or posted by Natural Resources. The harvest by either method is prohibited from two hours after low tide to two hours prior to the next low tide, based on the Boston Tide Calendar issued by Natural Resources.

- (3) Hydraulic method helper. Commercial permit holders utilizing the hydraulic method to harvest subtidal soft shell clams shall be allowed one helper. Said helper shall at all times be in the immediate company of and under the direct supervision of the hydraulic permit holder while harvesting shellfish. The helper shall be required to hold a Commonwealth of Massachusetts commercial shellfish permit. All helpers must present their valid Massachusetts bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman. **[Amended 1-30-2007]**
- (4) Gear restriction (Southside). Pumps shall not exceed eight horsepower and shall be equipped with proper muffler and exhaust system. Pumps shall be mounted low in the boat to limit noise.

§ 407-18. Northside harvest restrictions.

- A. Harvest days. The commercial harvest of soft shell clams on the Northside of the Town of Barnstable shall be allowed Monday through Friday. However, commercial harvest is prohibited on Wednesdays, May 1 through October 15, annually.
- B. Harvest method. Shellfish to be taken by hand rake only. The intertidal harvest of soft shell clams is permitted in those areas open to commercial harvest in Barnstable Harbor. The possession of plunging or hydraulic pumping equipment while harvesting shellfish in Barnstable Harbor is prohibited without the written permission of the Shellfish Constable.

§ 407-19. Northside commercial harvest area restrictions. [Amended 5-2005]

- A. Barnstable Harbor. The commercial harvest of shellfish shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign on Green Point, Sandy Neck, and west of Beach Point, Sandy Neck.
- B. The commercial harvest of soft shell clams shall be allowed west of a line extending from Calves Pasture Point to the eastern bank of Wells Creek, including the westernmost portion of Little Huckins Island and all tidal flats associated with said island, west of the "Closed to Commercial Shellfishing" signposts as posted by the Natural Resources Office. Commercial harvest is prohibited on Huckins Island and all tidal flats associated with said island. **[Amended 3-26-2008]**

- C. Great Thatch Island, Barnstable Harbor: eastern half of island, as posted; subject to the above listed restrictions.

ARTICLE V
Commercial Quahog Shellfishing

§ 407-20. Other applicable regulations.

All commercial shellfishing permit conditions, general commercial shellfishing rules and regulations and shellfishery conservation and management regulations apply. In addition the following conditions, rules and regulations apply:

- A. Definitions of quahogs.
- (1) Littleneck: greater than or equal to one-inch hinge width; less than 2 1/2 inches in longest diameter.
 - (2) Cherrystone: greater than or equal to 2 1/2 inches; less than three inches in longest diameter.
 - (3) Chowder: greater than or equal to three inches in longest diameter.
- B. Minimum size limit. Shellfish shall be culled and all seed returned to the waters and flats immediately. Persons shall not take or have in their possession (in basket, bucket, bag or other container) quahogs less than one inch shell thickness (hinge width) to the amount of more than 5% of any batch.
- C. Gear restrictions. Quahogs may be commercially harvested by hand, rakes, tongs, dipnet and bullrake. No other device may be used, unless approved by Natural Resources.

§ 407-21. Southside commercial quahog harvest restrictions.

- A. Harvest days. The commercial harvest of quahogs on the Southside of the Town of Barnstable shall be allowed on Monday through Saturday. Harvest by commercial permit on Sunday is prohibited.
- B. Commercial quahog harvest limit. The total daily limit of littleneck, cherrystone or mixed (littleneck/cherrystone) shall not exceed three level tote baskets, as defined. The total daily limit of all quahogs (i.e., littlenecks, cherrystones and chowders) shall not exceed five level tote baskets in any combination. Chowder quahogs shall be culled and bagged separately from littlenecks and cherrystones prior to landing, if the total catch exceeds three tote baskets.

§ 407-22. Northside commercial quahog harvest restrictions.

- A. Harvest days. The commercial harvest of quahogs on the Northside shall be allowed on Monday through Friday. However, commercial harvest is prohibited on Wednesdays, May 1 through October 15 annually.

- B. Commercial quahog harvest limit. The total daily limit of commercially harvested quahogs shall not exceed two level tote baskets, as defined.
- C. Commercial quahog harvest area restriction. The commercial harvest of quahogs shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck.

ARTICLE VI
Commercial Scallop Shellfishing

§ 407-23. Other applicable regulations.

All commercial shellfishing permit conditions, general commercial shellfishing rules and regulations and shellfishery conservation and management regulations apply. In addition, the following conditions, rules and regulations apply.

§ 407-24. Harvest days.

Scallops may be commercially harvested daily, Monday through Saturday.

§ 407-25. Closed season.

The harvest of scallops shall be closed (prohibited effective April 1 annually, MGL C. 130, § 71. Open season will be posted annually.

§ 407-26. Harvest limit.

Harvest limits will be posted annually.

§ 407-27. Minimum size limit.

Only scallops with a well-defined raised annual growth ring may be taken; all other scallops will be considered seed scallops and must be returned to the water immediately. However, it shall not be unlawful to have in possession seed scallops unavoidably left in the catch after it has been culled, to the amount of not more than 5% of the total catch remaining

§ 407-28. Gear restriction.

Scallops may be taken by hand, rake, dipnet and dragging in all areas that are not closed to dragging. In such areas closed to dragging, they may be taken by hand, dipnet, rakes and diving. No other devices may be used.

§ 407-29. Dredge size restriction.

No drags or dredges shall exceed 32 inches in width.

§ 407-30. Dredging area restrictions. [Amended 9-21-2004]

No dragging shall be permitted north of a line marked by buoys, running from the way to water at the end of Estey Avenue, to the southerly end of east jetty. No boats permitted in this area.

§ 407-31. Licensing of assistants. [Amended 9-21-2004; 1-30-2007]

All helpers actively helping a commercially licensed shellfishermen, harvesting scallops, shall be required to hold a valid Massachusetts bed certificate. However, no such permit is required to operate the boat. All helpers must present their valid Massachusetts bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman.

§ 407-32. Harvest limit per boat.

There shall be not more than two harvest limits allowed per boat for commercial permit holders.

§ 407-33. Sale and transfer restrictions.

It shall be unlawful for the holder of any type permit to sell or offer for sale, or transfer their catch, unless landed ashore.

§ 407-34. Storm policy.

In the event of a storm depositing scallops on the beach, where there is no chance of said scallops being returned to the waters by tidal actions, scallops may be harvested by Town of Barnstable residents and all Town of Barnstable shellfish permit holders. Residents must provide proof of residency. Ten-bushel per day limit. Note: The harvest of any shellfish is prohibited during the nighttime hours, sunset to 1/2 hour before sunrise.

ARTICLE VII**Commercial Shellfishing and Fishing Regulations for Other Species****§ 407-35. Applicability of other regulations.**

All commercial shellfishing permit conditions, general commercial shellfishing rules and regulations and shellfishery conservation and management regulations apply for each species. In addition the following conditions, rules and regulations apply for the individual species as listed.

§ 407-36. Commercial jackknife clam and common razor clam shellfishing.

- A. Commercial jackknife clam (*Tagelus plebeius*) and common razor clam (*Ensis directus*) harvest limit. The total commercially harvested daily limit of either species shall not

exceed four level tote baskets, as defined, whether harvested in the Northside or Southside areas open for commercial harvest

B. Southside harvest restrictions.

- (1) Harvest area restriction in the intertidal zone. The commercial harvest of jackknife clams and common razor clams by dry digging on the Southside of the Town of Barnstable is prohibited. The commercial harvest of jackknife clams and common razor clams from the intertidal area, that area between mean low-water line and the mean high-water line, or any flat or beach area which is exposed at low tide, is strictly prohibited, unless otherwise stated.
- (2) Harvest method. Jackknife clams and common razor clams may be commercially harvested on the Southside by hydraulic method or hand plunger. No other devices or materials shall be used, unless approved by the Natural Resources Office. All hydraulic method and hand plunger rules and regulations as defined for the commercial harvest of soft shell clams pertain to the commercial harvest of jackknife clams and common razor clams. (Refer to commercial soft shell clam shellfishing rules and regulations.) **[Amended 1-30-2007]**
- (3) Harvest days/hours. Refer to commercial soft shell clam shellfishing rules and regulations.

C. Northside harvest restrictions.

- (1) Harvest days. The commercial harvest of jackknife clams and common razor clams shall be allowed Monday through Saturday.
- (2) Harvest area restriction. The commercial harvest of jackknife clams and common razor clams shall be allowed east of a line extending north from the Barnstable Yacht Club pier, to a post and sign at Green Point, Sandy Neck, and West of Beach Point, Sandy Neck.
- (3) The commercial harvest of jackknife clams and common razor clams shall be allowed west of a line extending north from Calves Pasture Point, to the eastern bank of Wells Creek, excluding Huckins Island and all tidal flats associated with said island. Commercial harvest is prohibited on these islands. Harvest method: Razor clams may be taken with a standard clam hoe (rake) in areas designated by the Town Manager. No shovels, forks or other devices or materials shall be used, unless approved by the Natural Resources Office. **[Added 5-2005]**
- (4) The commercial harvest of jackknife clams and common razor clams shall be allowed on the eastern half of Great Thatch Island, Barnstable Harbor, as posted, subject to the above listed restrictions. **[Added 5-2005]**
- (5) All helpers actively helping a commercially licensed shellfisherman harvesting razor clams shall be required to hold a valid Massachusetts bed certificate. However, no such permit is required to operate the boat. All helpers must present their valid Massachusetts bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman. **[Added 1-30-2007]**

§ 407-37. Commercial mussel shellfishing.

- A. Harvest days. The commercial harvest of mussels shall be allowed on Monday through Saturday.
- B. Commercial mussel harvest limit. The total daily limit of mussels, commercial harvest, shall not exceed 50 bags.
- C. Harvest limit per boat. There shall not be more than two harvest limits per boat for commercial permit holders.
- D. Gear restrictions and harvest method. Stone fork or dredge, not to exceed 32 inches in width. All persons harvesting mussels are responsible for the cleanliness of the landing areas.
- E. All helpers actively helping a commercially licensed shellfishermen, harvesting mussels, shall be required to hold a valid Massachusetts bed certificate. However, no such permit is required to operate the boat. All helpers must present their valid Massachusetts bed certificate, in person, to the Natural Resources Office prior to initially helping a commercially licensed shellfisherman. [Added 9-21-2004; amended 1-30-2007]

§ 407-38. Commercial oyster shellfishing.

The commercial harvest of oysters is prohibited in the Town of Barnstable, except for licensed grant holders on their grants.

§ 407-39. Commercial elver and eel fishing.

- A. Minimum size limit. It is unlawful for a person to take or possess elvers or eels of a size less than four inches in total length.
- B. Permit. No person shall take or attempt to take eels for the purpose of sale or any commercial purpose unless he or she is the holder of a Town of Barnstable commercial permit endorsed for eels.
- C. Harvest method. No person shall take or attempt to take eels, *Anquilla rostrates*, by any contrivance other than by pots, spears or angling.
- D. Buoys. All buoys will be painted the Town eel fishery color, bright green, the Town eel permit number shall be displayed on all buoys. A colored stripe may be added for identification.
- E. Pots. Pots shall not be set in navigable marked channels. No person shall fish in excess of 100 pots.
- F. Freshwater eeling. Commercial eeling in freshwater is allowed by special state permit. A valid Massachusetts fishing license is also required.

§ 407-40. Other species.

For commercial rules and regulations pertaining to other species including conch, whelk, surf clam, ocean quahog, sea scallop, lobster, crabs and sea urchins refer to Massachusetts General Laws Chapter 130 and Code of Massachusetts Regulations 322.

ARTICLE VIII
Shellfish Area Status ³

§ 407-41. (Reserved)**§ 407-42. (Reserved)****§ 407-43. (Reserved)****§ 407-44. Town of Barnstable closures.**

A. Northside.

- (1) Scudder Lane recreational shellfishing area, Barnstable Harbor. The waters, foreshores and tidal flats of the Scudder Lane recreational shellfishing area are closed to the harvest or attempted harvest of shellfish and seaworms from the Beach House west of the Scudder Lane landing to the Barnstable Yacht Club pier, and extending to the Huckins Island tidal flat. Opening dates for Scudder Lane recreational shellfishing area will be posted annually. Effective April 1 annually, the Scudder Lane recreational shellfishing area is closed to the taking of shellfish and seaworms for any purpose. (DMF/CCB:31.20)
- (2) Phillis Island, Barnstable Harbor. The waters, foreshores and tidal flats of the western end of Phillis Island as posted are closed to the harvest or attempted harvest of shellfish and seaworms. Town shellfish propagation project.

§ 407-45. Areas closed to commercial shellfishing.

A. Northside.

- (1) Scudder Lane recreational shellfishing area as defined above.
- (2) Barnstable Harbor, except as otherwise noted.

B. Southside.

3. Editor's Note: Former §§ 407-41, Definitions, 407-42, Areas subject to water quality closure, and 407-43, Seasonal water quality closure were removed from the Code as they were Massachusetts Division of Marine Fisheries classified shellfish area descriptions derived by the commonwealth. These descriptions are now available in the Town offices.

- (1) Cordwood Landing recreational shellfishing area. The waters, flats and shoreline within an area beginning from the "No Shellfishing" sign/post located on the shore at 671 Old Post Road thence northeasterly to the "No Shellfishing" sign/post located on the shore at 721 Old Post Road to the "No Shellfishing" sign buoys located offshore.

- (2) Popponeset Bay seasonal commercial hydraulic method/hand plunger restriction. Effective annually the commercial harvest of soft shell clams and razor clams assisted by the hydraulic method or hand plunger method is prohibited in all the waters, shores, flats and tributaries of Popponeset Bay and Shoestring Bay in the Town of Barnstable. This regulation shall be in effect annually from May 1 through October 31, all dates inclusive.
- (3) The West Bay recreational shellfishing area. The waters, flats and shoreline within an area beginning from the West Bay Landing at Bridge Street to the Wianno Yacht Club pier to the "NR/No Shellfishing" sign buoys located offshore.

Note: For current information on the above listed areas, phone Natural Resources at 790-6272 or the Massachusetts Division of Marine Fisheries.

Periodically updated shellfish area maps and shellfish area openings and closures are available online at: <http://town.barnstable.ma.us/>

"Shellfish maps displayed on this web site are to illustrate written geographical definitions of shellfish areas, as defined by the Massachusetts Division of Marine Fisheries and the Town of Barnstable Natural Resources Office. In the field, signposts, buoys and landmarks are used to assist in the demarcation of written geographical definitions of shellfish areas. Check with the Natural Resources Office to verify shellfish area locations. The harvest of shellfish is prohibited in those areas posted by the Natural Resources Office, regardless of the fact that weather or man may from time to time remove signage. If an area has been posted and signage is missing, notify the Natural Resources Office."

ARTICLE IX

Aquaculture License Regulations

§ 407-46. Findings.

The Town of Barnstable advocates the orderly development of aquaculture that is complementary to the continuing development of the Town's shellfishery as it pertains to aquaculture licenses. In consideration of any aquaculture license the Town is obligated to protect and preserve the existing fisheries and to minimize the impact on other uses of the marine environment. The right of public navigation through a license shall not be infringed upon except in areas containing approved structures that are properly marked according to these regulations. The size and scope of the license shall co-exist with and not diminish the common property commercial and recreational shellfisheries or other existing water-related activities.

§ 407-47. Proof of residency required.

Aquaculture grant licenses, hereinafter referred to as the "license," will be issued to Town of Barnstable residents only who can prove to the satisfaction of the Licensing Authority that they are a bona fide, domiciled resident of the Town of Barnstable and have been domiciled

within the Town for at least 12 consecutive months prior to the date of application. Two forms of written proof of residency is required; tax bills, rent receipts, utility bills, driver's license, car registration, etc., may serve as proof. All local tax obligations must be paid in full in order for an application to be considered in accordance with MGL C. 40, § 57, which was adopted by Town Meeting 11/86. Any licensed area so licensed subsequent to the adoption of these rules and regulations shall be forfeited if the holder of the license, hereinafter referred to as the "licensee," ceases to be a bona fide domiciled resident of the Town of Barnstable.

§ 407-48. Application for and issuance of license; hearing; fee.

Applicants, other than renewal applications, desiring a license shall be required to complete and submit all information required on the Town's approved application form and shall be submitted under the pains and penalties of perjury. Any information on a license application that is determined to be untruthful before or after approval of any license application shall be grounds for denial and/or forfeiture of a license. The nonrefundable application fee is \$100 payable to the Town of Barnstable upon submittal of a license application to the Town Manager. Following the receipt of a completed license application, the Town Manager shall establish a public hearing date. At least 15 days prior to the established hearing date, the Town Manager shall notify the applicant of the time, date, and place of the hearing. The applicant is required to notify all abutters (as certified by the Town Assessor) within 300 feet of the outside boundaries of the proposed licensed area of the date, time and place of the public hearing. The notification by the applicant to the abutters must be made at least 10 days prior to the hearing date by certified mail return receipt requested, which receipts must be submitted to the Town Manager at the time of the public hearing. In addition the Town Manager shall post the hearing notice in the Town Hall at least 15 days prior to the hearing and cause the hearing notice to be published in the local newspaper at least seven days prior to the hearing.

§ 407-49. Moratorium on issuances of new licenses.

The Town Manager may issue a moratorium on the issuance of new licenses at any time when this action is deemed appropriate and in the best interests of the Town's shellfisheries.

§ 407-50. Filing and posting of list of applicants.

A list of applicants for licenses in order of date of application shall be kept on file by the Town Manager, and an up-to-date copy shall be permanently posted on an official bulletin board in the Town Hall.

§ 407-51. Submission of application for review by other agencies.

Upon receipt of a completed application the Town Manager shall deliver, within seven days, a copy of the completed application to Natural Resources, the Harbormaster, the Waterways Committee, the Recreation Department, the Conservation Commission, the Town Attorney, the Shellfish Committee, the precinct Councilor, civic association, and the village library for their review and written comments. Said written comments are to be received by the Town

Manager no later than 30 days after the applications are received by the reviewing departments and committees.

§ 407-52. Compliance with all laws required; approval of license.

Approval of any aquaculture license shall be subject to all federal, state and local laws, rules and regulations as in force and as amended from time to time, and the licensee shall comply with all such rules and regulations. Failure to comply with any of the aforementioned laws, rules and regulations shall be cause to revoke the license. The Town Manager's approval of a shellfish aquaculture license shall become effective upon the expiration of 30 days from the date the Town Council is notified, in writing, of said license approval unless the Town Council votes within said time to disapprove of said license.

§ 407-53. Preapplication meeting with GIS staff.

Prior to submittal of application, the licensee shall meet with the GIS staff of the Town of Barnstable to locate the proposed licensed area boundaries by latitude and longitude on the Town GIS system and obtain a map delineating proposed licensed area for submittal with the application. The licensee shall place approved boundary markers at all changes of angles of the licensed area in compliance with these regulations.

§ 407-54. Exclusivity of license; subleasing prohibited; transfer of license.

Licenses are issued to and for the exclusive use of the licensee who may contract with or employ others to work for the licensee. Subleasing of the licensed area or portion thereof is prohibited. Licenses are renewable, heritable and transferable subject to Town Manager written approval and pursuant to Massachusetts General Laws Chapter 130. A licensee proposing to transfer his or her license shall first notify the Town Manager in writing that he/she no longer wishes to operate the license and requests a transfer of his/her licensed area to a designated recipient. Such recipient shall thereupon file an application under § 407-48. Thereafter, the application shall be treated, insofar as apt, as a new application.

§ 407-55. Changes to original plans.

All proposed changes to the original working plans as described in the original application, and all additions of material investments, which may include, but are not limited to, rafts, floats, racks, cages, trays, nets, etc., must be submitted in writing to Natural Resources and if in the discretion of Natural Resources the changes are such that further review is warranted then the NR may recommend to the Town Manager that further review of the proposed change take place and the Town Manager upon review of the proposed change may approve or deny said proposed change.

§ 407-56. New license period; renewal.

A new license shall be issued for a period not to exceed five years, and for a maximum total area not to exceed two acres. During the first year, at least 10% of the lease site must be used

for the permitted aquaculture activity, during the second year 15% and during the third year 20%, or the lease site will be forfeited. The licensee may apply for the renewal of the license at anytime within two years prior to the expiration date of the license. The Town Manager shall review the licensee's request for renewal within 60 days after receipt of the renewal request. Under the legal discretion of the Town Manager the license holder shall have the option of a renewal period up to 10 years.

§ 407-57. Acreage limitation.

The maximum total acreage licensed to any licensee shall not exceed two acres on the Northside and two acres on the Southside within the Town of Barnstable inner bays. This acreage limitation does not apply to any existing so-called grant (now referred to as a "license") which is in excess of four acres and will not prevent the grant holder (now referred to as the "licensee") from future renewals, provided that said licensee abides by all other applicable regulations set forth herewith.

§ 407-58. License fee.

An annual license fee of \$25 per acre or any part thereof shall be paid to the Town by the licensee upon the issuance of the license and thereafter on or before December 31 of each year. If the fee is not paid within 30 days after it becomes due, the license shall be forfeited.

§ 407-59. Reasonable production value.

An annual review of each license will be conducted by NR in order to determine reasonable production value. If, after the third year of a new license, any licensee cannot show that a reasonable amount of shellfish product has been produced on the license during the preceding year the license may be forfeited. For purposes stated herein reasonable amount of shellfish product shall mean not less than \$2,000 per acre per year based upon market value. Failure of the licensed shellfish project to meet such a value shall result in a forfeit of the shellfish aquaculture license and licensed area. If, for any year, the licensee does not meet the reasonable production value then upon written request to the Town Manager said reasonable production value may be waived at the discretion of the Town Manager for that particular year, provided that the licensee can demonstrate to the Town Manager that the cause of the lower amount produced is the direct result of a natural disaster or other unforeseen personal misfortune.

§ 407-60. Filing of annual reports.

Licensees shall file annual reports with NR in accordance with the form provided by NR on or before December 31 of each year and shall produce documents upon the request of NR showing purchase and sale slips stating the total amount of each kind of shellfish planted, produced or marketed during the preceding year (January 1 through December 31) upon or from the licensed area, and an estimate of the total number of each kind remaining. The report shall disclose all necessary information as required by these regulations and NR which establishes that the licensee reached the reasonable production value.

§ 407-61. Transplanting seed stock from public fisheries prohibited. [Amended 9-25-2008]

No person shall transplant seed, seed stock or stock from the public fisheries within the Town for purposes of stocking licensed aquaculture land with such seed or stock. Said regulation is subject to fine schedule for noncompliance.

§ 407-62. Marking boundaries of licensed areas. [Amended 7-9-2007; 9-25-2008]

- A. Shellfish aquaculture sites bordering the channel within the ninety-eight-acre aquaculture area in Barnstable Harbor shall be marked with red buoys bordering the northside of the channel and green buoys bordering the southside of the channel where individual site boundary changes of angles border the channel. Said red and green buoys shall not be less than 11.5 inches in diameter.
- B. Shellfish aquaculture sites on the periphery of the ninety-eight-acre aquaculture area in Barnstable Harbor shall use yellow buoys not less than 15.5 inches in shortest diameter to mark only the most external changes of angles on said sites. The buoys shall bear the four-digit state propagation permit number and the words "Aquaculture Area." Said numbers and letters shall not be less than two inches in height.
- C. All other licensed area boundaries shall be marked at all corners and changes of angles by uniform yellow buoys, not less than 11.5 inches in shortest diameter, and bear the four-digit state propagation permit number issued to the licensee. Said numbers shall not be less than two inches in height. Where a licensed area borders another licensed area, a buoy may bear the four-digit state propagation permit number of more than one licensee. All said buoys shall be deployed from April 1 until November 15, annually.
- D. Any proposed alternative marking of a licensed area must be submitted in writing to Natural Resources and if in the discretion of Natural Resources the changes are warranted, they may be approved in writing. The Harbormaster may direct licensees of licensed areas that border navigational channels to use specified buoys to mark their licensed area boundaries for navigational purposes.
- E. Each licensee is responsible for maintaining the buoys marking their licensed area. Failure to place or reasonably to maintain said buoys shall be sufficient cause for revocation of the license. Said regulation is subject to fine schedule for noncompliance. The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice, severe weather or other condition hampers the ability of the licensee to immediately comply with these regulations.

§ 407-63. Responsibility for gear and tackle. [Amended 9-25-2008]

The license holder assumes all liability for all gear and tackle used on the license. If any such gear is moved to a location off the license, it shall be the responsibility of the licensee to remove said gear. If within 21 days after notification to the licensee by NR that the licensee has not complied with this requirement, the Town may cause such gear to be removed at the expense of the licensee. Every licensee shall permanently mark or tag, in a conspicuous place, each shellfish container used on the licensed site with the four-digit state propagation permit

number issued to the licensee. Netting shall be marked or tagged in a conspicuous place per every 200 square feet. Said regulation is subject to fine schedule for noncompliance. The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice, severe weather or other condition hampers the ability of the licensee to immediately comply with these regulations.

§ 407-64. Removal of gear upon termination of license.

When a license is discontinued or terminated for any reason, the license holder shall be required to remove all gear from the waters and substrate within 60 days of the license termination date. Any and all equipment not removed within 60 days may be removed by the Town at the expense of the licensee.

§ 407-65. Harbor improvements; migration of navigational channels.

No licensee shall hold the Town of Barnstable or the Commonwealth of Massachusetts liable for any damage to a license as a result of harbor improvements. Any grant bounded by a navigational channel, as defined by the Harbormaster, that has migrated by natural or man-made causes into or through a permitted shellfish grant and has eroded a portion of the permitted land within the grant to a navigational depth of at least three feet at mean low water, said channel shall become the natural boundary of the grant and supersede any previous agreed boundaries of the grant. The grant holder shall sacrifice any and all rights of his/her grant within this defined navigational channel.

§ 407-66. Inspection of containers; samples for disease testing.

The Shellfish Constable and/or assistants shall have authority to inspect the licensed area at any time, and said inspection may include any and all containers on the site. In the event that the Shellfish Constable and/or assistants have reason to believe that inspection of the contents of any or all containers on the site is in the best interest of the town, the Shellfish Constable and/or assistant shall contact the licensee by telephone or by leaving a notice at the address of the licensee indicated on the license, however, advising the licensee that the Town intends to inspect the contents of containers on the license and further inviting the licensee to be present at the time of said inspection. In the event that the Shellfish Constable and/or assistant does not receive a response from the licensee within 48 hours of notification by phone or by written notice, the inspection of containers may be conducted without the presence of the licensee. The Town of Barnstable reserves the right at any time to obtain samples of any shellfish from a licensed area for the purpose of certified testing for disease.

§ 407-66.1. Taking without consent from licensed site. [Added 9-25-2008]

Whoever takes or attempts to take shellfish of any description upon any shellfish grounds or beds covered by a license granted by the Town of Barnstable or Commonwealth of Massachusetts, or in any way disturbs the growth of shellfish thereon, or whoever discharges any substance which may directly or indirectly injure the shellfish upon any such grounds or

beds, without the consent of the licensee or transferee shall be subject to fine schedule for said violation.

§ 407-67. License review and/or revocation.

Violation of these rules and regulations subjects the licensee to review and possible revocation of the license at the discretion of the Barnstable Town Manager.

§ 407-68. Severability.

If any provision of these rules and regulations is declared invalid by any court or tribunal of competent jurisdiction, the remaining provisions of these rules and regulations shall not be affected thereby.

**ARTICLE X
Enforcement and Penalties**

§ 407-69. Enforcing persons.

The foregoing regulations shall be enforced by the Shellfish Constables, Deputy Shellfish Constables, Natural Resources Officers, Sandy Neck Rangers and any Police Officer of the Town of Barnstable, hereinafter called "enforcing persons."

§ 407-70. Violations and penalties.

Enforcing persons may in their discretion, initiate criminal proceedings for any violation thereof. Alternatively, enforcing persons may utilize the method of noncriminal disposition established by Article I of Chapter 1 of the Code of the Town of Barnstable. The fine for violation of regulations not specifically listed under said Article I shall be \$50.

§ 407-71. Revocation or suspension of Town permit.

The Town of Barnstable shellfish permit, recreational or commercial, may be revoked or suspended by the Town Manager for any violation of the Town shellfish regulations. A hearing with the Town Manager will be afforded on revocations.

§ 407-72. Missing signs.

The harvest of shellfish is prohibited in those areas posted by natural resources, regardless of the fact that weather or man may from time to time remove signage. If an area has been posted and signage is missing, notify natural resources.

Chapter 408

ROLLER SKATES AND SKATEBOARDS

- § 408-1. Designation of prohibited areas. § 408-3. Violations and penalties.
§ 408-2. Rental businesses.

[HISTORY: Adopted by the Town Manager of the Town of Barnstable. Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Roller-skating and skateboarding — See Ch. 173.

§ 408-1. Designation of prohibited areas.

The following areas are hereby designated as areas in which roller skating is prohibited under Chapter 173, Roller-Skating and Skateboarding, of the Code of the Town of Barnstable:

- A. Hyannis: Main Street; North Street; South Street; Ocean Street from Main Street to South Street; Barnstable Road from Main Street to North Street; Pearl Street from Main Street to South Street; Winter Street from Main Street to North Street; High School Road and High School Road Extension between North Street and South Street; Pine Street between Main Street and South Street; Sea Street and Sea Street Extension between North Street and South Street; all including sidewalks; and West Main Street, within the Business District, excluding sidewalks.
- B. Centerville: Main Street, from its intersection with Old Stage Road to its intersection with South Main Street, excluding sidewalks.
- C. Osterville: Main Street within the Business A District, including sidewalks; West Bay Road from its intersection with Parker Road to its intersection with Main Street, including sidewalks; Parker Road between its intersection with West Bay Road to its intersection with Main Street, including sidewalks; Wianno Avenue, within the Business A District, including sidewalks.
- D. Cotuit: Main Street, from its intersection with Lovell's Avenue to its intersection with School Street, excluding sidewalks; School Street, from its intersection with Main Street to its intersection with High Street, excluding sidewalks.
- E. Marstons Mills: Old Barnstable-Falmouth Road (Route 149) and Main Street and River Road, within the Village Business A District, excluding sidewalks.
- F. West Barnstable: Main Street and Meeting House Road, within the Village Business B District, excluding sidewalks.
- G. Barnstable: Main Street, within the Village Business A District, excluding sidewalks.
- H. All Town-owned parking lots.

§ 408-2. Rental businesses.

No person shall rent roller skates or skateboards to another person for off-premises use within the Town without first obtaining a license from the Board of Selectmen. The Board of Selectmen may annually issue such a license upon written application and payment of an annual fee of \$25. Each such licensee shall prominently post a notice at their premises listing the areas of the Town in which roller-skating is prohibited, and shall cause such a notice to be prominently reproduced in any rental contract used by the licensee in the course of business.

§ 408-3. Violations and penalties.

Whoever violates the provisions of this regulation shall be punished by a fine of not more than \$50.

Chapter 430

VESSELS ON TOWN PROPERTY

§ 430-1. Authority.

§ 430-2. Regulation of vessels on Town ways to water, landings and beaches.

[HISTORY: Adopted by the Town Manager of the Town of Barnstable 11-26-2008; amended in its entirety 9-18-2012. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Beaches and waterways — See Ch. 32.

§ 430-1. Authority.

These rules and regulations are made by the Town Manager of the Town of Barnstable under the authority of Chapter 32, Article II, § 32-7, of the Town of Barnstable Code

§ 430-2. Regulation of vessels on Town ways to water, landings and beaches.

- A. Unless a vessel owner secures written permission from Harbormaster staff for a proven need and that the vessel be actively used, no vessel shall be stored or placed on any Town property between November 15 and April 15 that is posted by the Harbormaster with a permanent sign to this effect. Any vessel placed or remaining between those dates shall be considered abandoned property under this regulation, and will be scrapped or otherwise disposed of by the Town. The Town of Barnstable shall not be responsible for damage to or theft of any vessel placed neither at this parcel nor for loss of property considered abandoned under this regulation.
- B. Additionally, with respect to the property located at 85 Old Shore Road, Cotuit (Assessor's Map 035, Parcel 072), no vessel shall be stored or placed on the bathing beach portion of this parcel, as delineated by the low rail fences on either side or as otherwise may be posted.
- C. Other than as may temporarily be required during launching, vessels shall not be placed on either side of the launch ramp.
- D. Trailer storage is prohibited at all times on the Town property located at 85 Old Shore Road.

PART V

**LICENSING AUTHORITY
REGULATIONS**

Chapter 501

ALCOHOLIC BEVERAGES

ARTICLE I General Rules for Licensees

- § 501-1. Availability of rules and regulations.
- § 501-2. Posting and signs.
- § 501-3. Admissions to the premises.
- § 501-4. Hours of operation.
- § 501-5. Physical premises.
- § 501-6. Business arrangements of licensees.
- § 501-7. Alcoholic beverages sales and laws.
- § 501-8. Environs of licensed premises.
- § 501-9. Inspections and investigations.
- § 501-10. Entertainment at premises which serve food or beverages to be consumed on the premises.
- § 501-11. Standards of conduct on the premises.
- § 501-12. Illegal activity on the licensed premises.
- § 501-13. Injuries to persons at the premises.
- § 501-14. Other causes for revocation, suspension, and modification.
- § 501-15. Service of suspension orders.
- § 501-16. Permission to close premises required.
- § 501-17. Definitions.
- § 501-18. Hearings in the neighborhoods.
- § 501-19. Activity without valid license displayed prohibited.

ARTICLE II Common Victuallers

- § 501-20. Kitchen facilities required.
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[HISTORY: Adopted by the Licensing Authority of the Town of Barnstable 9-10-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 20.

Licensing Authority jurisdiction — See Ch. 121,
§ 121-6F.

Outdoor businesses — See Ch. 141.

Sandy Neck alcohol policy — See Ch. 601.

Alcohol on Conservation Commission property — See
Ch. 701.

ARTICLE I

General Rules for Licensees

§ 501-1. Availability of rules and regulations.

- A. All licensees of the Licensing Authority for the Town of Barnstable shall ensure that a copy of the rules and regulations of the Licensing Authority is kept on the premises at all times and is immediately available for inspection upon request by a member of the public or an agent of the Authority, or any police officer. These rules and regulations are to be kept at the front door area where patrons pay their entrance fees or their checks or else at the main cash register; provided, however, that in establishments where patrons pay their checks at their tables, the rules and regulations shall be kept by the licensee in a location in the dining room of the premises.
- B. The rules and regulations need not be posted but must be readily accessible to a requesting party within several minutes of the request.
- C. The licensee is responsible for ensuring that all employees who work in the public areas of the premises read the rules and regulations of the Licensing Authority and comply with all rules and laws.
- D. No business requiring a license from the Licensing Authority shall operate without a valid license posted as required below.

§ 501-2. Posting and signs.

- A. Licenses issued by the Licensing Authority must be posted in a conspicuous place easily seen by the public where they can be read without difficulty and without recourse to the assistance of employees at the premises.
- B. All other licenses, permits, and certificates affecting the licensed premises must be posted conspicuously; provided, however, that no such document shall be posted in such a way as to cover over any part of the license issued by the Licensing Authority.
- C. No dress code or preferred customer program or cover charge or other admissions policy shall be put into effect at the premises except upon proper posting pursuant to § 501-3 below.
- D. The posting or presentation of any photographs, signs, posters, drawings or other matter that is of an improper or objectionable nature in the public areas of the licensed premises is prohibited. The material presented must be suitable for view by members of the general public in the same manner as if it were located in other public areas such as public ways, public parks, common carrier stations, and other government and business offices.

§ 501-3. Admissions to the premises.

- A. No licensee may permit any rule, policy, or action, express or implied, which makes any distinction, discrimination, or restriction on account of race, color, religious creed, national origin, sex, physical or mental disability, or ancestry, or on account of any other classification relative to the admission or treatment of persons from the general public or employees at the licensed premises; provided, however, that premises licensed pursuant to § 12 of the General Laws, Chapter 138, may make rules regulating the admission of minors to the premises when such rules are not inconsistent with other rules and regulations stated herein; provided, further, that private club licensees may not discriminate, as aforesaid, with regard to guests at the licensed premises or with regard to who may be invited to the premises as a guest.
- B. No licensee may institute dress requirements of any kind except according to the following rules:
- (1) A sign must be posted at the entrance stating dress requirements or dress restrictions with specificity. (Examples: "Jackets required." "Ties and jackets required." "Shirts with collars required." "No sneakers.")
 - (2) No signs may be posted which state "Proper dress required" or which otherwise announce a dress policy without stating specifically, item by item, what dress is required or what dress is prohibited.
 - (3) No requirement may be made as to the type of shoes or the height of heels which may be worn; provided, however, that reference may be made to the admissibility or nonadmissibility of sneakers or other soft athletic shoes or open shoes such as sandals.
- C. No licensee may issue special admissions passes or "VIP" cards except according to the following rules:
- (1) A licensee may issue special passes.
 - (2) The special passes must state the calendar year on the face of the pass.
 - (3) The special pass may not entitle the passholder to free drinks or to a discount on drinks.
 - (4) The licensee must keep a list of the names and addresses of all passholders and must have such list available if requested by the Licensing Authority.
 - (5) The licensee is responsible for ensuring that persons are picked to be passholders on a rational basis and not on any basis that invidiously discriminates.
- D. No licensee may require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance to any dining room or rooms where such charge is required, in letters no less than one inch in height, stating that a minimum charge or cover charge shall be charged and also stating the amount of charge; provided, however, that no such licensee shall require a person under 13 years of age to pay a minimum charge or cover charge. Such cover charge shall not be collected in advance of gaining entrance to the licensed premises, and can only be charged upon a written or

printed receipt, permanently recorded and numbered seriatim, presented to each individual customer or group of customers. Records of such receipts shall be kept by the licensee for a period not less than two years. "Cover charge" shall mean all admission fees or admission charges. Such charges must also be posted on the outside of the licensed premises. Nothing in this regulation shall be construed to prohibit advance ticket sales.

- E. No minimum charge for the purpose of alcoholic beverages or minimum alcoholic beverage drinking requirement shall be imposed upon any customer of a § 12 (General Laws, Chapter 138) licensee.
- F. A licensee who charges a minimum charge for the purchase of food and/or nonalcoholic beverages shall include a specific statement in the posting (as per Subsection D above) stating that there is no minimum charge for alcoholic beverages. Such minimum charge for food and/or nonalcoholic beverages shall not be collected in advance of gaining entrance to the premises. No licensee shall impose a minimum charge for food and/or nonalcoholic beverages upon any customer who incurs charges for alcoholic beverages equal to or greater than the posted minimum charge for food and/or nonalcoholic beverages. (204 CMR 2:16)
- G. Licensees may refuse entrance to the premises to a person who appears to be intoxicated or unruly; and may evict such a patron, except that in such a case the licensee should call the police and should offer assistance to an intoxicated person when possible.
- H. Licensees shall not permit entrance to the premises by more persons than the number approved by the Building Commissioner for the capacity of the premises minus the number of employees working in the public areas at the time. Every room licensed for public occupancy shall be conspicuously posted at each entrance, clearly visible to patrons as they enter, with a statement of maximum occupancy. The statement must be clearly printed on permanent stock with white letters and numbers, no less than one inch high, printed on a dark contrasting background. Handwritten statements or statements on paper or cardboard are not permitted. The statement shall be permanently affixed and secured and maintained in a clearly visible state. The statement shall contain the language "MAXIMUM CAPACITY OF THIS ROOM ____ PERSONS." The number of allowable persons included in the statement shall be that number approved by the Town of Barnstable Building Department. Whenever a section of a room is separated by an attached or secured wall, railing, divider, drink rail, or other partition, it shall be considered a separate room and all such sections shall be posted as separate rooms.
- I. Licensees who permit persons to wait in line for a table or a seat or for entrance to the premises must obey the following rules.
 - (1) Persons who wait inside the premises must be kept in an orderly line and must not be permitted to block fire aisles or exits. The number of such persons waiting inside the premises may not exceed the number of persons allowed as standees.
 - (2) Persons who are permitted to wait in line outside the premises must be supervised by an employee of the licensed premises. Such employee must stand outside with the line during all times when the line exceeds 10 persons and shall announce no further admissions to the premises if persons in the line are being loud or

disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public complaints the licensee will have been deemed to be inviting a public nuisance and will be subject to disciplinary proceedings for same. Licensees in residential zoning districts or within 150 feet of a residential zoning district are not permitted to allow patrons to wait in line outside the premises.

- J. Licensees are not permitted to lock the front door of the premises until the last patron has exited from the premises.
- K. Licensees are not permitted to allow any patron or any guest or any employee who is not working that shift to enter the premises after the closing hour posted on the license or prior to the opening hour posted on the license.

§ 501-4. Hours of operation.

Licensees are not permitted to have persons, including employees, on the premises except during the following hours:

- A. The hours on the license, except that patrons who are already on the premises at closing hour may remain on the premises for up to 1/2 hour after closing time; provided, however, that no new patrons are admitted after closing time and that no drinks are served after closing time and that no food is served after closing time.
- B. The owner, manager, and employees may be on the premises after hours but only if they are actively engaged in cleaning, making emergency repairs to, or providing security for such premises or preparing food for the day's business or opening or closing the business in an orderly manner. No other persons, friends, or relatives may be on the premises with the owners, managers or employees of licensed premises during the hours when the public is excluded from the premises.
- C. Licensees shall ensure that their patrons leave the premises in an orderly manner.

§ 501-5. Physical premises.

- A. No licenses shall issue or shall be considered in good standing unless licensed premises comply with all statutory requirements, including all applicable building codes, fire, health, safety, trash, state and local tax obligations and other government regulations and laws.
- B. The licensed premises shall conform to the floor plan approved by the Licensing Authority with regard to the structures and the walls at the premises, as well as with regard to all tables, chairs, booths, bars, counters, barstools, dance floors or areas, railing partitions, and other barriers at the premises. Any changes in the floor plan or any renovations of any kind may not be made without notification to the Licensing Authority and the approval of the Licensing Authority. This includes substantial changes in the arrangement of moveable furniture.

- C. All premises covered by the license shall be kept in a clean and sanitary condition.
- D. No outside area may be used as a gathering place for patrons unless approved by the Licensing Authority.
- E. The premises shall be lighted in all public areas in a manner sufficient for the safety of the patrons and in a manner sufficient for the agents of the Licensing Authority to make observations at the premises without the need to identify themselves or the need to seek assistance.
- F. The capacity set for the premises by the Building Department constitutes the maximum potential capacity for the premises but the actual capacity of the premises may not exceed the amount approved by the Licensing Authority and stated on the license.
- G. Licensees are not permitted to invite the members of the general public to private areas of the premises which are approved by the Licensing Authority for storage or for an office or for a kitchen or for a music or video projection room or for any similar nonpublic use. Only owners and employees of the licensed premises may be in these areas.

§ 501-6. Business arrangements of licensees.

- A. No person or entity may obtain or renew a license unless the applicant for such license or for renewal of such license can demonstrate proof of a legal right to the licensed premises for the term of the license. Such proof shall include ownership papers or a tenancy document or a management contract; provided, however, that all parties to such ownership or leasehold interest or management contract must be known to the Licensing Authority, and the terms of such agreements or contracts must be made known to the Licensing Authority. The Licensing Authority reserves the right to disapprove of such arrangements where it reasonably finds that such arrangements are not in the public interest.
- B. No licensee may hire any employee or contract for goods or services in any name other than that of the licensee, nor may the licensee pay for any such employment, goods, or services by any means other than its own cash or bank accounts in its own name. Cash transactions must be recorded in a manner suitable for review by the Licensing Authority. Such records must be kept for a period of three years.
- C. No licensee shall permit any person to have a direct or indirect financial or beneficial interest in the licensed business or to receive any revenue from the business or to manage the premises other than the persons properly approved of by the Licensing Authority and the salaried employees of such persons.
- D. No licensee shall permit any person to work at the licensed premises or to hold themselves out as a person in a position of authority at the premises except for those persons who are owners and officers or who are salaried employees for whom payroll records are available. No licensee may pay an employee any percentage of the profits of the business or pay an employee in any manner other than by salary or hourly rate except upon approval of the Licensing Authority.

- E. No licensee may pay a landlord or creditor of any kind a percentage of the profits of the business except upon complete disclosure to the Licensing Authority and the receipt of the Board's approval.
- F. No licensee shall lease out any part of the premises or any part of the business without the approval of the Licensing Authority. No licensee shall lease out the food or beverage service without the approval of the Licensing Authority.
- G. No licensee shall enter into an agreement with an independent contractor to provide beverages or food or entertainment or management at the premises without the approval of the Licensing Authority.
- H. No licensee may pledge the stock in the licensed business or the license itself without the approval of the Licensing Authority.
- I. No licensee may take a loan secured by any equipment at the premises or secured by any direct or indirect interest in the licensed business without the approval of the Licensing Authority. This includes kitchen equipment, video or audio equipment, lighting equipment, furniture, or any other type of equipment.
- J. No licensee shall contract bills for its licensed premises under any corporation or trade name other than that under which it is licensed.
- K. Managers in licensed premises must not be changed until the Licensing Authority and the Alcoholic Beverages Control Commission have approved such change.
- L. Any licensee intending to close its place of business for a short- or long-term must notify the Licensing Authority in writing before such closing and state the reason for such closing.
- M. Assignment of the stock of corporate licensees for purposes of collateralizing loans or notes, etc., gives no right to the assignee to conduct the business of the licensee. Licensees must immediately notify the Licensing Authority when the assignee forecloses under such assignment of stock or when other proceedings are brought which affect the economic and financial rights and abilities of the licensee.
- N. Subsections H through M above shall apply only to licensees who hold alcoholic beverages licenses.
- O. Alcoholic beverages licensees shall enter into no agreement or understanding which sets a minimum requirement for gross sales of food and beverages at the premises.
- P. Alcoholic beverages licensees shall not use any trade name, assumed name, or abbreviated name in connection with the licensed business unless the same appears on the license certificate issued by the Licensing Authority or unless written permission is first obtained from the Licensing Authority. The use of any unauthorized name on the books, records, stationery, or interior or exterior of the licensed premises or for advertising purposes or telephone listing is prohibited unless permission is first obtained from the Licensing Authority.

- Q. Licensees are responsible for maintaining a legal right to the premises which is covered by the license. Failure to have a legal right to the named licensed premises will result in revocation or nonrenewal of the license.
- R. No licensee under Chapter 138 of the General Laws may lend or borrow money, directly or indirectly, to or from any other licensee under Chapter 138.

§ 501-7. Alcoholic beverages sales and laws.

- A. No alcoholic beverages shall be sold for less than the actual cost of the beverage to the licensee. An admission charge shall not be credited towards the purchase price of any alcoholic beverage.
- B. All licensees shall maintain a schedule of the prices charged for all drinks to be served and drunk on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.
- C. No licensee or employee or agent of a licensee shall:
 - (1) Offer or deliver any free drinks to any person or group of persons;
 - (2) Deliver more than two drinks to one person at one time;
 - (3) Sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the general public;
 - (4) Sell, offer to sell, or deliver to any person an unlimited number of drinks during a set period of time for a fixed price, except at private functions not open to the general public;
 - (5) Sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
 - (6) Sell, offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
 - (7) Increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
 - (8) Encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.
 - (9) Advertise or promote in any way, whether within or without the licensed premises, any of the practices prohibited under this section.
- D. Nothing contained in the preceding section shall be construed to prohibit licensees from offering free food or entertainment at any time; or to prohibit licensees from including a drink as part of a meal package; or to prohibit the sale or delivery of wine by the bottle

or carafe when sold with meals or to more than one person; or to prohibit those licensed under Chapter 138, § 15, from offering free wine tastings; or to prohibit those licensed under Chapter 138, § 12, from offering room services to registered guests.

- E. Licenses shall not permit alcoholic beverages to be brought onto the licensed premises by patrons or employees.
- F. Licensees are responsible for ensuring that minors are not served alcoholic beverages and are not drinking alcoholic beverages on the licensed premises, whether served to them by an employee or handed to them by another patron. Licensees who do not have the ability to keep track of the drinking activity of minors at the premises may exclude minors from coming onto the premises in order to meet the burden of ensuring that there is no underage drinking at the premises. Licensees who choose to permit minors onto the premises, whether pursuant to an "I.D. bracelet" program or otherwise, are held accountable if minors are found to be drinking alcoholic beverages on the premises, whether or not the Board's agents are able to prove that the licensee actually served the drink directly to the minor. Sufficient security personnel should be employed to monitor the premises to ensure that patrons do not pass alcoholic beverages to minors.
- G. Throughout these rules and regulations, references to sales of alcoholic beverages are for those premises which hold licenses to sell alcoholic beverages on the premises. However, prohibitions against minors drinking on the premises and against alcoholic beverages being brought onto the premises apply to all licenses of the Licensing Authority with regard to the public rooms of the premises.
- H. Any person holding an alcoholic beverages license under §§ 12, 14, or 15 of General Laws Chapter 138, who, directly or through any agent, employee or other person, dilutes or changes or substitutes or in any manner tampers with any alcoholic beverages authorized to be sold under such license so as to change its composition or alcoholic content shall be punished by a fine of not less than \$200 nor more than \$500, and if any holder of such license is convicted of a violation of the foregoing, his license shall forthwith be suspended for a period of not less than six months, provided that cocktails and other mixed drinks may be prepared on the premises so licensed for the sale of alcoholic beverages. Licensees and their agents are prohibited from refilling any alcoholic beverage container which has a brand identification or a brand label.
- I. Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever, being a patron of an establishment licensed under § 12 or 15 of General Laws Chapter 138 delivers or procures to be delivered in any public room or area of such establishment any such beverages or alcohol to or for use of a person who he knows or has reason to believe to be under 21 years of age or whoever procures any such beverages or alcohol for a person under 21 years of age in any establishment licensed under § 12, or procures any such beverage or alcohol for a person under 21 years of age who is not his child, ward or spouse in any establishment that is a package store, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both. (N.B.: Alcoholic beverages may be procured for an underage child, ward or spouse in a package store by a parent, guardian or spouse but

may not be so procured for such underage person in an on-premises drinking establishment). (General Laws, Ch. 138, § 34)

- J. Employees at premises which sell or serve alcoholic beverages for on-premises consumption or at package stores must be 18 years of age except that such licensee may employ a person under the age of 18 who does not directly handle, sell, mix or serve alcohol or alcoholic beverages.
- K. Any person under 21 years of age who purchases alcoholic beverages or alcohol or makes arrangements with any person to purchase or in any way procure such beverages, or who willfully misrepresents his age, or in any way alters, defaces or otherwise falsifies his identification offered as proof of age with the intent of purchasing alcoholic beverages, either for his or her own use or for the use of any other person, shall be punished by a fine of \$300 and whoever knowingly makes a false statement as to the age of a person who is under 21 years of age in order to procure a sale or delivery of such beverages or alcohol to such person under 21 years of age, either for the use of the person under 21 years or for use of some other person, and whoever induces a person under 21 years of age to make a false statement as to his or her age in order to procure the sale or delivery of such beverages or alcohol to such person under 21 years of age shall be punished by a fine of \$300. (General Laws, Chapter 138, § 34A)
- L. Any licensee or agent or employee thereof under Chapter 138 who reasonably relies on a Massachusetts liquor purchase identification card or Massachusetts motor vehicle license for proof of a person's identity and age shall not suffer any disciplinary action or any criminal liability for delivering or selling alcohol or alcoholic beverages to a person under 21 years of age. Such licensee shall be presumed to have used due care in making the sale, but such presumption shall be rebuttable. The information on the card or license must clearly match the photograph and description of the card or license holder and there should be no obvious signs of tampering upon reasonable inspection. (General Laws, Chapter 138, § 34B) Any licensee claiming exemption under this section must be able to identify the identification shown, either by picture record, written log or other means deemed appropriate by the Licensing Authority.
- M. Any person who transfers, alters or defaces any such card, or who makes, uses, carries or sells or distributes a false identification card or uses the identification card or motor vehicle license of another or furnishes false information in obtaining such card shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$200 or by imprisonment for not more than three months. (General Laws, Chapter 138, § 34B)
- N. Any person who is discovered by a police officer or special police officer in the act of violating the provisions of Subsections L through M may be arrested without a warrant by such police officer or special police officer and held in custody, in jail or otherwise, until a complaint is made against him or her for such offense, which complaint shall be made as soon as practicable and in any case within 24 hours, Sundays and legal holidays excepted. (General Laws, Chapter 138, § 34B)
- O. Whoever being under 21 years of age and unaccompanied by his parent or legal guardian knowingly transports or carries on his person any alcohol or alcoholic beverages shall be punished by a fine of not more than \$50, provided that this section shall not apply to any

person who is between 18 and 21 who is acting in the course of his or her employment. A police officer may arrest without a warrant any person who violates this section. (General Laws, Chapter 138, § 34C)

- P. Alcoholic beverages licensees are forbidden to make a sale or delivery of alcoholic beverages or alcohol to a person who is intoxicated or appears to be intoxicated.
- Q. Any establishment licensed to sell alcoholic beverages to be drunk on the premises shall post a copy of the penalties for driving under the influence set forth in § 24 of General Laws Chapter 90. Establishments licensed to sell alcoholic beverages not to be drunk on the premises shall post a copy of the penalties for operating a motor vehicle while drinking from an open container (§ 24I of Chapter 90). Said copies shall be posted conspicuously in said establishments. Said copies are available at the Alcoholic Beverages Control Commission. (Chapter 138, § 34D)
- R. No alcoholic beverages shall be served after the closing hours indicated on the license, and all glasses, bottles, or other containers used for or containing alcoholic beverages shall be removed from all tables, bars, counters, patrons and public areas no later than 15 minutes after the approved closing time on the license for the sale of alcoholic beverages. No alcoholic beverages shall be consumed thereafter.
- S. No patron, licensee, or employee shall be served any alcoholic beverages after the legal hour for sale of same.
- T. All patrons must be off the licensed premises within 30 minutes after closing. Employees must be off the premises within 60 minutes after closing except as allowed by law.

§ 501-8. Environs of licensed premises.

