

Town of Barnstable Town Council

James H. Crocker Jr Hearing Room
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

May 6, 2021

7:00 PM

The May 6, 2021 meeting of the Barnstable Town Council will be held remotely and shall be physically closed to the public to avoid group congregation.

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
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

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/93093892251> Meeting ID: 930 9389 2251
1-888 475 4499 US Toll-free Meeting ID: 930 9389 2251

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 or can be streamed live on the Town of Barnstable's website:

<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

9. ORDERS OF THE DAY

A. Old Business

B. New Business

10. ADJOURNMENT

NEXT REGULAR MEETING: May 20, 2021

ITEM NO.	INDEX TITLE	PAGE
A. OLD BUSINESS		
2021-140	Authorization of a Housing Development Incentive Program Tax Increment Exemption Agreement between the Town of Barnstable and Standard Holdings, LLC for 43 new market rate residential units located at 850 Falmouth Road, Hyannis, MA (May be acted upon) (Roll Call Majority)	3-14
B. NEW BUSINESS		
2021-170	Amending the Administrative Code, Chapter 241, Article III Multiple Member Appointive Organizations, Chapter § 241-39A Youth Commission (First Reading) (Refer to Second Reading 05/20/2021)	15-16
2021-171	Council votes on the merits of a Citizens’ Request that the Town Council establish a Resident Zoning Task Force comprised principally of residents to provide perspective on zoning proposals and plan revisions (Public Hearing) (Roll Call Majority)	17-24
2021-172	Transfer Order in the amount of \$302,803.66 from Town Council Order 2016-098 to Town Council Order 2020-175 for the purpose of funding the Water Pollution Control Division’s Fiscal Year 2021 Pump Station Rehabilitation Project (May be acted upon) (Roll Call Majority)	25-27
2021-173	Transfer Order in the amount of \$30,000 for the Public Works Department Operating Expense Budget for the purpose of Funding Watershed Modeling (May be acted upon) (Roll Call Majority)	28-29
2021-174	Amending Article XIV, Chapter 240, Section 128 of the Zoning Ordinance to add a definition for Accessory Dwelling Unit (ADU) and Dwelling Unit, and revise the definition of Dwelling, Single-Family and add Article V, Chapter 240, Section 47.2 Accessory Dwelling Units (ADUs) to the Zoning Ordinance (Refer to Planning Board)	30-34
2021-175	Amending Article XIV, Chapter 240, Section 128 of the zoning ordinance to revise the definition of Accessory Dwelling Unit (ADU) and amending Article V, Chapter 240, Section 47.2(C)(4) to allow ADUs with greater than 900 square feet by special permit from the Zoning Board of Appeals (Refer to Planning Board)	35-37
2021-176	Nantucket Sound Fish Weirs Inc. application to install two (2) fish weir sites in the coastal waters of the Town of Barnstable in Nantucket Sound. The permit request is for five (5) years. (May be acted upon)	38-39

Approve Minutes: April 15, 2021 and April 29, 2021

Please Note: The lists of matters are those reasonably anticipated by the Council President which may 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 as 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, and with proper notice.

A. OLD BUSINESS (May be acted upon) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

ITEM# 2021-140

INTRO: 04/15/2021, 05/06/2021

2021-140 AUTHORIZATION OF A HOUSING DEVELOPMENT INCENTIVE PROGRAM TAX INCREMENT EXEMPTION AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND STANDARD HOLDINGS, LLC FOR 43 NEW MARKET RATE RESIDENTIAL UNITS LOCATED AT 850 FALMOUTH ROAD, HYANNIS

ORDERED: The Town Council hereby votes to authorize the Tax Increment Exemption (TIE) Agreement between the Town of Barnstable and Standard 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 forty-three (43) new market rate residential units located at 850 Falmouth Road, Hyannis (Assessor’s Map 250, Block 036 and Map 250, Block 160) substantially in the form as presented to the Town Council at this meeting, and to authorize the Town Manager to execute the TIE Agreement and submit it to Department of Housing and Community Development for approval.

SPONSORS: Town Council Tax Incentive Committee: Nikolas Atsalis, Precinct 4 Councilor; Jennifer Cullum, Precinct 13 Councilor; and Eric Steinhilber, Precinct 2 Councilor

DATE: ACTION:

04/15/2021 First Reading

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

BARNSTABLE TOWN COUNCIL

ITEM# 2020-140

INTRO: 04/15/2021, 05/06/ 2021

SUMMARY

TO: Town Council
FROM: Elizabeth S. Jenkins, Planning & Development Director
THROUGH: Tax Increment Exemption/Tax Increment Financing Committee
DATE: April 15, 2021
SUBJECT: Housing Development Incentive Program Tax Increment Exemption for 850 Falmouth Road, Hyannis

RATIONALE: The Tax Incentive Committee of the Town Council recommends approval of the Housing Development Incentive Program (HDIP) Tax Increment Exemption request from developer Standard Holdings LLC for property located at 850 Falmouth Road, Hyannis known as Residences @850. The proposed development will consist of 43 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 Department of Housing and Community Development approved the Zone. Approval of the revised Zone and Plan was voted by Town Council on January 26, 2021 and approved by DHCD on March 2, 2021. 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 Standard Holdings, LLC and found it to be complete and agreed the 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 \$1,500 per month for one bedroom and \$1,900 for 2 bedroom 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.

If approved by the Town, this project and TIE Agreement must also be approved by the 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 \$10,697,389 resulting in an increase of \$10,217,889 in assessed value. As proposed, the total value of the TIE is estimated at \$1,525,728.83. By approving the TIE Agreement, the Town agrees to forgo an estimated \$1,525,728.83 in tax revenue over 20 years in turn for an investment of \$15,360,600 in Hyannis.

STAFF ASSISTANCE: Mark Milne, CPA, 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

Standard Holdings, LLC

This AGREEMENT is made this _____ day of _____, 2021 by and between the Town of Barnstable (“Municipality”) and Standard Holdings, LLC, a Massachusetts Limited Liability Corporation (“Sponsor”) with an address at 540 Main Street, Suite 18, Hyannis, MA 02601.

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 the Town of Barnstable on January 18, 2018 and approved by DHCD as evidenced by a Certificate of Approval dated on March 9, 2018 and recorded with Barnstable County Registry of Deeds Book 32703 Page 1.
| _____ Amended on January 21, 2021 by the Town of Barnstable and approved by DHCD as
| _____ evidenced by a Certificate of Approval dated March 2, 2021 and recorded with
| _____ Barnstable County Registry of Deeds Book Page will be recorded asap _____

Lead Municipality: N/A

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

Property: 850 Falmouth Road and 3 Whitehall Way as shown in Exhibit 1, “Map of 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: Standard Holdings, LLC, a Massachusetts Limited Liability Corporation, with an address at 540 Main Street, Suite 18, Hyannis, MA 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 53 residential rental units created in the Project of which 43 shall be MRRUs comprised of 36 2 bedroom - 2 bathroom units, and 7 1 bedroom - 1 bathroom units. 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 20 years.
- C. Marketing. Sponsor shall cause the MRRU 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. \$479,500.
- B. MRRU Percentage. 82%. 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 June 30, 2023. 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 by merger.

