



Town of Barnstable Town Council

367 Main Street, 2nd floor,
James H. Crocker, Jr. Hearing Room
Village of Hyannis, MA 02601
Office 508.862.4738 • Fax 508.862.4770
E-mail: council@town.barnstable.ma.us

SPECIAL TOWN COUNCIL MEETING AGENDA July 1, 2021 7:00 PM

Councillors:

Matthew Levesque
President
Precinct 10

Paula Schnepf
Vice President
Precinct 12

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Nikolas Atsalis
Precinct 4

David W. Bogan
Precinct 5

Paul C. Neary
Precinct 6

Jessica Rapp Grassetti
Precinct 7

Debra S. Dagwan
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Jennifer L. Cullum
Precinct 13

Administrator:
Cynthia A. Lovell
Cynthia.Lovell@town.barnstable.ma.us

Administrative
Assistant:
Kelly Crahan
Kelly.Crahan@town.barnstable.ma.us

The July 1, 2021 Special Town Council Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

Alternative Public Access

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

Join Zoom Meeting <https://zoom.us/j/95674445363> Meeting ID: 956 7444 5363
US Toll-free 1- 888- 475- 4499

2. Written Comments may be submitted to:

https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp

3. The meeting will be televised live via Comcast Channel 18 access:

<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

7. ACT ON MINUTES (Including Executive Session)

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

9. ORDERS OF THE DAY

- A. Old Business
- B. New Business

Councilors:

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Precinct 10

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Vice President
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Precinct 1

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EXECUTIVE SESSION

The Town Council will enter Executive Session pursuant to G.L. c. 30A, sec. 21(a)(3) to discuss strategy with respect to litigation since a discussion in open session may have a detrimental effect on the litigating position of the Town and Town Council. Specifically, the Council will discuss two lawsuits filed against the Town by the Conservation Law Foundation, one regarding claims under the Federal Clean Water Act and the other regarding claims relating to the Massachusetts Title 5 septic regulations.

10. ADJOURNMENT

NEXT REGULAR MEETING: July 15, 2021

ITEM NO.	INDEX TITLE	PAGE
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A. OLD BUSINESS

2021-139	Order Amending Chapter 184 Sewers and Water of the General Ordinances (May be acted upon) (Roll Call Majority)4-18
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B. NEW BUSINESS

2021-186	Resolve approving Mark S. Ells’ outside employment with Cape Cod Community College (May be acted upon) (Roll Call Majority) 19
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2021-187	Appropriation Order in the amount of \$89,950 in Community Preservation Funds for the restoration work to the Barnstable Historic Society Inc.’s building at 3087 Main Street/Rte 6A, Barnstable (Refer to Public Hearing 07/15/2021)20-21
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Approve Minutes: June 17, 2021

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

A. OLD BUSINESS (May be acted upon)(Roll Call Majority)

BARNSTABLE TOWN COUNCIL

ITEM# 2021-139

INTRO: 04/15/2021, 05/20/2021, 07/01/2021

2021-139 ORDER AMENDING CHAPTER 184 SEWERS AND WATER OF THE GENERAL ORDINANCES

ORDERED: That Chapter 184 General Ordinances of the Code of the Town of Barnstable be amended by inserting the following new Article II, Sewer Assessments, as presented to the Town Council on April 15, 2021, and as amended by the Town Council at its meeting of May 20, 2021, and renumbering the current Articles II and III as Articles III and IV:

**“ARTICLE II
SEWER ASSESSMENTS**

Section 1: Purpose and Authorization

The purpose of this Article II is to assess all properties receiving benefit or advantage from public sewerage construction within a limited and determinable area, including, but not limited to, as set forth in the Comprehensive Wastewater Management Plan approved by vote of the Town Council on November 7, 2019, and in accordance with Section 1 of Chapter 83 of the General Laws, any other applicable section of said Chapter 83 and any other applicable general or special law.

Section 2: Definitions

For the purpose of this Article II, the following words shall be considered to have the following meanings:

- (1) Commercial Use: Occupancy of premises for financial gain including profit such as business and industrial uses.
- (2) Commercial Sewer Unit: Shall be equivalent to 330 gallons of actual or reasonably anticipated daily sewage volume, as determined by the Director of the Department of Public Works based on Title 5 of the State Environmental Code, 310 CMR 15.203, System Sewage Flow Design Criteria. For purposes of determining the number of Commercial Sewer Units to be assessed, volume in an amount up to and including 330 gallons shall be deemed one Commercial Sewer Unit. An additional Commercial Sewer Unit shall be assessed for each additional 330 gallons of volume.
- (3) Compensatory Sewer Privilege Fee: A fee that is assessed in lieu of a sewer assessment to reflect the increased use of a property in situations where: (a) a sewer assessment has been assessed to an undeveloped property based on the number of potential Sewer Units and said property is ultimately developed to accommodate a greater number of Sewer Units than that originally assessed; or (b) a sewer assessment has been assessed to a developed parcel and subsequently the use of that parcel has changed or intensified to accommodate a greater number of Sewer Units than that originally assessed; or (c) no sewer assessment was assessed to an Unbuildable Lot and that lot subsequently is issued a building permit.
- (4) Dwelling Unit: One or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping, and eating; provided that, solely for the purposes of this Article II, such complete living facilities that contain one bedroom or fewer shall be a Half Dwelling Unit.

