



Town of Barnstable Town Council

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Precinct 11

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Precinct 12

Jennifer L. Cullum
Precinct 13

Administrator to the
Town Council:
Barbara A. Ford

Administrative
Assistant:
Cynthia A. Lovell

MEETING AGENDA TOWN HALL HEARING ROOM July 11, 2013 7:00 PM

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

- **Barnstable Areas Recreation and Shellfish Association grant award to the Marine and Environmental Affairs Department**

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. ACT ON MINUTES (Includes Executive Session)

7. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS

8. ORDERS OF THE DAY

A. OLD BUSINESS

B. NEW BUSINESS

9. TOWN MANAGER COMMUNICATIONS

10. ADJOURNMENT

NEXT REGULAR MEETING: August 1, 2013

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A. OLD BUSINESS

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B. NEW BUSINESS

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2014-002	Acceptance of a gift of three beach wheelchairs for Douses Beach, Loop Beach and Millway Beach from the Smile Mass Organization (May be acted upon)	27 – 28
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Approve Minutes- June 20 2013 No executive session minutes.

Please Note: The list of matters, are those reasonably anticipated by the council president, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda.

Persons interested are advised, that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, may be put off to a continued session of this meeting, and with proper notice.

Anyone requiring hearing assistance devices please inform the Town Clerk at the meeting.

A. OLD BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-008-A
INTRO: 07/12/12, 08/02/12, 07/11/13

2013-008-A AUTHORIZING THE TOWN MANAGER TO FURTHER NEGOTIATE AND EXECUTE PROJECT DEVELOPMENT AGREEMENTS WITH CAPE AND VINEYARD ELECTRIC COOPERATIVE, INC.

RESOLVED, That the Town Council authorize the Town Manager to further negotiate and execute a Project Development Agreement, Net-metered Power Sales Agreement, and associated documents with respect to a proposed solar photo voltaic array at Independence Park.

SPONSOR: Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-008-A
INTRO: 07/12/12; 08/02/12; 07/11/13

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
DATE: July 8, 2013

BACKGROUND: This matter was last before the Council on August 2, 2012, when the Council voted to authorize the Manager to further negotiate and execute agreements with the Cape and Vineyard Electric Cooperative, Inc. for solar generating facilities proposed for Barnstable High School, West Villages Elementary, the Barnstable Senior Center, and the Barnstable Municipal Airport. At the same time, the Council voted to bi-furcate its vote with respect to a similar proposed facility at Independence Park, and to take up the Independence Park matter at a later date.

PROJECT DESCRIPTION: The Independence Park Project, as originally proposed for a site on Breed's Hill Road, was been sized to a "name plate capacity" of approximately 3.3 megawatts. The solar array would have covered about 17 acres of land.

Subsequent discussions with and surveying by the developer and negotiations with the Barnstable Fire District have resulted in a consensus plan that has reduced the proposed array to a name plate capacity of 1.378 megawatts that will cover less than 7 acres of land. The array will be located on the southerly-most extreme of the lot, directly abutting Barnstable Municipal Airport land.

The developer will voluntarily submit the proposed project to the Commonwealth's Department of Environmental Protection to solicit its opinion and advisory approval that the project is consistent with water quality protection. The project will also fund the hiring of an independent consulting firm specializing in water protection issues to act as a peer-review advisor to the Town and the Fire District. The independent firm will also monitor all installation activities consistent with DEP guidelines.

If deemed advisable by either DEP or the independent consulting firm, the project will bear the cost of installing a testing and monitoring well to be located between the project site and Barnstable Fire District and Hyannis well heads. The system will be supported by vertical metal members driven into the ground and the soil will be left otherwise undisturbed. The site will be mechanically mowed as necessary and the site will be visually well screened from Breed's Hill Road.

It is estimated that Barnstable's municipal net-metered savings realized from the site over its 20-year contract period may total more than \$3.1 million dollars, according to ISO (Independent Service Operators) New England base projections.

A. OLD BUSINESS (Continued public hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-032

**INTRO: 10/18/12, 11/15/12, 12/06/12, 01/17/13,
02/28/13, 03/21/13, 04/25/13, 05/02/13, 05/16/13, 07/11/13 (amended)**

2013-032 AMENDING CODE OF BARNSTABLE GENERAL ORDINANCES BY INSERTING, “CHAPTER 54. BUILDING AND PROPERTY MAINTENANCE”

ORDERED: That Part I, General Ordinances, of the Code of the Town of Barnstable be amended by inserting the following chapter 54.

“Chapter 54 BUILDING AND PREMISES MAINTENANCE

§54-1 Purpose and intent.

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

§54-2. Building and Premises Maintenance.

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

§54-3. Outdoor Storage.

Indoor items such as furniture, appliances, plumbing fixtures and bedding shall be kept within enclosed structures after fifteen (15) days. All other personal property shall be kept within enclosed structures or screened from public view after six (6) months. Functional outdoor items such as fixtures, landscape elements, outdoor furniture, outdoor appliances, children's play structures, firewood, compost materials, construction materials, boats and inventory shall not be subject to the requirements of this section. Motor vehicles and trailers shall be kept in compliance with chapter 228, vehicle storage.

§54-4 Stagnant Water.

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

§54-5. Storage and Removal of Rubbish, Garbage and Refuse.

