



Town of Barnstable Town Council

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Councilors:

Dr. Debra S. Dagwan
President
Precinct 8

Jessica Rapp Grassetti
Vice President
Precinct 7

Ann B. Canedy
Precinct 1

Tom Rugo
Precinct 2

Michael P. Hersey
Precinct 3

Frederick Chirigotis
Precinct 4

James H. Cote
Precinct 5

Janet S. Joakim
Precinct 6

James M. Tinsley
Precinct 9

Janice L. Barton
Precinct 10

June M. Daley
Precinct 11

John T. Norman
Precinct 12

Jennifer L. Cullum
Precinct 13

Administrator to the
Town Council:
Barbara A. Ford

Administrative
Assistant:
Cynthia A. Lovell

TOWN COUNCIL MEETING AGENDA January 3, 2013 7:00 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
- 4. PUBLIC COMMENT**
- 5. COUNCIL RESPONSE TO PUBLIC COMMENT**
- 6. ACT ON MINUTES (Includes Executive Session)**
- 7. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**
- 8. ORDERS OF THE DAY**
 - A. OLD BUSINESS**
 - B. NEW BUSINESS**
- 9. TOWN MANAGER COMMUNICATIONS**
- 10. ADJOURNMENT**

NEXT REGULAR MEETING: January 17, 2013

ITEM NO.	INDEX TITLE	PAGE
A. OLD BUSINESS		
2013-001	Amending the Zoning Ordinances, c. 240, §240-35 (F) (Public hearing) Roll-call, 2/3)	3 - 4
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2013-059	Appropriation and transfer order-\$40,000 from surplus golf enterprise funds to purchase golf course mowing equipment (Public hearing) (Roll-call)	9 - 10
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B. NEW BUSINESS		
2013-063	Acceptance of a \$ \$27,575 remediation grant toward survey and design of a Hyannis Harbor, boat pump-out facility (May be acted upon) (Roll-call)	13 - 14
2013-064	Amending the General Code, Chapter 76, Schedule of Fees (Refer to public hearing 01/17/13)	15 - 16
2013-065	Amending Chapter 240 of the zoning ordinance to establish a temporary moratorium on the establishment and permitting of Medical Marijuana Treatment Centers and associated activities. (Refer to Planning Board)	17 - 20

Approve Minutes- December 20, 2012. No executive session minutes for release.

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

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

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

A. OLD BUSINESS (Public hearing) (Roll-call, 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-001

INTRO: 07/12/12, 10/04/12, 10/18/12, 11/15/12, 01/03/13

2013-001 AMENDING C.240, ART III, §240-35.f (2) OF THE ZONING ORDINANCE

ORDERED:

That Chapter 240, Article III of the Zoning Ordinance is hereby amended as follows:

Amend Section 240-35 titled Groundwater Protection Overlay Districts by adding new subsection (v) to paragraph F, subsection (2) Prohibited Uses as follows:

(v) Storage of commercial fertilizers, as defined in MGL c 128 section 64, unless such storage is within a structure designed and engineered to prevent escape or transport of commercial fertilizers to the groundwater under any circumstances.

SPONSOR: Thomas K. Lynch, Town Manager

<u>DATE</u>	<u>ACTION TAKEN</u>
<u>10/04/12</u>	<u>Hearing opened and continued to 10/18/12</u>
<u>10/18/12</u>	<u>Hearing postponed to 11/15/12</u>
<u>11/15/12</u>	<u>Hearing opened and continued to 01/03/13</u>

- Referred to Planning Board at 07/12/12 Town Council Meeting
- Planning Board, held a public hearing—recommends adoption.
- Read Item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Amendments
- Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-001

INTRO: 07/12/2012, 10/04/12, 10/18/12, 11/15/12, 01/03/13

SUMMARY

TO: Town Council
FROM: Jo Anne Miller Buntich, Growth Management Director
DATE: September 18, 2012
SUBJECT: Groundwater Protection Overlay District Prohibited Uses Amendment

BACKGROUND: This amendment to the Zoning Ordinance is requested by the Hyannis Water Board to bring the Barnstable Ordinance into alignment with state regulations.

