



Town of Barnstable Town Council

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TOWN COUNCIL MEETING AGENDA March 18, 2010 7:00 PM

Councilors:

Frederick Chirigotis
President

James H. Crocker, Jr.
Vice President

Richard G. Barry
Janice L. Barton
Ann B. Canedy
Debra S. Dagwan
Henry C. Farnham
Janet S. Joakim
J. Gregory Milne
James F. Munafo, Jr.
John T. Norman
Tom Rugo
James M. Tinsley

Administrator:
Donald M. Grissom

Administrative
Assistant:
Barbara A. Ford

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
- 4. PUBLIC COMMENT (May be limited to 2 minutes)**
- 5. COUNCIL RESPONSE TO PUBLIC COMMENT**
- 6. ACT ON MINUTES**
- 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 MEETING: April 1, 2010

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B. NEW BUSINESS

2010-094	Acceptance and approval of the fish weir renewal application from Nantucket Fish Weirs, Inc. for two fish weirs (May be acted upon)	13- 14
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Minutes — February 25, 2010 and March 4, 2010

Please Note:

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.

B. OLD BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2008-163

INTRO: 06/19/08, 07/17/08, 08/21/08, 09/18/08, 03/18/10

2008-163 ADOPTION OF THE TOWN OF BARNSTABLE COMPREHENSIVE PLAN 2008

RESOLVED AND ORDERED: That the Town Council hereby adopts the Town of Barnstable Comprehensive Plan 2008 and instructs the Town Clerk to submit the plan to the Clerk of the Cape Cod Commission for certification that it is consistent with the Regional Policy Plan.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN	
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

BARNSTABLE TOWN COUNCIL

ADOPTION OF THE TOWN OF BARNSTABLE COMPREHENSIVE PLAN 2008

ITEM# 2008-163

INTRO: 06/19/08, 07/17/08, 08/21/08, 09/18/08, 03/18/10

SUMMARY

TO: Town Council
FROM: Patty Daley, Growth Management, Interim Director
DATE: June 10, 2008

BACKGROUND: This agenda item is the update of the 1997 Local Comprehensive Plan adopted by Town Council on October 30, 2007 and certified as consistent with the Regional Policy Plan by the Cape Cod Commission on February 12, 1998.

At their meeting on June 9, 2008 the Planning Board as the Local Planning Committee unanimously voted to send the Comprehensive Plan (CP) to Town Council for review and adoption. Once Town Council approves the CP it will then be submitted to the Cape Cod Commission for certification.

ANALYSIS: A comprehensive plan describes Barnstable's land use policy. This CP focuses on the location of new growth where capacity exists to absorb impacts; guidance for areas where investment in redevelopment is desirable and incentives can be provided; support and maintenance of the villages, their character and economy; economic sectors for focused attention; protection, improvement and maintenance of natural resources; and community housing, facilities and infrastructure, heritage preservation and health and human services issues.

RATIONALE: The 1997 Local Comprehensive Plan is the certified and approved plan of record for Barnstable. This updated plan reflects conditions, science, data and policies that have changed since 1997. The Comprehensive Plan is a source of information for residents, appointed and elected officials, businesses and other stakeholders as they consider land use options in Barnstable.

FISCAL IMPACT: The fiscal impact is neutral. Plan implementation would create an overall positive fiscal impact.

STAFF ASSISTANCE: Patricia Daley, Growth Management, Interim Director
Jo Anne Miller Buntich, Growth Management, Assistant Director
Jacqueline Etsten, AICP, Growth Management, Principal Planner

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

BARNSTABLE TOWN COUNCIL

ITEM# 2010-068

INTRO: 01/07/10, 03/04/10, 03/18/10

2010-068 AMEND ZONING ORDINANCES:-BUSINESS DISTRICT REGULATIONS IN BARNSTABLE VILLAGE

ORDERED, that:

Section 1.

The Zoning Ordinance, Article III District Regulations § 240-24 VB-A and VB-B Business District is hereby amended as follows:

By deleting the words “Special permit uses (reserved for future use)” from Subsection E.

And by adding the following to Subsection E:

The following use limitations shall apply within the Barnstable Village VB-A only.

Use Limitations: Permitted retail establishment, lodging establishment, restaurant, or take out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (“Formula”) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight (8) other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

Corporate Branding Prohibition: Buildings, colors, signage, architectural features, text, symbols, graphics, other attention getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means. All structures and sites shall be designed to include architectural and design elements that are consistent with the Barnstable Village VB-B architectural composition, character, and historic context.

