



# Town of Barnstable Town Council

367 Main Street, Village of Hyannis, MA 02601

508.862.4738 • 508.862.4770

E-mail: [council@town.barnstable.ma.us](mailto:council@town.barnstable.ma.us)

[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)

## Councilors:

Frederick Chirigotis  
President  
Precinct 4

Janice L. Barton  
Vice President  
Precinct 10

Ann B. Canedy  
Precinct 1

Tom Rugo  
Precinct 2

Michael P. Hersey  
Precinct 3

James H. Cote  
Precinct 5

Janet S. Joakim  
Precinct 6

Jessica Rapp Grasseti  
Precinct 7

Dr. Debra S. Dagwan  
Precinct 8

James M. Tinsley  
Precinct 9

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 December 6, 2012 7:00 PM**

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

**NEXT REGULAR MEETING: December 20, 2012**

ITEM NO.	INDEX TITLE	PAGE
----------	-------------	------

## A. OLD BUSINESS

2013-031	Amending Code of Barnstable General Ordinances by inserting “Chapter 160, Problem Properties” (Public hearing) (Roll-call).....	3 - 6
2013-032	Amending Code of Barnstable General Ordinances by inserting, “Chapter 54, Building and Property Maintenance” (Public hearing) (Roll-call) .....	7 - 10
2013-033	Amending Code of Barnstable General Ordinances Chapter 59, Comprehensive Occupancy (Public hearing) (Roll-call).....	11 - 12
2013-034	Amending Code of Barnstable General Ordinances Chapter 170, Rental Properties (Public hearing) (Roll-call).....	13 - 15
2013-035	Amending Code of Barnstable General Ordinances Chapter 133, Noise (Public hearing) (Roll- call).....	16 - 18
2013-042	Authorizing the Town Treasurer, upon the approval of the Town Manager, to enter into a lease- to-purchase agreement to acquire golf course equipment (Public hearing) (Roll-call, 2/3) .....	19 - 20
2013-043	Amending the General Ordinances, Article I, §1-3, Chapter 170, Rental Registration (Public hearing) (Roll-call) .....	21 - 22

## B. NEW BUSINESS

2013-046	Appointments to a board/committee/commission (First reading).....	23
2013-048	Allocation of tax levy FY13-tax factor (Public hearing) (Roll-call) .....	24 - 25
2013-049	Allocation of tax levy FY13-residential exemption (Public hearing) (Roll-call) .....	26 - 27
2013-050	Allocation of tax levy FY13-small commercial exemption (Public hearing) (Roll-call) .....	28 - 29
2013-054	Appointments to a board/committee/commission (First reading).....	30
2013-055	Zoning amendment referring to the medical marijuana (Refer to planning board for hearing) .....	31 – 36

---

**Minutes-** November 15, 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 or with advance notice, for a sign language interpreter.

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

### **BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-031**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

#### **2013-031 AMENDING CODE OF BARNSTABLE GENERAL ORDINANCES BY INSERTING “CHAPTER 160. PROBLEM PROPERTIES”**

**ORDERED:** That Part I, General Ordinances, of the Code of the Town of Barnstable be amended by inserting the following chapter.

#### **“ Chapter 160. Problem Properties.”**

##### **§160-1 Purpose and Intent.**

The purpose and intent of this chapter is to define a coherent method of addressing the adverse effects on the health, safety, welfare, and quality of life of residents arising from properties where illegal activity occurs on a regular basis. Some persons that own or control such properties allow their properties to be used for illegal activity, with the result that these properties have become chronic problem properties in the neighborhood. Chronic problem properties within the town of Barnstable cause a financial burden by the numerous calls for service to the properties because of the illegal activities that repeatedly occur or exist on such properties. The current provisions of the ordinances relating to noise and disturbing the peace do not provide an adequate tool for abating such chronic problem properties. The Town through its public safety, code enforcement and regulatory agencies is in a unique position to gather data on such properties and to establish an active plan tailored to address the particularized problems and costs posed by specific properties.