- A. It shall be obligation of licensees to ensure that a high degree of supervision is exercised over the conduct of the licensed establishment at all times. Each licensee will be held accountable for all violations that are related to the licensed premises to determine whether or not the licensee acted properly in the given circumstances.
- B. Licensees shall maintain compliance with all health and safety laws for the areas outside and contiguous to the licensed premises.
- C. Licensees shall act reasonably and diligently to disperse loiterers or patrons who attempt to congregate in front of or at the licensed premises. Failure of the licensee to keep persons from congregating at the licensed premises may lead to disciplinary action against the licensee for allowing a public nuisance. Reasonable steps to be taken by the licensee may include:
 - (1) Maintaining the front door in a closed position;
 - (2) Asking loiterers to disperse;
 - (3) Calling the police if loiterers refuse to disperse;
 - (4) Hiring a security guard or stationing a security employee at the front door to disperse loiterers;

- (5) Refusing to allow the same patrons to walk in and out of the premises at short intervals;
 - (6) Maintaining order in lines of patrons waiting outside to get in;
 - (7) Announcing that no further patrons will be allowed into the premises if lines become too long or disorderly or loud.
- D. Licenses shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages. Such steps may include: (1) having an employee stationed at the door to watch patrons as they leave; (2) refusing to serve beer in bottles; (3) refusing to serve alcoholic beverages in disposable cups. When patrons are observed leaving the premises with beer bottles, beer cans, or cups or glasses filled with liquids that smell like alcoholic beverages to the Board's agents, it shall be presumed that the vessels contain alcoholic beverages.
- E. When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Licensing Authority adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, or is offensive to public decency, the licensee may be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.
- F. Licensees who use a valet parking service shall be responsible for ensuring that valet parking is conducted in an orderly manner without undue noise, without undue blocking of traffic lanes, and without the violation of any laws or authorized parking programs.
- G. Licensees who have agreed to a parking program as a condition of their license must adhere to such program except upon exemption by the Licensing Authority.

§ 501-9. Inspections and investigations.

- A. All licensed premises shall be subject to inspection by the Police Department of the Town of Barnstable and other duly authorized agents of the Licensing Authority.
- B. Any person who hinders or delays a police officer or other authorized agent of the Licensing Authority in the performance of the agent's duties or who refuses to admit to, or locks out any such agent from any place which such agent is authorized to inspect or who refuses to give to such agent such information as may be required for the proper enforcement of the General Laws shall be punished by a fine of not less than \$50 and not more than \$200 or by imprisonment for not more than two months or both.
- C. Licensees shall maintain a current list of all of their employees and shall have it available at all times for inspection upon the request of a police officer or an authorized agent of the Licensing Authority. Licensees who contract with entertainment entities to provide entertainers must maintain a current list of the names of such entertainers, and said entertainers shall be held to the same rules as other employees at the premises.

- D. No device or electronic equipment shall be utilized by a licensed premises for the purpose of signaling employees that police officers or agents of the Licensing Authority are present.
- E. The Licensing Authority or its agents or a police officer may, at any time, take samples for analysis from any beverages or alcohol kept on the premises licensed pursuant to the General Laws, Chapter 138, and the vessel or vessels containing samples shall be sealed on the premises in the presence of the license holder or of one of the employees and shall remain so sealed until presented to the state's Department of Public Health for analysis. Duplicate samples shall be left with the license holder.
- F. All complaints and reports shall continue in force until they have been reviewed and disposed of by the Licensing Authority.

§ 501-10. Entertainment at premises which serve food or beverages to be consumed on the premises.

- A. No licensee may provide entertainment of any kind unless the licensee holds an entertainment license issued pursuant to the General Laws, Chapter 140, § 183A. Such license must be held in the same name, by the same owners, and with the same manager as the food or beverage licensee; provided, however, that in cases where entertainment on the premises is to be conducted by a person or entity who is an independent contractor at the premises, the food or beverage licensee may seek the approval of the Licensing Authority for an exemption from this rule based upon a written contract with the independent contractor which gives control of the premises to the food or beverage licensee while allowing the independent contractor to book and/or to produce the entertainment. The food or beverage licensee shall be responsible for the actions of such independent contractor on the premises in addition to the responsibility held by the independent contractor pursuant to the entertainment license. The food or beverage licensee shall pay the independent contractor a fee according to the written contract, said fee to be commensurate with the market value of the services, and the independent contractor shall not be given any direct or indirect interest in the licensed premises other than the fee set out in the contract. Said fee shall not be based upon the number of patrons attending an entertainment event. The food or beverage licensee shall provide in the contract for removing the independent contractor in the event that the entertainment is poorly managed or causes violations to occur at the licensed premises. Any food or beverage licensee who permits entertainment at the licensed premises pursuant to a license held by a person in violation of this rule will be subject to disciplinary action by the Licensing Authority.
- B. No entertainment at the licensed premises may be conducted in a manner such that the noise from the entertainment can be heard outside the boundaries of the premises.
- C. No dancing by patrons is permitted except upon proper licensing pursuant to General Laws, Chapter 140, § 183A, and confined to a particular dance floor area which has been approved by the Licensing Authority and which is not in consistent with the entertainment license requirements.

- D. No entertainment may take place at a licensed premises and no member of the public may be at the licensed premises except during the hours and days when the Licensing Authority has approved the premises to be open to the public. It shall be a violation of the food or beverage license if entertainment is conducted on the premises prior to the opening hour set by the Licensing Authority or subsequent to the closing hour set by the Licensing Authority for the exercise of the food or beverage license or during any period when the food or beverage license has been suspended.
- E. All areas where entertainers perform, including stages and platforms, shall be separated by a walkway of at least two feet in width from any area where drinks are served and consumed if the entertainment includes performers who are unclothed or substantially unclothed pursuant to § 501-11B.
- F. No licensee may permit any electronic games to be on the premises unless such machines are properly licensed pursuant to the General Laws, Chapter 140, § 177A.
- G. Licensees shall not permit any games to be played at the premises for money or for a prize of alcoholic beverages or for any other prize or prizes; provided, however, that games may be played for money at certain fund-raising activities which have been approved by the Licensing Authority and for which the licensee holds other appropriate licenses.
- H. Licensees who hold licenses under General Laws Chapter 138, § 12, to serve alcoholic beverages for on-premises consumption, may petition the Licensing Authority for approval to allow dancing on Sundays between the hours of 12:00 midnight and 1:00 antemeridian for the same hours for which the licensee is authorized to sell alcoholic beverages. (General Laws, Chapter 138, § 33)
- I. All applications for entertainment licenses must be submitted in writing and shall fully and specifically describe the conditions of the proposed entertainment, including the names and addresses of the entertainers. The application shall include the hours of entertainment, days of the week of the entertainment, and the address of the premises on which the entertainment will take place. A statement as to the location on the premises of the entertainment must be included. The application must be submitted 75 days prior to the date of the proposed entertainment to the Licensing Authority. The Licensing Authority will, within 30 days receipt of the complete application, either grant the license or order a hearing to be held, which hearing shall be preceded by at least 10 days' written notice to the applicant.
- J. When a hearing is held, the Licensing Authority will, within 45 days following the close of the hearing, either grant or deny the license.
- K. No entertainment shall be permitted without a valid entertainment license on the premises.

§ 501-11. Standards of conduct on the premises.

- A. Premises licensed for the consumption of food or beverages at the premises are public places where members of the public are invited and expect to be treated in the same

manner as in other public places with regard to the provision of a decent and nonoffensive environment. Food and beverage licensees are not permitted to have, create, produce, or tolerate any environment at the premises which is intended to hold any person or any group of people up to ridicule or derision such that said person or said group of persons would not feel comfortable at the premises.

- B. It is forbidden to employ or to permit any person in or on the licensed premises while such person is unclothed or in such attire as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, cleft of the buttocks, or genitals.
- C. It is forbidden to permit any employee or person in or on the licensed premises to promise, offer, suggest, or accept sexual acts or favors in exchange for money or for the purchase of any alcoholic beverages or other commodities.
- D. It is forbidden to encourage or permit any person in or on the licensed premises to touch, caress, or fondle the breasts, buttocks or genitals of any other person.
- E. It is forbidden to employ or permit any person to wear or use any device or covering exposed to view which simulates the breasts, buttocks, pubic hair, or genitals or any portions thereof.
- F. It is forbidden to employ or permit any person in or on the licensed premises to perform any act or acts or to simulate any act or acts of sexual intercourse, masturbation, sodomy, flagellation, or any sexual acts prohibited by law; or touching, caressing, or fondling of breasts, buttocks, or genitals of another or of himself or herself.
- G. No employee and/or entertainer shall solicit, induce or request a patron to purchase any alcoholic or nonalcoholic beverage or any food for them or for any other person. Nothing shall prohibit the above activity in connection with any contact which such person may have with a patron to whom they are related by blood or marriage.

§ 501-12. Illegal activity on the licensed premises.

- A. Licensees shall make all reasonable and diligent efforts to ensure that illegal activities do no occur at the licensed premises. Such efforts may include:
 - (1) Frequent monitoring of rest rooms and other nonpublic areas of the premises for signs of drug activity or other illegalities;
 - (2) Paying attention to activities on the premises of known drug users or drug dealers or prostitutes or others who are known to have been convicted of crimes which may be conducted at a licensed premises;
 - (3) Diligence in observing and taking action against persons who make unusually frequent trips in and out of the premises or in and out of the rest rooms and/or persons who are visited at the premises by an unusually large number of people or by one or more people at frequent intervals and/or persons who appear to be making exchanges of small packages (matchbooks, cigarette packs, bags, paper squares, plastic or foil containers, or other containers) or payments of money;

- (4) Monitoring of activities of persons who talk about weapons or who appear to be hiding a weapon;
 - (5) Calling for police assistance as necessary to protect patrons against injury or to evict unruly patrons or to uncover unlawful conduct or to give medical assistance and providing police with requested information;
 - (6) Hiring security personnel to deal with chronic unlawful activity at the premises such as prostitution or gambling or larceny from patrons or assaults and batteries or other problems associated with the premises.
- B. There shall be no disorder, indecency, prostitution, illegal activity on the licensed premises or any premises connected therewith by an interior communication.

§ 501-13. Injuries to persons at the premises.

- A. Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows from an unruly patron. In all other circumstances employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive and they are unable to convince the patron to leave the premises voluntarily.
- B. Licensees shall call the police and an ambulance and take all other reasonable steps to assist patrons or persons who are injured in or on the licensed premises or whose injuries have occurred outside the premises but have been brought to the attention of the licensee.

§ 501-14. Other causes for revocation, suspension, and modification.

- A. Any license issued pursuant to General Laws Chapter 138 and Chapter 140 for the service of food or beverages to the public may be modified, suspended, or revoked for any of the following causes:
- (1) Violation by the licensee of any provision of the relevant General Laws of the Commonwealth or the relevant Ordinances of the Town of Barnstable or of any rule or regulation of any Town of Barnstable agency or of the Alcoholic Beverages Control Commission or of any rule or regulation of the Licensing Authority;
 - (2) Fraud, misrepresentation, false material statement, concealment or suppression of facts by the licensee in connection with an application for a license or permit or for renewal thereof or in connection with an application for the renewal of the licensed premises or the alteration of the premises or in connection with any other petition affecting the rights of the licensee or in any interview or hearing held by the Licensing Authority in connection with such petition, request, or application affecting the rights of the licensee;
 - (3) Failure to operate the premises covered by the license;

- (4) Failure or refusal of the licensee to furnish or disclose any information required by any provision of the General Laws or by any rule or regulation of the Alcoholic Beverages Control Commission or any rule or regulation of the Licensing Authority;
 - (5) Conviction of the licensee of any crime which is a felony under the laws of the Commonwealth of Massachusetts or the United States of America.
- B. Licensees may not give or offer any money or any article of value or pay for or reimburse or forgive the debt for services provided to any employee or agent of the Licensing Authority either as a gratuity or for any service.
 - C. Licensees may not fail to comply with any condition, stipulation or agreement upon which any license was issued or renewed by the Licensing Authority or upon which any application or petition relating to the premises was granted by the Licensing Authority. It shall be the duty of the licensee to ensure that all appropriate personnel at the licensed premises are familiar with the rules and regulations of the Licensing Authority and with any conditions on the license.
 - D. A license may be suspended or modified or revoked for the refusal by any licensee and, if a corporation, by a manager, officer, or director thereof to appear and to testify under oath at an inquiry or hearing held by the Licensing Authority with respect to any application or matter bearing upon the conduct of the licensed business or bearing upon the character and fitness of such person to continue to hold a license.
 - E. Licensees must properly serve suspension and modification orders.

§ 501-15. Service of suspension orders. [Amended 4-13-2009]

- A. When the Licensing Authority suspends the license of any licensee, it shall provide the licensee with an order of suspension for public display.
- B. Suspension orders of the Licensing Authority, as above, shall remain affixed throughout the entire period of suspension. The removal, covering, defacement, or obliteration of the order of suspension or the failure to maintain the order of suspension in the manner and place required prior to the expiration of the suspension period shall be deemed the act of the licensee and shall be cause for further suspension, modification or revocation of the license.
- C. Suspension periods may not be used as a time to do renovations at the licensed premises unless such renovations have previously been approved by the Licensing Authority.
- D. Unless otherwise ordered by the Licensing Authority, no members of the public may be on the licensed premises at any time during the suspension periods and the business may not be open for any reason.
- E. If the business is closed by order of the Licensing Authority, the licensee may be on the premises only if it is in the process of actively cleaning up or doing office work at the premises. No persons other than the licensee and its employees may be on the premises during the period of closure for any reason.

§ 501-16. Permission to close premises required.

- A. Licenses are granted to serve the public need and to that end licensee are expected to operate the license for a substantial number of hours on all days when the premises are permitted to be open under the terms of the license. In the case of alcoholic beverages licenses, the numbers of which are limited according to statute, no alcoholic beverages licensees may close its place of business for any reason other than the following:
- (1) Upon request to the Licensing Authority for closing in order to do renovations after approval by the Licensing Authority for such renovations and for a reasonable time of closing in order to perform the renovations;
 - (2) For all holidays and religious days;
 - (3) A closing of one or more days per week upon approval of the Licensing Authority pursuant to licensee's request and a showing by licensee that it does not have adequate business upon such days;
 - (4) A closing due to an act of God or an illness or some other business problem for which request has been made to the Licensing Authority and approval granted.
- B. Alcoholic beverages licensees may not close the licensed business on any days for which their entertainment license has been suspended unless they make such request to the Licensing Authority based upon the licensee's allegation that its primary business comes from the entertainment at the premises and that there would be little or no business or public reason to keep the premises open during the days when entertainment cannot be provided at the premises. Such requests may be granted by the Licensing Authority where the entertainment is a primary attraction for the public at the licensed premises. Licensees not requesting to close the premises during days on which their entertainment licenses are suspended shall remain open to the public for the sale and service of alcoholic beverages and food but may not conduct any type of entertainment on the premises during the suspension period.

§ 501-17. Definitions.

Whenever the word "licensee" is used herein it shall mean an individual licensee and each member of a partnership licensee and each officer, director, manager, and stockholder of a corporate licensee and any agent of a licensee including those employees who work in the public areas of the premises.

§ 501-18. Hearings in the neighborhoods.

- A. The Licensing Authority may hold a hearing on an application for a new license location for an all-alcoholic beverages license in the neighborhood in which the applicant seeks to locate the license. For the purposes of this rule, the "neighborhood" shall be defined as the political precinct in which the new location is sought.
- B. The Licensing Authority may go to a neighborhood to hold a hearing with regard to a complaint against a licensee by a private citizen when the complaint is brought to the

Board's attention upon a petition of 25 adult residents who live within a one-mile radius of the licensed establishment in question; provided, however, that a spokesperson for the petitioners shall meet with the Licensing Authority's Chairperson (or duly authorized representative) to explain the case to be presented.

§ 501-19. Activity without valid license displayed prohibited.

No person shall suffer or allow any activity to take place on premises which they own or control or manage which requires a license from the Town of Barnstable Licensing Authority which license is not valid and displayed on the premises.

ARTICLE II
Common Victuallers

§ 501-20. Kitchen facilities required.

All common victualler licensees must have kitchen facilities for storing foods required to be kept at cold temperatures and facilities for cooking and serving foods.

§ 501-21. Alcoholic beverages.

Patrons are not permitted to bring alcoholic beverages on the premises for their own consumption. Licensees are not permitted to keep alcoholic beverages on the premises except for a reasonably small quantity that is used in the preparation of certain specialty foods. The Licensing Authority will, in its discretion, determine what is reasonable for this purpose and whether or not it is customary in the preparation of such specialty foods.

§ 501-22. Food service.

Reasonable food service must be available upon the request of a patron at a premises with a common victualler license during all operating hours; however, the full dining room menu must be available at least 75% of the operating hours. The Licensing Authority will, in its

discretion, determine what is reasonable food service based upon the Licensing Authority's intent on granting the license.

§ 501-23. Applicable rules.

Licensees under this article are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts that refer to the sale of alcoholic beverages.

ARTICLE III

Innholders

§ 501-24. Provisions for strangers and travelers.

- A. Every innholder shall at all times be provided with suitable food for strangers and travelers. Every innholder shall also have upon its premises suitable rooms, with beds and bedding, for the lodging of guests.
- B. An innholder who upon request refuses to receive and to make suitable provision for a stranger or traveler shall be punished by a fine of not more than \$50 and shall be subject to proceedings for suspension, modification or revocation of its license.

§ 501-25. Immorality on the premises.

Whoever being licensed as an innholder, or being in actual charge, management or control of the premises for which the license is issued, knowingly permits the premises under his or her control to be used for the purpose of immoral solicitation, immoral bargaining or immoral conduct, including prostitution, drugs or gambling, shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment and shall be subject to disciplinary proceedings against the license.

§ 501-26. Maintenance of register.

Every innholder shall maintain a permanent register in which shall be recorded the name and residence of every person engaging or occupying a private room. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein and shall be open to the inspection of the licensing authorities, their agents, and the police.

§ 501-27. Applicable rules.

Licensees under this section are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts that refer to the sale of alcoholic beverages if the innholder does not hold an alcoholic beverages license.

ARTICLE IV
Lodging Houses

§ 501-28. Definition.

As used in this article, the following terms shall have the meanings indicated:

LODGING HOUSE — A house where lodgings are let to four or more persons not within the second degree of kindred to the person conducting it and shall include fraternity houses and dormitories of educational institutions but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under § 71 of Chapter 111 of the General Laws or rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth.

§ 501-29. Cooking facilities.

A lodging house where lodgings are let to more than five but less than 20 persons may furnish individual cooking facilities for the preparation, serving, eating and storage of food, provided that no such facility shall be furnished in a room having an area of less than 150 square feet. Such facilities shall, in a single room, consist of a gas or electric plate, a refrigerator and storage area for food. Any facilities furnished under this section shall comply with the Building Code and the Town of Barnstable Zoning Regulations.¹

§ 501-30. Immorality on the premises.

Whoever being licensed as a lodging house keeper or being in actual charge, management or control of such lodging house knowingly permits the property under his or her control to be used for the purpose of immoral solicitation, immoral bargaining or immoral conduct, including criminal activities such as prostitution, use and sale of drugs, possession of drugs, and gambling, shall be subject to disciplinary proceedings against the license and shall be subject to a fine and imprisonment as set out by statute.

§ 501-31. Maintenance of register.

Every lodging house keeper shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name and residence of every person engaging or occupying a private room averaging less than 400 square feet floor area. Such register shall be kept for a period of one year after the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police.

§ 501-32. Rooms to be let to persons only.

Whenever the Licensing Authority issues a lodging house license, the licensee may let individual rooms to individual persons only and may not contract out rooms to an entity or institution which intends to choose lodgers for the rooms. Such conduct will be held to

1. Editor's Note: See Ch. 240, Zoning.

constitute leasing out of the license and is prohibited. Violation of this rule may result in suspension or revocation of the license.

§ 501-33. Applicable rules.

Licensees under this article are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts that refer to the sale of alcoholic beverages.

ARTICLE V
Nonintoxicating Beverages

§ 501-34. Certain premises to be licensed.

The Licensing Authority will require persons to be licensed who keep open their places of business for the retail sale of beverages derived wholly or in part from cereals or substitutes therefor and containing less than 1/2 of 1% of alcohol, unfermented grape juice, ginger ale, root beer, sarsaparilla, pop, artificial mineral waters, carbonated waters or beverages, and other so-called soft drinks, if the business has the primary purpose of providing an establishment where patrons gather in order to socialize and/or to enjoy some form of entertainment. (See MGL C. 140, § 21A.)

§ 501-35. Sale of soft drink.

For purposes of this regulation, a sale is defined as the provision of a soft-drink beverage to a patron in or by the establishment in exchange for something of value by means of an in-person exchange or by means of a vending machine exchange or by means of a cover charge which gives the patron the right to obtain drinks without additional payment.

§ 501-36. Violations and penalties.

Whoever not being licensed as aforesaid keeps open his place of business for the retail sale of any such beverage shall be punished by a fine of not more than \$50. This section shall not apply to persons who keep open their places of business on Sunday for the sale of soda water, if they are licensed under § 7 of Chapter 136. (See MGL C. 140, § 21 C.)

§ 501-37. Responsibilities of license holder.

The license holder is responsible for the proper management of the premises so that unlawful acts do not occur on the premises and so that the premises does not become a threat to the public welfare or public safety. When violations of the license or of the law are brought to the attention of the Licensing Authority a disciplinary hearing will be held and, as a result of evidence brought to the attention of the Licensing Authority at the hearing, the Licensing Authority may modify, suspend or revoke the license.

§ 501-38. Inapplicability to certain persons.

The provisions of this article shall not apply to innholders, common victuallers, druggists, nor to dealers whose principal business is the sale of groceries and meats or either of said products, nor to the sale of any or all of such beverages when sold not to be drunk on the premises.

§ 501-39. Applicable rules.

Licenses under this article are subject to all applicable general rules for licenses set out in Article I above, with the exception of those parts that refer to the sale of alcoholic beverages.

ARTICLE VI
Package Stores

§ 501-40. Records of deliveries.

Package store licenses are required to keep a written record of the name and address of every person to whom a delivery is made outside of the premises. Additionally, the record must include the information as to the amount of alcoholic beverages that were delivered, the date and time of delivery, and the signature of the person receiving the delivery. If such signature is illegible the licensee is required to have the patron print his or her name under said signature. Such records must be maintained for a period of not less than one year from the last entry therein and must be available to the Licensing Authority and its agents for inspection at any time in a form suitable for easy inspection.

§ 501-41. Applicable rules.

Licenses under this article are subject to all applicable general rules for licenses set out in Article I above, with the exception of those parts that refer to sales of alcoholic beverages for consumption on the premises and those parts that refer to sales of food or to entertainment on the premises. Package store licenses who also hold common victualler licenses are subject to additional special rules for common victuallers in Article II above.

§ 501-42. Off-premises sales.

Alcoholic beverages shall be transported or delivered for sale only upon orders actually received at the licensed business prior to the shipment thereof. Violation of this section shall be punished by a fine not exceeding \$200 or by imprisonment for not more than six months or both. (General Laws, Chapter 138, § 32)

§ 501-43. Sale of kegs.

Licenses shall not sell or deliver malt beverages in kegs to any person unless that person presents a valid Massachusetts liquor ID card or a valid driver's license issued by a political subdivision of the United States and containing a picture of the holder. Licenses shall record

the ID number, the name, address, date of birth, and expiration date from the ID. The date of the transaction and quantity of malt beverage and brand name shall also be recorded. Records of sales of malt beverages in kegs shall be maintained by the licensee for a period of one year and shall be available for inspection by the Licensing Authority, its agents or the police during usual business hours of the licensee.

ARTICLE VII

Billiard Tables, Pool Tables, Sippio Tables, and Bowling Alleys

§ 501-44. Issuance of licenses.

The Licensing Authority may issue licenses to persons to keep a billiard, pool or sippio table or a bowling alley for hire, gain or reward, to be used for amusement only and not for the purpose of gaming for money or for property.

§ 501-45. Violations and penalties.

Whoever without such a license keeps or suffers to be kept in a house, building, yard or dependency thereof, actually occupied or owned by him or her, a table for the purpose of playing at billiards, pool or sippio or a bowling alley for hire, gain or reward, or whoever for hire, gain or reward suffers any person to resort thereto for such purpose shall forfeit not more than \$100.

§ 501-46. Minors.

The keeper of a billiard, pool or sippio room or table who admits a minor under the age of 18 thereto without the written consent of his parent or guardian or the keeper of a bowling alley in which alcoholic beverages are sold who admits thereto a minor under the age of 16 without such consent shall forfeit \$10 for the first and \$20 for each subsequent offense and shall be subject to disciplinary proceedings against the license.

§ 501-47. Applicable rules.

Licensees under this section are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts pertaining to the sale of alcoholic beverages. If the licensee under this article also has an alcoholic beverages license he or she is subject to all of the general rules set out for licensees in Article I above. If the licensee under this article also has a common victualler or a nonintoxicating beverages or a club victualler or other such license, then the licensee is also subject to all rules under the corresponding section of these rules.

ARTICLE VIII

Dispensing Food or Beverages at Clubs Which Are Not Licensed for Sale of Alcoholic Beverages**§ 501-48. Issuance of licenses.**

- A. The Licensing Authority may grant a license to any club, society, association or other organization, whether incorporated or unincorporated, authorizing it to dispense food and beverages to be consumed on its premises, to its stockholders or members and their guests, but to no others; provided, however, that the Licensing Authority is satisfied that such organization is a proper one to which to grant such a license.
- B. If such organization is unincorporated, the names of all the officers and members shall be submitted with the application for the license and shall be kept available for public inspection.

§ 501-49. Exemptions.

The provisions of this article shall not apply to literary, benevolent, charitable, scientific or religious corporations or religious organizations or associations whose real or personal property is exempt from taxation, or to any club so long as it is licensed under § 12 of General Laws Chapter 138 to sell alcoholic beverages nor to any recognized veteran or fraternal organization.

§ 501-50. Violations and penalties.

Any officer or employee of any such organization who dispenses or causes to be dispensed any food or beverage on its premises, unless such organization is then licensed as aforesaid, shall be punished by a fine of not more than \$100 for the first or second offense and by a fine and imprisonment for each subsequent offense as set out in General Laws, Chapter 140, §§ 21E and 21F.

§ 501-51. Improper use of license.

If such organization at any time exercises in an improper manner the authority conferred upon it by such license, the Licensing Authority, after notice to the licensee and reasonable opportunity to be heard, may upon the satisfactory proof thereof suspend or revoke or modify the license.

§ 501-52. Conviction of officer.

If any officer or employee of such organization which is incorporated is convicted of any offense under this article, the Police Commissioner shall immediately give notice to the State

Secretary, who, upon receipt thereof, shall declare the charter of such organization void, and shall publish a notice that such incorporation is void and of no further effect.

§ 501-53. Applicable rules.

Licensee under this article are subject to all applicable, general rules for licensees set out in Article I above, with the exception of those parts which refer to sales of alcoholic beverages.

ARTICLE IX

Sale of Alcoholic Beverages by Registered Pharmacists

§ 501-54. Issuance of license.

A registered pharmacist who holds a certificate of fitness under § 30 of General Laws Chapter 138 may use alcohol for the manufacture of United States pharmacopoeia or national formulary preparations and all medicinal preparations unfit for beverage purposes, and may sell alcohol and upon the prescription of a registered physician, wines, malt beverages, and other alcoholic beverages, and a registered pharmacist may be licensed by the Licensing Authority to sell alcoholic beverages for medicinal, mechanical or chemical purposes without a physician's prescription. (General Laws, Chapter 138, §§ 29 and 30A)

§ 501-55. Sundays and legal holidays.

No licensee under this article shall sell any alcoholic beverages or alcohol without a physician's prescription on Sundays or legal holidays.

§ 501-56. Certification of purchaser.

Licensees under this article shall not sell alcoholic beverages of any kind for medicinal, mechanical or chemical purposes except upon the certificate of the purchaser which shall state the use for which it is wanted and which shall be immediately canceled at the time of sale in such manner as to show the date of cancellation.

§ 501-57. Maintenance of register.

Licensees under this article shall maintain a book in which each licensee shall enter, at the time of every such sale, the date thereof, the name of the purchaser, the kind, quantity and price of said beverage, the purpose for which it was sold, and the residence by street and number, if any, of the purchaser. If such sale is made upon the prescription of a physician, the book shall also contain the name of the physician and shall state the use for which said beverage is prescribed and the quantity to be used for such purpose and the prescription shall be canceled in the manner provided in the preceding section with reference to certificates. Said book shall be maintained in the format prescribed in General Laws, Chapter 138, § 30E, and said certificate shall be in the form prescribed in the same section.

§ 501-58. Applicable rules.

Licensees under this article are subject to all applicable general rules for licensees set out in Article I above, with the exception of those parts that refer to sales of alcoholic beverages or food for consumption on the premises.

ARTICLE X
Private Clubs Licensed to Sell Alcoholic Beverages

§ 501-59. Who may be served.

Private clubs licensed for the sale and service of alcoholic beverages may serve such beverages and may serve food to members and to guests of members and to no others.

§ 501-60. Inspections.

Private clubs may be inspected by the Police Department and other agents of the Licensing Authority in the same manner and to the same extent as other food or beverage licensees pursuant to General Laws, Chapter 138, §§ 63 and 63A.

§ 501-61. Lists of members and employees.

A current list of employees and members shall be available upon request of authorized agents of the Licensing Authority

§ 501-62. Discrimination prohibited.

No private club licensee shall make any distinction, discrimination or restriction on account of race, color, religious creed, national origin, sex or ancestry relative to the admission or treatment of any person.

§ 501-63. Membership lists.

The names of all club members must be provided to the Licensing Authority as part of the renewal application of each present club licensee on an annual basis. New applicants for club licenses must provide a list of charter member's names and update the list annually at renewal time. Names of members may be submitted in a sealed envelope and will be kept in a confidential file by the Licensing Authority.

§ 501-64. Entrance to private clubs.

Persons who are not listed as club members shall not be permitted to enter the licensed premises except when escorted into the club by a club member or when the club member has properly notified the club of his or her guest's arrival.

§ 501-65. Who is considered a guest and not a member.

Any person who is not made a member of the club for at least one year and has not paid an annual membership fee and is not recorded in the club's log of members is considered to be a "guest" for the purposes of the Licensing Board's regulations unless an exemption from the restriction has been granted by the Licensing Authority pursuant to § 501-64 above.

§ 501-66. Fees and surcharges.

Club members may be assessed an annual fee and may be assessed surcharges to be divided equally among the membership. Club members may not be charged a fee for entrance into the club on any particular occasion, unless written notice has been sent to each club member at least one week prior to the particular occasion, informing the membership that there will be an entrance charge for the particular occasion.

§ 501-67. Applicable rules.

Licensees under this article are subject to all applicable general rules for licenses set out in Article I above.

ARTICLE XI
Enforcements and Penalties

§ 501-68. Criminal or noncriminal disposition.

Violation of any provision of this chapter may be prosecuted, as a criminal matter or as an administrative procedure or by the method provided in § 21D of Chapter 40 of the General Laws.² Each violation shall be considered separately.

§ 501-69. Violations and penalties.

Whoever violates the provisions of this chapter shall be fined not more than \$300. The Licensing Authority may suspend, revoke or modify any license issued by them whenever they have reasonable cause to believe the licensee has violated the terms, conditions or regulations pertaining to such license. Any violation of this chapter enforced by the methods provided in § 21D of Chapter 40 of the General Laws shall be subject to a fine of \$100.

2. Editor's Note: See Ch. 1, General Provisions, Art. I, Noncriminal Disposition.

Chapter 502

SECONDHAND DEALERS AND SECONDHAND COLLECTORS

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| § 502-1. Definitions. | § 502-6. Purchases by dealers or collectors. |
| § 502-2. Issuance, renewal and revocation of licenses. | § 502-7. Unauthorized sale of property. |
| § 502-3. Inspection of property and records. | § 502-8. Holding periods. |
| § 502-4. Recordkeeping. | § 502-9. Testing of weighing and measuring devices. |
| § 502-5. Posting of licenses and notices. | § 502-10. Violations and penalties. |
| | § 502-11. Severability. |

[HISTORY: Adopted by the Licensing Authority of the Town of Barnstable 3-16-2009.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Jurisdiction of Licensing Authority — See Ch. 121,
§ 121-6F.

Junk on streets — See Ch. 206, Art. I.

§ 502-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCEPTABLE IDENTIFICATION — Either:

- A. A current driver's license that includes the date of birth, photograph, and physical description of the person offering the identification; or
- B. Two other pieces of current identification, at least one of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.

POLICE CHIEF — The Chief of Police of the Town of Barnstable or her or his designee.

REGULATED PROPERTY — The following used property:

- A. Precious metals, including but not limited to any metal valued for its character, rarity, beauty or quality, including gold, silver, copper, platinum or other metals, whether as a separate item or in combination with other items.
- B. Precious gems, including but not limited to any gem valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or other

1. Editor's Note: This regulation superseded former Ch. 502, Junk Dealers, adopted by the Licensing Authority 9-10-1990.

precious or semiprecious gems or stones, whether as a separate item or in combination with other items or as a piece of jewelry.

- C. Watches and jewelry containing precious metals or precious gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, chains, pocket watches, wristwatches, or stopwatches.
- D. Sterling silver flatware, including but not limited to knives, forks, spoons, candlesticks, coffee and tea sets, or ornamental objects.
- E. Any electronic audio, video or photographic and optical equipment, along with computer or computer equipment or recordings in any form.
- F. Any power tools or equipment.
- G. Musical instruments.
- H. Sporting equipment.
- I. Automobiles, boats, planes, motorcycles, in whole or taken in parts, or any other type machinery.
- J. Collectibles, including objects of art, coins, currency and antique objects, but not including those items identified in § 502-8H.

SECONDHAND COLLECTOR — Has the same meaning as the term "junk collector" in MGL c. 140, § 56.

SECONDHAND DEALER — Has the same meaning as the term "junk dealer" and "keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles" in MGL c. 140, § 54.

§ 502-2. Issuance, renewal and revocation of licenses.

- A. Secondhand collectors and secondhand dealers must obtain a license to conduct said activities.
- B. The Licensing Authority of the Town of Barnstable may, after notice and a public hearing, deny an original or renewal application for a secondhand dealer or secondhand collector license or revoke an issued license if it has probable cause to believe any of the following conditions exist after a public hearing:
 - (1) The applicant, or any person who in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business, has owned or operated a secondhand dealer or secondhand collector business regulated under this regulation or any substantially similar license and, within the five years prior to the application date:
 - (a) Has had a secondhand dealer or secondhand collector license revoked for a reason that would be grounds for a denial or revocation pursuant this chapter;
or

- (b) The secondhand dealer or secondhand collector business has been found to constitute a public nuisance.
- (2) The licensee applicant, or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business, has been convicted of a felony or any crime involving a false statement within 15 years prior to the application date.
- (3) The applicant has:
 - (a) Knowingly made a false statement in the application;
 - (b) Knowingly omitted information requested to be disclosed in the application;
or
 - (c) Completed the application with reckless disregard for the truth or accuracy of the statements made therein.
- (4) A lawful inspection of the secondhand dealer or secondhand collector business premises by the Police Chief or his designee has been unjustifiably refused by a person who, in part or whole, manages or operates the business.
- (5) The secondhand dealer or secondhand collector business, the applicant or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business has more than five violations of these regulations, any state or federal law, or any combination thereof within a two-year period, including the two years prior to the application date.
- (6) The secondhand dealer or secondhand collector business, the applicant or any person who, in part or whole, owns, manages or operates the secondhand dealer or secondhand collector business has been convicted of any law of the Commonwealth of Massachusetts that is contrary to the type of secondhand business to be conducted, such as, but not limited to, receiving stolen property, any form of breaking and entering, larceny from a person or any other form of larceny, or any form of aggravated assault, as verified by a CORI by the Police Chief or his designee.
- (7) Such other grounds as the Authority determines to be in the public interest or in violation of the conditions of the license or any law or regulation of the commonwealth or the Town of Barnstable.

§ 502-3. Inspection of property and records.

- A. Whenever necessary to make an inspection to enforce the provisions of this chapter, or when the Police Chief or his designee has reasonable grounds to believe more likely than not that a specific item of regulated property held by a secondhand dealer or secondhand collector is associated with criminal conduct, the Police Chief or his designee may enter the premises of the secondhand dealer or secondhand collector at any reasonable time, provided that the premises is occupied at the time of entry and the Police Chief or his designee presents proper official identification at or near the time of entry. If entry is

refused, the Police Chief or his designee shall have recourse to every remedy provided by law to secure entry, including an administrative search warrant or a criminal search warrant.

- B. Authority to inspect secondhand dealer or secondhand collector premises under this regulation is in addition to and not in limitation of the authority the Town or the Police Chief or any police officer would otherwise have to enter the business premises.
- C. Once allowed to enter the premises of the secondhand dealer or secondhand collector, the Police Chief or his designee may inspect property kept there. The Police Chief or his designee may also inspect the business records associated with regulated property and perform any duty imposed upon the Town or the Police Chief by this regulation.

§ 502-4. Recordkeeping.

- A. The Police Chief or his designee shall design a purchase report form and make copies available to all secondhand dealers or secondhand collectors. Secondhand dealers or secondhand collectors shall utilize these forms, or any other substantially similar form approved by the Police Chief, to record purchases of regulated property. The form may request any information reasonably calculated to help the Police Chief identify the purchaser, the seller or the property associated with the purchase of regulated property.
- B. Whenever a secondhand dealer or secondhand collector purchases regulated property for business purposes, the secondhand dealer or secondhand collector shall obtain acceptable identification from the seller along with the seller's current residence address. The secondhand dealer or secondhand collector shall fill out a purchase report form in all relevant aspects at the time of the purchase. A purchase report form as required to be filled out by this section shall be filled out in legible English. The seller shall sign his or her name on the filled-out form.
- C. An individual digital photograph will be taken of each item purchased as defined under "regulated property" in § 502-1. The photographs will be stored electronically and are subject to the same recordkeeping requirements as listed in § 502-4A. Copies of the photographs will be transmitted to the Police Department weekly and are subject to the same rights of inspection as listed in § 502-8. **[Amended 3-26-2012]**
- D. The licensee shall cause to be transmitted electronically to the Barnstable Police Department, on a weekly basis, a copy of all transactions recorded in the ledger on the form provided. If during the preceding week such secondhand dealer or secondhand collector has taken no articles in, he/she shall make out and deliver to the Police Department a report of such fact. **[Amended 3-26-2012]**

§ 502-5. Posting of licenses and notices.

- A. All licenses shall be conspicuously posted in an accessible place on the licensed premises, available at all times to the proper authorities.
- B. A secondhand dealer shall post the following notice, no smaller than 8 1/2 inches by 11 inches with lettering no smaller than 1/4 of an inch in height, outside each point of entry

intended for patron use and at or near each place where a secondhand dealer purchases used property in the regular course of business. If a significant number of the patrons of the regular secondhand dealer use a language other than English as a primary language, the notice shall be worded in both English and the primary language or languages of the patrons.

NOTICE:

The sale or attempted sale of property to a secondhand dealer without consent of the property's owner is punishable by a civil penalty not to exceed \$300 per item.

Don't sell property without consent of the property's owner. You will be held strictly liable for violation of this law.

§ 502-6. Purchases by dealers or collectors.

- A. A secondhand dealer or secondhand collector shall not make any cash purchase in an amount that exceeds \$50.
- B. A secondhand dealer must not carry on the business of buying or selling secondhand property except at the premises designated in the dealership license.
- C. A secondhand dealer must not purchase any property whose serial number or other identifiable marking has been wholly or partially tampered with or removed.
- D. A secondhand dealer or secondhand collector may not purchase any item from any person under the age of 18.
- E. Consignment. Any of the items listed in § 502-1 that are taken under "consignment" where the licensee, dealer, consignor or consignee receives any type of gain, profit, trade of property, or the recovery of expenses shall be considered regulated property and shall be reported according the established regulations. [Added 3-26-2012]

§ 502-7. Unauthorized sale of property.

- A. No secondhand dealer or secondhand collector may purchase or sell any property of any type without the consent of the owner.
- B. No purchase will be made from anyone under the age of 18.

§ 502-8. Holding periods.

- A. A copy of every purchase report form filled out as required by this chapter shall be kept on the premises of the secondhand dealer or secondhand collector business during normal business hours for at least three years from the date of purchase. The report form shall be subject to inspection by the Police Chief or his designee.
- B. All regulated property in the categories of precious metals or precious gems, defined in § 502-1, Subsections A through D of the definition of "regulated property," purchased by

a secondhand dealer or secondhand collector and required to be recorded on a purchase report form, shall be held by said secondhand dealer or secondhand collector for at least 21 days from the date of purchase.

- C. All other regulated property purchased by a secondhand dealer or secondhand collector and required to be recorded on a purchase report form shall be held by said secondhand dealer or secondhand collector for at least 15 days from the date of purchase.
- D. The secondhand dealer or secondhand collector shall maintain the property in substantially the same form as when purchased and shall not alter, exchange or commingle the property. During the holding period the regulated property shall be kept on the business premises during normal business hours and shall be subject to inspection by the Police Chief or his designee.
- E. The Police Chief or his designee may give written notice to a junk dealer or junk collector holding regulated property that the Police Chief or his designee has reasonable grounds to believe that more likely than not a specific item of regulated property is associated with criminal conduct. The secondhand dealer or secondhand collector holding the regulated property shall then continue to hold the property specified in the notice in the same manner and place as required under Subsection B of this section until released by the Police Chief.
- F. The holding period for any item of regulated property shall not exceed 180 days from the date of purchase.
- G. A secondhand dealer or secondhand collector may from time to time request, in writing, that the Police Chief shorten the length of the holding period. If the Police Chief or his designee determines relief from the holding period is appropriate due to unreasonable hardship, the Police Chief or his designee shall provide the secondhand dealer or secondhand collector who requested relief with written authorization to sell, transfer or otherwise dispose of the regulated property. The request shall identify the property and state the basis or bases of the unreasonable hardship or hardships. The authorization shall be effective only upon delivery of the written authorization to the secondhand dealer.
- H. Secondhand dealers retailing or wholesaling used property limited to the following are exempt from Subsection B above:
 - (1) Used clothing, furniture, costume jewelry, knickknacks, footwear, and houseware items such as dishes, pots, pans, cooking utensils, and cutlery; or
 - (2) Used clothing, furniture, costume jewelry, footwear and houseware items such as dishes, pots, pans, cooking utensils and cutlery, obtained only from or through a registered charity or by donations; or
 - (3) Used books, papers, or magazines.

§ 502-9. Testing of weighing and measuring devices.

All weighing or measuring devices used by a licensee in the conduct of the licensed business shall be tested and sealed by the Town of Barnstable Weights and Measures Division prior to being placed in service.

§ 502-10. Violations and penalties.

- A. Violation of any provision of this chapter may be prosecuted as a criminal matter or as an administrative procedure or by the method provided in § 21D of Chapter 40 of the General Laws. Each violation shall be considered separately.
- B. Whoever violates the provisions of this chapter shall be fined not more than \$300. The Licensing Authority may suspend, revoke or modify any license issued by it whenever it has reasonable cause to believe the licensee has violated the terms, conditions or regulations pertaining to such license. Any violation of this chapter enforced by the methods provided in § 21D of Chapter 40 of the General Laws shall be subject to a fine of \$250.

§ 502-11. Severability.

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.

PART VI

**MARINE AND ENVIRONMENTAL AFFAIRS
DIVISION REGULATIONS**

Chapter 601

SANDY NECK BEACH PARK

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| § 601-1. Introduction. | § 601-7. Horse regulations. |
| § 601-2. Beach closures for protection of rare and endangered species. | § 601-8. Obtaining off-road vehicle permits. |
| § 601-3. General regulations. | § 601-9. Enforcement. |
| § 601-4. Required equipment and minimum standards. | § 601-10. Alcohol Policy. |
| § 601-5. Hunting regulations. | § 601-11. Violations and penalties. |
| § 601-6. Shellfishing, fishing and boating regulations. | § 601-12. Contact information. |

[HISTORY: Adopted by the Marine and Environmental Affairs Division of the Town of Barnstable 2-15-2013.¹ Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. Ch. 1, Art. I.
Beaches and waterways — See Ch. 32.
Boats — See Ch. 40.

Operation of vehicles on Sandy Neck — See Ch. 177, Art. I.
Shellfish — See Ch. 407.

§ 601-1. Introduction.

Sandy Neck Beach Park (Sandy Neck), a coastal barrier beach, is approximately six miles long, varying in width from 200 yards to one-half mile. The majority of this unique conservation and recreation area is owned by the Town of Barnstable and is under the supervision and jurisdiction of the Town Manager, with the advice of the Sandy Neck Board. The Sandy Neck Park Manager (Park Manager) handles daily operations. Help us to preserve and protect the heritage and integrity of this resource by reading this brochure and abiding by the rules and regulations outlined herein.

§ 601-2. Beach closures for protection of rare and endangered species.

Shorebirds, including piping plovers and least terns, nest on Sandy Neck. To protect nesting activity, shorebird nesting areas are fenced to exclude pedestrians and speed limits are reduced to five miles per hour where posted. The piping plover, a threatened species under the Endangered Species Act, ² is given special protection once eggs begin to hatch. Pursuant to federal, state and local law, vehicle traffic is limited to protect developing chicks not yet able to fly.

1. Editor's Note: These regulations also superseded former Ch. 601, Sandy Neck Beach, adopted 3-12-2004, as amended 2-28-2011.

2. Editor's Note: See 16 U.S.C. § 1531 et seq.

§ 601-3. General regulations.

- A. Acts of a lewd or lascivious nature (including public nudity) are prohibited.
- B. All rubbish and garbage must be kept in suitable containers and removed from the beach. Burial or burning of rubbish, garbage or refuse is prohibited.
- C. Glass beverage containers are prohibited.
- D. No person shall feed, harass, molest or disturb wildlife on Sandy Neck. No person shall injure or remove any trees, shrubs, plants or other vegetation from Sandy Neck. Exception: edible fruits and legally hunted game.
- E. No person shall dig, remove, damage or disturb any artifact on Sandy Neck. The discovery of any artifact(s) should be reported to the Natural Resource Officer on duty.
- F. Removal or disturbance of buoys, storm debris, marine salvage, municipal or private property is prohibited.
- G. No person shall traffic (or allow any pet to traffic) in any posted area. All persons shall stay on marked trails and keep off all vegetation, dune faces, steeply sloped dunes, foredunes, and primary dunes. People who are hunting, berry collecting, involved in professionally led educational hikes and/or scientific studies are permitted off the marked trail. All activities require prior approval by the Sandy Neck Gatehouse.
- H. All dogs must be leashed from March 1 to September 15. At all other times, dogs must be kept leashed or under direct voice control of the owner or keeper. The owner or keeper of any dog shall clean up and properly dispose of all fecal material deposited by the animal. Dogs involved in dog-bite incidents must be removed immediately from the beach until further notice by the Park Manager.
- I. Curfew:
 - (1) Summer (May 1 to October 15): No vehicles may enter the beach between 9:00 p.m. and 8:00 a.m. Vehicles must exit prior to 11:00 p.m.
 - (2) Winter (October 16 to April 30): No vehicles may enter the beach between 6:00 p.m. and 8:00 a.m. All vehicles must exit prior to 8:00 p.m.
 - (3) Self-contained vehicles, fishermen, cottage owners and their guests may enter the beach past curfew if tidal conditions allow. Curfew may be moved forward as tidal conditions warrant.
- J. All organized gatherings at Sandy Neck involving 20 or more individuals must obtain a special permit from the Park Manager. A special permit is also required in order to conduct scientific research on Sandy Neck. Fees may apply. Please call the Sandy Neck Gatehouse for further information (508-362-8300).
- K. Camp fires:
 - (1) Weather permitting, evening camp fires (including cooking fires) on the front beach are allowed after sunset or 7:00 p.m. only, whichever is earlier.

- (2) Fires on the front beach shall be at least 15 feet from the toe of the dune and 10 feet from the established ORV corridor.
 - (3) Fires may be placed on the Cape Cod Bay side of the established ORV corridor.
 - (4) Fires shall not impinge on vehicle travel in the established ORV corridor.
 - (5) All fires shall be doused with water before being buried.
 - (6) The burning of wood pallets or garbage is prohibited at Sandy Neck.
 - (7) The Park Manager or Natural Resource Officers have final discretion on all fires.
- L. All people sleeping overnight at Sandy Neck shall remain inside self-contained vehicles. No tenting lean-tos, camping trailers, or temporary shelters are allowed. Registered owners will be responsible for anyone sleeping outside of said vehicles, i.e., in sleeping bags, tents, chase vehicles, or any other manner. Tenting in designated areas is allowed at the discretion of the Park Manager.
- M. The discharge of gray water or wastewater from holding tanks, portable toilets, sinks, or any other source is prohibited.
- N. If high tide forces passage within 15 feet of the toe of the dune or any vegetation, the beach shall be considered closed, with no traffic being allowed to travel either off or on, until the Park Manager or the Natural Resource Officer on duty has determined the tide has receded to an appropriate level.
- O. When vehicle limits reach capacity, there will be no waiting lines (no "one off —one on policy"). Access will be on a first-come-first-serve basis. Cottage owners and their guests, and chase vehicles returning from emergency work, will be allowed access over the beach if tidal conditions permit.
- P. The Park Manager reserves the right to close or limit use of Barnstable's land at Sandy Neck to all oversand vehicles (ORVs), horses, and/or pedestrian and recreational traffic when public safety, wildlife habitat, tidal or extreme weather conditions warrant. This includes access for fishing, shellfishing, and hunting.
- Q. No refunds will be granted for any reason, including foul weather, evacuations, personal emergencies, or limitations on access.
- R. All-terrain vehicles, dirt bikes and snowmobiles are prohibited at Sandy Neck.
- S. Motorized personal watercraft (jet skis) is prohibited on Sandy Neck in all areas except Beach Point and the Great Marsh. Transporting a personal watercraft via the ORV corridor is prohibited.
- T. Permit holders are responsible for the safe operation of their vehicle and compliance with all Sandy Neck Regulations by all operators and passengers of their vehicle. The penalty for violations by permit holders as well as nonowners and/or guests may include suspension and/or revocation of the OVR permit.

- U. Vehicle operation on those areas of Sandy Neck owned by the Town of Barnstable, by election to exercise the privilege of driving on this Town property, which is not a public way, is subject to being stopped by Natural Resource Officers or the Park Manager (or any other employee designated by the Town Manager to enforce the regulations at Sandy Neck) in order to ascertain the identification of the occupants, and to determine if there are violations of the Sandy Neck Beach Park Regulations and/or the Barnstable General Ordinances.

§ 601-4. Required equipment and minimum standards.

- A. All off-road vehicles (ORVs) must carry the following equipment:
- (1) Spare tire—spare shall be the same tire and wheel size as the other four tires mounted on the vehicle (trailer included). Exception: two-wheel-drive motor homes and "dune buggies" must carry one spare tire of sufficient height and aspect ratio to allow the vehicle to drive off the beach under its own power should any of the tires mounted on the vehicle fail.
 - (2) Tow device—minimum length 15 feet.
 - (a) Rope - diameter of 3/4 inch; or
 - (b) Strap - capacity of 6,800 pounds, 1 1/2 inches wide; or
 - (c) Chain - link of 5/16 inch; or
 - (d) Cable - diameter of 3/8 inch; or
 - (e) Suitable vehicle-mounted winch.
 - (3) Jack—standard-type jack or hydraulic jack.
 - (4) Support board—minimum size 18 inches by 18 inches, plywood of 3/4 inch or steel 1/4 inch thick.
 - (5) Shovel—heavy duty, equal to military folding type or better.
 - (6) Tire gauge—low-pressure type, must register 10 psi or lower.
 - (7) Sandy Neck Beach Park Regulations and tide current chart (both provided).
 - (8) Self-contained vehicles must carry a measuring device that determines a thirty-foot distance.
- B. It is recommended that all ORVs are equipped with a bucket, fire extinguisher and a first aid kit.
- C. Minimum acceptable tire rim size for all ORVs is 13 inches.
- D. Trailers:

- (1) All trailers must be inspected and receive a trailer permit at the gatehouse prior to beach access.
- (2) All trailer tires must meet the minimum rim size of 12 inches.
- (3) Matching spare tire is required.

E. Self-contained vehicles:

- (1) Self-contained camping vehicles are allowed to stay overnight when equipped with a permanently installed sanitary unit with holding tanks for sewage and "gray water," and adequate built-in bed space for each member of the camping party. Detachable gray or black water overflow tanks are prohibited.
- (2) Maximum stay for self-contained vehicles is 96 hours. All self-contained vehicles shall exit the beach for a minimum of 24 hours before being readmitted. Self-contained vehicles must be attended overnight by a qualified driver. The Park Manager or Natural Resource Officers may reduce the maximum stay of a self-contained vehicle.
- (3) Properly equipped two-wheel-drive permanently self-contained vehicles are allowed, subsequent to a beach driving test that is supervised by the Park Manager or a Natural Resource Officer. Tests are available Monday through Thursday only by appointment. Vehicles with ORV permits from the prior calendar year do not need to repeat the trial run unless ownership of said vehicle has changed.
- (4) Only one designated chase vehicle is permitted per self-contained vehicle.
- (5) Between May 1 and October 15, all self-contained vehicles, and associated chase vehicles, must purchase an overnight camping permit in order to stay on the beach past curfew. The permit must be placed in an area that is clearly visible to Sandy Neck staff.

F. Motor vehicle operation:

- (1) Speed limit:
 - (a) No person shall operate a motor vehicle on Sandy Neck at a rate of speed greater than is reasonable and proper, or in excess of posted speed limits.
 - (b) Unless otherwise posted, the speed limit shall be 15 miles per hour from May 1 to October 15. Speed shall not exceed 25 miles per hour at all other times.
 - (c) Maximum speed near shorebird nesting areas is five miles per hour.
- (2) Permits:
 - (a) The only vehicles eligible for an ORV permit are Park Manager approved all-wheel- or four-wheel-drive vehicles as well as two-wheel drive motor homes and suitably equipped "dune buggies."

