



The Town of Barnstable

Town Council

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TOWN COUNCIL AGENDA

October 20, 2005

7:00 PM

Councilors:

Gary R. Brown,
President

Henry C. Farnham
Vice President

Richard G. Barry
Janice L. Barton
Ann A. Canedy
James H. Crocker, Jr.
Leah C. Curtis
Janet Joakim
J. Gregory Milne
James F. Munafo, Jr.
Royden C. Richardson
Tom Rugo
Harold E. Tobey

Administrator:
Donald M. Grissom

Town Council
Secretary:
Cheryl A. Phillips

- 1. ROLL CALL**
 - 2. PLEDGE OF ALLEGIANCE**
 - 3. MOMENT OF SILENCE**
 - 4. PUBLIC COMMENT**
 - 5. COUNCIL AND TOWN MANAGER RESPONSE TO PUBLIC COMMENT**
 - 6. REPORTS FROM TOWN COUNCIL, BOARDS, AND COMMITTEES**
 - 7. ACT ON MINUTES**
 - 8. ORDERS OF THE DAY**
 - A. OLD BUSINESS**
 - B. NEW BUSINESS**
 - 9. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS AND STAFF, CORRESPONDENCE AND ANNOUNCEMENTS**
 - 10. PRESIDENT/VICE PRESIDENT COMMUNICATIONS**
 - 11. TOWN MANAGER COMMUNICATIONS**
 - 12. PUBLIC COMMENT**
 - 13. ADJOURNMENT.**
- NEXT MEETING NOVEMBER 3RD.**

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NOTE: It is possible, if it so votes, the Council may go into executive session to discuss land acquisition.

A. OLD BUSINESS (JOINT PUBLIC HEARING) (ROLL CALL)

BARNSTABLE TOWN COUNCIL

**2006-009 TO SEE IF TOWN COUNCIL WILL VOTE TO AMEND THE ZONING ORDINANCE BY ADDING THE FOLLOWING PROVISION RE: AFFORDABLE HOUSING OVERLAY DISTRICT
INTRO.: 07/14/05; 10/06/05; 10/20/05**

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF BARNSTABLE MASSACHUSETTS DO ORDAIN AS FOLLOWS:

ORDERED:

SECTION 1

AFFORDABLE HOUSING OVERLAY DISTRICT

1. Purpose. The purpose of this Section is to establish overlay district(s), in which a special permit process is created to encourage privately initiated affordable housing by for-profit and not-for profit organizations that;

A. Provides for residential development in a manner that is consistent with existing neighborhood development in terms of density and housing types; and

B. Authorizes an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide housing for persons of low or moderate income.

2. Definitions.

Affordable Unit: A dwelling unit reserved in perpetuity for ownership by a household earning less than 80% of area median family income, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for ownership units set forth in 760 CMR 45.03(4), in order that such Affordable Units shall be included in the DHCD Subsidized Housing Inventory.

Applicant - The person or persons, including a corporation or other legal entity, who applies for site plan approval for construction of an Affordable Housing Development (AHD), hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed AHD, or have authority from the owner(s) to act for the owner (s) or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

Bedroom - A separate room within a dwelling unit intended for, or which customarily could be used for, sleeping.

Affordable Housing Development (AHD) – A development of single-family (detached) and/or multi-family residential dwellings, including required Affordable Units, and permissible accessory structures authorized by special permit from the Planning Board as set forth herein for parcels located in the AHOD.

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INTRO.: 07/14/05; 10/06/05; 10/20/05

3. Overlay District. The AHOD is an overlay district superimposed on all underlying zoning districts. All uses permitted by right or by special permit in the underlying zoning districts shall be similarly permitted in the AHOD subject to the provisions of this Section. Where the AHOD authorizes uses not otherwise allowed in the underlying district, the provisions of the AHOD shall control.

4. Location. The AHOD is to be shown on a map entitled "Affordable Housing Overlay District," which shall be amended from time to time.

5. Concept Plan. Prior to the rezoning of any property for inclusion in the AHOD, and as part of the petition for such rezoning, a preliminary plan called for purposes of this Section, a "Concept Plan", shall be filed for review with the Barnstable Housing Committee. The Concept Plan shall be consistent with the provisions of this AHOD, the town of Barnstable Local Comprehensive Plan, the town of Barnstable Affordable Housing Plan and shall include:

- A. a preliminary site development plan showing the location and footprint(s) of all proposed buildings, general site grading with finish floor elevations, parking, landscaping, roads, walkways and access ways, open space, and wetlands;
- B. a preliminary utilities plan showing the proposed location and types of water, wastewater and general location and type of stormwater facilities, including hydrants;
- C. a preliminary lighting plan including a photometric plan and general information regarding light poles, bases and fixtures;
- D. a preliminary sign plan;
- E. preliminary subdivision plan(s), if applicable; and
- F. proposed buildings as to location, use classification, and size.
- G. the proposed level of affordability.

The Barnstable Housing Committee may solicit public comment on the Concept Plan. Thereafter, the Barnstable Housing Committee may determine that (i) the Concept Plan has been approved; or (ii) the Concept Plan has been approved subject to modifications suggested by the Barnstable Housing Committee or agreed upon by the person or entity submitting the plan, or (iii) the Concept Plan has been disapproved. The Barnstable Housing Committee shall advise the person or entity submitting such Concept Plan of its determination within forty-five (45) days following submittal of said Plan, unless such time period is extended by agreement of the parties. If the Barnstable Housing Committee disapproves the Plan, such notice shall provide the reasons for such determination. The determination of the Barnstable Housing Committee on the Concept Plan shall be advisory in nature only and shall be without binding effect on either the Town Council or the petitioner for rezoning.

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6. Map Amendment. Upon the completion of the review by the Barnstable Housing Committee of the Concept Plan, a petitioner may file a petition for the amendment of the Town of Barnstable Zoning Map for inclusion of a parcel or parcels within the AHOD.

7. Application for Special Permit in AHOD. An application for a special permit for an AHD shall be submitted to the Planning Board on forms furnished by the Planning Board, accompanied by the following:

- A) Information pertaining to any association which the Applicant proposes to form for the private management of the AHD.
- B) Copies of all proposed documents as required for the subdivision, including architectural rendering and layouts of proposed homes to be built and landscaping plans.
- C) Copies of proposed deed restrictions and monitoring agreements, drafted consistent with all requirements of 760 CMR 45 Local Initiative Program (LIP) and guidelines promulgated there under assuring the affordable units remain affordable in perpetuity, and assure the resale of Affordable Units at the restricted price, and providing a right of first refusal in favor of the Town.

8. Standards. In order to be eligible for consideration for a special permit, the proposal must contain parcels included in the AHOD and shall meet all of the following standards:

A) Compliance with Applicable Regulations and Standards:

- 1) In the case of a subdivision, all plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.
- 2) In the case of multiple single-family residential dwellings (detached) on a single lot, all plans and development shall comply with applicable standards of the Zoning Ordinance including Site Plan Review.

B) Lot Shape Factor: The numerical lot shape factor as required in Section 240-128 of the Barnstable Code shall not apply.

C) Bulk Regulations – For all lots and building within the AHOD the following Bulk Regulations shall apply

[insert table]

D) Parking. A minimum of two (2) on-site parking spaces per dwelling unit shall be provided. A one car garage shall count as one parking space. A two car garage shall count as two parking spaces.