- (5) Force Main: A line without access from individual properties providing access from pumping station to pumping station or to trunk and sewer main.
- (6) General Benefit Facilities: Improvements, such as pumping stations, trunk and force mains, acquisition of land or interests in land, which will provide benefit or advantage to an area exceeding that served by the Special Benefit Facilities. Ordinarily, General Benefit Facilities will serve a major part of a Pumping District.
- (7) Lateral Line: Sewer conduit from a house to a street.
- (8) Pumping District: An area, as identified by the Department of Public Works, which consists of a collection of sewer mains that connect to generally used infrastructure, such as pump stations, trunk mains and force mains that moves sewage from said collection of sewer mains to a treatment facility.
- (9) Residential Sewer Units: Shall be equivalent to the number of existing Dwelling Units, including, but not limited to, Accessory Dwelling Units, affordable accessory apartments and family apartments as defined by the Zoning Ordinance, and the number of potential Dwelling Units on the property as permitted under the Zoning Ordinance for the district in which the property is located; provided that any Accessory Dwelling Unit, affordable accessory apartment or family apartment that did not exist at the time of assessment shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F hereof; provided further, that a Half Dwelling Unit shall be assessed as one half of one Sewer Unit.
- (10) Semi-public Use: Occupancy of premises by private non-profit organizations, including without limitation private schools, hospitals, and religious institutions.
- (11) Sewer Main: The line serving as a conduit for sanitary sewerage from the lateral lines from each individual property.
- (12) Special Benefit Facilities: The sewer main to which a lateral line from an individual abutting property can be connected, acquisition of land or interests in land, pumping stations that are required to service a specific project area and any other costs of improvements required to service a specific project area.
- (13) Trunk Main: The line serving as a conduit for sanitary sewerage from a number of sewer mains and lateral lines. Trunk mains shall be considered as those lines ten (10) inches and over in diameter.
- (14) Unbuildable Lot: At the time at which a sewer assessment would have been imposed, a lot, as determined by the assessors of the Town, on which there is no apparent legal way to build a legal residence or commercial building because the lot does not conform to the Town's building regulations or Zoning Ordinance.
- (15) Uniform Unit Method: A means by which sewerage construction costs shall be equally divided between the total number of existing and potential Sewer Units to be served after having proportioned the costs resulting from the construction of Special and General Benefit Facilities.
- (16) Zoning Ordinance: The Zoning Ordinance in effect in the Town of Barnstable at the time the sewerage assessment is levied.

Section 3: Basic Requirements

The Town Manager shall assess sewerage construction costs to all properties receiving benefit or advantage on the basis of the Uniform Unit Method. The Town Manager shall separate the costs of the General Benefit Facilities from those of the Special Benefit Facilities. The proportional cost of the Special and General Benefit Facilities shall be assessed in accordance with Section 5 hereof.

Section 4: Determination of Sewer Units

Section 4A: Each parcel of land in a Pumping District shall be converted into permanent Residential or Commercial Sewer Units, as defined herein, by the DPW for the purpose of proportionally dividing the construction costs equitably among such parcels of land.

Section 4B: Developed Residential Lots

A residential lot that contains one Dwelling Unit shall be assessed as one Sewer Unit. If such residential lot contains more than one Dwelling Unit, the number of assessed Residential Sewer Units shall equal the number of Dwelling Units. Single family dwellings shall comprise one Residential Sewer Unit; single family dwellings which have an Accessory Dwelling Unit, affordable accessory apartment or family apartment as defined by the Zoning Ordinance within the single family residence or in a detached building on the same lot shall comprise two Residential Sewer Units; duplex dwellings shall comprise two Residential Sewer Units; three-family dwellings shall comprise three Residential Sewer Units; four-family dwellings shall comprise four Residential Sewer Units; and multiple family dwellings (in excess of four dwelling units) shall comprise one Residential Sewer Unit for each apartment in a rental property and one Residential Sewer Unit for each dwelling unit in a condominium complex; provided that the number of Residential Sewer Units in the foregoing list shall be adjusted accordingly for Half Dwelling Units. A Dwelling Unit that occupies two residential lots in such a way that only one Dwelling Unit is allowed shall be assessed as one Residential Sewer Unit.

Section 4C: Lots Capable of Division or Sub-Division

1. Residential Lots Capable of Division or Sub-Division

Residentially zoned land which is capable of being divided or sub-divided according to the Zoning Ordinance shall be assessed as currently used plus one additional Sewer Unit for each lot which could be created in accordance with the Zoning Ordinance. At the property owner's request, the time for payment of such additional assessment may be extended until such time as the land is built upon, provided that interest at the annual rate of 4% shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid in full within three months after such land is built upon.

2. Commercial, Industrial, Business and Semi-public Lots Capable of Division or Sub-Division

Commercial, industrial, business, and semi-public lots which could be divided or sub-divided according to the Zoning Ordinance shall be assessed as currently used plus one additional Commercial Sewer Unit for each additional 330 gallons of reasonably anticipated daily sewage volume which could be generated from the use in accordance with the Zoning Ordinance. At the property owner's request, the time for payment of such additional assessment may be extended until such time as the land is built upon, provided that interest at the annual rate of 4% shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid in full within three months after such land is built upon.

Section 4D: Improved Commercial, Industrial, Business, and Semi-public Lots and Uses

Improved commercial, industrial, business, and semi-public lots and uses shall be assessed according to the reasonably anticipated sewage volume to be generated from the use. 330 gallons of actual or anticipated daily sewage volume shall equal one Commercial Sewer Unit.

Section 4E: Unbuildable Lots

An Unbuildable Lot shall not be assessed any Sewer Units, provided that upon the issuance of a building permit, said lot shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F below.

