



Town of Barnstable Town Council

367 Main Street, 2nd floor,
Hyannis, MA 02601
Office 508.862.4738 • Fax 508.862.4770
E-mail: council@town.barnstable.ma.us

MEETING AGENDA January 21, 2021 7:00 PM

The January 21, 2021 meeting of the Barnstable Town Council will include a joint meeting with the Barnstable School Committee (see below).

The Town Council meeting, including the joint meeting with the Barnstable School Committee, will be held remotely and shall be physically closed to the public to avoid group congregation

Remote Participation Instructions

1. Real-time public comment may be addressed to the Barnstable Town Council utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://zoom.us/j/97395388005> Meeting ID: 973 9538 8005

1-888 475 4499 US Toll-free

2. Written Comments may be submitted to:

https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp

3. The meeting will be televised live via Comcast Channel 18 access:

<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

7. ACT ON MINUTES (Including Executive Session)

8. COMMUNICATIONS- from elected officials, boards, committees, and staff commission reports, correspondence and announcements

- Joint Meeting Town Council/ Barnstable School Committee**

Councillors:

Matthew Levesque
President
Precinct 10

Paula Schnepf
Vice President
Precinct 12

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Nikolas Atsalis
Precinct 4

David W. Bogan
Precinct 5

Paul C. Neary
Precinct 6

Jessica Rapp Grassetti
Precinct 7

Debra S. Dagwan
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Jennifer L. Cullum
Precinct 13

Administrator:
Cynthia A. Lovell
Cynthia.Lovell@
town.barnstable.ma.us

Administrative
Assistant:
Kelly Crahan
Kelly.Crahan@
town.barnstable.ma.us

• **Barnstable School Committee Adjourns**

Councilors:

Matthew Levesque
President
Precinct 10

Paula Schnepf
Vice President
Precinct 12

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Nikolas Atsalis
Precinct 4

David W. Bogan
Precinct 5

Paul C. Neary
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Jessica Rapp Grassetti
Precinct 7

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Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Jennifer L. Cullum
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Administrator:

Cynthia A. Lovell
Cynthia.Lovell@
town.barnstable.ma.us

Administrative
Assistant:

Kelly Crahan
Kelly.Crahan@
town.barnstable.ma.us

9. ORDERS OF THE DAY

- A. Old Business**
- B. New Business**

10. ADJOURNMENT

NEXT REGULAR MEETING: February 04, 2021

ITEM NO.**INDEX TITLE**

PAGE**A. OLD BUSINESS**

- 2021-063** Appropriation Order in the amount of **\$85,000** for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger which is serving as outside counsel to the Town with respect to two Notices of Intent to Sue received from the Conservation Law Foundation **(Public Hearing) (Roll Call Majority Full Town Council)**..... 4-5

B. NEW BUSINESS

- 2021-065** Resolve accepting a grant in the amount of **\$10,400** from the Massachusetts Department of Environmental Protection for the purpose of enhancing the Town's Waste Reduction Programs **(May be acted upon) (Roll Call Majority)** 6-7
- 2021-066** Resolve naming the Department of Public Works Administration Building located at 382 Falmouth Road, Hyannis, MA as the Captain Robert L. O'Brien Public Works Administration Building **(May be acted upon) (Roll Call Majority)** 8-9
- 2021-067** Appropriation Order in the amount of **\$45,000** for the purpose of acquiring an easement on a portion of the property located at 528 Craigville Beach Road, Barnstable (Centerville) Massachusetts shown on Assessors Map 246 as Parcel 071 to be associated with the construction of new sewer infrastructure **(Refer to Public Hearing 02/04/2021)** 10-11
- 2021-068** Order authorizing a Housing Development Incentive Program Tax Increment Exemption Agreement between the Town of Barnstable and Pearl Street Holdings, LLC for 9 new market rate residential units located at 39 Pearl Street, Hyannis, MA **(First Reading) (Refer to Second Reading 02/04/2021)**..... 12-22
- 2021-069** Resolve approving an amendment to the Housing Development Incentive Program Zone and Plan to include 850 Falmouth Road & 3 Whitehall Way in Hyannis, MA, for submission to the Massachusetts Department of Housing and Community Development (DHCD) **(May be acted upon) (Roll Call Majority)** 23-25

Approve Minutes: January 07, 2021

Please Note: the lists of matters are those reasonably anticipated by the council president to be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda. Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, it may be continued to a future meeting with proper notice.