Section 2

The Zoning Ordinance, Article III District Regulations § 240-23 MB-B Business District is hereby amended as follows:

By Re-enumerating existing subsection E to subsection G

And by adding the following to Subsection E:

The following use limitations shall apply within the MB-B only.

Use Limitations: Permitted retail establishment, lodging establishment, restaurant, or take out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (“Formula”) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight (8) other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

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SPONSOR: Councilor Ann Canedy

BARNSTABLE TOWN COUNCIL

ITEM# 2010-068

INTRO: 01/07/10, 03/04/10, 03/18/10

SUMMARY

TO: Town Council
FROM: Planning Board
THROUGH: Jo Anne Miller Buntich
DATE: December 7, 2009 & February 3, 2010

This zoning ordinance request arises out of a direct request from the Barnstable Village Business Association who sought the Town of Barnstable's management's help in crafting the ordinance. . The Village has been especially hard hit in recent months due to a combination of the poor economy and failed bulkhead and subsequent reduced use of Barnstable harbor.

The zoning ordinance has been vetted at Barnstable Village Sessions this spring, summer and fall. The Business District was considered, along with the Harbor area, to be a "threatened" resource.

There are a number of empty storefronts at the present time and the Barnstable Village Business Association and Barnstable Village Civic Associations believe that the village character is vulnerable to chain and formula corporations.

This zoning ordinance is modeled after the Centerville Village formula and corporate business prohibitions approved by the Barnstable Planning Board and Barnstable Town Council. The text of the zoning ordinance that is the subject of this Agenda items has been approved by the Planning Board subcommittee and it is requested that it be referred to the Planning Board for review, public hearing and recommendation to the Council.

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

BARNSTABLE TOWN COUNCIL

ITEM# 2010-069

INTRO: 01/07/10, 03/04/10, 03/18/10

2010-069 AMEND ZONING ORDINANCE, ARTICLE III DISTRICT REGULATIONS §240-24.1.6, OM OFFICE/MULTIFAMILY RESIDENTIAL DISTRICT SECTION A

ORDERED, that:

Section 1 That the Zoning Ordinance, Article III. District Regulations § 240-24.1.6. OM Office/Multifamily Residential District Section A. Permitted uses, is hereby amended as follows:

By adding the following to § 240-24.1.6 OM Office/Multifamily Residential District. § A. Permitted Uses,(1) Permitted Principal Uses

(j.) Office, dental or medical

Section 2 That the Zoning Ordinance, Article III. Definitions Applicable to the Hyannis Village Zoning Districts, §240-24-1.12 is hereby amended as follows:

By adding the following Definition

OFFICE, DENTAL OR MEDICAL — A building or portion of a building in which the primary use is the provision of health care services to patients or clients by an appointment only. Appointments limited to the hours between 7 AM to 7 PM Monday through Friday and Saturday from 7 AM to 1 PM. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services. The sale of merchandise is allowed only as an accessory use.

Section 3 That the Zoning Ordinance, Article III. Definitions, Definitions Applicable to the Hyannis Village Zoning Districts, §240-24-1.12, **CLINIC, MEDICAL OR DENTAL** is hereby amended as follows:

Delete the sentence: “No fabricating is conducted on the premises, except the custom fabrication of dentures or similar dental appliances.”

SPONSOR: Councilor Debra Dagwan

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-069

INTRO: 01/07/10, 03/04/10, 03/18/10

TO: Town Council
FROM: Planning Board
THROUGH: Jo Anne Miller Buntich
DATE: December 7, 2009 & February 3, 2010

BACKGROUND: This amendment to the Zoning Ordinance will permit medical and dental office use in the OM Office/Multifamily Residential District.

RATIONALE: These regulations respond to and support the request of Stuart Bornstein, whose entities own several office buildings in the OM Office/Multifamily Residential District. Mr. Bornstein has stated that he has lost many tenants in his buildings located at 259 North Street, Village Market Place (Stevens Street), and One Financial Place (297 Stevens Street) due to the change in zoning which removed medical and dental use as a permitted principal use. These buildings were built in the 1980's and were designed, at great extra expense, to be used, in part, as medical offices. Now, due the change in zoning, even when an existing doctor tenant retires, the new tenant for the same space has to re-apply for a special permit, and they don't want to spend the time nor money to go through that process. As a result, a good portion of these buildings are vacant, and currently un-rentable due to the medical office configuration. Mr. Bornstein and his staff have showed vacant offices in these buildings to several prospective doctor and dentist tenants who expressed interest in the premises, due to the location being close to Cape Cod Hospital, plenty of parking, etc., but broke off their lease negotiations when informed that they had to apply for a special permit. Therefore, there exist many vacancies in these buildings, while there is still a need for medical and dental offices in the Hyannis Village Zoning District. Mr. Bornstein contends that the change in zoning was not intended to prohibit medical and dental office use, but just to prohibit walk-in clinics.