Section 4F: Changes in Use or Intensity of Use

In the event that existing uses on a parcel of land are changed or intensified under any circumstance, including without limitation issuance of a building permit for what had been classified as an Unbuildable Lot at the time a sewer assessment otherwise would have been imposed, changes in zoning, variance from the Zoning Ordinance, new construction and changes in use or reconfiguration, resulting in greater actual or potential sewage output than that established at the time of the original assessment or at the time the decision was made not to assess, the Town Manager or his or her designee shall assess a Compensatory Sewer Privilege Fee to reflect the new or increased use. The Compensatory Sewer Privilege Fee shall be computed based on the number of Sewer Units attributable

to the new or increased use; provided that the amount of the fee for each such Sewer Unit shall be no greater than the initial maximum amount, as adjusted and most recently in effect, in accordance with Section 5A hereof. The Compensatory Sewer Privilege Fee shall be levied either at the time of connection of new or additional flow to the public sewer or upon Town of Barnstable approval of the change in use. Payment of the Compensatory Sewer Privilege Fee shall be made in accordance with the process for payment of assessments set forth in Section 8 hereof; provided that if the property owner chooses to apportion the payments, the Town will apply the same interest rate as that which would have been imposed for a sewer assessment on the property. Compensatory Sewer Privilege Fees collected by the Town shall be placed into a Sewer Privilege Fee Fund to be established by the Town and such monies shall be used to pay costs associated with the operation and maintenance costs of the Town's sewer system and wastewater treatment facility.

Section 5: Cost Determination and Apportionment Using the Uniform Unit Method

Section 5A: Sewer Cost Determination and Apportionment for Residential Land and Uses

Sewer assessments shall be based on one hundred percent (100%) of the cost of Special and General Benefit Facilities, as determined in accordance with the formulas set forth below. The actual assessment per Residential or Commercial Sewer Unit shall be the allocated cost or Ten Thousand Dollars (\$10,000.00) (the "initial maximum amount"), whichever is lower. This initial maximum amount will remain in effect until June 30 of the year following the calendar year in which the first sewer assessments are made. Thereafter, the initial maximum amount may be adjusted annually as of July 1 of each year by the percentage change in the construction cost index as calculated by the Gordian Company for the immediately preceding year ending June 30, as determined by the Town Manager, subject to approval by the Town Council. In the event that Gordian ceases to publish such index, the Department of Public Works will select an index which most closely resembles the Gordian index and the substitute index shall then be used for so long as the Director of the Department of Public Works determines that the substitute index accurately reflects market conditions.

Section 5B: Cost and Assessment of General Benefit Facilities

1. The cost of General Benefit Facilities and of Special Benefit Facilities shall be determined separately from each other.
2. The cost of General Benefit Facilities for a Pumping District shall be divided by the number of Sewer Units in such Pumping District. The result of such calculation shall be the General Benefit Facility Unit Cost.
 - a. The General Benefit Facility Unit Cost shall be assessed to Sewer Units which abut existing streets and have the capability to connect to the sewer system so that the property will receive a direct benefit and advantage upon connection to the sewer system.
 - b. The General Benefit Facility Unit Cost shall not be assessed to Sewer Units that do not currently abut existing streets to be sewered but shall be assessed at such later time as such Sewer Units shall have the capability to connect to the sewer system and directly benefit from the General Benefit Facilities.

Section 5C: Cost and Assessment of Special Benefit Facilities

1. The cost of Special Benefit Facilities for a Pumping District shall be divided by the number of Sewer Units in such Pumping District. The result of such calculation shall be the Special Benefit Facility Unit Cost.
 - a. The Special Benefit Facility Unit Cost shall be assessed to Sewer Units which abut existing streets and have the capability to connect to the sewer system so that the property will receive a direct benefit and advantage upon connection to the sewer system.
 - b. The Special Benefit Facility Unit Cost shall not be assessed to Sewer Units that do not currently abut existing streets to be sewered but shall be assessed at such later time as such Sewer Units shall have the capability to connect to the sewer system and directly benefit from the Special Benefit Facilities.

Section 6: Estimated Assessments

The Town may assess and collect estimated sewer assessments in connection with the construction of water pollution collection, pumping, treatment and disposal facilities. The total amount of such estimated sewer assessments shall not exceed the lesser of: (i) one-half of the Town's liability under all contracts it has entered into for the construction of such facilities or (ii) the amount of any cap on sewer assessments as determined under Section 5 multiplied by the total number of Residential and Commercial Sewer Units. The total of such estimated assessments shall be determined by the same method to be used for the determination of the actual assessments upon the completion of the work. When the final costs of construction of the facilities have been determined, the Town may assess and collect actual sewer assessments for the balance owed. The interest rate on estimated sewer assessments will be the rate as determined under Section 8.

Section 7: Sewer Connection Costs

The cost of connecting the abutter to the completed section of sewer will be assessed back to the property abutter at one hundred percent (100%) of the cost. Property abutters may elect to pay the entire cost of connection upon completion or may choose to have it added to their sewer assessment. Alternatively, property abutters may elect to privately arrange and pay for the connection to the completed section of sewer.

Section 8: Interest Rate on Apportioned Sewer Assessments

Section 8A. At the time of assessment, the property owner will have the option to pay the full amount of the assessment within thirty (30) days, or to make a partial payment on the assessment and apportion the unpaid balance over future tax bills for a period of their choosing, up to 30 years, or to apportion the full assessment over future tax bills for a period of their choosing, up to 30 years. The Town will apply an interest rate to the sewer assessment at an annual fixed rate of two percent (2.0%) above the borrowing costs the Town incurs on the loan. If multiple loans are issued, a blended rate will be used to calculate the Town's borrowing cost. The property owner may pay the total remaining principal amount due at any time without a prepayment penalty.