A. OLD BUSINESS (Public Hearing) (Roll Call Majority Full Town Council)

BARNSTABLE TOWN COUNCIL

ITEM # 2021-063

INTRO: 01/07/2021, 01/21/2021

2021-063 APPROPRIATION ORDER IN THE AMOUNT OF \$85,000 FOR THE PURPOSE OF PAYING OPERATING EXPENSES OF THE LEGAL DEPARTMENT FOR THE SERVICES OF THE LAW FIRM OF ANDERSON & KREIGER WHICH IS SERVING AS OUTSIDE COUNSEL TO THE TOWN WITH RESPECT TO TWO NOTICES OF INTENT TO SUE RECEIVED FROM THE CONSERVATION LAW FOUNDATION

ORDERED: That the sum of **\$85,000** be appropriated for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger which is serving as outside counsel to the Town with respect to two Notices of Intent to Sue received from the Conservation Law Foundation; and that to meet this appropriation, that **\$85,000** be transferred from the General Fund Reserves.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>01/07/2021</u>	<u>Refer to Public Hearing 01/21/2021</u>
_____	_____

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close Public Hearing
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-063

INTRO: 01/07/2021, 01/21/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Karen L. Nober, Town Attorney
DATE: January 07, 2021
SUBJECT: Appropriation Order in the amount of **\$85,000** for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger which is serving as outside counsel to the Town with respect to two Notices of Intent to Sue received from the Conservation Law Foundation

BACKGROUND: In August 2020, the Town received a Notice of Intent to Sue letter from the Conservation Law Foundation (“CLF”) alleging violation of the federal Clean Water Act for operating the Town’s wastewater treatment facility without obtaining a National Pollutant Discharge Elimination System permit for the discharge from the facility. In September 2020, the Town received a second Notice of Intent to Sue letter from CLF alleging violation of the Massachusetts Title 5 septic regulations. CLF did not present specific demands, but the letters threatened pursuit of injunctive relief that could require the Town’s expenditure of millions of dollars. In addition, with respect to CLF’s Clean Water Act allegations, the letters threatened penalties of approximately \$50,000 per violation per day for the past five (5) years.

The law firm of Anderson & Kreiger has substantial experience, knowledge and expertise in this very complex area of the law and has handled similar matters on behalf of other clients.

FISCAL IMPACT: The relief and penalties that may be sought by CLF, if granted, would have a substantial financial impact on the Town, and it is therefore critically important that the Town have the benefit of representation by counsel with significant experience and expertise in these types of matters. Funding for this appropriation is being provided from the General Fund reserves which have been certified at \$18.5 million as of July 1, 2020.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager recommends approval of this Appropriation Order.

STAFF ASSISTANCE: Karen L. Nober, Town Attorney

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-065
INTRO: 01/21/2021**

2021-065 ACCEPTANCE OF A GRANT IN THE AMOUNT OF \$10,400 FROM THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE PURPOSE OF ENHANCING THE TOWN'S WASTE REDUCTION PROGRAMS

RESOLVED: That the Town Council does hereby accept a grant in the amount of **\$10,400** from the Massachusetts Department of Environmental Protection for the purpose of enhancing the Town's Waste Reduction Programs through the acquisition of recycling containers, recycling carts and recycling bins, waste reduction and/or recycling outreach and education materials, and other related expenses; and that the Town Manager be authorized to contract for and expend the grant funds made available for these purposes.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-065
INTRO: 01/21/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director Department of Public Works
DATE: January 21, 2021
SUBJECT: Acceptance of a grant in the amount of **\$10,400** from the Massachusetts Department of Environmental Protection for the purpose of enhancing the Town's Waste Reduction Programs

BACKGROUND: The Town has been awarded a \$10,400 grant from the Massachusetts Department of Environmental Protection under the Recycling Dividends Program (RDP). The grant award was made because of specific programs and policies the Town has implemented to maximize reuse, recycling and waste reduction.