A. Owner’s responsibilities. The owner of any building, structure or premises shall be responsible for receptacles with tight-fitting lids to be used for the proper storage of rubbish, garbage and other refuse and for the final collection and disposal of rubbish, garbage and other refuse at a permitted transfer station or facility. The owner of any dwelling that contains three or more units, and

the owner of any dwelling which contains one or two units which is rented or leased for a period of six months or less, shall be responsible for the final collection and disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.

B. Occupant's responsibilities. The occupants of any building, structure or premises shall be responsible for the proper storage of rubbish, garbage and other refuse within receptacles with tight-fitting covers. Said occupant(s) shall also ensure that all tight-fitting covers are kept so that all rubbish, garbage and other refuse, which is stored outside a building or structure is properly covered. Said occupant(s) shall be responsible for the proper use and cleaning of the receptacles and keeping the premises free of rubbish, garbage and other refuse. Unless a written lease agreement specifies otherwise, the occupant(s) of any dwelling which contains one or two units and which is rented or leased for any period greater than six months shall be responsible for the collection and ultimate disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.

C. Receptacles shall be located in such manner that no objectionable odors enter any other building, structure or premises and so as to provide maximum screening from the street, provided that receptacles may be placed in the open near a street within twenty-four hours of scheduled collection and disposal by a contractor as provided in this chapter and returned to a screened location within twenty-four hours thereafter.

§54-6. Owners and Occupants of Premises.

For purposes of this chapter: "owner" shall mean any person(s) who alone or severally with others has legal title to buildings, structures, vacant land or to land with buildings or structures thereon, or to any dwelling or rooming unit, mortgagee in possession, or agent, trustee or person appointed by a court; and "occupant" shall mean any person(s) who alone or severally with others rents or leases premises, or resides overnight other than as a guest.

§ 54-7. Enforcement

A. The Director of the Health Department or her or his designee, is hereby designated as the enforcing authority for this chapter.

B. The enforcing authority shall notify the owner or occupant in writing of any alleged violation or violations of this chapter and order the owner or occupant to remove or abate the nuisance by a date certain not more than ten (10) days after service of notice of the violation(s): provided, however, that if the violation is determined to be such that the public health and safety will be jeopardized by that delay, the enforcing authority may order the abatement or removal of the nuisance in a shorter time as public health and safety may in her or his judgment require. The order shall be in writing and may be served personally on the owner, occupant or his authorized agent. If the violation is not removed or abated after notice, the enforcing authority may commence enforcement action through non-criminal, criminal or civil proceedings and no action shall preclude any other enforcement action or actions.

C. In addition to any penalties or enforcement action(s) hereunder, after final determination of three (3) or more violations within a twelve-month period an enforcing authority may notify a violator in writing that the enforcing authority may elect to bill the violator for the costs incurred by the Town for response to each subsequent violation not abated or ordered without abatement as provided herein. Such bill(s) shall be due and payable in full by the violator within thirty (30) days of submission and if unpaid thereafter shall be subject to a municipal charges lien as provided in G. L. c. 40 § 58.

§ 54-8. Applicability and Severability.

A. The provisions of this chapter are in addition to and not in lieu of any other chapter, rule or regulation of the Town of Barnstable and any board, commission or officer. Compliance with this chapter shall not thereby constitute compliance with any other chapter, rule or regulation, and violation of this chapter does not thereby preclude violation of any other chapter, rule or regulation.

B. If any provision of this chapter is declared invalid, it shall not thereby invalidate any other provision.

C. This chapter shall be in effect until June 16, 2015 and shall be void and of no effect thereafter unless extended by ordinance enacted and effective on or before said date.

SPONSOR: Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grasseti

<u>DATE</u>	<u>ACTION TAKEN</u>
<u>11/15/12</u>	<u>Referred to pub. hearing 12/6/12</u>
<u>12/06/12</u>	<u>Public hearing, cont'd to 01/17/13</u>
<u>01/17/13</u>	<u>Public hearing, cont'd to 02/28/13</u>
<u>02/28/13</u>	<u>Public hearing, cont'd to 03/21/13</u>
<u>03/21/13</u>	<u>Public hearing, cont'd to 04/25/13</u>
<u>04/25/13</u>	<u>Public hearing, cont'd to 05/16/13</u>
<u>05/16/13</u>	<u>Item amended, public hearing cont'd to 07/11/13</u>

- ___ Read Item
- ___ Motion to open public hearing
- ___ Rationale read
- ___ Public input
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-032

**INTRO: 10/18/12, 11/15/12, 12/06/12, 01/17/13,
02/28/13, 03/21/13, 04/25/13, 05/02/13, 05/16/13, 07/11/13 (as amended)**

SUMMARY

TO: Town Council
FROM: Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grasseti
DATE: October 9, 2012
SUBJECT: Amending the Code of Barnstable General Ordinances, C.54

RATIONALE: Throughout the Town of Barnstable, many blighted and/or abandoned homes not presently addressed by the town. The intent of this ordinance is to eliminate deteriorated structures, vacant buildings, overgrowth of vegetation, trash and debris within neighborhoods and commercial areas, where buildings may be abandoned.

This amendment outlines basic property management and repair standards and guidelines for structural and landscape management, trash removal, and land maintenance standards.

At present, these unchecked blighted/abandoned properties impair the health, safety and general welfare of the neighborhood in which they are located. It is intended that this amendment address these issues of abandoned/blighted properties and improve the standard of public safety and general welfare in the neighborhoods in which they are located.