DEP regulation 310 CMR 22.21(2) (b) 3 Wellhead Protection Zoning and Non-zoning Controls requires this prohibition to be submitted to DEP by the water system operator.

The Hyannis Water Board has requested this amendment.

At their meeting on September 14, 2012, the Planning Board voted to recommend this amendment to Town Council for adoption.

A. OLD BUSINESS (Public hearing) (Roll-call, 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-057

INTRO: 12/20/12, 01/03/13

**2013-057 AMENDING PART I OF THE GENERAL ORDINANCES, CH. 112,
ARTICLE 1, PROTECTION OF HISTORIC PROPERTIES, PROCEDURES
& DELAY NOTICE**

ORDERED:

That Chapter 112, Article I, of the Code of the Town of Barnstable (Protection of Historic Properties) is hereby amended as follows:

Section 1:

By Deleting § 112-3 Procedures in its entirety and replacing it with the following:

§112-3 Procedures.

- A. No permit for the demolition of a building which is a significant building as defined in §112-2 herein shall be issued other than in conformity with the provisions of this article as well as in conformity with the provisions of other laws applicable to the demolition of buildings and the issuance of permits therefore generally.
- B. Any person who intends to file an application for a permit to demolish a building which:
 - (1) has been listed or is the subject of a pending application for listing in the National Register of Historic Places or is listed in the Massachusetts Register of Historic Places; or
 - (2) which is over 75 years of age, shall first file a notice of intent to demolish a significant building with the Town Clerk, and in addition, shall complete the review process established in §112-3A through I herein. The Town Clerk shall forthwith transmit copies of each duly filed notice of intent to the Commission and the Building Commissioner. At the time of filing an application or request, the applicant shall pay a filing fee to be determined annually by the Town Manager to cover costs and expenses associated with this article.
- C. The Commission shall prepare and have available for distribution a notice of intent to demolish a significant building, which shall contain at least the following information:
 - (1) The applicant's name, address, if different in such property;
 - (2) The owner's name and address, if different from that of the applicant's;
 - (3) The address or location of such property;
 - (4) Assessor's map and parcel number;
 - (5) A brief description of such property; and
 - (6) An explanation of the proposed use to be made of the site of such property.
- D. Where an applicant has filed a notice of intent to demolish a building that is over 75 years of age which neither has been listed nor is the subject of a pending application for listing on the National Register of Historic Places nor has been listed on the Massachusetts Register of Historic Places, the Commission Chair or Chair's designee in consultation with the Growth Management Department Staff, shall, within 21 business days of the filing of the notice of intent, file with the Town Clerk an initial determination in writing as to whether or not the building is a significant building in accordance with any criterion set forth in §112-2, definition of "significant building," subsection A and B. A determination that a building is not a significant building shall be transmitted by the Commission to the applicant, to the Building Commissioner and to the Town Clerk, and the applicant shall not be required to take any further steps prior to filing for a demolition permit. This determination shall be in effect for 24 months from the date of determination filing with the Town Clerk. After 24 months have elapsed, a new determination shall be required.

2013-057 (Continued)

- E. The Commission shall hold a public hearing on each such notice of intent within 65 days after the date the notice intent is filed with the Town Clerk, and shall give notice thereof by publishing the date, time, place and purpose of the hearing in a local newspaper at least 14 days before such hearing, and also within seven days of said hearing, mailing a copy of said notice to the applicant and to all property owners within 300 feet of the subject property's boundaries. The Commission may require the applicant to post the Commission's notice form on the subject building and/or property. This form shall be visible from the nearest public way. Within 21 days from the close of the public hearing, the Commission shall file a written determination with the Town Clerk as to whether the demolition proposed will be detrimental to the historical, cultural or architectural heritage or resources of the Town of Barnstable.
- F. If after such hearing, the Commission determined that the demolition of the significant building would not be detrimental to the historical, cultural or architectural heritage or resource of the Town, the Commission shall so notify the applicant, the Building Commissioner and the Town Clerk. Upon receipt of such notification, the Building Commissioner may, subject to the requirements of the State Building Code and any other applicable laws, ordinances, rules and regulations, issue the demolition permit.
- G. If the Commission determines, that the demolition of the significant building would be detrimental to the historical, cultural or architectural heritage or resources of the Town, such building shall be considered a preferably preserved significant building.
- H. Upon a determination by the Commission that the significant building, which is the subject of the application for a demolition permit, is a preferably preserved significant building, the Commission shall notify the applicant, the Building Commissioner, and the Town Clerk, and no demolition permit may be issued until 18 months after the date of such determination by the Commission is filed with the Town Clerk.
- I. Notwithstanding the preceding sentence, the Building Commissioner may issue a demolition permit for a preferably preserved significant building at any time after receipt of written advice from the Commission to the effect that either:
 - (1) The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate and restore such building, or
 - (2) The Commission is satisfied that the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.
- J. The Commission's determination shall be in effect for 24 months from the date of determination filing with the Town Clerk. After 24 months have elapsed, a new determination shall be required.