##### **§160-2 Cost of Police Officers Assigned to Problem Properties.**

#### **A. Authority for Police Response.**

Where police department personnel, while on duty in service to the department, are dispatched or caused to respond to an incident at a property involving a criminal offense, whether a misdemeanor or felony under Massachusetts state law, including but not limited to battery, assault, harassment, trespass, illegal possession of a firearm, discharge of a firearm, disturbing the peace, underage drinking or criminal damage to property, at a particular property or location, the Chief of Police is hereby authorized and empowered to assign to such property or location a member or members of the department to staff such police response as the Chief of Police deems appropriate to protect the health, safety, and welfare of the inhabitants of the town of Barnstable.

#### **B. Requirements for Police Response.**

Such assignment of a police response shall only occur after the following procedure has been satisfied:

(1) Upon being dispatched or caused to respond to an incident at a property involving a criminal offense, police department personnel shall investigate the validity of the complaint against the occupants at the particular property or location.

## **2013-031 (Continued)**

(2) Upon finding a valid complaint, police shall make a record of the incident. A "valid complaint", "incident" or "criminal offense" as used in this ordinance shall not include a complaint, incident or offense where an occupant of the premises is the victim of the crime.

(3) The police department shall make a record of the number of such incidents at a particular property or location and keep such record within the department's control.

(4) After two (2) such incidents in a twelve-month period relating to the occupancy of a dwelling, or to a particular property or location, the Chief of Police may mail a copy of this ordinance and copies of the all-calls report relating to said police responses to the property owner by certified mail.

(5) After the third incident, whether misdemeanor or felony, in a twelve-month period relating to the tenants or occupants of a dwelling or at a particular property or location, the Chief of Police, at his discretion, shall notify, in writing, the property owner of his decision to assign police response as follows:

a. If the property owner resides within the town of Barnstable, such notification should be hand delivered to the property owner's residence or usual place of business that is on record at the assessor's office and by mailing the notification to such address by regular and certified mail - return receipt requested; or

b. If the property owner does not reside within the town of Barnstable, by mailing the notification to such address by regular and certified mail - return receipt requested.

c. The Chief of Police's notification must inform the property owner of where and to whom he must address his letter of appeal, specified under §160-2 D..

(6) Upon dispatch or delivery of the notification, the property or location shall be officially identified as a chronic problem property and the property owner shall be subject to the penalties addressed in Section (c). The Chief of Police may commence assigning police response seven (7) days after hand delivery of the notification and ten (10) days after mailing the notification to the property owner. Factors that should be considered by the Chief of Police include the following:

a. the nature, scope, and seriousness of the incident(s);

b. whether incident(s) resulted in an arrest;

c. history of criminal activity taking place at the property;

d. property owners and tenants/occupants willingness to cooperate with police.

(7) The Chief of Police or his designee shall keep an accurate record of the cost of police response to a particular property or location, including an accurate record of the number of officers who are part of the determined response; and the Chief of Police shall forward such record to the Collector.

(8.) Coordination of police response is subject to the rules and regulations of the department.

### **C. Penalties.**

(1) The Collector is hereby authorized and empowered to bill the property owner for the costs the Town incurred for its police response in addition to any incidental costs during the period of police response to the particular property or location. The property owner is responsible for payment of the bill in full within thirty (30) days of receiving the bill. All amounts collected by the Collector shall be deposited into the general fund of the Town.

(2) Any unpaid bill for police response, including interest and/or collection costs, shall be added to the real estate tax on the property and collected as part of that tax. Failure to pay real estate taxes will render the property owner delinquent and the Collector shall commence foreclosure proceedings

**D. Property Owner's Rights.**

The property owner may request, in writing, a hearing before the Town Manager or her designee within seven (7) days of receipt of notification to appeal any penalties set forth in Section C. The Town Manager may from time to time appoint a three person panel containing one (1) Barnstable member of the Cape Cod Board of Realtors, one (1) member of a civic association and one (1) at large member to hear appeals and advise the Town Manager on disposition. A decision on the appeal must be in writing. If the Town Manager or his/her designee finds in favor of the property owner, the cost of the penalty shall be abated.

**E. Eviction.**

In the event the property owner has commenced the process of eviction against the tenant(s) responsible for the incidents at the property, then the application of this ordinance shall be stayed until the eviction process is concluded. The Chief of Police may continue police response at the particular property or location, at his discretion, at all times after the eviction proceeding has been completed; provided, however, that such costs shall not be assessed to the property owner.

