



Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
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## TOWN COUNCIL MEETING AGENDA

July 21, 2022

7:00 PM

The July 21, 2022 Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

### Councillors:

Matthew Levesque  
President  
Precinct 10

Paula Schnepf  
Vice President  
Precinct 12

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Paul Hebert  
Precinct 3

Nikolas Atsalis  
Precinct 4

VACANT  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grassetti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Jennifer L. Cullum  
Precinct 13

Administrator:  
Cynthia A. Lovell  
[Cynthia.Lovell@town.barnstable.ma.us](mailto:Cynthia.Lovell@town.barnstable.ma.us)

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Written Comments may be submitted to:  
[https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town\\_Council/Agenda-Comment.asp](https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp)

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

Join Zoom Meeting <https://zoom.us/j/99032017926> Meeting ID: 990 3201 7926  
US Toll-free 888 475 4499

## PUBLIC SESSION

### 1. ROLL CALL

### 2. PLEDGE OF ALLEGIANCE

### 3. MOMENT OF SILENCE

### 4. PUBLIC COMMENT

### 5. COUNCIL RESPONSE TO PUBLIC COMMENT

### 6. TOWN MANAGER COMMUNICATIONS

### 7. ACT ON

- PUBLIC SESSION MINUTES

June 16, 2022

- EXECUTIVE SESSION MINUTES

Recommended Vote:

To approve the decision of the Town Council President approving the executive session minutes of the May 19, 2022 Town Council meeting, authorizing the release of the portion of the minutes pertaining to a potential lawsuit to be filed by the Town regarding the Bumps River Road cranberry bog, and determining that continued non-disclosure is warranted for the remainder of the minutes (pertaining to a lawsuit filed against the Town by TJA Clean Energy LLC).

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

- Grow Smart Cape Cod Mapping Project presented by  
Alisa Magnotta, CEO, Housing Assistance Corporation  
Andrew Gottlieb, Executive Director, Association to Preserve Cape Cod
- Private Road Policy Workshop presented by Mark S. Ells, Town Manager

## **9. ORDERS OF THE DAY**

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

## **10. ADJOURNMENT**

**NEXT REGULAR MEETING: August 18, 2022**

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Approve Minutes: June 16, 2022

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-001  
INTRO: 07/21/2022**

**2023-001 AUTHORIZATION TO EXPEND A FISCAL YEAR 2022 LEGISLATIVE EARMARK FROM THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH IN THE AMOUNT OF \$60,000**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2022 Legislative Earmark in the amount of **\$60,000** from the Commonwealth of Massachusetts, Department of Mental Health for the purpose of funding part-time co-response clinician services at the Barnstable Police Department, with such funds to be expended by June 30, 2026

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-001**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** July 21, 2022  
**SUBJECT:** Authorization to expend a Fiscal Year 2022 Legislative Earmark from the Massachusetts Department of Mental Health in the amount of **\$60,000**

**BACKGROUND:** The Department will hire a part-time Mental Health Clinician at 16 hours per week to work evenings and/or weekends to complement the work of the fulltime Clinician that is funded through the Co-Responder Grant that we currently have through the Massachusetts Department of Mental Health (DMH).

**ANALYSIS:** The fulltime clinician is funded to work 40-hour per week through the DMH Co-Responder Grant. The \$60,000 Legislative Earmark can be expended over a period of 5 years, from July 1, 2021 to June 30, 2026 and must be used to fund clinician services. The police department will expend the monies in Years 2 and 3 of the earmark, in equal amounts, in order to have a part-time clinician available for 16 hours a week year-round to serve in the off-hours of the fulltime co-response clinician.

**FISCAL IMPACT:** This funding has been directly received by the Town of Barnstable and there is no fiscal impact.

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

**STAFF ASSISTANCE:** Chief Matthew K. Sonnabend, Barnstable Police Department; Anne Spillane, Finance & Support Services Director

**B. NEW BUSINESS (Refer to Public Hearing 08/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-002  
INTRO: 07/21/2022**

**2023-002 SUPPLEMENTAL APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$6,007,000 FOR THE PURPOSE OF FUNDING THE RECONSTRUCTION OF RUNWAY 6-24 PROJECT AT THE CAPE COD GATEWAY AIRPORT**

**ORDERED:** That the amount of \$13,045,000 appropriated under Town Council Order 2021-088 be increased by **\$6,007,000** for a total revised appropriation amount of \$19,052,000 for the purpose of funding the Airport’s Design and Reconstruction of Runway 6-24 Project, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$19,052,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Cape Cod Gateway Airport Commission is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-002  
INTRO: 07/21/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Katie R. Servis, Airport Manager  
**DATE:** July 21, 2022  
**SUBJECT:** Supplemental Appropriation and Loan Order in the amount of **\$6,007,000** for the purpose of funding the Reconstruction of Runway 6-24 Project at the Cape Cod Gateway Airport

**BACKGROUND:** The Cape Cod Gateway Airport is scheduled to reconstruct Runway 6-24 in the spring of 2023. The project was conceived over five years ago as part of the Airport's Capital Improvement Plan (CIP) by the Airport and its former on-call engineering consultant (Jacobs). The Federal Aviation Administration (FAA) requires a 5-Year CIP for all airport improvements funded under the Airport Improvement Program (AIP), so the project was programmed as far back as 2017.<sup>1</sup> Up until this point in time Jacobs had designed many airfield reconstruction projects, including the following projects, using a standard pavement box section with four inches (4") of bituminous concrete:

- 2013 Reconstruct and Relocate Taxiway A and Other Miscellaneous Improvements;
- 2014 Reconstruct East Ramp and Reconstruct A Portion of Taxiway B;
- 2015 Reconstruct & Light Taxiway C and Reconstruct and Light A Portion of Taxiway C; and
- 2016 Reconstruct, Light, Groove & Mark Runway 15-33 and Re-Align A Portion of Taxiway C.

FAA Advisory Circular AC 150/5320-6G (Airport Pavement Design and Evaluation) provides guidance on the design and evaluation of pavements used by aircraft at civil airports; Section 3.5 (Stabilized Base Course) includes further guidance for the design of pavements for heavy aircraft. In 2014 JetBlue started using the Embraer 190 (E190) aircraft at KHYA with a gross weight of approximately 124,000 pounds. The Embraer 190 is considered a heavy aircraft. Section 3.5.1 of AC 5320-6G states, in part:

“When aircraft in the design traffic mix have gross loads of 100,000 pounds (45,359 kg) or more, then use of a stabilized base is required.”

Since the E190 exceeds 100,000 pounds, the use of a stabilized base in the pavement section is required.<sup>2</sup> To this end, Airport Solutions Group (ASG), the airport's on-call engineering firm, prepared a new pavement design for the Runway 6-24 project using the FAA's FAARFIELD 2.0.2 software. The new pavement section requires a stabilized (asphalt) base with a total of nine (9") of bituminous concrete versus the four inches (4") historically used at KHYA. ***This 225% increase in asphalt thickness more than doubled the cost associated with the bituminous concrete alone.*** Furthermore, under the current post-COVID bidding climate, and fluctuations in oil prices, the cost of bituminous concrete is greater today than it was when the project was originally programmed.

Additionally, upon review of the topographical survey secured by ASG under the 2022 project, it became clear that the existing safety area (500 feet wide, centered on the runway) along both sides of Runway 6-24 does not meet FAA design criteria for transverse grades pursuant to FAA AC 150/5300-13B (Airport Design). ASG recommended, and the funding agencies agreed, that full safety area re-

<sup>1</sup> ASG was selected as the new on-call engineer of record at the October 31, 2018 Airport Commission Meeting

<sup>2</sup> The 2022 Airport Master Plan Update indicates future use of the Airbus 220 with a gross weight of approx. 149,000 pounds



grading be included in the project. Additionally, the FAA Technical Operations Division requested ASG to design new surface grading for the entire (Runway 24) glide slope critical area to fix a long-standing concern with non-compliant grading. This extensive grading added significant cost to the project. The re-grading of the safety area and glide slope area produced an unanticipated amount of excess soils (100,000+ CY). The cost to dispose of these soils is also increased to comply with Mass DEP guidelines for the handling and disposition of soils which might contain PFAS. Soil sampling and testing for PFAS was conducted during design, and test results indicated only “background concentrations” of PFAS. Nevertheless, MassDEP still imposed specific material handling procedures including off-site disposal at certain pre-approved sites, as well as limitations for re-use of the material. This too added a significant cost to the project.

In summary, the cost increase for the reconstruction of Runway 6-24 from previous construction cost estimates is attributable to the following three (primary) factors:

1. A 225% increase in the thickness of the bituminous concrete pavement section (from 4” to 9”) to comply with FAA design criteria for a stabilized base to accommodate heavy aircraft (>100,000 lbs);
2. Added safety area and glide slope critical area grading to comply with FAA design standards; and
3. General increase in construction costs for post-COVID bidding vs. pre-COVID estimates.

**FISCAL IMPACT:** The Airport’s net share for this project is 5% (\$300,350); however this is under a reimbursable agreement and the full additional amount of \$6,007,000 of funding is requested. The entire project will be funded 95% by the FAA and MassDOT Aeronautics Division; therefore the Airport will be reimbursed \$5,706,650 from the FAA and MassDOT. As of July 1, 2021 the Airport Enterprise Fund had \$6,240,318 certified in cash reserves with the airport’s cash balance as of May 11, 2022 of approximately \$14 million. The Airport Commission approved of the above expenditure, contingent on Town Council approval, during the June 28, 2022 Airport Commission Meeting.