A. OLD BUSINESS (Continued public hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-034

**INTRO: 10/18/12, 11/15/12, 12/06/12, 01/17/13, 02/28/13,
03/21/13, 04/25/13, 05/02/13, 05/16/13, 07/11/13**

2013-034 AMENDING CODE OF BARNSTABLE GENERAL ORDINANCES CHAPTER 170, RENTAL PROPERTIES

ORDERED: That Chapter 170 of the Code of the Town of Barnstable, General Ordinances, be amended as follows.

SECTION 1. By striking the following sections 170-11 entitled “storage and removal of rubbish, garbage, and other refuse” and 170-12 entitled “inspections” and re-numbering the remaining sections accordingly.

“§170-11. Storage and removal of rubbish, garbage, and other refuse.

A. Owner’s responsibilities. The owner of any dwelling shall be responsible for providing receptacles with tight-fitting lids to be utilized for the proper storage of rubbish, garbage, and other refuse. Said receptacles shall be located in such a manner that no objectionable odor enters any dwelling and so as to provide maximum screening from the street. The owner of any dwelling that contains three or more units, and the owner of any dwelling which contains one or two units which is rented or leased for a period of six months or less, shall be responsible for the final collection and disposal of rubbish, garbage, and other refuse at a permitted transfer station or disposal facility.

B. Occupant's responsibilities. The occupant(s) of any dwelling shall be responsible for the proper storage of rubbish, garbage, and other refuse within receptacles with tight-fitting covers. Said occupant(s) shall also ensure that all tight-fitting covers are kept so that all rubbish, garbage, and other refuse which is stored outside the dwelling unit is properly covered. Said occupant shall be responsible for the proper use and cleaning of the receptacles and keeping the premises free of rubbish, garbage, and other refuse. Unless a written lease agreement specifies otherwise, the occupant(s) of any dwelling which contains one or two units and which is rented or leased for any period greater than six months shall be responsible for the collection and for the ultimate disposal of rubbish, garbage, and other refuse at a permitted transfer station or disposal facility.”

§170-12. Inspections.

Dwelling units covered by this section shall be subject to reasonable inspections by Town inspectional staff. All interior inspections shall be done in the company of the owner, occupant or the representative of either.”

SECTION 2. By adding the following sentence to subsection 170-12(A) of section 170-12 as re-numbered entitled “violations and penalties” after the first sentence; “Any owner of a rental property found to have two (2) documented violations within any twelve month period shall pay a fine of

2013-034 (Continued)

\$300.00”; and by adding the following at the end of the second sentence in subsection 170-12(B) as re-numbered; “or \$300.00 for any owner of a rental property found to have two (2) documented violations within any twelve month period” ; said subsection 170-12 to read as follows

“§170-12. Violations and penalties.

A. Any person who violates any provision of this chapter shall be subject to a fine not to exceed \$300. Any owner of a rental property found to have two (2) documented violations within any twelve month period shall pay a fine of \$300.00. Each day of continued violation may be deemed to be a separate offense.

B. This chapter may be enforced under the provisions of MGL c. 40, §21D. The fine for any violation under the provisions of MGL c. 40, §21D shall be \$100 or \$300.00 for any owner of a rental property found to have two (2) documented violations within any twelve month period. Each day of continued violation may be deemed to be a separate offense.”

SPONSOR: Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grasseti

<u>DATE</u>	<u>ACTION TAKEN</u>
<u>11/15/12</u>	<u>Referred to pub. hearing 12/6/12</u>
<u>12/6/12</u>	<u>Public hearing, cont'd to 01/17/13</u>
<u>01/17/13</u>	<u>Public hearing, cont'd to 02/28/13</u>
<u>02/28/13</u>	<u>Public hearing, cont'd to 03/21/13</u>
<u>03/21/13</u>	<u>Public hearing, cont'd to 04/25/13</u>
<u>04/25/13</u>	<u>Public hearing, cont'd to 05/16/13</u>
<u>05/16/13</u>	<u>Public hearing cont'd to 07/11/13</u>

- Read Item
- Motion to open public hearing
- Rationale read
- Public input
- Close public hearing
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-034

**INTRO: 10/18/12, 11/15/12, 12/06/12, 01/17/13, 02/28/13,
03/21/13, 04/25/13, 05/02/13, 05/16/13, 07/11/13**

SUMMARY

TO: Town Council
FROM: Councilor Jennifer Cullum with Councilors James Cote, and Jessica Rapp Grassetti
DATE: October 9, 2012
SUBJECT: Amending the Code of Barnstable General Ordinances, C.170

RATIONALE: The Code of Barnstable General Ordinances, Chapter 170 concerns rental properties in the town. This amendment provides for a maximum fine of \$300 after two (2) valid violations within a twelve (12) month period, making it consistent with other graduated fines.

A. OLD BUSINESS (Continued public hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-043

**INTRO: 10/18/12, 11/15/12, 12/06/12, 01/17/13, 02/28/13,
03/21/13, 04/25/13, 05/02/13, 05/16/13, 07/11/13**

**2013-043 AMENDING THE GENERAL ORDINANCES, ARTICLE 1, §1-3, CHAPTER 170,
RENTAL REGISTRATION**

ORDERED: That the schedule of fines in Article I, Section 1-3 of the General Ordinances is hereby amended by striking out the line related to Chapter 170 and inserting in place thereof the following.