E. Notices. In conjunction with concurrent electronic submission as provided for below or, if reasonable efforts can determine that such information is no longer current, otherwise reasonably obtainable and verifiable electronic contact information, 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, unless general measures for electronic receipt as a substitute are in place at such time or can otherwise be reasonably assumed due to publicized or immediately foreseeable remote working conditions, 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:Standard Holdings LLC
540 Main Street
Hyannis, MA 02601
Email: ttelman@comcast.net
rcarleton@comcast.net

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 02114
dhcdhdip@mass.gov

- 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 and Town Council as of the day and year first above written.

[SIGNATURES ON NEXT PAGE]

MUNICIPALITY SPONSOR

By: Mark S. Ells, Town Manager

Timothy T. Telman, Manager

Robert T. Carleton, Manager

EXHIBIT 1

MAP OF PROPERTY

EXHIBIT 2

DESCRIPTION OF PROPERTY

EXHIBIT 3

MARKET RATE RESIDENTIAL UNITS – PRICING PLAN

Proposed Initial
Monthly Rent(s)*: \$1900 (2-BR);
 \$1500 (1-BR)

*units shall be priced in compliance with DHCD’s HDIP Guidelines and 760 CMR 66.04(2) (f)

EXHIBIT 4

TAX INCREMENT EXEMPTION – CONFIRMATION OF CALCULATION

[FORM TO REMAIN BLANK UNTIL PROJECT COMPLETED AND ELIGIBLE FOR FINAL CERTIFICATION]

In connection with the Tax Increment Exemption Agreement dated _____, 2021 by and between the Town of Barnstable, and Standard Holdings, LLC, a Massachusetts Limited Liability Corporation (“Sponsor”) with an address at 540 Main Street, Suite 18, Hyannis, MA 02601, with respect to the property at 850 Falmouth Road, Hyannis, MA 02601 (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 Percentage is:
3. The assessed value of the of the residential portion of the Property upon Completion is:

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: Mark S. Ells, Town Manager

By: Timothy T. Telman, Manager

By: Robert T. Carleton, Manager

Dated:

B. NEW BUSINESS (First Reading) (Refer to Second Reading 05/20/2021)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-170
INTRO: 05/06/2021**

**2021-170 AMENDING THE ADMINISTRATIVE CODE, CHAPTER 241, ARTICLE III
MULTIPLE MEMBER APPOINTIVE ORGANIZATIONS, CHAPTER § 241-39A
YOUTH COMMISSION**

ORDERED: That the General Ordinances of the Code of the Town of Barnstable, Chapter § 241-39A, Youth Commission, be amended as follows:

Section A: That § 241-39A be amended as follows:

By striking out “15” in the first sentence and inserting “19” in its place.

By striking out “13” the first time it appears in the first sentence and inserting “17” in its place.

By striking out “13” in the second sentence and inserting “17” in its place.

By adding after the third sentence the following new sentence: “In addition, as long as a member who is a resident of the Town is enrolled as a full-time student, s/he does not have to be enrolled in a school located within the Town.”

So that § 241-39A as revised shall read as follows:

- A. Composition; Term of Office. There shall be a Youth Commission consisting of 19 members, 17 of whom will be between the ages of 13 and 19. These 17 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. Notwithstanding anything to the contrary in § 241-8J, as long as a member is enrolled as a full-time student at a school located within the Town, or a home school resident student identified by the Barnstable School Superintendent, s/he does not have to be a resident of the Town. In addition, as long as a member who is a resident of the Town is enrolled as a full-time student, s/he does not have to be enrolled in a school located within the Town. 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.”

SPONSOR: Councilor Jennifer Cullum

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2021-170
INTRO: 05/06/2021

TO: Town Council
FROM: Appointment Committee Members
THROUGH: Patti Machado, Recreation Director,
DATE: May 6, 2021
SUBJECT: Amending the Administrative Code, Chapter 241, Article III Multiple Member Appointive Organizations, Chapter §241-39A, Youth Commission

BACKGROUND: The Barnstable Youth Commission is a multi-member appointed Commission under the purview of the Barnstable Town Council. The Commission is responsible for reviewing youth-related concerns and taking action upon such concerns as necessary. The Commission is also responsible for the conveyance of youth related concerns to the Town Council. Further, the Commission works with intragovernmental and intergovernmental entities as well as local civic associations and businesses to best address youth concerns in the Town of Barnstable.

RATIONALE: The Barnstable Youth Commission's present membership is limited to fifteen individuals: thirteen voting members between the ages of thirteen and nineteen and two adult advisors. The parameters of membership were approved under § 241-39 of the Barnstable Administrative Code. Since the previous amendment to § 241-39 by **Order No. 2016-059**, the Youth Commission has engaged in aggressive recruitment to form a stronger and more diversified board representative of the youth populace with regards to age, grade, and race. The result of this recruitment has been a Commission which is now composed of thirteen official Youth Commissioners and four prospective Youth Commissioners who have filed papers from area schools with the intent of serving on the Youth Commission. As a result, the Commission sees the immediate need to increase its membership, as defined in the Barnstable Administrative Code. The Youth Commission believes that this increase would allow for the continued participation of interested youth in the Town of Barnstable. Further, the waiving of the residency requirement is reflective of the Commission's interest in including all youth applicants who attend a school within the Town of Barnstable, thereby conveying their vested interest in the welfare of the Town.

FISCAL IMPACT: None

STAFF SUPPORT: Patti Machado, Recreation Director; Appointment Committee members

B. NEW BUSINESS (Public Hearing) (Roll Call Majority)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-171
INTRO: 05/06/2021**

**2021-171 VOTE ON THE MERITS OF A CITIZENS' REQUEST TO ESTABLISH A
RESIDENT ZONING TASK FORCE**

RESOLVED: That the Town Council does hereby vote to find that the citizens' request submitted to it on March 3, 2021, which asks the Council to establish a Resident Zoning Task Force comprised principally of residents to provide perspective on zoning proposals and plan revisions, has merit.

SPONSOR: Matthew Levesque, Council President

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Vote



contact: OurZoning@gmail.com

TOWN OF BARNSTABLE
GROUP PETITION – RESIDENT ZONING TASK FORCE

Winter 2021 - Pursuant to Section 8-7(b) of the Town Charter, this Group Petition requests that the Barnstable Town Council establish a Resident Zoning Task Force comprised principally of residents to provide perspective on zoning proposals and plan revisions.

This Group Petition reflects residents' expression of support for, and effort to advance, the Town Council's goal to increase citizen engagement and input as set forth in its *2021-2022 Strategic Plan*. It also seeks to assist Town Manager Ells' recent corresponding emphasis on citizen engagement.