- (b) All motor vehicles operating "oversand" on Sandy Neck must have a valid Sandy Neck ORV permit affixed to the lower left-hand corner of the vehicle's windshield (or as directed by the gatehouse staff).
- (3) No person shall operate a motor vehicle on the following areas:
- (a) The designated public bathing beach; or
 - (b) The toe of the dune: defined as the foredune and/or vegetation area; or
 - (c) Below the berm: defined as the foreshores and tidal flats; or
 - (d) Outside of the established ORV corridor; or
 - (e) Posted shorebird nesting areas or other "closed" areas; or
 - (f) Within the inner dune routes and cross trails without a valid trail pass.
- (4) Beach parking:
- (a) All vehicles shall be parked parallel to the frontal dune, at least 30 feet from the dune fence line, unless otherwise directed by the Sandy Neck Staff.
 - (b) For ORV corridor safety, all portions of the vehicle and beach accessories must be at least 30 feet from the dune fencing line unless otherwise directed by the Sandy Neck Staff. This includes (but is not limited too): slide-outs, awnings, grills, etc.
 - (c) Further parking location restrictions on self-contained vehicles over 33 feet in length may be enacted by the Park Manager.
 - (d) No parking within posted shorebird nesting areas.
 - (e) In the off season, when dune fencing is absent, vehicles must be parked at least 15 feet from the toe of the dune. In addition, parking on dune vegetation is prohibited.
 - (f) The Park Manager or Natural Resource Officers have final discretion on all beach parking.
- (5) Self-contained vehicles shall always have the right-of-way due to size and weight of the vehicle. Otherwise, vehicles with the Cape Cod Bay on the driver's right have the right-of-way.
- (6) No person shall obstruct the established ORV corridor or park so as to impede vehicle travel within said corridor.
- (7) No person shall operate a passenger vehicle (or tow a trailer) with tire pressure in excess of 18 psi. (Self-contained campers shall maintain tire pressure appropriate for the vehicle.)
- (8) No person shall operate a vehicle:

- (a) Without a valid driver's license; or
 - (b) So as to endanger the public; or
 - (c) Engage in dunehopping, doing "zigzags," "donuts," "cutting tracks" or in any other reckless or unacceptable fashion.
- (9) Riding on tailgate, roof, bumper or any exterior portion of a vehicle not designed to carry passengers is prohibited. Standing in truck beds or sitting on truck bed rails is prohibited.
- (10) All holes, campfire remains or alterations of the beach shall be restored to natural condition.

§ 601-5. Hunting regulations.

- A. Hunting, possessing, taking, molesting or disturbing deer within the boundaries of Sandy Neck, unless authorized by the Town Manager or Park Manager, is prohibited.
- B. Discharging a firearm within the boundaries of Sandy Neck from Memorial Day to Labor Day is prohibited.
- C. No person shall hunt any game, except waterfowl, without wearing a "hunter orange" cap or hat. A "hunter orange" vest or coat is also recommended.
- D. All hunters must check in at the Sandy Neck Gatehouse prior to and at the conclusion of their hunt.
- E. Hunting or discharging a firearm or releasing an arrow upon or across the "front beach," that area between the primary dune and the high water mark, without written permission from the Town Manager or the Park Manager is prohibited.
- F. Discharging a firearm or releasing an arrow is prohibited on and within 150 feet of the access trail and front beach, or within 500 feet of any public building or structure.
- G. Hunting for in-season game shall occur between 1/2 hour before sunrise and sunset only.

§ 601-6. Shellfishing, fishing and boating regulations.

- A. All shellfishing at Sandy Neck requires a valid Town of Barnstable shellfishing permit.
- B. A Sandy Neck trail pass must be obtained in order to utilize the cross trails by vehicle to access the shellfishing areas. A trail pass can be obtained at the Sandy Neck Gatehouse (508-362-8300).
- C. The launching of motor vessels from Sandy Neck and their operation in waters offshore must be conducted in accordance with the provisions of Massachusetts General Law Chapter 90B and Barnstable General Ordinances.

- D. All fishermen must be actively engaged in fishing to remain past curfew as well as receive approval from a Natural Resource Officer on duty. Equipment shall be no more than 10 feet from the water.
- E. Violations may result in fines and/or the revocation of trailers and/or ORV permits.

§ 601-7. Horse regulations.

- A. Horseback riding shall be allowed on the Cape Cod Bay Trail (front beach to Trail No. 5), and on the Braley's Dune Trail (known as the "Horse Trail") only. All riders must enter the beach via the Access Trail.
- B. Between the Friday before Memorial Day and the day after Labor Day, the following restrictions shall apply:
 - (1) Horseback riding allowed from Monday 12:00 noon until Friday 12:00 noon. All riders shall be off the beach by 9:00 p.m., Monday through Thursday.
 - (2) Groups with more than two trailers must obtain a special permit from the Park Manager.
- C. All riders shall obtain permits and register at the Sandy Neck gatehouse before entering the beach.
- D. All organized trail rides of eight or more horses must be approved by special permit issued by the Park Manager.
- E. All riders shall stay on trails designated for use by horses.
- F. All riders shall remove horse droppings from the parking lot.
- G. Riders must maintain a buffer of 100 feet between the horses and all bathers.
- H. Note: It is recommended that riders on the front beach after sunset wear reflective clothing.

§ 601-8. Obtaining off-road vehicle permits.

- A. Off-road vehicle (ORV) permits are available at the Sandy Neck Gatehouse.
- B. Vehicles leased for a minimum term of one year will be allowed to register for oversand travel. Vehicles rented or leased for shorter terms are ineligible for oversand permits.
- C. A valid registration is required in order to purchase an ORV permit (no dealer, farm, or repair plates).
- D. Proof of residency is required in order to obtain a Barnstable or Sandwich ORV permit. Residency can be proven by:
 - (1) Tax bill.
 - (2) Minimum one-year property lease.

- (3) Vehicle registration with a street address (PO box is not sufficient).
 - (4) Other legal documents such as a deed or will (this does not include utility bills, excise tax bills, etc.).
 - (5) College students may provide a tuition bill with a Barnstable or Sandwich address.
- E. Barnstable and Sandwich residents wishing to obtain an ORV permit must have their vehicle registered in their name (or the name of a person residing at the same address) unless:
- (1) They have written permission to use a company vehicle.
 - (2) Proof of ownership of the company on the vehicle registration.
 - (3) A minimum one-year vehicle lease agreement.
 - (4) The resident's permit has been revoked.
- F. Permit replacement is \$1, providing:
- (1) The original permit is returned; or
 - (2) There is documented proof (approved by the Park Manager) that the original permit was destroyed.
- G. All ORV permits (issued by the Sandy Neck Gatehouse) and resident parking permits (issued by the Barnstable Recreation Division and the Town of Sandwich) are not valid unless they are permanently affixed to the lower left-hand corner of the vehicle's windshield and the license plate number on the vehicle matches the permit (except for authorized laminated permits). The protective sheet must be removed from the adhering side of the sticker and the permit must be adhered to the windshield of the vehicle.

§ 601-9. Enforcement.

- A. In addition to Sandy Neck Beach Park Regulations, all applicable Town of Barnstable Ordinances and Massachusetts General Laws applying at Sandy Neck will be enforced.
- B. The Park Manager and Natural Resource Officers will enforce the provisions of Town Ordinances on all public lands at Sandy Neck, including all parking areas, public ways, the Great Marsh and Bodfish Park.
- C. Warnings: Any person receiving two written warnings in one calendar year may have his or her rights to operate a vehicle on Sandy Neck suspended for a period of one year.
- D. Citations: Any person receiving a citation may have his or her rights to operate a vehicle on Sandy Neck revoked permanently or suspended for a period of up to one year.
- E. The Park Manager, or his/her designee, may issue suspensions for any violation of Massachusetts General Laws, Town Ordinances, or Sandy Neck Beach Park Regulations. Suspensions of up to five years may also be issued for any action which jeopardizes the

property or safety of another person, or for any action that causes another person to be fearful for his or her safety and/or his or her property.

- F. Abusive, inappropriate or aggressive behavior toward other beach users and/or Sandy Neck staff will result in the violator's removal from the beach for no less than 24 hours. In addition, violators may have their ORV permits revoked.
- G. The Park Manager reserves the right to suspend beach access to a dog as a result of aggressive behavior and/or due to irresponsible pet ownership.
- H. Any person who is issued a suspension notice will be provided the opportunity for a hearing with the Director of the Marine and Environmental Affairs Division. Any person desiring such a hearing must submit a written request for said hearing postmarked within five business days of the effective date of the suspension. An appeal of the Director of the Marine and Environmental Affairs' decision may be filed with the Office of the Town Manager within five days of issuance of said decision.

§ 601-10. Alcohol Policy.

- A. Alcoholic beverage regulation forbids the consumption of alcoholic beverages "while on, in or upon any public way or any place to which the public has a right of access as invitees or licensees."
- B. Alcoholic beverage and consumption regulation — minors — forbids the possession of alcohol by minors "while on, in or upon any public way or way or any other place to which the public has a right or access as invitees or licensees."

§ 601-11. Violations and penalties.

- A. Violations of any provisions of Sandy Neck regulations may be punished by a noncriminal fine not to exceed \$300, and/or loss of beach privileges. Criminal acts are subject to enforcement as allowed by the Town of Barnstable Ordinances or the General Laws of the Commonwealth.
- B. The provisions of these regulations may be enforced utilizing the procedures contained in MGL c. 40, § 21D, as a noncriminal alternative.

§ 601-12. Contact information.

If you have any questions pertaining to Sandy Neck operations, call the Gatehouse at 508-362-8300 or the Marine and Environmental Affairs Office at 508-790-6272.

PART VII

**CONSERVATION COMMISSION
REGULATIONS**

Chapter 701

PROPERTY USE VIOLATIONS

§ 701-1. Authority; goals.

§ 701-2. Findings with respect to littering and illegal dumping.

§ 701-3. Findings with respect to unauthorized vehicle use.

§ 701-4. Unauthorized use of firearms prohibited.

§ 701-5. Open fires; camping; consumption of alcoholic beverages.

§ 701-6. Findings with respect to vandalism.

§ 701-7. Violations and penalties.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 6-2-1988; revised 7-6-1988, 7-1-2003; 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Alcoholic beverages — See Ch. 20.

Camping — See Ch. 147, Art. II.

Sandy Neck — See Ch. 177, Art. I; Ch. 601.

Shooting range — See Ch. 702.

§ 701-1. Authority; goals.

Under the terms of the Conservation Commission Act, Conservation land is received and held "in the name of the city or town." The Conservation Commission has a clear authority under the Conservation Act to adopt rules and regulations for the use of its land. The Town of Barnstable Conservation Commission's goal in management of its property is to protect the values of the land. The values are related to the protection or preservation of biological and ecological diversity, water supply and water quality, aesthetics and recreation, and community character. These values are related to public health and safety and environmental protection. The Commission is charged with balancing these values with public use and accessibility. The Conservation Commission discourages the following land use practices.

§ 701-2. Findings with respect to littering and illegal dumping.

Unfortunately there are people who find open space parcels a quick answer to their unwillingness to drive to the solid waste station or pay the necessary dumping fees. Illicit dumping is a large problem in West Barnstable Conservation area. The Town's Public Works Division has removed items, time and time again, such as sofas, chairs, mattresses, tires, rugs, cardboard boxes and refrigerators. Other items dumped throughout all the Conservation parcels include household trash, landscaping debris and weekend party debris. Illicit dumping and littering impacts not only public health and safety, but also aesthetics and community character.

§ 701-3. Findings with respect to unauthorized vehicle use. ¹

Illegal motorcycle and ATV use on Conservation parcels is on the rise. The unauthorized motorcycles and ATVs race along the narrow winding paths that the hikers, horseback riders and mountain bikers share. This raises a public safety concern. Gates and other barricades are placed to discourage unauthorized vehicle use, but the smaller vehicles continue to make new paths around them. Many times gate locks are broken or even the large steel gates themselves are cut or torn out of the ground allowing the larger vehicles access. The Commission depends on the Town's Natural Resource Officers to patrol; however the mere size of West Barnstable Conservation Area, which boasts over 1,000 acres with 15 miles of trails makes this a difficult task.

§ 701-4. Unauthorized use of firearms prohibited.

- A. Unauthorized use of firearms on Conservation lands is clearly a public safety issue. The Conservation Commission provides the public a shooting range, at the West Barnstable Conservation Area. The range is managed by the Commission and policed and maintained by the Natural Resource Division. A fee is charged for the permit and a key to unlock the entrance gate. Hunting is allowed on certain Conservation parcels so as long as the person follows the state and federal laws.
- B. No hunting is allowed in the following conservation areas:
 - (1) Crocker Neck.
 - (2) Long Pond.
 - (3) Jenkins Wildlife Sanctuary.
 - (4) Whelan.
 - (5) Meetinghouse Farm.
 - (6) Santuit River.

§ 701-5. Open fires; camping; consumption of alcoholic beverages.

- A. For public safety reasons, unpermitted fires are not allowed. Area Fire Departments are called on an average to at least one or two fires a year occurring on Conservation parcels that have been maliciously started. Fire Departments reach many of these fires by using a brush breaker, which also causes damage.
- B. For public health, safety and environmental reasons camping is unpermitted on the lands. Public rest rooms are not available which would be a public health issue and campsites can damage the environment if not managed properly. Unpermitted camping can also lead to unpermitted fires.

1. Editor's Note: See Ch. 601, Sandy Neck Barrier Beach.

- C. Consumption of alcoholic beverages is not permitted on Conservation property. This regulation is in conjunction with the Chapter 20, Article I, Open Containers, of the Code of the Town of Barnstable. The consumption of alcohol seems to be prevalent at Long Pond and Whelan Conservation Areas in Marstons Mills and Crocker Neck Conservation Area in Cotuit. Associated with underage drinking is unpermitted fires and littering which are also public health, safety and environmental issues.

§ 701-6. Findings with respect to vandalism.

Vandalism is prevalent in most of the large Conservation parcels that promote public access with parking areas, trails and signage. Only to mention a few incidences: gates, barriers and fences have been cut or even torn out of the ground. Large wooden Conservation signs removed from a busy road side edge. Kiosks torn down and wood viewing decks burned to the ground. Interpretive trail markers are torn out of the ground. Replacement of these structures requires land management funds.

§ 701-7. Violations and penalties.

- A. Pursuant to Town of Barnstable By-laws Chapter 1, Article I, and MGL Chapter 40, § 21D, regarding the establishment of a noncriminal disposition process for Conservation Commission land use violations, the Commission does hereby promulgate the following regulation and penalty schedule for its land management rules and regulations for properties which the Commission both controls and directly manages:

Violation	Fine
Littering	\$300.00
Illicit dumping	\$300.00
Unauthorized vehicle use (cars, trucks, ATVs and motorcycles/dirt bikes)	
First	\$100.00
Second	\$200.00
Cutting or removal of vegetation, soil, stone	\$200.00
Consumption of alcoholic beverages	\$100.00
Camping	\$200.00
Defacing or destruction of any structure, sign or gate	\$200.00

- B. The Conservation Commission, its agents, and any Town police officer or Natural Resource Officer shall have the authority to issue citations assessing monetary fines, depending on the extent and severity of the violation.
- C. Failure to pay a fine assessed under this regulation within 21 calendar days may result in criminal prosecution.

Chapter 702

SHOOTING RANGE

§ 702-1. Location, use and management of range.

§ 702-2. Rules and regulations.

§ 702-3. Penalties.

§ 702-4. Enforcement officers.

§ 702-5. Periodic closing of range.

§ 702-6. Disclaimer of liability.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 8-16-1988; revised May 2002, 1-7-2003, 6-24-2003; 1-20-2005 by Order No. 2005-040; 11-22-2005; 3-14-2006; 2-27-2007; 12-11-2007; 1-6-2009; 12-4-2012; 2-19-2013; 3-5-2013; 10-15-2013. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Conservation Commission property use violations — See Ch. 701.

§ 702-1. Location, use and management of range.

The Town of Barnstable Conservation Commission's goal is to provide a safe and affordable public shooting range, following best management practices. The range is open to residents and nonresidents for a fee and is located in the West Barnstable Conservation Area, off the service road. The range is managed by the Conservation Commission, at the direction of the Town Manager, and policed and maintained by the Marine and Environmental Affairs Division. The Certified Range Safety Officers shall be provided as to be determined by the Town Manager.

§ 702-2. Rules and regulations.

The public shooting range in the West Barnstable Conservation Area is open for target shooting subject to the following rules and regulations:

A. Certified Range Safety Officer.

- (1) "Certified Range Safety Officer" (CRSO) as used herein shall mean an individual who, upon the completion of an approved training course, has been certified by the National Rifle Association, or an equivalent national shooting or law enforcement training organization, as a range safety officer.
- (2) The range shall only be opened when a CRSO or certified firearms instructor is on duty. The CRSO has the authority to interpret and enforce these rules in the interest of public safety, to enforce the Conservation Commission's General Range Use Policy and to expel and/or refuse service to any and all users. The Certified Range Safety Officer also retains the authority to close the range as circumstances may require.

B. Prerequisites for admission.

- (1) All persons entering the range must first sign the official sign-in sheet maintained by the designated range official and provide all information requested on said sheet. The Certified Range Safety Officer or his designee may require any person seeking admission into the range to produce a government-issued identification or other official identification containing a photograph and showing his/her date of birth. (This information may be provided in two separate documents, for example a school-issued identification containing a picture and a birth certificate).
- (2) Permit holders.
 - (a) All permit holders seeking admission into the public shooting range at the West Barnstable Conservation Area shall possess a range permit issued in their name. Permits are available at the Marine and Environmental Affairs Division (MEA), 1189 Phinney's Lane, Centerville, MA (508-790-6272). Before the issuance of a range permit, the applicant must certify under the pains and penalties of perjury that either s/he attended a range orientation program offered by the Town or watched the video of same online at the Town of Barnstable website: www.town.barnstable.ma.us.
 - (b) Individual permits shall be issued only to those persons possessing a valid Massachusetts firearms identification card or Massachusetts license to carry firearms. Individual permits will be issued only to those persons signing a waiver of liability and indemnification agreement for themselves. (Appendix A-1)¹
 - (c) The range use permit shall be displayed on the outer clothing of the permit holder.
 - (d) The current schedules of fees and hours of operation which apply are available at the Marine and Environmental Division.
- (3) Guests.
 - (a) Permit holders may be accompanied by no more than three adult guests. The CRSO may, at his/her sole discretion, limit the number of guests allowed to shoot. Subject to Subsection B(3)(b) below, where a minor is a guest, that minor shall be the permit holder's only guest; provided, however, that when a minor is accompanied by a parent or legal guardian, the parent or legal guardian may be allowed admission as an additional guest. The permit holder shall be responsible for any such guest, and any rule violation shall be enforceable against the permit holder as well as the guest. Any person entering the range with a permit holder will be deemed to be a guest regardless of his/her intention to participate in shooting or not. Prior to gaining admission to the range, any adult guest, must execute and present to the CRSO or designee the approved waiver of liability, and indemnification

1. Editor's Note: Appendix A-1 is on file in the Town offices.

form (See Appendix A-2.²) and pay the required admission fee. The current schedule of fees is available at the Marine and Environmental Division.

- (b) Minors under 11 years of age are not permitted inside the range facility. No junior (a minor under 18 years of age) may use any firearm unless accompanied by a parent or legal guardian or a certified firearms instructor. Minors must be under constant adult supervision and control at all times, including on the firing line. Prior to gaining admission to the range, a minor and his parent or legal guardian must execute and present to the CRSO or designee at the range the approved waiver of liability and indemnification agreement. (See Appendix A-3.³)

C. Range safety and usage.

- (1) Permit holders shall conduct themselves in an orderly manner at all times and will be held responsible for the conduct of any guest they bring with them.
- (2) No person shall possess or be under the influence of any alcoholic beverages or drugs at the range.
- (3) No smoking, eating, or drinking is allowed in the active range area (firing line/bench area).
- (4) Ear and eye protection is required for all persons at the shooting range.
- (5) Aluminum or steel cases, trash, paper or other combustible materials must be placed in trash containers separate from those used for brass.
- (6) No solicitation on the range property is allowed. Groups using the range during general public shooting hours are not permitted to make collections, charge admission, sell tickets or refreshments, solicit funds or raise money inside the range.
- (7) Firearms and ammunition.
 - (a) All firearms must be in good working condition.
 - (b) All firearms (unless licensed to carry a concealed a weapon) must be unloaded when entering the range.
 - (c) Ammunition must be in good condition, with no signs of corrosion or damage.
 - (d) Prohibited ammunition (except by law enforcement during sanctioned training event):
 - [1] Armor piercing.
 - [2] Tracer.

2. Editor's Note: Appendix A-2 is on file in the Town offices.

3. Editor's Note: Appendix A-3 is on file in the Town offices.

- [3] Incendiary.
- [4] 50 BMG.
- [5] Incendiary munitions and exploding targets are prohibited.
- (e) Black powder firearms and shotguns.
 - [1] The shooter shall ensure that black-powder-type firearms using black powder or black powder substitute are charged and the projectile inserted at the shooting tables only.
 - [2] Black powder firearms may not be charged directly from a powder flask, powder can, or large powder containers. Once charged, all powder containers must be removed from the shooting table before priming. Black powder firearms may only be primed and/or capped at the shooting table with the muzzle pointing downrange. Black powder containers will not be left on the shooting tables when the firearm is being discharged.
- (8) The use of shotguns is prohibited on the rifle and pistol ranges.
- (9) Shotgun range.
 - (a) The use of lead shot is prohibited on the shotgun range for skeet.
 - (b) Buckshot and slugs are allowed on approved target stands, which must be provided by the permit the holder. All such targets, stands and debris (if any) will be removed by the permit holder prior to departure.
- (10) All firearms (unless licensed to carry a concealed weapon) must be transported unloaded and in a case (pistols or rifles), or muzzle up with the action open, for rifles, whenever entering/exiting the range; muzzle up, with action/slide open, when moving between firing points inside the range.
- (11) All firearms not actively in use must be unloaded with actions open, resting in either the rifle stand or on a shooting bench, with muzzles pointed downrange, or stored in their cases.
- (12) No person shall deface, molest or destroy any sign, yard marker or other structures.
- (13) Automatic weapons.
 - (a) Use of automatic weapons is prohibited except use by the Barnstable Police Department or training supervised by the Barnstable Police Department.
 - (b) Bump fire/slide fire devices are prohibited.
- (14) Range users shall not distract any shooter while he/she is in the process of loading, aiming or firing.

- (15) In the event of a misfire or jammed firearm that cannot be cleared by the shooter, the shooter shall immediately bench the firearm, with the muzzle pointed downrange, and notify the CRSO.
- (16) A shooter may only go down range with the permission of the CRSO.
- (17) When any person is down range, all firearms must be unloaded and placed in a safe condition (action open). No firearm should be touched. All shooters must step back from the orange safety line.
- (18) All shooters must fire from the same firing line.

§ 702-3. Penalties.

The Barnstable Conservation Commission may determine, based on severity of the violation, to use one or all of the following:

- A. Violation of these rules and regulations or related schedules (fees; hours of operation) as may be amended from time to time shall be punishable by a fine of not more than \$300 for each separate violation.
- B. Conservation staff, Natural Resource Officers and Barnstable PD may elect to enforce violations by using the noncriminal process established by MGL c. 40 § 21D.
- C. Violations will result in immediate removal from the range and possible revocation of all range permits. Permits will be surrendered upon demand by the CRSO, Conservation staff, Natural Resource Officers and Barnstable PD. Permits may be reinstated only after a hearing by the Conservation Commission and a decision by the Commission authorizing the reinstatement.

§ 702-4. Enforcement officers.

These rules and regulations are promulgated under MGL c. 40, § 8C, and shall be enforced by Police Officers, Natural Resource Officers and such other agents or officers as may be designated by the Conservation Commission.

§ 702-5. Periodic closing of range.

The range area may be closed periodically for maintenance and/or police firearms qualification. The range may also be closed during poor weather conditions, based upon seasonal demand, staff and funding availability, emergency situations, and for other circumstances as necessary for safety. Notice will be provided when possible and posted on the board at the range and on the Town of Barnstable website: www.town.barnstable.ma.us/naturalresources.

§ 702-6. Disclaimer of liability.

Persons using this range do so at their own risk and peril. The Barnstable Municipal Shooting range and the Town of Barnstable assume no responsibility for injuries or lost or stolen items at the range.

Chapter 703

PRIVATE DOCKS AND PIERS

§ 703-1. Preamble.

§ 703-2. Definitions.

§ 703-3. Filing protocols.

§ 703-4. Regulations.

§ 703-5. Presumption of adverse effect;
burden of proof; cumulative
impact.

§ 703-6. Construction protocol.

[**HISTORY:** Adopted by the Conservation Commission of the Town of Barnstable 10-26-2004; revised 1-11-2005; 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Beaches and waterways — See Ch. 32.

Boats — See Ch. 40.

Wetlands protection — See Ch. 237.

Marinas — See Ch. 405.

Mooring — See Ch. 406.

Sandy Neck Barrier Beach — See Ch. 601.

§ 703-1. Preamble.

- A. Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable, explicitly protects the values of the natural resources of its foreshores, intertidal areas and the Commonwealth of Massachusetts' tidelands and waters as well as inland wetlands, ponds and lakes.
- B. The purpose of these regulations is to establish performance standards for private docks and piers. The authority for these regulations derives from Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable § 237-8. These regulations will not apply to freshwater docks unless the Commission specifically finds that they are applicable.
- C. The construction, use, and maintenance of docks, piers and walkways are likely to have a significant or cumulative adverse effect on the wetland resource values of storm damage prevention, fin and shellfisheries, wildlife habitat, erosion and sediment control, and recreation. Construction, maintenance and use of piers can have adverse effects on resource areas and on the use of these areas for recreational purposes. Further, piers destroyed by storm pose a threat to nearby properties by increasing water-borne debris.
- D. Turbulence, such as caused by jet-drive boats, and propeller dredging generated by boat use associated with piers significantly increase turbidity levels. High turbidity levels attenuate light. Light is necessary for photosynthetic process responsible for the primary productivity and oxygen regeneration of the water. The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the benthic environment essential for spat (mollusk larvae) settlement. Resuspension of bottom sediments causes redistribution of sediments, alteration in sediment grain size distribution and causes changes in bottom topography relief, elevation and grade, including creation

of depressions in the bottom. Settlement of sediments into depressions can create deep pockets of highly fluid-like sediment which may not be able to physically support shellfish or which can become anoxic and therefore not support shellfish. Disturbance of sediments during the period of shellfish larval settlement hinders or prevents the effective settlement of shellfish larvae. Boat traffic generated from piers will add to this disruption and may cause erosion of banks and marshes.

- E. Construction of piers and subsequent boat activity causes resuspension of nutrient-laden sediment particles which may cause a release of sediment-bound nutrients to the water column resulting in a "bloom" of vegetation. Release of nutrients to the water column leads to eutrophication and anoxic bottom conditions. Anoxic sediments and anoxic bottom conditions create adverse impacts on benthic resources, including shellfish and fisheries.
- F. While pier construction is typically the least environmentally destructive method of crossing a marsh, it may adversely affect the physical characteristics and functional value of marsh. Marsh plants provide the major energy flow (detritus food chain) between the autotrophic and heterotrophic levels in a marsh-estuarine system. Many species of sport and commercial fish and shellfish are dependent upon this system. Plants adapted to high ambient light intensity, such as marsh grasses, are ill-adapted to the shaded conditions created by a pier. Shading may result in the loss of vegetation biomass (decreased plant height, population density, and leaf thickness) or alteration of species composition. Reduction in plant density results in the loss of sediment normally trapped by roots and culms. Tidal washout of sediment can result in localized depressions which, through evaporation of trapped water, concentrate salt. High sediment salt levels effectively preclude recolonization by original vegetation. Localized tidal washout may lead to further vegetative regression, erosion, and disruption of natural communities in the area.
- G. Propeller turbulence near or in areas of submerged aquatic vegetation, such as eel grass, or salt marsh damages vegetation, thereby increasing the rate at which organic detritus is produced. If this organic detritus does not completely decompose aerobically, then anoxic bottom conditions will ensue, which adversely impact shellfish and fisheries.
- H. Cumulative impacts of the construction, maintenance and use of piers threaten to decrease the overall productivity of the marsh ecosystem, to reduce its ability to absorb storm wave energy, and to reduce its contribution to groundwater and surface water quality. Cumulative impacts also affect shellfish habitat and shell fishing.
- I. Docks and piers when placed in land containing shellfish or shellfish habitat have an adverse impact on the resource area value of recreation. The placement, length and size of docks and appurtenant floats can interfere with the harvesting of quahogs, soft-shell clams, and scallops. Docks and piers can have an unacceptable significant or cumulative effect on habitat and recreation as defined in § 327-14 of Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable.
- J. Piers, depending on their length, can have an adverse impact on recreation by interfering with recreational boating activities. Not properly designed, piers can interfere with intertidal lateral access for recreational fishing and fowling. Any proposal that affects navigation is likely to have a significant or cumulative adverse effect on recreation.

Excessive lighting on piers may cause temporary "night blindness" in boaters and may disrupt feeding habits of nocturnal aquatic animals.

- K. Docks conforming to the following regulations can be presumed to minimize the aforementioned possible negative impacts.

§ 703-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DOCKS AND PIERS — The terms "dock" and "pier" shall be used interchangeably for the purposes of these regulations and shall mean the entire structure of any pier, wharf walkway, bulkhead, or float, and any part thereof, including pilings, ramps, walkways, float, tie-off pilings, dolphins and/or outhaul posts, that is located on a bank (inland) (310 CMR 10.54), land under water bodies and waterways (310 CMR 10.56), land under the ocean (310 CMR 10.25), land under a salt pond (310 CMR 10.33), rocky intertidal shore (310 CMR 10.31), or that portion of a coastal beach (310 CMR 10.27) seaward of the mean high water line. Notwithstanding the above, either a swimming float or work float, kept at a mooring, that receives a permit from the Harbormaster and is not connected with the shore, is not a float subject to these regulations.

DRAFT — The maximum depth of a vessel as measured from the surface of the water to the deepest part when loaded to the manufacturer's maximum load specification. In vessels equipped with outboard or I/O engines, draft shall be measured with its propulsion unit in its lowest operating position.

MEAN HIGH WATER (MHW) — The present arithmetic mean of water heights observed at high tide over a specific 19-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MEAN LOW WATER (MLW) — The arithmetic mean of water heights observed at low tide over a specific 19-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MEAN LOWER LOW WATER (MLLW) — The average of the lower low water heights of each tidal day as established by the arithmetic mean of water heights observed at low tide over a specific 19-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

NAVIGATION — The ability to traverse a waterway by watercraft.

PRIVATE PIER — A water-dependent structure accessory to a residential use but shall also include Yacht Club, Association and community piers and any other noncommercial, nongovernmental pier.

SEASONAL USE — The dock, ramp, floats and all supporting materials are not in place in any wetland resource area prior to April 1 of each year and are removed prior to November 1 of each year.

SHELLFISH HABITAT — Areas below MHW that exhibit, or can be demonstrated to have exhibited within a reasonable historical period, characteristics including but not limited to sediment type, grain size, circulation patterns, hydrologic regime, water chemistry, plant and algal communities, food supply, and normal predation patterns necessary to support shellfish species populations. A determination of shellfish habitat can be based on the results of a site analysis and/or on current or historic shellfish productivity, municipal shellfish population development programs, or as shown on any maps or reports developed by the Marine and Environmental Affairs Division filed with the Commission and the Town Clerk (for example "The Significant Shellfish Resource and Habitat Area Mapping Project for the Three Bay Area," dated August 21, 2000). Shellfish relay areas are presumed to be good habitat. Absence of shellfish shall not be solely determinative of the quality of shellfish habitat due to the cyclic nature of shellfish population.

§ 703-3. Filing protocols.

- A. A notice of intent is required for any new pier or dock, whether fixed or floating, permanent or seasonal; also for any substantial alteration or extension of an existing pier or dock.
- B. one copy of the notice of intent shall be sent to each person or office on the following list, by certified mail or hand-delivered, and a receipt obtained at the time of filing of the notice of intent with the Conservation Commission:
 - (1) Shellfish Biologist/Marine and Environmental Affairs.
 - (2) Harbormaster.
 - (3) Waterways Committee.
- C. The applicant shall provide evidence to the Conservation Commission at the time of the notice of intent filing that such copies have been mailed or delivered. The project shall be clearly identified and staked or marked with a buoy at pier end within three weeks prior to the hearing.
- D. The notice of intent shall include:
 - (1) Brief comments, where appropriate, on each of the Guidelines.
 - (2) Length, draft and type of boats, horsepower and type of propulsion system intended for docking or use at the pier, including the depth of the propulsion system in its lowest position.
 - (3) Locus identified by Town Assessor's map and parcel number, and by street number, street and village.
 - (4) Locus shown on Assessor's map.
 - (5) Daytime telephone number of applicant, or name and telephone number of applicant's agent.

- (6) A shellfish survey, including an analysis of shellfish habitat suitability, and substrate sediment analysis. The minimum area surveyed shall include a 50-foot radius from the proposed project. The actual samples shall represent no less than 0.5% of this area.
 - (7) The shellfish survey report shall include as a minimum:
 - (a) The resume of the person(s) conducting the survey, including their qualifications for conducting such a survey;
 - (b) The date, time of day and tidal conditions at the time of the survey;
 - (c) A narrative explaining the methodology and equipment utilized, location and number of transects/quadrants utilized, results obtained, observations and conclusions.
- E. The project plans shall show:
- (1) A description of all materials to be used and the method of construction, including the method of pile installation; when near shellfish habitat, the type of precautions used to insure the barge and equipment used will not damage shellfish habitat.
 - (2) Where the structure is seasonal or includes seasonal floats, a statement indicating the site for winter storage and the method of hauling, if any.
 - (3) Soundings within 100 feet of the dock and from the dock to the closest marked channel. Depth shall be measured to the top surface of soft sediments. Soundings shall be of sufficient density to allow the exact determination of water depths around the proposed pier and floats, and to the closest navigable channel. The soundings shall show the MLW in the areas where the proposed boat will be berthed.
 - (4) Data shall be supplied to the Commission showing the time and date of the depth survey, the existing weather conditions, the state of the tide and the actual depths measured from water surface to the bottom. The methodology used to determine MLW and MHW shall be given. If MLW or MHW is derived from NGVD or other reference Datum, an explanation of the calculations used must be included in the narrative.
 - (5) Eel grass within 200 feet of dock.
 - (6) Marked or recognized navigation channels within 200 feet of pier.
 - (7) Any moorings within 200 feet of the proposed pier and information affixed to those moorings.
 - (8) Location of existing Town, commercial and private piers, Town landings (ways to water), public or Association beaches, shellfish propagation or relay areas and designated Town shellfishing areas within three hundred feet of the proposed pier.
 - (9) Approximate shoreward boundary of any existing public or commercial mooring area within 200 feet of the pier. (A recent aerial photograph, taken during the

summer boating season, may be used for this purpose if desired.) Proximate moorings shall be shown on plan.

- (10) Location of existing Town, commercial or private piers and docks, and Town landings, within 300 feet of pier.
 - (11) The plan shall have the official stamp of a registered civil engineer or land surveyor.
- F. In addition to the above requirements, the applicant shall comply with the Submission Requirements Checklist available at the Conservation Commission Office.
- G. A notice of intent may not be accepted or approved by the Conservation Commission unless all of the foregoing requirements have been completed. If any section does not apply, such inapplicability shall be indicated.

§ 703-4. Regulations.

- A. Private, noncommercial docks, being structures accessory to and appurtenant to dwellings, will be permitted only on land contiguous to the dwelling being served, except where unusual circumstances of longstanding may apply, such as where the dwelling is separated from the shore by a road.
- B. No dock, even if otherwise permitted, may be constructed when it is appurtenant to a residential dwelling until an occupancy permit has been issued for that dwelling.
- C. Only non-CCA material may be used in the construction of the dock. Lead caps are not permitted. No creosote treated materials may be used. [Note: CCA piles and structural timber three inches or more in thickness may continue to be used until such time as the Commission determines that suitable alternatives exist.]
- D. Lighting, if installed, shall not exceed a 25 watt incandescent bulb, set a minimum of 12 feet apart and a maximum of two feet high from the walking surface. These lights must be baffled or shaded to direct light downward only. The lights cannot utilize timers and should be switched at the beginning and end of dock. No lighting shall interfere with safe navigation.
- E. All piers and walkways shall be provided with access stairs at or proximate to MHW or other means provided for along shore public traverse. All structures shall be provided with suitable signage notifying the public of its right to free access as provided by the commonwealth, or equivalent.
- F. The DEP permit number shall be permanently and conspicuously placed on the dock so as to be visible from seaward.
- G. Storage of floats, other seasonal pier material, and boats shall not be allowed on marshes, dunes, or coastal banks. All such materials must be stored in a permitted area and transported thereto without causing damage to any resource area, or outside of conservation jurisdiction.

- H. Where the project includes the use of floats, the combined size of all floats shall be consistent with the impact of the entire project on the protected values at the site, but not greater than 200 square feet. A minimum depth of 12 inches of water measured at MLW is required under the floats.
- I. Plank spacing shall be a minimum of 3/4 inch. However, where any portion of the dock (walkways, ramps, pier, etc) crosses a salt marsh, a minimum of 65% light penetration is required. The maximum dock width shall be 4 feet, measured center of pile to center of pile. For single pile construction, maximum deck width shall be four feet.
- J. No dock, including pier, floats, dolphins, etc., shall extend further from shore than:
- (1) A point equaling 1/2 of the lot's water frontage measured in a straight line between the lot's waterfront corners. Owners of two adjoining lots may combine frontage and erect a shared pier, provided that such agreement is registered in perpetuity at the Registry of Deeds.
 - (2) A point 35 feet from a publicly used channel, either a marked channel or a channel as defined by historic use. This dimension includes the beam of the vessel being berthed.
 - (3) Is necessary to attain a depth of water at mean low water suitable for a private use of the pier that is consistent with protection of the wetland resources adjacent to the site and uses of the adjacent waters and wetlands by the public in pursuit of the interests protected under the Town of Barnstable Wetlands Protection Ordinance, but under no circumstances greater than 100 feet from mean low water, including all "ells" and "tees," regardless of configuration.
 - (4) Twenty percent of the width of a linear waterway at MLW except where the location of an existing channel shall dictate otherwise. This width shall include the beam of the berthed vessel. In such waterways, i.e., rivers, narrow estuaries, etc., sufficient open water shall be maintained to sustain a variety of activities not simply related to safe transit.
- K. Notwithstanding any other provision pertaining to length, no dock shall be longer than is necessary to attain the minimum depths required herein, and may not obstruct waterways normally used for recreation.
- L. The base of the pier shall be as close as possible to the center line of the lot, and it shall project outwards at an angle as nearly perpendicular to the shoreline as possible.
- M. Within the limits of performance standards governing overall length of docks, the following depth requirements must be met for motorized vessels, with these draft requirements continuing over time:
- (1) In areas determined to be of high-value shellfish habitat, the minimum depth under the draft of the boat must be 30 inches at MLW. High-value shellfish habitats are those found to be significant to the provision or protection of the wetland values protected under Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable. Any area rated six or above on any maps or reports developed by the Natural Resources Division and filed with the

Commission and the Town Clerk shall be presumptively considered a high-value shellfish area.

- (2) In areas determined not to be high-value shellfish habitat, the minimum depth under the draft of the boat must be 12 inches at MLW.
 - (3) For vessels using unconventional drive systems, such as but not limited to jet-drives, the applicant, in addition to meeting the above minimum depth requirements, must further demonstrate that the water depth is adequate to protect the interests herein referenced.
 - (4) To prevent bottom scouring, the above-described minimum depths must exist not only at the dock where a boat(s) is to be berthed or used but also between the dock and the nearest navigable channel or open water.
- N. Notwithstanding any other provisions contained herein, no new or expansion of an existing dock shall be permitted within an ACEC (area of critical environmental concern).
- O. Private piers shall be constructed so as to not interfere with any longstanding public recreational use of the waterway, e.g., an area used by sailboats tacking through a narrow waterway, an area used by boaters or others because of unique wind or current conditions, a structure that would interfere with public access to or from a way to water or public.
- P. Where there is a substantial expansion of an existing dock, the Commission may require compliance with all or part of these regulations.

§ 703-5. Presumption of adverse effect; burden of proof; cumulative impact.

- A. When a proposed project involves the dredging, removing, filling, altering or causing of a potentially adverse effect to an area subject to protection under the ordinance by the construction or enlargement of a dock, the Commission shall presume that the proposed activity will have a significant or cumulative adverse effect upon the resource values specified in Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable. These presumptions are rebuttable and may be overcome only by a preponderance of evidence showing that the work does not have a significant or cumulative adverse effect upon the resource values. The burden of proof to overcome the presumption shall be borne by the applicant. Moreover, the Commission will consider the impact of both existing docks and future docks with pending applications in determining the cumulative effects upon the protected resource areas. Where appropriate, the applicant may be required to submit a drawing showing all possible docks (docks that may meet Commission guidelines) within 1/2 mile of the proposed dock or other agreed to cumulative physical location. The cumulative impact of such docks and the related boat use pattern on the values protected by the ordinance will be considered by the Commission. A project which may otherwise comply with these regulations and guidelines may be denied where its cumulative effect would result in an adverse impact upon the protected resource areas.

- B. In most cases seasonal piers present less impact to the resource because of their seasonal nature and because they can be constructed entirely with environmentally benign materials. Accordingly, the presumptions set forth herein may be more easily overcome for this type of construction.
- C. These regulations notwithstanding, the Conservation Commission will consider any and all pier proposals on a site-specific basis, disposing of each according to its merit and to the degree that the preponderance of evidence shall show that the statutory interests have been preserved and protected.

§ 703-6. Construction protocol.

- A. The Natural Resources Department shall be given written notice by the applicant not less than 10 working days before the start of construction in order to arrange shellfish removal, reseeded, replanting, monitoring, and subsequent replanting if necessary, at the applicant's expense.
- B. The Conservation Commission shall be given written notice by the applicant not less than five business days before the start of construction.
- C. All construction shall proceed in compliance with the plan of record and the order of conditions. No alterations for which revised plans have not been approved prior to construction will be allowed.

Chapter 704

WETLANDS BUFFER ZONE ACTIVITY

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| § 704-0. Preamble. | § 704-4. Required waiver of performance standards for projects proposed in fifty-foot buffer. |
| § 704-1. Applicability. | § 704-5. Request for mitigation alternatives. |
| § 704-2. Definitions. | § 704-6. Applicability. |
| § 704-3. Performance standards for projects requiring notice of intent. | § 704-7. Individual consideration of proposals. |

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 6-5-1990; amended in its entirety 10-11-2011. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

§ 704-0. Preamble.

- A. Introduction. The Massachusetts Wetlands Protection Act (MGL c. 131, § 40), its attendant regulations (310 CMR 10), and Chapter 237, Wetlands Protection, of the Code of the Town of Barnstable were promulgated to protect wetland resource areas and the values or interests they serve. Moreover, the Town of Barnstable Zoning Ordinance embraces several construction setbacks from wetlands (35 feet) and MHW in coastal areas and inland great ponds (50 feet). By extending potential regulatory jurisdiction over proposed activity within the resource areas themselves and also within a one-hundred-foot buffer zone landward of such areas (when activity may elicit a deleterious resource area impact), the foregoing statute, regulations and ordinances provide the Conservation Commission with a meaningful set of tools for protecting the long-term integrity of areas under its jurisdiction.
- B. Prevention of pollution.
- (1) The role that a protective buffer zone plays in the maintenance of viable wetland resource areas has been frequently discussed in the scientific literature. Omernik (1977) thoroughly documented the dramatic increase in nitrogen and phosphorous loading to wetlands and waterbodies as their adjacent watersheds are cleared. Water quality, it was demonstrated, can be better maintained if protective buffer strips are preserved along stream edges.
 - (2) As surface runoff from developed sites flows toward a wetland resource area, the buffer zone can provide a site where eroded sediments settle, where nutrients from fertilizers are adsorbed onto soil elements, and where transition zone vegetation

can uptake unbound nutrients preventing nuisance algal blooms in adjacent waters (Harris and Gosselink, 1989).

- (3) Nutrients are by no means the only pollutant which may degrade wetland resource areas. Surface runoff from developed sites carries a diverse and potent pollution load: hydrocarbons, lawn chemicals, metals, bacteria, and viruses are common constituents (Diamond and Nilson, 1988). While it has been demonstrated that wetlands can play an effective role in cleansing pollutant loads (Nickerson, 1978), little is known of the assimilative capacity of wetland systems in accommodating the broad spectrum of nonpoint pollutants in a given watershed. Indeed, evidence of our swamping of the natural thresholds for wetland resiliency abound.
- C. Wildlife. The transitional assemblage of trees, shrubs and ground cover (containing both wetland and upland elements) frequently found in buffer zones has been found significant to the support of a greater number of native and specialist wildlife species in the interior of resource areas which they border. Put another way, similar habitats provide a gradual transition zone that is not as inhospitable as an abrupt habitat "edge" (Harris, 1984b). It seems that the relationship between the width of the transitional buffer zone along a bordering marsh, for example, and the provision of optimum wildlife habitat for its native marsh fauna is a proportional one. On the other hand, more common edge species, including many opportunistic exotics and generalists may find their habitat proportionately diminished.
- D. Cumulative effects. Cumulative effects are defined and discussed in Chapter 237, Wetlands Protection, of the Code of the Town of Barnstable. Cumulative effects result from individually minor but collectively significant actions taking place over a period of time (Council on Environmental Quality, 1978). While Chapter 237 provides that the Commission may deny any project that will have a significant cumulative effect on a wetland or its values, our permit-level activities (i.e., site disturbance) are difficult to measure on the scale of cumulative impacts (i.e., watersheds) (Gosselink and Lee, 1989). Thus, techniques employed for individual permit review are not robust enough to resolve potential significant cumulative impacts, even though it may be clear that the collective impact of many such proposals could adversely affect or imperil a wetland resource area. A reasonable hedge against the cumulative impact is the ascription of a flanking undisturbed buffer of suitable width.
- E. Storm damage prevention/flood control.
- (1) The Town of Barnstable's 100 miles of coastline have long provided an active interface for the power of the sea and the buffering capacity of its coastal land forms (marshes, beaches, dunes and banks).
 - (2) The concern for continued efficacy of the foregoing resource areas in buffering, storing, or containing floodwaters has recently been elevated in the face of predictions for sea level rise in the next century. Due to an increasingly warm atmosphere, a rise in mean sea level of 20 cm to 40 cm has been predicted by the year 2100 (Oerlemans, 1989). However, other projections find mean sea level will increase by 66 cm in the same period (Steward, 1989). However, it is important to note that only the relative rate of increase in sea level is being debated, not the

tendency to sustained increase in the centuries ahead. The effect of an accelerated rise in sea level will be an appreciable acceleration in coastal erosion processes and their notable manifestations: land erosion, storm damage, flooding, and loss of coastal wetlands.

- (3) Additionally, impacts to coastal resource areas may be incurred as a result of site development. Rill erosion of coastal banks and sedimentation of salt marshes may result from lack of appropriate drainage conveyance systems or erosion control practices for surface flows. In the face of the scientific concern over the acceleration of the rate of sea level rise, and so that upland-induced impacts to coastal resource areas may be minimized, the imposition of a flanking undisturbed buffer zone of suitable width is found both advisable and necessary, respectively.
- F. How wide a buffer? The Massachusetts Audubon Society has recommended the imposition of three-hundred-foot-wide natural undisturbed buffers in those areas that directly abut critical resource areas. Projects proposed for prohibition within the buffer zone include both non-water-dependent activities (building construction, sewage disposal systems) and water-dependent activities (bulkheads, revetments) (Brady and Buchsbaum, 1989). Minimum buffer zone widths as mandated by other northeast states for areas of critical environmental concern range from 200 feet in Rhode Island to up to 300 feet in Maine, Maryland and New Jersey.
- G. Conclusion. The Conservation Commission finds that the uniform provision of an undisturbed buffer zone width of 50 feet will serve to insulate wetland resource areas from adverse impacts stemming from development elsewhere in the buffer zone. In cases where the slope of an undisturbed buffer exceeds 18%, or in any instance where the scope or nature of the project is likely to require a greater spatial offset to wetland resource areas, the Commission reserves the right to increase buffer zone width to a more suitable dimension.
- H. Literature cited.
- (1) Brady, Pond R. Buchsbaum. 1989. Buffer zones: the environment's last defense. Mass. Audubon Society. 15 pp.
 - (2) Gosselink, J. and L. Lee. 1989. Cumulative impact in Bottomland Hardwood Forests. *Journal Society of Wetland Scientists* (9): 95-174.
 - (3) Harris, L. 1984b. *The Fragmented Forest: Island Biogeography Theory and the Preservation of Biotic Diversity*. University of Chicago Press, Chicago, IL.
 - (4) Harris, L. and J.G. Gosselink. 1989. Cumulative impacts of bottomland hardwood conversion on hydrology, water quality, and terrestrial wildlife. In *Ecological Processes and Cumulative Impacts: Illustrated by Bottomland Hardwood Wetland Ecosystems*. Lewis Publishers, Inc., Chelsea, MI. In press.
 - (5) Nickerson, N. 1978. Freshwater wetlands: their nature and importance to man. *New England Environmental Network*. 8 pp.
 - (6) Oerlemans, J. 1989. A projection of future sea level. *Climatic Change* (15): 151-74.

- (7) Omerik, J. 1977. Nonpoint source stream nutrient level relationships: a nationwide study. Corvallis Environmental Research Lab., Office of Research Development, U.S. Environmental Protection Agency, Corvallis, OR. EPA-600/3-77-105.
- (8) Stewart, R. 1989. Causes and estimates of sea-level rise with changing climate. In oceanography 1988, UNAM press, Mexico. p 65 - 68.

§ 704-1. Applicability.

Pursuant to the regulation of activity under Chapter 237, Wetlands Protection, Code of Town of Barnstable, in the one-hundred-foot buffer zone to resource areas (NOTE: For purposes of this regulation, land subject to coastal storm flowage shall not be treated as a resource area.) listed in 310 CMR 10.02 (1)(a) and in Chapter 237, § 237-2, the following regulations shall apply.

§ 704-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FIFTY-FOOT BUFFER ZONE — That area of land extending 50 feet horizontally outward from the boundary of resources areas, whether or not said buffer is in a disturbed or undisturbed/natural state.

FIFTY-TO-ONE-HUNDRED-FOOT BUFFER ZONE — That area of land extending 50 feet horizontally outward from the boundary of the fifty-foot buffer zone and terminating at the outer edge of the Commission's one-hundred-foot jurisdictional zone.

FIFTY-FOOT UNDISTURBED BUFFER ZONE — That area of land extending 50 feet horizontally outward from the boundary of resource areas. A fifty-foot undisturbed buffer zone consists entirely of unmanaged/unmaintained vegetation or long-established meadow. All of the following are absent from a fifty-foot undisturbed buffer zone: hardscape (except for permitted access paths and/or bank access stairs), lawns, ornamental plants and shrubs, gardens of any kind. This zone may be referred to herein as the "fifty-foot undisturbed buffer."

HARDSCAPE — Any structure or other covering on or above the ground that includes materials commonly used in building construction, such as wood, asphalt and concrete, and also includes, but is not limited to, all structures, decks and patios, sidewalks, landscape walls, and paving including gravel, shell, pervious or impervious concrete and asphalt.

ONE-HUNDRED-FOOT BUFFER ZONE — That area of land extending 100 feet horizontally outward from the boundary of resource areas. The one-hundred-foot buffer zone is comprised of the fifty-foot buffer zone and the fifty-to-one-hundred-foot buffer zone and constitutes the Conservation Commission's one-hundred-foot jurisdictional zone.

WATER-DEPENDENT FACILITY — Any structure or works associated with water-dependent industrial, maritime, recreational, educational, or fisheries activities that must be located at or near the shoreline and within the one-hundred-foot buffer zone. An activity is water-dependent if it is dependent on the water as part of the intrinsic nature or function of

the operation. Examples of water-dependent facilities include ports, marinas, community piers, public beaches, recreational areas and fisheries. Residences, restaurants, restrooms and concession stands are not water-dependent.

§ 704-3. Performance standards for projects requiring notice of intent.

- A. A fifty-foot undisturbed buffer zone shall be retained between the landward-most wetland resource areas and the limit of proposed site disturbance.
- B. Where a fifty-foot undisturbed buffer zone, as measured in accordance with the definition of "fifty-foot undisturbed buffer zone" in § 704-2, exists prior to the proposed work and is proposed to remain intact, proposed work within the fifty-to-one-hundred-foot buffer zone shall not require further buffer zone enhancement.
- C. Where a fifty-foot undisturbed buffer zone, as measured in accordance with the definition of "fifty-foot undisturbed buffer zone" in § 704-2, does not exist prior to the proposed work, any work proposed within the one-hundred-foot buffer zone shall be subject to mitigation planting requirements intended to restore, in so far as possible, both the dimensions of a fifty-foot undisturbed buffer and its vegetation. For such work proposed within the fifty-to-one-hundred-foot zone, the calculation of mitigation is set forth in Subsection D.
- D. Calculation of mitigation for work proposed within the fifty-to-one-hundred-foot buffer. The amount of mitigation planting required for work proposed within the fifty-to-one-hundred-foot buffer zone shall be determined by the following method:
 - (1) Calculate area of proposed hardscape within the fifty-to-one-hundred-foot buffer zone;
 - (2) Multiply the area found in Subsection D(1) by three to obtain the area of required mitigation at a planting to disturbance ratio of 3:1.
 - (3) In no case shall the total area of mitigation plantings required be greater than that which is necessary to restore a fifty-foot undisturbed buffer in its entirety.
- E. Location of mitigation planting. Mitigation planting location(s) shall clearly be shown on the site plan. The plan shall also provide area calculations for the amount of mitigation planting herein required, and the amount of mitigation planting proposed.
- F. Best practices.
 - (1) The Conservation Commission shall exercise a preference for pervious surface types of hardscape.
 - (2) Where possible and practical, proposed hardscape within the fifty-to-one-hundred-foot buffer zone shall be located no closer than 10 feet from the landward limit of the fifty-foot buffer zone, so that attendant construction, landscaping and maintenance activities may proceed without impact to the fifty-foot buffer zone.

§ 704-4. Required waiver of performance standards for projects proposed in fifty-foot buffer.