<u>CODE, CH/SECTION</u>	<u>SUBJECT</u>	<u>FINE</u>
Art. I, §1-3, Ch. 170	Rental Registration	
	Any violation	\$100
	Rental Registration	
	Two documented violations by owner in a twelve-month period	\$300

SPONSOR: Councilor Jennifer Cullum

<u>DATE</u>	<u>ACTION TAKEN</u>
<u>11/15/12</u>	Referred to pub. hearing 12/6/12
<u>12/6/12</u>	Public hearing cont'd to 01/17/13
<u>01/17/13</u>	Public hearing cont'd to 02/28/13
<u>02/28/13</u>	Public hearing cont'd to 03/21/13
<u>03/21/13</u>	Public hearing, cont'd to 04/25/13
<u>04/25/13</u>	Public hearing, cont'd to 05/16/13
<u>05/16/13</u>	Public hearing cont'd to 07/11/13

- Read Item
- Motion to open public hearing
- Rationale read
- Public input
- Close public hearing
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-043

**INTRO: 10/18/12, 11/15/12, 12/06/12, 01/17/13, 02/28/13,
03/21/13, 04/25/13, 05/02/13, 05/16/13, 07/11/13**

SUMMARY

TO: Town Council
FROM: Councilor Jennifer Cullum
DATE: November 6, 2102
SUBJECT: Amending the General Ordinances, Article 1, §1-3, Chapter 170, Rental Registration

BACKGROUND: Amending Chapter 170, Rental Registration, is relevant to the passage of 2013-034 - Chapter 170, Rental Properties. This amendment will conform to the maximum allowable fine of \$300 as referenced.

B. NEW BUSINESS (Refer to public hearing 08/01/13)

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-126
INTRO: 04/25/13, 07/11/13**

2013-126 AMEND THE ZONING ORDINANCE CH. 240, ARTICLE X PERSONAL WIRELESS COMMUNICATION

ORDERED:

That Chapter 240, Article X Personal Wireless Communication of the Zoning Ordinance is hereby amended as follows:

§ 240-108. Antennas permitted by special permit in all zoning districts.

This section is amended by deleting the word “or” after the word “building”; deleting the words “other than a” after the word “structure”; and adding the word “or” after the word “structure” in the second line.

The amended section would then read:

Except where permitted as of right in § 240-109 below, in all zoning districts, an antenna mounted or located on any existing building, structure **or** communications tower may be permitted by special permit from the Zoning Board of Appeals, provided that no antenna exceeds the height of the existing structure by more than 12 feet, unless the Board finds that additional height is necessary to provide coverage, and the additional height will not be visually intrusive upon the surrounding area.

§ 240-109. Antennas permitted as of right in all zoning district.

Antennas permitted as of right in all zoning district shall be as follows:

This section is amended by adding new subsection A and re-numerating existing subsection A,B,C,D,E and F to B,C,D,E.F and G to accommodate the insertion of the new subsection A

New subsection A to be inserted would read as follows:

A. Co-locations of antennas and customary appurtenant equipment on an existing communications tower lawfully permitted for the purpose of supporting FCC-licensed antennas, subject to compliance with Section 240-107 and the following standards:

- i. The antenna shall not increase the height of the communications tower.
- ii. The antenna shall not extend out from the tower more than technically necessary for proper operation.
- iii. The Applicant shall submit a structural analysis prepared and stamped by a registered professional engineer licensed to practice in the Commonwealth of Massachusetts demonstrating that the communications tower has sufficient structural capacity for the installation. The analysis shall include information about all antenna installations on the tower.
- iv. Ground-mounted accessory equipment shall be located within an existing equipment shelter or an area fully screened in accordance with subsection 240-107(F).

The following subsections would be re-numerated as follows:

~~B.A.~~ An antenna and/or tower used in accordance with the terms of an amateur radio service license issued by the Federal Communications Commission provided that any facility tower is not licensed or used for any commercial use, subject to all the requirements of § 240-8, Exempt uses.

~~C.B.~~ Television and radio antennas, including satellite dishes not exceeding a diameter of four feet, for personal use, accessory to a residential use, or to provide entertainment for a single business such as a restaurant.

~~D.C.~~ An antenna completely enclosed within an existing structure other than a communications tower, provided that the associated equipment or base transceiver station is located within an underground vault, or within an existing building or addition thereto, other than an equipment or base receiver shelter.

~~E.D.~~ An antenna located upon the roof of an existing building or structure other than a communications tower, provided that the antenna does not exceed a height of 12 feet, and provided that the equipment shelter is set back from the roof edge a distance equal to the height of the equipment shelter

~~F.E.~~ An antenna located on a water tower belonging to a public water supply utility, by permission of the water utility, not to exceed the height of the water tower by more than 12 feet, except that the Zoning Board of Appeals may by special permit increase the height of the antenna up to 20 feet where the location of the water tower and design of the antenna is such that it will not be visually intrusive upon the surrounding area.

~~G.F.~~ Antennas located on existing utility stanchions, not to exceed a height of 12 feet above the utility stanchions, located within a Commonwealth Electric Company easement, with permission of the landowner to location and maintenance of an equipment or base receiver station shelter, or submission of recorded easement language demonstrating the right to install an equipment or base receiver station for a wireless communication facility.