Section 8B. The provisions of section 15D of Chapter 83 of the General Laws, with respect to the apportionment of payments of the assessment over a 30 year period, are hereby accepted by reference as a part of the general ordinances of the Town.

Section 9: Deferral of Charges

Section 9A. In accordance with and subject to the provisions of Section 16G of Chapter 83 of the General Laws, the Department of Public Works shall, upon application of the owner of real property served by the common sewers, if such owner is receiving an exemption from property taxes under clause Forty-first A of Section 5 of Chapter 59 of the General Laws with respect to such property, defer charges for said use of the common sewers. An application for deferral may be filed with the Department of Public Works within the time limit established for the filing of an application for exemption under said clause Forty-first A.

Section 9B. The provisions of section 16G of Chapter 83 of the General Laws, with respect to the ability of certain eligible property owners to defer payments of sewer assessments, are hereby accepted by reference as a part of the general ordinances of the Town.

Section 10: Abatements

A property owner aggrieved by a sewer assessment imposed under this Article II may apply for abatement thereof by filing a request for abatement with the Town Manager on a form provided by the Department of Public Works within six months of the date of notice of such Assessment. The Town Manager shall make a final ruling on the application within 45 days from the date of filing. The filing of the application does not stay the payment of the sewer assessment, which must be paid as assessed. If the abatement request is allowed, the appropriate refund will be made by the Town. A property owner who is aggrieved by the refusal of the Town Manager to abate an assessment in whole or in part may within thirty days after notice of the decision of the Town Manager appeal

therefrom by filing a petition for the abatement of such assessment in the superior court in accordance with Section 7 of Chapter 80 of the General Laws.”

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

04/15/2021 Refer to Public Hearing 05/20/2021

05/20/2021 Public Hearing Closed/Continue agenda item 2021-139 to the Town Council Meeting on 07/01/2021

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

BARNSTABLE TOWN COUNCIL
RED LINED VERSION

ITEM# 2021-139

INTRO: 04/15/2021, 05/20/2021

**2021-139 ORDER AMENDING CHAPTER 184 SEWERS AND WATER
OF THE GENERAL ORDINANCES**

ORDERED: That Chapter 184 General Ordinances of the Code of the Town of Barnstable be amended by inserting the following new Article II, Sewer Assessments, and renumbering the current Articles II and III as Articles III and IV:

**“ARTICLE II SEWER
ASSESSMENTS**

Section 1: Purpose and Authorization

The purpose of this Article II is to assess all properties receiving benefit or advantage from public sewerage construction within a limited and determinable area, including, but not limited to, as set forth in the Comprehensive Wastewater Management Plan approved by vote of the Town Council on November 7, 2019, and in accordance with Section 1 of Chapter 83 of the General Laws, any other applicable section of said Chapter 83 and any other applicable general or special law.

Section 2: Definitions

For the purpose of this Article II, the following words shall be considered to have the following meanings:

- (1) Commercial Use: Occupancy of premises for financial gain including profit such as business and industrial uses.
- (2) Commercial Sewer Unit: Shall be equivalent to 330 gallons of actual or reasonably anticipated daily sewage volume, as determined by the Director of the Department of Public Works based on Title 5 of the State Environmental Code, 310 CMR 15.203, System Sewage Flow Design Criteria. For purposes of determining the number of Commercial Sewer Units to be assessed, volume in an amount up to and including 330 gallons shall be deemed one Commercial Sewer Unit. An additional Commercial Sewer Unit shall be assessed for each additional 330 gallons of volume.
- (3) Compensatory Sewer Privilege Fee: A fee that is assessed in lieu of a sewer assessment to reflect the increased use of a property in situations where: (a) a sewer assessment has been assessed to an undeveloped property based on the number of potential Sewer Units and said property is ultimately developed to accommodate a greater number of Sewer Units than that originally assessed; or (b) a sewer assessment has been assessed to a developed parcel and subsequently the use of that parcel has changed or intensified to accommodate a greater number of Sewer Units than that originally assessed; or (c) no

sewer assessment was assessed to an Unbuildable Lot and that lot subsequently is issued a building permit.

(4) Dwelling Unit: One or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping, and eating; provided that, solely for the purposes of this Article II, such complete living facilities that contain one bedroom or fewer shall be a Half Dwelling Unit.

(5) Force Main: A line without access from individual properties providing access from pumping station to pumping station or to trunk and sewer main.

(6) General Benefit Facilities: Improvements, such as pumping stations, trunk and force mains, acquisition of land or interests in land, which will provide benefit or advantage to an area exceeding that served by the Special Benefit Facilities. Ordinarily, General Benefit Facilities will serve a major part of a Pumping District.

(7) Lateral Line: Sewer conduit from a house to a street.

~~(8) Multifamily Use: Occupancy of premises with two or more dwelling units.~~

~~(89) Pumping District: An area, as identified by the Department of Public Works, which consists of a collection of sewer mains that connect to generally used infrastructure, such as pump stations, trunk mains and force mains that moves sewage from said collection of sewer mains to a treatment facility.~~

~~(940) Residential Sewer Units: Shall be equivalent to the number of existing Dwelling Units, including, but not limited to, Accessory Dwelling Units, affordable accessory apartments and family apartments as defined by the Zoning Ordinance, and the number of potential Dwelling Units on the property as permitted under the Zoning Ordinance for the district in which the property is located; provided that any Accessory Dwelling Unit, affordable accessory apartment or family apartment that did not exist at the time of assessment shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F hereof; provided further, that a Half Dwelling Unit shall be assessed as one half of one Sewer Unit. Residential Sewer Units: Shall be equivalent to the number of existing Dwelling Units, including Accessory Dwelling Units as defined by the Zoning Ordinance, and the number of potential Dwelling Units on the property, as permitted under the Zoning Ordinance of the Town of Barnstable for the district in which the property is located; provided, that any Accessory Dwelling Unit that did not exist at the time of assessment shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F hereof; provided further, that a Half Dwelling Unit shall be assessed as one half of one Sewer Unit.~~