**F. Charges to Constitute Municipal Lien Pursuant to MGL c. 40 s. 58.**

All charges to recover costs imposed in this ordinance shall constitute a municipal lien on the property so charged in accordance with Massachusetts General Laws chapter 40 section 58.

**SPONSOR:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-031**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti  
**DATE:** October 9, 2012  
**SUBJECT:** Amending Code of Barnstable General Ordinances, "Adding Chapter 160. Problem Properties"

**RATIONALE:** Proposed ordinance Chapter 160 is modeled on an ordinance in the City of Boston. The purpose and intent of the ordinance is to address the adverse effects on the health, safety, welfare and quality of life of residents arising from properties where illegal activity occurs on a regular basis. Some properties have become chronic problem properties and have contributed to the deterioration of the quality of life and safety in various neighborhoods in Barnstable. In addition, chronic properties have become a severe strain on municipal services and taxpayer dollars. To this end, the proposed ordinance would hold responsible the owners of the problem properties for excessive and the verified illegal activity conducted on the premises.

Current ordinances and provisions do not provide adequate tools to deal with the problem, in that they do not limit the amount of police calls to a particular address. This ordinance addresses the issue of chronic properties in the following manner:

After two (2) valid and confirmed criminal offenses are incurred in a twelve (12) month period to the same street address, the Chief of Police will warn the property owner/landlord that these offenses have occurred at said address. After the third incident, the Chief of Police may elect to bill the landlord/property owner for the cost of the police response needed to secure the neighborhood. There is a process to appeal this decision to the Town Manager or his designee.

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

### **BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-032**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

#### **2013-032 AMENDING CODE OF BARNSTABLE GENERAL ORDINANCES BY INSERTING, “CHAPTER 54. BUILDING AND PROPERTY MAINTENANCE”**

**ORDERED:** That Part I, General Ordinances, of the Code of the Town of Barnstable be amended by inserting the following chapter 54.

#### **“Chapter 54”**

#### **BUILDING AND PROPERTY MAINTENANCE**

##### **§54-1. Purpose and intent.**

The purpose and intent of this ordinance is to eliminate nuisances in the town. Nuisances, such as deteriorated structures, vacant buildings, overgrowth of vegetation, trash, debris and stagnant pools of water cause and contribute to blight within neighborhoods and commercial areas; adversely affect the value of adjacent and surrounding property; and impair the health, safety and general welfare of the inhabitants of the town. This ordinance is intended to further the objectives of and to act in concert with any existing state or local laws.

##### **§54-2. Building, structure and premises maintenance.**

Each owner and occupant shall comply with this ordinance by keeping land, premises, buildings and structures in a safe, sanitary and non-hazardous manner so as to prevent deterioration and ensure that the property itself may be preserved safely so that hazards to public health and safety are avoided. For purposes of sections 54-2 to 54-4, “occupant” means the person or persons other than an owner or owners having exclusive possession of land, premises, buildings and structures, or parts thereof, and the obligation to maintain the same.

##### **§54-3. Building and structure maintenance standards.**

A. All means of egress, devices, safeguards and equipment shall be kept in good working order

B. All exterior components of every building and structure including but not limited to walls, roofs, chimneys, cornices, gutters, downspouts, drains, porches, canopies, awnings, steps, landings, fire escapes, exterior stairs, windows, shutters, and doors, shall be kept in sound condition and good repair, with proper weather protection and waterproofing, and be maintained substantially free of deterioration, including but not limited to loose or missing shingles or siding, crumbling brick, stone and mortar, and peeling, scaling or deteriorated paint.

C. Vacant buildings and structures shall be maintained in compliance with this ordinance and be kept secure from use or occupation by unauthorized persons.

D. Overhanging structures, including canopies, awnings, exterior stairways, fire escapes, and other overhanging extensions shall be maintained in sound condition and good repair, be securely anchored, and be composed of decay resistant materials or protected from substantial decay by application of a protective coating material.

E. All buildings and structures damaged by fire, explosion, weather or other cause shall be repaired and returned to their former condition or in compliance with this ordinance, or be razed within six (6) months unless granted an extension by the Building Commissioner.

**§54-4. Maintenance of land, premises and landscape elements.**

A. Each owner and occupant shall keep premises and land, including but not limited to steps, walks, driveways, fences, retaining walls and vegetation, in good condition. "Occupant" for purposes of this section has the same meaning as in section 54-2.