SPONSOR: Councilor Janet S. Joakim

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-126
INTRO: 04/25/13, 07/11/13

SUMMARY

TO: Town Council
FROM: Councilor Janet S. Joakim
THROUGH: Jo Anne Miller Buntich, Growth Management Director
DATE: April 3, 2013
SUBJECT: Amending the zoning ordinance to update the permitting process for wireless antenna on existing telecommunication towers

SUMMARY/ANALYSIS/RATIONALE: The purpose of this ordinance amendment is to update the permitting process for telecommunications companies to locate a wireless antenna on an existing telecommunications tower.

The current zoning regulations require a modification of the telecommunications tower special permit or variance prior to installation of an additional antenna. This process is time and resource intensive for Town regulatory staff, the Zoning Board of Appeals, and private wireless service companies. Consumer demand and technology advances continually prompt wireless companies to replace and amend antennas installations.

It is best practice to incentivize wireless carriers to locate antennas on existing towers or even other facilities. This practice reduces the likelihood of new tower construction.

This amendment updates Article X of the Zoning Code: Personal Wireless Telecommunication to allow antennas to be co-located on lawfully existing communications towers as of right without relief from the Zoning Board of Appeals. New antennas would however be thoroughly reviewed during the Site Plan Review and Building Permit processes. These administrative processes incorporate all reviews necessary to ensure that tower structures have sufficient structural capacity to accommodate the new antenna and that antenna installations are authorized by the property or tower owner. Prior to issuance of a building permit a structural analysis, prepared by a registered professional engineer, must be submitted and is thoroughly reviewed before approval by Building Division.

This proposal would not affect the siting or construction of new telecommunications towers. New towers are largely under the regulatory jurisdiction of the Cape Cod Commission, as almost all modern towers exceed Development of Regional Impact thresholds. Once approved by the county local permitting, typically thought the Zoning Board of Appeals, would commence.

A. OLD BUSINESS (Public hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-166
INTRO: 05/16/13, 07/11/13

2013-166 AMENDING THE CODE OF BARNSTABLE GENERAL ORDINANCES- INSERTING CHAPTER 224 VACANT OR FORECLOSING PROPERTIES

ORDERED: That Part I, General Ordinances of the Code of the Town of Barnstable be amended by inserting the following chapter 224.

“CHAPTER 224

Vacant or Foreclosing Properties

§ 224-1. Purpose.

Unsecured and unmaintained vacant properties and foreclosing properties present a danger to the safety and welfare of public safety officers, the public, occupants, abutters and neighborhoods and, as such, constitute a public nuisance. This Ordinance is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

§ 224-2. Definitions.

The following words and phrases, when used in this Ordinance, shall have the following meanings:

FIRE CHIEF

The Fire Chief of the Fire District in which any property subject to this Ordinance is located, or his or her designee

FORECLOSING

The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS

Taking any of the following actions:

- A. Taking possession of a residential property pursuant to MGL c. 244, § 1.
- B. Commencing a foreclosure action on a property in any court of competent jurisdiction, including without limitation filing a complaint in Land Court under the Service Members Civil Relief Act, Public Law 108-189 (50 U.S.C.S. App. § 501-536).
- C. In any instance, where the mortgage authorizes mortgagee entry to make repairs upon mortgagor's failure to do so.

MAINTENANCE

Keeping property in good sanitary condition and repair, including without limitation removal of snow from adjacent sidewalks.

MORTGAGEE

The creditor, including, but not limited to, service companies, agents, lenders in a mortgage agreement, and any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

OWNER

Every person, entity, service company, property manager or real estate broker, who or which, alone or severally with others:

- A. Has legal title to any real property, including but not limited to a dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
- B. Has care, charge or control of real property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, administratrix, executor, trustee or guardian of the estate of the holder of legal title; or
- C. Is a mortgagee of any such property who has initiated the foreclosure process as defined in this Ordinance; or
- D. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- E. Is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, "owner" shall not mean a condominium association created pursuant to MGL c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or
- F. Every person who operates a rooming house; or
- G. Is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

PROPERTY

Any real residential property, or portion thereof, located in the Town, including buildings or structures situated on the property; provided, however, that "property" shall not include property owned or under the control of the Town, the Commonwealth or the United States of America.

VACANT

Any property not currently legally occupied and not properly maintained and secured but not including any property unoccupied on a seasonal basis only and properly secured while so unoccupied.

§ 224-3. Registration of vacant and/or foreclosed residential properties; maintenance requirements.

- A. Any owner of a vacant and/or foreclosing property shall, unless exempt from such actions by Massachusetts General Laws, within 30 days of the property becoming vacant or within 15 days of the initiation of the foreclosure process:
 - (1) Provide written notification to the (Designated Administrator) and the Fire Chief of the status of such property, including in such notice the name, address and telephone number of the owner or person in control of the property; the location of the property; the length of time the building has been vacant (where applicable); the estimated time the building will remain vacant (where applicable); and the nature of the contents of the building; and
 - (2) As may be required by the Fire Chief, file one set of space utilization floor plans for any buildings on said property with the Fire Chief and one set of said plans with the (Designated Administrator). The owner shall certify space utilization plans as accurate twice annually, in January and July; and