~~(104) Semi-public Use: Occupancy of premises by private non-profit organizations, including without limitation private schools, hospitals, and religious institutions~~

~~(112) Sewer Main: The line serving as a conduit for sanitary sewerage from the lateral lines from each individual property.~~

~~(123) Special Benefit Facilities: The sewer main to which a lateral line from an individual abutting property can be connected, acquisition of land or interests in~~

land, pumping stations that are required to service a specific project area and any other costs of improvements required to service a specific project area.

(134) Trunk Main: The line serving as a conduit for sanitary sewerage from a number of sewer mains and lateral lines. Trunk mains shall be considered as those lines ten (10) inches and over in diameter.

(145) Unbuildable Lot: At the time at which a sewer assessment would have been imposed, a lot, as determined by the assessors of the Town, on which there is no apparent legal way to build a legal residence or commercial building because the lot does not conform to the Town's building regulations or Zoning Ordinance.

(156) Uniform Unit Method: A means by which sewerage construction costs shall be equally divided between the total number of existing and potential Sewer Units to be served after having proportioned the costs resulting from the construction of Special and General Benefit Facilities.

(167) Zoning Ordinance: The Zoning Ordinance in effect in the Town of Barnstable at the time the sewerage assessment is levied.

Section 3: Basic Requirements

The Town Manager shall assess sewerage construction costs to all properties receiving benefit or advantage on the basis of the Uniform Unit Method. The Town Manager shall separate the costs of the General Benefit Facilities from those of the Special Benefit Facilities. The proportional cost of the Special and General Benefit Facilities shall be assessed in accordance with Section 5 hereof.

Section 4: Determination of Sewer Units

Section 4A: Each parcel of land in a Pumping District shall be converted into permanent Residential or Commercial Sewer Units, as defined herein, by the DPW for the purpose of proportionally dividing the construction costs equitably among such parcels of land.

Section 4B: Developed Residential Lots

A residential lot that contains one Dwelling Unit shall be assessed as one Sewer Unit. If such residential lot contains more than one Dwelling Unit, the number of assessed Residential Sewer Units shall equal the number of Dwelling Units. Single family dwellings shall comprise one Residential Sewer Unit; single family dwellings which have an Accessory Dwelling Unit, affordable accessory apartment or family apartment as defined by the Zoning Ordinance within the single family residence or in a detached building on the same lot shall comprise two Residential Sewer Units; duplex dwellings shall comprise two Residential Sewer Units; three-family dwellings shall comprise three Residential Sewer Units; four-family dwellings shall comprise four Residential Sewer Units; and multiple family dwellings (in excess of four dwelling units) shall comprise one Residential Sewer Unit for each apartment in a rental property and one Residential Sewer Unit for each dwelling unit in a condominium complex; provided that the number of Residential Sewer Units in the foregoing list shall be adjusted accordingly for Half Dwelling Units. A Dwelling Unit that occupies two residential lots in such a way

that only one Dwelling Unit is allowed shall be assessed as one Residential Sewer Unit.

Section 4C: Lots Capable of Division or Sub-Division

1. Residential Lots Capable of Division or Sub-Division

Residentially zoned land which is capable of being divided or sub-divided according to the Zoning Ordinance shall be assessed as currently used plus one additional Sewer Unit for each lot which could be created in accordance with the Zoning Ordinance. At the property owner's request, the time for payment of such additional assessment may be extended until such time as the land is built upon, provided that interest at the annual rate of 4% shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid in full within three months after such land is built upon.

2. Commercial, Industrial, Business and Semi-public Lots Capable of Division or Sub-Division

Commercial, industrial, business, and semi-public lots which could be divided or sub-divided according to the Zoning Ordinance shall be assessed as currently used plus one additional Commercial Sewer Unit for each additional 330 gallons of reasonably anticipated daily sewage volume which could be generated from the use in accordance with the Zoning Ordinance. At the property owner's request, the time for payment of such additional assessment may be extended until such time as the land is built upon, provided that interest at the annual rate of 4% shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid in full within three months after such land is built upon.

Section 4D: Improved Commercial, Industrial, Business, and Semi-public

Lots and Uses Improved commercial, industrial, business, and semi-public lots and uses shall be assessed according to the reasonably anticipated sewage volume to be generated from the use. 330 gallons of actual or anticipated daily sewage volume shall equal one Commercial Sewer Unit.

Section 4E: Unbuildable Lots

An Unbuildable Lot shall not be assessed any Sewer Units, provided that upon the issuance of a building permit, said lot shall be assessed a Compensatory Sewer Privilege Fee in accordance with Section 4F below.