B. All paved driveways and walks shall be maintained substantially free from broken or uneven condition.

C. All steps, fences, retaining walls and landscape features shall be firmly anchored and maintained in good structural repair. Elements subject to deterioration shall be composed of decay resistant materials or protected from substantial decay by application of a protective coating material.

D. All premises shall be maintained substantially free from overgrowth of vegetation which constitutes a suitable habitat for vermin, otherwise poses a hazard to the health and safety of any person in the vicinity of the premises, or is so overgrown as to have a clear adverse affect on the value of surrounding properties.

E. Indoor items such as furniture, appliances, plumbing fixtures and bedding shall be kept within enclosed structures after fifteen (15) days. All other personal property shall be kept within enclosed structures or screened from public view after six (6) months. Functional outdoor items such as fixtures, landscape elements, outdoor furniture, outdoor appliances, children's play structures, firewood, compost materials, operable vehicles, trailers, boats and inventory shall not be subject to the requirements of this subsection.

F. Water shall not be permitted to continuously stagnate outside of any building or structure for more than ten (10) days except under natural conditions. Nothing in this subsection shall operate as a waiver or exception to any other law, rule or regulation for the storage or handling of water.

**§54-5. Storage and Removal of Rubbish, Garbage and Refuse.**

A. Owner's responsibilities. The owner of any building, structure or premises shall be responsible for receptacles with tight-fitting lids to be used for the proper storage of rubbish, garbage and other refuse. Said receptacles shall be located in such manner that no objectionable odors enter any other building, structure or premises and so as to provide maximum screening from the street. The owner of any dwelling that contains three or more units, and the owner of any dwelling which contains one or two units which is rented or leased for a period of six months or less, shall be responsible for the final collection and disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.

B. Occupant's responsibilities. The occupants of any building, structure or premises shall be responsible for the proper storage of rubbish, garbage and other refuse within receptacles with tight-fitting covers. Said occupant(s) shall also ensure that all tight-fitting covers are kept so that all rubbish, garbage and other refuse, which is stored outside a building or structure is properly covered. Said occupant(s) shall be responsible for the proper use and cleaning of the receptacles and keeping the premises free of rubbish, garbage and other refuse. Unless a written lease agreement specifies otherwise, the occupant(s) of any dwelling which contains one or two units and which is rented or leased for any period greater than six months shall be responsible for the collection and ultimate disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.

C. For purposes of subsections (A) and (B): "owner" shall mean any person(s) who alone or severally with others has legal title to buildings, structures, vacant land or to land with buildings or structures thereon, or to any dwelling or rooming unit, mortgagee in possession, or agent, trustee or person appointed by a court; and "occupant" shall mean any person(s) who alone or severally with others rents or leases premises, or resides overnight other than as a guest.

D. Premises covered by this section shall be subject to reasonable inspections by Town inspectional staff. All interior inspections shall be done in the company of the owner, occupant or the representative of either.

**§54-6. Enforcement**

A. The Board of Health, the Police Chief, and the Building Commissioner, or their designees, are hereby designated as the enforcing authorities for this ordinance. If any enforcing authority determines that a violation of the standards contained in this ordinance exists, he or she shall notify the owner or occupant to



remove or abate the nuisance by a date certain as determined by the enforcing authority not more than ten (10) days after service of notice of the violation(s): provided, however, that if the enforcing authority determines that the violation is such that the public health and safety will be jeopardized by that delay, the enforcing person may order the abatement or removal of the nuisance in a shorter time as public health and safety may in her or his judgment require. The order shall be in writing and may be served personally on the owner, occupant or his authorized agent by any person authorized by the enforcing authority. If the violation is not removed or abated after notice, the enforcing authority may commence enforcement action through non-criminal, criminal or civil proceedings and no action shall preclude any other enforcement action or actions.

B. In addition to any penalties or enforcement action(s) hereunder, after final determination of three (3) or more violations within a twelve-month period an enforcing authority may notify a violator in writing that the enforcing authority may elect to bill the violator for the costs incurred by the Town for response to each subsequent violation not abated or ordered without abatement as provided herein. Such bill(s) shall be due and payable in full by the violator within thirty (30) days of submission and if unpaid thereafter shall be subject to a municipal charges lien as provided in G. L. c. 40 §58.