Zoning is personal. It affects residents' day-to-day quality of life. It affects the value of our most significant investments. It defines the nature of our neighborhoods where people choose - or not - to raise families or to retire and contribute to our year-round economy. Zoning also determines the character of our community. It's that unique character which attracts and brings back cherished guests, generation after generation. We are its custodians.

Because it is so personal, zoning has the potential to be deeply contentious, and even litigious. Recent history indicates that communications through comment during public hearings is not a vehicle through which to relieve that. Indeed, input in three-minute increments at Town Council meetings on contentious issues tends to force commenters into separate corners, rather than lead to understanding, openness, respect and workable solutions. That the three-minute input has been over the Internet due to COVID-19 has further hindered the meaningful, constructive communication required to bridge divides. The collaboration inherent in the Resident Zoning Task Force is a constructive way to mitigate this contentious dynamic. Many communities in the Commonwealth of Massachusetts and elsewhere have recognized that and created ways to bring citizens directly into zoning processes, commensurate with its importance.¹

Composition

Specifically, this Petition requests a Resident Zoning Task Force, comprised of seven residents (one resident from each village who may be appointed by a village or civic association, none of which shall currently serve on any town board or commission), and four representatives of the following publicly

¹ Newton and Eastham are two examples.

constituted bodies: one representative of the Town Council, one representative of the Planning Board, one representative of the Zoning Board of Appeals, and one representative of the Housing Committee who is not otherwise a public official. Should the Town Council prefer representation from additional public bodies, this petition requests a majority membership of residents who do not currently serve on any town board or commission, and resident representation from each one of Barnstable's seven Villages.

The Resident Zoning Task Force would select from its membership a chair, a vice chair, and a clerk. The chair would preside over meetings, and in his or her absence, the vice chair would assume that duty. The clerk would record meeting minutes. Task Force members would produce written reports, recommendations and rationale, and otherwise be responsible for work product in order to minimize human resource or fiscal impacts on the Town's budget. Today, what zoning issues will be considered when and by what body is not set forward in a plan or other public document, and so whatever entity makes those decisions and the Task Force would create a basic communication plan to provide the Task Force, and citizens generally, information about forthcoming zoning matters before proposals are advanced.² The Task Force would create a meeting schedule to enable advance and timely input.

This composition enables the Resident Zoning Task Force to reflect a residential point of view for the Town Council's ultimate consideration and decision-making. It will also ensure perspective on zoning from each of our distinct Villages, in furtherance of the first goal in Barnstable's 2010 Comprehensive Plan ("sustain diverse villages and livable neighborhoods for year round residents while providing housing opportunities for all"³), as well as the Village Plans.⁴ This Task Force and its composition is also directly compatible with the purpose of the town's planning and development office, which is "...to preserve the character of the seven villages and improve the quality of life for town residents by developing and implementing comprehensive land use strategies while promoting consistent, current, and sustainable community and economic development practices through a commitment to citizen engagement and the interdisciplinary coordination of municipal departments."⁵ (Emphasis added.)

Advisory Role

This Group Petition requests the Barnstable Town Council partner with residents by creating a Resident Zoning Task Force to work together on items such as, but not limited to, the following:

² The same would apply for input on plans. Given there is no publicly available schedule on which the Town updates the various plans upon which zoning proposals are based, the Town and the Task Force would similarly develop a means to share information about those schedules.

³ <https://www.town.barnstable.ma.us/Departments/ComprehensivePlanning/LCP/CompPlan10/1%20-%202010%20Comprehensive%20Plan%20Vision.pdf>

⁴ The current Village Plans are at these links [Barnstable](#); [Centerville](#); [Cotuit](#); [Hyannis](#); [Marstons Mills](#); [Osterville](#); [West Barnstable](#).

⁵ Town Code Section 241-47.36

⇒ Advise on Public Education and Engagement

Effective, broad public engagement starts with public awareness and education. A Resident Zoning Task Force as described would be well-suited to assist and advise on ways to achieve a meaningful level of citizen engagement on zoning issues.

⇒ Assist in Refreshing Barnstable's Plans

Barnstable's Comprehensive Plan, each of the seven Village Plans, and the Historic Preservation Plan are all over a decade old.⁶ Its Housing Needs Assessment is seven years old, and its Housing Production Plan, five years. Before any of them can form the basis of any zoning change proposals they need to be current: zoning changes are anchored in up-to-date facts, data, analysis and policy priorities. This is no doubt why the Town Code requires Barnstable's Comprehensive Plan to be updated.⁷ The Town's recent indication that it intends to bring the 2010 Comprehensive Plan to date was welcomed news.⁸ The Resident Zoning Task Force would play a constructive role in reviewing and helping to bring that and the other outdated plans to current, together with other appropriate and robust public processes.

⇒ Contribute to the Consistent Application of Policy to Achieve Intended Outcomes

A Resident Zoning Task Force would, through citizens' practical perspective, help the Town achieve consistent application of policy priorities across zoning ideas and proposals, which may flow from the refreshed plans described above. Recent experience brings into sharp focus the need for coherent policy application, and for ordinances drafted to achieve desired outcomes.⁹

⇒ Collaborate to Mitigate Contention and Litigation Risk

Zoning is about certainty with respect to land use. Without certainty, Barnstable does not have effective zoning. Consider, for example, that Barnstable advises residents to hire a lawyer for land use certainty in their residential neighborhoods.¹⁰ A constructive path to mitigate zoning

⁶ <https://www.town.barnstable.ma.us/departments/comprehensiveplanning/>

⁷ Town Code Section 241-47.36B(2)(i)

⁸ The Cape Cod Commission's recent decision not to require towns to update their Local Comprehensive Plans every five years does not change the requirement in the Town Code Section 241-47.36(B) for plans to be updated.

⁹ For example, in 2020, the short-term rental zoning change proposed ordinance and the housing policy objectives in the Accessory Dwelling Units proposed ordinance, both of which came out of the ad hoc Zoning Subcommittee within a six-month period, worked at cross purposes: long-term housing needs was a stated policy priority in one ordinance, and would have been adversely affected by the other ordinance. Another example: the Town's first Growth Incentive Zone property in Hyannis - a mixed use property with a business on the first floor and two homes on the second and third floor - are operated by the same owner as three short-term rentals (<https://www.capecodtimes.com/article/20150616/NEWS/150619560>; <https://www.airbnb.com/users/show/32952721>). This new use was unlikely the vision for mixed-use properties or of the Growth Incentive Zone program. The short-term rental proposed ordinance invited more such conversions to the detriment of housing needs.