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E) Phasing. Phasing: The applicant, as part of the application for subdivision approval, may propose a phasing plan identifying the number of building permits requested to be issued in each year of the phasing plan. The Planning Board, upon a finding of good cause, may vary the provisions of Section 240-114 of the Barnstable Code and allow for the allocation to the applicant of the number of building permits proposed in the phasing plan or any different number that the Planning Board deems appropriate, provided that at the time of the granting of the special permit, that the determined number of building permits are available and that no more than $\frac{1}{4}$ of each year's allocation under Section 240-114 shall be allocated to the applicant. Every permit allocated to the applicant by the Planning Board shall be included as part of the yearly building permit allocations under Section 240-114. There shall be no extension of a Building Permit granted under a phasing plan and any unused and/or expired permits shall be credited back as part of the adjustments under Section 4.9 (5) (d) for the next calendar year.

F) Visitability: The Planning Board require that some or all of the dwelling units provide access for visitors in accordance with the recommendations of the Barnstable Housing Committee.

9. Affordable Units. At *least* ___% of the dwelling units shall be Affordable Units, subject to the following conditions:

A) The Affordable Unit shall be affordable in perpetuity. A Deed Rider shall assure this condition. The Deed Rider shall be structured to survive any and all foreclosures.

B) The continuing enforcement of the Deed Rider through subsequent resale of the Affordable Units shall be the subject of a Monitoring Agreement.

C) The Deed Rider and the Monitoring Agreement shall be drafted in compliance with 760 CMR 45.00 (Local Initiative Program and guidelines promulgated thereunder. The Deed Rider and the Monitoring Agreement shall be subject to review and approval by the _____ and approved as to form by Town Attorney prior to the issuance of a certificate of occupancy for any dwelling unit.

D) The Affordable Unit shall conform to the standards of the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Subsidized Housing Inventory.

E) A right of first refusal upon the transfer of such Affordable Units shall be granted to the Town or its designee for a period not less than 120 days after notice thereof.

F) The Affordable Units shall not be segregated within the AHD. The Affordable Units shall satisfy the design and construction standards of the Local Initiative Program, 760 CMR 45.00, with regard to distinguishability from market

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rate units. It is the intent of this ordinance that the Affordable Units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.

G) The Affordable Units shall be constructed, and occupancy permits issued at the rate of one (1) Affordable Unit for every ____ market rate units.

H) In computing the number of required Affordable Units, any fraction of a unit shall be rounded up and the result shall be the number of Affordable Units to be built within the AHD and not off site.

10. Decision. The Planning Board may grant a special permit for an AHD where it makes the following findings:

A) The proposed AHD complies with all applicable Subdivision Rules and Regulations, the Zoning Ordinances and/or Site Plan Review as the case may be, and the requirements of this section except as they may be waived by the Board;

B) The proposed AHD provides Affordable Units consistent with the requirements set forth herein;

C) The proposed AHD does not cause substantial detriment to the neighborhood.

11. Relation to Other Requirements. The submittals and site plan approval required herein shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

A. OLD BUSINESS (PUBLIC HEARING TO BE VOTED ON NOVEMBER 17TH)

BARNSTABLE TOWN COUNCIL

**2006-015 GENERAL ORDINANCE AMENDMENT ESTABLISHING A HYANNIS VILLAGE DESIGN REVIEW DISTRICT WITHIN THE HYANNIS VILLAGE ZONING DISTRICTS WHICH DESIGN REVIEW DISTRICT EXCLUDES SINGLE FAMILY HOMES AND PROPERTIES LOCATED WITHIN THE HYANNIS MAIN STREET WATERFRONT HISTORIC DISTRICT.
INTRO.: 09/08/05; 09/22/05; 10/20/05**

ORDERED, the General Ordinances are hereby amended by inserting the following new paragraphs:

Hyannis Village Zoning Districts Design Review

§ 113-1. Authority.

This article shall be known and may be cited as the "Hyannis Village Zoning Districts Design Review Ordinance."

§ 113-2. Purpose.

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

§ 113-3. Definitions.

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

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

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

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

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

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

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DESIGN AND INFRASTRUCTURE PLAN – The plan adopted pursuant to Barnstable Zoning Ordinance Section 240-24.1-11.

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

DESIGN REVIEW OFFICER – An individual with design, architectural, planning, regulatory and/or similar expertise and experience appointed to conduct design review as authorized herein.

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

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

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

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

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

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

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

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

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

§ 113-4. Establishment of district.

There is hereby established a design review district in the Town of Barnstable to be known as the "Hyannis Village Design Review District." It includes all of the land located within the Hyannis

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Village Zoning Districts that does not lie within the Hyannis Main Street Waterfront Historic District. The Hyannis Village Design Review District is shown on the official map on file with the Town Clerk and at the Barnstable County Registry of Deeds.

§ 113-5. Establishment of Design Review Officer.

A. Notwithstanding the provisions of Barnstable Zoning Ordinance, Section 240-24.1-11.B, there is hereby established in the Town of Barnstable a Design Review Officer, hereinafter called the "DRO" that shall be responsible for overseeing the Design Review District. The DRO shall be appointed by the Town Manager to serve for a term of one year. The DRO may be reappointed for additional one-year terms at the direction of the Town Manager.

The DRO shall have the powers and authority to perform all the duties as hereinafter enumerated and provided, and those that may be added from time to time.

B. The Open Meeting Law, Commonwealth of Massachusetts, Chapter 694 of the Acts of 1986,1 shall apply to all public hearings held by the DRO.

1. Editor's Note: See MGL C. 39, § 23B.

§ 113-6. Design Review Officer powers, duties, and administration.

A. The DRO shall have the power, authority, and duty to do and perform any and all acts which may be necessary or desirable to carry out the purposes of this article. In addition, the DRO shall have any such other powers, authority, and duties as may be delegated or assigned to it from time to time by vote of the Town Council. Nothing in this article shall supersede the authority given to the Building Commissioner under the State Building Code.

B. In exercising its powers and duties hereunder, the DRO shall pay due regard to the characteristics of each building, structure, site, and setting and to the design review district as a whole, and to the standards and criteria set forth in the Design and Infrastructure Plan. For the purposes of this article, any structure partially within the design review district shall be considered wholly within the district, unless such structure is located partially within the Hyannis Main Street Waterfront Historic District in which case the Historic District Commission shall have jurisdiction to review such structure.

C. The DRO shall adhere to and apply the design guidelines in the Design and Infrastructure Plan which set forth design standards and criteria for certain exterior architectural building and site features which will meet the requirements of the district regarding appropriateness. No such design guidelines shall limit the right of an applicant for a certificate to present other designs to the DRO for approval.

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D. The DRO may also determine from time to time, after public hearing, that certain categories of exterior architectural features, structures, or signs may be constructed or altered without DRO review.

E. The DRO may prescribe such forms and procedures as it deems desirable and necessary for the regulation of the district's affairs, and for the conduct of its business, including requirements for the contents and form of applications for certificates, hearing procedures, and other matters. The DRO shall file a copy of said rules with the Town Clerk.