- A. Hardscape or landscape alteration proposed within the fifty-foot buffer, (except as noted in § 704-6 below) shall require a full or partial waiver of the performance standards found in § 704-3. The Conservation Commission shall have the discretion to grant a waiver should it find that the overall project, when considered with its proposed mitigation, will protect the wetland interests contained in Chapter 237. The waiver shall specify the terms of acceptable mitigation in accordance with Subsection B and either Subsection C or § 704-5 below. To the extent feasible and practical, work should be avoided within the fifty-foot buffer. Therefore, the granting of a waiver and acceptance of mitigation for work performed within the fifty-foot buffer should be considered only under exceptional, limited circumstances. In the absence of a waiver, hardscape or landscape alteration proposed within the fifty-foot buffer shall not be undertaken.
- B. Calculation of mitigation under a waiver. The minimum amount of mitigation planting required for a waiver of performance standards (§ 704-3) shall be determined using the following formula:
 - (1) Calculate area of disturbance from proposed hardscape and landscape alterations within the fifty-foot buffer zone; and
 - (2) Multiply the area found in Subsection B(1) by four to obtain the area of required mitigation at a planting to disturbance ratio of 4:1.
- C. On-site mitigation under a waiver. When the required mitigation is to be provided on site, mitigation planting location(s) shall clearly be shown on the site plan. The plan shall also provide area calculations for the amount of fifty-foot buffer zone altered, the amount of mitigation planting herein required, and the amount of mitigation planting proposed.

§ 704-5. Request for mitigation alternatives.

- A. Meadow restoration. Certain sites requiring mitigation planting may be candidates for meadow restoration. By request of the applicant or of its own accord, the Commission shall determine which sites are appropriate for this mode of mitigation.
- B. Mitigation-constrained sites. Certain sites requiring mitigation may not, from the perspective of the Commission, lend themselves to mitigation planting or meadow restoration (in part or in full) because of their landscape setting. For example an existing house close to the top of a coastal bank may have limited space for an expanded buffer to mitigate under this regulation. For such mitigation-constrained projects, the Commission may, at the applicant's request, consider off-site mitigation or in-lieu fees in order to achieve the required mitigation, as provided in Subsection C and D below.
- C. Request to provide mitigation off site.
 - (1) Request for off-site mitigation. For off-site mitigation to be considered, the following preconditions must be satisfied:

- (a) The Commission must find that the project site is mitigation-constrained;
 - (b) The applicant/representative must request in writing that the Commission consider off-site mitigation for the project;
 - (c) When off-site mitigation is proposed, the applicant/representative must identify the proposed off-site mitigation location and demonstrate the property owner's consent to use of the property for this purpose and record an order of conditions and certificate of compliance, or similar legally binding restriction on the off-site mitigation property for this purpose;
 - (d) When off-site mitigation is proposed, the area of required mitigation planting is calculated as set forth in § 704-3D for work proposed within the fifty-to-one-hundred-foot buffer zone, and as set forth in § 704-4B for work proposed within the fifty-foot buffer zone; and
 - (e) The acceptance of off-site mitigation is at the sole discretion of the Commission.
- (2) When the required mitigation is to be provided off site, mitigation planting location(s) shall clearly be shown on a site plan. The plan shall also provide area calculations for the amount of fifty-foot buffer altered, the amount of mitigation planting herein required, and the amount of mitigation planting proposed.
- D. Request to pay fees in lieu of mitigation.
- (1) Request to pay fees in lieu of off-site mitigation. For payment of fees in lieu of mitigation to be considered, the following preconditions must be satisfied:
 - (a) The Commission must find that the project site is mitigation-constrained.
 - (b) The applicant/representative must request in writing that the Commission consider payment of fees in lieu of mitigation for the project.
 - (2) In-lieu fees may be calculated as follows: multiply the total area of required mitigation planting calculated for the project by \$3.50 per square foot or in accordance with the current Conservation Commission Fee Schedule.
 - (3) In-lieu fees may be made payable to the Conservation Commission's Hamblin Conservation Fund, dedicated exclusively to the improvement of conservation land throughout Barnstable and across a variety of habitats. Alternatively, in-lieu fees may be made payable to the Town of Barnstable Conservation Fund, as established by MGL c. 40A, § 8, or other suitable entity acceptable to the Conservation Commission. In-lieu fees shall be paid at the time of recording of the order of conditions. Once received, such payments shall be nonrefundable.

§ 704-6. Applicability.

- A. This regulation shall not be construed to preclude the following activities, any of which may be permitted at the Commission's discretion, and without accompanying requirement for mitigation planting:

- (1) Access paths;
 - (2) The following maintenance activities: vista pruning; invasive species control; repair/replacement of subsurface septic disposal systems; or removal/replacement of underground fuel tanks or 21e cleanup.
 - (3) Projects undertaken by a government agency that can be demonstrated to provide an overriding public benefit, such as the area-wide improvement of water quality or the reduction of ground or surface water pollution.
 - (4) The construction or reconstruction, without expansion or intensification of use, of all or a portion of a previously existing structure which utilizes a preexisting foundation or footprint without need of additional excavation or filling, and either: is approved, or was constructed prior to 1973.
 - (5) The construction of water-dependent facilities as defined in § 704-2 herein.
- B. Projects filed under an application for a request for determination of applicability are not subject to this regulation unless and until such time as they are required to file a notice of intent.

§ 704-7. Individual consideration of proposals.

These regulations notwithstanding, the Conservation Commission will consider any and all proposals for activity within the one-hundred-foot buffer zone on a site-specific basis, disposing of each according to its merit and the degree to which wetland interests have been protected and preserved at the locus.

Chapter 705

COASTAL BANKS

§ 705-1. Definition.

§ 705-2. Comparison of DEP and Town policy.

§ 705-3. Methods for determining slope.

Definition and Delineation of Coastal Banks

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 3-22-1994; revised 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

§ 705-1. Definition.

A coastal bank is defined under Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable as a seaward face or elevated landform, other than a coastal dune, which resides at the landward side of a coastal beach, land subject to tidal action, or other coastal wetland. A coastal bank must have a slope greater than 18% (compare Figures 1 and 3¹). A coastal bank may serve as a vertical buffer to floodwater, or as a sediment source.

§ 705-2. Comparison of DEP and Town policy.

Chapter 237 coastal bank policy loosely parallels DEP's bank policy (92-1), but important differences exist.

A. In contrast with DEP:

- (1) To be regulated, a coastal bank must have a slope greater than 18%. The toe of bank is that point where the slope first exceeds 18%. The top of bank is that point where the slope diminishes to 18% or less (Figures 3 and 4). Observe that the top of bank may occur below (Figure 4) or above (Figure 3) the FEMA one-hundred-year coastal floodplain.
- (2) A slope less than or equal to 18% is not a coastal bank under Chapter 237, although it may be under DEP policy (Figure 1).
- (3) Under DEP policy, a coastal bank may arise anywhere the FEMA one-hundred-year coastal floodplain occurs, as long as the slope criteria are met. Thus, a DEP coastal bank may occur at a seemingly "interior" location, removed from the shoreline itself, but where the topography is low and the landscape prone

1. Editor's Note: Figures 1 and 3 are included at the end of this chapter.

to coastal flooding. Under Chapter 237, a regulatable coastal bank must necessarily reside adjacent to a tidal waterbody.

B. In common with DEP:

- (1) Multiple or tiered coastal banks may reside at the same site (Figure 5).
- (2) A coastal bank may extend above the FEMA one-hundred-year coastal floodplain only when the toe of bank is located below the floodplain (Figure 3). That is, a bank originating beyond the FEMA one-hundred-year coastal floodplain is presumed insignificant to storm damage prevention and flood control interests, and is not regulated (Figure 2).

§ 705-3. Methods for determining slope.




- A. Slopes of potential coastal banks shall be determined by employing one or more linear transects, depending on the bank's profile view:
- (1) Where the slope is relatively uniform (Figure 3), the transect shall extend from the toe of bank to the FEMA one-hundred-year coastal floodplain (or velocity zone, should no "A" zone be indicated). The derived "run-up slope" must exceed 18% to qualify as regulatable.
 - (2) Where the slope is variable (Figure 5), the transects shall be fitted so that the steepest portions of the bank are analyzed. Employing a single transect that includes both steep and gently sloping portions of the bank would serve to "average" the run-up slope, and shall not be considered appropriate.
- B. The top of coastal bank may be determined by either sighting the first observable break in the greater than 18% slope, or by using the transect method to quantify the point at which the slope diminishes to 18% or less.
- C. Observe that as this policy and methodology are independent of their DEP counterparts, different "local" and "state" banks may exist at the same site.
- D. Slopes which are clearly less than 18% shall require no demonstration that they are not regulatable. Where slopes are clearly greater than 18%, a regulated coastal bank may simply be conceded by the applicant without detailed analysis. Otherwise, slopes for notice of intent filings shall typically be determined from field survey spot elevations. Transect location(s) shall be shown in plan view, with spot elevations and run-up slope indicated. As a rule, deriving slopes through interpolated contours shall not be an acceptable method. Neither shall the "averaging" of a slope by the selection of too long a transect length.
- E. The Conservation Commission shall, however, reserve the right to find the appropriateness of an applicant's particular delineation method on a site-by-site basis. Moreover, where the application of this policy would describe a regulatable bank which is truly insignificant in scope, the Conservation Commission and/or its staff shall reserve the right to decline any jurisdiction over it.

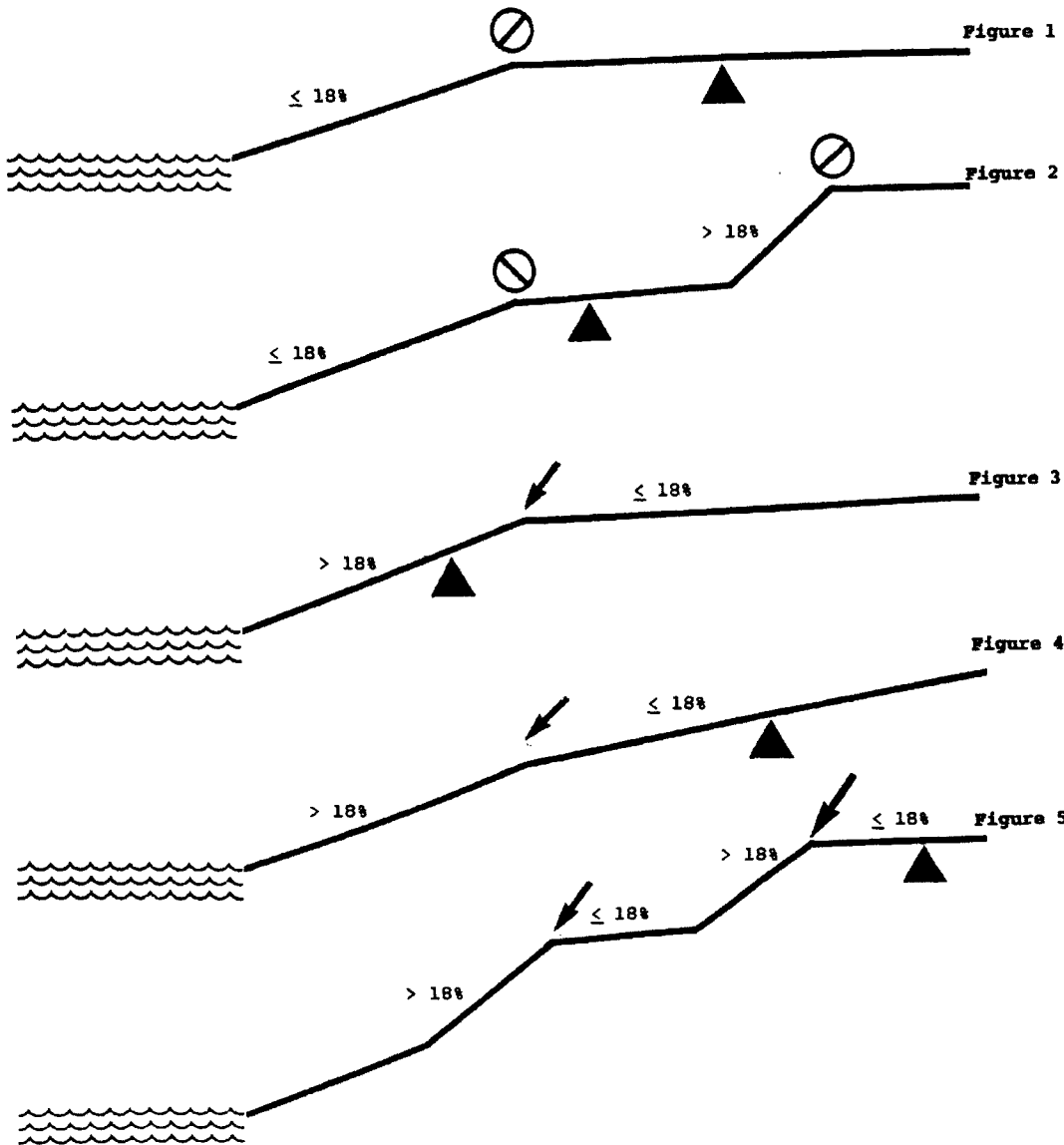
COASTAL BANKS

705 Attachment 1

Town of Barnstable
Definition and Delineation of Coastal Banks

ILLUSTRATIONS

-  FEMA - 100 YEAR COASTAL FLOOD PLAIN
-  TOP OF COASTAL BANK
-  NO COASTAL BANK PRESENT



Chapter 706

ABUTTER NOTIFICATION

§ 706-1. Notification requirements for notices of intent and requests for amended orders.

§ 706-2. Notification requirements for requests for determination.

§ 706-3. Exceptions to requirements.

[**HISTORY:** Adopted by the Conservation Commission of the Town of Barnstable 8-24-2004; revised 9-28-2004; 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

§ 706-1. Notification requirements for notices of intent and requests for amended orders.

- A. When: prior to filing the NOI, once a docket date and time have been assigned by the Conservation office.
- B. To: property owners within 100 feet of the perimeter of the subject parcel upon which work is proposed.
- C. How: by certified mail, return receipt requested. Use the Conservation office's standard form as template for your notification letter. We suggest using Town GIS office for assistance in producing abutter maps, lists and labels. Reminder: show green cards at hearing, but applicant will retain them afterward
- D. Notice: The Commission may exercise its discretion to require renotification of abutters for certain continued hearings.

§ 706-2. Notification requirements for requests for determination.

- A. When: after filing the RDA, once a docket date and time have been assigned by the Conservation office.
- B. To: property owners actually touching on the subject parcel upon which work is proposed.
- C. How: by first class mail. Use the Conservation office's standard form as template for your notification letter.

§ 706-3. Exceptions to requirements.

The Commission may allow reasonable interpretation of this regulation in special situations; for instance, where the subject parcel is very large and the work thereon small in area and

impact, or where a large condominium is to be served notice. Any such interpretation of this regulation will be regarded as a reasonable interpretation of DEP's 1994 guidance on abutter notification under the MA Wetlands Protection Act. Advance consultation with the conservation agent or consent by the Conservation Commission is required for any special situation

Chapter 707

SUBMISSION REQUIREMENTS FOR NOTICE OF INTENT APPLICATIONS

§ 707-1. Intent.

§ 707-2. Checklist.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 5-28-1997; last amended 8-4-2009. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

Private docks and piers — See Ch. 703.

Wetlands buffer zone activity — See Ch. 704.

Abutter notification — See Ch. 706.

§ 707-1. Intent.

The Barnstable Conservation Commission has adopted the following requirements in order to obtain more consistently complete submission documents necessary for a thorough and efficient review of all notice of intent (NOI) applications. Failure to complete any of the items in this checklist may result in your application being denied.

§ 707-2. Checklist.

Applicant or applicant's agent should check each box denoting that the task has been completed or in certain instances, like field staking, denoting that the task will be completed. The following submission checklist covers the requirements of Chapter 237, Wetland Protection, of the General Ordinances of the Code of the Town of Barnstable. This checklist shall be submitted to the Barnstable Conservation Division with the NOI application.

1. Requirements

- a. The applicant understands, unless the applicant has instructed otherwise, that the applicant is applying both under the Massachusetts Wetlands Protection Act, M.G.L. c.131,§ 40, and Chapter 237 of the Town of Barnstable General Ordinances.
- b. Attach a written narrative to the Notice of Intent Application (BRP WPA Form 3), found at www.mass.gov/dep, describing any project impacts and proposed mitigation as they relate to:
 - 1. Any of the interests of Chapter 237 of the General Ordinances and the MA Wetlands Protection Act.
 - 2. The performance standards contained in the MA Wetland Protections Regulations (310 CMR 10).
 - 3. Regulation Governing Activity in the 100' Buffer Zone. ¹

1. See Ch. 704, Wetlands Buffer Zone Activity.

- 4. Chapter 703, Private Docks and Piers.
- 5. Any other applicable regulations (310 CMR 10 or as promulgated under Chapter 237 of the General Ordinances).
- c. Enclosed proper payment to cover the fee for Chapter 237 filings. Consult current fee schedule.
- d. Please indicate who is to record the order of conditions (check one):

Applicant

Agent

2. **Abutter Notification** (See Abutter Notification Regulation) ²

- a. Contact the Conservation Division Office [(508) 862-4093] regarding the docketing process.
- b. Provide a copy of the list of abutters within a radius of 100 feet of the project site.
- c. Provide two copies of the Assessor's Map indicating the parcel of the project site and showing the one-hundred-foot radius perimeter line.
- d. Provide a copy of the abutter notification letter. Use the form letter provided in our Abutter Notification Regulation.
- e. Bring the green return receipts, from the certified mailings to the abutters, as proof of notification to the public hearing. If any mailings are returned, bring the entire envelope, indicating by postal service stamp the reason for return. You will retain the receipts afterwards, not the Conservation Commission.
- f. I further certify under the penalties of perjury that all abutters were notified of the Notice of Intent Application, pursuant to the requirements of Chapter 237 of the General Ordinances. Notice must be made in writing by certified mail to all abutters within 100 feet of the property line of the project location.

Signature of Applicant or Representative

Date

3. **Field Staking:**

2. Editor's Note: See Ch. 706, Abutter Notification.

SUBMISSION REQUIREMENTS FOR NOTICE OF INTENT
APPLICATIONS

§ 707-2

§ 707-2

- a. On or before Tuesday, 8:30 a.m. one week prior to the scheduled public hearing, have your project staked by a Registered Land Surveyor showing all outside corners of all proposed structures and the continuous proposed "limit of work" line.
- b. Have a wetlands scientist or other qualified professional flag all wetland resource areas on or within 100 feet of the work area. Make sure that the flags are sequentially numbered.
- c. Provide a project identification stake with bright painted top and applicant name and address easily visible from the street accessing the site.

4. **Legal Advertisement Fees:**

- a. While we take care of the ad's publication, you are responsible for its payment. Pay by check at the hearing. The amount will be calculated at that time.

5. **Minimum Documentation for a Complete Application:**

- a. Provide a completely filled out (in all parts) Notice of Intent application as locally adopted for the Town of Barnstable, including DEP Vegetated Wetland Field Data Form. Indicate Assessor's Map and parcel number of the project as well as the street address.
- b. Provide project plans stamped by a professional engineer, land surveyor, architect or landscape architect (as applicable). Plans shall be drawn at a readable scale (1" = 20' preferred). For multi-acre sites a second site plan, drawn at larger scale showing the entire site, should also be provided.

6. **The site plan shall also show:**

- 1. All existing and proposed contours (at two-foot minimum intervals, one-foot preferred on residential sites).
- 2. Clear delineation of all existing and proposed structures and features. Building structures must be accurately dimensioned (fixed location) from property lines and wetland resource areas. Plans shall be in sufficient detail to show all potential wetland impacts, mitigation, compensatory areas, engineered structures, utilities, landscaping, etc. within the area of jurisdiction. On complicated sites, existing and proposed conditions should be shown on separate sheets.
- 3. Locus inset map of the site clearly showing its location relative to surrounding public streets.
- 4. All wetland resource area flags by individual flag number (matched to the field) to clearly identify all resource areas on or within 100 feet of the work area.
- 5. Section views showing changes in grade, cuts and fills.
- 6. Plan revisions clearly noted and dated in the revision block. The individual who stamped the plan must re-initial. A Revised Plan Submittal Sheet must be attached.

- 7. At least one copy of the submitted site plan printed with original signature or over original professional seal.
- c. Provide detailed, written street directions to the locus (site).
- d. Provide a copy of a U.S.G.S. locus map indicating the general area of the project site.
- e. Provide a check for the Town of Barnstable portion of the required filing fee. (The portion payable to the Commonwealth goes elsewhere.)
- f. Provide any other documentation, photographs, architectural renderings or other supporting data prepared by professionals competent in the field which may be relevant to the application.

7. **Submission of copies of the completed application with plans:**

- a. Provide two Notice of Intent applications with plans folded to the Barnstable Conservation Division Office for the permanent file.
- b. Mail two copies of the Notice of Intent with plans to the D.E.P. Southeast Regional Office, 20 Riverside Dr., Lakeville, MA 02346. Send DEP portion of filing fee to: Dept. of Environmental Protection, Box 4062, Boston, MA 02211
- c. Provide seven additional Notice of Intent copies (with folded plans and all pertinent data attached) to the Barnstable Conservation Division Office for distribution to and review by the Barnstable Conservation Commission members. Any supplementary documentation for member review should be submitted on or before Tuesday at 12:00 noon, two weeks prior to the scheduled public hearing.
- d. For roadway construction or repair projects, provide one copy of the Notice of Intent and plans to the Coastal Health Resources Coordinator, c/o the Board of Health.
- e. For coastal piers, dredging, coastal engineering structures or other coastal erosion control projects, provide one copy of the Notice of Intent and plans to the Shellfish Biologist, c/o Natural Resources Division Office, 1189 Phinney's Lane, Centerville, MA 02632.
- f. For coastal piers and dredging, provide one copy to the Harbor Master, c/o the Harbor Master Division, 1189 Phinney's Lane, Centerville, MA 02632.

Submitted the _____ day of _____ in the year _____ in accordance with the Town of Barnstable "Regulation Governing Minimum Submission Requirements for a Notice of Intent Application" by:

(Print Name)

Owner / Applicant Signature / Telephone Number

Owner's Authorized Agent Signature / Telephone Number

Chapter 708

OUTSIDE CONSULTANTS

§ 708-1. Authority.

§ 708-2. Deposit and disposition of funds.

§ 708-3. Consultant services; selection of consultant.

§ 708-4. Notice of selection.

§ 708-5. Payment of required fee.

§ 708-6. Appeals; consultant qualifications.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 1-14-2004; revised 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

§ 708-1. Authority.

As provided by MGL c. 44, § 53G, the Barnstable Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (MGL c. 131, § 40), Chapter 237 of the General Ordinances, the Conservation Commission Act (MGL c. 40, § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. It is the intention of the Commission to use this authority judiciously, generally limited to complex technical matters as those of substantial impact to the Town of Barnstable.

§ 708-2. Deposit and disposition of funds.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Town of Barnstable Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 § 53G. Expenditures from this account shall be made only in connection with the review of specific project or projects for which a consultant fee has been collected from the applicant. Unexpended funds, if any, will be returned to the applicant at the conclusion of the proceedings.

§ 708-3. Consultant services; selection of consultant.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of impacts on protected resources, areas, values and functions, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator.

§ 708-4. Notice of selection.

The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is sent by certified mail or hand delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

§ 708-5. Payment of required fee.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within 10 business days of the request for payment shall be cause for the Commission to determine the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Commission within 10 business days of the request for payment shall be cause for the Commission to deny the permit application.

§ 708-6. Appeals; consultant qualifications.

The applicant may appeal the selection of the outside consultant to the Barnstable Town Council, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Town Council, and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

Chapter 709

NONCRIMINAL DISPOSITION OF WETLANDS VIOLATIONS

§ 709-1. Authority.

§ 709-3. Penalty schedule.

§ 709-2. Violations.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 7-1-2003; revised 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

§ 709-1. Authority.

Under §§ 237-1 to 237-14 of the Town of Barnstable Code, any person who violates any provision of this bylaw, regulations thereunder or permits issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw regulation or permit violated shall constitute a separate offense. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c.40, § 21D. In assessing noncriminal penalties (fines), the Conservation Commission and its agents shall have the discretion to hold the contractor, the property owner or both as the responsible party(ies).

§ 709-2. Violations.

Violations shall be as follows:

- A. Type 1: any unauthorized removing, filling, dredging, or altering of any of the following resource areas: surface water body; vegetated wetland or unvegetated wetlands; any land under said waters; any land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage; any coastal bank.
- B. Type 2: any unauthorized removing, filling, dredging, or altering within 100 feet of any of the following resource areas: surface water body; vegetated wetland or unvegetated wetlands; any land under said waters; any land subject to flooding or inundation by groundwater, surface water or tidal action; any coastal bank.
- C. Type 3: failure to comply with an enforcement order issued by the Barnstable Conservation Commission or its agents.
- D. Type 4: any unauthorized activity beyond the scope of an order of conditions, determination of applicability or certificate of compliance issued by the Conservation Commission.

§ 709-3. Penalty schedule.

Penalties for violations shall be as follows:

Violation	Penalty
Type 1	\$200
Type 2	\$200
Type 3	\$300
Type 4	\$300

Chapter 710

REQUESTS FOR DETERMINATION OF APPLICABILITY

§ 710-1. Guidelines for submission.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 3-6-2000; revised 3-14-2006. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

§ 710-1. Guidelines for submission.

- A. The request for determination of applicability is typically used for minor projects. Advance consultation with Conservation Division staff is encouraged.
- B. Complete the request for determination of applicability application (WPA Form 1) found at www.mass.gov/dep and attach the following to it:
 - (1) Your sketch of the project on an existing engineering plan or GIS plan. The sketch or plan shall be drawn to approximate scale and shall depict both the project footprint and the offset distances to a wetland resource area (i.e., wetlands, coastal banks, dunes, etc.). The sketch shall also be signed and dated by the preparer. GIS plan may be obtained in Conservation.
 - (2) A copy of the U.S.G.S. locus map may be obtained from Conservation. Indicate project site with an arrow and write the word "LOCUS."
 - (3) A list of direct abutters and Assessors Map of their location. These are available on the Town Web site at town.barnstable.ma.us or you may request assistance from Conservation staff. Under Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable, property owners actually touching on the subject parcel upon which work is proposed shall be notified.
 - (4) A copy of the abutter notification letter. Complete the letter supplied to you. The staff will issue you a date and time the public hearing will be held when the application is ready to be submitted. The notification letter should be sent by certified mail, the same day the application is submitted. Please plan on attending hearing. [Amended 10-14-2014]
 - (5) Written detailed directions to the project site.
- C. Make 11 copies of the application with items in Subsection B(1) through (5) attached. Submit nine copies to the Conservation Office with the proper filing fee. Send the other two copies to the D.E.P. — SERO, 20 Riverside Drive, Route 105, Lakeville, MA 02347.

- D. Have your project staked (for example, staking the corners of a proposed addition) by Tuesday 8:30 a.m., one week prior to the public hearing. This will facilitate our field review of your project.
- E. Filing fee. Include Town filing fee of \$50.00. Please make the check payable to: "Town of Barnstable."
- F. On the night of your hearing, make sure to bring a personal check to cover the cost of your legal ad (usually between \$10 and \$20). The exact amount will be posted at the table at the back of the hearing room. Make your check payable to the "Town of Barnstable," and please submit it to the Administrator when your hearing is called.

Chapter 711

SHORE OUTHAULS

§ 711-1. Preamble.

§ 711-2. Definitions.

§ 711-3. Application requirements.

§ 711-4. Regulations.

§ 711-5. Presumption of adverse effect;
burden of proof; cumulative
impact.

§ 711-6. Construction protocol.

[HISTORY: Adopted by the Conservation Commission of the Town of Barnstable 6-1-2010. Amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 237.

Private docks and piers — See Ch. 703.

§ 711-1. Preamble.

- A. Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable, explicitly protects the values of the natural resources of its foreshores, intertidal areas and the Commonwealth of Massachusetts' tidelands and waters as well as inland wetlands, ponds and lakes.
- B. The purpose of these regulations is to establish performance standards for shore outhauls. The authority for these regulations derives from Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable, § 237-8.
- C. The construction, use, and maintenance of shore outhauls are likely to have a significant or cumulative adverse effect on the wetland resource values of storm damage prevention, fin and shellfisheries, wildlife habitat, erosion and sediment control, and recreation. Construction and use of shore outhauls can have adverse effects on resource areas and on the use of these areas for recreational purposes. Further, shore outhauls destroyed by storms pose a threat to nearby properties by increasing waterborne debris.
- D. Turbulence, such as caused by jet-drive boats, and propeller dredging generated by boat use with shore outhauls significantly increase turbidity levels. High turbidity levels attenuate light. Light is necessary for the photosynthetic process responsible for the primary productivity and oxygen regeneration of the water. The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the benthic environment essential for spat (mollusk larvae) settlement. Resuspension of bottom sediments causes redistribution of sediments, alteration in sediment grain size distribution and causes changes in bottom topography relief, elevation and grade, including creation of depressions in the bottom. Settlement of sediments into depressions can create deep pockets of highly fluid-like sediment which may not be able to physically support shellfish or which can become anoxic and therefore not support shellfish. Disturbance of sediments during the period of shellfish larval settlement hinders or prevents the effective settlement of shellfish larvae. Boat traffic generated

from shore outhauls will add to this disruption and may cause erosion of banks and marshes.

- E. Construction of shore outhauls and subsequent boat activity causes resuspension of nutrient-laden sediment particles which may cause a release of sediment-bound nutrients to the water column resulting in a "bloom" of vegetation. Release of nutrients to the water column leads to eutrophication and anoxic bottom conditions. Anoxic sediments and anoxic bottom conditions create adverse impacts on benthic resources, including shellfish and fisheries.
- F. Propeller turbulence near or in areas of submerged aquatic vegetation, such as eel grass, or salt marsh damages vegetation, thereby increasing the rate at which organic detritus is produced. If this organic detritus does not completely decompose aerobically, then anoxic bottom conditions will ensue, which adversely impact shellfish and fisheries.
- G. Cumulative impacts of the construction and use of shore outhauls threaten to decrease the overall productivity of the marsh ecosystem, to reduce its ability to absorb storm wave energy, and to reduce its contribution to groundwater and surface water quality. Cumulative impacts also affect shellfish habitat and shell fishing.
- H. Shore outhauls, when placed in land containing shellfish or shellfish habitat, have an adverse impact on the resource area value of recreation. The placement of shore outhauls can interfere with the harvesting of quahogs, soft shell clams, oysters, and scallops. Shore outhauls can have an unacceptable significant or cumulative effect on habitat and recreation as defined in § 237-13 of Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable.
- I. Shore outhauls, depending on their length (distance from shore of their seaward piling), can have an adverse impact on recreation by interfering with recreational boating activities. Shore outhauls can interfere with intertidal lateral access for recreational fishing and fowling. Any proposal that affects navigation is likely to have a significant or cumulative adverse effect on recreation. The crowding or clustering of several outhauls on one parcel may exacerbate the adverse impacts to recreation.
- J. Shore outhauls conforming to the following regulations can be presumed to minimize the aforementioned possible negative impacts.
- K. All shore outhauls in Barnstable shall be governed by these regulations, whether accessory to residential use or serving commercial, yacht club, association, community, Town or other purpose.

§ 711-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DRAFT — The maximum depth of a vessel as measured from the surface of the water to the deepest part when loaded to the manufacturer's maximum load specification. In vessels equipped with outboard or I/O engines, draft shall be measured with its propulsion unit in its lowest operating position.

MEAN HIGH WATER (MHW) — The present arithmetic mean of water heights observed at high tide over a specific nineteen-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MEAN LOWER LOW WATER (MLLW) — The average of the lower low water heights of each tidal day as established by the arithmetic mean of water heights observed at low tide over a specific nineteen-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MEAN LOW WATER (MLW) — The arithmetic mean of water heights observed at low tide over a specific nineteen-year metonic cycle determined by using hydrographic survey data of the National Ocean Survey and the U.S. Department of Commerce.

MOTORBOAT — Any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion (M.G.L. c. 90B, § 1).

NAVIGATION — The ability to traverse a waterway by watercraft.

PIER OUTHAULS — Pier outhauls are similar to shore outhauls but are connected in some way to a pier. Pier outhauls are subject to a different set of regulations (Ch. 703, Private Docks and Piers).

SEASONAL USE — The securing and retrieval system of the shore outhaul, including the line and seaward piling, is not in place prior to April 1 of each year and is removed prior to November 1 of each year.

SHELLFISH HABITAT — Areas below MHW that exhibit, or can be demonstrated to have exhibited within a reasonable historical period, characteristics including but not limited to sediment type, grain size, circulation patterns, hydrologic regime, water chemistry, plant and algal communities, food supply, and normal predation patterns necessary to support shellfish species populations. A determination of shellfish habitat can be based on the results of a site analysis and/or on current or historic shellfish productivity, municipal shellfish population development programs, or as shown on any maps or reports developed by the Marine and Environmental Affairs Division filed with the Commission and the Town Clerk (for example, the "Significant Shellfish Resource and Habitat Area Mapping Project for the Three Bay Area," dated August 21, 2000). Shellfish relay areas are presumed to be good habitat. Absence of shellfish shall not be solely determinative of the quality of shellfish habitat due to the cyclic nature of shellfish population.

SHORE OUTHAUL — The entire structure of any boat securing and retrieval system by which a boat is secured to a line connecting a piling located in the water, and a post or similar structure on or near the shore. The shore outhaul system enables the craft to be retrieved for boarding or loading, and returned for securing following use.

§ 711-3. Application requirements.

A. Forms to be used to seek approval for new or existing shore outhauls:

- (1) A Notice of Intent (NOI) is required for any new or existing shore outhaul on which a motorboat or any registered vessel is to be secured. All NOI applications shall satisfy the filing protocols as set forth in Subsections B through G below.

- (2) A Request for Determination of Applicability (RDA) is required for any new or existing shore outhaul on which exclusively nonmotorized (and nonregistered) boats are to be secured, or where the application seeks approval based on conditions that satisfy the grandfathering criteria as set forth below under Subsection A(4). Commission Guidelines for Filing an RDA Application shall be followed. Sketch plans are allowed. A copy of the RDA application shall be mailed (first-class postage) to the Harbor Master and, if the shore outhaul is to be located in salt water, to the Shellfish Biologist. Their address is 1189 Phinney's Lane, Centerville, Massachusetts 02632.
- (3) Where an RDA has been filed, the Commission may determine that an NOI is necessary for any outhaul that is located in a high value shellfish habitat, or in a shellfish relay area, or where in its opinion the greater detail provided in the NOI filing requirements is necessary to aid the Commission in making its decision.
- (4) Grandfathering. An existing shore outhaul may be considered grandfathered only when it qualifies under one of the following Subsections A(4)(a) or (b).
 - (a) A Chapter 91 license has been issued by the Commonwealth of Massachusetts prior to the adoption of these regulations by the Conservation Commission. Notwithstanding any prior Chapter 91 approval of a currently existing shore outhaul, an appropriate application for continued use must be filed with the Commission using the RDA permitting process described above.
 - (b) Grandfathering may also be extended for existing shore outhauls, provided that the applicant submits the following information under either Subsection A(4)(b)[1] or [2] below:
 - [1] Written proof of local approval granted prior to the construction and initial deployment of the shore outhaul and prior to the adoption of Chapter 711 by the Conservation Commission. The local approval shall have been granted by a Town authority such as the Board of Selectmen or Town Council, Town Manager, Building Commissioner, Conservation Commission or other Town authority deemed appropriate by the Commission. Proof of the above prior approval shall be in the form of a specific permit, such as a building permit, bearing the date and signature of the issuing authority, or published minutes from a public meeting of a Town Board, or a signed letter from a Town authority on official letterhead or other proof as may be deemed acceptable by the Conservation Commission. Following Commission approval of an appropriate application under the RDA permitting process described above, the local permit holder must apply for and receive a Chapter 91 license from the Massachusetts Department of Environmental Protection.
 - [2] Upon submission of evidence, which the Commission deems satisfactory, that an existing shore outhaul or outhauls were in existence prior to January 1, 1973, the effective date of wetlands protection

permitting in the Town of Barnstable. This evidence shall include an affidavit, signed under the pains and penalties of perjury, documenting that the construction and initial deployment of a shore outhaul or outhauls, as in the case of a community or association beach, occurred prior to that date and has been continuously maintained since that date. The Conservation Commission may require additional information, including, but not limited to, dated photographs, vessel history, and other documentation that are reasonably necessary for it to make its determination. Following Commission approval of an appropriate application under the RDA permitting process as described above, the local permit holder must apply for and receive a Chapter 91 license from the Massachusetts Department of Environmental Protection.

- (5) For all existing shore outhauls (including those to be permitted as being grandfathered) the deadline for application shall be no later than October 1, 2010. Upon request, the Conservation Commission or its staff may extend the deadline.
- B. Notices of intent: Except where noted below, Commission regulation Ch. 707, Submission Requirements for Notice of Intent Applications shall be adhered to. In addition, one copy of the NOI shall be provided to each person on the following list, by certified mail or hand-delivered, with a proof of mailing or receipt included in the NOI.
- (1) Shellfish Biologist, Marine and Environmental Affairs Division (for saltwater shore outhauls only).
 - (2) Harbor Master, Marine and Environmental Affairs Division.
- C. The applicant shall provide evidence to the Conservation Commission at the time of the notice of intent filing that such copies have been mailed or delivered. The project shall be clearly identified, staked and marked on the landward end, and staked or buoyed at the seaward end at least two weeks prior to the hearing.
- D. Any Notice of Intent (required for motorcraft use of a shore outhaul) shall include:
- (1) Brief comments, where appropriate, on each of the guidelines.
 - (2) Length, draft and type of boats, horsepower and type of propulsion system intended for use at the shore outhaul, including the depth of the propulsion system in its lowest position.
 - (3) Locus identified by Town Assessor's map and parcel number, and by street number, street and village.
 - (4) Locus shown on Assessor's map.
 - (5) Daytime telephone number of applicant, or name and telephone number of applicant's agent.
 - (6) A shellfish survey (saltwater outhauls only), including an analysis of shellfish habitat suitability, and substrate sediment analysis. The minimum area surveyed

shall be 50 feet in any direction from the area to be occupied by the shore outhaul. The actual samples shall represent no less than 0.5% of this area.

- (7) The shellfish survey report shall include as a minimum:
 - (a) The resume of the person(s) conducting the survey, including their qualifications for conducting such a survey;
 - (b) The date, time of day and tidal conditions at the time of the survey;
 - (c) A narrative explaining the methodology and equipment utilized, location and number of transects/quadrants utilized, results obtained, observations and conclusions.

E. The project plans shall show:

- (1) A description of all materials to be used and the method of pile installation; when near shellfish habitat, the type of precautions used to ensure the barge and equipment used will not damage shellfish habitat.
- (2) Soundings within 100 feet of the shore outhaul and from the shore outhaul to the closest marked channel. Depth shall be measured to the top surface of soft sediments. Soundings shall be of sufficient density to allow the exact determination of water depths around the proposed shore outhaul, and to the closest navigable channel. The soundings shall show the MLW in the areas where the proposed boat will be secured.
- (3) Data shall be supplied to the Commission showing the time and date of the depth survey, the existing weather conditions, the state of the tide and the actual depths measured from water surface to the bottom. The methodology used to determine MLW and MHW shall be given. If MLW or MHW is derived from NGVD or other reference datum, an explanation of the calculations used must be included in the narrative.
- (4) Marked or recognized navigation channels within 100 feet of the proposed shore outhaul.
- (5) Any moorings within 100 feet of the proposed shore outhaul and information affixed to those moorings.
- (6) Location of other existing shore outhauls, Town landings (ways-to-water), public, association or community beaches, shellfish propagation or relay areas, and designated Town shellfishing areas within 300 feet of the proposed shore outhaul.
- (7) Approximate shoreward boundary of any existing public or commercial mooring area within 200 feet of the proposed shore outhaul. (A recent aerial photograph, taken during the summer boating season, may be used for this purpose, if desired.) Proximate moorings shall be shown on plan.
- (8) Location of existing piers and docks within 200 feet of the proposed shore outhaul.

- (9) The plan shall have the official stamp of a registered civil engineer or land surveyor.
- F. In addition to the above requirements, the applicant shall comply with the Submission Requirements Checklist available at the Conservation Commission office.
- G. A Notice of Intent may not be accepted or approved by the Conservation Commission unless all of the foregoing requirements have been completed. If any section does not apply, such inapplicability shall be indicated.

§ 711-4. Regulations.

- A. Private shore outhauls, being structures accessory to and appurtenant to dwellings, will be permitted only on land contiguous to the dwelling being served, except where unusual circumstances of longstanding may apply, such as where the dwelling is separated from the shore by a road, or at a community or association beach, wherein the outhaul owner has standing. No private shore outhaul shall be constructed in the frontage of Town-owned parcels, including, but not limited to, public ways-to-water, landings, ramps, docks, beaches or conservation areas.
- B. No shore outhaul, even if otherwise permitted, may be constructed when it is appurtenant to a residential dwelling until an occupancy permit has been issued for that dwelling.
- C. Only non-CCA material may be used in the construction of the shore outhaul. Lead caps are not permitted. No creosote-treated materials may be used.
- D. The DEP number and permit limitations sign shall be placed on the seaward piling visible from seaward. The designated color-code decal shall also be placed on the seaward piling, visible from both landward and seaward.
- E. No shore outhaul's seaward piling shall extend further from shore than:
 - (1) A point 35 feet from a publicly used channel, either a marked channel or a channel as defined by historic use.
 - (2) Is necessary to attain a depth of water at mean low water suitable for a private use of the shore outhaul that is consistent with protection of the wetland resources adjacent to the site and uses of the adjacent waters and wetlands by the public in pursuit of the interests protected under the Town of Barnstable Wetlands Protection Ordinance,¹ but not greater than 50 feet from mean low water.
- F. Notwithstanding any other provision pertaining to length, no shore outhaul shall be longer than is necessary to attain the minimum depths required herein, and may not obstruct waterways or foreshores normally used for recreation.
- G. The shore outhaul shall be as close as possible to the center line of the lot, and it shall project outwards at an angle as nearly perpendicular to the shoreline as possible.

1. Editor's Note: See Ch. 237, Wetlands Protection.

- H. Within the limits of performance standards governing overall length of shore outhauls, the following depth requirements must be met for motorized vessels, with these draft requirements continuing over time:
- (1) In areas determined to be of high-value shellfish habitat, the minimum depth under the draft of the boat must be 30 inches at MLW. High-value shellfish habitats are those found to be significant to the provision or protection of the wetland values protected under Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable. Any area rated six or above on any maps or reports developed by the Natural Resources Division and filed with the Commission and the Town Clerk shall be presumptively considered a high-value shellfish area.
 - (2) In areas determined not to be high-value shellfish habitat, the minimum depth under the draft of the boat must be 12 inches at MLW.
 - (3) For vessels using unconventional drive systems, such as but not limited to jet-drives, the applicant, in addition to meeting the above minimum depth requirements, must further demonstrate that the water depth is adequate to protect the interests herein referenced.
 - (4) To prevent bottom scouring, the above-described minimum depths must exist not only at the shore outhaul where a boat is to be secured but also between the shore outhaul and the nearest navigable channel or open water. When secured to the retrieval system, the boat shall be kept at the seaward piling.
- I. Notwithstanding any other provisions contained herein, no shore outhaul shall be permitted within an ACEC (area of critical environmental concern).
- J. Shore outhauls shall be constructed so as to not interfere with any longstanding public recreational use of the waterway, e.g., an area used by sailboats tacking through a narrow waterway, an area used by boaters or others because of unique wind or current conditions, a structure that would interfere with public access to or from a way-to-water.
- K. All shore outhauls shall be seasonal, as defined under § 711-2, and pile dimensions shall not exceed four inches by four inches.
- L. Motorboats shall not be operated until minimum permitted depths are reached.
- M. A permit holder who knowingly violates the regulations listed in § 711-4 or fails to meet the general and special conditions listed in the Order of Conditions, or the special conditions listed in the Determination of Applicability, may be subject to enforcement action by the Conservation Commission, including, but not limited to, temporary or permanent revocation of the shore outhaul permit if deemed appropriate by the Conservation Commission at the conclusion of a public hearing.

§ 711-5. Presumption of adverse effect; burden of proof; cumulative impact.

- A. When a proposed project involves the dredging, removing, filling, altering or causing of a potentially adverse effect to an area subject to protection under the ordinance by the

construction of a shore outhaul, the Commission shall presume that the proposed activity will have a significant or cumulative adverse effect upon the resource values specified in Chapter 237, Wetlands Protection, of the General Ordinances of the Code of the Town of Barnstable. These presumptions are rebuttable and may be overcome only by a preponderance of evidence showing that the work does not have a significant or cumulative adverse effect upon the resource values. The burden of proof to overcome the presumption shall be borne by the applicant. Moreover, the Commission will consider the impact of both existing and future shore outhauls with pending applications in determining the cumulative effects upon the protected resource areas. Where appropriate, the applicant may be required to submit a drawing showing all possible shore outhauls that may meet Commission guidelines within 1/2 mile of the proposed shore outhaul or other agreed to cumulative physical location. The cumulative impact of such shore outhauls and the related boat use pattern on the values protected by the ordinance will be considered by the Commission. A project which may otherwise comply with these regulations and guidelines may be denied where its cumulative effect would result in an adverse impact upon the protected resource areas.

- B. These regulations notwithstanding, the Conservation Commission will consider any and all shore outhaul proposals on a site-specific basis, disposing of each according to its merit and to the degree that the preponderance of evidence shall show that the statutory interests have been preserved and protected.

§ 711-6. Construction protocol.

- A. The Natural Resources Department shall be given written notice by the applicant not less than 10 working days before the start of construction in order to arrange shellfish removal, reseeding, replanting, monitoring, and subsequent replanting, if necessary, at the applicant's expense.
- B. The Conservation Commission shall be given written notice by the applicant not less than five business days before the start of construction.
- C. All construction shall proceed in compliance with the plan of record and the order of conditions. No alterations for which revised plans have not been approved prior to construction will be allowed.

PART VIII

PLANNING BOARD

REGULATIONS

Chapter 801

SUBDIVISION REGULATIONS

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§ 801-53. Street signs.

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§ 801-54. Cleaning up.

[HISTORY: Adopted by the Planning Board of the Town of Barnstable 2-24-2003. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 47.
Trees — See Ch. 221.
Wetlands protection — See Ch. 237.

On-site sewage disposal systems — See Ch. 360.
Wells — See Ch. 397.
Sewer connections — See Ch. 901.

ARTICLE I
Authority and Purpose

§ 801-1. Authority.

Under the authority vested in the Barnstable Planning Board, or its legally constituted successor, by § 81-Q of Chapter 41 of the General Laws, said Board hereby adopts these rules and regulations governing the subdivision of land in the Town of Barnstable. Such rules and regulations shall supersede and replace any previously adopted Subdivision Control Law Rules and Regulations; and may be amended in accordance with the provisions of § 81-Q of Chapter 41 of the General Laws.

§ 801-2. Purpose.

- A. The Subdivision Control Law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the Town by regulating the laying out and construction of ways in subdivisions providing access to the lots therein, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas.
- B. The powers of the Board under the Subdivision Control Law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for ensuring compliance with the applicable zoning ordinances; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, street lighting, and other similar municipal equipment and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the Town and with the ways in neighboring subdivisions.

ARTICLE II General Provisions

§ 801-3. Definitions and abbreviations.

For the purposes of these regulations, the following words and phrases shall have the meanings given in the following clauses, unless a contrary intention clearly appears.

AASHO — Latest revisions of Standard Specifications for Highway Materials and Methods of Sampling Testing adopted by the American Association of State Highway Officials.

ACI — Latest revisions of the Manuals of Concrete Practice published by the American Concrete Institute.

APPLICANT — Includes an owner, agent, representative, or assign so entrusted to propose and/or develop the proposed subdivision.

ASSHTO — Latest revisions of the Policy on Geometric Design of Highways and Streets by the American Association of State Highways and Transportation Officials.

ASTM — Latest revisions of Standard Specifications published by the American Society for Testing and Materials.

BOARD — The Planning Board of the Town of Barnstable.

DEFINITIVE PLAN — The plan of a subdivision as submitted (with appropriate application) to the Board for approval, to be recorded in the Registry of Deeds or filed with the Recorder of the Land Court when approved by the Board, and such plan when approved and recorded or filed. The requirements and content of the definitive plan shall be as specified hereinafter.

DEPARTMENT SPECIFICATIONS — "The Town of Barnstable, Department of Public Works, Construction Specifications" and the "Standard Specifications for Highways and Bridges of the Massachusetts Department of Public Works," as applicable, including all

revisions thereto. In the case of any conflict, the Town of Barnstable Department of Public Works specifications shall govern.

ENGINEER — A professional civil engineer registered in the Commonwealth of Massachusetts.

FRONTAGE — The distance between the side boundaries of a lot, measured along the exterior line of whatever way or street serves as legal and practical access to the buildable portion of the lot.

GENERAL LAWS — The Commonwealth of Massachusetts General Laws, with all additions and amendments. In case of a rearrangement of the General Laws, any citation of particular sections of the General Laws shall be applicable to the corresponding sections in the new codification.

LAND SURVEYOR — A land surveyor registered in the Commonwealth of Massachusetts.

LOT — An area of land delineated by lot boundary lines in one ownership and not divided by a public or private way.

OWNER — As applied to real estate, the person (as hereinafter defined) holding the ultimate fee simple title to a parcel, tract or lot of land, as shown by the record in the appropriate Land Registration Office, Registry of Deeds or Registry of Probate.

PERSON — An individual, or two or more individuals or a group or association of individuals, a trust, a partnership or a corporation having common or undivided interests in a tract of land.

PLANNING BOARD ENGINEER — A registered professional engineer so designated by the Board to act as its agent in that capacity.

PRELIMINARY PLAN — A plan of a proposed subdivision or a resubdivision of land submitted for discussion and consideration by the Board prior to the preparation of a definitive plan. Requirements and contents shall be as specified hereinafter.

PRINT — A blue-line or black-line print.

ROADWAY — That portion of a way which is designed and prepared for vehicular travel.

SCENIC ROADS — As designated by the Town of Barnstable pursuant to Chapter 40, § 15C, of Massachusetts General Laws.

STREET, MAJOR — A street which, in the opinion of the Board, is being used or will be used as a thoroughfare between different portions of the Town, or which will be the principal access to a business or industrial subdivision.

STREET, SECONDARY — A street intercepting several minor streets and which, in the opinion of the Board, may carry traffic from such minor streets to a major street or community facility, including the principal access streets or principal circulation streets of residential subdivisions, and including all streets, except those designated as major streets, of a business or industrial subdivision.

STREET, MINOR A — A street which, in the opinion of the Board, is being used or will be used primarily to provide access to abutting residential lots, and which is not intended for use by through traffic.

STREET, MINOR B — A residential street which, in the opinion of the Board, may not be used for access to land as yet undeveloped, is less than 500 feet in length, is access to four or fewer single-family lots and is not a portion of a piece of land which has been subdivided into 10 or more lots within the preceding 10 years.

SUBDIVISION — The division or resubdivision of a tract of land into two or more lots; or to the process of a subdivision; or to the land or territory subdivided. The division of a tract of land into two or more lots shall not constitute a subdivision if, at the time it is made, every lot within said tract has frontage in compliance with the Zoning Ordinance,¹ on:

- A. A public way which the Town Clerk certifies is maintained and used as a public way;
- B. A way shown on a plan previously approved and endorsed under the Subdivision Control Law which has been fully constructed in compliance with the Subdivision Rules and Regulations in effect at that time; or
- C. A way in existence when the Subdivision Control Law became effective which meets the standards of adequate access established by § 801-12B of these rules and regulations.

SUBDIVISION CONTROL LAW — Sections 81K through 81GG, inclusive, of Chapter 41, Massachusetts General Laws, as now in force, and any acts in amendment thereof.

UTILITIES — Sewers, surface water drains, water pipes, gas pipes, electric lines, telephone lines, fire alarm lines, cablevision lines and their respective appurtenances and other like services.

VEHICLE TRIP — A single or one-direction vehicle movement.

WAY — The full strip of land separate from adjoining lots, designated as a way or street as distinguished from the roadway.

WETLANDS — Resource areas subject to regulation under MGL Ch. 131, § 40; 310 CMR 10.00; and to Chapter 237, Wetlands Protection, of the Code of the Town of Barnstable.

§ 801-4. Definitive plan required prior to sale of lots or clearing of land.

- A. Plan requirement. No person shall make a subdivision of any land within the Town, or proceed with the improvement or sale of lots in a subdivision, or the construction of ways, or the installation of utilities therein, unless and until a definitive plan of such subdivision has been submitted to and approved by the Board.
- B. Clearing. No clearing of vegetation or grading for the development of ways or building sites shall commence until an approved and endorsed definitive plan has been recorded and evidence of recordation returned to the Planning Board office. This shall not apply to

1. Editor's Note: See Ch. 240, Zoning.

limited clearing for the purpose of surveying. Selective removal of trees for the purpose of soil testing may be undertaken with written permission of the Planning Board.

§ 801-5. Waivers.

A. Waiver criteria.

- (1) As provided in § 81-R of Chapter 41, Massachusetts General Laws, the Board may waive strict compliance with these requirements when, in its judgment, such action is in the public interest and not inconsistent with the intent or purposes of the Subdivision Control Law. In making this determination the Board shall consult with other agencies as the Board may deem necessary.
- (2) If the development is not consistent with the Subdivision Rules and Regulations, the written waivers granted thereto and the conditions of approval, the applicant shall be responsible for bringing the subdivision into compliance.

B. Waivers from construction standards to maintain rural character.

- (1) In order to maintain the rural character of an area, the Board may grant waivers for a residential subdivision plan which is designed in keeping with the rural character of the surrounding area, based on the following findings by the Board:
 - (a) The granting of the waiver is in the best interest of the citizens of the Town.
 - (b) That the plan is well designed, and in keeping with the general design principles set forth in Article VI of these regulations.
 - (c) That there is adequate access to the lots for the uses intended thereon.
 - (d) That the plan is in keeping with the character of the surrounding area.
- (2) In order to apply for waivers under this section, the applicant shall submit a preliminary subdivision plan to the Board.

C. Waiver requests. Applicants seeking waivers from the requirements of the Subdivision Control Rules and Regulations of the Subdivision Control Law shall submit at the time of filing of an application for approval of a preliminary or definitive subdivision plan, a separate written request for waivers. The written request shall specify by section and paragraph the requirement(s) of the Subdivision Rules and Regulations from which waivers are requested. A waiver request shall provide a concise statement of the nature and extent of the waiver(s) requested and the reason(s) for the request. Such waiver requests are required as part of the submission procedures as outlined in §§ 801-23B and 801-24A(1) of the Barnstable Subdivision Rules and Regulations.