- (3) Remove from the property, to the satisfaction of the Fire Chief, hazardous material as that term is defined in MGL c. 21K, as that statute may be amended from time to time; and
 - (4) At the discretion of the (Designated Administrator), secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board-up Procedures or provide twenty-four-hour on-site security personnel on the property. When a vacant or foreclosing property is located within a complex of buildings owned by a single owner, twenty-four-hour on-site security shall be provided within the building or within the complex wherein the building is located; and
 - (5) Where a property is vacant, post "No Trespassing" signs on the property; and
 - (6) Maintain the property in accordance with this Ordinance, free of overgrowth, trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and
 - (7) If the property is vacant, drain all water from the plumbing and turn off all electricity between September 15 and June 15 of each calendar year to guard against burst pipes and fires; and
 - (8) Maintain the property in accordance with the Massachusetts State Sanitary Code, the Massachusetts State Building Code and all specialized codes incorporated therein, and any Barnstable Ordinances concerning the maintenance of property and the Barnstable Zoning Ordinances; and
 - (9) Provide the Fire Chief and (Designated Administrator) with the name, local address, and telephone number of a responsible person who can be contacted in case of emergency. The owner shall cause the name and contact number to be marked on the front of the property as may be required by the Fire Chief or (Designated Administrator); and
 - (10) Maintain liability insurance on the property and furnish the Director with a copy of said certificate of insurance; and
 - (11) Provide a cash bond acceptable to the (Designated Administrator), in the sum of not less than \$10,000, to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any expenses incurred in inspecting, securing, marking or making such building safe. A portion of said bond shall be retained by the City as an administrative fee to fund an account for expenses incurred in inspecting, securing, and marking said building and other such buildings that are not in compliance with this Ordinance. Any owner of a vacant or foreclosing property providing a bond pursuant to this section must also provide bonds for all other vacant or foreclosing properties it owns in the City; and
 - (12) Notify the (Designated Administrator) in writing when the property is sold or transferred.
- B. Upon satisfactory compliance with the above provisions, the (Designated Administrator) shall issue a certificate of compliance with Chapter 224. Said certificate shall be valid for the length of the vacancy or initiation of foreclosure, foreclosure, and vacancy following foreclosure; provided, however, the certificate shall be subject to continued compliance with the provisions of this Ordinance.

§ 224-4. Signs and markings.

When required pursuant to this Ordinance, signs or markings shall be applied on the front of the property, and elsewhere as the Fire Chief or (Designated Administrator) may require, and shall not be placed over doors, windows or other openings. All signs/markings shall be visible from the street and, when requested by the Fire Chief or (Designated Administrator), shall be placed on the sides and rear of the property. Signs/Markings shall be a minimum of 24 inches by 24 inches, with lines of two-inch width, and shall have a reflective background, or be painted with reflective paint in contrasting colors. Signs/Markings shall be applied directly on the surface of the property and shall state the date of posting and the most recent date of inspection by the Fire Chief and (Designated Administrator).

§ 224-5. Properties without certificate of compliance.

The (Designated Administrator), upon being informed of the existence of a vacant or foreclosing property without a certificate of compliance with this Ordinance, shall cause notice to issue to the owner of the status of said property and shall order said person to immediately obtain a certificate of compliance. If any person fails to comply with said order, the (Designated Administrator) and agents thereof may commence proceedings to enforce the provisions of this Ordinance and in addition may enter the premises to inspect, secure and clean the premises, remove any pools of stagnant water, and seek court orders for the taking of such actions.

§ 224-6. Expenses.

The owner of a vacant or foreclosing property who fails to obtain a certificate of compliances required herein, shall be liable to the City for expenses incurred by the City in securing such property, for removing rubbish and overgrowth and/or for abating stagnant pools of water. The (Designated Administrator) shall provide the owner with a written statement of all costs associated with inspecting, securing, and marking the property, and removing rubbish or overgrowth, or abating stagnant pools of water. If the owner fails to pay or reimburse the City within seven days of notice of expenses, the City shall draw down upon the bond paid by the owner as required in § 224-3(A)(11). If there is no bond available, the (Designated Administrator) shall record the notice of claim in the Barnstable County Registry of Deeds (or the Land Court Department) forthwith, and shall have the right to file a civil action to establish a lien on the property for the balance due.

§ 224-7. Duty to maintain property.

- A. No owner of a vacant or foreclosing property shall allow said property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain overgrowth, or to have a stagnant pool of water. If it appears that any vacant or foreclosing property is unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the (Designated Administrator) shall send written notification to the owner, requiring that the owner promptly secure the property, remove the rubbish or overgrowth, or abate the stagnant pool of water.
- B. If the owner fails to comply with any notice issued pursuant to this provision, the (Designated Administrator) may immediately seek to obtain the proceeds secured by the bond filed pursuant to § 224-3(A)(11) and shall enter upon the premises and cause the property to be inspected, and further may seek court orders to enter upon the premises to secure, clean, and remove any pools of stagnant water.

§ 224-8. Nuisance referral.

All unsecured vacant or foreclosing properties shall be immediately referred to the (Designated Administrator) for a determination relative to whether the property is a nuisance or dangerous pursuant to MGL c. 139 and procedures promulgated there under.

§ 224-9. Notice.

Notices required pursuant to this Ordinance shall be served in the following manner:

- A. Personally on any owner as defined in this Ordinance or on the contact person specified pursuant to § 224-3A(9); or
- B. Left at the last and usual place of abode of any owner, or contact person as specified pursuant to § 224-3A(9), if such place of abode is known and is within or without the commonwealth; or
- C. By certified or registered mail, return receipt requested, to any owner, or the contact person specified pursuant to § 224-3A(9).