**§54-7. Applicability and Severability.**

A. The provisions of this ordinance are in addition to and not in lieu of any other ordinance, rule or regulation of the Town of Barnstable and any board, commission or officer. Compliance with this ordinance shall not thereby constitute compliance with any other ordinance, rule or regulation, and violation of this ordinance does not thereby preclude violation of any other ordinance, rule or regulation.

B. If any provision of this ordinance is declared invalid, it shall not thereby invalidate any other provision.

**SPONSOR:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-032**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grasseti  
**DATE:** October 9, 2012  
**SUBJECT:** Amending the Code of Barnstable General Ordinances, C.54

**RATIONALE:** Throughout the Town of Barnstable, many blighted and/or abandoned homes presently not presently being addressed by the town. The intent of this ordinance is to eliminate deteriorated structures, vacant buildings, overgrowth of vegetation, trash and debris within neighborhoods and commercial areas, where buildings may be abandoned.

This amendment outlines basic property management and repair standards and guidelines for structural and landscape management, trash removal, and land maintenance standards.

At present, these unchecked blighted/abandoned properties impair the health, safety and general welfare of the neighborhood in which they are located. It is intended that this amendment address these issues of abandoned/blighted properties and improve the standard of public safety and general welfare in the neighborhoods in which they are located.

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-033**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

**2013-033 AMENDING CODE OF BARNSTABLE GENERAL ORDINANCES CHAPTER 59, COMPREHENSIVE OCCUPANCY**

**ORDERED:** That Chapter 59 of the Code of the Town of Barnstable, General Ordinances, be amended as follows.

**SECTION 1.** By striking the number “22” from the definition of “occupant” in section 59-2 and substituting therefore the number “18,” said section 59-2 to read as follows.

“OCCUPANT — Any person who has attained the age of 18 who has resided in a residential dwelling for any length of time.”

**SECTION 2.** By striking the words “under the age of” and the number “22” from section 59-4 and substituting therefore the words “grandchildren and foster children of an owner or occupant,” said section 59-4 to read as follows.

“Children, grandchildren and foster children of an owner or occupant shall be exempt from these provisions.”

**SECTION 3.** By striking subsection 59-3(B), which reads as follows.

“The maximum number of motor vehicles that are permitted to be parked overnight, other than in a building, at any residential dwelling shall be equal to two motor vehicles for the first bedroom in a residential dwelling and one motor vehicle per bedroom thereafter.”

**SPONSOR:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti

**DATE**

**ACTION TAKEN**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-033**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti  
**DATE:** October 9, 2012  
**SUBJECT:** Amending the Code of Barnstable General Ordinances, Chapter 59

**RATIONALE:** Existing Town Ordinance, Chapter 59 defines the legal age of an occupant and addresses the number of vehicles allowed on a property. Under the current Ordinance, the legal age of an occupant is defined as 22 years of age. By law, however, an 18 year old may enter into a lease agreement. This discrepancy allows the potential for an overcrowding situation in residences.

The proposed change to the General Ordinances, Chapter 59 amends the definition of the legal occupant to “any person who has attained the age of 18 and who resides in a residential dwelling for any length of time.”

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

### **BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-034**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

#### **2013-034 AMENDING CODE OF BARNSTABLE GENERAL ORDINANCES CHAPTER 170, RENTAL PROPERTIES**

**ORDERED:** That Chapter 170 of the Code of the Town of Barnstable, General Ordinances, be amended as follows.

**SECTION 1.** By striking the following sections 170-11 entitled “storage and removal of rubbish, garbage, and other refuse” and 170-12 entitled “inspections” and re-numbering the remaining sections accordingly.

##### **“§170-11. Storage and removal of rubbish, garbage, and other refuse.**

A. **Owner’s responsibilities.** The owner of any dwelling shall be responsible for providing receptacles with tight-fitting lids to be utilized for the proper storage of rubbish, garbage, and other refuse. Said receptacles shall be located in such a manner that no objectionable odor enters any dwelling and so as to provide maximum screening from the street. The owner of any dwelling that contains three or more units, and the owner of any dwelling which contains one or two units which is rented or leased for a period of six months or less, shall be responsible for the final collection and disposal of rubbish, garbage, and other refuse at a permitted transfer station or disposal facility.