SPONSOR: Councilor Jessica Rapp Grassetti

DATE	ACTION TAKEN
<u>12/20/12</u>	<u>Referred to Jan 3 hearing</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2013-057
INTRO: 12/20/12, 01/03/13

SUMMARY

TO: Town Council
FROM: Councilor Jessica Rapp Grassetti
THROUGH: Jo Anne Miller Buntich, Growth Management Director
DATE: October 22, 2012
SUBJECT: An amendment to the General Ordinances of the Town of Barnstable pertaining to the length of notice before demolition of historic structures

BACKGROUND: This amendment to the Ordinance proposes to clarify some of the original language, adding an administrative procedure to streamline the process; bring the regulatory timeframes into alignment with other land-use permitting; adding an expiration date and lengthening the time of demolition-delay to eighteen months.

The Historic Commission's intent in lengthening the time of demolition-delay is to engage owners of historic resources in the process of preserving those buildings and structures.

FISCAL IMPACT: None

A. OLD BUSINESS (Second reading)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-058
INTRO: 12/20/12, 01/03/13

2013-058 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

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

LIBRARY COMMITTEE

Robert Anthony, 104 Old Stage Road, Centerville, as a member with a term expiring 12/31/2013

Patricia Giammasi, 7 Lester Circle, Centerville, as a member with a term expiring 12/31/2013

Stanley Goldstein, 12 Trundy Lane, Cotuit, as a member with a term expiring 12/31/2013

Elaine Grace, 8 Apollo Drive, West Barnstable, as a member with a term expiring 12/31/2013

Justin Grimes, 75 Grove Street, Centerville, as a member with a term expiring 12/31/2013

William Housman, 69 Captain Loring Lane, Barnstable, as a member with a term expiring 12/31/2013

John Jenkins, 361 Parker Road, West Barnstable, as a member with a term expiring 12/31/2013

Kenneth Jenkins, 184 Flume Avenue, Marstons Mill, as a member with a term expiring 12/31/2013

Joan Kenney, 112 Redwood Lane, Hyannis Port, as a member with a term expiring 12/31/2013

Judy Todd, 46 Peach Tree Road, Marstons Mills, as a member with a term expiring 12/31/2013

Gail Nighingale, 32 Sunset Lane, Osterville, as a member with a term expiring 12/31/2013

Gloria Rudman, 50 Waterman Farm Road, Centerville, as a member with a term expiring 12/31/2013

Cyndy Shulman, 1529 Race Lane, Barnstable, as a member with a term expiring 12/31/2013

SPONSOR: Town Manager Thomas K. Lynch at the request of the Library Trustees

DATE	ACTION TAKEN
<u>12/20/12</u>	Moved to 2 nd reading 1/3/13

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Move/Vote

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-059
INTRO: 12/20/12, 01/03/13**

**2013-059 APPROPRIATION & TRANSFER \$40,000 FROM SURPLUS GOLF
ENTERPRISE FUNDS TO PURCHASE COURSE MOWING EQUIPMENT**

ORDERED: That the sum of \$40,000 be appropriated for the purpose of funding the acquisition of golf course greens mowing equipment and to meet this appropriation, that \$40,000 be transferred from surplus funds within the golf course enterprise fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2013-059
INTRO: 12/20/12, 01/03/13

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lynne M. Poyant, Community Services Director
DATE: December 11, 2012
SUBJECT: Acquisition of Golf Course Equipment

RATIONALE: Golf course greens mowing equipment at Olde Barnstable Fairgrounds, is eleven years old and in need of replacement. While living within our means as an Enterprise Fund, when budget cuts occurred, the cuts were frequently made to capital needs, especially equipment. The greens on a golf course are the single most important aspect of the course and their condition and playability is the determining factor golfers weigh when deciding where to play. We must ensure that users of the golf courses continue to find the highly conditioned, quality putting greens that we have developed a reputation for providing to our members and guests alike. Two Toro Greenmaster units will be acquired.