D. Responsibility for maintenance. Where the Board approves waivers from these regulations pursuant to Subsection B above, the owners of all the land within the subdivision shall be responsible for the maintenance and repair of the street(s), including snow plowing. The Town will not accept a street as a public way that does not meet the construction standards contained herein. To provide notice to future landowners of responsibility for maintenance and repair, the applicant shall execute the S Form,

contained in the Appendix, at the Registry of Deeds, and return the recorded document to the Planning Board office. ²

§ 801-6. Inspection.

All work required by these rules and regulations shall be under the inspection of and with the approval of the respective Town departments and utility companies involved hereunder. Also see § 801-61 of these rules and regulations regarding inspections by the applicant's engineer.

§ 801-7. Responsibility.

- A. Applicant's responsibility. All work performed under these rules and regulations shall be the responsibility of the owner and/or applicant.
- B. Inspection by Town. The purpose of inspection by the Town is to assure that good practices are followed in constructing the project in accordance with the designs and specifications, and not to establish these practices.
- C. Quality control. The owner shall employ a quality control program through the services of a professional engineer.

§ 801-8. Severability.

If any section, paragraph, sentence, clause or provision of these regulations shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of these regulations shall be deemed valid and effective.

§ 801-9. Amendments.

These regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Board after a public hearing on its own motion or by petition.

**ARTICLE III
Requirements for Submission and Approval of Plans**

§ 801-10. Applicant.

- A. The applicant shall be the owner of all the land shown on the plan application, or be authorized to act upon behalf of the owner. Evidence of such authorization shall be provided to the Board with the application.
- B. The applicant shall file with the Planning Board proof of ownership of the land and, if a nonowner applicant, proof in writing of authority to act for the owner. A copy of the most recently recorded deed and the most recent real estate bill or certification of assessment to the owner from the Board of Assessors shall be submitted with all plan

2. Editor's Note: Form S is included at the end of this chapter.

applications. Evidence of payment of all property taxes for each parcel shown on the plan shall also be submitted.

§ 801-11. Certification of plans.

All plans submitted to the Board shall include a certification as to their conformance with these rules and regulations and as to the validity of their content executed by a land surveyor or professional engineer, or both, as required by the Board. The Board suggests that the owner be represented at any meeting with the Board by the person responsible for the design of the subdivision and the preparation of the plans.

§ 801-12. Adequacy of access.

- A. General. No plan shall be endorsed as not requiring approval under the Subdivision Control Law, and no subdivision plan shall be approved unless each building lot to be created by such plan has adequate access as intended under the Subdivision Control Law, Chapter 41, General Laws, §§ 81-K through 81-GG.
- B. Standards of adequacy. Streets within a subdivision shall have adequate access if they comply with the standards established in Articles VI and VII of this regulation. Existing ways providing access to the streets within a subdivision, or providing access to lots said not to be within a subdivision, shall be considered to provide adequate access only if there is assurance that prior to construction on any lots, access will be in compliance with the following:

Standards of Adequacy for Existing Ways

Total No. of Dwelling Units	1-4**	5-10	11-49	50+	Business District
Minimum ROW width (feet)	33	33	40	50	60
Surface type****	3 inches bit. con.	3 inches bit. con.	4 inches bit. con.	4 inches bit. con.	4 inches bit. con.
Surface width* (feet)	***	18	22	24	24
Minimum sight distance (feet)	250	250	250	350	250
Maximum grade	10%	10%	8%	6%	6%

* Over the entire width of the way, including curbing and berms, if any.
 ** No further access; see definition of a "street, minor B."
 *** For residential lots: 14 feet wide for two lots; 16 feet wide for three lots; and 18 feet wide for four lots.
 **** With adequate road base in the opinion of the Board's engineer.

- C. Obligations. The Board may require, as a condition of its approval of a subdivision plan, that the applicant dedicate or acquire and dedicate a strip of land for the purpose of widening accessways and/or intersections to land shown on a subdivision plan, and providing access to that subdivision, to a width as required above, and that the applicant either make physical improvements within such way or compensate the Town for the cost of such improvements in order to meet the standards specified above.

- D. Access roads. The Planning Board may require that ways in a proposed subdivision be connected to more than one access road adjoining the subdivision, depending on the existing or proposed road network, the topography and the size of the subdivision.
- E. Conditions. In any case in which the Board deems ways are not adequate, it may approve a subdivision plan with conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots without further consent by the Board to the access provided and in each case such conditions shall be endorsed on the plan to which they relate.
- F. Access over road frontage.
 - (1) Access to a lot created by an approval not required plan or by a subdivision plan shall be from the frontage that meets the legal requirements of the Zoning Ordinance,³ unless otherwise authorized by the Planning Board and so notated on the plan.
 - (2) Where such frontage and access is located along a private way, the applicant shall submit evidence to the Board, satisfactory to the Board, that the applicant has right of access over the private way.

§ 801-13. Sight distances at road intersections.

- A. Sight distances at road intersections shall be measured at an eye height of 3.5 feet and an object height of 4.25 feet above the pavement, from the center of the right lane, at the intersection with the pavement of the existing street.
- B. Site distances shall be measured according to posted speeds as follows:

Posted Speed on Existing Road (mph)	Required Site Distance (feet)
30	350
35	415
40	475
45	540
50	600

- C. Where speeds are not posted, the following standards shall apply:

3. Editor’s Note: See Ch. 240, Zoning.

Area Description	Design Speed (mph)	Required Site Distance (feet)
Thickly settled and/or buildings less than 200 feet apart	30	350
Outside a thickly settled or business district	40	475
On a highway outside a thickly settled or business district	50	600

§ 801-14. Boundaries of wetlands.

The applicant shall flag the boundaries of any wetlands within a subdivision. The flagged boundary shall be delineated on the plan.

§ 801-15. Tree map.⁴

In special instances where subdivision construction could result in excessive removal of large trees, the Planning Board may require a tree map showing the size, species and location of all trees over six inches in diameter.

§ 801-16. Submission requirements for all plans.

- A. Plans shall not be deemed to have been submitted until all the requirements of these regulations regarding form, content and procedure have been met.
- B. The applicant shall endeavor to ensure that a completed application is made at the time of submission, in order to allow the staff and the public opportunity to review the application in its entirety, prior to the public hearing. The Planning Board may deny incomplete applications and plans that do not meet the requirements of these regulations.
- C. Where the Board finds at a duly noticed public meeting that the application is incomplete, the Board may deny approval of the application as the first order of business at the public hearing, without a grant of leave to amend.

§ 801-17. Submission procedure.

One copy of the application for plan approval or endorsement shall be submitted to the Planning Board. Notice of the application shall be submitted to the Town Clerk by delivery or registered mail.

4. Editor’s Note: See Ch. 221, Trees.

§ 801-18. Environmental analysis form.

- A. When required. The applicant shall submit an environmental analysis (EA) on the EA Form ⁵ for any subdivision which:
- (1) Provides access to 10 or more dwelling units; and/or
 - (2) Provides access to four or more acres of nonresidentially zoned land; and/or
 - (3) Is a multifamily or nonresidential subdivision with access to or located within 500 feet of Route 132, Route 28 or Route 6A.
 - (4) If the Board determines it appropriate in light of special circumstances, based upon recommendations from the Planning Department and/or the Department of Public Works.
- B. Waivers from the environmental analysis (EA). Based upon recommendation(s) from the Planning Department and the Department of Public Works, Engineering Division, the Planning Board may waive any or all sections of the EA upon receipt of a written request by the applicant. It is strongly recommended that the applicant seek the determination prior to the submission of any plans.
- C. Submission. It is recommended that the EA Form be submitted providing appropriate detail with the preliminary plan in order to avoid errors or extra commitments which waste valuable time and resources. The completed form shall be filed with the definitive plan or a waiver obtained. Questions should be directed to the Planning Department.
- D. Mitigation of impacts. Subdivisions plans shall be designed so as to mitigate impacts upon natural resources and the Town's infrastructure.

ARTICLE IV
Approval Not Required Plans

§ 801-19. Applicant procedure.

- A. Anyone who seeks endorsement that a plan does not require approval under the Subdivision Control Law shall submit the following to the Planning Board office:
- (1) The original drawing, at a scale of one inch equals 20 feet or other suitable scale acceptable to the Board, and eight prints.
 - (2) Title block containing Fire District and location, the owner(s) and applicant(s) name(s), date, scale, bar scale.
 - (3) The name and address of the firm responsible for the plan; an original seal on the original plan and all full-size copies, with signature and date provided by the responsible professional, registered land surveyor. Revisions shall be clearly noted near the title block with reference number, date, description and initials of the person responsible for the revisions.

5. **Editor's Note: Form EA is included at the end of this chapter.**

- (4) Ten copies of the overall plan at a reduced scale of one inch equals 100 feet, or other suitable scale for distribution.
 - (5) A properly executed Form A and Form A Checklist, date stamped by the Town Clerk. ⁶
 - (6) The filing fee.
 - (7) A compatible electronic file of the plan shall be submitted in accordance with the file format and coordinate system specifications listed in Appendix A for accurately inputting plan information into the Town's geographic information system.
 - (8) A copy of the most recently recorded deed and a copy of the most recent tax bill.
 - (9) Evidence that all property taxes have been paid on each parcel shown on the plan.
 - (10) If the applicant is not the owner, evidence of authorization to apply on behalf of the owner.
 - (11) Evidence of right of access over a private way that provides access and frontage.
- B. Notice of application to the Planning Board shall be filed by delivery, registered or certified mail, to the Town Clerk. The plan shall not be deemed to have been submitted until all the requirements of these regulations regarding the form, contents and procedure have been met.
- C. The Planning Board may deny incomplete applications and/or plans that do not meet requirements of these regulations.

§ 801-20. Plan contents.

Plan sheets shall be 24 inches wide and 36 inches long with a three-fourths-inch border and contain the following information:

- A. A key map at a scale of one inch equals 2,000 feet, and beneath the locus, the Assessor's map and parcel number, the zoning district, any zoning overlay district, the minimum lot size, frontage, yard and width requirements.
- B. A North arrow.
- C. The present owner of the land and any remaining adjoining land owned by the present owner or by the authorized applicant. The frontage of any remaining adjoining land.
- D. The location of any existing building on the land shown on the plan, including setback and side or rear yard distances and street address.

6. Editor's Note: Form A and the Form A Checklist are included at the end of this chapter.

- E. The location and width of any street easement or way, its legal status, name (if any), the width of the traveled way and the nature of its surface. The legal status of a way shall be as determined by the Town Clerk and/or Town Engineer.
- F. Wetlands shall be shown on any buildable lot.
- G. The size of each lot shall be shown in square feet and acres and on lots which are to be separate building lots; lot shape factor calculations shall be shown. Lots which are created for conveyance purposes and which are not separate building lots shall be so noted on the plan.
- H. The plan shall contain a note: "No determination as to compliance with the Zoning Ordinance requirements has been made or intended by the above endorsement."
- I. The plan shall contain a certification clause signed by the preparer that the plan conforms to the requirements of the Registry of Deeds or the Land Court.
- J. Except for a plan to be registered with the Land Court, the plan shall contain a three-and-one-half-inch square labeled "FOR REGISTRY USE."
- K. The words "Barnstable Planning Board Approval under the Subdivision Control Law Not Required" and suitable space for the Planning Board's signature and date.
- L. Property corners shall be tied into the Massachusetts Plane Coordinate System when required by the Town of Barnstable Engineering Division of the DPW.

§ 801-21. Board actions.

The Board shall, within 21 days from the date of submission, at a meeting, either endorse the plan as one not requiring its approval under the Subdivision Control Law, or find that said plan requires the Board's approval as a subdivision. The Town Clerk shall be notified of the Board's decision in writing. If the Board determines that the plan requires its approval as a subdivision, the applicant shall be notified by certified mail.

**ARTICLE V
Subdivision Plans**

§ 801-22. Informal review of subdivision plans.

Before submitting a preliminary or definitive plan, the applicant is encouraged to submit a sketch plan to the Barnstable Planning Department for an informal staff review before formal application is made. This step does not require a formal application, fee or filing of a plan with the Planning Board.

§ 801-23. Preliminary plan.

- A. General provisions. The purpose of the submission of a preliminary plan will be to enable the applicant, the Board and other municipal agencies to discuss and clarify the problems of such subdivision before a definitive plan is prepared. In the case of a

subdivision showing lots in a residential zone, any person, before submitting a definitive plan for approval, may submit a preliminary plan to the Planning Board and to the Board of Health. In the case of a nonresidential subdivision, any person before submitting a definitive plan for approval shall submit a preliminary plan to the Planning Board and the Board of Health. Prior to submitting a plan, the applicant shall contact the Planning Board office and shall be assigned a subdivision number which shall appear on the plan. During discussions of the preliminary plan, information required for the definitive plan will be developed.

B. Submission procedure.

- (1) The following materials shall be submitted to the Planning Board office:
 - (a) One copy of the properly executed Form B and Form B Checklist. ⁷
 - (b) Copy of the most recently recorded deed and tax bill for each parcel of land. Evidence of payment of all taxes.
 - (c) Written authorization to submit the application on behalf of the owner, if the applicant is not the owner of all the land shown on the Subdivision Plan.
 - (d) The required filing fee.
 - (e) Eight prints of the preliminary plan.
 - (f) Ten copies of the plan at a reduced scale of one inch equals 100 feet, or other suitable scale for distribution.
 - (g) If the applicant proposes to seek a waiver of strict compliance with these rules and regulations, a written general description of such waiver request(s) shall be submitted with the preliminary plan in accordance with § 801-5.
 - (h) It is recommended that nine copies of the completed Environmental Analysis Form be submitted with the preliminary plan, if required, or a waiver requested.
- (2) The preliminary plan shall not be deemed to have been submitted to the Board until the application, checklist, plans and filing fee have been delivered to the Planning Board and are fully completed in accordance with these rules and regulations. The Planning Board may deny plans that are incomplete and/or do not meet the submission requirements of these regulations.
- (3) The applicant shall file by delivery or registered mail a copy of the completed application Form B with the Town Clerk stating the date of submission of the preliminary plan to the Planning Board.

C. Contents of plan. The preliminary plan shall be submitted on tracing paper or a print thereof, and shall be drawn at a suitable scale. The plans shall show the following:

7. Editor's Note: Form B and the Form B Checklist are included at the end of this chapter.

- (1) The subdivision name and number, North arrow, and the words "preliminary plan."
- (2) A key map shall be included on the preliminary plan showing the locus of the property with adjacent streets sufficient to determine the actual location of the subdivision, at a scale of one inch equals 2,000 feet.
- (3) A title block containing Fire District and location, the owner(s) and applicant(s) name(s), date, scale, bar scale.
- (4) The name and address of the firm responsible for the plan; an original seal on the original plan and all full-size copies, with signature and date provided by the responsible professional engineer and/or registered land surveyor. Revisions shall be clearly noted near the title block with reference number, date, description and initials of the person responsible for the revisions.
- (5) The Assessor's map and parcel number(s), zoning district(s) and zoning overlay district(s), zoning area, frontage, yard and width requirements. The total area of the subdivision shall be located directly below the key map.
- (6) The boundaries of the subdivision and intersection of adjoining property lines with the names of all abutters as they appear on the most recent tax list.
- (7) The existing and proposed lines of streets, ways, and their classification as a major, secondary, minor A or B street, easements, and any public areas, within or adjacent to the subdivision; with ownership status and existing pavement, if any, designated for abutting ways. The legal status of a way shall be as determined by the Town Engineer and/or Town Clerk.
- (8) The top and toe of proposed slopes adjacent to the roadways.
- (9) Sight distances at intersections of subdivision roads with existing streets. Sight distances shall be measured in accordance with § 801-13.
- (10) The approximate boundary lines of lots with approximate areas and divisions; the approximate area of wetlands on each parcel. Lots shall be numbered consecutively.
- (11) The proposed and existing system of drainage, including adjacent existing natural waterways, in a general manner.
- (12) The topography of the land shown by contours. If survey information on topography is not available at the preliminary plan stage, topographic information shall be utilized from the Town's Information Technology Department, GIS Division, indicating contours at two-foot intervals.
- (13) Significant site features including:
 - (a) Wetlands, water bodies, flood zone boundaries, kettle holes and natural drainage patterns; and/or
 - (b) Existing building structures and stone walls.

- (14) Wetlands and water bodies within 200 feet of the perimeter of the subdivision.
 - (15) Slopes in excess of 10%.
 - (16) Existing water mains, sewers and utilities adjoining and within the subdivision. The location of any existing utility poles in or adjacent to the subdivision.
 - (17) A plan showing in a general manner the proposed overall development of all contiguous land, if any, in the same ownership.
 - (18) Location of the proposed subdivision with regard to:
 - (a) Historical District or other designation as an historically significant property.⁸
 - (b) Flood areas as depicted on the special FIA Flood Insurance Rate Maps.
 - (c) Areas of critical environmental concern as designated by the Commonwealth of Massachusetts, Executive Office of Environmental Affairs.
 - (d) Designated scenic roads.
 - (e) Districts of Critical Planning Concern as designated by the Cape Cod Commission.
 - (f) Location within a critical habitat as designated by the 1990 APCC publication "Cape Cod Critical Habitats Atlas."
- D. Board actions. The Board shall, within 45 days after submission give such preliminary plan its approval with or without modification, or shall disapprove such plan stating its reasons. The applicant shall be notified by certified mail of the Board's decision and any conditions of approval. The Town Clerk shall be notified of the Board's decision in writing.

§ 801-24. Definitive plan.

A. General provisions.

- (1) Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file the following:
 - (a) With the Planning Board:
 - [1] An original drawing of the definitive plan and street plans and profiles and eight contact prints thereof. The original drawings will be returned after approval or disapproval;
 - [2] Ten copies of the plan at a reduced scale of one inch equals 100 feet or other scale suitable for distribution.

8. Editor's Note: See Ch. 112, Historic Properties.

- [3] A compatible electronic file of the plan shall be submitted in accordance with the file format and coordinate system specifications listed in Appendix A for accurately inputting plan information into the Town's geographic information system.
- [4] One copy of properly executed Application Form C and the Form C Checklist;⁹
- [5] A copy of the most recently recorded deed and tax bill for each parcel of land within the subdivision, unless submitted with a preliminary plan application, and there has been no change in ownership since that submission; evidence that taxes have been paid on all lots;
- [6] A copy of a purchase and sales agreement or other evidence of authorization to apply on behalf of the owner(s) of all of the land shown on the plan, unless submitted with the preliminary plan;
- [7] Evidence of right of access from a private way that provides frontage and access to any lot shown on the subdivision plan;
- [8] The filing fee;
- [9] Where no preliminary plan has been submitted, the applicant shall contact the Planning Board Office and shall be assigned a subdivision number which shall appear on the plan;
- [10] A list of all abutters to the subdivision as shown on the definitive plan, together with the address of each as determined from the most recent tax list;
- [11] If the applicant seeks a waiver of strict compliance with these rules and regulations, a written description of such waiver requests as specified in § 801-5 shall be submitted together with the definitive plan;
- [12] The location of all soil test sites and a description of the soil depths, percolation rate, and composition and type of soil for each lot and any open space in the subdivision;
- [13] Boring logs and soil classifications performed by a registered professional engineer shall be taken at intervals sufficient to adequately map soil types and groundwater elevations. In general, borings will be required at the location of each manhole, catch basin, leaching system, retention basin, detention basin, and every 250 feet along the roadway unless otherwise approved by the Board's engineer. Depth to groundwater shall be recorded if encountered;
- [14] Two copies of calculations for the determination of all waterway openings to justify culvert and drain sizes as required by § 801-27C.

9. Editor's Note: Form C and Form C Checklist are included at the end of this chapter.

Such calculations shall be prepared by a registered professional engineer;

[15] A copy of all the drainage calculations;

[16] Nine copies of the environmental analysis report, when required;

[17] Engineer's report outlining projected maintenance needed for the subdivision roads and drainage system over the next 20 years;

[18] A tree map in accordance with § 801-15; and

[19] Report from the Cape Cod Commission, if any.

- (b) With the Town Clerk: The applicant shall file, by delivery or registered mail, a notice stating the date of submission to the Planning Board.
- (c) With the Board of Health: four copies of all the plans and a copy of Application Form C.
- (d) With the appropriate Fire Department and public water supply office, if any, one copy of all the plans and a copy of Application Form C.

- (2) The definitive plan shall not be deemed to have been submitted to the Board until the application, filing fee, and other information required under Article III, together with the definitive plan and prints, have been submitted and are fully complete in accordance with these rules and regulations. The Board may deny approval of plan applications that are incomplete and/or do not meet the submission requirements of these regulations.

B. Contents of plan. The definitive plan and street plans and profiles shall be prepared by a registered professional civil engineer and a registered land surveyor. The plan shall be drawn to a scale of one inch equals 40 feet unless an alternative scale is approved by the Planning Board's engineer. The definitive plan shall meet the requirements of the Registry of Deeds or Land Court as applicable depending upon the method of recording. Plans shall also conform to the regulations of the Board of Professional Engineers and Land Surveyors, 250 CMR and its latest revisions thereto. Sheet size shall not exceed 24 inches by 36 inches. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire subdivision.

- (1) Sheet(s) A. The definitive plan shall show the following:
 - (a) The subdivision name and number, North arrow, legend, Fire District and location, the owner(s) and applicant(s) name(s), date, scale, bar scale and the words "definitive plan."
 - (b) A key map with adjacent streets sufficient to determine the actual location of the subdivision, at a scale of one inch equals 2,000 feet. The Assessor's map and parcel number(s), total gross area of the subdivision and any wetlands, zoning district(s), zoning overlay district(s), zoning area, width, yard and frontage requirements, shall be located directly below the key map.

- (c) Title block containing the name and address of the firm responsible for the plan; an original seal on the original plan and all full-size copies, with signature and date provided by the responsible professional engineer and/or registered land surveyor. Revisions shall be clearly noted near the title block with reference number, date, description and initials of the person responsible for the revisions.
 - (d) The boundaries of the subdivision and intersection of adjoining property lines with the names of all abutters as they appear on the most recent tax list.
 - (e) Any zoning district, zoning overlay GP and WP Districts, or Fire District lines which pass through the property.
 - (f) Existing and proposed lines of streets and their classification as a major, secondary, minor A or B street, ways, lots, easements and public or common areas within the subdivision with ownership status and existing pavement, if any. The proposed names of proposed streets shall be shown in pencil until they have been approved by the Board's engineer.
 - (g) Sufficient data to determine readily the location, direction, and length of every street and way line, easements, lot line and boundary line, and to establish those lines on the ground.
 - (h) Location of all permanent monuments properly identified as to whether existing or proposed.
 - (i) The location of any existing buildings and stone walls.
 - (j) The location of wetlands and surface water bodies.
 - (k) Area of each lot in acres and square feet; net area of wetlands within each lot or parcel, in square feet; lot shape factor calculations noted on each lot.
 - (l) Plans to be approved with a covenant shall contain the following note: "Approval of this plan subject to compliance with covenant to be recorded herewith."
 - (m) Suitable space to record the action of the Board and the Town Clerk's certification of no appeal.
- (2) Sheet B. Separate reproducible copies of the definitive plan shall show the following:
- (a) Beneath the key map, the total number of linear feet, measured along the center line, for each street proposed on the plan. The gross area of roads and culs-de-sac in square feet and acres.
 - (b) Lot numbers and street numbers, if issued by the Town Engineer, enclosed in a square.
 - (c) The coordinates of all property corners, lot corners, and street line changes in direction. Coordinates shall be tied into the Massachusetts Plane Coordinate

System where required by the Town of Barnstable Engineering Division of the DPW.

- (3) Sheet C. A separate reproducible copy of the definitive plan shall show the following:
- (a) Location, names, legal status, right-of-way widths and pavement widths of streets bounding, approaching or within reasonable proximity of the subdivision. Legal status of streets shall be as certified by the Town Clerk.
 - (b) The top and toe of proposed slopes adjacent to the proposed roadway.
 - (c) Slopes in excess of 10% and soils classified as having severe slope characteristics for building site development by the USDA, Soil Conservation Service, latest Soil Survey Report for Barnstable County.
 - (d) Road center-line stationing, referenced to the street plans and profiles. Zero point for center-line stationing shall be the intersection of center lines.
 - (e) Topography shall be shown by contour lines at a maximum interval of two feet. Existing contours shall be shown as dashed lines and proposed final contours as solid lines. Contours shall extend beyond the boundaries of the property a sufficient distance to indicate the effect of the subdivision on abutting property. A minimum of two benchmarks shall be indicated on the plan.
 - (f) Sight distances at intersections of subdivision roads with existing streets. Sight distances shall be measured in accordance with § 801-13.
 - (g) The complete drainage system including preexisting drainage patterns, proposed drainage components and the delineation of all watersheds including water entering and leaving the site.
 - (h) Erosion and sediment control plan including temporary drainage facilities for use during construction.
 - (i) Wetlands and surface water bodies within 200 feet of the perimeter of the subdivision.
 - (j) Existing water mains, utilities and sewers adjoining and within the subdivision. The location of any existing utility poles in or adjacent to the subdivision.
 - (k) Location of the proposed subdivision with regard to a:
 - [1] Historic District or other designation as an historically significant property.
 - [2] Flood areas as depicted on the special FIA Flood Insurance Rate Maps.

- [3] Areas of critical environmental concern (ACEC) as designated by the Commonwealth of Massachusetts, Executive Office of Environmental Affairs.
 - [4] Designated scenic roads.
 - [5] District of Critical Planning Concern as designated by the Cape Cod Commission.
 - [6] Location within a critical habitat as designated by the 1990 APCC publication "Cape Cod Critical Habitats Atlas."
- (4) Sheet D. A sketch plan showing the approximate layout of streets of any remaining adjoining land owned by the applicant or purchaser of the land, unless a subdivision plan of the remaining land has been filed with the Board.
- C. Road plans, profiles and cross sections. Two copies of separate plan and profiles of every street shall be submitted showing the following data:
- (1) A horizontal scale of one inch equals 40 feet. A vertical scale of one inch equals four feet.
 - (2) Existing center-line profile to be shown as alternating dotted and dashed black line. Existing center-line profile for intersecting streets to be shown for at least 100 feet each side of the intersection of street center lines. Zero point for center-line stationing shall be the intersection of center lines.
 - (3) Finished, designed profile to be full black line, with elevations shown every 50 feet, except where there is a vertical curve, the elevations shall be shown every 25 feet.
 - (4) Elevations referred to mean sea level datum as established by the U.S. Coast and Geodetic Survey.
 - (5) Plan, profile and cross section of proposed system of drainage including swales, retention basins, catch basins, manholes, and proposed inverts and pipe sizes. The location and dimensions of drainage easements and limits of any surface water body or wetland, and the height of groundwater, corrected to maximum elevation using the Frimpter correction method.
 - (6) All existing walks and driveways.
 - (7) Rates of gradient shown by figures for roadways and drainage.
 - (8) Location of existing and proposed gas, water, sewer, electric, telephone, cable and other utilities, in and adjacent to the subdivision, including utility poles; any conflict between existing utilities and proposed construction shall be shown. Utilities shall be shown in schematic fashion after consultation between the applicant and the utility company involved. Final plans of utilities shall be submitted for approval to the Board's engineer prior to construction.
 - (9) Two bench marks for each street.

- (10) Cross sections of roadway at fifty-foot intervals. Cross sections shall show existing and proposed grades including top and toe of slopes, pavement thickness, pavement width, existing and proposed utilities and gravel base and proposed drainage.
- (11) Spot elevations on gutters and center lines of corner roundings at street intersections and at culs-de-sac.
- (12) Location and type of proposed traffic signage and markings designed in accordance with the manual on Uniform Traffic Control Devices by the Federal Highway Administration and state laws.

D. Review by Board of Health as to suitability of land.

- (1) When a definitive plan of a subdivision is submitted to the Planning Board four copies thereof shall also be filed with the Board of Health. Such Health Board or officer shall report to the Planning Board in writing approval or disapproval of said plan, and in the event of disapproval shall make certain findings as to which, if any, of the lots shown within the subdivision cannot be used for building sites without injury to the public health, and include such specific findings and reasons therefor in such report, and, where possible, shall make recommendations for the adjustment thereof; provided, however, that if a municipal sewerage system will service the proposed subdivision, then failure of the Board to make such a report within 45 days after the plan is filed with their office shall be deemed approval by such Board or officer. Such Health Board or Officer shall send a copy of such report, if any, to the person who submitted such plan.
- (2) Any lot so located that it cannot be served by a connection to a municipal sewer system shall be provided with on-site sewage disposal facilities satisfactory to the Board of Health and the Planning Board.¹⁰

E. Review by other officials. Before approval of the definitive plan is given, the applicant shall provide certification that the proposed improvements shown on said plan are laid out to the satisfaction of the official and for the facilities listed below:

- (1) The Department of Public Works as to the design of the street system according to classification as a major, secondary, minor A or B street, location of easements, and design of the drainage system including appurtenances.
- (2) The Chief of the Fire Department as to the location of the hydrants and the layout of the fire alarm system, including location of boxes, if any, and to the adequacy of access for emergency vehicles into the proposed subdivision.
- (3) The Tree Warden as to the location, size and species of street trees.
- (4) The Department of Public Works as to the requirements for provision for connections to the sewer system, if available, and if required, the layout and design of the necessary connecting mains, laterals, manholes and stubs for such system.

10. Editor's Note: See Ch. 360, On-Site Sewage Disposal Systems.

- (5) The manager of the water supplier as to the requirements and schematic location of the proposed water supply system.
 - (6) The manager of the electric company as to the requirements for electrical service and schematic location of the electrical services.
 - (7) The gas company as to the schematic location for the gas service.
 - (8) The telephone company as to the schematic location of the telephone lines.
 - (9) The cablevision company as to the schematic location of the cable vision lines.
 - (10) The Police Chief.
 - (11) The Superintendent of Schools.
 - (12) The Conservation Commission.
 - (13) Such other departments or officials deemed necessary.
- F. Public hearing. Before approval of the definitive plan is given, a public hearing shall be held by the Board at the time and place designated by the Board. Notice of the hearing shall be given by the Board in accordance with MGL Ch. 41, the Subdivision Control Law. A copy of said notice will be mailed to the applicant and to all owners of land abutting upon the subdivision as appearing in the most recent tax list.
- G. Payment of taxes. All property taxes, for all parcels subject to the subdivision plan, shall be paid in full prior to approval of a definitive plan.
- H. Approval, modification or disapproval.
- (1) When a preliminary plan has been submitted and acted upon or when 45 days have elapsed since the submission of a preliminary plan, the Planning Board shall take final action, after a public hearing, within 90 days of submission of the completed definitive plan application.
 - (2) When no preliminary plan has been submitted, the Planning Board shall take final action, after a public hearing, within 135 days of submission of the completed definitive plan application.
 - (3) Upon receipt of a written request from the applicant, the time period for action upon a definitive plan may be extended. Notice of such extension of time shall be filed with the Town Clerk.
 - (4) The Planning Board may vote to approve, approve with conditions, or disapprove such plan. If the Board disapproves a plan, it shall state in detail wherein the plan does not conform to the rules and regulations of the Planning Board, or the recommendations of the Board of Health, and shall so notify the applicant.
- I. Development agreement.
- (1) Prior to the Planning Board's endorsement of approval of the subdivision plan, the applicant and the Planning Board shall enter into a development agreement by the

Form Development Agreements in the Appendix, together with Exhibits 1 and 2, as required.¹¹

- (2) Exhibit 1, Conditions of Approval: Exhibit 1 shall contain all the Planning Board's conditions of approval of the subdivision plan and special permit for an open space subdivision, if any. Exhibit 1 shall be attached to and made a part of the development agreement, when applicable.
- (3) Exhibit 2, Grant of Waivers: In the event that a definitive subdivision plan of land is approved with waivers from the Subdivision Control Rules and Regulations, the applicant, as a condition of approval of the plan, shall submit a completed form, Exhibit 2, Grant of Waiver(s); Exhibit 2 shall be attached thereto and made a part thereof the development agreement. The Town of Barnstable Planning Board shall be named as the grantor and the owner(s) of the land shown on the subdivision plan shall be designated as the grantees. The grant shall specify the sections and paragraphs of the Subdivision Rules and Regulations being waived, and for each waiver being granted must contain a concise description of the nature and extent of such waiver. The grant of waivers shall also contain the following sentence: "The waivers that are specifically described herein are the only waivers that are acknowledged and approved by the Barnstable Planning Board on the date of endorsement of the above-referenced definitive subdivision plan".
- (4) The Planning Board shall vote to sign the fully completed development agreement together with Exhibits 1 and 2 at a duly advertised meeting of the Planning Board.
- (5) The development agreement shall be in full force and effect for 20 years from the date of execution of the agreement, or until the Planning Board finds that the subdivision is complete and fully executes Form M, the Certificate of Completion.¹²

J. Performance guarantee.

- (1) Recordation deposit. Prior to the Planning Board's endorsement of approval, the applicant shall deposit with the Planning Board a bond, cash or other negotiable security satisfactory to the Planning Board for \$1,000. This deposit will be refunded upon receipt of a copy of all recorded documents required in Subsection L below.
- (2) Security to ensure the completion of the subdivision. The Planning Board shall require, prior to endorsement of its approval of a definitive plan, that the construction of ways and the installation of utilities as outlined and specified in Articles VI and VII be secured by one, or in part by one and in part by the other, of the following methods which may from time to time be varied by the applicant:

11. Editor's Note: The Development Agreements Form, with Exhibits 1 and 2, is included at the end of this chapter.

12. Editor's Note: Form M is included at the end of this chapter.

- (a) By a covenant.
- [1] The applicant shall file a covenant on Form F, ¹³ running with the land, whereby such improvements as shown on the definitive plan and as specified in Articles VI and VII and not covered by bond or other security under Subsection J(2)(b) below shall be provided to serve any lot before such lot may be built upon or conveyed, except as specified by Chapter 41, § 81U, of Massachusetts General Laws.
 - [2] The applicant shall submit to the Planning Board the fully executed covenant, prepared on Form F and attached thereto and made a part thereof the development agreement.
 - [3] Prior to the Board's approval of the covenant, the applicant's engineer or land surveyor shall place the following note on the plan: "Approval of this plan is subject to compliance with covenant to be recorded herewith."
 - [4] The Building Commissioner shall not issue any permit for the construction of a building, or a foundation for a building on any lot within a subdivision, without an authorized signature from the office of the Planning Board that the lot(s) are not subject to a covenant.
- (b) By bonds, deposit of money or negotiable securities.
- [1] The applicant shall either file a proper bond or a deposit of money or negotiable securities in an amount determined by the Board, based upon the recommendation of the Board's engineer, sufficient to cover the cost of all the requirements of the Subdivision Rules and Regulations, in accordance with the decision of the Planning Board, and as specified under Articles VI and VII, and not covered under the covenant under Subsection J(2)(a) above. The amount of the bond or other security shall also include an amount sufficient to cover inflation, and administrative and engineering costs if the Board determines it necessary for the Town to complete the subdivision. The applicant shall complete Form O ¹⁴ and submit to the Board attached thereto and made a part thereof the development agreement.
 - [2] Such bond or security, if filed or deposited, shall be approved as to form by the Town Attorney, and as to surety by the Town Treasurer, and shall be contingent on the completion of such improvements within 12 months of the date of the bond or surety.
- (3) At the discretion of the Board, a time extension for completion of the subdivision may be granted for a period not to exceed 12 months, provided that such an extension may be conditioned upon an increase in the amount of such bond or security as determined by the Board; and provided that a new bond or other

13. Editor's Note: Form F is included at the end of this chapter.

14. Editor's Note: Form O is included at the end of this chapter.

security is filed with the Planning Board 30 days before any date of expiration. A request for a time extension of the bond or other security shall be accompanied by a written statement from the applicant's engineer describing the degree of completion of the improvements and the measures that have been taken to prevent soil and slope erosion and to protect drainage structures from sediments.

- (4) It shall be the responsibility of the applicant to maintain adequate security at all times, as determined by the Board, to ensure the completion of the subdivision. If at any time security fails, any unsold lots shall be considered to be under covenant, not to be conveyed or built upon; and the Town shall not issue building permits for such lots in the subdivision. The applicant shall forthwith forward to the Planning Board alternative security acceptable to the Planning Board.
 - (5) Prior to the issuance of an occupancy permit, the road providing access to the proposed structure shall be paved with, at a minimum, a binder course of Class 1 bituminous concrete satisfactory to the Town Engineer, and a hydrant shall be in working condition satisfactory to the Fire Chief, within 500 feet of the proposed structure.
 - (6) The applicant shall furnish the Planning Board with an itemized breakdown of the estimated construction costs at the time he requests the setting of the security amount and when he requests a reduction in security.
- K. Certificate of approval. The action of the Board in respect to said plan shall be by vote, copies of which shall be certified and filed with the Town Clerk and sent by registered mail to the applicant. Final approval, if granted, shall be endorsed on the original drawing of the definitive plan by Board members, but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Board with the Town Clerk and said Clerk has notified the Board that no appeal has been filed. In any case, approval of the definitive plan shall not constitute the laying out or acceptance by the Town of any ways within a subdivision.
- L. Recording of plan and documents.
- (1) After the return to the applicant of the definitive plan, as approved and endorsed, the applicant shall cause to be recorded at the Barnstable Registry of Deeds and in the case of registered land, with the recorder of the Land Court, said plan with the following documents listed below, and shall pay all fees and costs related to the registry of the plan and documents:
 - (a) The fully executed development agreement, together with the following documents as required:
 - [1] Exhibit 1 of Development Agreement, Conditions of Approval of the Subdivision Plan and special permit, if any).
 - [2] Exhibit 2 of Development Agreement, Grant of Waivers.
 - [3] Form F, Covenant.
 - [4] Form O, Performance Security.

- [5] Form 1A, Open Space Restrictions and Easement.
 - [6] Deed of open space to homeowners/other homeowners' association documents.
 - [7] Form S, when required.
- (2) The original of the recorded Form 1A and the Planning Board covenant, and recorded copies of the development agreement and other documents required by the Planning Board shall be received by the Planning Board office within 30 days of the final endorsement of the definitive plan, or as otherwise extended by the Board. Failure to comply with this requirement shall result in automatic rescission of approval of the subdivision plan. Upon receipt and acceptance by the Board of all the required recorded documents, the Board shall release the recordation deposit.
- M. Revision of definitive plan. No revision or change of the definitive plan can be made without the prior approval of the Planning Board. This includes any revision of any nature whatsoever of the definitive plan. If the applicant desires to make revisions due to field conditions or for any reason whatsoever, the applicant shall submit a print of the definitive plan or plans to be revised with a colored-pencil representation of the proposed changes. The Board will consider such change in the same manner as consideration of the original plan and approve, disapprove or modify the requested change with or without a public hearing as the Board may determine. The change as approved shall then be incorporated on the original definitive plan or a cloth reproduction thereof, and prints shall be filed as required of the original plan. Any request for waivers shall be submitted in accordance with §§ 801-5 and 801-24H(3).
- N. Evidence of satisfactory performance. Before the Board will release the interest of the Town in a performance bond or deposit or, in the case of approval with a covenant, issue a release of covenant:
- (1) As-built plans.
 - (a) The applicant shall be responsible for filing with the Planning Board two copies of as-built plans of the ways of the subdivision, clearly marked as such. The as-built plan shall include the profile plan and shall meet the requirements as to format and content as given in Subsections B and C of this section for definitive plans. The as-built plans may be cloth reproductions of the definitive plans. The as-built plans shall represent the as-built conditions of all work and appurtenances constructed as a requirement of the subdivision and shall show all utilities installed as part of the subdivision.
 - (b) The as-built plan shall be prepared by a registered professional land surveyor and shall meet the requirements of the Registry of Deeds or the Land Court as applicable depending upon the method of recording. Plans shall conform to the requirements of the Town Engineer and shall be suitable for recording the plan as a taking of the road by the Town. The plan shall include the location of the road layout, pavement, storm drain facilities, drainage

easements, concrete bounds, driveways, fences, grades, and all other pertinent physical features within the road layout or drainage easements. A separate reproducible copy shall indicate below grade drainage facilities and utilities.

- (c) A compatible electronic file of the plan shall be submitted in accordance with the file format and coordinate system specifications listed in Appendix A¹⁵ for accurately inputting plan information into the Town's geographic information system.
- (2) Certified inspection reports. The applicant shall furnish to the Board from the applicant's engineer, certified inspection reports in compliance with Article VIII, to the effect that all work required by these rules and regulations has been completed for each way in the subdivision (or way or ways serving the lots in question), and that the applicant's engineer has approved the methods of construction and the materials used in the performance of such work, at each stage of work.
- (3) Other reports required. The applicant shall obtain and furnish statements to the Planning Board, that all utilities have been installed in compliance with all the requirements of the following agencies:
 - (a) From the Chief of the Fire Department a statement that the Chief has approved the installation of the hydrant system for each way in question and that the installation of the fire alarm cable and boxes has been approved by the Fire Chief.
 - (b) From the Water Superintendent (if any) a statement that the Superintendent has approved the installation of the public water supply system to the development.
 - (c) From the Tree Warden a statement that he has approved the location, size and species of street trees and that they have been planted.
 - (d) From the Department of Public Works a statement that they have approved the installation of the sewer system as required by them.
 - (e) From all other utilities a statement that they have approved the installation of the utilities as required by them.
- O. Release of performance guarantee.
 - (1) Upon the completion of the improvements as shown on the plan and as required herein, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant may request and agree on terms of release with the Board. The applicant shall send by registered mail to the Town Clerk and Planning Board a written statement in duplicate that the said construction or installation in connection with such bond, deposit or covenant has been completed in accordance with the

15. Editor's Note: Appendix A is included at the end of this chapter.

requirements contained in these rules and regulations, such statement to contain the address of the applicant and the subdivision name and number.

- (2) If the Board determines that said improvements have been completed, and these rules and regulations have been complied with, it shall release the interest of the Town in such bond and return the bond or the deposit to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged, with a copy to the Building Commissioner. If the Board determines that said improvements have not been completed, and/or these rules and regulations have not been complied with, it shall specify in notice sent by certified mail to the applicant and the Town Clerk the details wherein said improvements fail to comply with its rules and regulations.
- P. Reduction of bond or surety. Upon written application of the applicant stating reasons therefor, the penal sum of any such bond, or the amount of any deposit held hereunder may, from time to time, be reduced at the discretion of the Board, and the obligations of the parties thereto released by said Board in part. If release is by reason or covenant, a new plan of the portion to be subject to the covenant may be required.
- Q. One-year retainage period to insure adequate work.
- (1) At the time of the Board's release of the bond or the deposit to the person who furnished the same, the Board shall retain an amount not to exceed 10% of the total cost of the improvements to insure adequate construction and installation of the streets and utilities for 12 months, or until the streets are accepted by the Town, whichever comes first. The total cost of improvements shall be calculated by the Board's engineer. If the required improvements were secured by a covenant, at the time of the Board's release of the covenant the applicant shall post surety not to exceed 10% of the cost of improvements to insure adequate construction and installation of the streets and municipal services for the time period specified above.
 - (2) Approximately 60 days before the expiration of the 12 months, the Planning Board's engineer shall inspect said streets and municipal services to determine whether or not it should recommend the release of the final 10%.
- R. Time of completion.
- (1) Every applicant shall state in the application and in the development agreement, the time within which the applicant agrees to complete the proposed ways, and to install the drainage system, water pipes, gas pipes and electric lines, and all other utilities as required by the Board. The Board shall decline to approve any plan unless the applicant agrees to complete the ways shown thereon and install the utilities aforesaid within eight years of the date of approval of the application, unless a phased development schedule is approved by the Planning Board and incorporated into the development agreement. For the purposes of this section only, the one-year retainage period to ensure adequate work shall not be included in the eight-year completion time requirement.

- (2) The subdivision shall be completed and the as-built plans submitted within one year from the date of commencement of construction, unless a phased development schedule is approved by the Planning Board and incorporated into the development agreement. Construction is deemed to commence when clearing of vegetation within the proposed road layout begins.
 - (3) In the event the work is not completed within the time set forth, or as extended, the subdivision plan approval shall be considered null and void.
- S. Completion of the subdivision. The applicant shall maintain all the roads and utilities in the subdivision until the Planning Board finds that the subdivision is complete and executes Form M, the Certificate of Completion. ¹⁶

ARTICLE VI Design Standards

§ 801-25. General provisions.

Existing contours shall be preserved insofar as it is practical. In any event no change shall be made in existing contours that adversely affects land abutting the proposed subdivision. Due consideration shall be given to the attractiveness of the layout and the preservation of natural features. Roads shall be located so as to minimize the amount of grading required. All work on the ground hereinafter specified shall be performed by the applicant in accordance with these rules and regulations, in conformity with approved definitive plans and specifications and other construction requirements of the Town agencies concerned, and the satisfaction of such agencies.

§ 801-26. Streets.

A. Location of streets.

- (1) The streets shall be designed and located so as, in the opinion of the Board, to be continuous and in alignment with existing streets; to provide adequate access to all lots in the subdivision; by streets that are safe and convenient for travel; to lessen congestion in such streets and adjacent public streets; to reduce danger from the operation of motor vehicles; to secure safety in case of fire, flood, panic and other emergency; to insure compliance with applicable Zoning Ordinance; to secure adequate provision for proper drainage and water, sewers and other utilities; and to coordinate the streets in the subdivision with each other and with the existing street system of the Town, and the streets in neighboring subdivisions.
- (2) The proposed streets shall be designed and located so as to conform to the Master Plan, if any, as adopted in whole or in part by the Board.
- (3) Provision satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property that is not yet subdivided.

¹⁶ Editor's Note: Form M is included at the end of this chapter.

- (4) Due consideration will be given by the Board to the attractiveness of the layout and to the conformance of the ways to the topography. Streets shall be laid out with curvilinear lines wherever possible.
- (5) Reserve strips prohibiting access to streets or adjoining property shall not be permitted, except where, in the opinion of the Board, such strips shall be in the public interest.
- (6) Where ways are extended to the property line forming stub streets for future tie, that way shall be paved to the property line.
- (7) Subdivisions shall be designed so as to minimize the length of roads.
- (8) Road layouts shall be located and designed so as to create easily accessed lots at or near grade level.
- (9) Subdivisions shall be designed so as to avoid creating lots with double frontage, except when one frontage is on a major street.
- (10) Where a subdivision borders on a major street, access to lots shall be provided from a parallel local street and access to the major road shall be minimized.
- (11) No road, with or without fill, shall be located within a velocity zone or within the one-hundred-year floodplain, as shown on the special Flood Insurance Rate Maps, and as further defined by the topographic information shown on the plan.
- (12) Where access to a subdivision crosses land in another municipality, the Board may require certification, from appropriate authorities, that such access is in accordance with the Master Plan and subdivision requirements of such municipality and that a legally adequate performance bond has been duly posted or that such access is adequately improved to handle prospective traffic.

B. Width, alignment and grades of streets.

- (1) The criteria contained in the Appendix, Design Standards, Typical Road Cross Section, and Guard Rail Warrant, shall be observed in the design of streets.¹⁷
- (2) Streets shall intersect with minimum center-line offsets of 150 feet unless otherwise specified by the Board.
- (3) Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than 75°.
- (4) Where the angle of intersection between two streets varies more than 10° from a right angle, the radius of the curve at the curblines at the obtuse angle shall be less and at the acute angle shall be correspondingly greater than the radius specified in the Appendix to the extent approved or required by the Board.
- (5) All changes in grade exceeding 2% shall be connected by vertical curves of the length indicated in the design standards table in these regulations.

17. Editor's Note: These items are included at the end of this chapter.

- (6) No center-line gradient is to exceed 6% on any curve except when the curve is superelevated and the design is acceptable to the Board's engineer. All curves on a major road shall be superelevated in conformance with AASHTO Guidelines unless otherwise approved by the Planning Board's engineer. Superelevations shall not exceed $E = 0.06$.
- (7) No center-line gradient is to exceed 6% within 500 feet of a dead-end.
- (8) No street shall intersect another street at a gradient in excess of 2% for a distance of at least 40 feet from the intersection as measured from the edge of the right-of-way.
- (9) Way lines shall be parallel unless otherwise specified by the Planning Board.
- (10) Streets shall be designed in accordance with AASHTO Standards unless otherwise specified.

C. Dead-end streets.

- (1) Dead-end streets shall be not less than 100 feet long nor more than 750 feet. The length of the dead-end street shall be measured from the intersection with a street providing alternative access, to the beginning of the cul-de-sac or turnaround T. The Board may grant a waiver from the maximum length of the dead-end street if the Board determines that there is a reasonable expectation that the street will become an additional means of access or egress to a future street connection on adjacent, undeveloped land. No extension of a cul-de-sac or turnaround T to adjacent land shall be permitted where such extension will lengthen a dead-end street beyond the seven-hundred-fifty-foot maximum length.
- (2) Minor and secondary dead-end residential streets shall be provided at the closed end with a turnaround having an outside paved roadway diameter of 90 feet and a right-of-way diameter of 105 feet.
- (3) No major dead-end street and secondary nonresidential dead-end street shall be permitted, unless the Fire Department, DPW, and/or Police Department provide the Board with written determination that there will be no compromise to public safety of both pedestrian and vehicular traffic. Where the Board grants a waiver to allow a dead-end street, the street shall be provided at the closed end with a turnaround having an outside paved roadway diameter of not less than 94 feet, 30 feet of the pavement width on the cul-de-sac and with a right-of-way diameter of at least 110 feet. culs-de-sac shall be shaped in accordance with ASHTO standards for circular and circular offset culs-de-sac for single-unit trucks.
- (4) Dead-end streets shall be constructed all the way to the property line and shall be designed and located so as to allow them to continue to abutting property.
- (5) A minor road serving less than 10 lots may be constructed with a turnaround T or Y in lieu of a cul-de-sac at the discretion of the Planning Board. The turnaround T shall be designed according to the drawings in the appendix entitled "Paved Turnaround T" or shall be an alternative design approved by the Planning Board.

- (6) Natural vegetation shall be retained in the center of the turnaround. Damaged areas shall be replanted with a combination of ground cover, shrubs and/or trees common to the Cape such as: bearberry, bayberry, inkberry, American holly, beach grape; Rugosa rose, beach gum, red cedar, juniper, red oak, thornless honey locust, American red maple, checkerberry, Shore juniper or sargent juniper, unless otherwise approved by the Planning Board.
 - (7) Upon construction of an extension of a dead-end street, the easement for the existing turnaround shall terminate in accordance with the provisions of Chapter 41 of the General Laws. The paved surface of the turnaround shall be removed so as to create a roadway of a uniform width. Drainage, road surface and road shoulders shall be repaired and/or reconstructed and revegetated in accordance with all the requirements of the Subdivision Rules and Regulations.
- D. Clearance above roads. Overhanging vegetation shall be cleared to a height of 15 feet above roads, to provide clearance for trucks including Fire Department ladder trucks.

§ 801-27. Drainage.

A. General provisions.

- (1) The subdivision shall be designed so that all drainage shall be contained and disposed of within the subdivision; no drainage shall be discharged on to adjoining property or on to the public right-of-way at a rate greater than existed prior to the construction of the subdivision. The applicant shall submit information as to pre- and post-development runoff volumes and peak flows during the ten-year and one-hundred-year storm. No drainage shall be discharged directly into any wetland or surface water body, or into any drain, ditch, culvert or retention pond that leads into wetlands or surface water bodies.
- (2) All drainage systems within the subdivision shall be designed in accordance with the soil conservation service method or an alternative system acceptable to the Board's engineer. Calculations shall be made from the source of drainage runoff using topographic maps for the entire drainage area, including those areas outside the subdivision. Copies of all drainage calculations shall be submitted with the definitive plan. Percolation tests may be required at the discretion of the Board.
- (3) Drainage systems shall be designed and installed so as to prevent stormwater runoff from becoming a hazard or a nuisance to the subdivision residents or the public at large. The applicant is ultimately responsible for the adequacy of the drainage system in reaching this end. Should the system not adequately achieve the goal, the applicant shall make whatever modifications are needed to ensure that the drainage system performs adequately in the opinion of the Planning Board. All modifications shall be acceptable to the Board's engineer.

B. Subsurface drains or subdrains.

- (1) In areas where the finished grade of the roadway is less than four feet above the water table or in areas where less than four feet of fill is placed above water in

swampy places or any standing water, or in other areas, where in the opinion of the Board the subgrade must be drained, a system of subdrains shall be designed for such areas. The subdrain shall consist of a minimum of one longitudinal drain for each forty-foot width of roadway or fraction thereof.

- (2) In addition, laterals shall be required as directed by the Board in areas in which an undue amount of water could accumulate in the subgrade. The system of subdrains shall be discharged into the storm drainage system or otherwise disposed of in a manner satisfactory to the Board.
- (3) Subdrains shall also be required where test borings show an impervious layer of soil above a permeable layer of soil which is located at or above one foot below the proposed basement floor elevation.

C. Storm drains.

- (1) A complete storm drain system shall be designed for each street of the subdivision and, to the satisfaction of the Board, shall be so laid out to provide adequate drainage of all portions of the street system so that water does not accumulate thereon, to intercept stormwater runoff from the adjacent lots of the subdivision, and to eliminate undesirable or unnatural accumulation of water on any portion of the subdivision or surrounding property. Those conditions which result from a ten-, twenty-five- or fifty-year storm as required shall be assumed as a basis for design of the street drains. The storm drain system shall include gutters, catch basins, manholes, culverts, drain lines, headwalls, vegetated swales, detention ponds and such other items as may be required to complete the system to the satisfaction of the Board. Information regarding a procedure which may be utilized in drainage designs is available from the Town Engineering office.
- (2) The Soil Conservation Service drainage calculation methodology or an alternative systematic method acceptable to the Board's engineer shall be used in the design of the drainage systems.
- (3) Best management practices (BMPs) shall be utilized to treat the first one inch of rainfall, or 1/2 inch of runoff, whichever is greater. BMPs shall consist of grass-lined swales, grass-lined retention basins, or other treatment facilities acceptable to the Board's engineer.
- (4) Side slopes on BMPs shall not be steeper than four to one and generally should be much flatter. BMPs shall be distributed throughout a subdivision and not concentrated in any one location to better dilute the effects of any pollutants left untreated. For this reason, the use of swales in areas with relatively level terrain is desirable. The bottom of the BMPs should be four feet above the probable high groundwater. All BMPs shall be located within drainage easements or the road right-of-way.
- (5) Catch basins shall be located in pairs, one on each side of the roadway, at all low points or sag curves in the roadway, at intervals of not more than 300 feet on continuous grades of the roadway, and at or near the corners of the roadway at intersecting streets.