F. The DRO may advise and coordinate with the Town Manager and other agencies of Town government under the Town Charter with respect to:

- (1) Employment of clerical, technical assistance/consultants;
- (2) Apply for, accept, receive, and expend grants, gifts, contributions, and bequests of funds from individuals, foundations, and from federal, state, and other governmental bodies, and may expend the same, for purpose of furthering the design review district;
- (3) Imposition of reasonable fees to cover the cost associated with the conduct of business as reviewed annually per the Town's general ordinances.

G. The DRO shall keep a permanent and accurate record of its hearings, findings, resolutions, transactions, and determinations.

H. The DRO may provide technical assistance to property owners within the design review district, and to other Town residents, on matters pertaining to design review and historic preservation. The DRO may also develop programs and publications that promote understanding and support for district objectives.

§ 113-7. DRO jurisdiction.

A. Except as this article may otherwise provide, no building, structure, setting or part thereof within the design review district shall be constructed, demolished, moved or altered in any way that affects any exterior architectural feature subject to public view until the DRO shall first have issued a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship with respect to such construction, demolition, movement, or alteration.

B. No building permit for the construction of any building or structure or for the alteration of any exterior architectural feature within the design review district which is subject to public view shall be issued by the Town or any department thereof until a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship has been issued by the DRO as required under this article, except that the Building Commissioner may issue a temporary sign permit for

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a period not to exceed 60 days for a temporary sign no larger than eight square feet on a commercial premises, provided that size is in conformance with the Town's Sign Code² and:

- (1) The applicant files a date-stamped copy of the application for a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship from the DRO.
- (2) Should the DRO deny the application, use of the temporary sign should not be permitted beyond the end of the twenty-day appeal period of the decision made by the DRO.
- (3) Should the applicant appeal the denial of the application, and should the appeal be denied, use of the sign should no longer be permitted as of the day on which the appellate body makes this decision.

2. See Ch. 240, Zoning, Art. VII, Sign Regulations.

C. No permit for the demolition, razing, movement, or removal of a building or structure, or parts thereof within the district which is subject to public view shall be issued by the Town or any department thereof until a certificate of appropriateness, certificate of nonapplicability, or certificate of hardship has been issued by the DRO as required under this article.

§ 113-8. Limitations, exclusions, and exemptions.

The DRO shall not make any recommendations or requirements except for the purpose of preventing structural developments obviously incongruous to the historical or architectural characteristics of the area and the context of its surroundings. In addition, the DRO shall exclude the following specific items from its purview:

- A. Consideration of interior arrangements or exterior features not visible from a public way;
- B. Ordinary maintenance, repair, repainting, or replacement of any exterior building or site feature within the design review district which does not involve a change in design, material, color, or the outward appearance thereof;
- C. Ordinary maintenance or replacement of landscaping;
- D. Actions taken to meet requirements certified by a duly authorized public officer to be necessary for public safety;
- E. Any construction or alteration under a permit duly issued prior to the effective date of this article;
- F. Temporary structures for official celebrations or charitable drives, or directly connected with permitted construction, subject however, to conditions pertaining to the

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duration of existence and use, location, lighting, removal, and similar matters as the DRO may reasonably specify;

G. Temporary signs subject however, to conditions pertaining to the duration of existence and use, location, lighting, removal, and similar matters as the DRO may reasonably specify including:

- (1) Those for use in connection with any official celebration, parade, or any charitable drive, as long as they are removed within two days of the termination of the event, provided that they are authorized by the Building Inspector;
- (2) Single-faced sale or rent signs as allowed by the Town Zoning Ordinance,³ advertising the sale or rental of the premises on which they are erected or displayed;
- (3) Special permit signs as allowed by the Town Zoning Ordinance.

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

H. The removal of any sign unless the sign is deemed to contribute to the historic character of the district;

I. The installation of storm doors without ornamentation, storm windows, screens, gutters, and downspouts, provided they are the same color as the building or building trim.

§ 113-9. Procedures for review of applications.

A. Any person who desires to obtain a certificate from the DRO shall file with the DRO an application for a certificate of appropriateness, a certificate of nonapplicability, or a certificate of hardship, as the case may be, in such form as the DRO may reasonably determine. The application shall be accompanied by such plans, elevations, specifications, photographs, paint color samples, or other materials or information the DRO deems necessary to make a determination on the application. In the case of a demolition or removal, an evaluation of the property condition and appearance shall be included. The date of the filing of an application shall be the date on which a copy of such application is received by the DRO.

B. The DRO, shall determine promptly, and in all events within 14 days after the filing of an application for a certificate of appropriateness, a certificate of nonapplicability, or a certificate of hardship, as the case may be, whether the application involves any exterior architectural or site features that are subject to review by the DRO.

C. If the DRO determines that an application for a certificate does not involve any exterior architectural or site features that are subject to review by the DRO, the DRO shall forthwith issue a certificate of nonapplicability.

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D. If the DRO determines that such application for a certificate does involve any exterior architectural or site features subject to review under this article, the DRO shall hold a public hearing on the application, except as may otherwise be provided in this article, within 30 days of filing of the application. When feasible, the DRO shall conduct his or her public hearing(s) during site plan review meeting(s) concerning the same land, buildings and/or structures for which a certificate is sought. At least 14 days before said public hearing, public notice of the time, place, and purposes thereof shall be given by posting in a conspicuous place in Town Hall, and by mailing a copy of said public notice, postage prepaid, to the:

- (1) Applicant;
- (2) Owners of all adjoining property and other property deemed by the DRO to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors;
- (3) Planning Board;
- (4) Any person filing a written request for notice of hearings, such request to be renewed yearly in December; and
- (5) Such other persons as the DRO shall deem entitled to notice.

E. As soon as convenient after such public hearing, but in any event within 45 days after the filing of an application for a certificate, or within such further time as the applicant may allow in writing, the DRO shall make a determination on the application, and issue a certificate or a disapproval. In the case of a disapproval of an application for a certificate, the DRO shall set forth in its disapproval the reasons for such determination. The DRO may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material, and similar features which if made and filed with the DRO in a subsequent application, would make the application acceptable to the DRO.

F. Prior to the issuance of a disapproval of an application for a certificate of appropriateness, the DRO may, at its sole discretion, notify the applicant in writing of its proposed action accompanied by specific recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the DRO. If within 30 days of the receipt of such notice the applicant files a written modification of the application in conformity with the recommended changes of the DRO, the DRO shall issue a certificate of appropriateness.

G. Each certificate of appropriateness, nonapplicability or hardship issued by the DRO shall be dated and signed by the DRO.

H. In issuing certificates, the DRO may, as he or she deems appropriate, impose certain conditions and limitations and may require architectural or plan modifications consistent with the intent and purpose of this article.

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I. The DRO shall issue a certificate of appropriateness based upon the application if he or she determines that the construction, alteration, or demolition for which an application has been filed will be appropriate for or compatible with the purposes of the design review district. Nothing herein shall prevent the DRO from making recommendations for changes in the applicant's proposal, which may include changes in design, massing, arrangement, texture, material, and similar features, that, if made, would make the application acceptable to the DRO, and if the applicant so assents, including such modifications in any certificate of appropriateness it may issue.

J. The DRO shall issue a certificate of hardship to the applicant if the DRO determines that: (1) owing to conditions especially affecting the building, structure, setting, or place involved, but not affecting the district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant; (2) such application may be approved without substantial derogation from the intent and purpose of this chapter; and (3) the application may be approved without substantial detriment to the public welfare. If the DRO determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, the DRO shall issue a certificate of hardship.