FISCAL IMPACT: The FY13 budget had included \$20,000 for the lease of the above equipment however, with the certification of the Golf Enterprise Fund's surplus at \$414,000 we are looking to have the \$40,000 balance transferred from surplus.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends the purchase of this equipment.

STAFF ASSISTANCE: Bruce McIntyre, Director of Golf Operations
Mark Milne, Finance Director
Charles S. McLaughlin, Jr., Assistant Town Attorney

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-061
INTRO: 12/20/12, 01/03/13**

**2013-061 ACCEPTANCE OF A PORT SECURITY GRANT FOR \$90,000 AND
APPROPRIATION OF \$30,000 IN MATCHING FUNDS**

ORDERED: The Barnstable Town Council does hereby accept a Port Security Grant from the Department of Homeland Security, FEMA in the amount of \$90,000 and that the amount of \$30,000 in matching funds is hereby appropriated from available funds, and further, that the Town Manager is authorized to contract for and expend these funds in accordance with the grant.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2013-061
INTRO: 12/20/12, 01/03/13

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lynne M. Poyant, Community Services Director
DATE: December 11, 2012
SUBJECT Port Security Grant Program (PSGP) Award in the amount of \$90,000 and appropriation of \$30,000 in matching funds.

BACKGROUND: Marine and Environmental Affairs' Harbormaster's Office has applied for and been awarded its sixth consecutive Port Security Grant Program (PSGP) Grant in the amount of \$90,000. Twenty-five percent or \$30,000 in matching funds is required for a total of \$120,000. These funds will be used for:

- Overtime staffing of additional on the water patrols for 2013 & 2014
- Purchase of spare camera equipment for our system
- Add an additional camera in Hyannis harbor
- Expand our camera system to the Three Bays area (West Bay Bridge/Cotuit Town Dock)

FISCAL IMPACT: 25% matching funds required in the amount of \$30,000. This will allow us to have additional on the water presence, provide spare equipment in the event of a malfunction and expand our monitoring capability. With limited on the water staff these cameras will allow us to remotely view these areas as well as review the video in the event of an incident.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends acceptance of this grant.

STAFF ASSISTANCE: Joe Gibbs, Assistant Harbormaster
Daniel J. Horn, Marine & Environmental Affairs
Director/Harbormaster

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-063
INTRO: 01/03/13**

2013-063 AUTHORIZE THE COUNCIL PRESIDENT TO ACCEPT \$27,575 REMEDIATION GRANT TOWARD SURVEY & DESIGN-HYANNIS HARBOR, BOAT PUMP-OUT FACILITY

RESOLVED: That the Town Council does hereby authorize the Town Council President to accept a grant from the Coastal Pollutant Remediation Grant Program in the amount of Twenty Seven Thousand Five Hundred Seventy-Five Dollars and 00 Cents (\$27,575.00), for the survey and design of a stationary pump-out station for commercial vessels, located to serve vessels which operate out of Hyannis Harbor.

SPONSOR: Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-063
INTRO: 01/03/13

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
DATE: December 6, 2012
SUBJECT: Acceptance of a Grant for the survey and design of a Hyannis Harbor Boat Pump-out Facility

BACKGROUND: The Commonwealth of Massachusetts has awarded 6 communities a total of \$400,000 in grants through the Coastal Pollution Remediation Grant Program.

The goal of this grant program, which is administered by the Massachusetts Office of Coastal Zone Management (CZM), is to improve coastal water quality by reducing or eliminating non-point sources of pollution, the leading cause of water quality impairment in the nation. This type of pollution occurs when contaminants are picked up by rain, water, and snow melt and carried over land, in groundwater or through drainage systems to the nearest body of water. The grant program also complements the Commonwealth's effort to designate all Massachusetts coastal waters as a No Discharge Area (NDA), prohibiting the discharge of both treated and untreated boat sewage waste.