- (6) Manholes shall be located at all changes in direction, either horizontally or vertically, of a drain line or at the intersection of two or more drain lines, or so located that no drain line greater than 300 feet in length would exist without either a catch basin or manhole.
- (7) Culverts shall be designed on the assumption that the entire drainage area is built up to that density and in the manner which the applicable section of the Zoning Ordinance¹⁸ allows. The calculations (or a copy thereof) necessary to determine the size of any culvert which carries a brook, stream, river or other natural waterway shall be submitted to the Board for review. All culverts shall have a headwall at each end, and any culvert over 36 inches in diameter shall include at the upstream end additional protection, as approved by the Board, for the roadway side slopes.
- (8) All drains shall be a minimum of 12 inches in diameter and shall be laid on a slope of not less than 1/2 of 1%. The minimum design velocity shall be three feet per second and maximum design velocity shall be 10 feet per second. If the system is designed as a self-cleaning system, the Board may accept a lesser minimum slope for the drain lines. Pipe shall have a capacity 25% greater than required by the calculations. In such cases as it is deemed necessary and acceptable by the Board and its engineer, surface water may be disposed of by a leaching system of the proper size and design. Calculations for the design of such system shall be submitted with other drainage calculations for the subdivision and under the same provisions. Provision shall be made for the disposal of surface water intercepted or collected by the system in such a manner that no flow is conducted over Town ways, or over the land of others unless a drainage easement is obtained or unless such flow, in essentially the same quantity, previously existed in the same location. Where adjacent property is not subdivided, provision shall be made for extensions of the system by continuing appropriate drains to the boundary of the subdivision at such size and grade as will allow their proper projection.
- (9) All recharge systems shall be designed with a fail-safe feature which will provide a safe, legal off-the-road overflow area for the runoff in the event that the catch basins overflow. The overflow areas shall be sized to accommodate a one-hundred-year storm. The overflow areas shall preferably be located in naturally vegetated shallow kettle holes or other depressions; however, if there are not any naturally occurring areas, then the shallow areas with gently sloping sides shall be excavated for stormwater storage. Overflow areas shall be located within drainage easements. Separate drainage lots are discouraged and will not be permitted without the permission of the Planning Board.
- (10) A headwall shall be provided at the outfall end of all drains where required.
- (11) All recharge infiltration type drainage systems shall be designed by the applicant's engineer to prevent stormwater from breaking out of any slopes. Breakout calculations shall be provided by the applicant's engineer.

18. Editor's Note: See Ch. 240, Zoning, of the Code of the Town of Barnstable.

§ 801-28. Easements.

- A. Easements for utilities. Easements for utilities shall be provided and recorded as required and centered on lot lines where practical.
- B. Stormwater and drainage easements. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, the Board may require that there be provided a stormwater easement or drainage right-of-way of adequate width to conform substantially to the lines of such watercourses, drainageway, channel or stream, and to provide for construction, maintenance, or other necessary purposes.
- C. Access easements. Access easements may be required where deemed necessary.
- D. Slope easements. Slope easements may be required where deemed necessary.
- E. Sight and scenic easements. Sight and/or scenic easements may be required where deemed necessary.

§ 801-29. Sidewalks.

- A. Where required. Sidewalks shall be installed on both sides of Major Streets.
- B. Sidewalks conditionally required. Sidewalks shall be installed on one or both sides of a secondary street and a minor A street, unless in the opinion of the Planning Board, pedestrian safety would not be substantially served by their construction. Where sidewalks are not required, the Board may require that the grading of the right-of-way be so executed as to make possible later additions of sidewalks without major regrading.
- C. Location of paved road surface. In order to accommodate a sidewalk and/or bicycle path, the Planning Board may require that the paved surface of the roadway be offset to one side of the right-of-way.
- D. Green strips. Sidewalks and/or bicycle paths shall be separated from the roadway by a strip of land loamed and seeded to the specifications of § 810-48, Grass plots. Sidewalks and/or bicycle paths shall be located as close as possible to the outside line of the right-of-way. Street trees shall be planted in the green strip.
- E. Sidewalk length. Sidewalks shall extend the full length of each side of the street.
- F. Sidewalk width. Sidewalks shall have a minimum width of five feet along major and secondary roads. All sidewalks shall conform to American Disabilities Act requirements and Massachusetts Architectural Access Board standards, 521 CMR, and as may be amended.

§ 801-30. Curbing and berms.

- A. All streets shall have bituminous concrete "Cape Cod berms," vertical granite or sloped granite curbing at the discretion of the Board. In the case where granite is used, the curbing shall extend along the entire circumference of curves plus six feet at all

intersections. Vertical inlet curbing shall be used for all catch basins when vertical granite curbing is used.

- B. As a general guide bituminous concrete Cape-Cod-type berms placed at the time of paving are required on all roads regardless of slope. Roads located in or near urbanized village centers, commercial areas, industrial areas and other areas designated by the Planning Board will require the installation of granite curbing at the discretion of the Planning Board.

§ 801-31. Lots.

- A. All lots within the subdivision shall comply with the Zoning Ordinance of the Town,¹⁹ or with terms of any variance from such requirements which may have been specifically granted by the Board of Appeals. Percolation tests may be required on each lot at the discretion of the Board. Lot numbers as shown on the approved plan shall be conspicuously displayed with a suitable marker which shall be visible from the road layout.
- B. Lots shall be located and designed so as to provide building sites with positive drainage away from buildings.

§ 801-32. Open spaces.

Before approval of a plan, the Board may also, in proper cases, require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air. The Board may, by appropriate endorsement of the plan, require that no building be erected upon such park or parks for a period of not more than three years without its approval. These parks shall be offered for just compensation to the Town in the form of a deed, with the Town having the option of accepting or releasing these areas within the three-year period.

§ 801-33. Protection of natural features.

Regard shall be shown for all natural features, such as large trees, watercourses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision.

§ 801-34. Retaining walls.

Wherever retaining walls may be required, design and type of wall construction shall be submitted to the Board for approval prior to installation.

19. Editor's Note: See Ch. 240, Zoning.

§ 801-35. Utilities.

- A. General requirements. The Board may require that the plan show utilities of the kinds existing in the public ways nearest to the subdivision, or which in the opinion of the Board are likely to be laid in such public ways within the reasonably near future and which will be necessary for the health, safety, or convenience of the prospective occupants of the subdivision.
- B. Location. The utilities and sleeves for house connections shall be located as shown on the typical road cross sections. ²⁰ The number and type of sleeves for house connections will be directed by the Board.
- C. Sewer system design. The design of the sewer system, if required, shall be as directed and approved by the Department of Public Works. A functional sewer collection system complete with service connection to the property line shall be required in areas that now have service or are scheduled for such service within three years.
- D. Public supply standards. The applicant shall work with the Fire District or water company and provide the Board with documentation of compliance with their water supply standards. Wherever feasible, water supply shall be provided from a public water supply system. Where any part of any lot is at elevation 100 feet (msl) or higher, the applicant shall submit calculations documenting supply adequacy.
- E. Private supply standards. Where connection to an adequate public water supply is infeasible, the Planning Board shall approve a subdivision only upon its determination, following consultation with the Fire Department, that reserved access to a fire pond or other provisions for water supply will adequately provide for fire safety.
- F. Design of water system. The design of the water system and provision for hydrant service shall be as directed or approved by the Fire District or water company in accordance with the typical road cross sections. In the case where sidewalks are to be constructed on one side of the roadway, the water and hydrants shall be on the opposite side of the roadway.
- G. Location of hydrants. The location and type of hydrants and size of pipe serving the hydrants shall be as directed or approved by the Fire District or water company, if required.
- H. Fire alarm boxes. The location and type of the fire alarm boxes and point of entry into the subdivision of the connecting fire alarm cable shall be as directed by the Fire Chief. The applicant shall furnish and install the necessary ducts, fire alarm boxes, and electric cable.
- I. Electric power system. The design and location of the electric power system shall be as directed by the electric company. The system shall be constructed to a standard which will enable the electric company to accept it as part of their system upon completion.
- J. Gas service. The applicant shall consult the gas company relative to coordination of the installation of gas pipes, if gas service is to be installed.

20. Editor's Note: The typical road cross section diagrams are included at the end of this chapter.

- K. Telephone service. The applicant shall consult with the telephone company relative to the installation of telephone service.
- L. Location of wires. All electrical, telephone, and other utility wires shall be placed below ground in every subdivision, unless the Board determines that such placement is not feasible or is not in the best interest of the Town.
- M. Utility service connections. All service connections for utilities shall be clearly marked at the lot line and shall be installed so that electric, telephone, sewer, and water services are located on the lot line perpendicular to the street, and the gas service is located on the alternate lot line, and said service connection shall be installed prior to the completion of the fill.

ARTICLE VII

Specifications for Construction of Required Improvements

§ 801-36. General provisions.

- A. All improvements specified or implied on the definitive plan shall be constructed or installed by the applicant in accordance with the provisions of this article of the rules and regulations or as directed by the Board. The applicant shall furnish all necessary materials, labor, and equipment which may be required to complete the work called for or implied on the definitive plan, including all related expenses. Items not specifically mentioned herein shall be constructed in accordance with the latest revision of the Standard Specification for Highways and Bridges of the Massachusetts Department of Public Works (hereinafter referred to as the "Department's specifications"); unless specifically directed otherwise by the Board.
- B. All work performed by the applicant as a consequence of these rules and regulations will be subject to the review and acceptance or approval of the Board. Therefore, the Board may employ a registered professional engineer to act as its agent for the inspection of the work. In order that the Board's engineer may properly inspect the work as it progresses, the applicant will keep the engineer informed of the progress of the work and shall, at any time, provide safe and convenient access to all parts of the work for inspection by members of the Board or its engineer or such persons as the Board may designate. No work will be approved which has been covered prior to inspection by subsequent work. Reference should be made to Article VIII for inspections required by the Board.

§ 801-37. Construction details and standards.

Construction details and specifications shall comply with the standards contained in the construction specifications and standards volume which is available from the Engineering Section of the Barnstable Department of Public Works for a nominal fee.

§ 801-38. Subdivision layout.

- A. The subdivision, including all way and lot lines and all drain lines and utilities shall be laid out as to line and grade by a registered land surveyor and a certificate filed with the

Board to this effect. Stakes for line and grade, clearly marked with the proper station, shall be maintained throughout construction.

- B. Any work which, in the opinion of the Board, has not been properly laid out or does not conform to the plans may be checked by a registered land surveyor employed by the Board. If the Board determines that such work does not conform to the plan, the applicant shall pay all costs which the Board incurs as a consequence of checking the work. The Board may require the removal and correct replacement of any work which has been incorrectly laid out.

§ 801-39. Clearing, grubbing and excavation.

- A. The entire area to be occupied by the roadway plus an additional four feet or extending outward to the toe of slopes in fill areas, whichever is greater, shall be excavated a minimum of 15 inches below finished grade in cut sections or as necessary to remove the topsoil in fill sections or such greater depth as may be required by the Board's engineer if soft or yielding material, clay, peat, silt, sand pockets, boulders or rocks, organic materials, or other material detrimental to the subgrade is encountered. All fill or undisturbed material shall be non-frost-susceptible and shall contain not more than 3% passing the No. 200 sieve for a minimum depth of three feet below the finished roadway grade.
- B. Trees intended to be preserved shall be protected from injury by suitable boxes or fenders, or wells if in fill.
- C. The Board's engineer will make an inspection when this phase of the work is completed.

§ 801-40. Erosion control measures.

The erosion control plan shall include the use of erosion control measures recommended by the Soil Conservation Service for use during and after construction.

- A. Erosion minimalization. Stripping of vegetation, soil removal and regrading shall be accomplished so as to minimize erosion.
- B. Duration of exposure. The duration of exposure of disturbed area shall be kept to a practical minimum.
- C. Temporary erosion control. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- D. Permanent erosion control installation. Permanent (final) vegetation and mechanical measures to stabilize the land surface and control erosion shall be installed as soon as practicable after construction ends.
- E. Protection of permanent drainage facilities. Until a disturbed area is stabilized, permanent drainage facilities, including but not limited to catch basins, pipes, retention basins, grass swales and infiltration devices, shall be protected from sediment in runoff water by the

use of temporary drainage facilities such as debris basins, sediment basins, silt traps or other acceptable methods.

- F. Dust control. During grading operations, methods of dust control shall be employed wherever practicable.

§ 801-41. Drainage system.

- A. Conformance to department's specifications. The construction of the drainage system, including methods of construction and quality of materials shall conform to the applicable sections of the Department of Public Works specifications except as modified hereafter or as directed by the Board's engineer.
- B. Storm drains. Storm drains shall be constructed of reinforced Class V concrete pipe with removable rubber gasket joints and of a strength or class adequate to withstand the H-20 live loads and dead loads which the pipe will be subjected. All joints shall be securely mortared or clamped. The pipe shall be a minimum of 12 inches in diameter and shall be laid at a minimum pitch so as to maintain a velocity of three feet per second when flowing full.
- C. Catch basins. All catch basins shall be constructed of air-entrained cement concrete, and a standard square frame and grate, with square holes, and a granite mouth frame shall be furnished and set. All catch basins shall have an inside diameter of at least four feet, shall be constructed with a minimum depth of four feet below the invert of the outflow pipe or the bottom of the pipe trap, whichever is lower, and as otherwise shown in accordance with the latest revisions of the construction standards of the Department of Public Works.
- D. Manholes. All manholes shall be constructed of the same materials as permitted herein for catch basins except that a standard heavy twenty-six-inch diameter cover and frame shall be furnished and set, and all other details shall be as shown in the Department of Public Works standards for manholes.
- E. Subsurface drainage system. The subsurface drainage system as shown on the definitive plan or as ordered by the Board during construction shall be constructed of not less than six-inch diameter perforated polyvinyl chloride (Schedule 40) pipe with perforations turned up, and laid to line and grade.
- F. Headwalls. All drainage pipe shall end in an air-entrained cement concrete or air-entrained cement masonry headwall having dimensions as specified in the Department of Public Works standards and constructed in accordance with the Department's specifications.
- G. Compressive strength of concrete. The air-entrained cement concrete shall have a minimum compressive strength of 3,000 pounds per square inch after 28 days curing.
- H. Tide gates. All tide gates shall be of standard manufacture, of the same size as the outfall pipe, elastomer synthetic fabric type and subject to the approval of the engineer.

- I. Inspection required prior to backfilling. The engineer will inspect the completed drainage system or sections thereof prior to placing any backfill.
- J. Backfill specifications. All trench backfill for the storm and subsurface drains and other backfill within the limits of the way shall conform to the base course requirements and shall be deposited to required subgrade in not more than six-inch layers and compacted to 95% of the maximum dry density as determined by modified Proctor Test, in accordance with ASTM-C-1557, Method D.

§ 801-42. Utilities.

- A. Responsibility. The applicant shall provide and install all necessary materials, appurtenances and equipment to complete the utilities as may be required by the definitive plan in a manner acceptable to the officials or agency having jurisdiction of each service as previously mentioned herein. All costs incurred by the applicant as a consequence of installing and maintaining such utilities as the Board required shall be paid by the applicant, including all costs which may be incurred for any reasons whatsoever. The Board will not take any action to have the applicant reimbursed for any costs so incurred.
- B. Submission of finalized utility plans. Prior to the beginning of construction of the road, the applicant shall submit to the Board's engineer for his approval finalized plans of the various utilities including water, sewer, electric, telephone, gas and cablevision. The finalized plans shall be approved in writing by an authorized representative of the utility company involved.
- C. Fire alarm system specifications. The fire alarm system connection will be made by the Fire District using materials which shall be furnished by the applicant as specified by the Fire District.
- D. Hydrant specifications. The type of hydrants and type and size of pipe serving the hydrants shall be as directed or approved by the Fire District.
- E. Water system specifications. The type and size of pipe, fittings and appurtenances for the water system shall be as directed or approved by the Fire District or water company.
- F. Sewer system specifications. All materials and work in connection with the sewer system shall be as directed and approved by the Department of Public Works.
- G. Electric power installation. All materials and work in connection with electric power service shall be as directed and approved by the manager of the electric company.
- H. Notification of backfill and paving. All work in connection with the utilities shall be left uncovered until such time as the Board's engineer permits the backfill to be placed. The applicant shall notify all companies with utilities installed or to be installed within the ways as to the date and time the applicant intends to place the gravel base course and the paving so that such utility company may properly record the location of pertinent features of the system so that they will not be covered or lost as a result of the paving operation.

- I. Backfill specifications. All trench backfill material for the utilities within the way limits shall conform to the base course requirements and shall be deposited to required subgrade in not more than six-inch layers and thoroughly tamped, not puddled, to 95% of the maximum dry density as determined by modified Proctor Test, in accordance with ASTM-D-1557, Method D.

§ 801-43. Fill.

All fill material which may be required within the exterior lines of the way up to the twelve-inch gravel foundation shall be of clean gravel or other suitable material as approved by the engineer and compacted to 95% of the maximum dry density as determined by modified Proctor Test, in accordance with ASTM-1557, Method D. All utilities including but not limited to storm drains, subdrains and drainage structures and sewers if required within the way lines shall be installed prior to the completion of the fill. This shall include the installation of each service pipe, sleeve or conduit to the front lot line of each lot in the subdivision. Upon completion of the fill and the backfill of all service trenches, the work will be inspected by the Board’s engineer. Subsequent work shall not commence until the engineer has approved the fill as acceptable for the application of the roadway foundation material.

§ 801-44. Roadway foundation.

- A. A minimum of 12 inches of clean gravel, as approved by the engineer, shall be deposited in not more than six-inch layers for the full width of the way so as to form a roadway foundation which shall be at all points parallel to the finished grade of the roadway surface. The gravel shall be compacted to 95% of the maximum dry density as determined by the Modified Proctor Test, in accordance with ASTM-D-1557, Method D. The gravel shall consist of processed gravel for subbase meeting the Massachusetts DPW Specification Number M1.03.1 to the following gradation:

Sieve Size	Percent Passing By Weight
3 inches	100
1 1/2 inches	70-100
3/4 inches	50-85
No. 4	30-60
No. 200	0-5

- B. The engineer will inspect the roadway foundation after the compaction of each six-inch layer and after the approval of the completed foundation.
- C. Where it is acceptable to both the applicant’s engineer and the Planning Board’s engineer, an alternate roadway foundation may be utilized consisting of a minimum of 12 inches of reclaimed pavement borrow material (reclaimed asphalt). In general the use of dense graded crushed stone will only be permitted where the underlying material is suitable, well draining, and structurally sound. The dense graded crushed stone shall conform to the following gradation:

Reclaimed Pavement Borrow Material

Sieve Size	Percent Passing By Weight
2 inches	100
1 1/2 inches	70-100
3/4 inch	50-85
No. 4	30-55
No. 50	8-24
No. 200	3-10

D. The subgrade and each six-inch layer of gravel shall each be compacted with a minimum of three passes of a vibratory roller. Additional passes shall be made as required to achieve the 95% density required.

§ 801-45. Roadway surface.

A. General provisions. All roadways shall be paved to conform with the finished grade and width as specified with Class I bituminous concrete paving Mass. Type I-1 in accordance with the Department’s specifications and subject to the approval of the engineer. The applicant shall submit a specification job-mix formula to the engineer for approval prior to starting the work, and a test report verifying that the minimum temperature of each load is 350° F.

B. Binder and finish course requirements.

(1) Minimum depth requirements after compaction:

Type of Street	Binder Course (inches)	Finish Course (inches)
Major	4.0	2
Secondary	3.5	1.5
Minor	2.5	1.5

(2) If the binder course is to be left without a topcoat over a winter when access is needed to properties along the road, then all utility castings shall be no higher than the level of the binder course of mix to facilitate snow plowing. The castings shall then be raised to the grade of the finished topcoat just prior to placement of the topcoat.

§ 801-46. Sidewalks.

- A. Sidewalks shall have a finished grade in relation to the roadway as shown on ²¹ and shall be constructed of bituminous or portland cement concrete. The gravel foundation shall be a minimum of six inches in thickness and shall otherwise conform to the requirements of the roadway foundation.
- B. Sidewalks shall have transverse slopes or crowns of 3/8 of an inch per foot.
- C. Bituminous concrete sidewalks shall consist of one inch of Type I-1 binder course and one inch of Type I-1 surface course after compaction.
- D. Portland cement concrete sidewalks shall be four inches thick and constructed in accordance with the Department's specifications.
- E. Sidewalks constructed of all-weather materials other than bituminous concrete may be approved if they are deemed appropriate by the Planning Board.

§ 801-47. Curbing and berms.

- A. Requirements. Cape-Cod-type bituminous concrete berm shall be provided on all roadways unless otherwise approved by the Planning Board. In the following situations, vertical or sloped granite curbing shall be provided in place of bituminous concrete berms:
 - (1) In or adjacent to urbanized village centers.
 - (2) Along the side of the traveled way to protect sidewalks where there is less than a four-foot grass strip separating the traveled way from the sidewalk.
 - (3) Where adjacent streets have granite curbing and the Planning Board determines that the granite curbing shall be extended into the subdivision.
 - (4) To delineate traffic islands or where otherwise needed to improve traffic control.
 - (5) In commercial or industrial subdivisions where the Planning Board determines they are necessary to adequately channelize traffic.
- B. Specifications. Curbing and berm shall be of the following dimensions and types. Curbing and berm materials and installation shall conform to the applicable Department's specifications.

Description	Type	Width	Heights	Length
Bituminous Concrete	Cape Cod	1 foot	3 inches	Continuous
Vertical Granite	VB	5 inches	15 inches to 17 inches	3 feet to 10 feet

21. Editor's Note: The diagrams of typical road cross sections are included at the end of this chapter.

Description	Type	Width	Heights	Length
Sloped Granite	SB	11 inches to 13 inches	3 inches to 6 inches	2 feet to 6 feet

- C. Cape Cod berms. Cape Cod bituminous concrete berms shall be constructed monolithically with the bituminous binder and top courses. Berms shall be one foot in width. The berm shall be even with the gutter on the road side and three inches higher than the gutter on the shoulder side of the berm.

§ 801-48. Grass plots.

- A. Requirements. A grass plot shall be provided on each side of all roadways according to the typical road cross sections. (See Appendix.) The finished grade of the grass plot in relation to the finished grade of the roadway shall be as shown on the typical road cross section.
- B. Specifications. The top six inches of grass plots and side slopes (cut or fill) shall be good quality loam as approved by the engineer and shall be screened, raked and rolled with a hand roller to finished grade. The loam shall be of good quality that will support the growth of grass without requiring heavy use of pesticides or fertilizers. After installation of loam, the applicant’s engineer shall submit test results of the organic content, pH and nutrient content of the loam. The loam shall be seeded with lawn grass seed applied in sufficient quantity to assure adequate coverage and establish growth. Grass seed shall consist of a seed mixture suitable for the location and containing a substantial proportion of fescue and perennial rye seed. The applicant shall perform sufficient cuttings and maintain the grass plot until such time as the street is accepted by the Town, or the Board finds that the subdivision is complete.

§ 801-49. Street trees. ²²

Street trees, with a caliper of not less than 2 1/2 inches in diameter, and of a species approved by the Tree Warden, shall be planted on each side of every street in the subdivision wherever, in the opinion of the Planning Board, existing woodlands or individual trees are absent or not retained. Trees shall be located outside the exterior roadway lines unless located in green strips (see § 801-29D), at thirty-foot intervals unless otherwise specified by the Tree Warden in accordance with general practice in the Town. At the discretion of the Board, an easement, of such width as requested, outside the exterior way lines may be required for the planting of trees.

§ 801-50. Side slopes.

The area outside the traveled way in cut areas shall be sloped at a rate not steeper than three to one until it intersects the finished grade of the abutting lots, except as may be required for sidewalks. All such slopes shall be loamed and seeded as previously required for grass plots.

22. Editor’s Note: See Ch. 221, Trees.

§ 801-51. Guardrails.

Guardrails shall be installed where warranted as indicated on the figure in the Appendix and where required by the Board. Guardrails on major and secondary roads shall be steel beam highway guardrail Type SS in accordance with the Massachusetts Highway Department standards. On minor roads and in Historic Districts, steel-backed wood rail in accordance with the National Park Service either/or ASHTO standards may be used in the place of steel beam guardrails where permitted by the Board.

§ 801-52. Monuments.

Granite or reinforced concrete bounds shall be set at all street intersections at all points of change in direction or curvature of streets, at all front corners and at other points where, in the opinion of the Board permanent monuments are necessary, but in no case more than 500 feet apart. Monuments shall be at least five inches by five inches by 30 inches. The cap shall be as specified by the Board. The bounds shall otherwise conform to the Department's specifications and shall not be set until all construction which could disturb the monument is completed. After setting, the location of the bounds shall be certified by a licensed land surveyor.

§ 801-53. Street signs.

Street signs of the reflecting type specified by the Department of Public Works and bearing the names of the intersecting streets, as indicated on the definitive plan, shall be erected at all intersections of streets in the subdivision. Such signs shall be subject to the approval of the Board. Temporary wood signs with black letters stenciled on to a white background shall be installed on all roads in the subdivision at the beginning of clearing for construction of the road. Temporary signs shall be maintained and replaced as necessary until the permanent signs are installed. Permanent street signs must be installed after the road shoulders are loamed and seeded, and an acceptable stand of grass has grown.

§ 801-54. Cleaning up.

The entire area of the subdivision shall be cleaned up so as to leave, in the opinion of the Board, a neat and orderly appearance free from debris and other objectionable materials. All catch basins and manholes shall be cleaned out. Following the completion of this and other items of work as required herein, a final inspection will be made.

§ 801-55. Maintenance.

If released from restrictions with regard to sale of lots or buildings on lots by the posting of a performance bond or other security, the applicant shall maintain the roadway for vehicular traffic in a manner satisfactory to the Board. Further, the applicant shall maintain the roadway in a subdivision in a condition which meets all the above requirements to the satisfaction of the Board either until acceptance of the way by vote of the Town, or for a period of one year from the date of release of the security. A retainage fee is required to cover this period of time. See § 801-24P.

ARTICLE VIII

Inspection**§ 801-56. Responsibility.**

All work performed as a consequence of these rules and regulations shall be subject to the review of the Board which shall approve or reject each phase or portion of such work and at completion shall recommend the acceptance of all work or disapproval of the work with reasons therefor. The Board will employ a registered professional engineer to act as its agent in the inspection of the work to insure compliance with those rules and regulations and to report to the Board recommendations as to approval or disapproval of the work. The applicant will engage the services of a professional engineer throughout both the design and construction phases of the work who will act as agent with the Planning Board engineer or the Town Engineer and who will submit to the Planning Board a certified inspection report. Such engineer may make certain inspections as prescribed herein in order to check the adequacy of the work at various stages prior to such work being covered by subsequent work. However, the Board, its engineer, and such other persons as the Board may designate shall have the right to inspect the work at anytime. Therefore, the applicant shall at any time provide safe and convenient access to all parts of the work for inspection by the Board or its authorized agents.

§ 801-57. Removal or replacement of noncomplying work.

All work which has been disapproved or is not acceptable to the Board shall be removed and replaced or otherwise corrected to the point of complying with the requirements of the Board for acceptance. Any work which has been covered by subsequent work prior to acceptance or is otherwise not available or obscured to the point of rendering inspection of the work difficult shall be considered to be not acceptable to the Board. Such subsequent work shall be removed as directed by the Board's engineer to insure availability of the work to be inspected as required herein. The release of the performance guarantee shall depend upon the acceptance of all work prescribed herein and on the definitive plan and as directed by the Board.

§ 801-58. Engineer's inspection.

- A. At points indicated in Article VII and as further described hereinafter, the construction of the required improvements may be inspected by the Board's engineer or authorized agent, and unless approval of the work completed, including approval of materials used, to each such point has been given in writing, no further work shall be commenced. Such inspections may include the taking of certain samples for laboratory analysis or testing; in such cases, the applicant shall insure that the Board's engineer is in no way hindered or obstructed in the course of obtaining such samples. Where such samples are removed from the completed work, the applicant shall replace and restore such work, to the satisfaction of the Board's engineer, to its condition prior to the taking of the sample.
- B. The Board's engineer may require certified copies of delivery receipt or bills of lading or other certification as to the description of materials used or incorporated in the work. The Board's engineer may also require a sample of any materials or supplies which may be incorporated in work; such samples shall be furnished at the expense of the applicant,

and the applicant shall be liable for all costs and fees insured by the Board as a result of transporting and testing such materials.

§ 801-59. Notification to applicant's engineer.

- A. Applicant's procedure. After the approval of the definitive plan and subsequent to the receipt by the Board of the fees required in Article IX, the Board will notify the applicant of the name and address of the engineer, if other than the Board's engineer, designated as its representative to perform the inspections as required herein and otherwise act as the Board's agent to insure compliance with these rules and regulations. The applicant shall notify the Planning Board as to the engineer who will act as agent, and keep the Board's engineer fully informed as to the status and progress of the work and shall notify the Board's engineer directly in writing at least 48 hours in advance, that the work has progressed to a stage that an inspection is required. The applicant shall also submit samples for testing one week in advance of the date the test results are needed.
- B. Designation of alternate inspector. In the event that the Board's engineer is unable, for 48 hours after the work is ready, to make such inspection or examination the applicant shall notify the Chairman or Clerk of the Board to such effect, who will designate an alternate to make such inspection and shall notify the applicant.
- C. Engineer's procedure. In the event the Board's engineer makes an inspection of the work at the time designated and finds that such work is not at the proper state of completion or that the work has been covered or otherwise obscured, the Board's engineer shall notify the applicant and the Board as to the additional steps the applicant shall take to complete the work to the point required or to the extent the work shall be uncovered or exposed to full view. The applicant shall notify the Board's engineer again when the work is ready as prescribed in Subsection A.
- D. Liability. The applicant shall be liable for all costs and fees incurred by the Board as a result of requests by the applicant for an inspection of the work which, in the opinion of the Board, was not at an acceptable stage of completion for such inspection, said costs and fees to be in addition to those specified in Article IX.

§ 801-60. Lines and grades.

- A. Deviation from definitive plan. The applicant's engineer will advise the Board at any time during the construction if, in the applicant's engineer's opinion, the work has not been laid out to the lines and grades as shown on the definitive plan. In such cases, the Board will proceed as described in § 801-38.
- B. Responsibility. Any costs which, in the opinion of the Board, are the responsibility of the applicant as noted in § 801-38 shall be in addition to the fees required elsewhere herein.²³

23. Editor's Note: See § 801-63.

§ 801-61. Inspection of required improvements.

The following inspections of the required improvements will be made by the applicant's engineer and may be verified by the Board's engineer. These inspections may be in addition to any other inspection the Board may make or cause to be made. All sampling and testing of materials shall be performed by qualified personnel acceptable to the Town and shall be at the applicant's expense. At the discretion of the Board's engineer or the applicant's engineer, additional sampling may be required.

- A. First inspection. An inspection will be made of the work upon completion of all clearing, grubbing and excavation and all work incidental thereto as may be required or implied in § 801-39. No fill shall have been placed at the time of this inspection.
- B. Second inspection.
 - (1) An inspection will be made of the completed drainage system (without backfill) as required or implied herein or on the definitive plan. At the same time, or such other time as the work may be available, an inspection will be made of the completed utilities (without backfill) as required on the definitive plan. The inspection of the required utilities will be made by the agency responsible for the particular service as well as by the applicant's engineer. The Board's engineer shall also be notified so that he or she may inspect the utilities prior to backfill. Each agency so involved will notify the Board's engineer of the approval of such work.
 - (2) Backfill of any portion of the drainage system or utilities shall not be made until after receipt of notification of approval or acceptance by the applicant's engineer or agency responsible.
 - (3) The inspection of the construction of the ways shall include the inspection of the backfilling and compaction of all utility trenches as may be installed by utility companies, and such work shall be performed in the manner as required by these rules and regulations. It shall be the applicant's responsibility to insure compliance with these requirements. If, in the opinion of the Planning Board, the backfilling and compaction of utility trenches and the patching of the pavement, if required, has not been performed in accordance with these rules and regulations, the Board's engineer may require compaction tests and the Planning Board may not release the bond or covenant applicable until such work has been performed to the satisfaction of the Planning Board.
- C. Third inspection. An inspection will be made of the compacted fill as specified in § 801-43 and as may be required to bring the roadways to their proposed grades. The applicant shall notify the Town and the applicant's engineer as to the source of gravel for fill as soon as such information is known, so that samples may be taken and analyzed by the Town and the applicant's engineer. The applicant is hereby advised not to proceed with the filling operation until such time as the Town and the applicant's engineer notifies the applicant that the gravel proposed for the fill is acceptable, if the applicant proceeds with the fill prior to such notice this act shall be at the applicant's own risk. The applicant shall not use a gravel source other than the one designated without prior notice to the Board and the applicant's engineer. Compaction tests shall be required and submitted to the Board's engineer.

- D. Fourth inspection. An inspection will be made of the first six inch layer of compacted roadway foundation as specified in § 801-44. A gravel sample or samples may be taken at the option of the applicant's engineer, in the same manner as prescribed for the third inspection. Compaction tests shall be required and submitted to the Board's engineer.
- E. Fifth inspection. An inspection will be made of the final six-inch layer of compacted roadway foundation (prior to the application of the asphalt penetration) as specified in § 801-44 and gravel samples may be taken by the Board's engineer. Compaction tests shall be required and submitted to the Board's engineer.
- F. Sixth inspection. An inspection of the binder course of mix during placement and following completion. If required, samples of the mix shall be taken by the applicant's engineer or the Board's engineer for the purposes of performing extraction tests, compaction tests or pavement thickness tests. Core drill samples may be required at the applicant's expense. Certified paving slips indicating bituminous concrete quantities shall be submitted to the applicant's engineer who will tabulate the quantities and check the correlation with the anticipated qualities and then forward the slips and a report to the Board's engineer.
- G. Seventh inspection. An inspection of the top course of mix before, during and following the placement of the mix shall be performed. A tack coat shall be applied to the binder course of mix prior to placement of the topcoat where required by the applicant's engineer or the Board's engineer. The requirements regarding sampling, testing and quantity slips indicated in Subsection F for binder course shall also apply to the top course.
- H. Eighth inspection. An inspection will be made of all work as required on sidewalks, curbing, grass plots, side slopes, monuments, bounds and street signs.
- I. Ninth inspection. A final inspection will be made of all subsequent work as required herein or on the definitive plan to include the final cleanup.

§ 801-62. Engineer's report.

- A. Certified report to Board. The applicant's engineer will submit a completed certified report to the Board for each way in a subdivision. Such report will be similar to that given herein and will be augmented by such additional information as the Board may require to describe any special problems or situations which may arise during the construction of the required improvements.
- B. Compliance with rules and regulations. The applicant's engineer will report to the Board that the work has been performed in accordance with these rules and regulations and the definitive plan, or the applicant's engineer will advise the Board that the work is not acceptable with the reasons therefor.
- C. Progress reports. At any time during the progress of the work, the applicant's engineer will advise the Board, immediately, of any factors which may adversely affect the progress of the work.

ARTICLE IX
Fees

§ 801-63. Fee schedule.

The following fee schedule applies to submissions or requests to the Planning Board:

- A. Approval not required (ANR) plans: \$150.
- B. Preliminary plans: \$400, plus \$30 per lot. At the time of definitive plan application, \$400 of the subdivision plan costs will be credited to the definitive plan.
- C. Definitive plans:
 - (1) Application fees: \$475, plus \$55 per lot.
 - (2) Inspection fees: due prior to endorsement of the definitive plan.
 - (3) Gravel roads, four lots or fewer: \$400.
 - (4) All other roads: \$960, plus \$210 per lot.
- D. Lot leases; duplicates.
 - (1) Lot releases, reduction in security, security administration: \$225.
 - (2) Duplicate lot release: \$65.
- E. Rescission of plan: \$200.
- F. Modification of subdivision plan or special permit: \$220.
- G. Road name change: \$200.
- H. Scenic road fees.
 - (1) Stone wall removal: \$25.
 - (2) Tree removal, three trees or fewer: \$25.
 - (3) Four to 10 trees in the same general area: \$100; separate locations shall require separate applications and fees.

SUBDIVISION REGULATIONS

APPENDIX A

FORMS

Plan Electronic File Requirements

Design Standards

Typical Road Cross Sections (25, 35, 45 and 50 mph)

Guardrails

Paved Turnaround "T"

SUBDIVISION REGULATIONS

801 Attachment 1

APPENDIX A

PLAN ELECTRONIC FILE REQUIREMENTS

File Format

Acceptable electronic file formats include AutoCad .dwg, AutoCad .dxf, or Microstation .dgn format. Acceptable media formats include three-and-one-half-inch floppy disks, CD-ROM, or Iomega Zip disks.

Coordinate System

For the purpose of accurately inputting the plan into the Town's geographic information system, the plan should be tied into the Massachusetts State Plane Coordinate System through bounds with published coordinates (i.e., National Geodetic Survey, Mass Highway, etc.) where feasible. The datum and units used shall be clearly shown. In cases where there are no suitable geodetic bounds in the vicinity, the plan shall be tied into existing physical features such as catch basins, manholes, utility poles, etc. In such cases, tie-ins to two or more physical features shall be made for at least two different identifiable points on the plan (i.e. property corners).

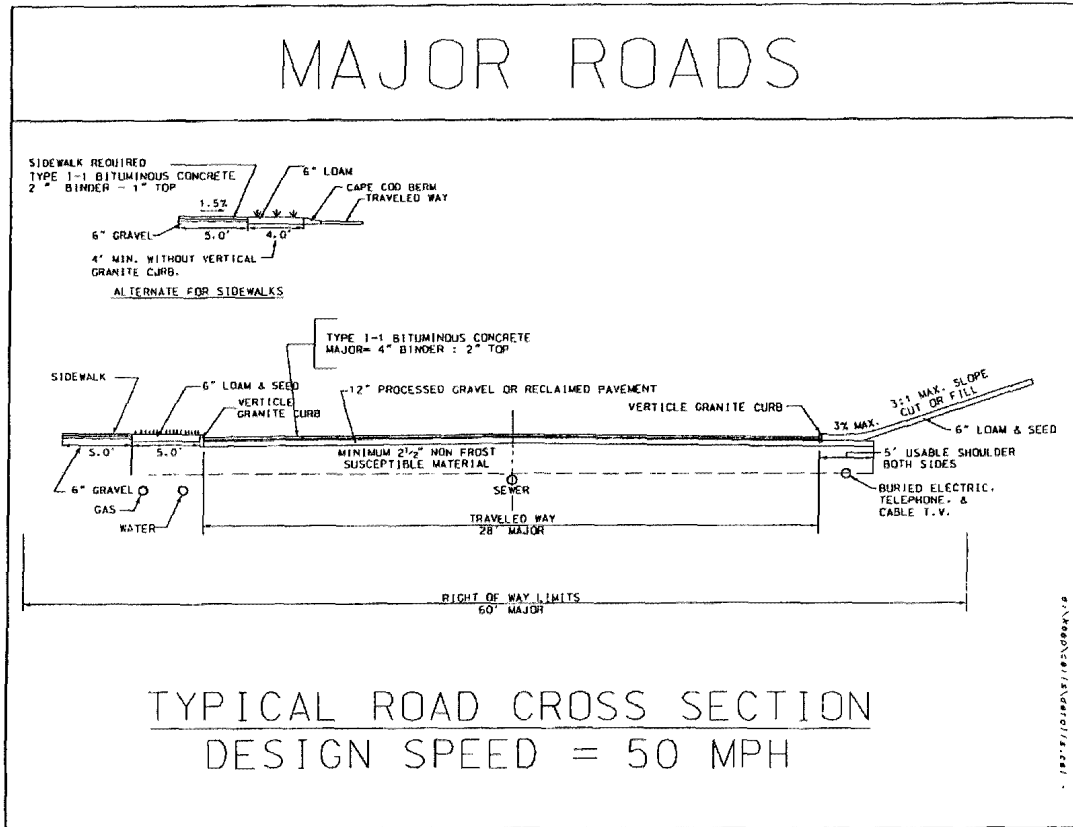
SUBDIVISION REGULATIONS

Design Standards										
Type of Street	Width of Way (feet)	Width of Traveled Way (feet)	Design Speed (mph)	Minimum Centerline Radii (feet)	Maximum Centerline Grade	Minimum Centerline Grade	Minimum Curb Radius at Street Intersect (feet)	Minimum Length or Tangent between Reverse Curves (feet)	Storm Frequency for Drainage Calculations (year)	Stopping Site Distance** (feet)
Major	60	28	50	600 minimum 800 desirable	5%	1%	50	300*	50	475
Secondary	50	24	45	400 minimum 500 desirable	8%	1%	40	150	25	400
Minor A	50	20	35	150 minimum 200 desirable	10%	1%	30	100	25	250
Minor B	40	16	25	100	10%	1%	30	100	25	250

* Transition or minimum needed for superelevation.

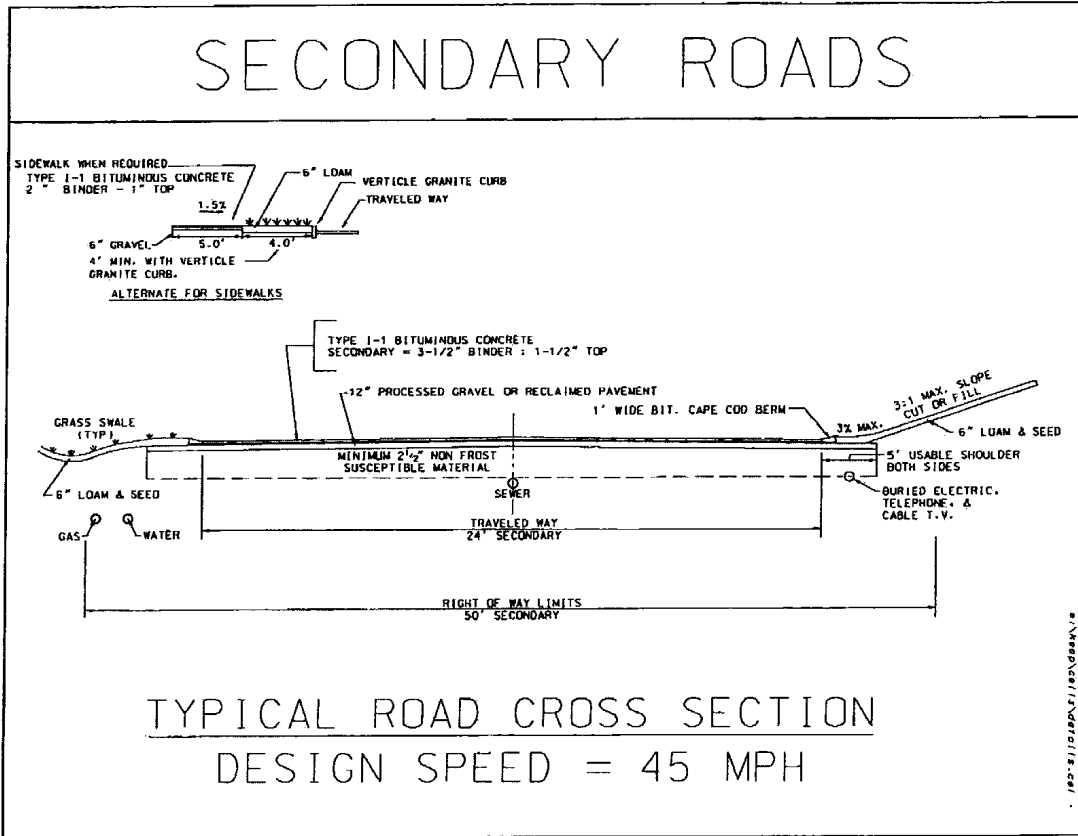
** Sight distance shall be measured with an eye height of 3.5 feet and an object height of 0.5 feet above the pavement. Also see § 801-13 for site distance required at intersections.

SUBDIVISION REGULATIONS



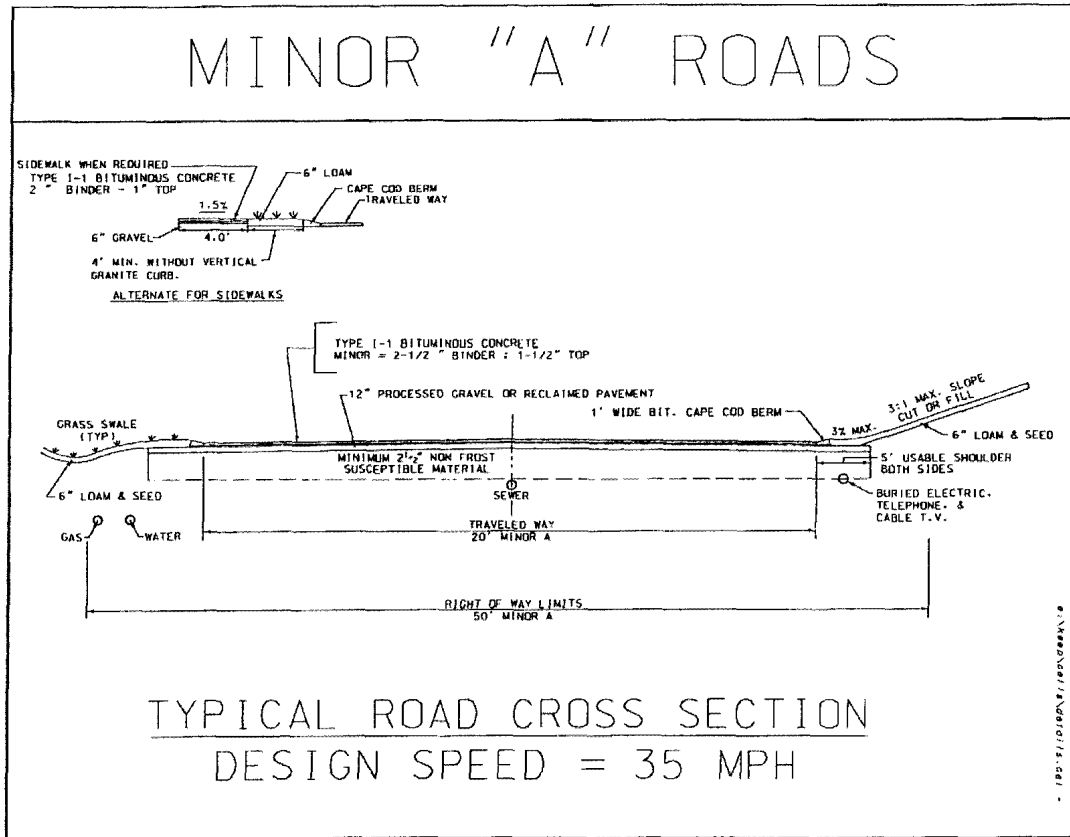
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SUBDIVISION REGULATIONS



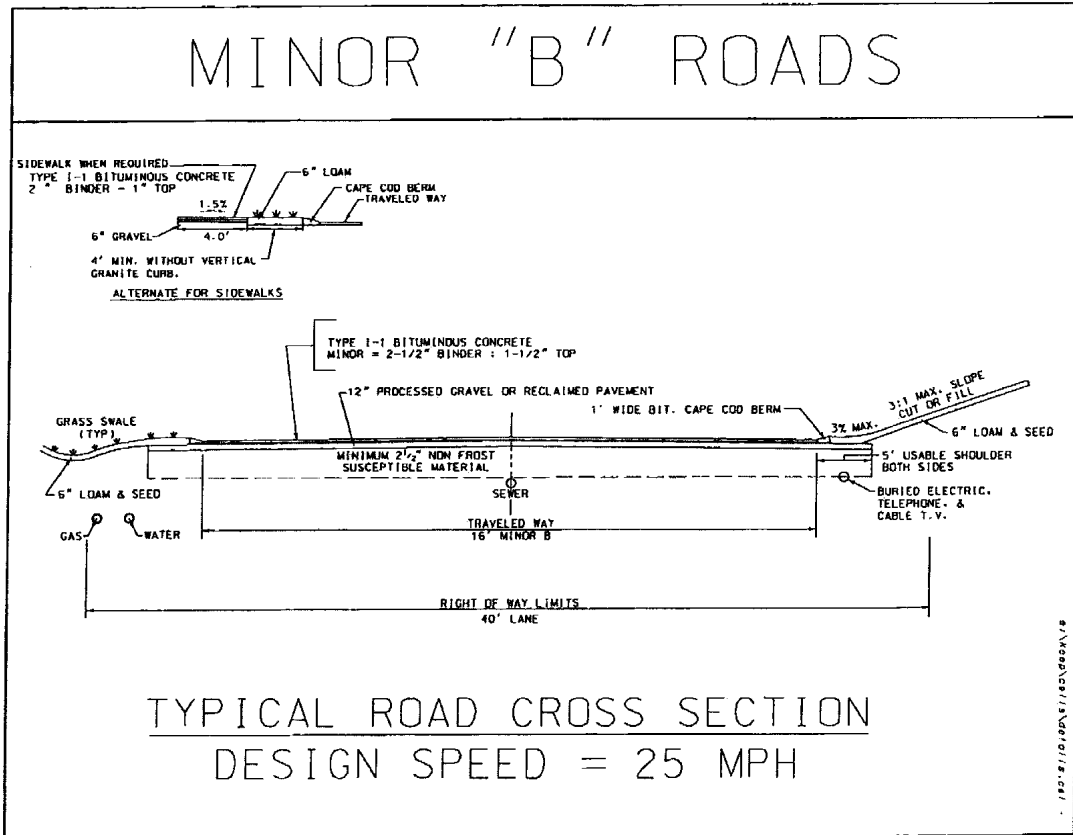
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SUBDIVISION REGULATIONS



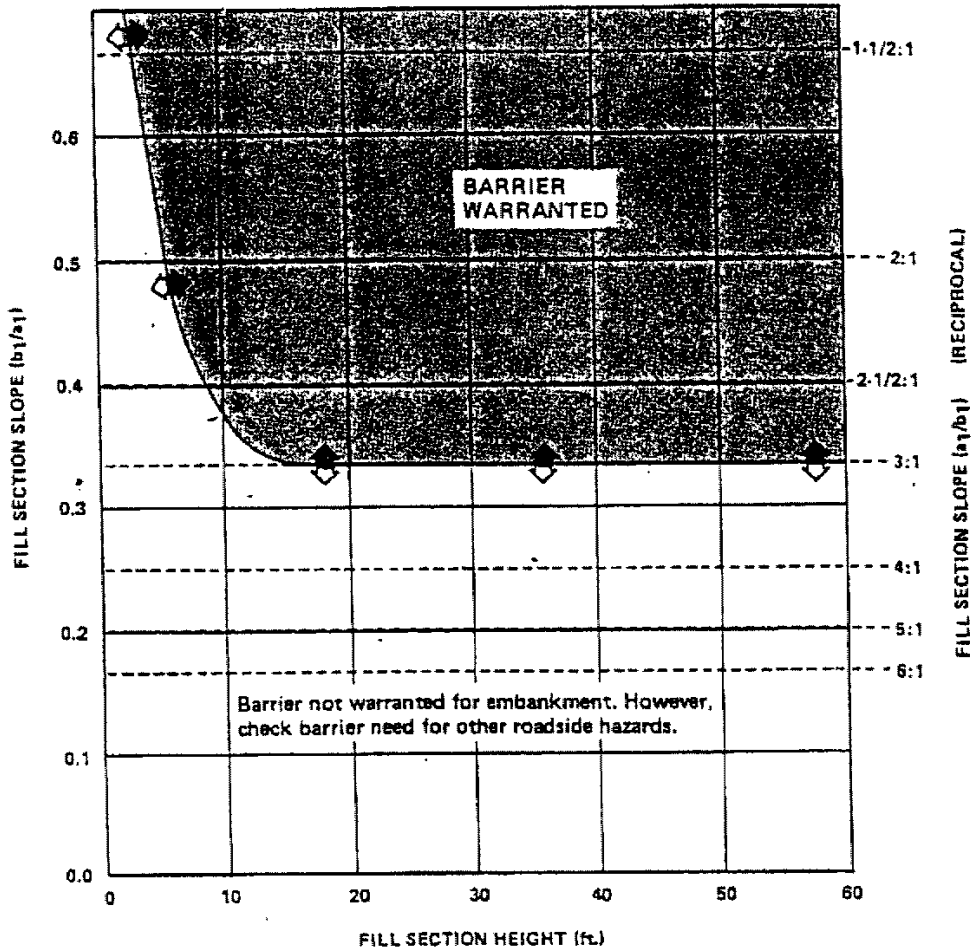
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SUBDIVISION REGULATIONS



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SUBDIVISION REGULATIONS



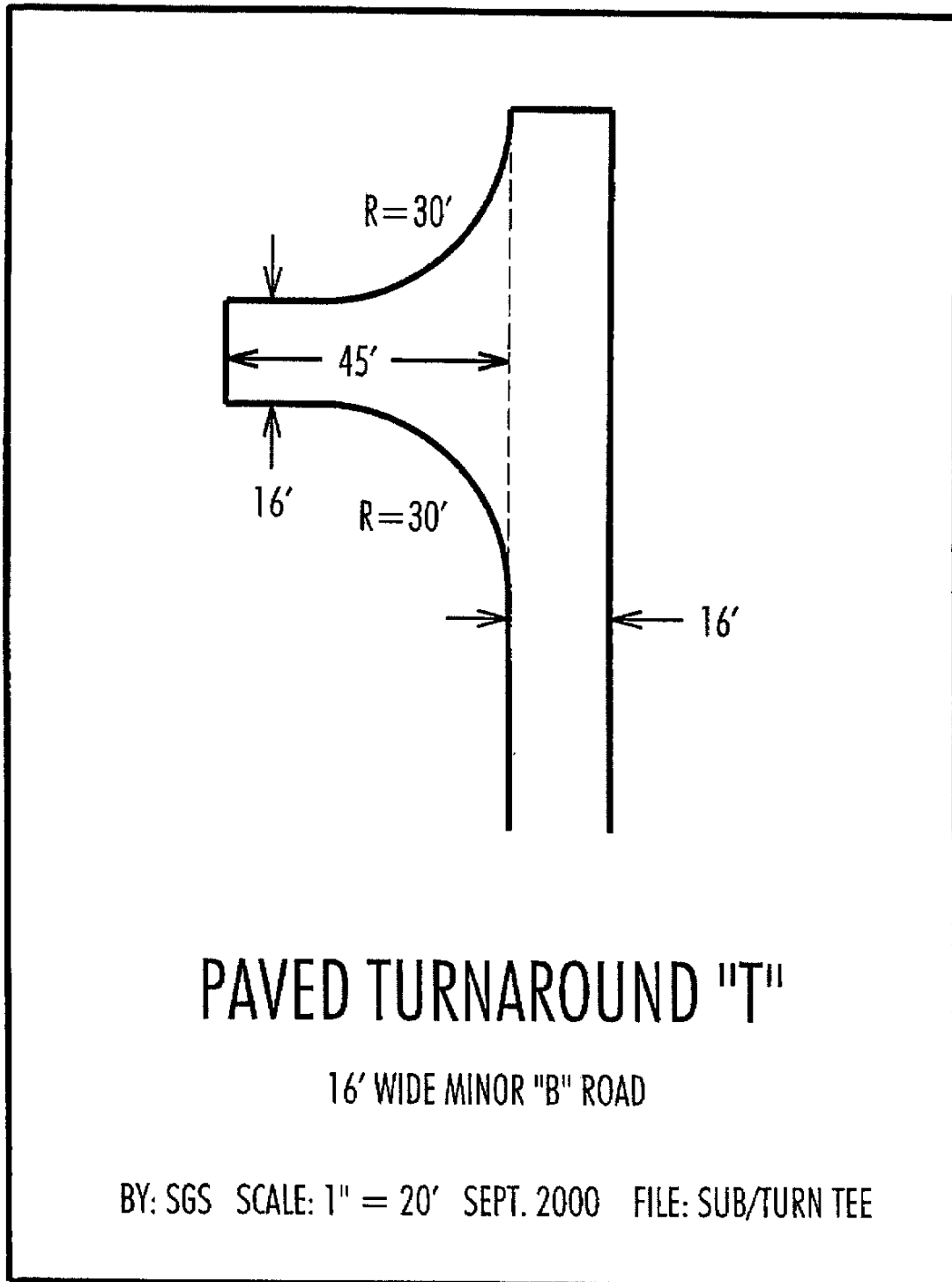
Reference: Guide for Selecting, Locating and Designing Traffic Barriers, AASHTO, 1977.