ANALYSIS: The acceptance of this grant will allow the Solid Waste Division and the Town to enhance its waste reduction programs through the acquisition of recycling containers, recycling carts and recycling bins, waste reduction and/or recycling outreach and education materials, and other related expenses authorized in the Recycling Dividends Program (RDP) contract.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager recommends acceptance of this grant.

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director Department of Public Works;
Patrick Kelliher, Supervisor, Solid Waste Division

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-066
INTRO: 01/21/2021**

2021-066 APPROVING THE NAMING OF THE DEPARTMENT OF PUBLIC WORKS ADMINISTRATION BUILDING AT 382 FALMOUTH ROAD HYANNIS, MA, AS THE CAPTAIN ROBERT L. O'BRIEN PUBLIC WORKS ADMINISTRATION BUILDING

RESOLVED: That the Town Council does hereby approve the naming of the Department of Public Works Administration Building at 382 Falmouth Road Hyannis, MA, as the Captain Robert L. O'Brien Public Works Administration Building.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-066
INTRO: 01/21/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director Department of Public Works
DATE: January 21, 2021
SUBJECT: Approving the naming of the Department of Public Works Administration Building located at 382 Falmouth Road, Hyannis, MA as the Captain Robert L. O'Brien Public Works Administration Building

BACKGROUND: Bob O'Brien had a long and distinguished career with the United States Coast Guard (USCG). He steadily moved up in the ranks from Ensign to Captain and retired in 1981. Prior to attending Boston College, he served as a USCG Seaman in WWII. Bob's last post before retiring in 1981 was that of Chief of Staff and Deputy Commander of the USCG's First District, the New England District. He was also Deputy Director of Reserve Personnel, Chief Plans and Programs Officer and Chief Budget Officer during a 23-year land career that followed his sea service, including Commanding Officer aboard various Coast Guard cutters. He had assignments in Alaska, Boston, and four separate tours in Washington, D.C., where he ultimately became Comptroller for the entire Coast Guard.



Bob accepted a position as Supervisory Administrative Assistant of the Department of Public Works (DPW) for the Town of Barnstable in 1981. He was promoted to DPW Superintendent and after a few years decided he would prefer to spend more time with his family and requested that he transfer to the job of Assistant DPW Superintendent. He retired from the Town of Barnstable in 1999 and was hired in 2000 as Special Assistant to the Town Manager and completely retired from the Town of Barnstable in 2018. Bob played a critical role in all aspects of the local government in the Town of Barnstable including its organizational structure, financial management and

emergency response program, to name of few areas. Bob served on the Steamship Authority Board of Governors for the Town of Barnstable for 25 years until 2016 and as Board Chairman for some of those years. He was instrumental in the transformation of the Steamship Authority fleet including vessel construction, vessel modification and refurbishment projects. Bob also played a critical role in the Authority's capital projects in Hyannis, including reconstruction of the Hyannis terminal and slip improvements. Bob served on the Barnstable Municipal Airport Commission for 13 years and retired in 2017. Bob was a charter member of the Coast Guard Heritage Museum in Barnstable, which opened in 2005.

FISCAL IMPACT: There is no direct fiscal impact resulting from the resolve

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager recommends approval of this Resolve.

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director Department of Public Works

B. NEW BUSINESS (Refer to Public Hearing 02/04/2021)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-067
INTRO: 01/21/2021**

2021-067 APPROPRIATION ORDER IN THE AMOUNT OF \$45,000 FOR THE PURPOSE OF ACQUIRING AN EASEMENT ON A PORTION OF THE PROPERTY LOCATED AT 528 CRAIGVILLE BEACH ROAD, BARNSTABLE (CENTERVILLE) MASSACHUSETTS SHOWN ON ASSESSORS MAP 246 AS PARCEL 071 TO BE ASSOCIATED WITH THE CONSTRUCTION OF NEW SEWER INFRASTRUCTURE

ORDERED: That the sum of **\$45,000** be appropriated for the purpose of acquiring an easement and other costs incidental thereto, and to fund this appropriation, that **\$45,000** be transferred from the available balance in the Sewer Construction and Private Way Maintenance and Improvement Special Revenue Fund; and that the Town Council hereby authorizes the Town Manager to purchase, take by eminent domain under chapter 79 of the General Laws of Massachusetts, or otherwise acquire for sewer infrastructure and related purposes, an easement on a portion of the parcel of land located at 528 Craigville Beach Road, Barnstable (Centerville) Massachusetts, as show on the Plan entitled “Sewer Easement Plan, 528 Craigville Beach Road, Village of Centerville, Barnstable Massachusetts”, prepared by, and on file with, the Barnstable Department of Public Works.