Section 4F: Changes in Use or Intensity of Use

In the event that existing uses on a parcel of land are changed or intensified under any circumstance, including without limitation issuance of a building permit for what had been classified as an Unbuildable Lot at the time a sewer assessment otherwise would have been imposed, changes in zoning, variance from the Zoning Ordinance, new construction and change in use or reconfiguration, resulting in greater actual or potential sewage output than that established at the time of the original assessment or at the time the decision was made not to assess, the Town Manager or his or her designee shall assess a Compensatory Sewer Privilege Fee to reflect the new or increased use. The Compensatory Sewer Privilege Fee shall be computed based on the number of Sewer Units attributable to the new or increased use; provided that the amount of the fee for each such Sewer Unit shall be no

greater than the initial maximum amount, as adjusted and most recently in effect, in accordance with Section 5A hereof. The Compensatory Sewer Privilege Fee shall be levied either at the time of connection of new or additional flow to the public sewer or upon Town of Barnstable approval of the change in use. Payment of the Compensatory Sewer Privilege Fee shall be made in accordance with the process for payment of assessments set forth in Section 8 hereof; provided that if the property owner chooses to apportion the payments, the Town will apply the same interest rate as that which would have been imposed for a sewer assessment on the property. Compensatory Sewer Privilege Fees collected by the Town shall be placed into a Sewer Privilege Fee Fund to be established by the Town and such monies shall be used to pay costs associated with the operation and maintenance costs of the Town's sewer system and wastewater treatment facility.

Section 5: Cost Determination and Apportionment Using the Uniform Unit Method

Section 5A: Sewer Cost Determination and Apportionment for Residential Land and Uses

Sewer assessments shall be based on one hundred percent (100%) of the cost of Special and General Benefit Facilities, as determined in accordance with the formulas set forth below. The actual assessment per Residential or Commercial Sewer Unit shall be the allocated cost or ~~Seventeen Thousand Dollars (\$17,000.00)~~ Ten Thousand Dollars (\$10,000.00) (the "initial maximum amount"), whichever is lower. This initial maximum amount will remain in effect until June 30 of the year following the calendar year in which the first sewer assessments are made. Thereafter, the initial maximum amount may be adjusted annually as of July 1 of each year by the percentage change in the construction cost index as calculated by the Gordian Company for the immediately preceding year ending June 30, as determined by the Town Manager, subject to approval by the Town Council. In the event that Gordian ceases to publish such index, the Department of Public Works will select an index which most closely resembles the Gordian index and the substitute index shall then be used for so long as the Director of the Department of Public Works determines that the substitute index accurately reflects market conditions.

Section 5B: Cost and Assessment of General Benefit Facilities

1. The cost of General Benefit Facilities and of Special Benefit Facilities shall be determined separately from each other.
2. The cost of General Benefit Facilities for a Pumping District shall be divided by the number of Sewer Units in such Pumping District. The result of such calculation shall be the General Benefit Facility Unit Cost.
 - a. The General Benefit Facility Unit Cost shall be assessed to Sewer Units which abut existing streets and have the capability to connect to the sewer system so that the property will receive a direct benefit and advantage upon connection to the sewer system.
 - b. The General Benefit Facility Unit Cost shall not be assessed to Sewer Units that do not currently abut existing streets to be sewered but shall be assessed at such later time as such Sewer Units shall have the capability to

connect to the sewer system and directly benefit from the General Benefit Facilities.

Section 5C: Cost and Assessment of Special Benefit Facilities

1. The cost of Special Benefit Facilities for a Pumping District shall be divided by the number of Sewer Units in such Pumping District. The result of such calculation shall be the Special Benefit Facility Unit Cost.
 - a. The Special Benefit Facility Unit Cost shall be assessed to Sewer Units which abut existing streets and have the capability to connect to the sewer system so that the property will receive a direct benefit and advantage upon connection to the sewer system.
 - b. The Special Benefit Facility Unit Cost shall not be assessed to Sewer Units that do not currently abut existing streets to be sewered but shall be assessed at such later time as such Sewer Units shall have the capability to connect to the sewer system and directly benefit from the Special Benefit Facilities.

Section 6: Estimated Assessments

The Town may assess and collect estimated sewer assessments in connection with the construction of water pollution collection, pumping, treatment and disposal facilities. The total amount of such estimated sewer assessments shall not exceed the lesser of: (i) one-half of the Town's liability under all contracts it has entered into for the construction of such facilities or (ii) the amount of any cap on sewer assessments as determined under Section 5 multiplied by the total number of Residential and Commercial Sewer Units. The total of such estimated assessments shall be determined by the same method to be used for the determination of the actual assessments upon the completion of the work. When the final costs of construction of the facilities have been determined, the Town may assess and collect actual sewer assessments for the balance owed. The interest rate on estimated sewer assessments will be the rate as determined under Section 8.

Section 7: Sewer Connection Costs

The cost of connecting the abutter to the completed section of sewer will be assessed back to the property abutter at one hundred percent (100%) of the cost. Property abutters may elect to pay the entire cost of connection upon completion or may choose to have it added to their sewer assessment. Alternatively, property abutters may elect to privately arrange and pay for the connection to the completed section of sewer.

Section 8: Interest Rate on Apportioned Sewer Assessments ~~(NOTE: Ability to make payments over 30 years is subject to acceptance by the Town of G.L. c. 83, sec. 15D~~

Section 8A. At the time of assessment, the property owner will have the option to pay the full amount of the assessment within thirty (30) days, or to make a partial payment on the assessment and apportion the unpaid balance over future tax bills for a period of

30 years. The Town will apply an interest rate to the sewer assessment at an annual fixed rate of two percent (2.0%) above the borrowing costs the Town incurs on the loan. If multiple loans are issued, a blended rate will be used to calculate the Town's borrowing cost. The property owner may pay the total remaining principal amount due at any time without a prepayment penalty.

Section 8B. The provisions of section 15D of Chapter 83 of the General Laws, with respect to the apportionment of payments of the assessment over a 30 year period, are hereby accepted by reference as a part of the general ordinances of the Town.