In summary, this amendment is needed in order to permit medical and dental as primary use in the OM Office/Multifamily Residential District, for providing health care services to patients or clients by appointment only during the hours set forth above. Specifically excluded would be in-patient or overnight care, animal hospitals, veterinarians, or other similar services.

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-091
INTRO: 03/04/10, 03/18/10**

2010-091 AMEND GENERAL ORDINANCE: SECTION 177-1 SANDY NECK BEACH PARK

**ORDERED:
SECTION I**

The General Ordinances are hereby amended by striking out Section 177-1 and inserting in place thereof the following:

“§ 177-1. Operation of a vehicle within a closed area on Sandy Neck Beach Park. No person shall operate a motor vehicle on Sandy Neck Beach Park except within marked open sections of the front beach off road vehicle corridor and on the beach access trail.”

SECTION 2

The General Ordinances are hereby amended by striking out Section 177-2 and inserting in place thereof the following:

“§ 177-2. Operation of a vehicle on Sandy Neck Beach Park without a valid permit
No person shall operate a motor vehicle on Sandy Neck Beach Park without first obtaining a Sandy Neck off road vehicle permit.”

SECTION 3

The General Ordinances are hereby amended by striking out Section 177-3 and inserting in place thereof the following:

“§ 177-3. Violations and penalties.
Any person violating this chapter shall be punished by a fine not more than \$200 for each offense.”

SECTION 4

The schedule of fines in Article I, Section 1-3 of the General Ordinances are hereby amended by striking out the lines related to Chapter 177, Article I and inserting in place thereof the following:

“Code Chapter/Section	Subject	Fine
Ch. 177, Art. I	Vehicle within a closed area (Sandy Neck Beach Park)	\$150
Ch. 177, Art. II	Vehicle without a valid permit (Sandy Neck Beach Park)	\$150”

SECTION 5

The schedule of fines in Article 1 of the General Ordinances is hereby amended by adding the following new section, §1-6.1:

“§1-6.1: Fines for the Violation of Marine and Environmental Affairs Division Regulations

offense	Fines
Sandy Neck Beach Park Regulations	
Violation of regulation	\$50

SPONSOR: Town Manager John C. Klimm

BARNSTABLE TOWN COUNCIL

ITEM# 2010-091
INTRO: 03/04/10, 03/18/10

SUMMARY

TO: Town Council
FROM: Lynne M. Poyant, Director of Community Services
DATE: February 23, 2010
SUBJECT: Town of Barnstable Ordinance changes for § 177-1, § 177-2 and § 177-3 as well a schedule of fines for Sandy Neck Beach Park Regulations

BACKGROUND: The Town Ordinances, as they pertain to Sandy Neck Beach Park, are outdated. They include multiple references to the Sandy Neck Governing Board which has been disbanded for many years. In addition, the ordinances refer to the off road vehicle permit as an “inspection sticker” which is confusing to the public and the court system. With regard to fines, the dollar amount is not defined for violations of the regulations. In addition, the fine amount for driving on the beach in many cases is less than the cost of an off road vehicle permit. This makes driving illegally on the beach less expensive than purchasing a permit and obtaining and obeying the rules and regulation of the beach.

RATIONALE: By updating the Town Ordinances, the public will have a better understanding of the Town laws as they pertain to driving a vehicle on Sandy Neck Beach Park. In addition, citations issued will be more defensible in the court system with improved and comprehensible language defining the violation. Finally, fines for regulation violations will be clearly delineated and not subject to individual interpretation.

FISCAL IMPACT: There will be a minimal increase in revenue as fines for violations will increase.

STAFF ASSISTANCE: Ruth J. Weil, Town Attorney
Nina Coleman, Sandy Neck Park Manager

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

BARNSTABLE TOWN COUNCIL

ITEM# 2010-092
INTRO: 03/04/10, 03/18/10

2010-092 APPROPRIATION FROM SANDY NECK ENTERPRISE SURPLUS FUNDS \$5,000

ORDERED: That the sum of five thousand dollars and no/100 (\$5,000.00) be transferred from the Sandy Neck Enterprise Account Surplus funds to the Sandy Neck Enterprise Account Operating Budget for the purpose of funding additional purchases of merchandise for resale.