B. **Occupant's responsibilities.** The occupant(s) of any dwelling shall be responsible for the proper storage of rubbish, garbage, and other refuse within receptacles with tight-fitting covers. Said occupant(s) shall also ensure that all tight-fitting covers are kept so that all rubbish, garbage, and other refuse which is stored outside the dwelling unit is properly covered. Said occupant shall be responsible for the proper use and cleaning of the receptacles and keeping the premises free of rubbish, garbage, and other refuse. Unless a written lease agreement specifies otherwise, the occupant(s) of any dwelling which contains one or two units and which is rented or leased for any period greater than six months shall be responsible for the collection and for the ultimate disposal of rubbish, garbage, and other refuse at a permitted transfer station or disposal facility.”

##### **§170-12. Inspections.**

Dwelling units covered by this section shall be subject to reasonable inspections by Town inspectional staff. All interior inspections shall be done in the company of the owner, occupant or the representative of either.”

**SECTION 2.** By adding the following sentence to subsection 170-12(A) of section 170-12 as re-numbered entitled “violations and penalties” after the first sentence; “Any owner of a rental property found to have two (2) documented violations within any twelve month period shall pay a fine of \$300.00”; and by adding the following at the end of the second sentence in subsection 170-12(B) as re-numbered; “or \$300.00 for any owner of a rental property found to have two (2) documented violations within any twelve month period” ; said subsection 170-12 to read as follows.

**“§170-12. Violations and penalties.**

A. Any person who violates any provision of this chapter shall be subject to a fine not to exceed \$300. Any owner of a rental property found to have two (2) documented violations within any twelve month period shall pay a fine of \$300.00. Each day of continued violation may be deemed to be a separate offense.

B. This chapter may be enforced under the provisions of MGL c. 40, §21D. The fine for any violation under the provisions of MGL c. 40, §21D shall be \$100 or \$300.00 for any owner of a rental property found to have two (2) documented violations within any twelve month period. Each day of continued violation may be deemed to be a separate offense.”

**SPONSOR:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grasseti

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-034**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Jennifer Cullum with Councilors James Cote, and Jessica Rapp Grassetti  
**DATE:** October 9, 2012  
**SUBJECT:** Amending the Code of Barnstable General Ordinances, C.170

**RATIONALE:** The Code of Barnstable General Ordinances, Chapter 170 concerns rental properties in the town. This amendment provides for a maximum fine of \$300 after two (2) valid violations within a twelve (12) month period, making it consistent with other graduated fines.

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

### **BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-035**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

#### **2013-035 AMENDING THE CODE OF BARNSTABLE GENERAL ORDINANCES CHAPTER 133, NOISE**

**ORDERED:** That Chapter 133 of the Code of the Town of Barnstable, General Ordinances, be amended as follows.

##### **SECTION 1. By revising §133-1 as follows:**

By adding the words "or owning" between the words "of" and "premises" in the Title and by adding the words "or owning" between the words "of" and "any" in the first line of the first sentence of the paragraph.

**So, as amended, §133-1 shall now read:**

##### **"§133-1. Responsibility for noise violations by person in charge of or owning premises.**

It shall be unlawful for any person or persons occupying, having charge of or owning any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof in the Town, to cause or suffer to allow any unnecessary, loud, excessive or unusual noises in the operation of any radio, phonograph or other mechanical or electronic sound making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise, where the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance in which or from which it is produced. The fact that the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance from which it originates shall constitute prima facie evidence of a violation of this chapter."

##### **SECTION 2: By revising §133-4 as follows:**

By adding the words "and owner's responsibility for repeated violations by renters" after the word "renters" in the title; and by adding the following after the first sentence in the paragraph: "The owner of any building, dwelling, structure, premises, shelter, boat or conveyance which is let, rented or leased shall be notified in writing of each violation of this chapter committed by his tenants, lessees and sublessees After notice of two such violations within a twelve month period, for each subsequent violation, the owner shall be deemed to have suffered to allow noise in violation of §133-1. "

**So as amended, §133-4 shall now read:**

##### **"§133-4. Notice of noise restrictions to be provided to renters and owner's responsibility for repeated violations by renters.**