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close Public Hearing
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-067
INTRO: 01/21/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: January 21, 2021
SUBJECT: Appropriation Order in the amount of **\$45,000** for the purpose of acquiring an easement on a portion of the property located at 528 Craigville Beach Road, Barnstable (Centerville) Massachusetts shown on Assessors Map 246 as Parcel 071 to be associated with the construction of new sewer infrastructure

BACKGROUND: The Town is proceeding with plans to install sewers and related infrastructure as part of the Strawberry Hill Road Sewer Expansion Project. Town Engineers have identified the property at 528 Craigville Beach Road as an ideal technical location for the construction of sewer pump station infrastructure. Siting this infrastructure in this location would significantly reduce excavation depths and construction costs, and removes the need to site a pump station at the property at Covell's Beach.

Direct negotiations with the property owners produced an Agreement that damages for an Eminent Domain Taking of an Easement will be in the amount of \$40,000. This comprehensive agreement will be executed by both the Owners and the Town, subject to Town Council Approval. It is anticipated that an Order of Taking will be recorded after 30 days have passed from the Council vote, whereupon the easement would transfer to the Town. An additional \$5,000 has been added for costs associated with this taking, including title examination, recording fees, etc.

ANALYSIS: The acquisition of this easement is essential to the anticipated Strawberry Hill Sewer Expansion Project and future sewer expansion in the region. Siting sewer infrastructure in this location will reduce sewer excavation depths and significantly reduce construction costs. The acquisition of this parcel by eminent domain taking has been thoroughly discussed with the owners and their counsel and they have agreed to the compensation resolution of their prospective claim for eminent domain damages. Utilizing the eminent domain procedure will assure clear title to the property and allow engineering staff to include the easement in the sewer construction planning.

FISCAL IMPACT: There is no annual operating budget impact as a result of acquiring this easement. Funding for the acquisition will be provided from the available reserves in the Sewer Construction and Private Way Maintenance and Improvement Special Revenue Fund which has an available balance of \$14.7 million.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager recommends approval of this appropriation order.

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

B. NEW BUSINESS (First Reading) (Refer to Second Reading 02/04/2021)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-068
INTRO: 01/21/2021**

2021-068 AUTHORIZATION OF A HOUSING DEVELOPMENT INCENTIVE PROGRAM TAX INCREMENT EXEMPTION AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND PEARL STREET HOLDINGS, LLC FOR 9 NEW MARKET RATE RESIDENTIAL UNITS LOCATED AT 39 PEARL STREET, HYANNIS, MA

ORDERED: That the Town Council hereby authorizes a Tax Increment Exemption (TIE) Agreement between the Town of Barnstable and Pearl Street Holdings, LLC pursuant to the Housing Development Incentive Program, M.G.L. c. 40V, and the regulations promulgated thereunder at 760 CMR 66.00, for nine (9) new market rate residential units located at 39 Pearl Street, Hyannis, MA (Assessor’s Map 308, Block 089), substantially in the form as presented to the Town Council at this meeting, and further authorizes the Town Manager to execute the TIE Agreement and submit it to the Massachusetts Department of Housing and Community Development for approval.

SPONSOR: Town Council Tax Incentive Committee: Nikolas Atsalis, Councilor Precinct 4, Matthew Levesque, Councilor Precinct 10; Eric Steinhilber, Councilor Precinct 2

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2021-068
INTRO: 01/21/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth S. Jenkins, Planning & Development Director
DATE: January 21, 2021
SUBJECT: Authorization of a Housing Development Incentive Program Tax Increment Exemption Agreement between the Town of Barnstable and Pearl Street Holdings, LLC for 9 new market rate residential units located at 39 Pearl Street, Hyannis, MA

RATIONALE: The Tax Incentive Committee of the Town Council recommends approval of the Housing Development Incentive Program Tax Increment Exemption request from developer Jacob Dewey for property located at 39 Pearl Street, Hyannis known as Captain Bearse Residences. The proposed development will consist of 9 new market rate rental units on an undeveloped parcel.