Section 9: Deferral of Charges (~~NOTE: Section c. 83, sec 16G needs to be accepted by the Town~~)

Section 9A. In accordance with and subject to the provisions of Section 16G of Chapter 83 of the General Laws, the Department of Public Works shall, upon application of the owner of real property served by the common sewers, if such owner is receiving an exemption from property taxes under clause Forty-first A of Section 5 of Chapter 59 of the General Laws with respect to such property, defer charges for said use of the common sewers. An application for deferral may be filed with the Department of Public Works within the time limit established for the filing of an application for exemption under said clause Forty-first A.

Section 9B. The provisions of section 16G of Chapter 83 of the General Laws, with respect to the ability of certain eligible property owners to defer payments of sewer assessments, are hereby accepted by reference as a part of the general ordinances of the Town.

Section 10: Abatements

A property owner aggrieved by a sewer assessment imposed under this Article II may apply for abatement thereof by filing a request for abatement with the Town Manager on a form provided by the Department of Public Works within six months of the date of notice of such Assessment. The Town Manager shall make a final ruling on the application within 45 days from the date of filing. The filing of the application does not stay the payment of the sewer assessment, which must be paid as assessed. If the abatement request is allowed, the appropriate refund will be made by the Town. A property owner who is aggrieved by the refusal of the Town Manager to abate an assessment in whole or in part may within thirty days after notice of the decision of the Town Manager appeal therefrom by filing a petition for the abatement of such assessment in the superior court in accordance with Section 7 of Chapter 80 of the General Laws.”

SPONSOR: Mark S. Ells, Town Manager

BARNSTABLE TOWN COUNCIL

ITEM# 2021-139

INTRO: 04/15/2021, 05/20/2021, 07/01/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Karen L. Nober, Town Attorney, Mark A. Milne, CPA, Director of Finance
DATE: April 15, 2021
SUBJECT: Order Amending Chapter 184 Sewers and Water of the General Ordinances

BACKGROUND: The Comprehensive Wastewater Management Plan (CWMP) is a 30-year construction plan to extend sewer service to 11,800 properties across Town. It is a science-based plan for meeting the Total Maximum Daily Loads (TMDLs) in our estuaries that will protect the health of our waters. By collecting and treating wastewater, the sewers will safeguard the health of our coastal waters, ponds and drinking water for generations to come. The program also provides ancillary benefits to the community in the form of increased opportunities for housing, economic development and the redevelopment of underutilized property.

The current estimated cost for planning purposes of the 30-year plan is approximately \$1.4 billion, including construction, borrowing costs and inflation. This will be reviewed at regular intervals and updated based on new information. The Town has already made significant progress in identifying resources to address this plan. Through legislative action at both the state and local levels the Town has created over 50% of the estimated funding sources needed for this program. An existing dedicated revenue stream consisting of proceeds from the local room occupancy tax on traditional lodging, short-term rental occupancy tax, local meals tax and a new excise tax of 2.75% that applies to all types of lodging on Cape Cod is estimated to provide over one-half of the funding needed for this program. As additional properties are brought on-line with the public sewer system additional revenue will be provided from sewer user charges. Options for financing the remaining costs of the plan are being developed to equitably allocate the costs to property owners in accordance with the benefits they will receive from the sewer construction. One of these options is a sewer assessment that is charged to property owners who will have the ability to tie into the public sewer system as it is built out.

RATIONALE: There are two methods that can be used to calculate sewer assessments. 1) A fixed uniform rate or uniform unit. The fixed uniform rate is based upon the estimated average cost of all the sewers therein, according to the frontage of such land on any way in which a sewer is constructed, or according to the area of such land within a fixed depth from such way, or according to both such frontage and area. 2) A uniform unit method is based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served. Each sewer unit shall be equal to a single family residence.

Under either method, the size of a structure on the property, the number of people that could potentially live in a structure or the assessed value of a property cannot be used to determine the sewer assessment. The Town is proposing to equalize the sewer assessment to all affected property owners by capping it at \$17,000. This would apply to either method chosen so the uniform unit method is recommended as sewer units are more easily determined. If the Town wants to execute a strategy that would determine sewer assessments based upon a group of property owner's perceived ability to pay; therefore charging different sewer assessments amounts to different groups of property owners, a strategy would have to be implemented whereby the assessment would be determined on a project by project basis as the system is built out.

All property owners in Town benefit from the quality of life and economic advantages provided by pristine beaches, ponds and drinking water. However, the properties that are to be connected to the public sewer system will gain added advantages of state-of-the-art wastewater treatment service resulting in enhanced property values. A property tied into a public sewer system has the potential to command a higher market value and increased marketability compared to a similar home with a private on-site system due to the eventual failure of the on-site system and potential significant cost of its replacement. A recent study involving active brokers/agents and developers found universal agreement that the introduction of sewers will result in increased market values and greater marketability. The study's market analysis showed that sewers resulted in an increase in single family residential property values estimated at 6-13% with an average of 8%, and an increase in property values on vacant acreage estimated at 15-25%. In another recent study prepared for the Sound View Sewer Coalition, LLC of South Lyme, CT, appraisers concluded that the estimated benefit of public sewer to residential property was 7% and 10% for restaurant/mixed use property. Furthermore, a property tied into the public sewer system will never have to incur the cost of replacing an on-site system and will benefit from reliable sewer service operated and maintained by the Town, and receive an improved roadway in front of their property. Accordingly, one of the options proposed to close the funding gap for the CWMP is that property owners that will have the ability to connect to sewer service pay an additional charge in the form of a sewer assessment for receiving these public benefits.