Barnstable's grant in the amount of \$27,575 covers 75% of the cost to survey and design a stationary pump-out station for commercial vessels. The pump-out facility will be located to serve vessels, which operate out of Hyannis Harbor.

Commercial vessels plying the waters of Nantucket Sound, particularly those carrying passengers from Hyannis Harbor to Martha's Vineyard and Nantucket, presently discharge sanitary waste into the Sound. The recent approval of the South Cape Cod and Islands NDA (No Discharge Area) has highlighted the "gap" in the areas designated. This grant, to provide a vessel "pump-out" facility, will go a long way to closing the gap, minimizing discharge in the heart of Nantucket Sound.

FISCAL IMPACT: The matching 25% (\$9,200) will be in-kind services from staff

TOWN MANAGER RECOMMENDATION: The Town Manager recommends approval.

STAFF ASSISTANCE: Roger Parsons, Town Engineer

B. NEW BUSINESS (Refer to public hearing 01/17/13)

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-064
INTRO: 01/03/13**

2013-064 AMENDING THE GENERAL CODE, CHAPTER 76,-SCHEDULE OF FEES

ORDERED, that Chapter 76 of the General Code of the Town of Barnstable is hereby amended by deleting three Chapter 76 sections, and replacing them with the following amended sections.

Chapter 76 of the General Code:

76-3 Weights and Measures annual fees (MGL C.98§56)

76-4 Licensing

§ 76-3. **Weights and Measures annual fees (MGL C. 98, § 56).**

DESCRIPTION	FEE PER DEVICE			
	2008 1 - 3	2013 1 - 3	2008 4 or more	2013 4 or more
Scale with capacity over 10,000 lbs.	\$250.00	\$275.00	\$225.00	\$250.00
Scale with capacity 5,000-10,000 lbs.	\$135.00	\$145.00	\$110.00	\$120.00
Scale with capacity 100-5,000 lbs.	\$ 80.00	\$ 90.00	\$70.00	\$80.00
Scale with capacity less than 100 lbs.	\$ 50.00	\$ 60.00	\$45.00	\$55.00
Weights (each)	\$ 8.00	\$10.00	\$6.00	\$8.00
Liquid measures	\$ 30.00	\$40.00	\$30.00	\$40.00
Liquid measure meters	-----	-----	-----	-----
Lubricant meters	\$ 50.00	\$60.00	\$45.00	\$55.00
Motor fuel meters	\$ 50.00	\$60.00	\$45.00	\$55.00
Vehicle tank meters	\$110.00	\$120.00	\$100.00	\$110.00
Vehicle tank meter gravity	\$175.00	\$185.00	\$150.00	\$160.00
Bulk storage tank meter	\$175.00	\$185.00	\$150.00	\$160.00
Mechanical pumps, each stop	\$ 10.00	\$15.00	\$10.00	\$15.00
Taxi meters (semi-annually)	\$ 55.00	\$60.00	\$50.00	\$55.00
Commercial odometer – hubodometer	\$ 55.00	\$60.00	\$50.00	\$65.00
Leather measure	\$175.00	\$185.00	\$150.00	\$160.00
Dry measure, one bushel or less	\$ 85.00	\$95.00	\$85.00	\$95.00
Dry measure, more than one bushel	\$120.00	\$130.00	\$120.00	\$130.00
Counting Device	\$25.00	\$35.00	\$25.00	\$35.00
All other measuring devices	\$125.00	\$135.00	\$125.00	\$135.00
Rope, wire or chain measuring devices	\$ 25.00	\$35.00	\$20.00	\$30.00
Reinspection fee (after official rejection)	\$ 95.00	\$100.00	\$95.00	\$100.00
Reverse Vending Machines				
Bottle and Can redemption Inspection				
Disposable Test Material Supplied by Inspector	\$25.00	\$35.00	\$20.00	\$30.00
Disposable Test Material supplied by Store	\$15.00	\$20.00	\$10.00	\$15.00
Automatic Electronic Check-Out Systems				
3 or less cash registers (per inspection)	\$85.00	\$95.00	N/A	
4-11 cash registers (per inspection)	\$170.00	\$180.00	N/A	
12 or more cash registers (per inspection)	\$280.00	\$300.00	N/A	