In January 2018, the Barnstable Town Council approved the Downtown Hyannis HD Zone and Plan and in March 2018 the Town received approval of its Zone from the Massachusetts Department of Housing and Community Development. Approval of this Zone allows the Town to enter into Tax Increment Exemption Agreements with property owners within the Zone.

The goals of the Housing Development Incentive Program, which authorizes Tax Increment Exemption Agreements, are to increase residential growth, expand diversity of housing supply, support economic development and promote neighborhood stabilization.

The Housing Development Program (HDIP) Staff Review Committee and the Town Council Tax Incentive Committee reviewed the application from Pearl Street Holdings, LLC and found it to be complete and that this development meets the objectives of the HDIP Plan including increasing residential stock and diversity of housing choice. The Operating Pro Forma is reasonable and in line with industry standards. The proposed rents, at \$1,800 per month plus utilities, are priced consistently with prevailing rents. The development will have a positive impact on housing supply and in turn support economic development. The TIE Agreement is a contract between the property owner and the municipality which sets forth the amount of the tax exemption and the duration of the benefits. The Sponsor has requested, and the Tax Incentive Committee recommends, an 85% Tax Exemption for years 1-5, a 60% Tax Exemption for years 6-10, and a 50% Tax Exemption for years 11-20 on the increased value, anticipated to be \$2.4 million.

If approved by the Town, this project and TIE Agreement must also be approved by the Massachusetts State Department of Housing and Economic Development.

FISCAL IMPACT: The estimated value of the new residential portion of this parcel when developed as proposed is \$2.5 million resulting in an increase of \$2,400,000 in residential value.

As proposed, the total value of the TIE is \$345,953. By approving the TIE Agreement, the Town agrees to forgo an estimated \$235,953 in tax revenue over 20 years in turn for an investment of \$2.4 million in downtown Hyannis.

STAFF ASSISTANCE: Mark Milne, Finance Director; Ed O'Neil Assessor; Karen Nober, Town Attorney; Arden Cadrin, Housing Coordinator

HOUSING DEVELOPMENT INCENTIVE PROGRAM

TAX INCREMENT EXEMPTION (TIE) AGREEMENT

between
Town of Barnstable
and
Pearl Street Holdings LLC

This AGREEMENT is made this _____ day of _____, 20____ by and between the Town of Barnstable, (“Municipality”) _____ and Pearl Street Holdings LLC, a Massachusetts Limited Liability Corporation with an address at, 17 High School Road B Hyannis, Massachusetts (“Sponsor”).

Section 1 – Agreement

The Municipality and the Sponsor, for good and valuable consideration and in consideration of the covenants and agreements herein contained, hereby make this agreement regarding a tax increment exemption pursuant to the Housing Development (HD) Incentive Program, M.G.L. c. 40V, and the regulations promulgated thereunder at 760 CMR 66.00 (HD TIE), with respect to the Property as herein defined.

Section 2 – Definitions

Each reference in this Agreement to the following terms shall be deemed to have the following meanings:

Act: M.G.L. c. 40V, as may be amended from time to time.

Completion: Certificates of occupancy have been issued for the entire Project.

DHCD: Department of Housing and Community Development

Event of Default: An “Event of Default” as defined in Section 5 below.

Final Certification: Determination by DHCD that the Sponsor has completed the new construction or substantial rehabilitation of the Property, consistent with the New Construction or Rehabilitation Plans, including the creation of MRRUs, as set forth in the Act and the Regulations.

Fiscal Year: An annual period of July 1 through June 30.

HD Project: A Certified Housing Development Project as defined in the Act and the Regulations.

HD Zone: The Housing Development Zone adopted by Town of Barnstable Town Council on January 18, 2018, and approved by DHCD as evidenced by a Certificate of Approval dated March 9, 2018, and recorded with the Barnstable County Registry of Deeds at Book 32703, Page 1.

Lead Municipality: Town of Barnstable

MRRU: Market Rate Residential Unit(s) as defined at Section 3.B.1.

Property: and further described in Exhibit 2, “Legal Description of Property”.