K. If the DRO fails to make a determination through issuance of a certificate of appropriateness or a disapproval within the time period specified in Subsection E (45 days), or within such further time as the applicant may allow in writing, the DRO shall thereupon issue a certificate of hardship due to failure to act. The DRO shall send a copy of its certificates and determinations of disapproval to the applicant, and shall file such copies with the offices of the Town Clerk, and the Building Commissioner. The date of issuance of a certificate or determination of disapproval shall be the date of the filing of a copy of such certificate or determination of disapproval with the office of the Town Clerk.

§ 113-10. Criteria for DRO determinations.

A. In deliberating on applications for certificates, the DRO shall consider, among other things, the historical and architectural value and significance of the site, building, structure, setting, or place; the general exterior design, scale, color, placement on the lot including dimensions and setback, arrangement, proportions, texture, material of the building or structure; setting, topography, landscaping, and general appearance of the feature(s) involved and the relation of such feature(s) to similar features of buildings and structures in the surrounding area; and the position of such buildings or structures in relation to the streets or ways and to other buildings or structures.

B. In the case of new construction or additions to existing buildings or structures the DRO shall consider the appropriateness of the size, shape, and location of the building or structure, both in relation to the land area upon which the building or structure is situated and to buildings, structures, and general setting in the vicinity.

BARNSTABLE TOWN COUNCIL
2006-015 HYANNIS VILLAGE ZONING DISTRICTS (CONTINUED)
INTRO.: 09/08/05; 09/22/05; 10/20/05

C. In cases of demolition or removal, the DRO shall consider whether such demolition or removal of a building, structure, setting, or site element whose architectural or historical significance contributes to the historic character of the district would impair the public interest and the general welfare of the people of Barnstable; whether the demolition or removal of the building or structure would undermine the purpose and intent of this article, whether the building or structure has so deteriorated that preservation or restoration is not structurally or economically feasible, provided that the owner's self-created hardship or failure to maintain the property in good repair shall not qualify as a basis for the issuance of a certificate of hardship. The DRO may seek advice from individuals or organizations in making these determinations.

D. The DRO shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historical aspects or the architectural and other physical characteristics of the surroundings and of the design review district.

§ 113-11. Appeals.

A. Any person or persons aggrieved by a determination of the DRO, or by its failure to act as specified in this article, may, within 20 calendar days after the filing of such notice with the Town Clerk, appeal to the Barnstable Planning Board in writing. The planning board shall hear all pertinent evidence and act upon such appeals within 30 calendar days after the filing of such appeal. The decision of the planning board shall be determined by a majority vote of the board members. If they determine that the DRO action is unsupported by the evidence, or exceeds the authority of the DRO, they may annul the DRO decision, or remand the case for further action by the DRO. The findings of the planning board shall be binding on the applicant and the DRO unless a further appeal is sought in the Superior Court.

B. Any person or persons aggrieved by a determination of the DRO, or by its failure to act as specified in this article, or by a finding of the planning board, may appeal to the Superior Court sitting in equity for Barnstable County.

C. Costs shall not be allowed against the DRO or the planning board unless it shall appear to the court that the such DRO or planning board acted with gross negligence, in bad faith, or with malice in the matter from which the appeal was taken.

D. Costs shall not be allowed against the party appealing such decision of the DRO or planning board unless it shall appear to the Court that the appellant acted in bad faith or with malice in making the appeal to the Court.

§ 113-12. Enforcement; violations and penalties.

A. The Building Commissioner shall be charged with the enforcement of this article.

BARNSTABLE TOWN COUNCIL
2006-015 HYANNIS VILLAGE ZONING DISTRICTS (CONTINUED)
INTRO.: 09/08/05; 09/22/05; 10/20/05

B. The Superior Court sitting in equity for Barnstable County has jurisdiction to enforce the provisions of this article and the rulings issued thereunder. Upon petition by the DRO through the Town Manager, or on petition by the Town Manager, said Court may restrain the applicant through injunction and without limitation may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable. Nothing in this chapter shall be construed to limit the DRO or Town Manager from pursuing other available remedies including those provided by § 21D of Chapter 40 of the General Laws.

C. Any person who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined \$200, which shall be forfeited to the use of the Town. Each day that a violation continues to exist shall constitute a separate offense.

§ 113-13. Severability.

In case any provision, section, paragraph, or part of this article be for any reason declared invalid or held unconstitutional by any court of competent jurisdiction, every other provision, section, paragraph or part shall continue in full force and effect.

SPONSOR: Town Manager John C. Klimm

DATE:

ACTION TAKEN:

_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-015
INTRO: 09/08/05; 09/22/05; 10/20/05**

TO: Town Council
FROM: Gary Brown, President, Town Council
DATE: August 9, 2005
SUBJECT: Design Review Hyannis Zoning Districts

BACKGROUND AND ANALYSIS: Downtown Hyannis has a unique historic and maritime character which the new downtown zoning strives to preserve and compliment. However, in order encourage well-designed buildings and spaces, it is important to provide both design guidelines and architectural design review of new developments. Currently, the Hyannis Main Street Waterfront Historic District (HHD) reviews the design of development proposals within the HHD District in downtown Hyannis. However, a portion of the land area encompassed by the new Hyannis Village Zoning Districts is not included in the HHD. This ordinance is intended to fill this design review gap by creating a Design Review District for that area of the new Hyannis zoning districts that lies outside of the HHD and currently would not received any design review.

Outside the HHD, this ordinance proposes to establish a Design Review District, to be administered by a Design Review Officer. The Design Review Officer would review development proposals to make sure they are consistent with the Design and Infrastructure Plan currently being written for Downtown Hyannis. The Design Review Officer is proposed to streamline the design review process for applicants. Where possible, design review shall take place concurrent with site plan review.

Inside the HHD, the Hyannis Main Street Waterfront Historic District Commission will review the design of all development proposals. Currently, staff is working with the Hyannis Main Street Waterfront Historic District Commission to coordinate the current HHD design guidelines with the new Hyannis zoning. A subcommittee of the Historic District Commission has been formed to consider potential areas of conflict between existing Historic District Guidelines and the new zoning. In addition, town staff and members of the Historic District Commission are taking steps to conduct an inventory of ‘contributing’ historic structures in the District. Better identifying and documenting historically and architecturally significant structures will greatly assist the Historic Commission in its review of individual development projects. The Design Review Officer can also provide additional staff support to the Historic District Commission upon request.

Due to the ambitious schedule adopted in the new Hyannis zoning (an effective date of October 15, 2005 is set forth in the new zoning), this ordinance is presented for first read on September 8, 2005. There will be an opportunity to further consider the provisions of this proposed ordinance at the second reading (public hearing), and potentially at a third reading if a third reading is the will of the Town Council.

TOWN MANAGER’S RECOMMENDATION: Town Manager recommends adoption of this ordinance.