¹⁰ For example, all homeowners wishing to register their homes as short- or long-term rentals must sign the following acknowledgement: "By submitting this application I acknowledge that I have been informed that an approval of this application and issuance of a rental registration certificate does not constitute a determination that the use of the property as a rental is in compliance with the zoning ordinance. You should consult with your legal advisor to determine whether your intended use of the property as a rental unit is in compliance with zoning." https://www.town.barnstable.ma.us/Departments/healthdivision/Applications_and_Forms/Rental-Registration-Application.pdf

litigation risks - and costs - is for the Town and residents to devise solutions as needed, together. The Resident Zoning Task Force as described is an ideal vehicle to that end.

⇒ Help to Achieve Predictable, Consistent, Transparent Zoning Processes

To achieve sustained citizen engagement on zoning, residents need clarity about the zoning process. The Resident Zoning Task Force as described could assist with such clarity, so that citizens know what specific zoning issues belong where, and the path they will travel through government, along with input opportunities.

Relationship to the Planning Board, or in the Alternative to the Zoning Subcommittee

This Group Petition seeks to have the Resident Zoning Task Force serve in an advisory role to the Planning Board, the body the Town Code charges to engage in planning and to recommend zoning ordinance changes. *In the alternative*, if the Town Council wishes to separate planning and zoning¹¹ and/or have a Town Council Zoning Subcommittee originate zoning recommendations instead of the Planning Board, this Group Petition seeks to have the Resident Zoning Task Force serve in an advisory role to that body.

The Town Council's objective to increase citizen engagement would be served by using the planning and zoning processes in the Town Code. The Town Code calls for the Planning Board to propose zoning changes and to advise on land use planning. The Planning Board also has specific public processes. The Town Council's public engagement objective would be well served if the town either followed the Town Code on these matters or amended it to conform to the Town's recent practices. Some observations:

- ⇒ The Town Council did not vote to create the Zoning Subcommittee, or on its scope, or on the timeframe by which it is to complete its tasks.¹² The effect is that today, citizens have no idea what zoning issue it will take up next, or where the next zoning change proposal originates.

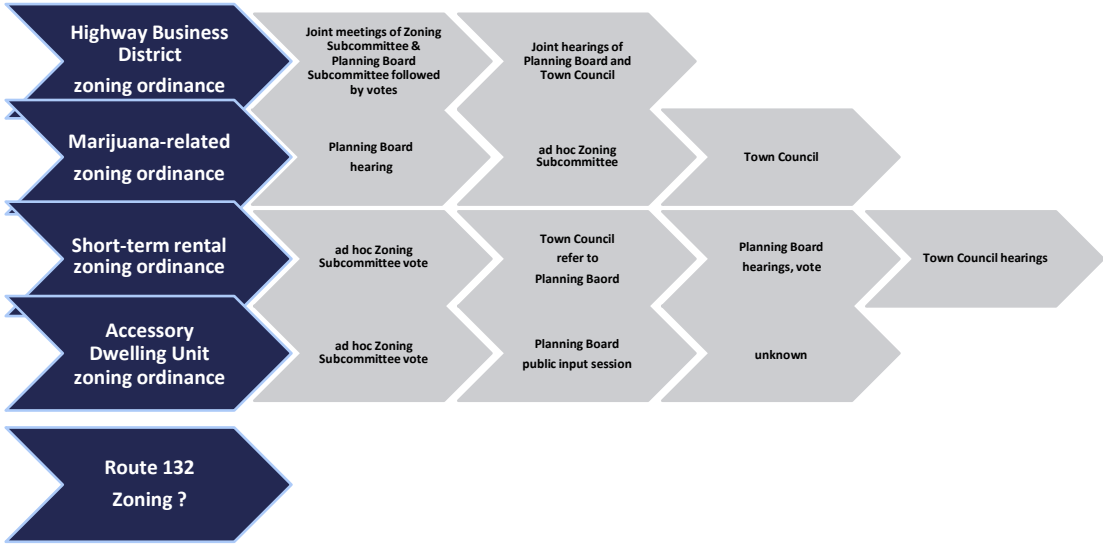
- ⇒ Neither the Town Council nor the Town Code prescribes how the Zoning Subcommittee is to interact with the Planning Board, or any other Town body with a connection to planning or zoning such as the Housing Committee or Zoning Board of Appeals. The Town Code describes the Planning Board's - and all other public bodies' -

¹¹ The Town Code contemplates connection between planning and zoning. For example, as it relates to the Planning and Development Department, the Town Code provides that "[t]he Comprehensive Planning Program performs long-term professional planning for the Town, including the drafting of amendments to the zoning...". Town Code Section 241-47.36

¹² The Town Code provides that the Town Council, based upon passage by a majority vote of its membership, may establish ad hoc or standing committees to assist the Town Council in carrying out the Council's responsibilities. The Town Code further provides that ad hoc committees are to be limited to a particular subject area and serve only in that capacity for a specific period of time. Should the Town Council want to form a standing committee, it also requires a majority Town Council vote, and the Council must specify the following: membership, term of office, authorities and responsibilities, and interrelationships with both the Town Council and other agencies. The Town Council rules, according to the Town Attorney, also requires a Town Council vote to create a standing Town Council committee. The Zoning Subcommittee is necessarily ad hoc, then, as the Town Council did not vote to create it; however, it has not specific list of issues to address or timeframe in which to complete them.

interrelationship with all relevant town boards and commissions. None contemplate a Zoning Subcommittee, or interactions with it.¹³

- ⇒ The Planning Department’s description of town boards and commissions with land use planning and zoning responsibilities does not include the Zoning Subcommittee.¹⁴
- ⇒ Despite the inextricable link between planning and zoning as contemplated by the Town Code¹⁵, the Zoning Subcommittee has no identified role in the development of town plans, including the Comprehensive Plan, upon which zoning change recommendations are grounded.¹⁶
- ⇒ Since 2017 when the then Town Council President announced that there would be a Zoning Subcommittee, the process by which zoning proposals move through town government has changed on a case-by-case basis.¹⁷ For example:



¹³ Town Code Section 241-29.

¹⁴ It points citizens to the Historical Commission, the Housing Committee, the Hyannis Main Street Waterfront Historic District Commission, the Old Kings Highway Historic District Committee, the Planning Board and the Zoning Board of Appeals.

¹⁵ Town Code Section 241-47-36B(2) “The Comprehensive Planning Program performs long-term professional planning for the Town, including the drafting of amendments to the zoning and general ordinances...” and Town Code Section 241-29 (duties of the Planning Board, including zoning and planning)

¹⁶ Town Code Section 241-47.36B(c)(3) (“Comprehensive Planning interacts 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 and other boards and commissions as requested.”)

¹⁷ Please understand if this review is imperfect as it changes each time.

- ⇒ With the exception of the short-term rental matter, based on our review, only about one dozen residents have provided views to the ad hoc Zoning Subcommittee on all of the above zoning

ordinances - combined - since 2017. The lack of public awareness and engagement at the outset of zoning change proposals is, respectfully, a material weakness in the current process.