§ 224-10. Enforcement; violations and penalties.

- A. Failure to comply with any provision of this Ordinance shall be punished by a fine of \$300 pursuant to MGL c. 40, § 21D, with each day of violation constituting a separate offense.
- B. This Ordinance may also be enforced by civil, criminal process or noncriminal process, including injunctive relief. The (Designated Administrator) shall be enforcing persons for purposes of this section.
- C. In addition to any penalties or enforcement action(s) hereunder, after final determination of three (3) or more violations within a twelve-month period an enforcing authority may notify a violator in writing that the enforcing authority may elect to bill the violator for the costs incurred by the Town for response to each subsequent violation not abated or ordered without abatement as provided herein. Such bill(s) shall be due and payable in full by the violator within thirty (30) days of submission and if unpaid thereafter shall be subject to a municipal charges lien as provided in G. L. c. 40 § 58.

§ 224-11. Term.

This Ordinance shall be in effect until _____ and shall be void and of no effect thereafter unless extended by Ordinance enacted and effective on or before said date. “

SPONSORS: Councilors Ann Canedy and Councilor Jen Cullum

DATE	ACTION TAKEN
<u>05/16/13</u>	<u>Referred to 07/11/13 public hearing</u>

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-166
INTRO: 05/16/13, 07/11/13

SUMMARY

DATE: May 10, 2013
TO: Town Council
FROM: Town Councilor Ann Canedy and Town Councilor Jen Cullum
SUBJECT: Vacant or foreclosed property ordinance

RATIONALE: The purpose of this proposed Ordinance is to enable appropriate staff to identify and enforce basic safety and health regulations on specific identifiable nuisance properties in the Town of Barnstable. Unsecured and unmaintained vacant and abandoned properties and/or some properties in the process of foreclosure or, which may or may not be “bank owned” present a danger to the safety and public welfare. These properties, which unfortunately exist throughout the town, negatively affect property values and integrity of entire neighborhoods. These properties are those wherein an owner or occupant has left the premises and the property is subject to the elements without continued maintenance, security or upkeep.

It is the intent of this ordinance in the case of “foreclosing” properties, to place the responsibility of maintenance and upkeep on the foreclosing bank and not on the “owner” of record, regardless of occupancy.

FISCAL IMPACT: None anticipated

A. OLD BUSINESS (Second reading)

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-171
INTRO: 06/20/13, 07/11/13**

2013-171 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED, that the Town Council reappoint the following individuals to a multiple-member board/committee/commission:

COUNCIL ON AGING

Eleanor Letterie, 14 Janes Way, Osterville, as a member to a term expiring 6/30/2016

Thomas Pelish, 73 Brant Way, Hyannis, as a member to a term expiring 6/30/2016

Paul Curley, 27 Lancaster Way, West Barnstable, as member to a term expiring 06/30/16

HUMAN SERVICES COMMITTEE

Heidi Nelson, c/o Duffy Health Center, 94 Main Street, Hyannis, as a representative member to a term expiring 6/30/2016

RENEWABLE ENERGY COMMISSION

Stephen Thomas, 535 South Street, Hyannis, as a member to a term expiring 6/30/2016

SPONSOR: The Appointments Committee

DATE	ACTION TAKEN
<u>06/20/13</u>	<u>Moved to second reading 07/11/13</u>

- ___ Read Item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

A. OLD BUSINESS (Second reading)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-172
INTRO: 06/20/13, 07/11/13

2013-172 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED, that the Town Council appoint the following individuals to a multiple-member board/committee/commission:

COUNCIL ON AGING

Taylor Cobb, 1135 Santuit-Newtown Road, Cotuit, as a member to a term expiring 6/30/2014

RECREATION COMMISSION

William Dado, 200 Camelback Road, Marstons Mills, as a member to a term expiring 6/30/2014

SPONSOR: The Appointments Committee

DATE	ACTION TAKEN
<u>06/20/13</u>	<u>Moved to second reading 08/11/13</u>
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2014-001
INTRO: 07/11/13**

**2014-001 APPROVING A CONSERVATION RESTRICTION ON A PORTION OF LAND
LOCATED AT 140 MAIN STREET, WEST BARNSTABLE, MAP 197, PARCEL 015**

RESOLVED, that the Town Council approve a Conservation Restriction from 1540 Main Street LLC (grantor) to the Barnstable Land Trust, Inc. (grantee), over approximately 4.5 acres of land located at 1540 Main Street/Route 6A in West Barnstable, Map 197 Parcel 015 (portion), for conservation purposes.

SPONSOR: Councilor Daley upon approval from the Legal Department

DATE	ACTION TAKEN
_____	_____
_____	_____

- _____ Read Item
- _____ Rationale
- _____ Council discussion
- _____ Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2014-001

INTRO: 07/11/13

SUMMARY

TO: Town Council
FROM: Councilor Jennifer Cullum
DATE: May 31, 2013

SUMMARY: This item has been placed on the agenda for the Council's approval of a conservation restriction (CR) to be granted to the Barnstable Land Trust, Inc. by 1540 Main Street LLC, covering 4.5 acres on Route 6A in West Barnstable. The land is shown as a portion of Barnstable Assessor's Map 197 Parcel 015.