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2006-019 GRANT ACCEPTANCE AND TRANSFER ORDER -- RE: MITCHELL
PROPERTY BARNSTABLE VILLAGE
INTRO.: 09/22/05; 10/20/05**

ORDERED, That the Town Council hereby accepts a USDA Natural Resources Conservation Service Wildlife Habitat Improvement Program grant in the amount of \$24,537 for clearing and field mowing the Mitchell Property in Barnstable village.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-019
INTRO.: 09/22/05; 10/20/05

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Thomas F. Geiler, Director, Regulatory Services Department
DATE: September 09, 2005
SUBJECT: Acceptance and Transfer Order for NRCS Wildlife Habitat Improvement Program Grant

BACKGROUND: USDA NRCS grant funding has been secured to enable the clearing and mowing of portions of the Mitchell Property for wildlife habitat enhancement. The area to be improved is approximately 15 acres.

ANALYSIS: NRCS grant funding provides the Town with a cost-effective means of restoring former meadows from their present-day overgrown condition in the interest of improving wildlife habitat.

FISCAL IMPACT: The local match requirement for the grant is \$ 9,663, to be provided over several years through the Conservation Division's Land Management line item.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends favorable action.

BOARD AND COMMISSION ACTION: The draft Mitchell Property management plan is expected to be approved by the Conservation Commission on Sept. 27.

STAFF ASSISTANCE: Darcy Karle

**A. OLD BUSINESS (PUBLIC HEARING MAY BE ACTED UPON)
(ROLL CALL)**

BARNSTABLE TOWN COUNCIL

**2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
ORDINANCE FOR THE DOWNTOWN HYANNIS AREA
INTRO.: 09/22/04; 10/20/05**

**TOWN OF BARNSTABLE REGULATORY AGREEMENT ORDINANCE
FOR THE DOWNTOWN HYANNIS AREA**

§ 168-1. Purpose and intent; legislative authority; boundary; single-family residence exception.

- A. It is the purpose and intent of this chapter to enable the Town of Barnstable to enter into development agreements (hereinafter "regulatory agreements") in the Hyannis Village Zoning Districts, as delineated on the attached map, dated August 30, 2005, entitled "Hyannis Regulatory Agreement District." Editor's Note: Said map is on file in the Town offices.
- B. The Town of Barnstable adopts this chapter under the Home Rule Authority of Article 89 of the amendments to the Massachusetts Constitution, the provisions of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, and Chapter D, Development Agreement Regulations, Code of Cape Cod Commission Regulations of General Application.
- C. This chapter shall apply within the Downtown Implementation District, shown on the attached map. Editor's Note: Said map is on file in the Town offices.
- D. The provisions of this chapter shall not apply to any single-family structure in existence on the date of adoption of this chapter that is used as a primary residence by the owner or a family member of the owner, as the term "family member" is defined in the Barnstable Zoning Ordinance. Editor's Note: See Ch. 240, Zoning.

§ 168-2. Definitions.

In this chapter, the following words have the meanings indicated:

QUALIFIED APPLICANT — A person who has a majority legal or equitable interest in the real property which is the subject of the regulatory agreement. A qualified applicant may be represented by an authorized agent.

REGULATORY AGREEMENT — A contract entered into between the Cape Cod Commission and/ or the Town of Barnstable and a holder of property development rights, the principal purpose of which is to negotiate and to establish the development regulations that will apply to the subject property during the term of the agreement and to establish the conditions to which the development will be subject including, without limitation, a schedule of impact fees and/or transfer development rights.

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
(CONTINUED)

INTRO.: 09/22/05; 10/20/05

TOWN OF BARNSTABLE — The municipality where the proposed development is located. The Town Manager, or his or her designee, shall be authorized to execute, on behalf of the Town of Barnstable, a regulatory agreement, subject to the procedural requirements set forth below.

DESIGN AND INFRASTRUCTURE PLAN – The plan established by the Barnstable Zoning Ordinance, Section 240-24.1-11.

§ 168-3. Authority.

Notwithstanding provisions to the contrary, the Town of Barnstable is hereby authorized to enter into a regulatory agreement with a Qualified Applicant within the Downtown Implementation District, provided the following conditions are met:

- A. The Town's Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan, and said certification has not been revoked;
- B. The Town has adopted the enabling regulation contained in §§ 168-1 through 168-10, herein.

§ 168-4. Parties to regulatory agreements.

A regulatory agreement may be executed by and between a qualified applicant and:

- A. The Cape Cod Commission; or
- B. The Cape Cod Commission and the Town of Barnstable; or
- C. The Cape Cod Commission and the Town of Barnstable and with a state agency or agencies; or
- D. The Town of Barnstable; or
- E. The Town of Barnstable and a state agency or agencies.

§ 168-5. Negotiation and execution of regulatory agreements.

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
(CONTINUED)
INTRO.: 09/22/05; 10/20/05

- A. Negotiation of the elements of a regulatory agreement between authorized parties (§ 168-4) and a qualified applicant shall follow all pertinent rules of due process currently required for public meetings, public hearings, and ratification of board and council decisions.
- B. Negotiation of the elements of a regulatory agreement between authorized parties (§ 168-4) and a qualified applicant shall be led by the Planning Board or its designee, and shall include representatives from other municipal boards, departments and commissions where said joint participation will assist the negotiation process.
- C. No regulatory agreement may be executed by the Town Manager prior to an affirmative, majority vote by the Planning Board and the Town Council recommending the execution of the regulatory agreement. When a waiver from zoning is allowed under the negotiated regulatory agreement, there shall be a two-thirds vote of the Town Council recommending execution of the regulatory agreement.
- D. The Town Manager may make minor amendments to the regulatory agreement recommended by the Planning Board and approved by the Town Council and execute said regulatory agreement as amended, provided that such amendments do not alter the use, intensity or mitigation stipulations of the regulatory agreement. However, in no instance may the Town Manager make substantial amendments to the regulatory agreement recommended by the Planning Board and approved by the Town Council without first receiving written concurrence from the Planning Board and the Town Council and qualified applicant that said substantial amendments are agreed to.
- E. The Town Manager or his/her designee shall be authorized to execute, on behalf of the town, a regulatory agreement. Prior to executing said regulatory agreement, the Town Manager shall obtain a majority vote of the Town Council to authorize the execution, unless the regulatory agreement authorizes a waiver from the Barnstable Zoning Ordinance in which case the Town Manager shall obtain a two-thirds majority vote of the Town Council to authorize the execution. The Town Manager shall, within seven (7) days of the Town Council vote authorizing the execution of the regulatory agreement, cause said regulatory agreement to be so executed and forward the same to the qualified applicant by certified, return receipt, mail. Within twenty-one (21) days of the date said regulatory agreement has been mailed by the Town Manager, the qualified applicant shall execute the agreement and return, either by certified mail or hand delivery, the fully executed regulatory agreement.

§ 168-6. Elements of regulatory agreements.