- ⇒ It appears that no proposed ordinance that originated with the ad hoc Zoning Subcommittee has been ultimately adopted by the Town Council.¹⁸
- ⇒ It appears that the Planning Board's essential functions - to propose and recommend zoning ordinance amendments - has been curtailed by the ad hoc Zoning Subcommittee's formation. Moreover, from the public's point of view, there is no known source about forthcoming zoning proposals or related issues, or from which body they will originate.

Town Council President Levesque has observed that if government does not get processes right, it casts a shadow on the integrity of its decisions. We agree.

Conclusion

The Town Council's and Town Manager's prioritization of public engagement in 2021/2022, warrants the Town Council's favorable response to this Petition. The Resident Zoning Task Force as described would help to increase engagement to a meaningful level, to create communication opportunities of the nature that can ease contention and find viable solutions, and to bring any zoning changes that may be needed, based on updated plans, to fruition. By this Group Petition, we ask the Town Council to accept residents' offer to partner with the Town on these critical issues and to form a Resident Zoning Task Force as described.

¹⁸ We believe this recitation is correct based on a review of proposed zoning ordinance changes since 2017. If this has errors, we ask for correction. Because the zoning path through Town government has been changing proposal to proposal, it is challenging to track.

TO: Town Council
FROM: Karen L. Nober, Town Attorney
THROUGH: Matthew Levesque, Town Council President
Paula Schnepf, Town Council Vice President
DATE: May 6, 2021
SUBJECT: Citizens' Request for Establishment of a Resident Zoning Task Force

BACKGROUND:

On March 3, 2021, Robert and Anne Schulte, on behalf of themselves and other residents of the Town of Barnstable, submitted to the Town Council a request that the Council “establish a Resident Zoning Task Force comprised principally of residents to provide perspective and input on zoning proposals and plan revisions.”

Although the request refers to itself as a “Group Petition” pursuant to Section 8-7(b) of the Town Charter, it does not contain the actual signatures of the residents whose names appear in support of the request. Because the request does not contain the signatures of at least 150 registered voters of the Town, it does not meet the Charter’s requirements for a Group Petition and cannot be considered as such.

However, in recognition of the difficulties of getting signatures from 150 people during the current COVID-19 public health crisis, Council leadership has agreed, as an accommodation to the residents in these unique circumstances, to generally follow the Group Petition process by advertising and holding a public hearing and taking a vote on the merits of the request. The action to be taken by the Council at this meeting is simply a vote on whether the request has merit. It is not a vote to approve the request as written. If the Council concludes that the request has merit, then it will be up to Council leadership and the full Council to consider what, if any, actions it may wish to take. To ensure compliance with the Open Meeting Law, any action by the Council, other than the vote on the merits, should take place at a future Town Council meeting so that it may be properly noticed on that meeting’s agenda.

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-172
INTRO: 05/06/2021**

2021-172 TRANSFER ORDER IN THE AMOUNT OF \$302,803.66 FROM TOWN COUNCIL ORDER 2016-098 TO TOWN COUNCIL ORDER 2020-175 FOR THE PURPOSE OF FUNDING THE WATER POLLUTION CONTROL DIVISION'S FISCAL YEAR 2021 PUMP STATION REHABILITATION PROJECT

ORDERED: That the remaining unexpended balance of **\$302,803.66** in Town Council Order 2016-098 from the Water Pollution Control Enterprise Fund Capital Budget for the Backup Generator Replacement be transferred and added to the **\$1,200,000** appropriated under Town Council Order 2020-175, resulting in a revised appropriation total of **\$1,502,803.66**, for the purpose of funding the rehabilitation of wastewater pump stations and associated infrastructure.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2021-172
INTRO: 05/06/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: May 06, 2021
SUBJECT: Transfer Order in the amount of **\$302,803.66** from Town Council Order 2016-098 to Town Council Order 2020-175 for the purpose of funding the Water Pollution Control Division's Fiscal Year 2021 Pump Station Rehabilitation Project

BACKGROUND: On April 22, 2021, bids were opened for the Water Pollution Control Division's Fiscal Year 2021 Pump Station Rehabilitation Project. Favorable bids were received for the base bid and three (3) of the four (4) bid alternates. The third bid alternate would include an evaluation of the sewer force mains for the Old Colony Pump Station, the largest pump station in Town. However, the existing appropriation does not have sufficient funds to award this work. There are also a number of other minor repairs that are recommended by the 2019 Pump Station Asset Management Plan to be completed over the course of the next few years that staff would prefer to expedite.

The Backup Generator Replacement at the Water Pollution Control Facility Project was completed in 2018. Town Council Order 2016-098 appropriated \$904,000 for this project and the appropriation currently has a remaining unspent balance of \$302,803.66.

ANALYSIS: Sewer pump stations are a critical portion of the municipal sewer system, with high consequence of failure. The Old Colony Pump Station is the largest pump station in the Town, pumping approximately 700,000 gallons per day (average daily flow) of sewage to the Water Pollution Control Facility (WPCF). This sewage is pumped approximately 1.75 miles through a single 16 inch and 20 inch asbestos cement force main, which was constructed in 1956, to the WPCF. Assessment of the force main had been scheduled for 2023; however it was included as a bid alternate in this year's program in order to potentially understand the condition of this important infrastructure sooner and realize cost savings. The bid pricing received for the force main assessment work was over \$100,000 less than the engineers estimate and therefore will be more cost effective to complete as part of this contract.

There are also a number of other minor repairs that are recommended by the 2019 Pump Station Asset Management Plan to be completed over the course of the next few years that staff would prefer to expedite. Additional funds towards this program will allow these repairs to be made more expeditiously.

FISCAL IMPACT: After completion of the Backup Generator Replacement Project funded under Town Council Order 2016-098 there remains \$302,803.66 of unexpended funds. This project was financed with a bond issue; therefore, these remaining funds are unexpended bond proceeds. The Town must use them for another capital project for which it could borrow funds for a similar length of time or longer, and cannot allow them to close to the enterprise fund's reserves or use them for operating costs. The rehabilitation of wastewater pump stations and associated infrastructure qualifies as an allowable use of these funds. The debt service associated with the bond issue authorized under Town Council

Order 2016-098 has been accounted for in the enterprise fund's rate model and there is no impact on the sewer rates as a result of this action.

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; Griffin Beaudoin, P.E., Town Engineer; Andrew Boule, Supervisor, Water Pollution Control Division

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-173
INTRO: 05/06/2021**

2021-173 TRANSFER ORDER IN THE AMOUNT OF \$30,000 FOR THE PUBLIC WORKS DEPARTMENT OPERATING EXPENSE BUDGET FOR THE PURPOSE OF FUNDING WATERSHED MODELING

ORDERED: That the sum of **\$30,000** be transferred from the Fiscal Year 2021 Public Works Department Personnel Budget to the Fiscal Year 2021 Public Works Department Operating Expense Budget for the purpose of funding watershed modeling.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2021-173
INTRO: 05/06/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: May 06, 2021
SUBJECT: Transfer Order in the amount of **\$30,000** for the Public Works Department Operating Expense Budget for the purpose of Funding Watershed Modeling

BACKGROUND: Due to vacancies in salaried positions throughout the fiscal year in the Department of Public Works, the department currently has approximately \$250,000 of unencumbered salary funds. The department proposes to access a portion of the projected savings to fund additional watershed modeling work to assess nutrient management scenarios in the Three Bays Watershed.