BARNSTABLE TOWN COUNCIL

**ITEM# 2013-064
INTRO: 01/03/13**

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Thomas F. Geiler, Director Regulatory Services Department
DATE: November 9, 2012
SUBJECT: Fee Schedule Change

BACKGROUND: Chapter 76 of the General Code of the Town of Barnstable contains the schedule of fees established by the Town Council. The fees contained therein are primarily fees for licenses or permits associated with commercial or business activities. The council has maintained a policy of 100% cost of service recovery rate for several years.

ANALYSIS: Changes in laws and regulations as well as changes in technology affect the procedures and policies governing the licensing and inspection process. This revision is an attempt to bring the fees closer to achieving the council goal of 100% cost recovery. In some cases, this is not possible. Some permits carry state imposed maximums that prevent the town from achieving 100% cost recovery. This proposal identifies fees that no longer reflect 100% cost recovery and adjusts the fees to remove discrepancies. The average annual percentage increase is 2.8%.

FISCAL IMPACT: It is anticipated that adoption of this amended fee schedule would have a positive impact on the town’s financial position. Failure to adopt the amended schedule will result in reduced revenue in FY 12. Reduced revenue will require the town reduce expenditures to balance the budget. Reduced revenues will almost certainly result in reduced services. Reduced services may result in additional lost revenue from fees associated with the reduced services.

Our goal is to continue to increase our efficiency and effectiveness. We cannot do that without appropriate resources. Fees for service are an important resource.

See current fee/proposed fee comparison chart attached –

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

STAFF ASSISTANCE: Thomas F. Geiler, Director Regulatory Services
Tracey Smith, Administrative Assistant, Consumer Affairs Division
Richard Scali, Consumer Affairs Supervisor

DATE ACTION TAKEN

____ Read Item

____ Motion to refer to public hearing on Jan 17, 2013

B. NEW BUSINESS (Refer to planning board for hearing)

BARNSTABLE TOWN COUNCIL

ITEM# 2013-065

INTRO: 1/03/13

2013-066 AMENDING CHAPTER 240 OF THE ZONING ORDINANCE TO ESTABLISH A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND PERMITTING OF MEDICAL MARIJUANA TREATMENT CENTERS AND ASSOCIATED ACTIVITIES

Section 1.

WHEREAS, the citizens of Massachusetts, by passage of Ballot Question 3 on November 6, 2012, approved a referendum question that created a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes, which law takes effect on January 1, 2013;

WHEREAS, this law as passed allows a new land use Medical Marijuana Treatment Centers and other supporting activities that are not expressly regulated under Chapter 240;

WHEREAS, The Town's related land use regulations currently in effect are not adequate for the appropriate regulation of medical marijuana treatment centers and associated activities, nor do they provide sufficient definitive criteria with which the Town's Building Commissioner, Site Plan Review, Board of Health and/or the Zoning Board of Appeals can properly evaluate and condition the siting and design of this new use;

WHEREAS, the law requires the State Department of Public Health to issue regulations regarding implementation of the law within 120 days of January 1, 2013 and said regulations will not be promulgated by January 1, 2013;

WHEREAS, the regulations to be promulgated by the State Department of Public Health are expected to provide guidance and further regulation regarding the siting of medical marijuana treatment centers;

WHEREAS, the regulation and siting of medical marijuana treatment centers raises novel and complex legal, planning and public safety issues;

WHEREAS, the Town needs time to study and consider the regulation and siting of medical marijuana treatment centers so as to address such novel and complex issues;

WHEREAS, there is concern among Barnstable residents and public officials about the lack of Department of Public Health regulations which regulations will be a necessary part of the Town's planning analysis;

WHEREAS, the Town needs time to address the potential impacts of the law and the impending state regulations on local zoning requirements;

WHEREAS, the Town needs time to undertake a planning process to consider potential amendment of the Town's Zoning Ordinance regarding the siting of medical marijuana treatment centers and other uses related to the regulation of medical marijuana;

WHEREAS, the Town intends to adopt a temporary moratorium on the use of land and structures in the Town for the siting of medical marijuana treatment centers, so as to allow the Town sufficient time to engage in a planning process to address the direct and secondary effects of siting such centers in the Town and to enact zoning amendments in a manner consistent with sound land use planning goals and objectives. Such moratorium shall be in effect through and including January 1, 2014 or until ninety (90) days after the effective date of the State Department of Public Health final regulations relating to Ballot Question 3, whichever occurs first.