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
(CONTINUED)
INTRO.: 09/22/05; 10/20/05

- A. Proffers by a qualified applicant. A regulatory agreement may include, but is not limited to, the provisions whereby a qualified applicant agrees to provide certain benefits which contribute to one or more of the following:
- (1) The town's infrastructure;
 - (2) Public capital facilities;
 - (3) Land dedication and/ or preservation;
 - (4) Affordable housing, either on or offsite;
 - (5) Employment opportunities;
 - (6) Community facilities;
 - (7) Recreational facilities;
 - (8) Alternative mass transportation;
 - (9) Any other benefit intended to serve the proposed development, municipality or county, including site design standards, to ensure preservation of community character and natural resources.
- B. Proffers by the Town of Barnstable. A regulatory agreement may include the provisions whereby the Town of Barnstable agrees to provide certain protection from future changes in applicable local regulations and assistance in streamlining the local regulatory approval process. Streamlining will include, where not in conflict with existing local, state or federal law, holding of joint hearings, coordination of permit applications and, where possible, accelerated review of permit approvals. A regulatory agreement may also provide for extensions of time within which development approvals under state, regional and local laws may be extended to coincide with the expiration of the regulatory agreement established in § 168-9, below. When the Cape Cod Commission is not a party to the regulatory agreement, the land use development rights shall not vest with respect to Cape Cod Commission regulations and designations and the property shall be subject to subsequent changes in the Commission's regulations and designations.
- § 168-7. Procedural requirements for regulatory agreements where the Cape Cod Commission is party to agreement.

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
(CONTINUED)
INTRO.: 09/22/05; 10/20/05

- A. Where the Cape Cod Commission is to be a party to a regulatory agreement, a qualified applicant shall complete a regulatory agreement application form and comply with the specific requirements set forth in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised.
- B. Where the Cape Cod Commission is to be a party to a regulatory agreement, the procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall be followed, and no such regulatory agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.

§ 168-8. Procedural requirements for regulatory agreements where the Cape Cod Commission is not party to agreement.

- A. Where the Cape Cod Commission is not to be a party to a regulatory agreement, a qualified applicant shall complete a regulatory agreement application form. The regulatory agreement application form shall include:
 - (1) A fully completed application form provided by the Town of Barnstable, including a certified list of abutters;
 - (2) A legal description of the land subject to the agreement and the names of its legal and equitable owners;
 - (3) The proposed duration of the agreement;
 - (4) The development uses currently permitted on the land, and development uses proposed on the land, including population densities, and building densities and height;
 - (5) A description of public facilities that will service the development, including who shall provide and pay for such facilities, the date any new facilities will be constructed, and a schedule to assure that public facilities adequate to serve the development are available concurrent with the impacts of the development;
 - (6) A description of any reservation or dedication of land for public purposes;
 - (7) A description of all local development permits approved or needed to be approved for the development of the land;
 - (8) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;
 - (9) A final environmental impact report, certified as adequate by the Secretary of Environmental Affairs, if required under Sections 61-62h of Chapter 30 of the General Laws;

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
(CONTINUED)
INTRO.: 09/22/05; 10/20/05

- (10) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Town of Barnstable.
- B. All qualified applicants seeking to enter into a regulatory agreement without the Cape Cod Commission as a party shall submit the proposed development to the Barnstable Building Commissioner for a jurisdictional determination. If the Barnstable Building Commissioner determines that the proposed development is not a development of regional impact, then the Building Commissioner shall forward his or her determination, together with the reasons for such determination and a copy of the Regulatory Agreement application form, to the Clerk of the Cape Cod Commission within five (5) business days. If the proposed development is not a development of regional impact, then the Qualified Applicant may pursue a Regulatory Agreement without the Cape Cod Commission as a party pursuant to the provisions of § 168-8C through I, below. If the proposed development is a Development of Regional Impact, then the Cape Cod Commission must be a party to the Regulatory Agreement, in which case, the provisions of Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall apply.
- C. The Town of Barnstable shall assume the responsibility for overseeing the regulatory agreement process. The Town of Barnstable shall hold a public hearing after receipt of a fully completed application from a qualified applicant for consideration of a proposed regulatory agreement. The Town of Barnstable shall hold at least two public hearings. The public hearings regarding review of a regulatory agreement shall not exceed sixty (60) days, unless extended by mutual agreement of the parties. Failure to close the public hearings within sixty (60) days shall not result in a constructive grant of the proposed development.
- D. The Town of Barnstable shall provide notice of the public hearing to consider a regulatory agreement by publication in a newspaper of general circulation once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and by mailing notice not less than fourteen (14) days to:
- (1) The town council, town manager, town clerk, building inspector, planning board, board of appeals, conservation commission, board of health, historic district commission, housing authority, and to any other town agency or any individual that makes a written request for such notice;
 - (2) The applicant;
 - (3) Each abutter to the proposed development, based on a list of abutters provided by the applicant and certified by the Barnstable tax assessor. Abutters shall include owners of land directly opposite on any public or private street or way and owners of land located within three hundred feet of any boundary or the proposed development; and
 - (4) The Cape Cod Commission.

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT (CONTINUED)
INTRO.: 09/22/05; 10/20/05

- E. The qualified applicant shall bear the cost of providing notice of the public hearing to consider the proposed regulatory agreement.
- F. The Town of Barnstable shall review proposed regulatory agreements for their consistency with the Cape Cod Commission Act, the Design and Infrastructure Plan and the Barnstable Local Comprehensive Plan.
- G. The Town of Barnstable shall file its regulatory agreement with the Clerk of the Cape Cod Commission and with the Barnstable Town Clerk. Notices of regulatory agreements shall be published in a newspaper of general circulation in the Town of Barnstable, including a brief summary of the contents of the regulatory agreement and a statement that copies of the regulatory agreement are available for public inspection at the Barnstable Town Clerk's office during normal business hours. In addition, the Town of Barnstable shall provide the Cape Cod Commission with a summary of the regulatory agreement which the Cape Cod Commission shall publish in its official publication pursuant to Section 5(i) of the Cape Cod Commission Act.
- H. Regulatory agreements shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The Town of Barnstable shall record the regulatory agreement in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Town Clerk and the Cape Cod Commission Clerk within 14 days of such recording. The qualified applicant shall bear the expense of recording.
- I. The cost for filing and processing of each regulatory agreement shall be as established by the Town Manager during his annual public hearing on the town's fee schedule, except that the Town Manager may establish temporary fees to apply from the effective date of this chapter until the next annual public hearing on town fees.

§ 168-9. Limitations on regulatory agreements.

- A. Nothing in this chapter may be construed to permit a municipality to require a qualified applicant to enter into a regulatory agreement.
- B. A regulatory agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section. Where the Cape Cod Commission is not a party, a regulatory agreement shall not exceed 10 years; however, provisions in the regulatory agreement pertaining to the preservation of open space and park areas, and agreement to pay for maintenance of utilities and other infrastructure may exceed such ten-year limitation. Where the Cape Cod Commission is a party, a regulatory agreement may extend for a longer period of time than that noted above, as set forth in Section 7 of the Code of Cape Cod Commission Regulations of General Application, as revised.
- C. A regulatory agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring a qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of

BARNSTABLE TOWN COUNCIL
2006-020 TOWN OF BARNSTABLE REGULATORY AGREEMENT
(CONTINUED)
INTRO.: 09/22/05; 10/20/05

Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction.

§ 168-10. Amendments and rescission.