FISCAL IMPACT: This request, if approved, will reduce the estimated amount of unexpended Fiscal Year 2021 appropriations that would be turned back to the General Fund reserves at the close of the Fiscal Year and become part of the Town's Free Cash.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works; Griffin Beaudoin, P.E., Town Engineer;

B. NEW BUSINESS (Refer to the Planning Board)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-174
INTRO: 05/06/21**

2021-174 AMENDING ARTICLE XIV, CHAPTER 240, SECTION 128 OF THE ZONING ORDINANCE TO ADD A DEFINITION FOR ACCESSORY DWELLING UNIT (ADU) AND DWELLING UNIT, AND REVISE THE DEFINITION OF DWELLING, SINGLE-FAMILY AND ADD ARTICLE V, CHAPTER 240, SECTION 47.2 ACCESSORY DWELLING UNITS (ADUS) TO THE ZONING ORDINANCE

ORDERED: That the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning be amended as follows:

SECTION 1

By amending Article XIV, Chapter 240, Section 128 by adding a definition of “Accessory Dwelling Unit (ADU)” as follows:

ACCESSORY DWELLING UNIT (ADU)

An Accessory Dwelling Unit (ADU) is a self-contained Dwelling Unit, inclusive of sleeping, cooking, and sanitary facilities, incorporated within a lawful principal single-family dwelling or within a detached building accessory to and on the same lot and in the same ownership as a lawful principal single-family dwelling use. The ADU shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress. ADUs shall have a maximum habitable floor area that is not larger than 1/2 of the habitable floor area of the principal single family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller.

SECTION 2

By amending Article XIV, Chapter 240, Section 128 by adding a definition of “Dwelling Unit” as follows:

DWELLING UNIT

Complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

SECTION 3

By amending Article XIV, Chapter 240, Section 128 by striking in the definition of DWELLING, SINGLE-FAMILY the phrase “including permanent provisions for living, sleeping, eating, cooking and sanitation” so it reads as follows:

DWELLING, SINGLE-FAMILY

A detached residential building designed for and occupied by a single family and providing complete independent living facilities for one or more persons.

SECTION 4

By adding Article V, Chapter 240, Section 47.2 **Accessory Dwelling Units (ADUs)** which reads as follows:

A. Purpose and Intent.

The intent of permitting Accessory Dwelling Units (ADUs) is to:

- (1) Increase the number of dwelling units available for year-round rental in Town while remaining within our current wastewater capacity limitations;
- (2) Adapt single-family residential properties so they are supportive of residents at a variety of stages in their life cycle;
- (3) Encourage greater diversity and support of all populations with particular attention to young adults and senior citizens; and
- (4) Encourage a more economic and efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods; and
- (5) Provide homeowners with a means of obtaining rental income to defray housing costs.

B. Procedural Requirements

- (1) An ADU that conforms to the requirements contained herein shall be permitted as an accessory use to a lawful single family dwelling use, except that no ADU shall be permitted on a lot at the same time as a family apartment exists on that lot pursuant to §240-47.1.
- (2) Prior to issuance of a building permit for an ADU, site plans, floor plans and elevations shall be submitted showing the proposed interior and exterior changes to existing buildings or new buildings and improvements on a lot associated with a proposed ADU.
- (3) The construction of any accessory dwelling unit must be in conformity with the Federal, State, and local laws and regulations, including all historic, and Old King's Highway requirements if applicable.

C. Use and Dimensional Requirements

The Building Commissioner may issue a Building Permit authorizing the installation and use of an Accessory Dwelling Unit within a lawful existing or new single-family dwelling to which the ADU is accessory, or in a new or existing detached building accessory to and on the same lot as the principal dwelling subject to the following:

- (1) No more than one (1) ADU may be created per lot. This provision is not subject to variance.
- (2) If the primary entrance of an ADU is not proposed to be shared with that of the principal dwelling, such entrance shall be less visible from the street view of the principal dwelling than the main entrance of the principal dwelling.
- (3) An ADU shall be designed so that, to the maximum extent practical, the appearance of the property on which it is to be located remains that of a single-family residential property. Any addition or new construction shall be consistent in design with the principal single family dwelling, considering the following: architectural details, roof design, building spacing and orientation, door and window location, and building materials. Any person aggrieved by the determination of a Town official with respect to a determination under this subsection may appeal said determination to the Zoning Board of Appeals.

- (4) The ADU shall contain no more than two bedrooms. ADUs, in accordance with the definition, shall have a maximum habitable floor area that is not larger than 1/2 of the habitable floor area of the principal single family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller. ADUs with more than two bedrooms may be permitted by special permit from the Zoning Board of Appeals. Garages, unfinished attics and basements, common entries, porches and decks shall not be included in the floor area calculations.
- (5) Occupancy of the ADU shall not exceed two persons; occupancy limitations shall not apply to children ages 18 and under. Occupancy of an ADU by more than two persons over the age of 18 may be permitted by special permit from the Zoning Board of Appeals.
- (6) Once an ADU has been added to a single-family dwelling or lot, the accessory dwelling unit shall not be enlarged beyond the square footage allowed by this section.
- (7) All parking for the ADU shall be off street.
- (8) The Board of Health must have documented to the Building Commissioner that sewage disposal will be satisfactorily provided for in accordance with the provisions of Title 5 and Board of Health regulations, including provisions for an appropriate reserve area on the site. The principal dwelling unit and accessory dwelling unit shall meet all wastewater requirements for the combined number of bedrooms/ wastewater flow on the lot. If the property is served by municipal sewer, the Department of Public Works shall certify adequate capacity is available to serve the additional unit.
- (9) The rights and requirements of this ordinance hereby transfer upon the sale of a property containing an ADU built under the provisions of this ordinance.
- (10) An ADU and the principal dwelling to which it is accessory may be rented only in accordance with the terms of this section.
- (11) An ADU shall be used only as a rental, except that the owner of the property may reside in the ADU while renting the principal dwelling. The rental period for an ADU and for a principal dwelling shall not be shorter than 12 consecutive months. Both the ADU and the principal dwelling may be rented concurrently.
- (12) Any commercial use, with the exception of permitted home occupations, shall not be allowed on a property on which there is an ADU.