The owner of any building, dwelling, structure, premises, shelter, boat or conveyance, which is let, rented or leased, shall provide any and all tenants, lessees and sublessees with a copy of this chapter. The owner of any building, dwelling, structure, premises, shelter, boat or conveyance, which is let, rented or leased, shall be notified in writing of each violation of this chapter committed by his tenants, lessees and sublessees. After notice of two such violations within a twelve month period, for each subsequent violation, the owner shall be deemed to have suffered to allow noise in violation of §133-1. "



**SECTION 3: By revising §133-5 as follows:**

By adding the following after the first sentence: "After final determination of three (3) or more violations within a twelve-month period, an enforcing authority may notify a violator in writing that it elects to bill the violator for the costs incurred by the Town for response to each subsequent violation. The person so notified shall have the right to appeal this notification by requesting, in writing, a hearing before the Town Manager or her designee within seven (7) days of receipt of said notification. The Town Manager may from time to time appoint a three person panel containing one (1) Barnstable member of the Cape Cod Board of Realtors, one (1) member of a civic association and one (1) at large member to hear appeals and advise the Town Manager on disposition. A decision on the appeal must be in writing. If the Town Manager or her designee finds in favor of the appealing party, the cost of the penalty shall be abated. All unabated charges shall be due and payable in full by the violator within thirty (30) days of submission. All unpaid charges for violations of this chapter by an owner shall constitute a municipal lien on the property so charged in accordance with Massachusetts General Laws chapter 40 section 58."

**So, as amended, §133-5 shall now read:**

**"§133-5. Violations and penalties**

Any person violating the provisions of this chapter shall be punished by a fine not to exceed \$200 for each offense. After final determination of three (3) or more violations within a twelve-month period, an enforcing authority may notify a violator in writing that it elects to bill the violator for the costs incurred by the Town for response to each subsequent violation. The person so notified shall have the right to appeal by requesting, in writing, a hearing before the Town Manager or her designee within seven (7) days of receipt of said notification. The Town Manager may from time to time appoint a three person panel containing one (1) Barnstable member of the Cape Cod Board of Realtors, one (1) member of a civic association and one (1) at large member to hear appeals and advise the Town Manager on disposition. A decision on the appeal must be in writing. All unabated charges shall be due and payable in full by the violator within thirty (30) days of submission. All unpaid charges for violations of this Chapter by an owner shall constitute a municipal lien on the property so charged in accordance with Massachusetts General Laws chapter 40 section 58."

**SPONSOR:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-035**

**INTRO: 10/18/12, 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Jennifer Cullum with Councilors James Cote and Jessica Rapp Grassetti  
**DATE:** October 9, 2012  
**SUBJECT:** Amending the Code of Barnstable General Ordinances, Chapter 133 §133-1

**RATIONALE:** Chapter 133 is the current Noise Ordinance in the Town of Barnstable. At present, it defines a noise violation as noise that emanates more than 150 feet from its source. The ordinance currently states that: "[i]t shall be unlawful for any person or persons occupying or having charge of any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof in the Town, to cause or suffer to allow any unnecessary, loud, excessive or unusual noise..." The amendment clarifies the owner's responsibility for noise violations on leased premises and requires that the owner be notified in writing of each noise violation committed by his tenants. After notice of two such violations within a twelve month period, for each subsequent violation, the owner shall be deemed "to have suffered to allow noise" in violation of the ordinance.

After final determination of three (3) or more violations within a twelve-month (12) period, the Town may notify a violator in writing that it elects to bill the individual previously found in violation of the ordinance for the costs incurred by the Town for response to each subsequent violation. There is a process to appeal this decision to the Town Manager or his designee.

The intent of the ordinance is to curtail the waste of municipal resources and taxpayer dollars, as well as to encourage responsible renting and peaceful neighborhood living conditions.

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-042**

**INTRO: 11/15/12, 12/06/12**

**2013-042 AUTHORIZING THE TOWN TREASURER, UPON THE APPROVAL OF THE TOWN MANAGER TO ENTER INTO A LEASE-TO-PURCHASE AGREEMENT TO ACQUIRE GOLF COURSE EQUIPMENT**

**ORDERED:** That the Treasurer, with the approval of the Town Manager, be authorized to enter into a Tax Exempt Lease Purchase agreement for the acquisition of golf course equipment.