Regulations: 760 CMR 66.00.

New Construction or

Rehabilitation Plans: The material submitted for Conditional Certification pursuant to 760 CMR 66.05(3)(a) and approved by DHCD.

Sponsor: Pearl Street Holdings LLC, a Massachusetts Limited Liability Corporation, with an address at 17 High School Road B, Hyannis, Massachusetts 02601, its successors and assigns.

Section 3 – Sponsor’s Covenants

A. New Construction or Substantial Rehabilitation of the Property. Sponsor will undertake the new construction or substantial rehabilitation of the Property in accordance with the work and schedule set forth in the New Construction or Rehabilitation Plans.

B. Market Rate Residential Units.

1) There shall be a total of nine (9) residential rental units created in the Project of which 9 shall be MRRUs comprised of 9 two Bedroom, 1.5 Bath townhouse apartments. The monthly rent for such units shall be priced- consistently with prevailing rents or sale prices in the Municipality as determined based on criteria established by the Department, as set forth in Exhibit 3, “Market Rate Residential Units – Pricing Plan”.

2) Sponsor shall use good faith efforts to maintain the units as MRRUs for a minimum of twenty (20) years.

C. Marketing. Sponsor shall cause the MRRUs to be marketed in a manner that is consistent with the strategies, implementation plan and affirmative fair housing efforts set out in the New Construction or Rehabilitation Plans.

D. HD Project Certification. Sponsor shall take all actions reasonably necessary to obtain Final Certification of the Property as an HD Project, including but not limited to submitting applications to DHCD for Conditional Certification and Final Certification consistent with the requirements of the Act and the Regulations.

Section 4 – Tax Increment Exemption

Municipality agrees to grant Sponsor an exemption to the real property taxes due on the Property pursuant to G.L. c. 59 according to the following terms:

A. Base Value. \$92,900.

B. MRRU Percentage. One hundred (100%) of total market rate residential units on site, exclusive of commercial use. The MRRU Percentage shall be confirmed as required in paragraph F, below.

C. Exemption Percentage. Commencing on the Effective Date which shall be Fiscal Year 1: 85% years 1-5, 60% years 6-10, 50% years 11-20

D. The Increment. As defined at 760 CMR 66.06(1)(b)(1).

E. Calculation. For each Fiscal Year during the term of this Agreement, the HD TIE shall be determined by applying the Exemption Percentage to the property tax on the Increment.

F. Confirmation or Amendment of Calculation. Upon Completion, and prior to applying for Final Certification of the Project, the Sponsor and Municipality shall file a “Tax Increment Exemption – Confirmation of Calculation” in the form attached as Exhibit 4 (“TIE Confirmation”). To the extent that the dates or figures in the TIE Confirmation differ from those set forth in this Agreement, the contents of the TIE Confirmation shall control and shall be deemed to have amended this Agreement.

Section 5 – Default

- A. Event of Default. An “Event of Default” shall arise under this Agreement upon the occurrence of any one or more of the following events:
- 1) Breach of Covenant Prior to Final Certification. Subject to the limitations set forth in the Regulations at section 66.05(4)(b), Sponsor defaults in the observance or performance of any material covenant, condition or agreement to be observed or performed by Sponsor pursuant to the terms of this Agreement, and the continuance of such default for thirty (30) days after written notice thereof from the Municipality; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default provided the Sponsor shall have commenced to cure such default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion.
 - 2) Breach of Covenant Subsequent to Final Certification. Sponsor’s conduct is materially at variance with the representations made in its New Construction or Rehabilitation Plans; such variance is found to frustrate the public purposes that Final Certification was intended to advance, and the continuance of such default for thirty (30) days after written notice thereof from the Municipality; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default provided the Sponsor shall have commenced to cure such default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion.
 - 3) Misrepresentation. Any representation made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.
- B. Rights on Default.
- 1) Prior to Final Certification. Upon the occurrence of an Event of Default prior to Final Certification, then this Agreement shall become null and void.
 - 2) Subsequent to Final Certification. Upon the occurrence of an Event of Default subsequent to Final Certification, then:
 - a. Revocation of Certification. Pursuant to the terms of the Act, the Municipality, may, at its sole discretion, request that DHCD revoke the Final Certification of the Project, such revocation to take effect on the first day of the fiscal year in which DHCD determines that a material variance commenced.
 - b. Termination of Agreement. Upon revocation of certification, this Agreement shall become null and void as of the effective date of such revocation.
 - c. Recoupment of Economic Benefit. Upon revocation of certification, the Municipality may bring a cause of action against Sponsor for the value of any economic benefit received by Sponsor prior to or subsequent to such revocation.
 - 3) Other Remedies. The Municipality’s rights upon the occurrence of an Event of Default are in addition to those granted to DHCD and the Massachusetts Commissioner of Revenue under the terms of the Act.