The Sewer Assessment Ordinance would create a sewer assessment that would apply only to properties that will be receiving new sewer service. The sewer assessment will not apply to a property that is already tied into the public sewer system or properties that currently have the ability to tie into the public sewer system. A cap on the sewer assessment of \$17,000 per sewer unit is recommended at the start of the program. This amount reflects only a portion of the actual cost of sewerage the property. It is also less than the potential increase in property value an owner can realize from by being connected to public sewer service. For example, an assessment of \$17,000 represents approximately 4% of the median residential assessed value in town (\$388,500) when the connection to sewer service could increase a residential property's value by as much as 6% to 13% based on the studies referenced above. The \$17,000 also approximates what it could cost to replace an on-site system. In addition, the roadway in front of the properties to be sewerage will be improved.

It is proposed that the sewer assessment be adjusted annually in accordance with a construction cost index to recognize inflation and provide equity in assessments for those paying the assessment in today's dollars versus those who will be assessed in the future. This is the maximum assessment for a residential property and some actual assessments could in fact be a lower amount. The exact costs for each affected property owner are not known until construction contracts are awarded and a project is completed.

FISCAL IMPACT: The Sewer Assessment Ordinance described above would not cover the entire remaining funding needed to implement the CWMP. The strategy for meeting this additional need will be developed once the Sewer Assessment Ordinance is finalized.

STAFF ASSISTANCE: Karen L. Nober, Town Attorney; Charles S. McLaughlin, Jr., Sr. Town Attorney; Kathleen Connolly, Assistant Town Attorney; Mark A. Milne, CPA, Director of Finance

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

BARNSTABLE TOWN COUNCIL

**ITEM # 2021-186
INTRO: 07/01/2021**

**2021-186 RESOLVE APPROVING MARK S. ELLS’ OUTSIDE EMPLOYMENT
WITH CAPE COD COMMUNITY COLLEGE**

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

SPONSOR: Matthew Levesque, Town Council President, Precinct 10

DATE	ACTION TAKEN
_____	_____
_____	_____

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

B. NEW BUSINESS (Refer to Public Hearing 07/15/2021)

BARNSTABLE TOWN COUNCIL

**ITEM#2021-187
INTRO: 07/01/2021**

2021-187 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$89,950 IN COMMUNITY PRESERVATION FUNDS TO BARNSTABLE HISTORICAL SOCIETY, INC., FOR RESTORATION WORK TO THE BUILDING LOCATED AT 3087 MAIN STREET/RTE 6A, BARNSTABLE

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G. L. c. 44B, the amount of Eighty- Nine Thousand Nine Hundred Fifty Dollars (**\$89,950**) be appropriated and transferred from the amount set aside for historic resources in the Community Preservation Fund to be used for restoration work on the Barnstable Historical Society’s building at 3087 Main Street/Rte. 6A, Barnstable. The property will have a Preservation Restriction to maintain the property in good condition, with said Restriction to be held by the Town of Barnstable. It is further ordered that the Town Manager is authorized to expend the appropriation subject to oversight by the Community Preservation Committee and to receive, execute, deliver and record any written instruments for the purposes set forth herein.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM#2021-187
INTRO: 07/01/2021

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee on behalf of the Community Preservation Committee
DATE: July 01, 2021
SUBJECT: Appropriation Order in the amount of \$89,950 in Community Preservation Funds for the restoration work to the Barnstable Historic Society Inc.'s building at 3087 Main Street/Rte 6A, Barnstable

BACKGROUND: Barnstable Historic Society Inc. is seeking approval from the Town Council through the Town Manager for \$89,950 in Community Preservation Historic Preservation funds. At the February 11, 2021 Community Preservation Committee meeting, the eight members present voted unanimously to recommend to the Town Council through the Town Manager, the request for Historic Preservation funds in the amount of \$89,950 representing a portion of the cost of Phase I, Priority I work in the amount of \$128,500 with \$38,550 contributed by Barnstable Historical Society, Inc. for restoration work to the Historical Society's building, a/k/a the Sylvanus Phinney House ca. 1832. The following proposed work is outlined in Phase I, Priority I of the building analysis prioritized report prepared by CBI and includes the following: cement basement floor, footings and foundation walls, first-floor framing including sistering of floor joists, and new footings, foundation and supports for the west porch.

ANALYSIS: Barnstable Historical Society has taken a leading role in documenting local history through collecting artifacts. The historical collection housed at the subject property dates from the 17th century into the 20th century and consists of antique furniture, textiles, photographs, correspondence and diaries, ships logs and much more. The collection is open to public visitors and tours, and also members of the public who have questions on Barnstable history and access the services and facilities. Also sponsored are lectures and social events. The Barnstable Historical Society intends to engage a professional fund raising consultant to guide and assist in raising the funds necessary to undertake the remaining phases of the of the CBI master plan by way of private and public donations, grants and other sources available for such purposes. The Sylvanus Phinney House is located within the Old King's Highway Regional Historic District the National Register of Historic Places and is listed in the State Register of Historic Places for its architecture, associations and/or archaeology. Most recently, the Commonwealth of Massachusetts Historical Commission qualified the property for a preservation restriction which is a requirement for the granting of Community Preservation Funds. The Barnstable Historical Society obtained the services of CBI to prepare a full building analysis, and received three quotes on the work, which resulted in resulted in a favorably adjusted Priority 1/Phase 1 work Community Preservation Historic Preservation fund request as well as adjustments to the remaining work in the phased budget.

FISCAL IMPACT: This appropriation is provided from the set-aside for historic preservation funds within the Community Preservation Fund which has an available balance of \$334,934. There is no impact on the general fund operating budget.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, upon recommendation of the Community Preservation Committee

VOLUNTEER ASSISTANCE: Lindsey Counsell, Chair, Community Preservation Committee