SPONSOR: Town Council Zoning & Regulatory Advisory Subcommittee (as constituted on December 16, 2020): Paula Schnepf, Councilor Precinct 12; Matthew Levesque, Councilor Precinct 10; Kristine Clark, Councilor Precinct 11; Jennifer Cullum, Councilor Precinct 13; Gordon Starr, Councilor Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2021-174
INTRO: 05/06/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Director, Planning & Development Department
DATE: May 06, 2021
SUBJECT: Amending Article XIV, Chapter 240, Section 128 of the Zoning Ordinance to add a definition for Accessory Dwelling Unit (ADU) and Dwelling Unit, and revise the definition of Dwelling, Single-Family and add Article V, Chapter 240, Section 47.2 Accessory Dwelling Units (ADUs) to the Zoning Ordinance

RATIONALE: This item proposes an update to the Town's Zoning Ordinance to allow Accessory Dwelling Units (ADUs) as an accessory use to single-family residential dwellings town-wide. The intent and purpose of this amendment, as stated in the proposed ordinance is to increase the number of dwelling units available for year-round rental while remaining within our current wastewater capacity limitations; allow adaptation of single-family residential properties to be supportive of residents at a variety of stages in their life cycle; encourage greater diversity and support of all populations with particular attention to young adults and senior citizens enabling an intergenerational community; encourage a more economic and efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods; and provide homeowners with a means of obtaining rental income to defray housing costs.

The proposed Accessory Dwelling Unit ordinance directly responds to goals and recommendations in the Town's Housing Production Plan and the associated Housing Needs Assessment. These plans identify the need for expanded housing choice and additional supply of rental housing to support an intergenerational community by encouraging aging in place and the attraction and retention of younger residents. The Needs Assessment emphasizes the need for more alternative choices to single-family houses, which currently compose the majority of the Town's housing stock. Limited housing choice and the high cost of housing results in homeownership being out of reach for many families. These factors, coupled with very low vacancy rates, place a significant burden on those seeking rental housing options. The Housing Production Plan, which is a compilation of housing recommendations for the community based on the Needs Assessment and an extensive community engagement process, explicitly recommends permitting market-rate Accessory Dwellings Units accessory to existing single-family homes and in outbuildings throughout Barnstable to increase housing options.

The proposed Accessory Dwelling Unit ordinance is based on the Cape Cod Commission's model Accessory Dwelling Unit ordinance. The model ADU ordinance allows ADUs by-right to support the addition of small scale housing alternatives in an effort to meet housing needs within our region. In an overview of the model ADU ordinance, the Commission highlights how the gap between median annual income and the cost of housing continues to widen. At the same time, the average household size is declining creating a demand for smaller units. Allowing ADUs by right will expand housing choices and increase the number of smaller units, which the Commission notes as being an important part of meeting Cape Cod's housing challenge especially in areas of our region with limited infrastructure and sensitive habitats. To date nine other towns on Cape Cod have adopted by-right Accessory Dwelling Unit bylaws.

Additionally, the new "Housing Choice" legislation, adopted by the Commonwealth on January 14, 2021, encourages and promotes new housing production by making it easier to approve housing supportive zoning. The new legislation reduces the required vote for the approval of zoning amendments

allowing as of right ADUs, whether within the principal dwelling or a detached structure on the same lot, from a two-thirds majority vote to a simple majority vote.

Furthermore, Town Council's Strategic Plan housing goal includes developing and promoting rental housing to meet the needs of residents. One of the identified strategies is to review zoning issues identified by the Council to determine how to best achieve housing goals through zoning and regulatory changes. Our current zoning allows for the incorporation of accessory apartments through the Accessory Affordable Apartment Program (AAAP) and our Family Apartment ordinance. However, the Housing Production Plan notes that although AAAP has been a successful tool for producing affordable housing, the process requires a Comprehensive Permit and Zoning Board of Appeals approval for each unit, which was noted to be a cumbersome process. The Family Apartment ordinance allows, within a residential district, one temporary family apartment occupied only by the property owner or a member(s) of the property owner's family as accessory to a single-family residence to provide families the ability to live together as a family unit. While the Family Apartment ordinance allows more diverse housing it is limited by factors including duration and is prohibited for non-family members. Allowing ADUs as of right is an effort aimed at increasing the supply of rental housing to better meet the needs of our residents.

The proposed zoning ordinance allows ADUs "by right" to encourage the creation of new units, while including limitations on size, dimension, style, number of bedrooms, and occupancy necessary to protect community character. ADUs are further limited by the general standards required for all buildings (setbacks, height, etc.) and uses contained in the underlying zoning. The ordinance proposes allowing specific restrictions to be exceeded with the grant of a Special Permit by the Zoning Board of Appeals: bedrooms in excess of two and occupants (over 18) in excess of two. A third standard, ADUs in excess of 900 square feet, is the subject of the second item under consideration.

The proposed ordinance does not include an owner occupancy requirement, consistent with the recommendation in the Cape Cod Commission's model. It allows the rental of both or either of the units, so long as the ownership of the units is not severed. The proposed zoning ordinance requires that any rental on a property with an ADU be no shorter than 12 consecutive months, in keeping with the goal of increasing the supply of year-round rentals. This provision prevents the owner of a single family dwelling with an ADU from offering any rental for a time period shorter than 12 consecutive months, thereby deterring short term rentals in neighborhoods and promoting housing opportunity for year-round residents.

The ordinance also requires properties with ADUs to remain within established wastewater capacity limitations. The principal dwelling unit and ADU must meet all wastewater requirements for the combined number of bedrooms/wastewater flow on a lot. No additional wastewater disposal capacity is permitted by this zoning amendment.

FISCAL IMPACT: There is no significant fiscal impact of the proposed zoning amendment.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends the proposed zoning amendment.

STAFF SUPPORT: Elizabeth Jenkins, Director of Planning & Development; Arden Cadrin, Housing Coordinator; Kate Maldonado, Assistant Director of Planning & Development, Gloria McPherson, Planning & Economic Development Coordinator; Brian Florence, Building Commissioner; Karen Nober, Town Attorney; Charles McLaughlin, Assistant Town Attorney; Kathleen Connolly, Assistant Town Attorney

B. NEW BUSINESS (Refer to the Planning Board)

BARNSTABLE TOWN COUNCIL

**ITEM# 2021-175
INTRO: 05/06/21**

2021-175 AMENDING ARTICLE XIV, CHAPTER 240, SECTION 128 OF THE ZONING ORDINANCE TO REVISE THE DEFINITION OF ACCESSORY DWELLING UNIT (ADU) AND AMENDING ARTICLE V, CHAPTER 240, SECTION 47.2(C)(4) TO ALLOW ADUS WITH GREATER THAN 900 SQUARE FEET BY SPECIAL PERMIT FROM THE ZONING BOARD OF APPEALS

ORDERED: That the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning be amended as follows:

SECTION 1

By amending Article XIV, Chapter 240, Section 128 by adding in the definition of “Accessory Dwelling Unit (ADU)” the phrase “unless special permit relief is granted with respect to the requirements of 240-47.2(C)(4) with regard to square footage” so it reads as follows:

ACCESSORY DWELLING UNIT (ADU)