Section 6 – Miscellaneous

- A. Effective Date. The effective date of the HD TIE shall be July 1st of the first Fiscal Year following DHCD’s Final

Certification of the HD Project pursuant to the requirements of the Act and the Regulations, which date is anticipated to be 2021. The Effective Date shall be confirmed as required under section 4.F above

B. Term of Agreement. This Agreement shall expire upon the Municipality's acceptance of the annual report, as required below, for the final Fiscal Year for which the Municipality is granting the TIE.

C. Reporting. Sponsor shall submit reports to the Municipality not later than thirty (30) days after June 30 of each Fiscal Year for the term of this Agreement. Each report shall contain the following information:

- 1) Until Completion, the status of construction in relation to the schedule contained in the New Construction or Rehabilitation Plan;
- 2) Until Completion, the status of marketing in relation to the New Construction or Rehabilitation Plans; and
- 3) For each MRRU, the number of bedrooms in the unit, whether it was leased as of the end of the most recent fiscal year and the monthly rent charged.

D. Assignment. The Sponsor shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without the prior written consent of the Municipality, which approval shall not be unreasonably withheld. The foregoing notwithstanding, the rights and obligations of this Agreement shall inure to the benefit of any entity succeeding to the interests of the Sponsor.

E. Notices. Any notice, request, instruction or other document to be given hereunder to either party by the other shall be in writing and delivered personally or sent by recognized overnight courier, receipt confirmed or sent by certified or registered mail, postage prepaid, as follows, and shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, three (3) days after the day on which mailed or, if sent by overnight courier, on the day after delivered to such courier.

1) Municipality: Town Manager
Town of Barnstable
367 Main Street
Hyannis, MA 02601

2) Sponsor: Pearl Street Holdings LLC
17 High School Road B
Hyannis, MA 02601

3) Copy to DHCD: All such notices shall be copied to DHCD at:

HDIP Program Coordinator
Department of Housing & Community Development
100 Cambridge Street, Suite 300
Boston, MA 02124

4) Change of Address. Either party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving notice.

F. Modifications. No modification or waiver of any provision of this Agreement, nor consent to any departure by the Sponsor therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which

given. No failure or delay on the part of Municipality in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

IN WITNESS WHEREOF, the Sponsor has caused this Agreement to be duly executed in its name and behalf and its seal affixed by its duly authorized representative, and the Municipality has caused this Agreement to be executed in its name and behalf and its seal duly affixed by its Town Manager as of the day and year first above written.

Town of Barnstable
(Municipality)

(Sponsor)

By: Mark S. Ells, Town Manager

By: Jacob Dewey for Pearl Street Holdings LLC

EXHIBIT 1
MAP OF PROPERTY

EXHIBIT 2

DESCRIPTION OF PROPERTY

EXHIBIT 3

MARKET RATE RESIDENTIAL UNITS – PRICING PLAN

| Pricing Area: Town of Barnstable

Proposed Initial

Monthly Rent: \$1800

EXHIBIT 4

TAX INCREMENT EXEMPTION – CONFIRMATION OF CALCULATION

In connection with the Tax Increment Exemption Agreement dated _____, 20____ by and between the Town of Barnstable, and Pearl Street Holding LLC, a Massachusetts Limited Liability Corporation with an address at 17 High School Road B Hyannis, MA 02601, with respect to the property at 39 Pearl Street Hyannis, Massachusetts (the “Agreement”), the parties hereby confirm the following elements of the Agreement. Unless otherwise stated, capitalized terms have the meaning set forth in the Agreement.