- A. Where the Cape Cod Commission is not a party to the regulatory agreement, any party to the agreement may petition the Town of Barnstable to amend or rescind the regulatory agreement. The petitioning party shall provide notice to all parties to the agreement and to the Cape Cod Commission of its intention to amend or rescind the agreement by providing such parties with a copy of the petition seeking such amendment or rescission. When the Town of Barnstable initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the agreement and to the Cape Cod Commission. The process for amendment or rescission shall follow the procedures for adoption outlined above.
- B. When the Cape Cod Commission is a party to the regulatory agreement, any other party to the regulatory agreement may petition the Commission to amend or rescind the regulatory agreement. Such petition shall be made in writing, on a form provided by the Cape Cod Commission. The petitioning party shall provide notice to all parties to the regulatory agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the Commission initiates an amendment or rescission, it shall provide advanced notice, in writing, to all other parties to the agreement. The process for amendment or rescission shall follow the procedures for adoption outlined above.

§ 168-11. Enforcement.

A regulatory agreement is a binding contract which is enforceable in law or equity by a Massachusetts court of competent jurisdiction.

§ 168-12. Severability; effect on other laws.

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

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-020
INTRO.: 09/22/05; 10/20/05**

TO: Town Council
FROM: John Klimm, Town Manager
THROUGH: Thomas Broadrick, AICP, Planning Director
DATE: September 13, 2005
SUBJECT: General Ordinances Amendment – Regulatory Agreement

BACKGROUND: The Regulatory Agreement Ordinance authorizes the Town of Barnstable to enter into voluntary Regulatory Agreements with individual developers. A Regulatory Agreement is a negotiated contract between a developer and the Town (and, for the time being, the Cape Cod Commission when the project is a Development of Regional Impact). All Regulatory Agreements will be negotiated by the Planning Board and the developer with input from all boards and commissions with jurisdiction over the project. In addition, the Planning Board has the authority to seek input from any board or commission it deems necessary to fulfill its review of such a proposed project. Through these negotiations, each Regulatory Agreement will establish how land will be developed and the types of mitigation that the developer will provide in exchange for permission to develop the property in the manner proposed.

After the Planning Board and the applicant have negotiated a Regulatory Agreement, the final Regulatory Agreement must be approved by the Town Council. If the proposed development requires zoning relief, the Town Council vote will require a two-thirds majority. As noted throughout the text of the Regulatory Agreement Ordinance, the Planning Board negotiates the agreement on behalf of the Town of Barnstable, the Town Council must approve the agreement, and, finally, the Town Manager executes the agreement as approved by the Planning Board and the Town Council.

Use of the Regulatory Agreement is limited to the Downtown Hyannis Zoning Districts as noted on the map dated August 30, 2005 and entitled “Hyannis Regulatory Agreement District” attached.

FISCAL IMPACT: There is no impact to the town budget of these revisions.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends that the proposed Ordinance be adopted after all issues raised at the Public Hearing have been satisfactorily addressed.

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2006-027 RESOLVE ACCEPTING AN ITEM PRICING/PRICE VERIFICATION
GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS, DIVISION OF STANDARDS
INTRO.: 10/20/05**

RESOLVED, that the Town Council hereby accepts an Item Pricing/Price Verification Grant in the amount of \$60,000 from the Massachusetts Office of Consumer Affairs, Division of Standards, to be used by the Regulatory Services Department, Consumer Affairs Division, to conduct Item Pricing/Price Verification Inspections throughout Barnstable County utilizing Division of Standards certified staff of the town.

SPONSOR: John C. Klimm, Town Manager

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-027
INTRO.: 10/20/05**

TO: Town Council
FROM: John Klimm, Town Manager
THROUGH: Thomas F. Geiler, Director Regulatory Services Department
DATE: September 19, 2005
SUBJECT: Request to Accept Item Pricing Grant of \$60,000 Awarded to
Town of Barnstable

BACKGROUND: The Commonwealth of Massachusetts Office of Consumer Affairs and Business Regulations, Division of Standards administers an Item Pricing/Price Verification Grant to support accurate pricing within the Commonwealth. By administering the grant the Division of Standards encourages the local communities to assist the Commonwealth in random inspections of retail stores to ensure pricing accuracy compliance.

ANALYSIS: The Town of Barnstable Regulatory Services Department, Consumer Affairs Division, is committed to maintaining a fair and accurate marketplace, free from errors and overcharges. The Item Pricing/Price Verification Grant will provide for 1.5 staff positions to conduct compliance checks in retail stores to ensure accuracy in posted or advertised prices. Inspections and compliance checks utilizing grant funded staff will be conducted throughout Barnstable County to ensure Barnstable merchants do not unfairly carry the burden of compliance costs.

Retail sales through electronic scanning systems in Barnstable County is estimated to be over 2 billion dollars annually. A one per cent error could represent an annual overcharge to consumers of 20 million dollars. Inspections during 2001 identified an average error of 5.78%. Implementation of this program has reduced the error to 2.8% over the last three years. The Item Pricing/Price Verification Grant program is intended to reduce error and level the marketplace playing field.

FISCAL IMPACT: The grant is for \$60,000 and is intended to cover all costs of the program. Acceptance of the grant will have a positive fiscal impact on the town.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends grant acceptance.

BOARD/COMMITTEE ACTION: N/A

STAFF ASSISTANCE: Lois Lomba, Administrative Assistant to the Director of Regulatory Services
Stephen Agostinelli, Inspector of Weights and Measures

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

<p>2006-028 MAKING CERTAIN CORRECTIVE CHANGES TO THE ADMINISTRATIVE CODE TO INSERT SECTIONS WHICH HAD BEEN INADVERTENTLY STRICKEN INTRO.: 10/20/05</p>

ORDERED: that the Administrative Code is hereby amended as follows: by adding after section 241-47.05(D) a section 241-47.05(E) entitled “Hearing Officer” as adopted on April 5, 2001 under agenda item number 2001-030; by adding after section 241-47.30 a section 241-53 entitled “Generally” as it appeared prior to the adoption of agenda item number 2005-126 on September 8, 2005; and by adding after section 241-53 a section 241-54 entitled “Communications” as it appeared prior to the adoption of agenda item number 2005-126 on September 8, 2005.

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-028
INTRO.: 10/20/05**

TO: Barnstable Town Council Members
FROM: John C. Klimm, Town Manager
DATE: October 3, 2005
SUBJECT: Administrative Code Section Correction, Articles IV and V

BACKGROUND AND ANALYSIS: This amendment corrects a mis-numbering of the Code sections in agenda item number 2005-126 adopted on September 8 (Growth Management Department). That item inadvertently struck code sections 241-53 (development and implementation of administrative procedures) and 241-54 (communication practices based on clarity, succinctness and timeliness) and did not include section 241-47.05(E) (hearing officer, added in 2001 by agenda item number 2001-030 on April 5): this item adds all three back.

FISCAL IMPACT:. Adoption of this ordinance will have no negative impact on the general fund.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends adoption of this order.

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2006-029 UTILITY EASEMENT IN NOB HILL ROAD, SCHOOLHOUSE
POND, HYANNIS
INTRO: 10/20/05**

ORDERED: That the Town Manager be authorized to acquire by purchase or eminent domain for the purpose of installing a drainage pipe to mitigate flooding, easements over eight parcels of land located on Nob Hill Road in Barnstable (Hyannis), Barnstable County, Massachusetts, as shown on a plan of land entitled “Utility Easement at Nob Hill Road in Barnstable (Hyannis) MA. as prepared by the D.P.W. Engineering Division Survey Section Scale: 1”=40’ Dated June 17, 2005” a copy of which plan is on file in the Town Clerk’s office; and to appropriate the sum of \$1.00 for the purchase or taking of said easements and that the Town Manager is authorized to contract for and to expend the appropriation made available for this purpose and to accept any gifts or grants in relation thereto.