**STAFF ASSISTANCE:** Mark A. Milne, CPA, Director of Finance

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-003  
INTRO: 07/21/2022**

**2023-003 RESOLVE APPROVING MARK S. ELLS' OUTSIDE EMPLOYMENT WITH CAPE COD COMMUNITY COLLEGE**

**RESOLVED:** That, in accordance with Section 7 of the Employment Agreement between the Town of Barnstable and Mark S. Ells effective July 21, 2021, the Barnstable Town Council does hereby approve and ratify Mark S. Ells' outside employment with Cape Cod Community College (the "College") to allow him to continue teaching at the College for the period of July 1, 2022 through June 30, 2023.

**SPONSOR:** Matthew P. Levesque, Town Council President

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 08/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-004  
INTRO: 07/21/2022**

**2023-004 APPOINTMENT TO A BOARD/COMMITTEE/COMMISSION:**

**RESOLVED:** That the Town Council appoints the following individual to a multiple-member Board/Committee/Commission: **Council on Aging:** Ellen Queeney, as a regular member to a term expiring 6/2025

**SPONSOR:** Appointment Committee Members

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 08/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-005  
INTRO: 07/21/2022**

**2023-005 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION:**

**RESOLVED:** That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Planning Board:** Raymond Sexton, as a regular member to a term expiring 06/2025; Robert Twiss, as a regular member to a term expiring 06/2025; **Sandy Neck Board:** William Monroe, as a member at large to a term expiring 06/2025; William Carey, as a member at large to a term expiring 6/2025

**SPONSOR:** Appointment Committee Members

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-006  
INTRO: 07/21/2022**

**2023-006 CONFIRMING REAPPOINTMENTS TO THE AFFORDABLE HOUSING/GROWTH & DEVELOPMENT TRUST FUND BOARD**

**RESOLVED:** That Town Council hereby confirms the Town Manager’s reappointment of the following individuals to serve as Trustees of the Affordable Housing/Growth and Development Trust Fund Board (the “Board”), pursuant to the provisions of M.G.L. c. 44 §55C, and in accordance with the Amended Declaration of Trust, as approved by the Board at its September 25, 2020 meeting:

Michael Andrew Clyburn, a resident of Sandwich, MA, to a term expiring June 30, 2023

Mark Milne, a resident of Marstons Mills, MA, to a term expiring June 30, 2024

Wendy Northcross, a resident of West Barnstable, MA, to a term expiring June 30, 2023

Laura Shufelt, a resident of West Barnstable, MA, to a term expiring June 30, 2024

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-007  
INTRO: 07/21/2022**

**2023-007 AUTHORIZATION TO EXPEND A GRANT FROM BARNSTABLE COUNTY IN THE AMOUNT OF \$1,965,218.61 TO FUND A PORTION OF THE COST OF CONSTRUCTING A PUMP STATION AT 725 MAIN STREET HYANNIS**

**RESOLVED:** That the Barnstable Town Council does hereby authorize the Town Manager to contract for and expend a grant from Barnstable County in the amount of **\$1,965,218.61** for the purpose of constructing a pump station at 725 Main Street Hyannis.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-007  
INTRO: 07/21/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** July 21, 2022  
**SUBJECT:** Authorization to expend a grant from Barnstable County in the amount of **\$1,965,218.61** to fund a portion of the cost of constructing a pump station at 725 Main Street Hyannis

**BACKGROUND:** In March 2021, the American Rescue Plan Act (ARPA) was passed by Congress and signed into law by President Biden. This legislation allocated \$41.3 million in federal grant funds to Barnstable County to expend between 2021 – 2026 on COVID-19 recovery efforts and regional investments in key areas. These funds have specific expenditure categories that are set by the federal government. Several of the categories will allow the county to address some of the urgent priorities needing investment on Cape Cod.

The Barnstable County Commissioners Office held a public comment period through 2/11/2022 for residents of Barnstable County and stakeholders to provide input and feedback on how the county's ARPA funds should be prioritized and allocated.

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses:

- 1) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- 2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- 3) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- 4) To make necessary investments in water, sewer, or broadband infrastructure.

None of the County funds can be used for category 3 – the provision of government services to the extent of the reduction in revenue. This only applies to local government allocations under ARPA. In addition, the County has established an ARPA Advisory Committee. The Committee's mission is to advise the Barnstable County Board of Commissioners and Assembly of Delegates on regional funding priorities and to recommend criteria to identify projects of regional impact for funding.

The ARPA Advisory Committee will carry out its work while considering the following:

- Regionalism: The Committee's frame of reference shall be Barnstable County as a region and, as appropriate, the four sub-regions of the Upper, Middle, Lower, and Outer Cape.

- **Data-Informed and Evidence-Based Recommendations:** The Committee’s activities and resulting recommendations shall be driven by the data, analyses, and evidence developed to identify priorities and projects of regional impact.
- **Equity:** The Committee shall include in its recommendations criteria for ensuring that regional ARPA funding addresses the needs of vulnerable populations and populations disproportionately affected by the COVID-19 pandemic.
- **Transparency:** Meetings of the full Committee will be conducted in accordance with Open Meeting Law.
- **Conflict of Interest:** Voting Committee members shall adhere to the applicable provisions of Conflict of Interest Law.

**ANALYSIS:** The County has released the first \$10 million of its ARPA fund allocation awarding the 15 Cape towns a grant. Only towns are eligible to submit applications. Distribution of the funds is based on population and the Town of Barnstable has been awarded \$1,965,218.61. Sewer and water projects that are listed on the State Department of Environmental Protection’s (DEP) Intended Use Plan (IUP) for State Revolving Funds (SRF) are clearly eligible projects for the use of the ARPA funds. The Town has submitted an application to the County to use its allocation to offset a portion of the cost to construct a pump station at 725 Main St. The project is listed on DEP’s 2022 IUP. The next step is the Town Council’s authorization for the Town Manager to execute a grant agreement with the County to expend the funds for this purpose.

**FISCAL IMPACT:** Town Council order 2022-087 appropriated \$11 million for the construction of this pump station. Since the project is listed on DEP’s 2022 IUP it is eligible for the use of County ARPA funds as well as a subsidy from the Cape Cod and Islands Water Protection Fund (CCIWPF). The CCIWPF awarded a 25% subsidy (\$2,750,000) on projects listed on the 2022 IUP. This award combined with the County allocation will reduce the amount of borrowing the town will need to finance through the SRF to \$6,284,782. Further principal subsidies on the principal amount that needs to be borrowed from the SRF may materialize. The significant reduction in the amount borrowed results in a lower annual loan payment to the SRF.

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

**STAFF ASSISTANCE:** Mark A. Milne, CPA, Director of Finance



**B. NEW BUSINESS (Refer to Public Hearing on 8/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-008  
INTRO: 07/21/2022**

**2022-008 ORDER ACCEPTING THE PROVISIONS OF M.G.L. CHAPTER 59, SECTION 5N AND AMENDING CHAPTER 183 OF THE GENERAL ORDINANCES TO ADD A PROGRAM FOR A VETERANS PROPERTY TAX WORK-OFF ABATEMENT**

**ORDERED:**

SECTION 1. That the Town Council hereby accepts the provisions of Massachusetts General Laws, Chapter 59, § 5N, effective for the fiscal year beginning July 1, 2022.

SECTION 2. That the General Ordinances, Part I, of the Code of the Town of Barnstable are hereby amended by deleting Chapter 183 in its entirety and inserting the following new Chapter 183 in its place:

“Chapter 183. Senior Citizen and Veterans Property Tax Work-Off Abatement Programs

§ 183-1. Purpose.

In accordance with the provisions of M.G.L. c. 59, § 5K and M.G.L. c. 59, § 5N, the Town is offering programs which allow certain eligible seniors aged 60 and older and veterans the opportunity to perform work for the Town in exchange for an abatement of property taxes for the maximum amount of \$1,500 yearly.

§ 183-2. Eligibility.

- A. In order to be eligible to apply for the Senior Property Tax Work-off Program, an individual shall meet all of the following requirements:
  - a. Owns and occupies a residential property in the immediate fiscal year preceding the fiscal year in which the taxpayer applies to volunteer his/her services;
  - b. Has reached 60 years of age by July 1 of the fiscal tax year for which the tax credit is given;
  - c. Has a gross yearly income from all sources of not more than \$40,000 for single taxpayers and \$50,000 for married taxpayers; and
  - d. Otherwise qualified municipal employees may participate in the program as long as they are able to secure an exemption to M.G.L. c. 268A, § 20.
  
- B. In order to be eligible to apply for the Veterans Property Tax Work-off Program, an individual shall meet all of the following requirements:
  - a. If the veteran has a service-connected disability or is deceased, the veteran’s spouse or surviving spouse may earn the abatement instead;
  - b. Owns and occupies a residential property in the immediate fiscal year preceding the fiscal year in which the taxpayer applies to volunteer his/her services;

- c. Has a gross yearly income from all sources of not more than \$40,000 for single taxpayers and \$50,000 for married taxpayers; and
- d. Otherwise qualified municipal employees may participate in the program as long as they are able to secure an exemption to M.G.L. c. 268A, § 20.

§ 183-3. Program administration.

- A. The Town Manager or his/her designee shall be responsible for administering the Senior and Veterans Tax Work-Off Programs.
- B. The Town Manager or his/her designee shall review and approve the volunteer services to be included in the programs and place and/or assign eligible residents to perform such services.
- C. The Town Manager or his/her designee shall certify the amount of volunteer services performed by each participating taxpayer to the Barnstable Board of Assessors on or before December 1 of the year for which tax credits are to be given. Upon timely receipt of this certification, the Board of Assessors shall credit the real property tax obligations of the participating taxpayers in an amount not to exceed \$1,500 per taxpayer. A copy of each taxpayer's certification will be given to that taxpayer. This credit shall be in addition to any exemption or abatement for which the volunteer may otherwise be eligible.
- D. There shall be a maximum number of 20 residents who may participate in the programs in a given year.

§ 183-4. Program criteria.

- A. The hourly rate at which the volunteer services are to be credited shall be the minimum wage of the Commonwealth in effect at the time the services are provided.
- B. The Town will pay the volunteer's share of FICA taxes.
- C. The maximum amount by which the real property tax obligation of any one volunteer may be reduced in any given tax year shall not exceed \$1,500 for each program.
- D. Tax credits may be applied only toward real property, which the volunteer occupies as a principal residence and has property tax liability.
- E. Only one tax abatement per property per year shall be allowed.
- F. Participation will be awarded using a lottery system if qualified applications received exceed the number of available slots.
- G. Taxpayers in the program may not participate in two consecutive years unless the number of applicants is less than the eligible slots.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-008  
INTRO: 07/21/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** July 21, 2022  
**SUBJECT:** Order accepting the Provisions of M.G.L. Chapter 59, Section 5N and Amending Chapter 183 of the General Ordinances to add a Program for a Veterans Property Tax Work-Off Abatement

**BACKGROUND:** The Town has had a Senior Property Tax Work-off Program in place since fiscal year 2009 when it accepted MGL c. 59, § 5K and would like to expand the program to include veterans by accepting the provision of MGL C. 59, § 5N. Under the programs, participating taxpayers volunteer their services to the town in exchange for a reduction in their property tax bills. Acceptance of either statute may be revoked but the town must wait until at least three years after the statute was accepted to do so. Revocation is also made by the Town Council.

**ANALYSIS:** These programs would allow eligible seniors and veterans the opportunity to work off a portion of their annual property tax bill by providing volunteer services to the town. Work performed by these individuals is not replacing town employees. It will be augmenting services that are currently provided. The positions will be primarily clerical requiring mail sorting, copying, filing, phone work and reception as well as other appropriately identified tasks.

The maximum abatement taxpayers may earn is \$1,500 per fiscal year under each program. Individuals cannot receive credit for their services at an hourly rate higher than the state's minimum wage rate. As of January 1, 2022, the minimum wage rate is \$14.25 per hour resulting in an individual having to work approximately 105 hours to earn the maximum allowable abatement.

Taxpayers may earn abatements under the work-off programs in addition to any property tax exemptions they may be eligible for under other statutes, such as personal exemptions under G.L. Ch. 59 §5 or residential exemptions under G.L. Ch. 59 §5C. They may also defer the balance of their taxes under G.L. Ch. 59 §5 Clause 41A if they are eligible to do so. Additionally, seniors may be eligible for the State Senior Circuit Breaker Tax Credit. Participation in this tax work-off program may affect a taxpayer's eligibility under the State Circuit Breaker program if the tax work-off program reduces their tax liability to certain non-qualifying levels.

The Human Resources Division will certify to the Board of Assessors the hours of services performed by the taxpayer *before* the actual tax for the fiscal year is committed. The certification must state the amount actually earned as of that time. Services performed after that date is credited toward the next fiscal year's actual tax bill to the extent consistent with the program rules established by the town. A copy of the certification must also be given to the taxpayer before the actual tax bill is issued.

The amount of the property tax reduction earned by the taxpayer under these programs is not considered income or wages for purposes of *state* income tax withholding and workmen's compensation. However, the United States Internal Revenue Service (IRS) has ruled that under current federal law the abatement amount is included in the taxpayer's gross income for both federal income tax and Federal Insurance Contribution Act (FICA) tax purposes. Participating seniors will receive a W2 under this program and

the maximum employee's share of FICA taxes (\$111.75) will be paid by the Town resulting in a maximum potential federal taxable income to the participant of \$1,611,75.

Earned reductions must be applied to the actual tax bills for the fiscal year. The assessors must commit the full tax for the year and process the gross amount earned as certified by Human Resources for the taxpayer's volunteer services as an abatement to be charged against the town's overlay account. The taxpayer's actual tax bill, however, should only show a credit for the amount earned net of any federal withholdings. The municipal share of federal Social Security and Medicare taxes may also be charged to the overlay account.

**FISCAL IMPACT:** The amounts earned under the program are charged to the Town's overlay account (reserve for abatements and exemptions); similar to other exemptions granted. The cost would be dependent upon the number of participants, the amount of the maximum abatement granted and the treatment of FICA taxes. If the town has full participation of 20 individuals who earned the maximum \$1,500 then the charge to the town's overlay account will be \$34,590.

**STAFF ASSISTANCE:** Mark A. Milne, CPA, Finance Director

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-009  
INTRO: 07/21/2022**

**2023-009 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 MASSTRAILS GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS IN THE AMOUNT OF \$500,000 FOR PRELIMINARY DESIGN OF THE CAPE COD RAIL TRAIL PHASE 4 EXTENSION IN THE TOWN OF BARNSTABLE**

**RESOLVED:**That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 MassTrails Grant in the amount of **\$500,000** from the Commonwealth of Massachusetts for the purpose of funding the preliminary design of the Cape Cod Rail Trail Phase 4 extension in the Town of Barnstable.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-009**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** July 21 2022  
**SUBJECT:** Authorization to expend a Fiscal Year 2023 MassTrails grant from the Commonwealth of Massachusetts in the amount of **\$500,000** for preliminary design of the Cape Cod Rail Trail Phase 4 extension in the Town of Barnstable

**BACKGROUND:** The Town of Barnstable was awarded a **\$500,000** MassTrails grant from the Commonwealth of Massachusetts.

**ANALYSIS:** This grant is for the purpose of preliminary design of the Cape Cod Rail Trail Phase 4 extension in the Town of Barnstable. Phase 4 is proposed to extend the trail from Mary Dunn Road near the Hyannis Ponds Wildlife Management Area entrance to Service Road at the Barnstable/Sandwich town line, a distance of approximately nine miles.

**FISCAL IMPACT:** The Town is responsible for a 25% local match in the amount of **\$167,000** (calculated based on the total project cost, as required). Previous land acquisition and design expenditures by the Town of Barnstable for the Cape Cod Rail Trail Phase 3 Extension (Old Town House Road in Yarmouth to Mary Dunn Road in Barnstable, currently at 75% design) will be used for the local match. Therefore, there will be no fiscal impact associated with the acceptance of this grant.

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-010  
INTRO: 07/21/2022**

**2023-010 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 SHARED STREETS AND SPACES GRANT FROM THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION IN THE AMOUNT OF \$50,000 TO FUND THE PURCHASE OF A SIDEWALK SNOW MACHINE**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Shared Streets and Spaces Grant in the amount of **\$50,000** from the Massachusetts Department of Transportation for the purpose of purchasing a sidewalk snow machine.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-010**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** July 21, 2022  
**SUBJECT:** Authorization to expend a Fiscal Year 2023 Shared Streets and Spaces grant from the Massachusetts Department of Transportation in the amount of **\$50,000** to fund the purchase of a sidewalk snow machine

**BACKGROUND:** The Town of Barnstable was awarded a **\$50,000** Shared Streets and Spaces grant from the Commonwealth of Massachusetts, Department of Transportation.

**ANALYSIS:** This grant is for the purchase of a sidewalk snow machine. The sidewalk snow machine, estimated to cost approximately **\$61,500**, will improve the Town's sidewalk snow removal operations by reducing reliance on inferior equipment, rental equipment, and contractors.

**FISCAL IMPACT:** The remaining **\$11,500** required for the snow machine purchase will come from Department of Public Works Operating Funds.

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



**B. NEW BUSINESS (First Reading) (Refer to Planning Board)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-011  
INTRO: 07/21/2022**

**2023-011 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 240 ZONING, ARTICLE V SECTION 46, HOME OCCUPATION, AND ARTICLE III SECTION 14, RC-1 AND RF RESIDENTIAL DISTRICTS, SUBSECTION (C) CONDITIONAL USES, TO UPDATE REQUIREMENTS PERTAINING TO HOME OCCUPATIONS**

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

**SECTION 1**

By amending Article V Accessory Uses, Section 46, Home Occupation by deleting Section 240-46 in its entirety and inserting the following new Section 240-46 in its place:

**“§ 240-46 Home occupation.**

A. Intent. It is the intent of this section to allow the residents of the Town of Barnstable to operate a home occupation within a dwelling, subject to the provisions of this section, provided that the activity shall not be discernible from outside the dwelling except as provided herein; there shall be no increase in noise or odor; no visible alteration to the premises which would suggest anything other than a residential use; no increase in traffic above normal residential volumes; and no increase in air or groundwater pollution.

B. A home occupation shall be permitted, in all zoning districts as of right subject to the following conditions:

- (1) The activity is conducted by a permanent resident of a dwelling unit, located within that dwelling unit, or within an accessory structure located on the same lot, subject to the limitations herein.
- (2) Such use is clearly incidental to and subordinate to the use of the premises or occupants for residential purposes.
- (3) Such use occupies no more than 20% of the dwelling unit including office and storage areas combined unless relief is granted by Special Permit as provided by subsection (C) (1)a. below. Such use within an accessory structure shall occupy no more than 200 square feet unless relief is granted by Special Permit as provided by subsection (C) (1)f. below.
- (4) There are no external alterations to the dwelling which are not customary in residential buildings, and there is no outside evidence of such use except as provided herein.
- (5) The use is not objectionable or detrimental to the neighborhood and its residential character

- (6) Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from a residential use, considering volume, hours, vehicle types and other traffic characteristics.
- (7) The use shall not involve the production of offensive noise, vibration, smoke, dust or other particulate matter, odors, electrical disturbance, heat, glare, humidity or other objectionable effects.
- (8) There is no storage or use of toxic or hazardous materials, or flammable, or explosive materials, in excess of normal household quantities.
- (9) Any need for parking generated by such use shall be met on the same lot containing the customary home occupation, and not within the front yard.
- (10) There is no exterior storage or display of materials or equipment.
- (11) There are no commercial vehicles related to the home occupation, other than one van or one pickup truck not to exceed one-ton capacity, and one trailer not to exceed 20 feet in length and not to exceed four tires, parked on the same lot containing the home occupation. This section does not apply to residents of a dwelling who park take-home work vehicles that are not registered to them and that do not have a home occupation on premises.
- (12) No sign shall be displayed indicating the home occupation.
- (13) If the home occupation is listed or advertised as a business, the street address shall not be included.
- (14) No more than one non-resident employee may be employed on the premises of a home occupation. Except pursuant to a special permit in accordance with Section C (1) (c) below.
- (15) Home occupations shall not include such uses similar to, and including the following:
- (a) Barber- and beauty shops.
  - (b) Commercial stables or kennels<sup>3</sup>.
  - (c) Real estate or insurance office.<sup>4</sup>
  - (d) The sale of retail or wholesale merchandise from the premises, with the exception of online or mail order sales. The storage of merchandise is included in the total area limits of the home occupation subject to B (3) above.
  - (e) The sale of antique or secondhand goods, with the exception of online or mail order sales. The storage of merchandise is included in the total area limits of the home occupation subject to B (3) above.
  - (f) Service or repair of vehicles, and gasoline or diesel powered machinery.
  - (g) Contractor's storage yards. Contractor's storage yard includes the keeping of materials in trade outdoors, such as: lumber, granite, windows and other such bulk materials including but not limited to stone, gravel, mulch, firewood etc. beyond the limits of personal use.
  - (h) Veterinary services.
  - (i) The manufacture of goods using heavy machinery.

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<sup>3</sup> Kennel - Premises used for the harboring and/or care of more than six dogs or other domestic non-farm animals six months old or over.

<sup>4</sup> Real Estate and Insurance Offices which provide public access shall be prohibited. Real Estate Office for administrative purposes only are allowed.

- (j) Medical or dental practice.
- (k) Fortune-telling or palm reading.

C. Home occupation by special permit. The Zoning Board of Appeals may allow by Special Permit, subject to the provisions of § 240-125C herein, a home occupation subject to the specific standards for such conditional uses as required in this section:

(1) Home occupations shall comply with all of the requirements of Subsection B (1) through (11) above, except the Zoning Board of Appeals may allow by Special Permit the following waivers from the requirements of Subsection B above.

- a. The Zoning Board of Appeals may allow an activity to exceed 20% of a dwelling's gross floor area by special permit but at no time shall allow a home occupation to occupy more than 40% of a dwelling's gross floor area.
- b. The Zoning Board of Appeals may allow one non-illuminated wall sign not exceeding two square feet in area by special permit.
- c. The Zoning Board of Appeals may allow more than one non-resident employee to be employed on the premises of a home occupation but at no time shall a home occupation allow for greater than two non-residents of the household to be employed on the premise at the same time.
- d. The Zoning Board of Appeals may allow the parking of one work vehicle capable of being operated under a Massachusetts Class B license related to the home occupation by special permit. All parking generated by the use by special permit shall be accommodated off-street, screened by a physical or natural barrier so not to be seen from a public way.
- e. Home occupations shall not include the uses listed in Subsection B (15) above. However, The Zoning Board of Appeals may allow activities that may not be customary within a dwelling provided that the activity meets the intent as specified herein.
- f. The Zoning Board of Appeals may allow a home occupation use to be located within an accessory structure which may occupy greater than 200 sq. ft. of the accessory structure, on the same lot as the primary residential dwelling unit occupied by the applicant. Such use within an accessory structure may occupy greater than 200 square feet by special permit but at no time shall the use within the accessory structure occupy an area within an accessory structure that is greater than 25 percent of the square footage of the primary residential dwelling unit occupied by the applicant.

(2) Home Occupations requiring a special permit shall require Article IX, Site Plan Review.

(3) Any special permit granted by the Zoning Board of Appeals shall be issued solely to the applicant at his or her residence, and shall not be transferable to another person, or to another location.”

## **SECTION 2**

By amending Article III District Regulations, Section 240-14 RC-1 and RF Residential Districts, by deleting in paragraph (1) of Subsection C. Conditional Uses, the words “Home occupation, subject to all

the provisions of §240-46C, Home occupation by special permit” and inserting the word “Reserved” in their place.

**SPONSOR:** Mark S. Ells, Town Manager, upon recommendation of the Planning Board

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-011**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Elizabeth S. Jenkins, Director, Planning & Development Department  
**DATE:** July 21, 2022  
**SUBJECT:** Amending the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning, Article V Section 46, Home Occupation, and Article III Section 14, RC-1 and RF Residential Districts, Subsection (C) Conditional Uses, to update requirements pertaining to Home Occupations

**BACKGROUND:** This item proposes to amend the Zoning Ordinance to address provisions related to home occupations. The existing zoning ordinance strictly limits home occupations within certain areas of town and allows them only to occur in single-family homes, despite the fact that such uses must be clearly incidental to and subordinate to the use of a premises for residential purposes. Individuals looking to pursue a home occupation, even for rather benign uses, often discover that a rather extensive permitting process requiring relief by the Zoning Board of Appeals is necessary. People are regularly deterred by the necessary process and choose simply not to move forward.

**ANALYSIS:** The use known as a home occupation has evolved over the years. The Town of Barnstable has seen an influx of applications for home occupations since the pandemic as many embrace new opportunities for remote work and entrepreneurship.

The first section of the amendment proposes an opportunity to support home occupations throughout Town and develop a “by-right” process for those uses that create negligible impacts to the neighborhood. The revised ordinance establishes standards for “by-right” home occupations and then allows specific and limited exceptions to those standards with the grant of a Special Permit by the Zoning Board of Appeals.

The second section of the amendment proposes the deletion of the section referencing home occupation allowed by special permit only in RC-1 and RF Residential Districts and allows for the proposed home occupation amendment to be consistent throughout the Town of Barnstable.

On June 13, 2022, the Planning Board made a motion to recommend the proposed Home Occupation Zoning Amendment as presented to be submitted to Town Council. Zoning amendments are processed in accordance with Massachusetts General Law (MGL) Chapter 40A Section 5. Adoption or change of zoning ordinances may be initiated by the submission to the Town Council of a proposed zoning ordinance by different parties, including the Town Council itself or by other parties, including the Planning Board.

**FISCAL IMPACT:** There is no significant fiscal impact associated with this item.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, supports this item.

**STAFF SUPPORT:** Planning & Development Department; Brian Florence, Building Commissioner

**B. NEW BUSINESS (Refer to Public Hearing on 8/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-012  
INTRO: 07/21/2022**

**2023-012 APPROPRIATION ORDER IN THE AMOUNT OF \$62,000 FOR THE PURPOSE OF FUNDING THE LOCAL MATCH REQUIREMENT FOR A FEDERAL GRANT FROM THE NATURAL RESOURCE CONSERVATION SERVICE IN THE AMOUNT OF \$320,000 FOR THE LONG POND FISHWAY PROJECT AS OUTLINED IN THE FISCAL YEAR 2023 - FISCAL YEAR 2027 CAPITAL IMPROVEMENT PLAN AND AUTHORIZATION TO EXPEND SAID GRANT**

**ORDERED:** That the amount of **\$62,000** be appropriated and added to the amount appropriated under Town Council Order 2022-116, resulting in a revised appropriation amount of \$112,000, representing the local match requirement for the acceptance of a grant from the U.S. Department of Agriculture Natural Resource Conservation Service in the amount of \$320,000, and that to meet this appropriation, that \$62,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation and grant for the purpose of funding the Long Pond Fishway Design, Permitting and Construction Project as outlined in the Fiscal Year 2023 – Fiscal Year 2027 Capital Improvement Plan, including the payment of costs incidental or related thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-012**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** July 21, 2022  
**SUBJECT:** Appropriation Order in the amount of **\$62,000** for the purpose of funding the local match requirement for a Federal Grant from the Natural Resource Conservation Service in the amount of **\$320,000** for the Long Pond Fishway Project as outlined in the Fiscal Year 2023 - Fiscal Year 2027 Capital Improvement Plan and authorization to expend said Grant

**BACKGROUND:** This project will fund the design, permitting, and construction required of improvements to the outlet structure of Long Pond (Centerville) to improve the conveyance of river herring into and out of the pond. The project will design, permit, and construct a water control structure to be used in lieu of the existing sand bags to control water levels and flow out of Long Pond. This project will be completed in partnership with the United States Department of Agriculture Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$320,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$112,000.

**ANALYSIS:** Every spring, herring travel up the Centerville River through Long Pond and into Lake Wequaquet. Over the years, thousands of herring are counted entering Long Pond in the spring when groundwater levels are high. The Department of Marine and Environmental Affairs (MEA) has been managing this outlet with sandbags to ensure there is enough water to convey herring from Long Pond to the estuary in the fall. Installation of a water control structure is needed to provide consistent fish passage at this location.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$320,000. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's matching funds for this project will be provided from the Capital Trust Fund which has an available balance of \$14,986,637.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, supports this item.

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

**B. NEW BUSINESS (Refer to Public Hearing 08/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-013  
INTRO: 07/21/2022**

**2023-013 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND S&C REALTY INVESTMENT CO., LLC, FOR 442 MAIN STREET, HYANNIS**

**ORDERED:** That the Town Council hereby authorizes the Town Manager pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable (the "Code"), to enter into and execute a Regulatory Agreement between the Town of Barnstable S&C Realty Investment Co., LLC for the property at 442 Main Street, Hyannis, Massachusetts, and shown on Assessor's Map 309 as Parcel 223, consisting of 35,531 square feet of land and located in the Hyannis Village Business District (HVB) zoning district; the Hyannis Main Street Waterfront Historic District; and the Aquifer Protection (AP) overlay district (hereafter, the "Property"); and further authorizing the redevelopment of the Property by enclosing the existing drive-through; creating a food service establishment/coffee shop restaurant in the back of the building with a new drive-through window; creating a patio area with seating for customers in the alley along the easterly side of the building; maintaining the first floor retail area in the front of the building for commercial tenants; adding five (5) residential apartments on the second floor; reconfiguring the parking lot; adding sidewalk to connect the sidewalk along Winter Street to the sidewalk along North Street; and adding new lighting, landscaping, and signage, all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the "Redevelopment Plans", and such proposed site work, new buildings and improvements all as shown on the Redevelopment Plans are hereafter referred to herein, collectively, as the "Redevelopment"), and granting the requested zoning relief pursuant to and as described in this Regulatory Agreement.

**REGULATORY AGREEMENT**  
**S&C REALTY INVESTMENT CO., LLC**  
442 MAIN STREET  
HYANNIS, MA 02601

This Regulatory Agreement ("Agreement") is entered into by and between the applicant, **S&C Realty Investment Co., LLC** (the "Applicant" and/or "Developer"), a Massachusetts limited liability company with a mailing address of 169 Main Street, Stoneham, MA 02180, and the **Town of Barnstable** (the "Town"), a municipal corporation with a mailing address of 367 Main Street, Hyannis, MA 02601, on this \_\_\_\_ day of \_\_\_\_\_, 2022, pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapter 168 of the Code of the Town of Barnstable.

WITNESSETH:

WHEREAS, this Agreement shall establish the following: permitted uses, densities, signage, and traffic within the proposed Redevelopment (as defined herein), the duration of this Agreement, and any other terms and conditions mutually agreed upon between the Applicant and the Town;



WHEREAS, pursuant to section 168-3 of the Code of the Town of Barnstable, the Town of Barnstable is authorized to enter into a Regulatory Agreement with a qualified applicant within the Downtown Implementation District as 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, and the Town has adopted the enabling regulation contained in §§ 168-1 through 168-10;

WHEREAS, Developer has an agreement to purchase the property located at 442 Main Street, Hyannis, Massachusetts consisting of 35,531± square feet, shown on Town of Barnstable Assessor's Map 309 as Parcel 223, the parcel is referred to herein as the "Property";

WHEREAS, the Property is developed with a two-story building consisting of approximately 11,736 square feet, formerly used as a bank with a two lane drive-through;

WHEREAS, the Property borders Main Street to the south, Winter Street to the west, and North Street to the north, and has access to Winter Street and North Street;

WHEREAS, the Property consists of approximately 35,531 square feet of land and is located in the Hyannis Village Business District (HVB) zoning district; the Hyannis Main Street Waterfront Historic District; and the Aquifer Protection (AP) overlay district.

WHEREAS, Developer proposes to: redevelop the property by enclosing the existing drive-through; creating a food service establishment/coffee shop restaurant in the back of the building with a new drive-through window; creating a patio area with seating for customers in the alley along the easterly side of the building; maintaining the first floor retail area in the front of the building for commercial tenants; adding five (5) residential apartments on the second floor; reconfigure the parking lot; adding sidewalk to connect the sidewalk along Winter Street to the sidewalk along North Street; and adding new lighting, landscaping, and signage, all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the "Redevelopment Plans", and such proposed site work, new buildings and improvements all as shown on the Redevelopment Plans are hereafter referred to herein, collectively, as the "Redevelopment");

WHEREAS, the Redevelopment is consistent with the Town of Barnstable's Design and Infrastructure Plan in that the proposed project provides a sidewalk which connects the existing sidewalks onto Winter Street and North Street; improves curb cuts along Winter Street and North Street; and provides access from Main Street to the North Street parking lot; the scale, placement, materials, design, and details of the re-developed building comply with the Design and Infrastructure Plan guidelines; and the project provides the infrastructure necessary to support the project.

WHEREAS, the Town and Applicant desire to set forth in this Agreement their respective understandings and agreements with regard to the Redevelopment;

WHEREAS, the Applicant is willing to commit to the reuse of the Property in accordance with this Agreement and desires to have a reasonable amount of flexibility to carry out the reuse and therefore considers this Agreement to be in its best interests;

WHEREAS, this Agreement shall vest land use development rights in the Property for the duration of the Agreement, and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health, safety or welfare;

WHEREAS, the Redevelopment will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Property is located in the Downtown Hyannis Growth Incentive Zone (GIZ) as originally approved by the Cape Cod Commission by decision dated April 6, 2006 and re-designated by decision dated April 19, 2018, and as authorized by Barnstable County Ordinance 2005-13, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11, and 18-11, Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS, the Redevelopment is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this Redevelopment may proceed;

WHEREAS, the Redevelopment has undergone formal site plan review and the Town of Barnstable Site Plan Review Committee determined the Redevelopment Plans approvable by decision dated May 10, 2021, and Developer shall submit final plans consistent with the terms and conditions contained in this Agreement to the Building Commissioner to determine whether any modifications to the Site Plan Review approval are necessary prior to any building permits being issued for the Redevelopment;

WHEREAS, the Redevelopment has undergone formal review by the Hyannis Main Street Waterfront Historic District Committee on September 15, 2021 and October 6, 2021 and received a Certificate of Appropriateness for the proposed exterior renovations and addition to the building and a Certificate of Appropriateness for business signage;

WHEREAS, the Redevelopment proposal has undergone a public hearing before the Planning Board opened on May 9, 2022 and closed on May 9, 2022 on the Agreement application and received an affirmative majority vote from the Planning Board on May 9, 2022;

WHEREAS, the Redevelopment proposal has undergone a public hearing opened on \_\_\_\_\_ and closed on \_\_\_\_\_ on the Agreement application before the Barnstable Town Council and has received a two-thirds vote approving the Agreement on \_\_\_\_\_, 2022;

WHEREAS, this Agreement authorizes only the uses, intensity of uses, dimensions and signage specified herein. Any substantial deviation from the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Chapter 168-10 of the Code;

NOW, THEREFORE, in consideration of the agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereby acknowledge to each other, the Applicant and Town do enter into this Agreement, and hereby agree and covenant as follows:

1. Description of Existing and Proposed Conditions:

A. Existing Conditions

The Property is developed as follows:

- A two-story building consisting of approximately 11,376 square feet, formerly used as a bank;
- The Property contains two curb-cuts, one off of North Street and one onto Winter Street;
- No landscaping;
- A two-lane drive-through; and
- A parking lot with 35 spaces.

## B. Proposed Redevelopment

The proposed Redevelopment involves development as follows and as shown on the Redevelopment Plans listed below:

- Adding a 2,524 square foot two-story addition to the North Elevation of the building;
- The second floor will contain two (2) two-bedroom apartments and three (3) one-bedroom apartments;
- The new addition will be brick matching as nearly as possible the existing brick (“Old Port”);
- Install new Anderson, white vinyl windows to match as nearly as possible the existing windows in appearance;
- Replace existing wood shutters with vinyl shutters to match as nearly as possible the existing appearance;
- The existing entrance way off of North Street and exit onto Winter Street will be reconfigured;
- Significant landscaping and vegetation improvements;
- Architectural and site design in accordance with the Design and Infrastructure Plans;
- Construction of a sidewalk connecting the existing sidewalks on Winter Street and North Street;
- Drive-through menu, directional signage, and a free-standing monument based sign (with brick base to match existing building brick) located next to the entrance along North Street;
- A total of 33 paved parking spaces.

2. The Developer agrees to construct the Redevelopment on the Property in accordance with the Redevelopment Plans which are submitted herewith and which are entitled as follows:

- a. “Proposed First Floor Plan Date: 10/06/21, Job Location Hyannis, MA 442 Main St. Hyannis, MA” drawn by James D. Smith Architects, Sheet A-1.0;
- b. “Proposed Second Floor Plan Date: 10/06/21, Job Location Hyannis, MA 442 Main St.” drawn by James D. Smith Architects, Sheet A-2.0;  
“Proposed Elevations; Signage Information Plan Date: 10/06/2021, Job Location Hyannis, MA 442 Main St.” drawn by James D. Smith Architects, Sheet A-3.0;
- c. “Existing Conditions Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C1.0;
- d. “Site Layout Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C2.0;
- e. “Grading, Drainage & Utility Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C3.0;
- f. “Details Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C4.0 and C4.1; and
- g. “General Notes & Legend Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C5.0.

The Redevelopment has undergone formal site plan review and the Town of Barnstable Site Plan Review Committee determined the Redevelopment Plans approvable by decision dated May 10, 2021, and Developer shall submit final plans consistent with the terms and conditions contained in this Agreement to the Building Commissioner to determine whether any modifications to the Site Plan Review approval are necessary prior to any building permits being issued for the Redevelopment.

3. The Redevelopment provides, without limitation, the following multi-modal transportation, economic, place-making, site design, traffic safety, and community benefits:

- a. Redevelopment and significantly improved aesthetics at a historic, Main Street, Hyannis property.
- b. Substantially increased landscaping.
- c. Construction of a sidewalk along the Property's frontage along Winter Street and North Street connecting the existing sidewalks in accordance with the Department of Public Works specifications and review and approval by the Town Engineer.
- d. Safe and well marked interior pedestrian connections within the Property.
- e. Exterior site lighting improvements, including use of LED lights.
- f. Addition of five (5) new apartments on Main Street, Hyannis.
- g. Improved access to and from Main Street to the North Street parking lots.

4. Outdoor storage is prohibited including storage in trailers, containers, trucks or other storage units. This prohibition shall be prominently noted on the final approved site plans.

5. The Developer currently owns and operates a coffee shop with drive through at the address 149 North Street Map 309 Parcel 226-001. The Developer agrees to abandon the drive-through use at 149 North Street within one year of receipt of an occupancy permit for the coffee shop with drive-through at the Property.

6. Prior to an occupancy permit granted, the Developer shall grant a public access easement from the North street parking lot to Main Street between the Property and 438 Main Street. Said easement shall be reviewed as to form by the Town Attorney and shall be granted in perpetuity and recorded at the Barnstable Registry of Deeds by the Developer.

7. This Agreement shall run with the land, and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant for as long as the Property is used in accordance with this agreement and unless and until it is redeveloped further into some other use.

8. Prior to the issuance of the first building permit, the Developer shall provide a letter of credit or cash escrow in an amount equivalent to 150% of the total scope of the landscape plan proposed. Said letter of credit or cash to be expended on the replacement of landscape materials if such replacement becomes necessary. The letter of credit or cash escrow shall be approved by the Planning and Development Director, said letter of credit or cash escrow to be expended to replace landscape materials if such replacement becomes necessary because of the failure of Developer or its tenants to do so. An "acceptable" letter of credit is a letter of credit issued by a bank incorporated in the Commonwealth of Massachusetts or currently licensed to do business in the Commonwealth, and having at the time of issue of the letter of credit a Standard & Poor ("S&P") Rating of "BBB+" or better and/or a Bankrate.com rating of 4-star or better. Further, an acceptable letter of credit shall be approved as to issuer by the Treasurer of the Town of Barnstable and as to form by the Office of the Town Attorney. Any unexpended portion of said letter of credit or cash escrow shall be released by the Planning Board to the Developer or its successor(s), as directed by the Developer, after three years from the date of the landscape installation, such date to be determined by the Building Commissioner, upon the request of the Developer.

9. Developer is responsible for obtaining all applicable permits and licenses.

10. No Certificate of Occupancy shall be issued until all conditions of this Agreement have been met and Design and Infrastructure Plan approval has been issued.

This Agreement is transferable to a person or entity other than the Applicant (hereafter, the "Transferee") with prior written notice to the Town Manager and contingent upon the Applicant being in compliance with all the requirements of this Agreement. However, no such notice to the Town shall be effective unless it includes a written acknowledgement by the Transferee that they

have read this Regulatory Agreement, and any amendments thereto, and they agree to be bound by the terms and conditions set forth herein, in which event after such assignment the transferor shall be relieved of liability from and after the date of transfer. Upon receipt of such written notice of transfer, and subject to a determination by the Town Manager that that the Applicant is in compliance with all the then applicable requirements of the Agreement, the Transferee and the Town Manager shall execute a minor amendment of this Regulatory Agreement acknowledging the Transferee is a signatory of this Regulatory Agreement, agreeing to be bound by the terms and conditions set forth herein, and any subsequent amendments hereto, and assuming liability as of the date of transfer. No Planning Board or Town Council approval is required for such a minor amendment acknowledging such a transfer in ownership.

11. The development rights granted hereunder shall be exercised and development permits needed to commence construction may be obtained hereunder for a period of five (5) years from the effective date of this Agreement, provided, however, that prior to the expiration of said five year period, the Developer may request an extension to obtain development permits necessary to commence construction, said extension shall not exceed two years. Upon receipt of necessary development permits, construction shall proceed continuously and expeditiously, but in no case shall construction exceed two years from receipt of necessary development permits. In the event that this Agreement and/or any necessary development permits for the Project are appealed, the timeframes set forth in this section shall be tolled for the length of any such appeals.

12. Construction and demolition debris from the Project shall be removed and reused or recycled to the maximum extent possible.

13. No uses shall use, store, generate, treat or dispose of hazardous waste or hazardous materials and shall not generate hazardous waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.353, except in compliance with all applicable laws.

14. To the extent that the Redevelopment Plans referenced in this Agreement do not depict all the findings and conditions set forth in this Agreement, revised plans and/or notations shall be provided in the final site plan. The Redevelopment shall remain in substantial conformance with the Site Plan Review approval dated May 10, 2021 and all conditions thereof and any modifications thereto as reflected in the final approved site plan.

15. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.

16. The term of this Agreement shall be five (5) years from the effective date of the Agreement (the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term or this Agreement shall be null and void, subject to the potential tolling due to litigation referenced in paragraph 12. Once the development rights authorized herein have been timely exercised, all terms and conditions of this Agreement shall remain in effect until the Property is no longer used in accordance with the Redevelopment Plans.

17. The Town hereby grants the following waivers from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:

- a. Section 240-24. 1.11(A)(3), Site Development Standard prohibits drive-through windows in the Hyannis Village Zoning Districts.
  - i. Redevelopment proposes one drive through window for restaurant use.

b. Section 240-24.1.3(D) (2) (a) and Section 240-56, Schedule of Parking Spaces.  
ii. Redevelopment proposes 33 parking spaces and Ordinance requires 34 parking spaces.

c. Sections 240-24.1.11(A) (6); 240-71; and 240-65 Signage.  
iii. Section 240-71A limits maximum height of all signs on buildings to 12 feet. The project proposes two signs on the South elevation of the building (“Tenant Sign” and “Dunkin” sign) and one sign on the North elevation (“DD” sign) which exceed the height limitation.

iv. Section 240-71 B limits the maximum square footage of all signs to the lesser of 50 square feet or 10% of the building face. The project proposes 71.84 square feet of signage.

v. Section 240-71C provides that the maximum size of any freestanding sign shall be 12 square feet. The project proposes two freestanding signs which exceed 12 square feet; the Monument Sign (14.27 sq. ft.) and the Menu Board (24.16 sq. ft.).

vi. Section 240-65A limits each business to two signs. The project proposes seven (7) signs for the Dunkin store as follows:

Monument Sign 14.27 sq. ft.  
South Elevation 8.69 sq. ft. (“Dunkin”)  
South Elevation 3.14 sq. ft. (“DD”)  
East Elevation 2.00 sq. ft. (“DD”)  
East Elevation 2.00 sq. ft. (“DD”)  
North Elevation 17.58 sq. ft. (“DD”)  
Menu Board 24.16 sq. ft.

The project also proposes one additional sign for a Tenant (South Elevation 8.69 sq. ft.). Further Tenant signage may be requested at a future date.

vii. Section 240-65D allows one freestanding sign per business, which may not exceed half the allowable size as permitted. The project proposes two freestanding signs for the Dunkin restaurant (Monument Sign on North Street and Menu Board).

viii. Section 240-65J limits the size of a menu sign or board to three square feet. The project proposes a menu sign containing 24.16 square feet.

ix. Section 240-75A allows for directional signs provided such signs do not exceed one square foot in area or be more than three feet high. The project proposes five directional signs each containing 2.75 square feet, and each being 4 feet 10 inches tall.

x. Section 240-75 B allows a total of four directional signs. The project proposes five directional signs.

18. The failure of this agreement to address a particular permit, condition, term, or restrictions shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;

19. This Regulatory Agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring the qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and

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

20. The failure of this Agreement to address a particular permit, condition, term, or restrictions shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;

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IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the day and year first above written.

Applicant: Town of Barnstable:

Signature: Signature:

Print: Print:

Date: Date:

**EXHIBIT A  
REDEVELOPMENT PLANS**

**SPONSOR:** Tracy Shaughnessy, Councilor Precinct 9

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-013  
INTRO: 07/21/2022

## SUMMARY

**TO:** Town Council  
**FROM:** S&C Realty Investment Co, LLC  
**THROUGH:** Elizabeth S. Jenkins, AICP, Planning & Development Director  
**DATE:** June 19, 2022  
**SUBJECT:** Authorizing the Town Manager to execute a Regulatory Agreement between the Town of Barnstable and S&C Realty Investment Co., LLC, for 442 Main Street, Hyannis

**BACKGROUND:** Pursuant to Chapter 168 of the Code of the Town of Barnstable, the Town may enter into Regulatory Agreements in areas delineated on the Regulatory Agreements District Map. The subject property is located within the area delineated for Regulatory Agreements. Pursuant to Chapter 168 Section 5, 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.

S&C Realty Investment Co., LLC seeks to enter in to Regulatory Agreement 442 Main Street with the Town of Barnstable. The Applicant proposes to redevelop the property at 442 Main Street. The current site fronts on Main Street and extends to North Street. The Site is improved with a 20,512 sq. ft. two-story building sited along Main Street with a rear parking area including a two-lane drive through that was formerly used for a bank.

The proposed agreement would allow for the repurpose of the existing structure to accommodate a retail use and a coffee shop with a drive through on the first level and five residential apartments on the second floor. The Applicant proposes to reduce the existing curb cuts on Winter and North Streets and install sidewalks where there are existing gaps on both Winter Street and North Street. Access for vehicles would be on North Street only. The Applicant also proposes to grant a pedestrian access easement between the subject property and 438 Main Street for pedestrian access from Main Street to the North Street parking lot.

On March 25, 2022, S&C Realty Investment Co., LLC submitted an application to the Planning Board for a Regulatory Agreement pursuant to Chapter 168 of the Code of the Town of Barnstable.

The Planning Board held a duly posted and noticed public hearing on the proposal on May 9, 2022. At the conclusion of the hearing, the Planning Board unanimously voted to recommend Town Council to execute the Regulatory Agreement consistent with the final agreement reviewed by the Board.

**RATIONALE:** Grant of the Regulatory Agreement to S&C Realty Investment Co., LLC allowing the specified zoning relief, and upon the terms and conditions, all as recommended by the Planning Board, will facilitate redevelopment of the Property and yield the following benefits to the Town:

- a. Redevelopment and significantly improved aesthetics at a historic Main Street, Hyannis property.



- b. Substantially increased landscaping.
- c. Construction of a sidewalk along the property's frontage along Winter Street and North Street connecting the existing sidewalks in accordance with the Department of Public Works specifications and review and approval by the Town Engineer.
- d. Safe and well marked interior pedestrian connections within the Property.
- e. Exterior site lighting improvements, including use of LED lights.
- f. Addition of five (5) new apartments on Main Street, Hyannis.
- g. Improved access to and from Main Street to the North Street parking lots.

**FINANCIAL IMPACT:** Approval of the proposed Regulatory Agreement will have no significant Fiscal impact.

**STAFF ASSISTANCE:** Karen Nober, Town Attorney; Elizabeth Jenkins, Planning & Development Director; Kate Maldonado, Assistant Director; Jim Kupfer, Senior Planner

**B. NEW BUSINESS (Refer to a Public Hearing 08/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-014  
INTRO: 07/21/2022**

**2023-014 APPROPRIATION ORDER IN THE AMOUNT OF \$150,000 FOR THE PURPOSE OF FUNDING THE LOCAL MATCH REQUIREMENT FOR A FEDERAL GRANT FROM THE NATURAL RESOURCES CONSERVATION SERVICE IN THE AMOUNT OF \$1,529,333 FOR THE UPPER MARSTONS MILLS FISHWAY PROJECT AND AUTHORIZATION TO EXPEND SAID GRANT**

**ORDERED:** That the amount of **\$150,000** be appropriated and added to the amount appropriated under Town Council Order 2014-108, resulting in a revised appropriation amount of \$543,500, representing the local match requirement for the acceptance of a grant from the U.S. Department of Agriculture Natural Resources Conservation Service in the amount of \$1,529,333, and that to meet this appropriation, that \$150,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation and grant for the purpose of funding the Upper Marstons Mills Fishway Design, Permitting and Construction Project, including the payment of costs incidental or related thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-014  
INTRO: 07/21/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** July 21, 2022  
**SUBJECT:** Appropriation Order for **\$150,000** for the purpose of funding the local match requirement and the authorization to expend a Federal Grant from the Natural Resource Conservation Service in the amount of \$1,529,000 for the Upper Marstons Mills Fishway Project

**BACKGROUND:** This project will fund the design, permitting, and construction required of improvements to replace a 1,100-foot failing timber/earthen fish bypass channel with a new fishway to restore and improve fish passage to Middle Pond. The project will include stream channel work to restore and maintain flow from Middle Pond and a new screen structure to direct fish to the entrance of the new channel. The project will complete design, obtain permits, and construct structures necessary to convey fish into Middle Pond. This project will be completed in partnership with the United States Department of Agriculture Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$1,529,333. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$447,206. The town's revised appropriation amount of \$543,500 includes additional funding for consulting services on the project if needed.

**ANALYSIS:** The timber fish ladder and fish diversion structure to Middle Pond is in disrepair, requiring frequent maintenance. As the Town's largest fish run, conveying 10,000 to 25,000 fish to Middle Pond each year, the Town Marine and Environmental Affairs (MEA) staff has been conducting annual repairs to ensure fish passage. The Town and NRCS have a current agreement to design and construct improvements to the existing fish ladder. However, due to increased construction costs and changes in ownership of the adjacent bogs, the NRCS suggested an alternate route was feasible for fish passage. The Town staff is currently vetting this alternate route. In the meantime, NRCS has drafted a new agreement that will provide the additional funds necessary to complete this project for either the existing ladder or alternate route.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$1,529,333. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's match funds for this project will be provided from the Capital Trust Fund which has an available balance of \$14,986,637.

**TOWN MANAGER RECOMMENDATION:** The Town Manager recommends approval of this appropriation order.

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

**B. NEW BUSINESS (May be acted upon) (Roll Call 2/3 Vote of the Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-015  
INTRO: 07/21/2022**

**2023-015 ORDER TO PETITION THE GENERAL COURT OF THE COMMONWEALTH TO ENACT SPECIAL LEGISLATION APPROVING THE GRANT OF EASEMENT TO PARK CITY WIND LLC IN CERTAIN PARCELS OF LAND, NAMELY THAT PORTION OF CRAIGVILLE BEACH KNOWN AS ASSESSORS' PARCEL 206-013 AND THAT PORTION OF 20 SOUTH MAIN STREET KNOWN AS ASSESSORS' PARCEL 228-138, SUPERSEDING TOWN COUNCIL ORDER 2022-191**

**ORDERED:** That the Town Council hereby directs the Town Manager to submit a petition to the General Court of the Commonwealth for a special act approving the grant of an easement to Park City Wind LLC, as follows; provided that this Order shall supersede and replace Order No. 2022-191 approved by the Town Council on June 2, 2022:

**“AN ACT AUTHORIZING THE TOWN OF BARNSTABLE TO GRANT AN EASEMENT TO PARK CITY WIND LLC**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** Notwithstanding any general or special law to the contrary, the town council of the city known as the town of Barnstable may grant to Park City Wind LLC, and its successors and assigns, permanent easements in parcels of land, namely a portion of Craigville Beach known as town of Barnstable assessors' parcel 206-013 and a portion of 20 South Main Street known as town of Barnstable assessors' parcel 228-138, for the purpose of constructing, installing, inspecting, operating, maintaining, repairing and replacing, subsurface high voltage electric power transmission lines, along with associated subsurface appurtenances including but not limited to subsurface telecommunications lines, conduits, duct banks, bays and vaults, and together with surface appurtenances for access, in connection with the wind generating facility to be developed by Park City Wind LLC in federal waters south of Martha's Vineyard.

**SECTION 2.** Park City Wind LLC shall provide mitigation for the granting of such an easement pursuant to the host community agreement entered into between the city known as the town of Barnstable and Park City Wind LLC and dated May 6, 2022; provided, that such mitigation shall consist of a \$100,000 payment to the town of Barnstable to be used for the benefit of and improvements to Craigville Beach or to purchase or improve other Article 97 protected land located in the city known as the town of Barnstable, as determined by the city known as the town of Barnstable.

**SECTION 3.** The town manager of the city known as the town of Barnstable may execute and record any instruments necessary on behalf of the city known as the town of Barnstable to effectuate the transfer described in section 1 upon the passage of this act.

**SECTION 4.** This act shall take effect upon its passage.”

**SPONSOR:** Mark S. Ells, Town Manager

DATE

ACTION TAKEN

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-015**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Senior Attorney  
**DATE:** July 21, 2022  
**SUBJECT:** Order to Petition the General Court of the Commonwealth to Enact Special Legislation Approving the Grant of Easement to Park City Wind LLC in Certain Parcels of Land, Namely that Portion of Craigville Beach Known as Assessors' Parcel 206-013 and that Portion of 20 South Main Street Known as Assessors' Parcel 228-138, Superseding Town Council Order 2022-191

**RATIONALE:** In Order 2022-191, the Council authorized the Town Manager to submit a petition to the General Court to authorize the Town to grant easements to Park City Wind LLC ("PCW") at Craigville Beach and Aaron Crosby Park. Legislative approval is needed because the easements are considered to be a disposition of land protected by Article 97 of the Amendments to the state Constitution. The petition included a requirement that PCW pay \$100,000 to the Town as mitigation. Because the easements involve Article 97 land, approval of the proposed legislation by the state's Executive Office of Energy and Environmental Affairs ("EEA") is vital to the successful passage of the legislation. EEA has an Article 97 Land Disposition Policy intended to protect and preserve Article 97 land, which requires, among other things, a "no net loss" of Article 97 land. Essentially this means that to comply with EEA's Policy, legislation authorizing a disposition of Article 97 land must include a requirement that such land is replaced by real estate of equal or greater value. To ensure the Town's compliance with EEA's Policy, EEA staff counsel agreed with the Town's suggestion to amend the proposed legislation to require that the PCW mitigation monies either be used for improvements to Craigville Beach or for the purchase or improvement of other Article 97-protected property in the Town. Substituting this Order in place of Order 2022-191 will accomplish this objective and assure EEA's support of the legislation.

In addition, the language of the petition approved by the Council previously in Order 2022-191 provided that the mitigation for the granting of the easement would be provided by PCW pursuant to the Host Community Agreement between the Town and PCW (HCA 2). However, the language of the petition, as amended, no longer matches the contract language in HCA 2 regarding the use of PCW mitigation payments, as the new petition language requires the use of such monies to purchase or improve Article 97 land. Therefore, HCA 2 should be amended to ensure that its language is consistent with the language of the legislation. The proposed amendment to the HCA would accomplish this end.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Senior Attorney

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 08/18/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-016  
INTRO: 07/21/2022**

**2023-016 ORDER TO APPROVE AN AMENDMENT TO THE HOST COMMUNITY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND PARK CITY WIND LLC (“HCA 2”) AMENDING THE SPECIAL MITIGATION PROVISIONS**

**ORDERED:** To authorize and direct the Town Manager to execute an amendment to the Host Community Agreement between the Town of Barnstable and Park City Wind LLC, dated May 6, 2022 (“HCA 2”), deleting in the second paragraph of Section 9(d) of the Agreement the words “for the purpose of making improvements to public facilities on the route selected by PCW for cable installation or to an area within reasonable proximity of the cable route” and inserting the following words in their place: “to be used for the benefit of and improvements to Craigville Beach or to purchase or improve other Article 97 protected land located in the Town of Barnstable, as determined by the Town of Barnstable.”

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-017  
INTRO: 07/21/2022**

**2023-017 RESOLVE AUTHORIZING THE TOWN MANAGER TO COMMENCE NEGOTIATIONS WITH COMMONWEALTH WIND LLC FOR A NEW HOST COMMUNITY AGREEMENT**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to commence negotiations with Commonwealth Wind LLC, a wholly owned subsidiary of Avangrid Renewables LLC, for a new Host Community Agreement (“HCA 3”) between the Town of Barnstable and Commonwealth Wind LLC, which agreement is designed to mitigate the impacts of the Commonwealth Wind Project selected by the Commonwealth of Massachusetts and Electric Distribution Companies within Massachusetts under M.G.L. c. 83C on December 17, 2021, as described in section S-4.1.6 of the June update of the federal Construction and Operation Plan filed at the Bureau of Ocean Energy Management, which project includes cable landings in Osterville and underground cables connecting the landfall with a substation and with Eversource’s existing West Barnstable substation.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote



# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-017**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Senior Attorney  
**DATE:** July 21, 2022  
**SUBJECT:** Resolve authorizing the Town Manager to commence negotiations with Commonwealth Wind LLC for a new Host Community Agreement

**RATIONALE:** The third phase of offshore wind development to be called “Commonwealth Wind” is currently being permitted by the U.S. Department of the Interior. As with Park City Wind, which is owned by Avangrid Renewables LLC, Commonwealth Wind is also wholly owned by Avangrid Renewables LLC. Commonwealth Wind proposes to bring its cables ashore in Osterville and route them underground to the Oak Street Eversource substation in order to connect to the regional electric grid. The Town Manager seeks the Council’s authorization to commence negotiations with Commonwealth Wind regarding the impacts of the project and the resulting mitigation measures that will be integral to a successful project within the Town.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Senior Attorney

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-018  
INTRO: 07/21/2022**

**2023-018 AUTHORIZATION TO EXPEND A SHARED STREETS AND SPACES GRANT FROM THE MASSACHUSETTS DEPARTMENT OF TRANSPORTATION IN THE AMOUNT OF \$ \$419,739.55 FOR THE IMPLEMENTATION OF A PLACEMAKING AND TRANSIT PARKLET PROJECT AND TRAFFIC CALMING AND PEDESTRIAN IMPROVEMENTS ON HYANNIS MAIN STREET**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Shared Streets and Spaces Grant in the amount of **\$419,739.55** from the Massachusetts Department of Transportation for the purpose of public infrastructure and transit improvements to sidewalks, curbs, streets, transit stops, and other public spaces that are quick to implement and support public health, safe mobility, and strengthened commerce. Funds will be used to support the installation of combined public parklets/trolley stops with adjacent bike racks, as well as improvements to pedestrian safety to provide traffic calming measures and safe crossings for pedestrians on Hyannis Main Street.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-018**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Elizabeth S. Jenkins, AICP, Director, Department of Planning & Development  
**DATE:** July 21, 2022  
**SUBJECT:** Authorization to expend a Shared Streets and Spaces Grant from The Massachusetts Department of Transportation in the amount of \$ **\$419,739.55** for the implementation of a Placemaking and Transit Parklet Project and traffic calming and pedestrian improvements on Hyannis Main Street

**SUMMARY:** The Town of Barnstable has been awarded a \$419,739.55 grant through the Commonwealth of Massachusetts, Department of Transportation Shared Streets and Spaces Grant Program.

The Town of Barnstable has been successful in prior years with the Shared Streets and Spaces Grant Program, the purpose of which is to provide funding to municipalities and public transit authorities to quickly implement improvements to plazas, sidewalks, curbs, streets, bus stops, parking areas, and other public spaces in support of public health, safe mobility, and strengthened commerce, as communities address ongoing challenges from COVID and seek to improve their transportation infrastructure.

Grant funds will support the implementation of a placemaking and transit project that is designed to enhance Hyannis Main Street. The overall project goals are:

- Increasing transit ridership and accessibility by improving transit visibility and accessibility for the seasonal Cape Cod Regional Transit Authority (CCRTA) trolley;
- Placemaking to support our local businesses and to enhance other economic development efforts in Downtown Hyannis;
- Enhancing civic space on Main Street, by providing outdoor seating, planters, shaded coverage, and places for people to gather and enjoy Main Street;
- Traffic calming which will enhance the pedestrian environment and increase safety.

The project proposes the installation of up to six public parklets that were designed to also serve as covered trolley stops with adjacent bike racks. The trolley stop parklets are 8 feet wide and 40 feet long, and take up two parallel parking spaces each. The addition of the trolley stop parklets along Main Street will provide attractive gathering space for tourists, visitors, and residents, and at the same time improve transit accessibility by creating a dedicated space for the CCRTA trolley to provide safe and accessible service along the route.

The project also proposes improvements to pedestrian safety, consisting of enhancing pedestrian crossings, pedestrian signalization beacons, and adding rubberized speed tables to provide traffic calming measures and safe crossings for transit riders and all pedestrians.

All trolley stop parklets and rubberized speed tables are anticipated to be deployed annually, from approximately May to October during the seasonal peak, and while the CCRTA runs the trolley.

The Planning Department, in coordination with a consultant team, worked closely with the CCRTA to analyze the best locations for the trolley stop parklets. The proposed locations are based on a ridership heat map that shows the areas with the highest frequency of passenger pick-ups for calendar year 2019, as well as qualitative feedback from trolley drivers and the CCRTA operations team. Final proposed locations were tweaked in the field with the Department of Public Works to assure access to drainage structures, manholes, and fire hydrants, and provide acceptable distance from intersections, and to ensure that business entrances would not be visually blocked by the parklets.

This project went through Informal Site Plan Review on March 15<sup>th</sup>, where the completed grant application was vetted in detail by the DPW, Police, Fire, and other town departments.

Next steps for this project include more detailed outreach in coordination with the Hyannis Main Street Business Improvement District to the downtown business community, particularly those businesses that are in close vicinity of the locations proposed for the parklets, speed humps, and other safety improvements.

**FISCAL IMPACT:** No funding match is required for this grant award. No general funds will be expended on this program.

**STAFF ASSISTANCE:** Gloria McPherson, Planning & Economic Development Coordinator

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-019  
INTRO: 07/21/2022**

**2023-019 RESOLVE ACCEPTING THE PROVISIONS OF M.G.L. CHAPTER 59, SECTION 5, CLAUSE TWENTY-SECOND H TO PROVIDE A PROPERTY TAX EXEMPTION UP TO THE FULL AMOUNT OF THE TAXABLE VALUATION FOR SO-CALLED GOLD STAR FAMILIES**

**RESOLVED:** That the Town Council does hereby accept the provisions of Massachusetts General Laws Chapter 59, § 5, Clause Twenty-second H, which provides a property tax exemption up to the full amount of the taxable valuation for certain surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans as described therein.

**SPONSOR:** Kristine Clark, Town Councilor, Precinct 11

DATE	ACTION TAKEN
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_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-019**  
**INTRO: 07/21/2022**

## SUMMARY

**TO:** Town Council  
**THROUGH:** Mark S. Ells, Town Manager  
**FROM:** Kristine Clark, Town Councilor Precinct 11  
**DATE:** July 21, 2022  
**SUBJECT:** Resolve accepting the provisions of M.G.L. Chapter 59, Section 5, Clause Twenty-Second H to provide a property tax exemption up to the full amount of the taxable valuation for so-called Gold Star Families

**RATIONALE:** Acceptance of this clause will provide Gold Star Families a property tax exemption up to the full amount of the taxable valuation of real property of the surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans who: (i) during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs or a branch of the armed forces that was a proximate cause of their death; or (ii) are missing in action with a presumptive finding of death as a result of active duty service as members of the armed forces of the United States; provided, however, that the real estate shall be occupied by the surviving parents or guardians as the surviving parents' or guardians' domicile; and provided further, that the surviving parents or guardians shall have been domiciled in the commonwealth for the 5 consecutive years immediately before the date of filing for an exemption pursuant to this clause or the soldier or sailor, member of the National Guard or veteran was domiciled in the commonwealth for not less than 6 months before entering service.

Surviving parents or guardians eligible for an exemption pursuant to this clause shall be eligible regardless of when the soldier, sailor, member of the National Guard or veteran died or became missing in action with a presumptive finding of death; provided, however, that the exemption shall only apply to tax years beginning on or after January 1, 2019. Such exemption shall be available until such time as the surviving parents or guardians are deceased. No real estate shall be so exempt which has been conveyed to the surviving parents or guardians to evade taxation. This clause shall take effect upon its acceptance by or town.

**FISCAL IMPACT:** The amount of property taxes exempted under this law will be provided from the annual amount the town sets aside for abatements and exemptions when setting the annual tax rate.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, supports this item.

**STAFF ASSISTANCE:** Mark A. Milne, CPA, Finance Director; Karen Nober, Town Attorney;