An Accessory Dwelling Unit (ADU) is a self-contained Dwelling Unit, inclusive of sleeping, cooking, and sanitary facilities, incorporated within a lawful principal single-family dwelling or within a detached building accessory to and on the same lot and in the same ownership as a lawful principal single-family dwelling use. The ADU shall maintain a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress. ADUs shall have a maximum habitable floor area that is not larger than 1/2 of the habitable floor area of the principal single family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller, **unless special permit relief is granted with respect to the requirements of 240-47.2(C)(4) with regard to square footage.**

SECTION 2

By amending Article V, Chapter 240, Section 47.2(C)(4) by adding the phrase “and/or a maximum habitable floor area greater than 900 square feet” so it reads as follows:

The ADU shall contain no more than two bedrooms. ADUs, in accordance with the definition, shall have a maximum habitable floor area that is not larger than 1/2 of the habitable floor area of the principal single family dwelling unit (exclusive of floor area that converted to the ADU), or 900 square feet, whichever is smaller. ADUs with more than two bedrooms **and/or a maximum habitable floor area greater than 900 square feet** may be permitted by special permit from the Zoning Board of Appeals. Garages, unfinished attics and basements, common entries, porches and decks shall not be included in the floor area calculations.

SPONSOR: Town Council Zoning & Regulatory Advisory Subcommittee (as constituted on December 16, 2020): Paula Schnepf, Councilor Precinct 12; Matthew Levesque, Councilor Precinct 10; Kristine Clark, Councilor Precinct 11; Jennifer Cullum, Councilor Precinct 13; Gordon Starr, Councilor Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2021-175
INTRO: 05/06/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Director, Planning & Development Department
DATE: May 06, 2021
SUBJECT: Amending Article XIV, Chapter 240, Section 128 of the zoning ordinance to revise the definition of Accessory Dwelling Unit (ADU) and amending Article V, Chapter 240, Section 47.2(C)(4) to allow ADUs with greater than 900 square feet by special permit from the Zoning Board of Appeals

BACKGROUND: The proposed amendment adds to the definition for an Accessory Dwelling Unit (ADU) and the dimensional requirements for an ADU as defined within Article V, Chapter 240, Section 47.2(C)(4) to allow that an ADU with more than 900 square feet may be permitted by a special permit from the Zoning Board of Appeals. The new “Housing Choice” legislation, adopted by the Commonwealth on January 14, 2021, encourages and promotes new housing production by establishing that zoning for ‘as of right’ ADUs, defined to be no larger than 900 square feet, shall be adopted by a simple majority vote. The ability to seek relief by special permit for ADUs that are greater than 900 square feet diverges from the Commonwealth’s Housing Choice provisions and therefore requires a two-thirds majority vote. Massachusetts General Laws Chapter 40A Section 5 was amended to note that “any amendment that requires a simple majority vote shall not be combined with amendments that require a two-thirds majority vote.” Therefore, consistent with the guidance from local officials on determining voting thresholds for zoning ordinances and bylaws, the additional provision to seek a special permit for an ADU greater than 900 square feet is voted upon as a separate amendment in an effort to not combine provisions that require different voting thresholds.

RATIONALE: The ability to seek a special permit for an ADU greater than 900 square feet enables additional flexibility supporting more diverse housing options and aligns with the provisions of the Family Apartment ordinance which similarly allows an apartment that exceeds the established maximum square footage to be authorized by special permit from the Zoning Board of Appeals. Despite any allowed increase in square footage for the ADU, the principal dwelling unit and the ADU shall meet all wastewater requirements for the combined number of bedrooms/wastewater flow on the lot.

FISCAL IMPACT: There is no significant fiscal impact of the proposed zoning amendment.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends the proposed zoning amendment.

STAFF SUPPORT: Elizabeth Jenkins, Director of Planning & Development; Arden Cadrin, Housing Coordinator; Kate Maldonado, Assistant Director of Planning & Development, Gloria McPherson, Planning & Economic Development Coordinator; Brian Florence, Building Commissioner; Karen Nober, Town Attorney; Charles McLaughlin, Assistant Town Attorney; Kathleen Connolly, Assistant Town Attorney

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

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-176
INTRO: 05/06/2021**

**2021-176 RESOLVE ACCEPTING THE FISH WEIR APPLICATION FROM
NANTUCKET SOUND FISH WEIRS, INC., (KURT MARTIN)**

RESOLVED: The Barnstable Town Council does hereby approve the Application of Nantucket Sound Fish Weirs, Inc. to renew permits for two (2) fish weir sites in the coastal waters of the Town of Barnstable in Nantucket Sound. The permit renewal request is for a period of five (5) years. (Full application on file in Council office)

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

_____ Read Item
_____ Rationale
_____ Council Discussion
_____ Vote

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM # 2021-176
INTRO: 05/06/2021

TO: Town Council
FROM: Mark Ells, Town Manager
THROUGH: Derek Lawson, Director, Marine and Environmental Affairs Department
DATE: May 06, 2021
SUBJECT: Nantucket Sound Fish Weirs Inc. application to install two (2) fish weir sites in the coastal waters of the Town of Barnstable in Nantucket Sound. The permit request is for five (5) years.

BACKGROUND: In 2016, Nantucket Sound Fish Weirs, Inc. was granted a permit for a period of five (5) years (refer to Agenda Item 2016-115). The applicant is again seeking to renew permits for two (2) existing sites in Nantucket Sound, the location and coordinates for those being on file at the Marine and Environmental Affairs Office, 1189 Phinney's Lane, Centerville.

Location 1 - Shore end of leader: Latitude 41° 37' 07" N; Longitude 70° 18' 47" W. Distance from mean high water mark: 1,000 yards. Landmark description: Hallet's Rock buoy in line with Centerville flag pole. Collier Ledge buoy in line with Hyannisport Breakwater. Overall length of structure: 700 yards. Extreme width of structure, including guy lines or anchor lines: 120 yards.

Location 2 - Shore end of leader: Latitude 41° 36' 33" N; Longitude 70° 22' 00" W. Distance from mean high water mark: 850 yards. Landmark description: Collier Ledge buoy in line with flagpole on Osterville Point. Overall length of structure: 700 yards. Extreme width of structure, including guy lines or anchor lines: 120 yards.

Kurt Martin, President of Nantucket Fish Weirs, Inc. has indicated that both sites will continue to have U.S. Coast Guard approval for three yellow lights.

ANALYSIS: The Marine and Environmental Affairs Department supports the request of the applicant for renewing his permits to construct and maintain fish weirs for a period of five years. Mr. Martin has indicated that both sites will continue to have U.S. Coast Guard approved yellow lights for each trap.

FISCAL IMPACT: None identified.

TOWN MANAGER RECOMMENDATION Mark S. Ells, Town Manager, recommends approval of the permits for a term not to exceed five years from the date of renewal approval.

STAFF ASSISTANCE: Brian Taylor, Harbormaster.