Note: 1. Use guardrail when roadside dimensions fall on the line (e.g., is 3:1 and height is 20 ft.)

Note: 2. Guardrail maybe required for other roadside hazards.

GUARDRAIL WARRANT

SUBDIVISION REGULATIONS



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SUBDIVISION REGULATIONS

APPENDIX B

FORMS

Form A and Form A Checklist
Form B and Form B Checklist
Form C and Form C Checklist
Form D, Modification or Rescission
Form EA, Environmental Analysis
Form F, Covenant
Form G, Release of Lots Under Covenant
Form M, Certificate of Completion
Form S, Snow and Maintenance Agreements
Form O, Performance Security
Developer's Agreement, Exhibits 1 and 2
Form 1A, Open Space Restrictions and Easement

SUBDIVISION REGULATIONS

801 Attachment 2

<p>TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS</p> <p>FORM A</p> <p>APPLICATION FOR DETERMINATION THAT PLAN DOES NOT REQUIRE APPROVAL</p>

Date: ____/____/____

The undersigned owner(s) or authorized applicant(s) of the land shown on the accompanying plan request a determination and endorsement by the Barnstable Planning Board that approval under the Subdivision Control Law is not required.

Plan Title: _____

Plan Date: ____/____/____

Assessor's Map and Parcel Number: Map (s): _____ Parcel (s): _____

Zoning: _____ Area: _____ Number of Lots: _____

Drawn By: _____

Address: _____

Phone: (____) _____

The undersigned's title to said land is derived as follows:

PLEASE COMPLETE THE FOLLOWING

1. The proposed lots do ____ do not ____ meet the present Zoning Ord. lot size requirements, including lot shape factor requirements. (Check one).
2. The applicant believes that the plan does not require the Planning Board's approval because (please circle):
 - A. Each lot has the minimum required frontage required under the Zoning Ord. on _____ Street, which is:
 1. A public way, certified by the Town Clerk as maintained and used as a public way, or
 2. A way shown on a subdivision plan # _____ dated ____/____/____, and endorsed and installed in accordance with the Subdivision Rules and Regulations, or
 3. A private way which provides adequate access in accordance with § 801-12B of these Subdivision Rules and Regulations.
 - B. The division proposed is for conveyance purposes and does not reduce the lot frontage less than the minimum required in the Zoning Ordinance.
 - C. The division of the tract of land shown on the accompanying plan is not a subdivision because two or more buildings shown on the accompanying plan were standing prior to the date in which the Subdivision Control Law was implemented in the Town of Barnstable. The date the buildings were constructed and the use is as follows:

BARNSTABLE CODE

Building #1 : ___/___/___ date _____ use _____

Building #2 : ___/___/___ date _____ use _____

Building #3 : ___/___/___ date _____ use _____

Other reasons: _____

4. Has a plan of this land been submitted to the Planning Board before? Yes ___ No ___ (check one). If yes please provide the date of the plan, date of recordation with the Registry of Deeds or of the date of filing with Land Court. date of plan: ___/___/___ date of recording: ___/___/___

5. Are there any wetlands within this tract of land? Yes ___ No ___ (check one).

6. The owner/applicant owns adjoining land ___ yes ___ no

_____/_____(_____)_____
Signature of Owner Address Telephone

Print Name of Owner

_____/_____(_____)_____
Signature of Owner Address Telephone

Print Name of Owner

_____/_____(_____)_____
Signature of Authorized Applicant Address Telephone

Print Name of Applicant

Applicant's Authorization:

This section is to be completed by the Registered Land Surveyor who prepared the plan or by the legal counsel representing the applicant:

I certify that no other conditions or limitations from prior plans apply to the plan of land submitted.

Company/Firm: _____
Address: _____
Telephone: (_____) _____ Date: ___/___/___
Certification: _____ Certification #: _____
Signature: _____

Received by Town Clerk:

Date: ___/___/___ Time: _____ Fee: _____

Signature: _____

Please make check payable to the Town of Barnstable.

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS

FORM A

APPROVAL NOT REQUIRED PLAN - SUBMISSION CHECKLIST

This form must be completed by the plan preparer, signed, dated and returned with the completed copy of Form A along with the appropriate fee. For the complete submission requirements see Article IV of the Rules and Regulations. Please check each item submitted:

- One Copy of the completed Form A, and Form A Checklist.
Filing Fee Paid \$
Copy of most recently recorded deed and copy of recent tax bill. Evidence of payment of taxes on all lots.
If the applicant is not the owner, a copy of authorization to apply signed by land owner(s).
Evidence of right of access over any private way that provides access and frontage.
Ten copies of the plan at a reduced scale of 1"=100" or other suitable scale for distribution.
GIS file (see Appendix A) and original mylar.
Original cloth tracing and eight (8) prints of the plan containing the following information:
Locus Map at a scale of 1" = 2,000'.
Underneath the locus map, the assessors map and parcel number(s), zoning district(s), zoning overlay district(s), and zoning area, frontage and dimensional requirements. North arrow.
Title block location and Fire District, owner, applicant, date scale and bar scale. Firm responsible and original seal on all copies with signature and date. Revisions with dates and descriptions..
Adjoining lots and owner(s). Frontage of any remaining adjoining land.
Location of existing buildings, including front, side and rear yard setbacks and street address.
Location and width of streets, ways and easements: legal status, name and pavement widths. Type of surface of way which gives frontage.
Location and area of wetlands on any buildable lot.
Lot sizes in sq. ft and/or acres; area of any remaining land; lot shape factor calculations on separate building lots.
Lots created for conveyancing purposes only, so noted.
Note: "No determination as to compliance with the Zoning Ordinance requirements has been made or intended by the above endorsement".

THE PLANNING BOARD MAY DENY INCOMPLETE APPLICAITONS

Signature of registered land surveyor or registered engineer: _____

Print name: _____

Company/Firm: _____ Address: _____

Telephone:(_____) _____ Date: ____/____/____ Certification: _____ Certification #: _____

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM B
APPLICATION FOR TENTATIVE APPROVAL OF PRELIMINARY PLAN

Date: _____
 Subdivision #: _____

To the Planning Board in the Town of Barnstable:

The undersigned authorized applicant(s) or owner(s) of all the land shown on the accompanying Preliminary Subdivision plan located and described as follows:

Plan Title: _____

Plan Date: _____ Assessor's Map and Parcel Number(s): _____
 Zoning: _____ Area: _____ Number of Lots: _____

Drawn By: _____
 Address: _____

Phone: (_____) _____

hereby submits such plan as a Preliminary Subdivision plan in accordance with the Rules and Regulations of the Barnstable Planning Board.

The undersigned's title to said land is derived as follows: _____

PLEASE COMPLETE THE FOLLOWING

1. Access to the development is proposed from the following street(s): _____

2. Have any of the proposed access roads been designated as Scenic Roads? ____ yes ____ no
 If yes, which one(s)? _____

3. The development will be served by:
- ____ Public Water Supply
 - ____ Private Wells
 - ____ Town Sewers
 - ____ On-Site Sewage Disposal Systems
 - ____ Package Sewage Treatment Facility

4. Is any part of the development within the following Groundwater Protection Overlay Districts of the Zoning Ordinance?
 GP ____ yes ____ no WP ____ yes ____ no

5. Are there:
 a. Any wetlands or inland water bodies on this site? ____ yes ____ no; approximate area: _____

BARNSTABLE CODE

- b. Wetlands or inland waterbodies within 200 feet of the perimeter? yes no
- 6. Is any of the site within the FEMA 100 year flood plain: yes no
 Within the 100 - 500 year flood plain: yes no
 Within the 100 year Velocity Zone: yes no
- 7. Is the subdivision in a Historic District: yes no
- 8. Is the subdivision in a District of Critical Planning Concern as designated by the Cape Cod Commission:
 yes no
- 9. Is the subdivision located in an Area of Critical Environmental Concern: yes no
- 10. Is the subdivision located in a Critical Habitat as designated by the 1990 APCC publication "Cape Cod Critical Habitats":
 yes no
- 11. Will the subdivision conform to all the requirements of the Subdivision Rules and Regulations?
 yes no If "no", attach a list of waivers required.

To the best of my knowledge the information submitted herewith is complete and accurate.

<i>Signature of Owner</i>	<i>Address</i>	<i>Telephone</i>
---------------------------	----------------	------------------

Print Name of Owner

<i>Signature of Owner</i>	<i>Address</i>	<i>Telephone</i>
---------------------------	----------------	------------------

Print Name of Owner

<i>Signature of Authorized Applicant</i>	<i>Address</i>	<i>Telephone</i>
--	----------------	------------------

Print Name of Applicant

Applicant's Authorization, if not the owner:

_____ (attach copy of written authorization)

Please make check payable to the Town of Barnstable

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS

FORM B

PRELIMINARY SUBDIVISION PLAN - SUBMISSION CHECKLIST

This form must be completed by the plan preparer, signed and dated and returned with a completed copy of Form B attached and the appropriate filing fee. No application shall be considered complete until all the required materials have been submitted. For the complete submission requirements, see full text of the Rules and Regulations.

PLEASE CHECK EACH ITEM:

- One copy of the completed Form B and Form B Checklist.
Filing Fee \$
A copy of the most recent recorded deed for each parcel.
If the applicant is not the owner, written authorization to act for the owner
A copy of the most recent tax bill for each parcel, and evidence that all taxes are paid.
A list of waivers that may be required.
Nine copies of the EA Form if required. (Submission is recommended at the Preliminary stage.)
10 copies of the Preliminary Plan at a scale of 1"=100' or other suitable scale for distribution.
Eight copies of the Preliminary Plan containing the following information:
Subdivision name and number, north arrow, and the words "Preliminary Plan".
Key map at 1" = 2,000'.
Below the key map, the assessors map and parcel number(s), zoning district(s) and zoning overlay district(s), and zoning area, frontage and width requirements. Total area of the subdivision.
Title block with location, Fire District, names of record owner, applicant and plan preparer, date, scale, bar scale; plan revisions described, initialed and dated.
Subdivision boundaries, adjacent property lines and abutters.
Existing and proposed streets, ways, easements, public areas and width of paving. Legal status of ways.
Classification of streets
Top and toe of proposed slopes adjacent to roadways.
Sight distances.
Approximate lot sizes, lot numbers. Approximate area of wetlands on each parcel.
Drainage systems, existing and proposed.
Topography shown by contours. Use GIS information from town if survey information is unavailable.
Significant site features, including wetlands, waterbodies, flood zone boundaries, and kettle holes.
Existing building structures and stone walls.
Wetlands within 200 feet of perimeter of the proposed subdivision.
Slopes in excess of 10%.
Existing water mains, utilities and sewers adjoining property. Utility poles within and adjoining the subdivision.
Plan showing overall development of contiguous land if it is in the same ownership.
Application file with Board of Health
Notice filed with Town Clerk

THE PLANNING BOARD MAY DENY INCOMPLETE APPLICAITONS

Signature of registered land surveyor or registered engineer:

Company/Firm: Address:

Telephone: Date: Certification: Certification #:

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM C
APPLICATION FOR APPROVAL OF A DEFINITIVE PLAN

Date: _____

Subdivision #: _____

To the Planning Board in the Town of Barnstable, the undersigned authorized applicant(s) or owner(s) of all the land shown on the accompanying Definitive Subdivision plan located and described as follows:

Plan Title: _____

Plan Date: _____ Assessor's Map and Parcel Number(s): _____

Zoning: _____ Area: _____ Number of Lots: _____

Drawn By: _____

Address: _____

Phone: _____ hereby submits such plan as a Definitive Subdivision plan in accordance with the Rules and Regulations of the Barnstable Planning Board.

The undersigned's title to said land is derived as follows: _____

PLEASE COMPLETE THE FOLLOWING

1. Access to the development is proposed from the following street(s): _____

2. Have any of the proposed access roads been designated as Scenic Roads? ____ yes ____ no
If yes, which one(s)? _____

3. The development will be served by:

- ____ Public Water Supply
- ____ Private Wells
- ____ Town Sewers
- ____ On-Site Sewage Disposal Systems
- ____ Package Sewage Treatment Facility

4. Is any part of the development within the following Zoning Groundwater Protection Overlay Districts?

GP zone ____ yes ____ no WP zone ____ yes ____ no

BARNSTABLE CODE

5. Are there:

a. Any wetlands or inland water bodies on this site?

____ yes _____ total acreage ____ no

b. Wetlands or inland waterbodies within 200 feet of the perimeter of the subdivision?

____ yes ____ no

6. Is any part of the site within the FEMA 100 year flood plain?

____ yes ____ no

B flood plain?

____ yes ____ no

100 year Velocity Zone?

____ yes ____ no

7. Is the subdivision in an Historic District? ____ yes ____ no

8. In a District of Critical Planning Concern as designated by the Cape Cod Commission ____ yes ____ no

9. In a Location within a Critical Habitat as designated by the APCC 1990 publication "Cape Cod Critical Habitats Atlas"

____ yes ____ no

To the best of my knowledge the information submitted herewith is complete and accurate.

Signature of Owner Address Telephone

Print Name of Owner

Signature of Owner address Telephone

Print Name of Owner

Signature of Authorized Applicant Address Telephone

Print Name of Applicant

Applicant's Authorization:

____ File copy of notice with Town Clerk:

____ File Definitive Plan with Board of Health

Please make checks payable to the Town of Barnstable

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS

FORM C

DEFINITIVE SUBDIVISION PLAN - SUBMISSION CHECKLIST

This form must be completed by the plan preparer, signed and dated and returned with a completed copy of Form C attached and the appropriate filing fee. For the complete submission requirements see § 801-24 of the Subdivision Rules and Regulations.

PLEASE CHECK EACH ITEM:

- One copy of the completed Form C and Form C Checklist.
- Filing Fee paid \$_____.
- GIS file, see Appendix A.
- A list of all abutters, with addresses, from the most recent tax list.
- Copy of most recent recorded deed and tax bill unless submitted at Preliminary stage, and there is no change.
- Evidence of payment of taxes on all lots,
- For applicants who are not owners – a copy of the P and S, or written authorization from owner.
- Evidence of right of access over any private way providing frontage and access to lot(s).
- Will the subdivision conform to all the requirements of the Subdivision Rules and Regulations?
yes no If "no", attach a list of waivers required.
- List of any waivers from strict compliance to these Rules and Regulations.
- Location of soil test sites and data obtained from them.
- Boring logs and soil classifications from proposed manhole and catch basin sites.
- Calculations for the determination of waterway openings to justify culvert and drain sizes.
- Drainage calculations.
- Nine copies of the Environmental Analysis Report, when required, or request for waiver.
- Engineer's report outlining maintenance.
- Tree map (See § 801-15.)
- Report from the Cape Cod Commission, if any.
- Land Surveyor's and Engineer's original seal and signature on all plans including copies

BARNSTABLE CODE

SHEET(S) A

Eight copies of the Definitive Plan Sheet A containing the following information:

- _____ Scale of 1" = 40', or other suitable scale, sheets not to exceed 24" by 36".
- _____ Subdivision name and number, north arrow, date, scale, legend, and the words "Definitive Plan".
- _____ Key map at 1" = 2,000'
- _____ Below the key map the assessor's map and parcel number(s), zoning district(s), zoning overlay district(s), and zoning area, frontage and width requirements.
- _____ Title block – Names of record owner, applicant and plan preparer, location and fire district, revisions described, dated and signed, date scale and bar scale and the words "Definitive Plan"
- _____ Subdivision boundaries, adjacent property lines and abutters.
- _____ Zoning District designations and lines, including any overlay districts.
- _____ Existing and proposed streets, ways, easements, public areas, and width of paving. Names of streets in pencil until approved by the Board's Engineer. Classification of streets as Major, Secondary, Minor A or B.
- _____ Sufficient data to determine readily the location, direction and length of every street and way line, easements, lot lines and boundary lines, and to establish these lines on the ground.
- _____ Location of all monuments, existing and proposed.
- _____ The location of any existing buildings and stone walls.
- _____ The location of wetlands, and surface water bodies.
- _____ Area of each lot in square feet and acres. Area of wetlands within each lot. .
- _____ Lot shape calculations noted on each lot.
- _____ Note: "Approval of this plan subject to compliance with covenant to be recorded herewith", or written description of other security to be submitted separately.
- _____ Space for the Board's signatures and Town Clerk's Certification of no appeal.
- _____ **10 copies of Sheet A at a reduced 100 scale, or other suitable scale for distribution.**

SHEET B

A separate reproducible copy of the plan showing:

- _____ Below the key map, the total number of linear feet, measured along the centerline, for each street proposed on the plan. Gross area of roads and cul-de-sacs in sq. ft. and acres.
- _____ Lot numbers.
- _____ Coordinates of all property corners, lot corners, street line changes in direction, tied in to Mass. Plane Coordinate System

SUBDIVISION REGULATIONS

SHEET C

A separate reproducible copy of the plan showing:

- _____ Location, name, legal status and width of right-of-way and paved surface of streets bounding, approaching, or within reasonable proximity of the subdivision.
- _____ Top and toe of proposed slopes adjacent to the proposed roadway
- _____ Slopes in excess of 10%, slopes with severe slope characteristics for building sites according to the Soil Conservation Service.
- _____ Road centerline stationing, referenced to the street plans and profiles 0 point for centerline station from intersection of centerlines.
- _____ Existing and proposed contours at two foot intervals, extending beyond boundaries of subdivision to indicate effect on abutting property. Two bench marks.
- _____ Sight distances, see § 801-13.
- _____ Drainage systems existing and proposed, delineation of watersheds; water to and from the site.
- _____ Erosion and sediment control plan including temporary drainage facilities.
- _____ Location of wetlands and surface waterbodies, within 200 feet of the subdivision boundary lines.
- _____ Existing water mains, utilities, sewers and utility poles within and adjoining the subdivision.

Separate plans and profiles of every street, showing the following data:

- _____ Horizontal scale of 1" = 40'. Vertical scale of 1" = 4'.
- _____ Existing centerline profile lines, lines of sidelines.
- _____ Finished design profile: elevations every 50 feet, 25 feet on vertical curves.
- _____ Elevations related to mean sea level, adjusted using Frimpter correction method.
- _____ Profiles and cross sections of drainage including swales, retention basins, catch basins, manholes and proposed invert and pipe sizes. The location of drainage easements and any surface water body or wetland, and the height of groundwater (adjusted – Frimpter).
- _____ Existing walks and driveways.
- _____ Rates of gradient shown by figures for roadways and drainage.
- _____ Location of existing and proposed gas, water, sewer, electric, telephone, cablevision and other utilities including utility poles. Any conflict between existing utilities and proposed construction.
- _____ Two bench marks for each street.
- _____ Cross sections of roadway at 50 foot intervals showing existing and proposed grades, top and toe of slopes, pavement thickness, width and gravel base. Utilities and proposed drainage..
- _____ Spot elevations on gutters, center lines of corner roundings at street intersections and cul-de-sacs.

BARNSTABLE CODE

_____ Location and type of proposed traffic signs and markings, and street name signs.

SHEET D A sketch plan showing the approximate layout of streets of any remaining land owned by the applicant or purchaser of the land, unless a subdivision plan has been submitted to the Planning Board.

THE PLANNING BOARD MAY DENY INCOMPLETE APPLICAITONS

Registered Land Surveyor

Name (please print): _____

Address: _____

Phone: _(____)_____

Registration #: _____

Signature: _____

Professional Engineer

Name: (please print) _____

Address: _____

Phone: _(____)_____

Registration #: _____

Signature: _____

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM D
APPLICATION FOR MODIFICATION OR REVISION OF DEFINITIVE PLAN

Date: ____ / ____ / ____

Subdivision #: _____

To the Planning Board in the Town of Barnstable:

The undersigned authorized applicant(s) or owner(s) of all the land shown on the accompanying approved Definitive Subdivision plan located and described as follows:

Plan # _____ Title: _____

Plan Date: ____ / ____ / ____

Date of Planning Board Approval: ____ / ____ / ____

Assessor's Map and Parcel Number(s): _____

Zoning: _____ Area: _____ Number of Lots: _____

Drawn By: _____

hereby submits this Application for a Modification ____ or Revision ____ of an Approved Definitive Subdivision Plan.

The Modification is described as follows: _____

If a proposed Modification will result in changes to the Definitive Plan, the plan submission requirements for a Definitive Plan shall be followed and a Form C Checklist must also be completed and attached.

List all lots which have been conveyed: _____

* Attach a list of lot owners and their addresses.

** Attach a list of all abutters and their addresses as they appear on the most recent tax list.

List all mortgage holders of the land by lot:

BARNSTABLE CODE

Permission of the owners affected by any change to the subdivision plan and of the mortgage holders must be obtained.

To the best of my knowledge the information submitted herewith is complete and accurate.

Signature of Owner Address () Telephone

Print Name of Owner

Signature of Owner Address () Telephone

Print Name of Owner

Signature of Authorized Applicant Address () Telephone

Print Name of Applicant

Applicant's Authorization: _____

Received by Town Clerk:

Date: ___/___/___ Time: _____ Fee: _____

Signature: _____

Please make check payable to the Town of Barnstable.

____ Notification to the Town Clerk, date: ___/___/___

____ Submitted to the Board of Health, date: ___/___/___

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM EA
ENVIRONMENTAL ANALYSIS

This form should be completed for all subdivisions which:

- 1. provide access to 10 or more dwelling units; and/or
2. provide access to 4 or more acres of non-residentially zoned land; and/or
3. is a multi-family or non-residential subdivision with access to, or within 500 feet of Route 132, Route 28 or Route 6A; and/or
4. if the Board deems it appropriate in light of special circumstances, based on recommendations from the Planning Department and/or D.P.W.

The applicant should request a determination from the Planning Board as to which sections should be completed, preferably prior to the submission of the Preliminary plan. Plans should be designed so as to mitigate impacts upon natural resources and infrastructure. It is recommended that this form be submitted providing appropriate detail with the Preliminary Plan in order to avoid errors or extra commitments which may waste valuable time and resources. The completed form shall be filed with the Definitive Plan, or a waiver obtained. See § 801-18 of the Subdivision Rules and Regulations. Questions should be directed to the Department of Planning and Development.

A. PHYSICAL ENVIRONMENT

- 1. Provide a map of the subdivision showing soil and subsoil types using information obtained from test pits and utilizing the system of soil classification in the United States Department of Agriculture, Soil Conservation Service, Interim Soil Survey Report for Barnstable County. The location of all test pits shall be indicated on the map. Soil logs shall be enclosed with the map. See § 801-24A(1)(a) of the Subdivision Rules and Regulations

Briefly describe the characteristics of the soils and subsoils of the site:

- 2. Is the subdivision located in an area designated as a Critical Habitat in the 1990 APCC publication entitled "Cape Cod Critical Habitats Atlas" published by the Association for the Preservation of Cape Cod?

_____ yes _____ no

For subdivisions located in areas designated as Critical Habitats, on the basis of a recommendation from the Conservation Department, the Planning Board may require that the applicant provide an inventory and map of species.

- 3. For multi-family, cluster and non-residential subdivisions, provide a map of the site showing the approximate location of major trees or major tree clusters with a caliper in excess of ten inches. Stands of major trees should be delineated by a line. Indicate types of trees found.

BARNSTABLE CODE

- 4. Provide a map showing any buildings listed on the national, state or local register, or more than 50 years old and eligible for listing on the local historic register. Show stone walls and any historic or prehistoric site. Information may be obtained from the Historic Commission.

B. RESIDENTIAL SUBDIVISIONS

1. Dwelling units and population at full buildout:

- _____ Total number of dwelling units
- _____ Number of dwelling units available to low and moderate income families
- _____ The total number of bedrooms planned, if known
- _____ Total population of the subdivision
- _____ Projected sewage generation based upon 110 gallons per day, per bedroom

Describe the profile of the future residents as follows:

- Family size: _____
- Age range: _____
- Proportion of the dwelling units expected to be purchased by second home buyers: _____%
- Minimum sales price for the dwellings: \$ _____

C. NON-RESIDENTIAL AND MIXED USE SUBDIVISIONS

All information shall be projected for full buildout.

1. Total building square footage by use:

- _____ sq. ft. use: _____
- _____ sq. ft. use: _____
- _____ sq. ft. use: _____
- _____ sq. ft. use: _____
- _____ sq. ft. use: _____

2. Total number of employees: _____

SUBDIVISION REGULATIONS

3. Projected water usage in gallons per day: _____ gal./day
4. Projected solid waste in tons per year: _____
5. Projected sewage generation in gallons per day: _____ gal. (use Title V calculations)

D. TRAFFIC GENERATION

1. Provide average summer daily and peak hour summer traffic counts for the following street segments servicing the subdivision as designated by the Planning Board:

Street	av. summer daily	peak hour summer	LOS*
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

*Highway
Capacity Manual

2. For the entire subdivision:

_____ the average summer daily peak hour trip generation

_____ peak hour summer trip generation

Trip generation shall be calculated according to the latest International Transportation Engineers handbook entitled "Trip Generation".

E. SOIL EROSION CONTROL MEASURES

Provide a map showing temporary drainage features in accordance with § 801-40E. Indicate at what point in the construction schedule these facilities will be installed and if temporary, when they will be removed:

BARNSTABLE CODE

F. WATER QUALITY

1. Provide a map indicating the direction of flow of the groundwater and surface water. Data should be taken from the latest map showing the Zone 11 recharge areas for Existing and Proven Future Water Supply Wells on file with the Town Clerk, unless the Planning Board requires that a site specific hydrogeological study be made of the site by a qualified hydrogeologist. A map indicating groundwater levels and the direction of groundwater flow shall be developed from information supplied from on-site monitoring wells.

2. Annual Water Table fluctuations within the area of the subdivision determined by the formula contained in the United States Department of the Interior Geological Publication, "Estimating Highest Groundwater Levels for Construction and Land Use Planning - A Cape Cod, Massachusetts, Example":
 _____ feet per year

3. Total area of lawn _____ sq. ft.

4. Total annual Nitrate-Nitrogen loading from the subdivision from:
 _____ lbs per year - septic systems or other sewage treatment facility)
 _____ lbs per year - lawn and garden fertilizers.

Nitrate-Nitrogen loading shall be calculated according to the method approved by the Cape Cod Commission.

5. Total annual phosphorous loading from the subdivision from:
 _____ lbs - sewage
 _____ lbs - lawn and garden fertilizers

G. OPEN SPACE

Provide a map showing any nearby trails or publicly or privately owned areas of protected open space as shown on the open space maps available in the Conservation Department.

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM F COVENANT
KNOW ALL MEN BY THESE PRESENTS

WHEREAS _____ of _____ MA. has submitted an application to the Planning Board of the Town of Barnstable for the approval of Definitive Plans and Profiles dated _____, 20_____, revised _____, 20_____, prepared by _____ MA, land located off _____ Road into _____ lots, entitled " _____", subdivision # _____.

WHEREAS The Planning Board and the Applicant have entered into a Development Agreement dated _____, this covenant is attached hereto and made a part thereof the Development Agreement, to secure the performance thereof

NOW THEREFORE IN CONSIDERATION that said Planning Board of the Town of Barnstable waive the requirements for security as provided in Section 81U of Chapter 41 of the General Laws of Massachusetts (Ter. Ed.) as amended and for other good and valuable consideration WE hereby COVENANT WITH THE INHABITANTS OF THE TOWN OF BARNSTABLE as follows:

- 1. We are the owners of record of the premises on said plan.
- 2. We will not convey any lot or erect or place on any lot any building foundation or permanent building until the work on the ground necessary to adequately serve such lot has been completed in the manner specified in the Development Agreement dated _____; PROVIDED further, however, the Board may release a lot or lots upon the furnishing of sufficient security as required and approved pursuant to the provisions of Chapter 41, Section 81U, of the Massachusetts General Laws.
- 3. We agree to record this covenant as a part thereof the Development Agreement, with the Barnstable County Registry of Deeds, and to forward recorded copies of the Development Agreement and Covenant to the office of the Planning Board within thirty(30) days of the Planning Board's endorsement of approval of the Subdivision plan, or the approval of the Subdivision Plan shall be null and void.
- 4. This covenant shall be and is binding upon our heirs, executors, administrators, grantee or successors in interest and our grantee or successors in title, it being the express intention and understanding and agreement that this covenant shall constitute a covenant running with the land.
- 5. Nothing herein shall be deemed to prohibit a conveyance subject to this Covenant and the Development Agreement by a single deed of the entire parcel of land shown on said subdivision plan.
- 6. This covenant shall take effect upon approval of said plan by the Planning Board of the said Town of Barnstable.

For title to the property, see deed from _____, dated _____, recorded in the Barnstable Registry of Deeds, Book _____, Page _____, or registered in the Land Court as Document No. _____ and noted on the certificate of title no. _____, in Registration Book _____, page _____. The present holder of the mortgage upon the property is _____ (name) of _____ (address). The mortgage is dated _____ and recorded in the Barnstable Registry of Deeds, Book _____, Page _____, and noted on certificate of title no. _____, in

Subdivision Rules and Regulations Form F Covenant

BARNSTABLE CODE

Registration Book _____, Page _____, or registered in the Land Registry as Document no. _____, and noted on the certificate of title no. _____, in Registration Book _____, Page _____

_____(signature)_____ (print name), spouse of the undersigned applicant hereby agrees that such interest as I, we may have in the premises shall be subject to the provisions of this covenant and insofar as is necessary releases all rights of tenancy by dower or homestead and other interests therein.

I (we) hereby agree to construct the ways and install the utilities in the foregoing subdivision in accordance with all the terms of the Development Agreement dated: _____

In witness whereof we have hereunto set our hands and seals this _____ (day) and _____ (month) 20_____

Owners

Acceptance by a majority of Planning Board

Spouses of owners

[Planning Board]

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS _____, 20_____

Then personally appeared before me the above named _____(print name) and acknowledged the foregoing instrument to be the free act and deed of said Planning Board for the Town of Barnstable, MA.

_____ Notary Public My commission expires: _____

[APPLICANT]

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS _____ 20_____

Then personally appeared before me the above named

Subdivision Rules and Regulations Form F Covenant

SUBDIVISION REGULATIONS

_____ (print name) and acknowledged the foregoing instrument to be (his/ hers /its) free act and deed

_____ Notary Public My commission expires: _____

(SPOUSE)

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS _____ 20_____

Then personally appeared before me the above named

_____ (print name) and acknowledged the foregoing instrument to be (his/ hers /its) free act and deed

_____ Notary Public My commission expires: _____

OPTIONAL PARAGRAPHS TO BE INCLUDED AT THE DISCRETION OF THE PLANNING BOARD

There are not mortgages of record, or otherwise, on any of the land in the aforesaid subdivision except as described below and the present holders of said mortgages have assented to this covenant prior to its execution by the undersigned.

This covenant shall constitute a mortgage on the land affected which may be foreclosed upon by the Planning Board in the event that the principal obligation is not performed.

The mortgagee agrees to hold the mortgage subject to the covenants set forth above and agrees that the covenants shall have the same force and effect as though executed and recorded before the taking of the mortgage and further agrees that the mortgage shall be subordinate to the above covenant.

Subdivision Rules and Regulations Form F Covenant

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE PLANNING BOARD
FORM G
RELEASE OF LOTS UNDER COVENANT

Barnstable, Massachusetts: date _____

The undersigned, being an authorized agent of the Planning Board of Barnstable, Massachusetts, hereby certifies that the following lots owned by _____, securing the covenant dated _____ 20____, and recorded in Barnstable District Deeds, Book____, Page____, (or registered on Certificate of Title No. _____, Document# _____), and shown on a plan entitled"

_____ " and recorded with said Deeds, Plan Book____, Page____, (or registered in said Land Registry District, L. C. # _____), are hereby released from the restrictions as to sale and building specified in said Covenant. Said lots are designated on said plan as follows: _____

SUBDIVISION# _____

**Authorized Agent, Planning Board of the
Town of Barnstable**

COMMONWEALTH OF MASSACHUSETTS

Barnstable, Massachusetts, ss _____ 20____

Then personally appeared _____ an authorized agent of the Planning Board of the Town of Barnstable, Massachusetts and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.

NOTARY PUBLIC My commission expires: _____

After recording, return to:

Town of Barnstable Planning Board
200 Main Street
Hyannis, MA 02601

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM M
CERTIFICATE OF COMPLETION

Date: _____ Subdivision #: _____

Subdivision Name: _____

Owner: _____

Owner's Address: _____

Applicant, if other than owner: _____

Applicant's Address: _____

Date of Subdivision Plan: _____ Plan Designer: _____

Land Located: _____

Plan Recorded: _____

_____ signature _____ date

Planning Board's Determination

The undersigned, being a majority of the Town of Barnstable Planning Board, have determined that based on the certification of the Planning Board's Engineer, the construction of ways and installation of utilities in the subdivision referred to above have been fully and satisfactorily completed in accordance with the Subdivision Rules and Regulations.

Pursuant to Section 81-U of Chapter 41, M.G.L., and in consideration of completion of said construction and installation, the Town of Barnstable, a Massachusetts municipal corporation, acting through its Planning Board, hereby declares the above-mentioned subdivision to be complete.

Duly executed as a sealed instrument this _____ day of _____, 20__.

Signatures of a majority of the Barnstable Planning Board.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Date: _____

Then personally appeared _____, one of the above-named members of the Planning Board of Barnstable, Massachusetts and acknowledged the foregoing instrument to be his/her free act and deed before me.

_____ Notary Public My Commission Expires: _____ 20__

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS
FORM 0
PERFORMANCE SECURITY

Date: ____/____/20__

Subdivision #: _____

Agreement made this date between the Town of Barnstable and _____ hereinafter referred to as "the Developer", to secure the performance of all the requirements of the Subdivision Rules and Regulations and terms of the Development Agreement dated _____ between the Developer and the Town of Barnstable, a municipal corporation acting through the Planning Board, for a subdivision of land entitled _____

drawn by _____ dated ____/____/20__ owned by _____ address _____

approved by the Planning Board _____ (date)

Know all people by these presents that the agreement is binding upon our heirs, executors, administrators, assignees, grantees, successors in interest and the grantee or successors in title, to the Town of Barnstable, a Massachusetts municipal corporation, acting through its Planning Board, in the sum of \$_____ dollars, and has secured this obligation by depositing with the Planning Board of the Town of Barnstable:

- 1. A deposit of money in the above sum to be deposited in an escrow account in the name of the town. Please provide Tax ID # for escrow account: _____

- 2. A Letter of Credit in the above sum in favor of the Town on the _____ bank located at _____ Letter of Credit # _____, dated ____/____/20__ with an expiration date of ____/____/20__, authorized by _____, title, telephone number _____, drafts to be presented at _____ office, _____ located in the Town of Barnstable.

- 3. A bond in the above sum deposited with the Town on the _____ company located at _____ authorized by _____ title _____ telephone number _____ with an expiration date of ____/____/20__.

This agreement shall remain in full force and effect until the Planning Board finds that the applicant has fully and satisfactorily performed all obligations under the terms of the above Development Agreement, or has elected to provide another method of securing performance as provided in Massachusetts General Laws, Chapter 41, Section 81-U, acceptable to the Planning Board.

BARNSTABLE CODE

In the event the applicant should fail to complete the requirements of the Subdivision Rules and Regulations and obligations of the Development Agreement, and within the time specified in the Development Agreement or as otherwise agreed to in writing by both parties, the Letter of Credit/Bond/Deposit of Money may be applied in whole, or in part, by the Planning Board for the benefit of the Town of Barnstable to the extent of the reasonable cost to the Town of completing such construction or installation as specified in the Development Agreement. Any unused money and the interest accrued on the deposit of money will be returned to the applicant upon the completion of the work by the Planning Board; and

The Town of Barnstable acting by and through its Planning Board hereby agrees to accept the aforesaid Letter of Credit/Bond/Deposit of Money in the amount specified in this agreement as security for the performance of the above Development Agreement.

In witness whereof we have hereunto set our hands and seals this date: ____/____/20____.

Signatures of a Majority of the Barnstable Planning Board:

Signature of Developer:
_____ print name
____/____/20____ date

COMMONWEALTH OF MASSACHUSETTS

Barnstable County, ss Date: ____/____/20____

Then personally appeared _____, one of the above-named members of the Planning Board of the Town of Barnstable, Massachusetts and acknowledged the foregoing instrument to be the free act and deed of said parties before me.

Notary Public
My Commission Expires: ____/____/20____

COMMONWEALTH OF MASSACHUSETTS

Barnstable County, ss Date: ____/____/20____

Then personally appeared before the above named _____ (print name) and acknowledged the foregoing instrument to be his/her/its free act and deed of said parties before me.

Notary Public My Commission Expires: ____/____/20____

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE SUBDIVISION RULES AND REGULATIONS

FORM S
CERTIFICATE OF COMPLETION

The undersigned owners, their successors and assigns of the land shown on the subdivision plan: #.____.
entitled: _____ drawn by
_____ approved by the Planning Board _____, endorsed
_____, and recorded with the Barnstable District Registry of Deeds, Book _____ or registered
on a Certificate of Title No. _____, in Registration Book _____ page _____ :are responsible
for all maintenance and repair, including snow and ice removal, of _____ Road
located in the village of _____, Town of Barnstable Mass; and agree to hold the town
harmless on any account of any failure to perform these functions.

signature _____ date _____

print name _____

address _____

signature _____ date _____

print name _____

address _____

signature _____ date _____

print name _____

address _____

BARNSTABLE CODE

signature _____ date _____

print name _____

address _____

signature _____ date _____

print name _____

address _____

signature _____ date _____

print name _____

address _____

Notary Public

COMMONWEALTH OF MASSACHUSETTS, BARNSTABLE, SS

_____ 20_____

Then personally appeared before me the above named

_____ (print name) and acknowledged the foregoing instrument to be (his/ her/its) free act and deed.

Notary Public
My Commission expires _____

After recordation, return to the Barnstable Planning Board, 200 Main Street, Hyannis MA 02601

SUBDIVISION REGULATIONS

<p style="text-align: center;">TOWN OF BARNSTABLE</p> <p style="text-align: center;">DEVELOPMENT AGREEMENTS AND OTHER DOCUMENTS TO BE RECORDED AT THE REGISTRY OF DEEDS</p>

Development Agreement

Development agreement

Exhibit 1, Conditions of Approval of the Subdivision Plan
(and Special Permit for Open Space
Subdivisions)

Exhibit 2, Grant of Waivers from the Subdivision Rules
and Regulations

Covenant

Form O, Performance Security

Open Space Subdivisions

Special Permit

Form 1A, Open Space Restriction and Easement

Deed of open space to homeowners/other

Homeowners Association Documents

Return **recorded** copy forthwith to Planning Board office, 200 Main Street, Hyannis, MA 02601.

NOTE: Failure to return recorded copies of the above documents within 30 days of the Planning Board's endorsement of approval of the subdivision plan, or as extended by the Board, shall result in automatic rescission of approval of the subdivision plan.

BARNSTABLE CODE

DEVELOPMENT AGREEMENT

AGREEMENT made in consideration of approval of the within subdivision by the Planning Board this _____ day of _____ 20_____, by and between the Town of Barnstable, a municipal corporation acting through its Planning Board, _____ and

_____ having a usual place of business _____

_____ hereinafter referred to as the "Applicant", owner of all the land shown on the plan entitled _____

_____ subdivision # _____, dated _____, revised _____ approved by the Planning Board _____, prepared by _____ for title to the property see deed from _____

_____ dated _____, recorded in the Barnstable Registry of Deeds, Book _____, Page _____, or registered in the Land Court as Document No. _____ and noted in the certificate of title no. _____, in Registration Book _____, page no. _____

The parties mutually agree as follows:

1. The Applicant hereby agrees to construct the ways and install the utilities in the foregoing subdivision in accordance with the following :
 - i. all the conditions of approval of the Planning Board in their decision dated _____, which are specifically set forth in Exhibit 1 and attached hereto and made a part thereof, this development agreement: and
 - ii. in accordance with the conditions of approval of the special permit for an Open Space Subdivision granted pursuant to § 240-17 of the Zoning Ordinance of the Town of Barnstable which has been granted by the Planning Board as specifically set forth in Exhibit 1, and attached hereto and made a part thereof, this development agreement: and
 - iii. all the requirements of the Subdivision Rules and Regulations of the Barnstable Planning Board dated _____ under the authority provided by Section 81Q of Chapter 41 of the General Laws (Ter. Ed.) as amended; except for the waivers which have been granted by the Planning Board as specifically set forth in Exhibit 2, and attached hereto and made a part thereof, this development agreement.
 - iv. in accordance with the Subdivision Plans and Profiles submitted by the Applicant and approved by the Planning Board; and
 - v. in accordance with all the requirements of the Cape Cod Commission in their decision number _____ dated _____.
2. The Applicant acknowledges that the waivers that are specifically described in Exhibit 2 are the only waivers that are acknowledged and approved by the Planning Board as of the date of approval of the Subdivision Plan: and

Development Agreement, Subdivision Rules and Regulations

SUBDIVISION REGULATIONS

- 3. The Applicant agrees that the subdivision shall conform to all the requirements of the Subdivision Rules and Regulations except as waived by the Planning Board in writing; if the development is not consistent with the Subdivision Rules and Regulations, the waivers granted thereto, and the Conditions of Approval, the Applicant agrees to bring the development in to compliance; and
- 4. The Applicant agrees to construct the ways and install the utilities within **eight (8)** years from the date of endorsement of the Subdivision Plan and Profiles, and furthermore agrees that construction shall be completed one year from the date of commencement of construction, or such further time as may otherwise be mutually agreed upon by both parties in writing. **Failure to complete construction and installation within the time specified shall result in rescission of approval of the plan.**
- 5. The Applicant agrees to maintain all ways and utilities in the subdivision until the Planning Board finds that the subdivision is complete, and fully executes Form M, the Certificate of Completion.
- 6. The Applicant agrees to record this agreement with the Subdivision Plan at the Barnstable County Registry of Deeds, and to forward recorded copies of this agreement to the office of the Planning Board Office within thirty (30) days of the Planning Board's endorsement of approval of the Subdivision Plan. Failure to comply with this provision will result in automatic rescission of the Subdivision Plan.
- 7. This agreement shall be and is binding upon the heirs, executors, administrators, assignees and successors in interest, and upon the grantee or successors in title.
- 8. The Applicant is the owner(s) of record of the premises on said plan.
- 9. The Applicant has furnished the Planning Board as part of the consideration of this agreement, and in accordance with the provisions of Massachusetts General Laws, Chapter 41, Section 81U, with a (covenant)

(in the amount of \$ _____) to secure the construction of ways and the installation of utilities within the three years specified in paragraph (3) (three) above; which security is by Form _____ attached hereto and made a part thereof this agreement, and which security may be varied from time to time in accordance with the provisions of Massachusetts General Laws, Chapter 41, Section 81U.

- 10. The Applicant agrees that in the event that the security lapses or is no longer valid, all unsold lots shall be considered to be under covenant and not to be conveyed or built upon; and the Town shall not issue building permits on such lots in the subdivision; and the Applicant shall forthwith forward to the Planning Board alternative security acceptable to the Board.

This agreement shall be in full force and effect for twenty (20) years from the date of execution of the agreement, or until the Planning Board finds that the Subdivision has been completed and fully executes Form M, the Certificate of Completion.

Development Agreement, Subdivision Rules and Regulations

BARNSTABLE CODE

In witness whereof we have hereunto set our hands and seals this _____ (day) and _____ (month) 20____.

Owners

Acceptance by a majority of Planning Board members

spouses _____

(PLANNING BOARD) COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS _____/____/20____

Then personally appeared before me the above named _____ (print name)

and acknowledged the foregoing instrument to be the free act and deed of said Planning Board for the Town of Barnstable, MA.

Notary Public
My commission expires: _____

(APPLICANT) COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS _____/____/20____

Then personally appeared before me the above named _____ (print name)

and acknowledged the foregoing instrument to be his/her/its free act and deed.

Notary Public
My commission expires: _____

Development Agreement, Subdivision Rules and Regulations

SUBDIVISION REGULATIONS

DEVELOPMENT AGREEMENT

**EXHIBIT 1 CONDITIONS OF APPROVAL OF THE SUBDIVISION PLAN
(and the Special Permit for the Open space subdivision pursuant to § 240-17 of the
Zoning Ordinance.)**

Exhibit 1 is attached to and made a part thereof the Development Agreement dated
____/____/20____ between the Town of Barnstable Planning Board and _____
_____ the Applicant, for a subdivision plan of land entitled

dated _____, owned by _____
address _____
_____ approved by the
Planning Board ____/____/20____ date.

The above referenced subdivision plan (and Special Permit pursuant to _____ of the
Zoning Ordinance) was approved by the Barnstable Planning Board subject to the following
conditions of approval:

_____ applicant
_____ (print name)
____/____/20____ date

_____ Planning Board Chairman
____/____/20____ date

Development Agreement, Subdivision Rules and Regulations

SUBDIVISION REGULATIONS

DEVELOPMENT AGREEMENT

EXHIBIT 2, GRANT OF WAIVERS

Exhibit 2 is attached to and made a part thereof the Development Agreement dated ___/___/20___ between the Town of Barnstable Planning Board and _____ the Applicant, for a subdivision plan of land entitled _____

dated ___/___/20___, owned by _____ address _____

approved by the Planning Board _____ date ___/___/20___.

The Town of Barnstable acting through the Planning board as grantors, hereby grants waivers from the following sections of the Subdivision Rules and Regulations of the Town of Barnstable Planning Board:

Section and paragraph _____ general description _____

Section and paragraph _____ general description _____

Section and paragraph _____ general description _____

Section and paragraph _____ general description _____

The Applicant acknowledges that the waivers that are specifically described herein are the only waivers that are acknowledged and approved by the Planning Board as of the date of approval of the Subdivision Plan.

GRANTEE

_____ signature Applicant ___/___/20___ date

_____ Print name

GRANTOR

_____ Planning Board Chairman ___/___/20___ date

Development Agreement, Subdivision Rules and Regulations

SUBDIVISION REGULATIONS

TOWN OF BARNSTABLE
Open Space Residential Developments
Form IA
Open Space Restriction and Easement

Whereas, the Planning Board of the Town of Barnstable, pursuant to Chapter 40A, Section 9 of the Massachusetts General Laws and : § 240-17 of the Zoning Ordinance of the Town of Barnstable, Open Space Residential Developments, has granted a Special Permit for an Open Space Residential Development and said Special Permit requires that land designated Open Space in the development be specifically restricted in its use, and

Whereas, it is the intention of this grant to convey such restrictions over said Open Space which shall remain in perpetuity, and

Whereas, it is the intention of this grant to be excepted from the limitation of term of conditions pursuant to Chapter 184, Section 23 of the Massachusetts General Laws as it is a gift for a public purpose under Article 97 of the Amendments to the Massachusetts Constitution, and,

Whereas, the preservation of open space is stated public purpose of the Town of Barnstable, now, therefore,

_____ (Grantor), for consideration paid and in consideration of an approval of an Open Space residential development, shown on a plan of land Planning Board # _____ entitled _____

dated _____ 20____, drawn by _____ (Land Surveyors), recorded _____

(reference to record), grants to the Town of Barnstable, a municipal corporation with a mailing address of 367 Main Street, Barnstable (Hyannis), Barnstable County, Massachusetts, 02601, the perpetual right and easement to enter upon Lot(s) on said Subdivision Plan (Open Space Area(s), subject to the rights and reservations contained herein, in order to maintain the said Open Space Areas in accordance with the standards required by the Planning Board of the Town of Barnstable and to remove any offending improvements not authorized by said Planning Board. Any costs incurred by said Town in performing any maintenance work as herein above set forth shall be reimbursed to the Town within thirty (30) days after an invoice from said Town for said cost has been submitted to the Trustees of

_____ (subdivision name) # _____ and number). In the event said cost is not paid in full within said time period, the Town may assess each lot in said Open Space Residential Development (Lots _____ through on said Subdivision Plan) for its proportionate share of said cost in the same manner, as a betterment assessment, or may take other such action as the Town deems advisable.

In order to ensure that said Open Space Areas shall be kept in an open and natural state and not be built upon for residential use or developed for accessory uses, such as parking or roadway, the Grantor hereby agrees that:

BARNSTABLE CODE

A. Except as set forth in Paragraph B, neither the Grantor nor his/her successors or assigns will perform or give permission to others to perform the following acts or uses on the premises:

1. Paving or construction for road or parking purposes unless shown on the approved definitive plan; road drainage systems;
2. Construction or placing of any buildings, permanently affixed mobile homes, signs, billboards, or other advertising, utilities or other structures on or above the ground. A clustered unit wastewater system cluster unit septic systems shall be located on a separate lot, labeled as such;
3. Dumping or placing of soil or other substance-e on the ground as landfill, or dumping or placing of trash, waste or unsightly or offensive material;
4. No trees, grasses or other vegetation on the premises shall be cut, removed or otherwise destroyed;
5. Excavation or dredging or removal of loam, peat, gravel, soil, rock or other mineral substance or natural deposit in such a manner as to affect the surface of the premises;
6. Use of the premises except for outdoor recreational purposes or purposes, permitting the premises to remain predominantly in its natural condition;
7. Activities detrimental to drainage, flood control water or soil conservation, or erosion control; or
8. Other acts or uses detrimental to the preservation of the premises in its present natural condition;
9. No use shall be made of the premises and no activity thereon shall be permitted which is or may become inconsistent with the intent of this grant, being the preservation of the premises predominantly in their present condition, the protection of environmental systems and scenic enjoyment.

B. The provisions of Paragraph A notwithstanding, the following uses and activities shall be permitted on the premises, in accordance with § 240-17, Open Space Residential Development, of the Zoning Ordinance, and the Grantee Planning Board's decision of approval of the Special Permit and Definitive Subdivision Plan:

1. Common recreational facilities as shown on the Definitive Open Space Residential Development plan, or upon an approved, modified subdivision plan;
2. Maintenance and improvement of naturally-existing woods, fields, meadows and wetlands, in accordance with good conservation practices, and with a maintenance plan approved by the Grantee Planning Board, if any;
3. Subject to a management plan approved by the Grantee: farming, agriculture, horticulture, silviculture, and the harvesting of crops, flowers and hay;

SUBDIVISION REGULATIONS

- 4. The construction and maintenance of fences around the perimeter of the open space;
- 5. The creation of unpaved paths for horseback riding trails or jogging paths for recreational use;
- 6. Where approved by the Grantee, utility tie ins across open space, by an easement shown on the subdivision plan. Clearing should be no more than ten (10) feet in width, and the land promptly restored after installation;
- 7. Such other recreational or conservation purposes as may be permitted by the Planning Board of the Town of Barnstable, evidence of which shall be the recording of a decision, a Subdivision Plan or a modification of the Special Permit permitting such uses;
- 8. Such other changes or activities requested by the grantor and expressly consented to by the Grantee as are consistent with the purpose of this restriction.
- 9. Where required by the Planning Board and/or the Board of Health, a clustered unit wastewater system.

The Grantee through one or more duly designated officers, employees or agents shall have the right to enter the premises at a reasonable time and in a reasonable manner for the purposes of inspecting the premises, insuring compliance with the terms of this restriction and preventing, abating or remedying any violations thereof. The right herein granted shall be in addition to any other remedies, by appropriate legal proceedings or otherwise, which may be available to the Grantee for the enforcement of this restriction, This open space restriction-easement does not grant public access to this property except for those as described above. The Grantor intends that this grant be an easement in gross in perpetuity.

This restriction shall be binding upon and may be enforced against the Grantor and his/her heirs, successors and assigns by the Grantee as holder of this restriction and all references herein to the Grantor and Grantee shall include references to their respective successors and assigns. This conservation restriction shall be in addition to and not in lieu of any other restrictions or easements of record.