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-029
INTRO.: 10/20/05**

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Mark S. Ells, Director
DATE: October 14, 2005
SUBJECT: Utility Easement in Nob Hill Road, Schoolhouse Pond, Hyannis

BACKGROUND: In the 2004 Capital Improvement Program, \$250,000.00 was appropriated in Appropriation and Loan Order 03-085, to repair failed drainage systems at various locations. Schoolhouse Pond is one of the locations cited in the Order. The pond drains into Stewart's Creek via an undersized clay pipe culvert that passes under residential private property and crosses Marston Avenue to reach Stewart's Creek. Schoolhouse Pond receives more runoff than in years past due to full residential build out in the neighborhood. The existing culvert, which is undersized for current runoff conditions, was severely damaged two years ago during a residential septic system replacement project and must be replaced. The current situation is exacerbating flooding problems for homeowners around the pond and increasing the mosquito population.

ANALYSIS: The construction project will be facilitated by the Town acquiring the easement that allows the piping system to be placed in this private road.

FISCAL IMPACT: There is a minor cost to the Town in the taking of this easement as it will be acquired by gift, purchase or eminent domain. Cost will be incurred in preparing and filing the easement documents with the Registry of Deeds.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends that the Town Council approve the action proposed by this order.

BOARD AND COMMISSION ACTION: n/a

STAFF ASSISTANCE: Robert A. Burgmann, P.E., Town Engineer

A. OLD BUSINESS (FIRST READING)

BARNSTABLE TOWN COUNCIL

<p>2006-030 APPOINTMENTS INTRO.: 10/20/05</p>

That the Barnstable Town Council appoint the following individuals to a multiple member board/committee/commission:

BOARD OF HEALTH:

Paul J. Canniff, 106 Hayes Road, Centerville, MA 02632, term expires 06/30/2008

CABLE TV ADVISORY BOARD:

Max Kumin, 3826 Main Street, Cummaquid, MA 02637 term expires 06/30/2006

HOUSING COMMITTEE:

Larry Gordon, 97 Loomis Lane, Centerville, MA 02632, term expires 06/30/2008

RECREATION COMMITTEE:

Kevin Turner, 202 Skunknet Road, Centerville, MA 02632, term expires 06/30/2006

SPONSOR: Town Councilor Royden C. Richardson

DATE

ACTION TAKEN

**B. NEW BUSINESS (TO BE REFERRED TO PUBLIC HEARING
NOVEMBER 3RD)**

BARNSTABLE TOWN COUNCIL

**2006-031 COMMUNITY PRESERVATION FUND RESERVE SET-ASIDES AND
APPROPRIATION FOR APPRAISALS, TITLE, HAZARDOUS
MATERIAL, CONSULTING AND PRE-DEVELOPMENT SERVICES
INTRO.: 10/20/2005**

ORDERED: that, pursuant to the provisions of G. L. c. 44B, for the fiscal year ending June 30, 2006, the following sums, or sums equaling ten percent (10%) of the annual revenues of the Community Preservation Fund if a different amount, be set aside for further appropriation and expenditure from the annual revenues of the Community Preservation Fund for the following community preservation purposes: Two hundred thirty-three thousand three hundred ninety-eight and NO/100 (\$233,398.00) Dollars or ten percent (10%) for open space but not including land for recreational use; Two hundred thirty-three thousand three hundred ninety-eight and NO/100 (\$233,398.00) Dollars or ten percent (10%) for historic resources; Two hundred thirty-three thousand three hundred ninety-eight and NO/100 (\$233,398.00) Dollars or ten percent (10%) for community housing; and that the sum of One hundred thousand and NO/100 (\$100,000.00) Dollars be appropriated from the annual revenues of the Community Preservation Fund to be expended under the direction of the Town Manager, or the Community Preservation Committee with the prior approval of the Town Manager, for appraisal, title search, hazardous materials assessment, consulting services, and pre-development costs, if any, to assist in the development and performance of contracts for community preservation.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-031
INTRO.: 10/20/05**

TO: Barnstable Town Council
FROM: Town Manager John C. Klimm
DATE: October 7, 2005
RE: Community Preservation Act 2006

BACKGROUND/RATIONALE: The rationale for the reservation of the requested funds to the three program areas of the Community Preservation Act is based on the Community Preservation Committee's (CPC) desire to have available to it a sum of money for each program from which to recommend appropriations from when opportunities present themselves during the course of FY06, if any. This has to be done before the tax rate is set each year as the reservation of funds and appropriations from the Community Preservation Fund are included in the annual tax rate setting documents sent to the Department of Revenue. This is a different procedure from that which was used for Land Bank Act acquisitions.

The reservation of funds is just that - reservations. They are not the same as the authority to expend. They are merely dedicating the minimum required sums of money to each program area. If any portion of these are to be spent then an appropriation from the respective reserve(s) must go to the Town Manager for his approval and then to the Town Council for their approval. These reservations do not give the CPC the authority to expend them. If no appropriation requests come forward in FY06 requesting to expend any of the funds reserved, then they merely roll over to FY07 and become part of the fund balance reserved for that particular program. If this item is not acted upon, then the CPC will have to wait until July 1, 2006 before any funds are made available to it.

The \$100,000 appropriation is just that - an appropriation. Approval of this item will give the Town Manager or CPC with the Town Manager's approval the authority to expend up to this amount for items so mentioned in the order.

FISCAL IMPACT: This is a reservation and appropriation from the Community Preservation Fund and has no adverse impact on the general fund.

DATE	ACTION TAKEN
_____	_____
_____	_____

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2006-032 ORDER THAT THE TOWN COUNCIL CONFIRM APPOINTMENT
OF THE DIRECTOR TO THE DEPARTMENT OF COMMUNITY
SERVICES
INTRO.: 10/20/05**

ORDERED, that the Town Council confirm appointment by the Town Manager John C.

Klimm of the Director of the Department of Community Services.

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

B. NEW BUSINESS (FIRST READING)

BARNSTABLE TOWN COUNCIL

**2006-033 AN ORDER FURTHER REGULATING MOTOR VEHICLES KEPT
ON RESIDENTIAL PREMISES
INTRO: 10/20/05**

ORDERED, that the general ordinances are hereby amended by striking out section 228-1 and inserting in place thereof the following:

“§ 228-1. Limit of one vehicle on premises.

No person shall have more than one unregistered motor vehicle or trailer or any part or portion thereof, nor any vehicle required to have a current and valid Massachusetts certificate of inspection without such a certificate, on premises owned, occupied or controlled by him at any time, unless such vehicle or part or portion is kept in a garage.”

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2006-033
INTRO.: 10/20/05**

TO: Town Council
FROM: Zoning Sub Committee
DATE: October 14, 2005
RE: Regulating Motor Vehicles Kept On Residential Premises

BACKGROUND/RATIONALE: Subsequent to item number "2005-092 Ordinance Limiting Number of Autos Per Residence" a sub-committee was formed to develop legislation to address the issues related to excessive number of automobiles parked in residential areas.

This item (2006-033) as proposed by the zoning sub-committee will provide an additional tool to address the issue of multiple automobiles on properties in residential neighborhoods.