NOW THEREFORE, and consistent with the rationale provided above and consistent with the Town's powers and authority under the Massachusetts Zoning Act and the Town's coincident obligations thereunder, the Town adopts the following temporary moratorium with respect to the permitting of Medical Marijuana Treatment Centers and associated activities.
Section 2.

That Chapter 240, Article XIII of the Zoning Ordinance is hereby amended by adding a new §240-129 as follows:

"§240-129 Temporary moratorium on the establishment and permitting of medical marijuana treatment centers and associated activities.

A. No building permit, special permit, variance, site plan approval decision or other permit may be issued under this zoning ordinance for the purpose of establishing a medical marijuana treatment center or associated activities.

B. The moratorium shall be in effect through and including January 1, 2014 or until ninety (90) days after the effective date of the final regulations promulgated by the State Department of Public Health relating to Ballot Question 3, whichever occurs first.

C. During the moratorium period, the Town shall undertake a planning process to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers in the Town and shall review and consider the Department of Public Health regulations regarding the siting of such centers and related uses, and shall consider proposing the adoption of zoning amendments to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers and related uses in the Town.

D. Zoning amendments resulting from the aforementioned study process shall be deemed to be continuations of this moratorium and not new zoning amendments. Applications for permits submitted after the first publication of the notice of the public hearing which results in the adoption of this moratorium but before the moratorium's effective date, shall be administered according to established procedures until the effective date of this moratorium, and if a permit or other relief is granted prior to such effective date, it shall be subject to the effectiveness of this moratorium and shall be issued at the peril of the permit applicant and/or recipient. During the moratorium, any application shall be denied on the basis of this moratorium. In no event shall any permit or other relief sought after the first publication of the notice of the public hearing create or result in any protections with respect to the land, its uses or structures upon it.

E. Unless extended, continued or modified by a subsequent action of Town Council, this section shall cease to be effective January 2, 2014 or ninety (90) days after the effective date of the final regulations promulgated by the Department of Public Health relating to Ballot Question 3, whichever occurs first."

SPONSOR: Councilor Ann Canedy

DATE ACTION TAKEN

- Read Item
- Motion to refer to Planning Board
- Rationale
- Public Hearing
- Close public hearing
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL

ITEM# 2013-065
INTRO: 01/03/13

SUMMARY

TO: Town Council
FROM: Councilor Ann B. Canedy
DATE: January 3, 2013
SUBJECT: Medical Marijuana Treatment Centers

RATIONALE: This is a proposed *temporary* moratorium on the use of land and structures in the Town for the siting of medical marijuana treatment centers, so as to allow the Town sufficient time to engage in a planning process to address the direct and secondary effects of siting such centers in the Town and to enact zoning amendments in a manner consistent with sound land use planning goals and objectives.

It is meant to honor the will of the voters who passed Ballot Question 3, Medical Marijuana Law in November 2012, while ensuring that proper regulations and zoning have been fully vetted and are in place before implementation.

The regulation and siting of medical marijuana treatment and/or distribution centers raise novel and complex public safety, health, planning and legal issues. The Law goes into effect January 1, 2013. However, the Massachusetts State Department of Health will not have promulgated implementing regulations by January 1. This proposed moratorium allows time to fully study and engage in a thoughtful planning process in a responsible and deliberate way, with the benefit of the regulations from the Massachusetts Department of Public Health, which regulations represent a critical component to the implementation of Question 3.

The proposed moratorium would be in effect until January 1, 2014 *or* 90 days after the effective date of the State Department of Health's final regulations relating to Ballot Question 3, whichever occurs first.

FISCAL IMPACT None anticipated.

STAFF ASSISTANCE: Legal Department