In witness whereof, the said _____ (Grantor) has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name on its behalf by _____ (Grantor or authorized representative) its _____ (Title), hereby duly authorized this _____ day of _____, 20_____

(Grantor)
 Authorized Signature _____
 Print name: _____
 Title _____

BARNSTABLE CODE

Grantee, Planning Board

Grantee, Planning Board of the Town of Barnstable
by the Planning Board Chairman, or other officer of the Board _____

COMMONWEALTH OF MASSACHUSETTS

(Grantor)

Barnstable, ss.
then personally appeared the above-named - _____
of aforesaid, and acknowledged the foregoing Instrument to be the free act and deed of before
me

Notary Public _____ My commission expires: ___/___/20___

(Planning Board)

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.
Then personally appeared the above-named _____
of aforesaid, and acknowledged the foregoing Instrument to be the free act and deed of before
me

Notary Public _____ My commission expires: ___/___/20___

PART IX

**DEPARTMENT OF PUBLIC WORKS
REGULATIONS**

Chapter 901

SEWERS

- § 901-1. Definitions.
- § 901-2. Town sewer connection permit.
- § 901-3. Contractor approval to connect building sewer; insurance requirements.
- § 901-4. State sewer connection permit.
- § 901-5. Other permits and forms.
- § 901-6. Design submittal.
- § 901-7. Pipe material.
- § 901-8. Pipe joints.
- § 901-9. Pipe bedding and cover.
- § 901-10. Slope and grade.
- § 901-11. Cleanouts.
- § 901-12. Vacuum sewer vent piping.
- § 901-13. Sampling manhole/sampling station.
- § 901-14. Manholes.
- § 901-15. Grease traps.
- § 901-16. Building floor drains and oil/water separators.
- § 901-17. Force mains and low-pressure sewers.
- § 901-18. Vacuum valve pit and buffer tank connections.
- § 901-19. Connection of pressure sewers to vacuum valve pits or buffer tanks.
- § 901-20. Pumping stations.
- § 901-21. Manhole frames and covers.
- § 901-22. Saddling of existing pipelines.
- § 901-23. Vehicular traffic.
- § 901-24. Erosion control.
- § 901-25. Gravity sewer limitations.
- § 901-26. Alternate designs and technologies.

[HISTORY: Adopted by the Department of Public Works of the Town of Barnstable Spring 2003. Amendments noted where applicable.]

GENERAL REFERENCES

Sewers — See Ch. 184.
Wastewater discharge — See Ch. 232.

Maintenance of private sewage systems — See Ch. 353, Art. II.
On-site sewage disposal systems — See Ch. 360.

§ 901-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANSI — American National Standards Institute

ASTM — American Society for Testing and Materials

BUILDING FLOOR DRAINS — That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys the discharge to the building sewer, beginning five feet outside the inner face of the building wall.

BUILDING SEWER — The sewer extension from the building drain to the public sewer, or other place of wastewater disposal.

INDUSTRIAL — Any property on which an activity is carried which falls into any of the following Standard Industrial Classification codes.

SIC Code(s)	Industry Category
753 - 7549	Automotive repair and services
7231, 7241	Beauty shops, barbershops
7211 - 7219	Laundry cleaning and garment services
4911, 4925, 4931, 4939	Electric, gas services (power-generation gas production only)
4011 - 4581	Transportation (maintenance only)
8062 - 8069	Hospitals
2000 - 3999	Manufacturing
2000 - 2099	Food products
2100 - 2199	Tobacco products
2200 - 2299	Textile mill products
2300 - 2399	Apparel and other finished products made from fabrics and similar materials
2400 - 2499	Lumber and wood products, except furniture
2500 - 2599	Furniture and fixtures
2600 - 2699	Paper and allied products
2700 - 2799	Printing, publishing and allied industries
2800 - 2899	Chemicals and allied products
2900 - 2999	Petroleum refining and related industries
3000 - 3099	Rubber and miscellaneous plastics
3100 - 3199	Leather tanning and finishing
3200 - 3299	Stone, clay, glass and concrete products
3300 - 3399	Primary metals industries
3400 - 3499	Fabricated metal products (except machinery and transportation equipment)
3500 - 3599	Industrial and commercial machinery and computer equipment
3600 - 3699	Electronics and other electrical equipment and components, except computer equipment
3700 - 3799	Transportation equipment
3800 - 3899	Measuring, analyzing and controlling instruments; photographic, medical and optical goods; watches and clocks
3900 - 3999	Miscellaneous manufacturing industries

PUBLIC SEWER — A sewer owned or controlled by the Town in which owners of abutting properties have rights.

RESIDENTIAL — Any property which is used exclusively for residential use and where the waste being generated contains sanitary sewage with no waste from any process or industrial trade or business activity.

SANITARY SEWER — A sewer which carries sewage and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

SEWAGE — A combination of the water-carried wastes from residences, business buildings, commercial or industrial establishments and other facilities of public or private institutions, together with such groundwaters, surface waters and stormwaters as may be present.

SEWER — A pipe or conduit for carrying sewage.

SEWER SYSTEM — The combination of building sewers, associated collection and storage containers, valve pits, buffer tanks and pumping stations, and public sewers through and by means of which wastewater flows and is transported to the wastewater treatment plant.

TOWN — The Town of Barnstable.

WASTEWATER — A combination of liquid and water-carried wastes, whether treated or untreated, from residences, business buildings, industrial and manufacturing facilities, and facilities of private and public institutions, together with such groundwaters, surface waters and stormwaters as may be present, which is contributed into or permitted to enter the sewer system.

§ 901-2. Town sewer connection permit.

- A. No sewer connection, disconnection or alteration of a sewer connection to a municipal sewer shall be constructed prior to obtaining the appropriate sewer connection permit, and payment of the appropriate permit fee, from the Town of Barnstable Department of Public Works. The building sewer connection must be installed by a contractor who is licensed as a disposal works installer by the Town of Barnstable Board of Health or by a contractor who has been approved by the Town of Barnstable Department of Public Works. Failure of a licensed installer to secure a permit prior to beginning work on a connection, disconnection or alteration shall result in a ninety-day license suspension for the first offense, a one year suspension for the second offense and license revocation for the third offense. In order to avoid these penalties, the installer must apply and pay for the required permit no later than 72 hours after initiating work on the connection. Any work on a municipal sewer connection by anyone not licensed by the Department of Public Works shall be subject to a fine not to exceed \$500.
- B. All building sewer connections for industrial/commercial discharges shall submit a copy of their State sewer connection permit to the Town of Barnstable Department of Public Works for review.
- C. All industrial/commercial building sewer connections shall install any pretreatment equipment and meet all pretreatment discharge requirements, as determined to be

necessary by the Town of Barnstable Department of Public Works Water Pollution Control Division.

- D. All sewer connection permits are valid for a period of 180 calendar days from the date of issue. Forty-eight hours must be given to the Engineering Division before beginning work on a sewer connection. No work shall be backfilled until approval for backfilling is given by Engineering Division personnel. Any work that has been backfilled without that approval shall be uncovered at the request of Engineering Division personnel.

§ 901-3. Contractor approval to connect building sewer; insurance requirements.

- A. Other contractors (plumbers, general contractors, excavation contractors, etc.) who wish to install or alter building sewer connections in the Town of Barnstable must submit to the Department of Public Works a company history, certificate(s) of insurance(s) or bond(s), a list of references and any other information which the contractor believes may be pertinent. The information will be reviewed by the Town Engineer and a determination will be made.
- B. Insurance(s) and bond(s) must include the following:
- (1) Workmen's compensation: minimum limit of employer's liability of \$1,000,000.
 - (2) Commercial general liability insurance: covering the premises, operations, completed operations, contractual and protective hazards that may be presented by the work to be done, in an amount of \$1,000,000 each occurrence limit; a products-completed operations aggregate limit of \$2,000,000 and a general aggregate limit of \$2,000,000.
 - (3) Owned and nonowned automobile liability insurance: combined single limit in an amount of not less than \$1,000,000.

§ 901-4. State sewer connection permit.

The appropriate sewer connection/extension permit, when applicable, must be obtained from the Massachusetts Department of Environmental Protection, prior to applying for a sewer connection permit from the Town of Barnstable Department of Public Works.

§ 901-5. Other permits and forms.

- A. The property owner is responsible for obtaining all permits or license(s) from the Town of Barnstable Building Services Division; the Town of Barnstable Conservation Commission; Town of Barnstable Water Pollution Control Division; Massachusetts Highway Department; Massachusetts Department of Environmental Protection; and other federal, state or municipal regulatory agencies, when appropriate.
- B. The installer must obtain all appropriate permits necessary from the Town of Barnstable Board of Health, prior to performing the installation/disconnection of grease traps, waste interceptors or septic systems.

- C. A pretreatment survey from the Town of Barnstable Water Pollution Control Division must be filed for all industrial and commercial building sewer connections, and the property owner shall install any pretreatment equipment necessary to meet all pretreatment discharge requirements, as determined by the Town of Barnstable Department of Public Works.
- D. A grease trap installation permit obtained from the Town of Barnstable Department of Public Health must be provided to the Engineering Division prior to the issuance of a sewer connection permit.
- E. A permit to abandon the existing septic system must be obtained from the Town of Barnstable Department of Public Health.
- F. A road opening permit must be obtained from the Town of Barnstable Department of Public Works Engineering Division prior to any work being performed within the designated layout of a Town road or sidewalk. All road opening work must be performed by a contractor licensed to perform road opening work by the Town of Barnstable Department of Public Works Engineering Division.
- G. All industrial or commercial properties and any residential property whose flow is expected to exceed 2,000 gallons per day (7,500 liters per day), based on Title V quantity estimates, connecting to the municipal sewer must obtain and file a pretreatment survey with the Town of Barnstable Water Pollution Control Facility. All industrial building sewer connections shall install any pretreatment equipment and meet all pretreatment discharge requirements, as determined to be necessary by the Town of Barnstable Department of Public Works.

§ 901-6. Design submittal.

- A. All building sewer connections and alterations of an existing sewer connection shall be designed and installed in accordance with accepted engineering principles. A plan of the proposed building sewer connection or alteration must be submitted to the Department of Public Works Engineering Division as part of the sewer connection application for residential flows expected to exceed 2,000 gallons per day (7,500 liters per day), based on Title V quantity estimates, and for all commercial or industrial flows. This plan shall include a sketch of the lot and buildings to be served and the proposed layout, locations and depths of the sewer piping and other appurtenant structures (manholes, valve pits, buffer tanks, grease traps, cleanouts, etc.).
- B. The plan for a disconnection shall include a sketch of the lot and buildings located on the property, locations of existing sewer pipe and appurtenances. The disconnection shall be performed at the property line and the cut sewer line, and pipe end shall be capped and encased in concrete.

§ 901-7. Pipe material.

The building sewer shall be constructed of PVC SDR 35 pipe, Schedule 40 PVC or better, as acceptable to the Department of Public Works. The minimum size of the building sewer shall

be four inches (100 mm) in diameter for residential connections and six inches (150 mm) in diameter for commercial or industrial connections. Upon approval from the Department of Public Works, larger diameter pipe may be installed. Pipe and fittings shall be uniform and homogeneous throughout and free from visible cracks, holes, foreign inclusions or other injurious defects. Pipe, fittings and other materials shall be examined prior to installation for any defects.

§ 901-8. Pipe joints.

All pipe joints of the building sewer shall be made watertight and protected against damage from roots, stones or other objects. Each length of pipe shall be laid to form a tight joint and to bring the inverts into a continuous line. All pipe shall be clean and free of dirt before laying and open ends shall be kept covered and free of dirt during construction. Where new pipes are to join existing piping, structures and appurtenances, extreme care shall be taken in cutting into the existing material and tight connections shall be made. Where new piping and construction is to join existing structures and appurtenances, care shall be taken so as to not interrupt existing service.

§ 901-9. Pipe bedding and cover.

A. The building sewer shall be laid on a firm base. The subbase shall be compacted prior to placing the pipe bedding material. Material used for bedding and cover shall be free of large stones, frozen clumps of earth, masonry, stumps or any other deleterious materials. The bedding material shall be placed and compacted by manual or mechanical means to suit the material, and acceptable to the Department of Public Works, to minimize settlement or other movement of the piping and any appurtenant structures. Commercial or industrial connections and appurtenant structures shall be laid on a layer of crushed stone Type A, 3/4 inch (19 mm), and shall meet the following gradation requirements:

	Sieve	Percent Passing (square openings)
1 inch	25 mm	100
3/4 inch	19 mm	90 - 100
1/2 inch	12.5 mm	10 - 50
3/8 inch	9.5 mm	0 - 20
No. 4	4.75 mm	0 - 5

- B. Cover for building sewer connections shall be a minimum of three feet (900 mm).
- C. For residential connections, suitable excavated material may be used as backfill for pipe bedding and cover.
- D. Each pipe shall be held firmly in position by carefully and thoroughly tamping backfill material around the barrel of the pipe. Tamping irons shall be used.

- E. The building sewer shall not be designed or constructed so as to pass over a water pipe or storm drainpipe. Sewer connections shall be installed with a minimum horizontal separation of 18 inches (450 mm) and a minimum vertical separation of 36 inches (900 mm) from a waterline or storm drain. If it is necessary to cross above a water utility or storm drainpipe, the building sewer shall be encased in concrete or placed in a large diameter watertight sleeve for a distance of 10 feet (three meters) on both sides of the crossing.

§ 901-10. Slope and grade.

The building sewer shall be designed so as to provide a minimum flow velocity of two feet per second (0.6 meters per second), when flowing full. The building sewer shall be laid on a continuous grade and in a straight line. Allowable slope shall not be less than that listed on the following table:

Pipe Diameter		Minimum Slope (foot/foot) (meter/meter)	
4 inches	(100 mm)	0.0250	1/2 bubble
6 inches	(150 mm)	0.0125	1/4 bubble
8 inches	(200 mm)	0.004	
10 inches	(250 mm)	0.0035	
12 inches	(300 mm)	0.003	

§ 901-11. Cleanouts.

A cleanout tee shall be provided at the exterior wall of the building for all building sewer connections. Residential sewer connections shall include a cleanout tee upstream of all major bends. Where right-angle bends cannot be avoided, they shall be long sweeps or a series of bends of 45° with a short pipe length between each bend. Cleanout tees shall be sealed with a removable, reusable threaded screw-on cap. Cleanouts, or riser connections, shall be installed at or just below grade, for reasonable access and use. All cleanouts installed in areas subject to vehicular traffic must be constructed to withstand H-20 wheel loads.

§ 901-12. Vacuum sewer vent piping.

A minimum four-inch diameter vent pipe shall be provided at the exterior wall of the building for all sewer connections to valve pits or buffer tanks connected to the vacuum sewer system. All aboveground vent piping shall be Schedule 80 PVC and shall have a stainless steel bird screen. Vent piping shall be located a minimum of 20 linear feet away from the valve pit or buffer tank it is connected to. Bollards or similar Department of Public Works approved protective devices shall be installed to protect above-grade piping at all commercial and/or industrial sites. Protective devices for residential installations shall be required as determined by Department of Public Works Sewer Inspector.

§ 901-13. Sampling manhole/sampling station.

Commercial or industrial sewer connections shall include a sampling station, to be used for discharge sampling, located in the road layout at the property line.

§ 901-14. Manholes.

For commercial or industrial sewer connections manholes shall be used at all locations where pipe size, slope or direction changes. Distance between manholes shall not exceed 300 feet (90 meters). With prior approval from the Town of Barnstable Department of Public Works, minor direction changes may consist of long sweeps or a series of bends of 45° with a short pipe length between each bend. Manholes shall be constructed of pre-cast concrete. Pre-cast concrete manholes shall be commercially manufactured units of 3,000 psi (20 mpa) minimum, air-entrained concrete conforming to ASTM Standard C478. All joints between pre-cast sections shall be sealed with bitumastic sealant or other method acceptable to the Department of Public Works. Steps in pre-cast concrete manholes shall be aluminum or polypropylene. Polypropylene steps shall be steel reinforced and shall be embedded a minimum of three inches (75 mm) into the concrete. Joints between the manhole and pipes shall consist of cast-in-place flexible rubber sleeves with stainless steel clamps. Manholes shall be laid on a layer of crushed stone Type A, 3/4 inch (19 mm), meeting the gradation requirements listed above. The layer of bedding material for the manhole base shall be not less than six inches (150 mm) thick. Inverts may be cast of cement concrete or brick and mortar, and must be surfaced with cement or clay brick. Brick shall be laid in portland cement mortar composed of one part portland cement and two parts sand, measured by volume, to which not more than 10 pounds of lime shall be added for each bag of cement. Portland cement shall conform to ASTM Standard C150, Type II. Sand for the mortar shall be clean and sharp and contain no grains that will be retained on a mesh screen of 1/8 inch (3.125 mm). Backfill material shall consist of clean soil material and be free of large stones, frozen clumps of earth, masonry, stumps or any other deleterious materials. Backfill shall be uniformly placed, in six-inch layers around the structure and thoroughly compacted with hand tampers or mechanical equipment.

§ 901-15. Grease traps.

- A. The appropriate permits must be obtained from the Town of Barnstable Board of Health before installation of the grease trap and building sewer connection is started. The installation of the grease traps or waste interceptors shall be inspected and accepted by the Town of Barnstable Board of Health prior to being backfilled by the contractor.
- B. A waste interceptor or grease trap shall be installed for all facilities discharging other than domestic wastes, such as food handling/preparation facilities, laundromats, scientific/research facilities or facilities handling/storing petroleum products. Grease traps or waste interceptors shall be constructed of pre-cast reinforced concrete or other prefabricated materials acceptable to the Department of Public Works. All joints between pre-cast sections shall be sealed with bitumastic sealant or other method acceptable to the Department of Public Works. The grease trap or waste interceptor shall be installed on a separate discharge line serving that part of the plumbing system into which the grease or waste will be discharged before flowing to the building sewer. Grease traps and

interceptors shall have a minimum depth of four feet (1.2 meters) and a minimum capacity of 1,000 gallons (3,750 liters). The waste interceptor or grease trap shall have sufficient capacity to provide at least a twenty-four-hour detention period. Grease traps and interceptors shall be located so as to be accessible for cleaning and servicing. Records pertaining to the cleaning shall be delivered to the Town of Barnstable Board of Health.

§ 901-16. Building floor drains and oil/water separators.

Building floor drains may be connected to the Town sewer system, provided that an appropriately designed and constructed oil/water separator is installed between the floor drain(s) and the sewer connection. The amount of oil in the discharge effluent from the oil/water separator shall not exceed 10 parts per million. A description of the proposed oil/water separator must be submitted to the Department of Public Works with the sewer connection application. The description submittal shall include a list of materials that will be stored or utilized in or adjacent to the area of the floor drain(s). Additional treatment requirements, protection or surety may be required by the Town, after review of the sewer connection application, on a case-by-case basis. The oil/water separator shall be inspected monthly and cleaned in accordance with the manufacturer's recommendations or when the level of waste oil is 25% of the effective depth or at least every three months, whichever comes first.

§ 901-17. Force mains and low-pressure sewers.

PVC pipe for force mains or low-pressure sewers shall be Schedule 40 or SDR 21. Ductile iron pipe shall conform to ANSI Standards A21.50 and A21.51, Thickness Class 52, and shall have either mechanical joint or a type of joint which employs a single, elongated, grooved rubber gasket. Rubber gaskets shall be oil-resistant, conforming to ANSI Standard A21.11. In-line flushing connections shall be installed at terminus of pressure lines. Distance between cleanout/flushing connections shall not exceed 600 feet (180 meters). Air-release valves shall be installed at each high point on a force or pressure sewer.

§ 901-18. Vacuum valve pit and buffer tank connections.

- A. The building sewer connecting to a vacuum valve pit shall be constructed of Schedule 40 or SDR-21 PVC pipe. Pipe shall be connected to existing pipe stubs from the valve pit or buffer tank. The contractor shall field verify the invert elevation at each buffer tank or valve pit to be connected. Valve pits are provided with four-inch stubs and will require the use of four-inch by six-inch reducers for commercial connections. Reducers shall be located within two feet of the valve pit for proper connection. Gravity piping to the valve pit or buffer tank shall be installed with proper slope and bedding as specified in this document. Pipe joints shall be as specified under § 901-8, Pipe joints.
- B. Only homes or apartments whose lower floor elevations are identical shall be connected to a common valve pit. Multiple-floor apartment complexes shall have each floor served by its own valve pit or shall be served by a buffer tank.

- C. The Department of Public Works shall be notified a minimum of seven days prior to making the final connection to any valve pit or buffer tank. Connections shall be scheduled with the Department of Public Works to allow for the installation of the vacuum valves. Vacuum valves shall only be installed following the installation of the vent pipe but prior to final connection to the building. Valve installation shall be performed by the Town during the hours of 8:00 a.m. to 1:00 p.m., Monday through Thursday, excluding all holidays.

§ 901-19. Connection of pressure sewers to vacuum valve pits or buffer tanks.

- A. Force main piping shall be as specified under § 901-17, Force main and low-pressure sewers, and gravity piping shall be constructed of SDR-21 PVC pipe. A minimum of 20 feet of gravity piping shall be provided at two-percent slope prior to entering the valve pit or buffer tank. The vent pipe on the force main connection line may be optional at the discretion of the Department of Public Works if one or more additional gravity vents are installed on gravity lines servicing the same valve pit or buffer tank. Force main and low-pressure sewer systems may only connect to a vacuum sewer system after approval from the Department of Public Works. Any force main and low pressure sewer systems allowed to connect to a vacuum sewer system shall not pump to a rate greater than that listed on the following table.

Vacuum Sewer Connection Via:	Maximum Allowable Pumping Flow Rate¹
Valve pit (1 valve)	15 gpm (maximum 50 gallons pumping volume per cycle)
Single valve buffer tank (1 valve)	15 gpm commercial; 30 gpm residential
Dual valve buffer tank (2 valves)	30 gpm commercial; 60 gpm residential
Dual buffer tank with splitter MH (4 valves)	60 gpm commercial; 120 gpm residential

¹Maximum allowable pumping flow rate for buffer tanks is the total of all connections to the buffer tank(s).

- B. With prior approval from the Department of Public Works, wastewater may be pumped up to a properly designed and constructed distribution box or sampling manhole prior to the valve pit or buffer tank and then connected to the valve pit or buffer tank by gravity as describe above. Flows shall not exceed those as shown on the table above. Distribution boxes and manholes shall be constructed of pre-cast reinforced concrete or other prefabricated materials acceptable to the Department of Public Works. A description of the proposed distribution box connection must be submitted to the Department of Public works with the sewer connection application.

§ 901-20. Pumping stations.

Pumps shall be either factory preassembled grinder pump(s) or nonclog centrifugal pump(s) capable of passing four-inch (100 mm) solids, appropriately sized for required capacity at design head. The pre-engineered pump station shall consist of either submersible pump(s) within a wet well or dry pit pump(s) housed separately from the wet well. Either shall have appropriate level controls within the wet well. A separate electrical control panel, with warning alarms connected from the wet well level controls shall be contained within a watertight enclosure or be located within a building. A red flashing alarm light shall be located on the exterior of the building at a location visible from the street. The pre-engineered pump station shall have a check valve and a gate valve along the discharge pipe, located outside the wet well and contained within a pre-cast pit for accessibility and servicing. Single-family residential sewer connections may be served by a simplex pump installation; all commercial or industrial sewer connections and multiple residential sewer connections shall install a duplex pump system.

§ 901-21. Manhole frames and covers.

- A. Manholes shall be topped with a cast-iron frame and cover. Manhole frames and covers shall be marked "SEWER." Frames and covers shall be of tough, gray cast iron conforming to ASTM Standard A48, Class 30. Cast-iron frames and covers shall be set in full mortar beds true to line and grade. Cement concrete collars shall be placed around the castings after the final setting.
- B. Adjustments to grade shall be accomplished by the use of a stackable frame riser ring. Frame and cover adjustments may not be obtained by brick and mortar under the flange of the casting.

§ 901-22. Saddling of existing pipelines.

- A. No direct sewer connections or repairs shall be made to a vacuum sewer, except by written permission of the Department of Public Works. All proposed connections to a vacuum sewer shall be accompanied by a written request from the owner, and/or contractor, clearly identifying the proposed flow to be connected, to allow the Town to determine the impact on system capacity and allow for proper sizing of required valve pit or buffer tank. Only following verification of sufficient available capacity of the vacuum system shall the DPW issue approvals for connection.
- B. When a gravity sewer connection must be made into a sewer main, where a service connection is not available, the sewer connection shall be tied in using an appropriate tapping saddle or PVC wye. The tapping saddle shall be made of aluminum, stainless steel or other material acceptable to the Department of Public Works. The saddle shall be a wrap-around type with full-length internal gasket and multiple nut and bolt clamps. The sewer main shall be cleaned of all dirt and foreign matter and inspected for any scores, dents, pin-holes, small surface cracks or other injurious defects which may interfere with the proper installation or operation of the saddle. The saddle and tapping shall be installed according to the manufacturer's recommendations and in such a manner so as not allow any exfiltration of wastewater from the sewer main or infiltration of

groundwater into the sewer main. The sewer main and service pipe shall be encased in concrete for a distance of 12 inches beyond the tapping saddle.

- C. For installation of a PVC wye tie-in, a suitable length of sewer main shall be cut out using a saw with a high speed rotating cutting blade. The sewer main pipe ends shall be wiped clean with a clean cloth. All rough edges and burrs shall be removed or smoothed. Any foreign material shall be removed from the sewer main prior to installation of the tie-in wye assembly.
- D. The sewer main tie-in assembly shall consist of an appropriately sized PVC wye, two short lengths of PVC transition pipe with spigot ends, and two PVC repair couplings (for PVC sewer main tie-ins) or two flexible couplings (for tie-ins to vitrified clay, AC transite, steel or other types of sewer main pipe).
- E. All couplings, pipe, wyes and other materials shall be examined, prior to installation, and shall be clean and free of any injurious defects. The PVC wye and repair coupling gaskets shall be free of any cuts, slices, abrasions or other defects which could interfere with a proper fit of all pieces. The flexible coupling gaskets shall be free of any cuts, slices, abrasions or other defects. The flexible coupling body shall be free of any cracks, inclusions, dents or other defects. The threads on the flexible coupling bolts and collar shall be free of cracks, burrs, rust or other defects which could interfere with the proper fit and function of the coupling and tie-in assembly.
- F. The tie-in assembly shall be installed and shall not allow any exfiltration of wastewater from the sewer main or infiltration of groundwater into the sewer main.

§ 901-23. Vehicular traffic.

When the building sewer connection or other appurtenant structures may be subject to vehicular traffic, the system should be designed and constructed to withstand H-20 wheel loads.

§ 901-24. Erosion control.

- A. During the construction project, soil erosion can be a major contributing factor to environmental pollution. In order to minimize the effect of sedimentation, washouts, etc., during construction activity, erosion control devices may need to be installed for the duration of the construction.
- B. The form and design of the controls will vary with the type of area that is to be protected and the anticipated cause of the environmental degradation. In most situations the type and location of controls can be determined during the design phase; however, field conditions may require a reevaluation of the controls needed during construction.
- C. Erosion control methods must be submitted to the Department of Public Works for review and approval.

§ 901-25. Gravity sewer limitations.

Gravity sewers may not be available to service a basement or other below-ground area. In such situations the sanitary sewage shall be lifted, by a pumping system or other approved means, and discharged to the building sewer. Before design is begun the Department of Public Works should be contacted to determine the availability of service for below-grade connections.

§ 901-26. Alternate designs and technologies.

The preceding standards are based on known and accepted engineering practice and theory. The Town of Barnstable Department of Public Works will give reasonable consideration and review of alternate designs or technologies, which may be available, that transport and discharge sanitary sewage to a municipal sewer system and treatment facility.

APPENDIX

**DERIVATION
TABLE**

DERIVATION TABLE

Town of Barnstable

Derivation Table of the General Ordinances to the 2005 Code

Chapter/Title From the General Ordinances	Location in 2005 Code
CHAPTER I	
Art. I, Meetings of the Town Council	Ch. 220, Art. I
Art. II, Standing Appointments Committee of the Town Council	Ch. 37, Art. I
Art. III, Councilor Compensation	Ch. 220, Art. IV
Art. IV, Petitions for Legislation From Districts of the Town	Ch. 220, Art. II, § 220-9
Art. V, Televising of Meetings	Ch. 220, Art. III
Art. VI, Public Hearings on General Ordinances and Amendments Thereto	Ch. 162, Art. I
CHAPTER II	
Art. I, Approval of Certain Appointments by Town Manager	Ch. 241, § 241-47D
Art. II, Treasurer	Omitted; superseded by statute
Art. III, Collector of Taxes	Omitted; superseded by § 241-6
Art. IV, Town Attorney	Omitted; superseded by § 241-48
Art. V, School Committee	Deleted 5-18-1976
Art. VI, Board of Health	Ch. 241, § 241-21D
Secs. 1 and 2	Omitted; superseded by § 241-21
Sec. 3	Ch. 241, § 241-21D
Art. VII, Licensing Authority	Omitted; superseded by § 241-25
Art. VIII, Assignment of Certain Responsibilities to Town Agencies	Ch. 121, Art. II
Art. IX, Auditing of Accounts	Omitted; superseded by § 241-56D

DERIVATION TABLE

Chapter/Title From the General Ordinances	Location in 2005 Code
Art. X, Public Bids on Certain Contracts	Repealed 9-22-1994
Art. XI, Council on Aging	Omitted; superseded by Ch. 241, §§ 241-8 and 241-9
Art. XII, Trust Fund Management	
Sec. 1(a)	Ch. 241, § 241-47B(2)(t)
Secs. 1(b) and (c)	Omitted; superseded by § 241-35
Art. XIII, Schedule of Fees	Ch. 76, Art. II
Art. XIII A, Establishment of Certain User Fees by Town Council, Town Manager and Other Municipal Agencies	Repealed 5-6-2004
Art. XIV, Reversion of Specific Appropriations to the General Fund	Ch. 86, Art. I
Art. XV, Pension Fund Advisory Committee	Deleted by Town
Art. XVI, Disposal of Personal Property	Deleted by Town
Art. XVII, Golf Committee	Deleted by Town
Art. XVIII, Collection of Sewer Use Charges	Ch. 184, Art. II
Art. XVIII-A, Revolving Funds	Ch. 86, Art. III
Art. XVIII-B, Enterprise Funds	Ch. 86, Art. II
Art. XIX, Submittal of Legislation to the General Court	Ch. 220, Art. II
Art. XX, Retention of a Portion of Fees by Golf Pro at Municipal Golf Course`	Ch. 76, Art. I
Art. XXI, Recycling Required	Ch. 202, Art. II
Art. XXII, Notification of Public Hearings	Ch. 162, Art II
CHAPTER III	
Art. I, General Sanitary Regulations	Ch. 206, Art. I
Art. II, Advertising Devices and Billboards	Ch. 192, Art. I
Art. III, Zoning	Ch. 240
Art. IV, Building Procedures and Regulations	Ch. 47
Art. V, Numbering of Buildings	Ch. 51
Art. VI, Inspection of Wires	Ch. 68, Art. I
Art. VII, Regulation of Auto-Trailer Tourist Camp and Park Sites	Ch. 217
Art. VIII, Civil Defense	Deleted by Town

DERIVATION TABLE

Chapter/Title From the General Ordinances	Location in 2005 Code
Art. IX, Barnstable Municipal Airport Approach Protection	Ch. 13
Art. X, Protection of Privacy	Ch. 147, Art. III
Art. XI, Swimming Pools	Ch. 210
Art. XII, Snow, Ice and Vehicle Removal	Ch. 206, Art. II
Art. XIII, Removal of Soil, Sand and Gravel and Sand Pits	Ch. 198
Art. XIV, Operation of Motor Boats and Use of Waterways	Ch. 40, Art. I
Art. XV, Alcoholic Beverage Regulation - Minors	Ch. 20, Art. II
Art. XVI, Alcoholic Beverage Regulation (open containers)	Ch. 20, Art. I
Art. XVII, Use of Land, Main Street, Hyannis and Main Street Osterville	Ch. 141, Art. I
Art. XVIII, Inspection of Gas Piping and Gas Appliances	Ch. 96
Art. XIX, Distribution of Commercial Advertising	Ch. 100, Art. I
Art. XX, Unregistered Motor Vehicle or Trailer Regulation	Ch. 228
Art. XXI, Anti-Noise Regulation	Ch. 133
Art. XXII, Waterways Committee	
Sec. 1	Ch. 241, § 241-37A
Sec. 2	Omitted; superseded by § 241-37B
Art. XXIII, Camping on Public or Private Property	Ch. 147, Art. II
Art. XXIV, Profane or Obscene Language	Ch. 147, Art. I
Art. XXV, Saunter or Loiter in a Street	Ch. 125
Art. XXVI, Operation of Motor Vehicles at Sandy Neck	Ch. 177, Art. I
Art. XXVII, Wetlands Protection	Ch. 237
Art. XXVIII, Mechanical Protection Devices	Deleted
Art. XXIX, Garage and/or Barn Sales	Ch. 93
Art. XXX, Tree Warden	Ch. 138, Art. I
Art. XXXI, Temporary Repairs for Certain Private Ways	Ch. 206, Art. III

DERIVATION TABLE

Chapter/Title From the General Ordinances	Location in 2005 Code
Art. XXXII, Operation of Motor Vehicles at Town Beaches	Ch. 32, Art. I
Article XXXIII, Obstruction of Access	Ch. 32, Art. II
Art. XXXIV, Leasing and Restraint of Dogs	Deleted by Town
Art. XXXV, Regulation of Roller Skating and Skate Boarding in Congested Areas	Ch. 173
Art. XXXVI, Regulation of Sewer Use	Ch. 184, Art. I
Art. XXXVII, Signs (Visible Moving or Movable Parts)	Ch. 192, Art. II
Art. XXXVIII, Houseboats and Houseboat Marinas	Ch. 40, Art. II
Art. XXXIX, Control of Toxic and Hazardous Materials	Ch. 108
Art. XL, Raffles and Bazaars	Ch. 166
Art. XLI, Scenic Roads	Ch. 180
Art. XLII, Burglar Alarms	Ch. 17, Art. I
Art. XLIII, Parking for Handicapped Persons	Ch. 104
Art. XLIV, Commercial Handbills	Ch. 100, Art. II
Art. XLV, Barking Dogs	Deleted by Town
Art. XLVI, License and Tags for Dogs	Deleted by Town
Art. XLVI-A, Town System Relative to Regulation of Dogs	Ch. 24, Art. I
Art. XLVII, Regulation of Wastewater Discharge	Ch. 232
Art. XLVIII, Fire Lanes	Ch. 80
Art. XLIX, Protection of Historic Properties	Ch. 112, Art. I
Art. L, Newspaper Boxes-Newsracks; News Publication Vending Devices	Ch. 130
Art. LI, Rental Ordinance	Ch. 170
Art. LII, Ordinance Governing Waste Collection and Disposal	Ch. 202, Art. I
Art. LIII, Outdoor Business License	Ch. 141, Art. II
Art. LIV, Cigarette Regulations	Ch. 57
Art. LV, Town Trees	Ch. 221
Art. LVI, Barnstable Historic Landmark Ordinance	Ch. 112, Art. II
Art. LVII, Handicap Parking Fund	Superseded 5-6-2004. See Ch. 86, Art. IV

DERIVATION TABLE

Chapter/Title From the General Ordinances	Location in 2005 Code
Art. LVIII, Historic Commission Approval for Buttresses and Dolphins to be Placed in Any Harbor of the Town	Ch. 32, Art. III
Art. LIX, Town System Relative to Regulation of Shellfisheries	Ch. 188
Art. LX, Hyannis Main Street Waterfront Historic District	Ch. 112, Art. III
Art. LXI, Hawkers and Peddlers	Ch. 150
Art. LXII, Body Piercing	Ch. 43
Art. LXIII, Inclusionary Affordable Housing Requirements	Ch. 9, Art. I
Art. LXIV, Gambling	Ch. 89
Art. LXV, Comprehensive Permits for Pre-Existing and Unpermitted Dwelling Units and for New Dwelling Units in Existing Structures	Ch. 9, Art. II
CHAPTER IV	
Art. I, Non-Criminal Disposition to be an Alternative Method of Enforcement of Town Ordinances	Ch. 1, Art. I
Art. II, Non-Payment of Municipal Charges Denial of Licenses	Ch. 121, Art. I
CHAPTER V	
Art. I, Personnel Ordinance	Ch. 153
Appendix Designation of Town Offices/Positions as Special for Purposes of the Conflict of Interest Law	Ch. 241, Appendix

**DISPOSITION
LIST**

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Barnstable adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
Order No. 2004-113	11-18-2004	Zoning amendment	Ch. 240
Order No. 2004-114	11-18-2004	Zoning amendment	Ch. 240
Order No. 2004-115	11-18-2004	Zoning Map amendment	Ch. 240, table only
Order No. 2004-118	9-2-2004	Regulatory agreements	Ch. 168
Order No. 2004-128	9-2-2004	Zoning amendment (Former Grade 5 School Planned Unit Development Overlay District)	Ch. 240
Order No. 2005-004	9-2-2004	Motorized conveyances; schedule of fines amendment	Ch. 128; Ch. 1, Art. I
Town Manager Conservation Commission	9-21-2004 10-26-2004	Shellfish amendment Private docks and piers	Ch. 407 Ch. 703
Order No. 2005-019	11-4-2004	Alarm systems; schedule of fines amendment	Ch. 17; Ch. 1, Art. I
Town Manager	11-8-2004	Shellfish amendment	Ch. 407
Order No. 2005-025	11-18-2004	Zoning amendment	Ch. 240
Order No. 2005-026	11-18-2004	Zoning amendment (family apartments)	Ch. 240
Order No. 2005-030	11-4-2004	Administrative Code amendment (Youth Commission)	Ch. 241

Enactment	Adoption Date	Subject	Disposition
Conservation Commission	1-11-2005	Regulations for new private docks amendment	Ch. 703
Order No. 2005-038	1-20-2005	Adoption of Code	Ch. 1, Art. III
Order No. 2005-039	1-20-2005	Adoption of codified zoning	Ch. 1, Art. IV
Order No. 2005-040	1-20-2005	Adoption of codified regulations	Ch. 1, Art. V
Order No. 2005-049	12-16-2004	Administrative Code amendment	Ch. 241
Order No. 2005-058	2-17-2005	Zoning amendment	Ch. 240
Board of Health	3-1-2005	Nuisances amendment	Ch. 353
Board of Health	3-1-2005	Stables amendment	Ch. 376
Order No. 2005-071	4-7-2005	Administrative Code amendment (Community Preservation Committee)	Ch. 241
Order No. 2005-073	4-7-2005	Administrative Code amendment (Economic Development Commission)	Ch. 241
Board of Health	4-26-2005	Stables	Ch. 376
Board of Health	4-26-2005	Food establishments: use of low-temperature dishwashers	Ch. 322, Art. V
Board of Health	4-26-2005	Variance requests amendment	Ch. 385
Board of Health	4-26-2005	Swimming pools	Ch. 378
Town Manager	5-2005	Shellfish amendment	Ch. 407
Board of Health	5-10-2005	Monitoring of innovative or alternate on-site sewage treatment systems	Ch. 360, Art. XIII
Board of Health	5-10-2005	Septic system risers	Ch. 360, Art. XIV
Order No. 2005-099	5-26-2005	Enterprise Funds amendment	Ch. 86, Art. II
Order No. 2005-100	7-14-2005	Zoning amendment	Ch. 240

Enactment	Adoption Date	Subject	Disposition
Order No. 2005-121	6-2-2005	Administrative Code amendment	Ch. 241
Order No. 2005-126	9-8-2005	Administrative Code amendment	Ch. 241
Order No. 2006-014	8-18-2005	Administrative Code amendment	Ch. 241
Order No. 2006-017	10-20-2005	Administrative Code amendment	Ch. 241
Order No. 2006-20	10-20-2005	Regulatory agreements amendment	Ch. 168
Order No. 2006-028	10-20-2005	Administrative Code amendment	Ch. 241
	11-3-2005	Administrative Code amendment	Ch. 241
Board of Health	11-15-2005	Food establishments: minimum sanitation standards amendment	Ch. 322, Art. I
Town Manager	11-23-2005	Shellfish amendment	Ch. 407
Town Manager	12-30-2005	Dog control amendment	Ch. 403
Harbormaster	1-6-2006	Mooring	Ch. 406
Order No. 2006-057	1-19-2006	Administrative Code amendment	Ch. 241
Town Manager	2-17-2006	Dog control amendment	Ch. 403
Board of Health	2-28-2006	Body art establishments amendment	Ch. 307
Board of Health	2-28-2006	Fuel and chemical storage tanks amendment	Ch. 326
Board of Health	2-28-2006	Food establishments: minimum sanitation standards amendment	Ch. 322, Art. I
Board of Health	2-28-2006	Fee schedule amendment	Ch. 318
Town Manager	3-2006	Administrative procedures amendment	Ch. 401
Town Manager	3-14-2006	Shellfish amendment	Ch. 407
Conservation Commission	3-14-2006	Property use violations amendment	Ch. 701
Conservation Commission	3-14-2006	Shooting range amendment	Ch. 702
Conservation Commission	3-14-2006	Private docks and piers amendment	Ch. 703

Enactment	Adoption Date	Subject	Disposition
Conservation Commission	3-14-2006	Wetlands buffer zone activity	Ch. 704
Conservation Commission	3-14-2006	Coastal banks	Ch. 705
Conservation Commission	3-14-2006	Abutter notification	Ch. 706
Conservation Commission	3-14-2006	Submission requirements for notice of intent applications	Ch. 707
Conservation Commission	3-14-2006	Outside consultants	Ch. 708
Conservation Commission	3-14-2006	Noncriminal disposition of wetland violations	Ch. 709
Conservation Commission	3-14-2006	Requests for determination of applicability	Ch. 710
Order No. 2006-125	6-1-2006	Rental property	Ch. 170
Order No. 2006-126	6-1-2006	Comprehensive occupancy	Ch. 59
Order No. 2006-127	6-1-2006	Noncriminal enforcement of violations amendment	Ch. 1, Art. I
Order No. 2006-128	6-1-2006	Schedule of fees amendment	Ch. 76
Order No. 2006-131	5-18-2006	Hours of operation of businesses	Ch. 115
Order No. 2006-136	6-1-2006	Zoning amendment	Ch. 240
Order No. 2006-148	7-20-2006	Hours of operation for businesses amendment	Ch. 115
Town Manager	8-14-2006	Administrative procedures amendment	Ch. 401
Town Manager	8-17-2006	Administrative procedures amendment	Ch. 401
Order No. 2007-012	8-17-2006	Beaches and waterways: operation of motor vehicles amendment	Ch. 32, Art. I
Order No. 2007-032	10-5-2006	Administrative Code amendment	Ch. 241
Order No. 2007-033	10-19-2006	Comprehensive occupancy amendment; schedule of fees amendment	Chs. 59 and 76

Enactment	Adoption Date	Subject	Disposition
Order No. 2007-035	11-2-2006	Peace and good order: child safety information and awareness	Ch. 147, Art. IV
Order No. 2007-041	11-2-2006	Administrative Code amendment	Ch. 241
Board of Health	11-14-2006	Stables amendment	Ch. 376
Town Manager	1-30-2007	Shellfish amendment	Ch. 407
Conservation Commission	2-27-2007	Shooting range amendment	Ch. 702
Order No. 2007-076	3-15-2007	Compensation of Councilors and officers amendment	Ch. 220, Art. IV
Order No. 2007-082	6-14-2007	Zoning amendment	Ch. 240
Order No. 2007-101	5-10-2007	Zoning amendment	Ch. 240
Order No. 2007-105	5-24-2007	Regulatory agreements amendment	Ch. 168
Order No. 2007-141	6-14-2007	Wastewater discharge amendment	Ch. 232
Order No. 2007-158	6-21-2007	Administrative Code amendment	Ch. 241
Order No. 2007-160	6-21-2007	Zoning amendment	Ch. 240
Town Manager	7-9-2007	Shellfish amendment	Ch. 407
Board of Health	7-17-2007	Deadlines to repair failed septic systems	Ch. 360, Art. XIV
Order No. 2007-166	7-19-2007	Administrative Code amendment	Ch. 241
Order No. 2008-002	8-16-2007	Administrative Code amendment	Ch. 241
Town Manager	8-22-2007	Sandy Barrier Beach amendment	Ch. 601
Town Manager	8-28-2007	Administrative procedures amendment	Ch. 401
Conservation Commission	12-11-2007	Shooting range amendment	Ch. 702
Harbormaster	1-8-2008	Mooring amendment	Ch. 406
Order No. 2008-057	2-28-2008	Zoning amendment	Ch. 240

Enactment	Adoption Date	Subject	Disposition
Order No. 2008-076	2-7-2008	Retention of fees by golf pro amendment; schedule of fees amendment	Ch. 76, Arts. I and II
Board of Health	2-19-2008	Variance requests amendment	Ch. 385
Board of Health	2-19-2008	Upgrading of substandard on-site sewage disposal systems amendment	Ch. 360, Art. V
Order No. 2008-077	2-28-2008	Zoning amendment	Ch. 240
Order No. 2008-089	2-28-2008	Zoning amendment	Ch. 240
Order No. 2008-090	2-28-2008	Zoning amendment	Ch. 240
Town Manager Order No. 2008-091	3-26-2008 4-3-2008	Shellfish amendment Zoning amendment	Ch. 407 Ch. 240
Order No. 2008-126	4-17-2008	Administrative Code amendment	Ch. 241
Town Manager	5-29-2008	Marinas	Ch. 405
Board of Health	6-30-2008	Protection of saltwater estuaries	Ch. 360, Art. XV
Order No. 2009-008	9-18-2008	Zoning amendment	Ch. 240
Order No. 2009-013	9-4-2008	Boards, committees and commissions: absentee members	Ch. 37, Art. II
Order No. 2009-016	9-4-2008	Administrative Code amendment	Ch. 241
Town Manager	9-25-2008	Shellfish amendment	Ch. 407
Order No. 2009-026	10-2-2008	Senior property tax work-off abatement program	Ch. 183
Town Manager Order No. 2009-044	11-26-2008 12-4-2008	Vessels on Town property Noncriminal enforcement of violations amendment	Ch. 430 Ch. 1, Art. I
Conservation Commission	1-6-2009	Shooting range amendment	Ch. 702
Board of Health	1-13-2009	Sanitary standards for housing	Ch. 335, Art. I
Town Manager	1-21-2009	Marinas amendment	Ch. 405

Enactment	Adoption Date	Subject	Disposition
Town Manager	1-26-2009	Mooring amendment	Ch. 406
Board of Health	2-10-2009	On-site sewage disposal systems: protection of saltwater estuaries amendment	Ch. 360, Art. XV
Board of Health	3-10-2009	Fee schedule amendment	Ch. 318
Licensing Authority	3-16-2009	Secondhand dealers and secondhand collectors	Ch. 502
Order No. 2009-070	3-19-2009	Collection of water use charges	Ch. 184, Art. III
Licensing Authority	4-13-2009	Alcoholic beverages amendment	Ch. 501
Order No. 2009-074	5-7-2009	Zoning amendment	Ch. 240
Order No. 2009-077	5-7-2009	Zoning amendment	Ch. 240
Order No. 2009-086	4-16-2009	Fees: exception for water tower construction projects	Ch. 76, Art. III
Order No. 2009-099	5-7-2009	Zoning amendment	Ch. 240
Order No. 2009-137	7-16-2009	Zoning amendment (Centerville Village District)	Ch. 240
Conservation Commission	8-4-2009	Submission requirements for notice of intent applications amendment	Ch. 707
Order No. 2009-106	5-21-2009	Enterprise Funds amendment	Ch. 86, Art. II
Order No. 2009-138	7-16-2009	Regulatory agreements amendment	Ch. 168
Order No. 2009-139	6-18-2009	Zoning amendment	Ch. 240
Order No. 2010-002	7-16-2009	Administrative Code amendment	Ch. 241
Order No. 2010-065	1-21-2010	Administrative Code amendment	Ch. 241
Order No. 2010-068	3-18-2010	Zoning amendment	Ch. 240
Order No. 2010-069	3-18-2010	Zoning amendment	Ch. 240
Order No. 2010-071	3-4-2010	Schedule of fees amendment	Ch. 76, Art. II

Enactment	Adoption Date	Subject	Disposition
Order No. 2010-079	2-25-2010	Administrative Code amendment	Ch. 241
Conservation Commission	6-1-2010	Shore outhauls	Ch. 711
Order No. 2010-122	6-17-2010	Zoning amendment	Ch. 240
Order No. 2010-123	6-17-2010	Zoning amendment	Ch. 240
Order No. 2010-158	7-15-2010	Collection of sewer use charges amendment; collection of water use charges amendment	Ch. 184, Arts. II and III
Order No. 2010-159	10-7-2010	Zoning amendment	Ch. 240
Order No. 2011-003	9-2-2010	Noncriminal enforcement of violations amendment; Sandy Neck: operation of motor vehicles amendment	Ch. 1, Art. I; Ch. 177, Art. I
Order No. 2011-006	10-7-2010	Zoning amendment	Ch. 240
Order No. 2011-007	9-2-2010	Administrative Code amendment	Ch. 241
Town Manager	9-30-2010	Shellfish amendment	Ch. 407
Order No. 2011-010	10-7-2010	Zoning amendment	Ch. 240
Town Manager	12-7-2010	Administrative procedures amendment	Ch. 401
Town Manager	1-5-2011	Shellfish amendment	Ch. 407
Order No. 2011-36	1-6-2011	Administrative Code amendment	Ch. 241
Barnstable County Assembly of Delegates Ord. No. 11-01	1-19-2011	Zoning amendment; maintenance of private sewage systems amendment; protection of saltwater estuaries amendment; Craigville Beach implementing regulation	Chs. 240; 353, Art. II; 360, Arts. XV and XVI
Order No. 2011-039	1-20-2011	Zoning amendment	Ch. 240
Order No. 2011-045	2-3-2011	Noncriminal enforcement of violations amendment; wetlands protection amendment	Chs. 1, Art. I; 237
Town Manager	2-28-2011	Sandy Neck Beach amendment	Ch. 601

Enactment	Adoption Date	Subject	Disposition
Order No 2011-046	5-5-2011	Zoning amendment	Ch. 240
Order No. 2011-047	5-5-2011	Zoning amendment	Ch. 240
Order No. 2011-049	2-3-2011	Administrative Code amendment	Ch. 241
Order No. 2011-052	2-17-2011	Schedule of Fees amendment	Ch. 76, Arts. II and III
Order No. 2011-097	5-5-2011	Noncriminal enforcement of violations amendment; regulation of roosters	Chs. 1, Art. I; 24, Art. II
Order No. 2011-134	6-2-2011	Revolving funds amendment	Ch. 86, Art. III
Order No. 2011-138	9-8-2011	Zoning amendment	Ch. 240
Conservation Commission	10-11-2011	Wetlands buffer zone activity amendment	Ch. 704
Order No. 2012-028	11-17-2011	Administrative Code amendment	Ch. 241
Order No. 2012-034	1-5-2012	Schedule of parking fines amendment; schedule of fees amendment	Chs. 1, Art. II; 76, Art. II
Licensing Authority	3-26-2012	Secondhand dealers and secondhand collectors amendment	Ch. 502
Order No. 2012-140	6-21-2012	Administrative Code amendment	Ch. 241
Order No. 2012-152	7-12-2012	Regulatory agreements amendment	Ch. 168
Order No. 2012-155	7-12-2012	Noncriminal enforcement of violations amendment; boats amendment	Chs. 1, Art. I; 40, Arts. I, II and III
Order No. 2013-001	1-17-2013	Zoning amendment	Ch. 240
Order No. 2013-002	8-2-2012	Administrative Code amendment	Ch. 241
Town Manager	9-18-2012	Vessels on Town property amendment	Ch. 430
Order No. 2013-031	1-17-2013	Chronic problem properties	Ch. 160

Enactment	Adoption Date	Subject	Disposition
Order No. 2013-033	1-17-2013	Comprehensive occupancy amendment	Ch. 59
Order No. 2013-035	3-21-2013	Noise amendment	Ch. 133
Order No. 2013-057	1-3-2013	Protection of historic properties amendment	Ch. 112, Art. I
Board of Health	1-15-2013	Restricting sales of tobacco products	Ch. 365
Order No. 2013-060	3-21-2013	Zoning amendment	Ch. 240
Order No. 2013-064	1-17-2013	Schedule of fees amendment	Ch. 76, Art. II
Marine and Environmental Affairs Division	2-15-2013	Sandy Neck Beach Park	Ch. 601
Town Manager	3-4-2013	Mooring amendment	Ch. 406
Order No. 2013-065	3-7-2013	Zoning amendment	Ch. 240
Order No. 2013-069	3-21-2013	Administrative Code amendment	Ch. 241
Board of Health	4-9-2013	Upgrading of substandard septic systems amendment	Ch. 360, Art. V
Order No. 2013-032	7-11-2013	Building and premises maintenance	Ch. 54
Order No. 2013-034	8-1-2013	Rental property amendment	Ch. 170
Order No. 2013-043	8-1-2013	General provisions: noncriminal enforcement of violations amendment	Ch. 1, Art. I
Order No. 2013-083	4-25-2013	Boats: operation amendment	Ch. 40, Art. I
Order No. 2013-126	8-1-2013	Zoning amendment	Ch. 240
Board of Health	6-18-2013	Fee schedule amendment	Ch. 318
Order No. 2013-133	6-20-2013	Zoning amendment	Ch. 240
Conservation Commission	10-15-2013	Shooting range amendment	Ch. 702

Enactment	Adoption Date	Subject	Disposition
Order No. 2013-166	10-17-2013	Vacant and foreclosing properties	Ch. 224
Order No. 2014-34	11-7-2013	Schedule of fees amendment	Ch. 76, Art. II
Board of Health	12-10-2013	On-site sewage disposal systems: septic system components	Ch. 360, Art. XVII
Board of Health	12-10-2013	On-site sewage disposal systems: floodplain sewage regulation amendment	Ch. 360, Art. III
Order No. 2014-047	4-17-2014	Zoning amendment	Ch. 240
Order No. 2014-050	2-6-2014	Zoning amendment	Ch. 240
Order No. 2014-069	4-3-2014	Administrative Code amendment	Ch. 241
Order No. 2014-126	5-22-2014	Zoning amendment	Ch. 240
Order No. 2015-019	10-2-2014	Streets and sidewalks: temporary repairs on private ways amendment	Ch. 206, Art. III
Conservation Commission	10-14-2014	Requests for determination of applicability amendment	Ch. 710
Order No. 2015-026	10-16-2014	Administrative Code amendment	Ch. 241