1. The effective date of the Agreement is: _____
2. The MRRU is: 9 units, 100%
3. The assessed value of the of the residential portion of the Property upon Completion is: 2021

To the extent that the dates or figures in this “Tax Increment Exemption – Confirmation of Calculation” differ from those set forth in the Agreement, the contents of this document shall control and shall be deemed to have amended the Agreement.

MUNICIPALITYSPONSOR

By: Town Manager

By: Jacob Dewey, Pearl Street Holdings LLC

Dated: _____

B. NEW BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-069
INTRO: 01/21/2021**

2021-069 APPROVAL OF AN AMENDMENT TO THE HOUSING DEVELOPMENT INCENTIVE PROGRAM ZONE AND PLAN TO INCLUDE 850 FALMOUTH ROAD & 3 WHITEHALL WAY IN HYANNIS, MA FOR SUBMISSION TO THE MASSACHUSETTS DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD)

RESOLVED: That the Town Council, pursuant to M.G. L. Chapter 40V and Massachusetts Regulations 760 CMR 66.00, hereby approves the Housing Development Incentive Program (HDIP) Zone and Housing Development Zone Plan amendment for the Town of Barnstable, dated January 14, 2021, to include 850 Falmouth Road and 3 Whitehall Way in Hyannis, MA; and further authorizes the Town Manager to forward said Housing Development (HD) Zone and Housing Development (HD) Zone Plan Amendment for certification to the Massachusetts Department of Housing and Community Development (DHCD) for its approval and endorsement and acknowledges that upon the approval and endorsement of said Zone designation and Zone Plan Amendment by DHCD, the Town will be authorized to negotiate tax increment exemptions from property taxes in the designated HD Zone for a period not to exceed twenty (20) years for projects that meet the guidelines set forth under M.G. L. Chapter 40V and the regulations set forth in 760 CMR 66.00.

SPONSOR: Town Council Tax Incentive Committee: Nikolas Atsalis, Councilor Precinct 4, Matthew Levesque, Councilor Precinct 10; Eric Steinhilber, Councilor Precinct 2

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Move / Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2021-069
INTRO: 01/21/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth S. Jenkins, Planning & Development Director
DATE: January 21, 2021
SUBJECT: Approval of an amendment to the Housing Development Incentive Program Zone and Plan to include 850 Falmouth Road & 3 Whitehall Way in Hyannis, MA for submission to the Massachusetts Department of Housing and Community Development (DHCD)

BACKGROUND: The Housing Development Incentive Program (HDIP), established by M.G.L. Chapter 40V and administered by the Department of Housing and Community Development, aims to strengthen Gateway Municipalities across the Commonwealth by increasing residential growth, expanding the diversity of housing stock, supporting economic development, and promoting neighborhood stabilization.

Any geographic area characterized by the need for market rate multi-family residential development can be designated an “HD Zone”. Zones do not need to be contiguous. Designation of an HD Zone allows for two incentives for the creation of market-rate housing:

- A local-option property tax exemption, which allows a municipality to exempt a percentage of from the new value of market-rate units from taxation for a period of five to twenty years
- A State Investment Tax Credit of up to 25% of qualified costs of constructing market-rate residential units

The Town adopted the adopted the Housing Development Incentive Program in January 2018, designating the Downtown Hyannis Growth Incentive Zone as the area eligible for participation in the HDIP.

ANALYSIS: This proposed “HD Zone” and “HD Plan” Amendment would include 850 Falmouth Road and 3 Whitehall Way for participation in the HDIP. This area was selected because the current zoning promotes and encourages the development of multi-family housing. The Housing Investment Tax Credits made available by this program will provide the developers a tool to help overcome the challenge of financing and constructing market-rate housing projects in Hyannis. The HDIP is aimed at positively impacting the housing supply and, in turn, supporting workforce and economic development.

A public hearing on the proposed HD Zone and HD Plan amendment was held on Wednesday, January 13, 2021.

FISCAL IMPACT:

The Housing Development Incentive Program allows for Applicants to seek tax relief from the increased value of the property resulting from development. Tax Increment Agreements must be approved by the Town Council.

STAFF ASSISTANCE: Arden Cadrin, Housing Specialist; Kate Maldonado, Senior Planner, Anna Brigham, Principal Planner