BACKGROUND: Last year, the Pogorelc family (owners of the Crystal Pineapple) donated their 7-acre property (Map 197, Parcel 016) on the north side of the railroad bed to the Orenda Wildlife Land Trust, which conveyed a perpetual conservation restriction on the land to Barnstable Land Trust (BLT). The family owns another 9.89 acres on the south side of the railroad bed across from those 7 acres. The current CR encompasses 4.5 of these acres. The CR area fronts on Route 6A and is immediately to the west of the Crystal Pineapple.

These ecologically significant 4.5 acres on Route 6A are comprised of freshwater wetlands and critical buffering upland, and abuts salt marsh. The property is within the Sandy Neck/Barnstable Harbor Area of Critical Environmental Concern, and abuts an area on the north side of the railroad bed designated by the state as Priority Habitat for Rare Species. The property also is within a BioMap2 Critical Natural Landscape area, and lies within the Old Kings Highway Regional Historic District

The conveyance of this CR to the Barnstable Land Trust will enhance the Town and BLT conservation lands, preserve important wildlife habitat, maintain the integrity of a significant wildlife corridor, and protect freshwater wetlands. In addition, the CR provides for public access for passive recreation purposes on designated trails within the property.

ANALYSIS: This proposed conservation restriction conforms to the Open Space Policy of the Town, adopted in 1981, which "encouraged...grants of conservation restrictions" which yielded "benefits to the Town," and furthers the Town of Barnstable's 2010 Update to its Open Space Plan.

Specifically, the Conservation Restriction has the following public benefits and will:

- ◆ increase the amount of protected open space in town;
- ◆ preserve important wildlife habitat;
- ◆ prevent the disturbance of wetlands;
- ◆ preserve the scenic quality and character of this undisturbed area.

APPROVALS: The Land Acquisition and Preservation Committee approved the Conservation Restriction on May 13, 2013. The Conservation Commission voted its approval on May 21, 2013.

FISCAL IMPACT: The Pogorelc Family's 9.89-acre site is both residential (their home) and commercial (the Crystal Pineapple). The business is classified as a non-conforming use in the RF Zone. It is not part of the Village Business (VB-B) zone. The total FY 2013 taxes for both uses are \$4,976.

The 4.5-acre area that is subject to the CR is on the western portion of the property not being used for residential or commercial purposes. That land is assessed as residential land for under \$70,000. It is the intent of the donor to first place a conservation restriction on the land to be held by Barnstable Land Trust and then to subsequently convey the title to the Orenda Wildlife Land Trust. Once the land is donated to Orenda, the land will come off the tax rolls. The total reduction in assessment will result in a net loss of approximately \$800.

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2014-002
INTRO: 07/11/13**

2014-002 ACCEPTANCE OF A GIFT OF THREE BEACH WHEELCHAIRS FROM THE SMILE MASS ORGANIZATION FOR DOWSES BEACH, LOOP BEACH AND MILLWAY BEACH

RESOLVED: That the Town Council does hereby accept a gift of three beach wheelchairs to be used by the Barnstable Recreation Division for Dowses Beach, Loop Beach, and Millway Beach.

SPONSOR: Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2014-002
INTRO: 07/11/13

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lynne M. Poyant, Director of Community Services
DATE: July 2, 2013
SUBJECT: Acceptance of gift of four beach wheelchairs from SMILE Mass for Dowses Beach, Loop Beach and Millway Beach

BACKGROUND: SMILE Mass (Small Miracles in Life Exist) is a Massachusetts Chapter 501(c)(3) non-profit corporation. The mission of SMILE Mass is to help handicapped children and their families enjoy wonderful vacation experiences — for a day or for a week — that will create memories that will last a lifetime. For many of these families, this could be their very first family vacation.

Phase One of SMILE Mass's mission is to purchase and donate 100 beach wheelchairs to public beaches on Cape Cod. Last year, they delivered 20 Mobi-Chairs to 20 beaches in 12 towns on Cape Cod. On June 28th, the Town of Barnstable received three additional chairs.

Made by Mobi-Chair, the wheelchairs look much like beach recliners and are fully equipped with shock-absorbing wheels that can handle sandy terrain and even allow for flotation.

RATIONALE: This gift will provide access to the beach and ocean for handicapped children and their families. The Mobi-Chair is a high quality, amphibious rolling beach chair that provides a seamless transition from the parking lot, across the sand, and right into the water. The aluminum frame and stainless steel parts are corrosion free from salt water and the floatational wheels and armrests provide an unprecedented experience due to their stable buoyant design. Each chair costs approximately \$5,000. SMILE Mass has donated four Mobi-Chairs to the Town of Barnstable. Last year chairs were given to Covell's Beach, Craigville Beach, Kalmus Beach and Veterans Park Beach. This year the chairs will go to Dowses Beach, Loop Beach and Millway Beach.

FISCAL IMPACT: There is no fiscal impact.

BOARD AND COMMISSION RECOMMENDATION: The Barnstable Recreation Commission and the Barnstable Disability Commission recommend acceptance of this gift.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends acceptance.

STAFF ASSISTANCE: Patti Machado, Director of Leisure Services

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2014-003
INTRO: 07/11/13

**2014-003 APPROVING A CONTRACT EXTENSION FOR THE FINANCE DIRECTOR,
MARK A. MILNE**

RESOLVED: that the Town Council authorizes Town Manager, Thomas K. Lynch, to extend the contract of the Director of Finance Director, Mark A. Milne until June 30, 2018

SPONSOR: Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote