



TOWN COUNCIL MEETING September 3, 2015



3, **A** quorum being duly present, Council President Jessica Rapp Grasseti called the September 2015, Town Council meeting to order at 7:00 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

An announcement was made by President Rapp Grasseti regarding the meeting being televised live and questioning if anyone was actively taping the session to please make their presence known. This session is recorded and broadcast on Channel 18.

PRESENT: Ann Canedy, Frederick Chirigotis, James Crocker, Jr., William Crocker, Jr., Jennifer Cullum, Sara Cushing, Debra Dagwan, Jessica Rapp Grasseti, Paul Hebert, John Norman, Eric Steinhilber, James Tinsley, Jr., Philip Wallace.

The Pledge of Allegiance was led by President Rapp Grasseti, followed by a Moment of Silence.

PUBLIC COMMENT:

Brian Mannal discussed the spice ban and the single use plastic bag ban. He urged Council to accept these bans.

Larry Gordon spoke about his support for the single use plastic bag ban. He hoped Council would support the ban.

Nancy Ayotte supported the ban on single use plastic bags and mentioned the lack of maintenance and upkeep of the Craigsville Beach restrooms.

Charlie Hetzel spoke about plastic bags littering the beach area asked Council to adopt the ban.

Lorraine Dunnett thanked Council for helping keep the adult day care program open. She mentioned this benefited herself and many other families.

Steve Scannell discussed the BayBridge Clubhouse and how it has helped the homeless community and many people dealing with mental issues. He felt a free standing non-agency could run the BayBridge Clubhouse.

Deb Nugnes asked Council for help with regards to property maintenance issues on her street. She mentioned noise, general disrepair and debris issues. (Exhibit A)

Alan Baker spoke about the upcoming September 13th Marstons Mills Village Day Dinner.

Sue Phelan discussed the health side effects of pesticide spraying in the right-of-ways by Ever Source. She added spraying would commence although Ever Source does not own the right-of-ways.

Oliver Cipollini suggested the Town learn to recycle first before adopting the plastic bag ban. He

mentioned nickel deposits were being recycled but nothing else.

Leslie Bondaryk spoke about the reduction in the number of patrons who frequent her store. She felt the Town shelter was the major negative factor.

COUNCIL RESPONSE TO PUBLIC COMMENT:

Councilor Hebert discussed recycling and the possible cost increases in running the transfer station.

Councilor Cullum felt the homeless community and people living with mental issues needed multi-faceted solutions. She discussed the Carousel on Main Street; their issues with homeless individuals and staff safety.

TOWN MANAGER COMMUNICATIONS:

- Craigville Beach bathhouse
- Community Compact
- Agenda Setting Meeting
 - David Houghton discussed the pending litigation regarding the land court title for Cross Street.
- Coastal Resiliency Grants
- Homeless Discussion
 - Chief MacDonald mentioned a positive meeting regarding the homeless situation. He spoke about the need to move the homeless shelter out of the Hyannis downtown business area.
- Osterville Library
- FAA funding for airport safety improvements

COMMUNICATIONS – from elected officials, boards, committees, staff, commission reports, correspondence and announcements:

September 13th Marstons Mills Village Day Dinner. West Barnstable Fire District September 12th lobster dinner. Barnstable Land Trust hosting Yellow Dog event at Craigville Beach on September 12th. Village Clean up September 12th.

October 4th - Ann Canedy Appreciation Day celebration.

ACT ON MINUTES:

Upon a motion duly made and seconded it was voted to accept as written the minutes of the July 9, 2015 meeting.

VOTE: PASSES UNANIMOUS

COMMUNICATIONS – from elected officials, boards, committees, staff, commission reports, correspondence and announcements:

- **Report on Community Rating System; Jo Anne Miller Buntich, Director of Growth Management**
Jo Anne Miller Buntich spoke about the Community Rating System (Exhibit B) Floodplain Management process. She introduced Darren Punchard, from Hawksley Consulting and Elizabeth Jenkins, Staff Growth Management. Mr. Darren Punchard and Ms Jenkins each gave an overview of the material.
- **Report by Andi Genser, Executive Director; Women’s Empowerment Through Cape Area Networking (WE CAN)**
Andi Genser introduced Sharon Hawkins, Chairman of the Board and Dan Swank, Treasurer and financial volunteer and Susan Bethel, Program participant. Sharon Hawkins discussed the group’s mission and free services. Andi Genser discussed the work the Women’s Empowerment Networking was accomplishing. (Exhibit C) She mentioned 98 percent of the funding comes from private sources and added the group was looking for a Council letter of support.

2016-024 RESOLVE SEEKING LETTER OF SUPPORT FOR WOMEN'S EMPOWERMENT THROUGH CAPE AREA NETWORKING, INC. (WE CAN) INTRO 09/03/15

Councilor questions and comments

The agenda item was 2015-024 and should have been 2016-024.

Upon a motion duly made and seconded it was

RESOLVED, That the Town Council, pursuant to the policy adopted under Town Council Order 2015-024, hereby approves sending a letter of support for Women's Empowerment Through Cape Area Networking, Inc., (WE CAN) a nonprofit organization that seeks to empower women of all ages who are undergoing challenging life transitions, by providing support and unique services that bring increased opportunity, self-sufficiency, stability and lasting positive change for themselves, their families and ultimately for our entire community.

VOTE: PASSES UNANIMOUS

- **Report and recommendations from Town Manager Search Committee**

Councilors Steinhilber (Chair) and Cushing (Vice-Chair) of the Town Manager Search Committee spoke about the organizational meeting of August 13th. It was noted that the Committee to Analyze Management Practices and Policies (CAMP) Committee had updated the Town Manager's job description and the Town Manager Search Committee had reviewed it.

The next Town Manager Search Committee convened on August 20th and recommended the updated Town Manager's job description to be presented to Council for their review and acceptance. The Town Manager Search Committee asked for further direction from Town Council regarding obtaining an outside search firm

Council discussed the search process and if there would be an internal search for a Town Manager. Questions arose regarding the impetus for changing the management team. [This was a look at best practices not about individuals] Some Councilors were not comfortable with this process and wanted to negotiate the contract with the present management team as Tom Lynch had received an exceptional approval rate at his last evaluation. [Other Councilors felt it was about what was best for Barnstable and wanted to look at all options].

VOTE: PASSES 8 YES, 5 NO (CHIRIGOTIS, CULLUM, DAGWAN, HEBERT, TINSLEY) TO CONTINUE THE PROCESS IN SELECTION OF A SEARCH FIRM

2016-006 AMENDMENT TO CHAPTER 241 OF THE CODE OF THE TOWN OF BARNSTABLE, "ARTICLE III MULTIPLE- MEMBER APPOINTIVE ORGANIZATION" BY ADDING SECTION 241-45.3 WATER RESOURCES ADVISORY COMMITTEE (WRAC) INTRO: 08/13/15, 09/03/15

Vice President Ann Canedy gave the rationale.

Open Public Hearing and seeing no one close Public Hearing.

Upon a motion duly made and seconded it was

ORDERED: That Chapter 241 of the Town's Administrative Code of the Town of Barnstable be amended by adding the following new section creating a Water Resources Advisory Committee (WRAC)

“§241-45.3 Water Resources Advisory Committee”

A. Purpose of the Committee: To advise the Town of Barnstable on the completion and implementation of its Comprehensive Water Resource Management Planning Project, with the goal of protecting and restoring the Town’s fresh and salt water bodies and its drinking water supplies, in compliance with the Cape Cod Commission’s Cape Cod Area Wide Water Quality Management Plan Update of 2015, (“The 208 Plan”)

B. Composition of the Committee:

(1) There shall be a Water Resources Advisory Committee ("WRAC") consisting of eleven (11) members as follows:

- a. Five (5) members shall be appointed by the Town Council so as to be as geographically diverse as possible so as to represent all the salt water embayments, freshwater lakes and ponds and watersheds of the Town of Barnstable.
- b. Three (3) members shall be appointed by the Town Council as at large members who have interest or expertise in matters related to water quality and wastewater issues.
- c. Three (3) members shall be Town Councilors, appointed by the Town Council President. Town Council members shall be full voting members of WRAC and shall act as liaisons from WRAC to the Town Council and Town Manager.

(2) A liaison to WRAC shall be appointed from the chair or his/her designee from each of the following: Board of Health, Conservation Commission, and Planning Board and from other boards, committees, commissions as requested by the Town Council.

C. Term of Office: Town Council members shall be appointed by the Town Council President to serve at his/her discretion. Other members shall each serve for a term of (3) years, so arranged that as equal a number, as possible, shall expire each year.

D. Authorities and Responsibilities: Assist and advise the Town and specifically the Director of the Department of Public Works and or his/her designee in identifying, prioritizing and reporting to the Town all town wide and site specific strategies which would bring the Town of Barnstable into compliance with The 208 Plan and any other applicable regulations for water resources protection.

E. Interrelationships:

(1) The Town Council: WRAC interacts with the Town Council in matters of policy and implementation of its functions and recommendations under the provision of this section. The Town Council members of this committee will regularly report to the Town Council as a whole. From time to time, the Town Council may direct the Committee to focus on specific areas of implementation or other related wastewater, groundwater, surface water and drinking water matters.

(2) The Town Manager: WRAC interacts with the Town Manager in matters relating to staff support and recommendations, funding and implementation of its functions under the provision of this section, including but not limited to interaction with other towns, districts, state and federal agencies and the Cape Cod Commission.

(3) Other Boards, Committees and Commissions: WRAC meets, as necessary, with any multiple member board to effectuate its purpose.

VOTE: PASSES UNANIMOUS

2016-008 AMENDMENT TO CHAPTER 121 OF THE CODE OF THE TOWN OF BARNSTABLE, “LICENSING” BY ADDING ARTICLE III, CIVIL FINGERPRINTING CRIMINAL HISTORY RECORD CHECK FOR CERTAIN LICENSES INTRO: 08/13/15, 09/03/15

Chief MacDonald gave the rationale.

Open Public Hearing and seeing no one close Public Hearing.

Councilor questions and comments

Is selling ice cream on boats included in the ordinance? [Yes] Would like to include everyone who sells to children in this amendment. [Might need to table this item and have Ruth Weil review language]

Upon a motion duly made and seconded it was

ORDERED: That Chapter 121 of the Code of the Town of Barnstable, "Licensing" be amended by adding Article III, Civil Fingerprinting Criminal History Record Check for Certain Licenses as follows:

"§121-8 Criminal History Record Check Procedure

A. The Police Department shall, as authorized by **MGL c. 6, § 172B 1/2**, to conduct state and federal fingerprint-based criminal history checks for individuals applying for the following licenses:

- (1) Hawking and peddling or other door-to-door salespeople
- (2) Ice cream truck vendors

B. At the time of fingerprinting, the Police Department shall notify the individual fingerprinted that the fingerprints will be used to check the individual's criminal history records and shall obtain the individual's consent.

C. The Chief of Police shall periodically check with the Executive Office of Public Safety and Security ("EOPSS"), which has issued an informational bulletin which explains the requirements for town ordinances and the procedures for obtaining criminal history information, to see if there have been any updates.

D. Upon receipt of the fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this ordinance to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services (DCJIS), and/or the Federal Bureau of Investigation (FBI) or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks of license applicants specified in this ordinance.

E. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI), and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this ordinance.

F. The Town authorizes the Police Department to receive and utilize state and FBI records in connection with such background checks, consistent with this ordinance. The state and FBI criminal history will not be disseminated to unauthorized entities.

G. Upon receipt of a report from the FBI or other appropriate criminal justice agency, a record subject may request and receive a copy of his/her criminal history record from the Police Department.

H. An applicant who wants to challenge the accuracy or completeness of the record received under

§121-8G shall make application directly to the agency which contributed the challenged information. The Police Department shall not utilize and/or transmit the results of the fingerprint-based criminal record background check to any licensing authority until the applicant has been afforded a reasonable time to correct or complete the information,. Where an applicant has sought to challenge the accuracy or completeness of the record, no license specified herein shall be issued until a determination is made by the applicable state or federal agency regarding the applicant's request, at which point either the original

or corrected record, depending on the determination, shall be transmitted to the applicable licensing authority.

I. The Police Department shall communicate the results of the fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town pursuant to **§121-8A**. The Police Department shall, in addition, render to the licensing authority its evaluation of the applicant's suitability for the proposed occupational activity based upon the results of the criminal records background check and any other relevant information known to it. The Police Department shall indicate whether the applicant has been convicted of, or is awaiting final adjudication for, a crime that bears upon his or her suitability or any felony or misdemeanor that involved force or threat of force, controlled substances or a sex-related offense.

J. No such suitability evaluation or communication shall be disseminated to unauthorized entities.

K. The Town Manager is authorized to promulgate regulations for the implementation of the proposed ordinance, after consultation with the Chief of Police.

§121.9 Use of Criminal History Record by Licensing Authorities:

A. Town licensing authorities shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this ordinance.

B. Town licensing authorities may deny an application for the license on the basis of the results of a fingerprint-based criminal record background check and upon the evaluation provided by the Police Department if it determines that the results render the subject unsuitable for the proposed occupational activity. The licensing authority shall consider all applicable laws, regulations and town policies bearing on an applicant's suitability in making this determination.

C. The Town or any of its officers, departments, boards, committees or other licensing authorities is hereby authorized to deny any application, including renewals and transfers thereof, for any person who is deemed unfit for the license, as determined by the licensing authority, due to information obtained pursuant to this ordinance.

§121.9. Fees:

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be fifty dollars (\$50.00). A portion of the fee, as specified in

MGL c. 6, § 172B 1/2, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

§121.10. Severability

The provisions of this article are severable. If any provision shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

VOTE: POSTPONED UNTIL SEPTEMBER 17, 2015 – PASSED UNANIMOUS

2016-010 AMENDMENT TO THE CODE OF THE TOWN OF BARNSTABLE GENERAL ORDINANCES BY ADDING CHAPTER 195 SINGLE USE PLASTIC BAGS AND AMENDMENT TO "CHAPTER 1, ARTICLE I NONCRIMINAL ENFORCEMENT OF VIOLATIONS" INTRO: 08/13/15, 09/03/15

Councilor Paul Hebert gave the rationale.

Open Public Hearing

- o Steven Thomas said currently sea birds have 98 percent plastic in their gut and by 2018 that percentage will be 100. He added plastic bags can be a clogging hazard in storm drains.
- o Lois Fournier speaking for Carol Wilde supported a ban on single use plastic bags.
- o Sheila Place handed out a letter from Jaci Barton (Exhibit D) to Council with resident signatures supporting the ban on single use plastic bags. Residents in the audience stood in support of the ban
- o Christine Greeley mentioned all the plastic trash she has seen in and around the Town of Barnstable. She had concerns about clients paying for plastic bags at the thrift shop.
- o Susan Brinkerhoff urged Council to not let this item pass by without approval.
- o Meg Loughran supported the single use plastic bag ban.

Close Public Hearing

Councilor questions and comments

Single use plastic bag can be reused for other uses in the home. Single use plastic bags should not be singled out. Need to look at all forms of litter clean-up.

Upon a motion duly made and seconded it was

ORDERED: That the General Ordinances of the Code of the Town of Barnstable be amended by adding the following Chapter 195 and by amending Chapter 1, Article I, Non-criminal Enforcement of Violations.

SECTION 1: by adding the following Chapter 195.

"Chapter 195"

SINGLE-USE PLASTIC CARRYOUT BAGS

§ 195-1 Purpose and Intent.

The production and use of single-use plastic checkout bags have significant impacts on the marine and land environment of all coastal communities, including but not limited to: contributing to the potential death of marine and terrestrial animals through ingestion and entanglement; contributing to pollution of the land and coastal environment; clogging our storm drainage systems; creating a burden on our solid waste collection and recycling efforts; and requiring the use of millions of barrels of non-renewable, polluting, fossil fuel nationally for their manufacture. Therefore, the purpose of this chapter is to phase out the use of single-use plastic checkout bags by all establishments as defined herein in the Town of Barnstable over a period of 12 months from the effective date of this chapter.

§ 195-2 Definitions.

For purposes of this chapter, the following words shall have the following meanings.

CARRYOUT BAG - Any bag that is provided at the point of sale to a customer of an establishment for use to transport or carry away purchases, such as merchandise, goods or food, except as otherwise exempted under §195-4.

CUSTOMER - Any person purchasing goods articles, food or personal services from an establishment.

ENFORCING PERSON – Those persons listed in §1-2(A), non-criminal enforcement of ordinances, rules and regulations, of the General Ordinances of the Code of the Town of Barnstable, as further delegated by the time of taking effect pursuant to §195-6.

ESTABLISHMENT - Any business selling goods, articles, food or personal services to the public, including public eating establishments and take-out restaurants.

OPERATOR - The person in control of, or having the responsibility for, the operation of an establishment, which may include, but is not limited to, the owner.

PERSON - Any natural person, firm, corporation, partnership, or other organization or group however organized.

PLASTIC BAG - Any bag made of plastic derived from either petroleum, ethylene derived from natural gas, polyethylene, polyethylene terephthalate, polyvinyl chloride, polypropylene, or nylon.

PRODUCT BAG - A bag integrated into the packaging of the product.

REUSABLE BAG - A bag specifically designed and manufactured for long term multiple reuses made of cloth, fabric or other durable washable materials.

SINGLE-USE PLASTIC BAG means a plastic carryout bag with integral handles and thickness less than 3.0 mils.

§ 195-3 Plastic Bag Use Regulation.

Single-use plastic carryout bags shall not be sold, provided, or distributed to a customer or any other person by any person, owner, or operator of any establishment within the Town of Barnstable.

§ 195-4 Exemptions and Alternatives.

A. The following are exempt and not subject to the provisions of this chapter.

(1) Bags used by customers inside establishments to:

- (a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
- (b) contain or wrap frozen foods, meat, or fish, whether packaged or not;
- (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem;

(2) Laundry or dry-cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage, waste, pet waste or yard waste.

(3) Product bags.

B. Nothing in this chapter prohibits customers from using bags of any type that they bring to the grocery store, food provider, or other establishment themselves or from carrying away goods that are not placed in a bag. Customers are encouraged to bring their own reusable bags to the aforesaid establishments.

C. Establishments may and are strongly encouraged to distribute paper bags, reusable bags and boxes available to customers with or without charge and educate their staff to promote reusable bags and post signs encouraging customers to use washable reusable bags.

D. The Town Manager or designee may prior to the effective date of this ordinance engage in any outreach process to establishments concerning this ordinance and exempt an establishment from the requirements of § 195-3 for a period of not more than one year upon the establishment's showing, in writing, that this code would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing and the Town Manager's decision shall be final.

§ 195-5 Provision for Reusable Bag at No Cost.

Notwithstanding the provisions of § 195-4, an establishment shall provide a reusable bag at no cost upon the request of a customer who uses a voucher issued under the Special Supplemental Food Program for Women, Infant and Children (WIC) pursuant to M.G.L. c. 111.

§ 195-6 Time of Taking Effect.

In addition to the exemption provided in §195-4(D), in order to further assist existing establishments in complying with this ordinance by phasing out the use of single-use plastic carryout bags over a period of 12 months from the effective date this ordinance, this ordinance shall take effect after 12 months from the expiration of thirty days from the date of its adoption.

§ 195-7 Inspection and Enforcement.

Any enforcing person shall have the right to enter any establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter. Upon finding a violation of this chapter an enforcing person shall issue a written warning notice to the operator of the establishment that a violation has occurred and the potential penalties that will apply for future violations.

§ 195-8 Violations and Penalties.

Any establishment that violates or fails to comply with this chapter shall be subject to the following penalties to be enforced in law or equity by any means, including without limitation non-criminal disposition pursuant to G. L. c. 40 § 21D, provided that no more than one (1) penalty after written warning shall be imposed upon an establishment within a seven (7) day calendar day period:

First Offense: written warning.

Second Offense: \$100.00 fine.

Third and Subsequent Offense: \$200.00 and the Town may in its discretion publish the fine on its web site after the third and subsequent offense.

§ 195-9 Severability.

If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.”

SECTION 2: by amending section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances by adding after “Ch.192, Art. II Signs \$100” the following in the respective columns: “Ch.195 Single-Use Plastic Carryout Bags First Offense warning, Second Offense \$100.00 fine, Third and Subsequent Offense \$200.00 fine” in the respective columns.

VOTE: PASSES 7 YES, 6 NO (CANEDY, CROCKER (J), CROCKER (W), NORMAN, STEINHILBER, WALLACE)

2016-015 APPROPRIATION ORDER IN THE AMOUNT OF \$226,781.00 FOR PRESERVATION AND RESTORATION OF THE OLD TOWN HALL/JFK MUSEUM, 397 MAIN STREET HYANNIS, MA INTRO: 08/13/15, 09/03/15

Lindsey Counsell gave the rationale. Keith Mackenzie-Betty gave an overview of the project. Open Public Hearing and seeing no one close Public Hearing.

Upon a motion duly made and seconded it was

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of Two Hundred Twenty Six Thousand Seven Hundred Eighty One and No/100 (\$226,781.00) Dollars be appropriated and transferred from the set aside for historic preservation in the Community Preservation Fund; and that the Town Manager is authorized to contract for and expend said appropriation for preservation and restoration of the Old Town Hall/JFK Museum historic resource at 397 Main Street, Hyannis consisting of replacement of 16 additional lintels and wood trim, cornice restoration and masonry cleaning and sealing.

VOTE: PASSES 13 YES

2016-016 APPROPRIATION ORDER IN THE AMOUNT OF \$500,000.00 FOR ACQUISITION AND PRESERVATION BY PRESERVATION OF AFFORDABLE HOUSING, INC. (POAH) AT FOUNDERS COURT, 979 FALMOUTH ROAD, HYANNIS, MA INTRO: 08/13/15, 09/03/15

Lindsey Counsell gave the rationale. Julie Kramer, Vice-President of Preservation of Affordable Housing spoke about Founders Court improvements.

Open Public Hearing and seeing no one close Public Hearing.

Councilor Discussion and Comment:

Upon a motion duly made and seconded it was

ORDERED: That, pursuant to the provisions of G.L. c. 44B, the sum of Five Hundred Thousand and NO/100 (\$500,000) Dollars be appropriated and transferred from the amount set aside for Community Housing in the Community Preservation Fund; that the Town Manager is authorized to contract for and expend the amount appropriated for the acquisition and preservation by Preservation of Affordable Housing, Inc. (POAH) of the 32 unit affordable rental housing community of Founders Court located at 979 Falmouth Road, Hyannis, MA; and that the Town Manager is authorized to recover or apply any other sums of money and execute, accept, deliver and record instruments to secure the units' continued affordability.

VOTE: PASSES 13 YES

A motion was made and duly seconded to go beyond 11:00 PM

VOTE: PASSES 13 YES

2016-017 AMENDMENT TO THE CODE OF THE TOWN OF BARNSTABLE GENERAL ORDINANCES BY ADDING CHAPTER 208 SUBSTANCE CONTROLS, ARTICLE I SYNTHETIC MARIJUANA AND SYNTHETIC MARIJUANA ANALOGUE AND BY AMENDING CHAPTER 1, "ARTICLE I NONCRIMINAL ENFORCEMENT OF VIOLATION" INTRO: 08/13/15, 09/03/15

Deputy Chief Sonnabend gave the rationale.

Open Public Hearing

- o Brendan Clark said spice was not yet in the high school but that did not mean it would not get there. He added this amendment was a step in the right direction.
- o Christine Greeley said this issue crosses town lines and urged Council to support the amendment.
- o Steve Scannel hoped this ban on spice worked because it is being sold to mentally ill people.

Close Public Hearing.

Upon a motion duly made and seconded it was

ORDERED: that the General Ordinances of the Code of the Town of Barnstable be amended by adding the following Chapter 208, Substance Controls, and by amending Chapter 1, Article I, Noncriminal Enforcement of Violations.

SECTION 1: by adding the following Chapter 208, Substance Controls.

**“Chapter 208”
SUBSTANCE CONTROLS**

ARTICLE I
Synthetic Marijuana and Synthetic Marijuana Analogue

§ 208-1 Purpose and Intent.

It has been determined that certain businesses and/or individuals within the Town of Barnstable are possessing and selling certain substances which when ingested produce intoxicating effects similar to Tetrahydrocannabinol (THC) or Marijuana. These substances, which are described herein, are often used as an alternative synthetic to Marijuana and are potentially dangerous to users and society, and the long term effects are not yet known. The effects of these substances are a health concern to the citizens of Barnstable. Not all of the substances are categorized as illegal controlled substances under State or Federal law. By selling these "legal" substances for smoking and ingestion in the guise of incense, the manufacturers avoid the United States Food and Drug Administration process for study and approval of such prior to distribution for consumption. In addition, by marketing such "incense" products directed at the controlled drug subculture, the manufacturers and sellers avoid the Schedule Implications of the Controlled Substances Act. The Town of Barnstable Town Council recognizes there is no legitimate purpose of such synthetic chemicals contained therein.

§ 208-2 Prohibited Activities.

A. It shall be unlawful for any person to possess, sell, barter, give, publicly display for sale; attempt to possess, sell, barter, or give; or transport any material, compound, mixture or preparation within the corporate limits of the Town of Barnstable which contains any quantity of synthetic marijuana or synthetic marijuana analogue.

B. This Ordinance shall apply regardless of whether the synthetic marijuana or synthetic marijuana analogue is described as tobacco, herbs, incense, spice, bath salts, plant food or any blend thereof, and, regardless of whether the substance is marketed for the purpose of being smoked or ingested, and, regardless of whether the substance is marked "not for human consumption".

§ 208-3 Exceptions.

A. It is not an offense under this Article if the person was acting at the direction of the Barnstable Police Department and its officers, or federal or state law enforcement, to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substances.

B. If the State of Massachusetts enacts criminal penalties for the possession, sale, transportation, or delivery of any chemical substance listed in this Article, then upon the effective date of such enactment, this Article shall no longer be deemed effective for that substance. However, a violation of this Article

occurring prior to the effective date of such enactment may be prosecuted after the effective date of State enactment.

§ 208-4 Definitions.

For the purpose of this article, the following words shall have the following meanings.

PERSON - An individual, corporation, limited liability company, partnership, wholesaler, retailer, and any license or unlicensed business, including clerk, manager, or owner of business.

SYNTHETIC MARIJUANA – any substance as defined by 21 U.S.C §812(d), excluding "marihuana" as such term is defined in Massachusetts General Laws chapter 94C §1, 21 U. S.C. §812(d) notwithstanding; or any one or any combination of the following cannabinoids, or, a substance containing any one or combination of the following cannabinoids, namely JWH-018,JWH-073, CP-47,497, JWH-200, or, cannabicyclohexanol; or vegetable material that has been chemically treated and is possessed, sold, or, purchased, with the intent that it will, despite any labeling to the contrary, be consumed by humans, for the purpose of voluntary intoxication, said vegetable material typically having a retail price of over five dollars per ounce and contained within packaging indicating that the contents is not for human consumption, and which, if consumed, may induce an effect or effects of intoxication similar to a controlled substance or imitation controlled substance, said effect or effects to include elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, dulling of the senses or nervous system, or, distortion of audio, visual or mental processes.

SYNTHETIC MARIJUANA ANALOGUE - a substance , the chemical structure of which is substantially similar to the chemical structure of synthetic marijuana and which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana; or with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana.

§ 208-5 Violations and Penalties

A. Any person found to be in violation of this Article will be assessed a fine of \$300.00. Each day a violation occurs will constitute a separate offense.

B. In addition to any penalty provided in the above Section A, if any of the aforementioned substances listed above are found in the possession of any person, the substance will be forfeited by seizure by the Barnstable Police Department, or its officers, and may be destroyed by such law enforcement officials in a method consistent with law.

§ 208-6 Severability

If any provision of this Article shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this Article, which shall remain in full force and effect.”

SECTION 2: by adding the following in the appropriate numerical and column order to section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances in the Code of the Town of Barnstable.

“Ch. 208, Art. I \$300.00”

VOTE: PASSES 13 YES

Reorder the agenda and take item 2016-022 before item 2016-018.

2016-022 ACCEPTANCE OF A FEDERAL FISCAL YEAR 2015 BULLETPROOF VEST PARTNERSHIP GRANT IN THE AMOUNT OF \$13,181.56 FROM THE US DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS INTRO: 09/03/15

Deputy Chief Sonnavbend gave the rationale.

Upon a motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept a grant in the amount of \$13,181.56 for the Federal Fiscal Year 2015 Bulletproof Vest Partnership Grants from the United States Department of Justice, Office of Justice Programs

VOTE: PASSES UNANIMOUS

2016-018 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 08/13/15, 09/03/15

Councilor Cullum left the dais at approximately 11:14 pm.

Upon a motion duly made and seconded it was

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

COMPREHENSIVE FINANCIAL ADVISORY BOARD: Joseph Mladinich, 44 Dogwood Lane, Cotuit, MA as a regular member to a term expiring 06/30/18

HOUSING COMMITTEE: Aaron Kanzer, 48 Crystal Ridge Road, Cotuit, MA as a regular member to a term expiring 06/30/18

LICENSING AUTHORITY: Larry Decker, 346 Sea Street, Hyannis, MA as an associate member to a term expiring 06/30/18; Judith Notz, 363 Sea Street, Hyannis, MA as an associate member to a term expiring 06/30/17

YOUTH COMMISSION: Carrie Osborn, 141 Bassett Lane, Hyannis, MA as a regular member to a term expiring 06/30/16

VOTE: PASSES UNANIMOUS

Councilor Cullum returned to the dais at approximately 11:16 pm.

2016-019 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 08/13/15, 09/03/15

Upon a motion duly made and seconded it was

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

AGRICULTURAL COMMISSION: David Ross, as a regular member to a term expiring 06/30/18; Jeffrey Taylor, as a regular member to a term expiring 06/30/17

COUNCIL ON AGING: L. Helen Stretch, as a regular member to a term expiring 06/30/18; Barbara Cross, as a regular member to a term expiring 06/30/18

CULTURAL COUNCIL: Marlene Weir, as a regular member to a term expiring 06/30/18

SHELLFISH COMMITTEE: Linda Roman, as a member holding a family permit to a term expiring 06/30/18; Richard Haskell, as a member at large to a term expiring 06/30/18

VOTE: PASSES UNANIMOUS

2016-021 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 09/03/15

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council appoint the following individual to a multiple-member board/committee/commission:

LIBRARY COMMITTEE: Elena Schuck, 56 Cinderella Terrace, Marstons Mills, as a member with a term expiring 6/30/16

VOTE: REFER TO A SECOND READING ON 09/17/15 - UNANIMOUS

2016-023 ACCEPTANCE OF THE TOWN MANAGER JOB DESCRIPTION AS RECOMMENDED BY THE COMMITTEE TO ANALYZE MANAGEMENT PRACTICES AND POLICES (CAMPP) INTRO: 09/03/15

Upon a motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept the Town Manager job description as recommended by the Committee to Analyze Management Practices and Polices (CAMPP)

VOTE: PASSES UNANIMOUS

Reorder the agenda to take item 2016-024 before The Town Manager Search Committee item.

2016-025 AUTHORIZE THE ESTABLISHMENT OF A GIFT ACCOUNT FOR RECEIVING GIFTS FOR DESIGNING, CREATING AND MAINTAINING A DOG PARK FACILITY FOR PASSIVE RECREATION. INTRO: 09/03/15

Tom Lynch gave rationale.

Upon a motion duly made and seconded it was

RESOLVED, That the Town Council, pursuant to the provisions of General Law Chapter 44, §53A, hereby establishes an account for the purposes of receiving gifts for designing, creating and maintaining a dog facility for passive recreation in the Town of Barnstable (commonly referred to as a “dog park”) and hereby authorizes the Town Manager to approve the expenditure of monies from said gift account for that purpose.

VOTE: PASSES UNANIMOUS

ADJOURNMENT:

Upon a motion duly made and seconded it was

VOTED to adjourn.

Unanimous

Adjourned at 11:19 PM

Respectfully submitted,

Janet E. Murphy

Assistant Town Clerk – Town of Barnstable

NEXT REGULAR MEETING: September 17, 2015

EXHIBITS:

- A) Property maintenance Photos
- B) Community Rating System/Floodplain Management Report
- C) WE CAN literature
- D) Jaci Barton letter and signature supporting plastic bag ban