SPONSOR: Town Manager John C. Klimm

BARNSTABLE TOWN COUNCIL

ITEM# 2010-092
INTRO: 03/04/10, 03/18/10

SUMMARY

TO: Town Council
FROM: Lynne M. Poyant, Director of Community Services
DATE: February 22, 2010
SUBJECT: Transfer of \$5,000 in funds from Sandy Neck Enterprise Account Surplus to the Sandy Neck Enterprise Account Operating Budget.

BACKGROUND: In past years we have utilized a revolving account to purchase merchandise for resale at Sandy Neck Beach Park. However, we were required to close our revolving account when the Sandy Neck Enterprise Account was established in Fiscal Year 2006. The new enterprise account line item for purchasing merchandise was set at \$5,000 and we feel that this amount does not maximize our revenue potential.

RATIONALE: Sandy Neck merchandise is very popular and we often sell out long before the end of the season. We would like to increase and expand our offerings to include a larger variety of sweatshirts and tee shirts as well as start a new line of sweatpants. These items will require a greater initial investment than the existing operating budget can support.

FISCAL IMPACT: There will be a positive fiscal impact as improved and increased merchandise offerings will enhance revenue potential.

STAFF ASSISTANCE: Nina Coleman, Sandy Neck Park Manager

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-094
INTRO: 03/18/10**

2010-094 ACCEPT THE FISH WEIR APPLICATION-NANTUCKET SOUND FISH WEIRS, INC.

RESOLVED: The Barnstable Town Council does hereby approve the Application of Nantucket Sound Fish Weirs, Inc. to renew permits for two (2) fish weir sites in the coastal waters of the Town of Barnstable in Nantucket Sound. The permit renewal request is for a period of five (5) years. (Full application on file in Council office)

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2010-094

INTRO: 03/18/10

SUMMARY

DATE: March 8, 2010
TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Lynne M. Poyant, Director, Community Services Department and
Daniel J. Horn, Director, Marine and Environmental Affairs Division

RESOLVED: The Barnstable Town Council does hereby approve the application of Nantucket Sound Fish Weirs, Inc. to renew permits for two (2) fish weir sites in the coastal waters of the Town of Barnstable in Nantucket Sound. The permit renewal request is for a period of five (5) years.

BACKGROUND: In 2005, Nantucket Sound Fish Weirs, Inc. was granted a permit for a period of five (5) years (refer to Agenda Item 2005-080). The applicant is again seeking to renew permits for two (2) existing sites in Nantucket Sound, the location and coordinates for those being on file at the Marine and Environmental Affairs Office, 1189 Phinney's Lane, Centerville. This year, 2010, will mark the thirtieth year that Nantucket Sound Fish Weirs, Inc. has been operating fish weirs in the Town of Barnstable.

Location 1 - Shore end of leader: Latitude 41° 37' 07" N; Longitude 70° 18' 47" W. Distance from mean high water mark: 1,000 yards. Landmark description: Hallet's rock buoy in line with Centerville flag pole. Collier's Ledge buoy in line with Hyannisport Breakwater. Overall length of structure: 700 yards. Extreme width of structure, including guy lines or anchor lines: 120 yards.

Location 2 - Shore end of leader: Latitude 41° 36' 33" N; Longitude 70° 22' 00" W. Distance from mean high water mark: 850 yards. Landmark description: Colliers Ledge buoy in line with flagpole on Osterville Point. Overall length of structure: 700 yards. Extreme width of structure, including guy lines or anchor lines: 350 feet.

Kurt Martin, President of Nantucket Fish Weirs, Inc. has indicated that both sites will continue to have U.S. Coast Guard approval for three yellow lights for each trap.

ANALYSIS: The Marine and Environmental Affairs Division supports the request of the applicant for renewing his permits to construct and maintain fish weirs for a period of five years.

FISCAL IMPACT: None identified.

TOWN MANAGER RECOMMENDATION The Town Manager recommends approval of the permits for a term not to exceed five years from the date of renewal approval.

BOARD/COMMITTEE ACTION: The Shellfish Committee meets on March 17th and the Waterways Committee meets on March 23rd. Their recommendations will be forwarded after they meet.

STAFF ASSISTANCE: Doug Kalweit, Supervisor of Natural Resources.