**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**

## **SUMMARY**

**ITEM# 2013-042**  
**INTRO: 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Lynne Poyant, Director of Community Services  
**DATE:** November 1, 2012  
**SUBJECT:** Lease-Purchase Agreement for Golf Course Equipment

**RATIONALE:** Golf course fairway and greens mowing equipment at Olde Barnstable Fairgrounds is in need of replacement. Two Toro Greenmaster units will be acquired pursuant to Massachusetts State Contract FAC71 at a total price of \$59,041.85. No appropriation is necessary, as this has been previously approved with the passage of the FY13 budget. Three annual payments of principal will be made in the amount of \$21,484.02 each to which interest in the amount of \$3,056.56 will be added.

The equipment will be leased from PNC Equipment Finance, LLC for three (3) years. At the expiration of the lease, the Town may purchase the equipment for One Dollar. The lease is a so-called tax exempt lease purchase "TELP" available to governmental units; it is similar in some respects to a tax-exempt municipal bond in that the entity financing the lease pays no tax on the interest earned which, in turn, results in a very competitive financing package for the municipality.

The state Department of Revenue has ruled that this transaction is in the nature of a borrowing which requires a 2/3 vote of the Council to approve.

**FISCAL IMPACT:** Total cost of the lease-purchase agreement over the life of the three-year lease is \$62,098.41.

**STAFF ASSISTANCE:** Lynne Poyant, Director of Community Services  
Bruce McIntyre, Director of Golf Operations  
Charles S. McLaughlin, Jr., Assistant Town Attorney

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-043**  
**INTRO: 11/15/12, 12/06/12**

**2013-043 AMENDING THE CODE OF BARNSTABLE GENERAL ORDINANCES ARTICLE 1, §1-3,  
CHAPTER 170 RENTAL REGISTRATION**

**ORDERED:** That the schedule of fines in Article I, Section 1-3 of the General Ordinances is hereby amended by striking out the line related to Chapter 170 and inserting in place thereof the following.

<u>CODE, CH/SECTION</u>	<u>SUBJECT</u>	<u>FINE</u>
Art. I, §1-3, Ch. 170	<b>Rental Registration</b>	
	Any violation .....	\$100
	<b>Rental Registration</b>	
	Two documented violations by owner in a twelve-month period ....	\$300

**SPONSOR:** Councilor Jennifer Cullum

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-043**

**INTRO: 11/15/12, 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Jennifer Cullum  
**DATE:** November 6, 2102  
**SUBJECT:** Amending General Ordinances, Article 1, §1-3, Chapter 170, Rental Registration

**BACKGROUND:** Amending Chapter 170, Rental Registration, relates to the passage of 2013-034 - Chapter 170, Rental Properties. This amendment will conform to the maximum allowable fine of \$300 as referenced.

**B. NEW BUSINESS (First reading)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-046**

**INTRO: 11/15/12 (Postponed), 12/06/12**

**2013-046 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, Hyanns 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 Rjoad, 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

_____	_____
_____	_____

☐ Read Item  
☐ Rationale  
☐ Council Discussion  
☐ Move/Vote

**B. NEW BUSINESS (Public hearing) (Roll-call)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-048**

**INTRO: 12/06/12**

**2013-048 ALLOCATION OF TAX LEVY FISCAL YEAR 2013– TAX FACTOR**

**RESOLVED**, that the Town Council hereby votes to classify the Town of Barnstable under the Classification Act at a Factor of 1 (one) for the fiscal year 2013.

**SPONSOR:** Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

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



# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-048**

**INTRO: 12/06/12**

**TO:** Town Council  
**FROM:** Town Manager  
**DATE:** December 6, 2012  
**SUBJECT:** Allocation of Tax Levy FY13 – Tax Factor

**BACKGROUND:** According to Massachusetts General Law, Chapter 40, Section 56, of the Acts of 1982 and Chapter 79 of the Acts of 1983, require that the Town Council annually determine the Allocation of Local Property Taxes by the adoption of a Residential Factor; a Residential Exemption; and/or the adoption of a Small Business Exemption.

These tax levy-shifting tools will not change the overall amount of money that will be raised through property taxes; rather they allow the town to shift portions of the tax levy between classes of property and/or between property owners within certain property classes.

The residential factor commonly referred to as the “Split Tax Rate” allows the Town Council to create separate tax rates; one for residential property owners and a separate one for commercial, industrial and personal property owners, (CIP owners). Under a residential “Factor of 1”, all property owners would pay taxes at the same rate per \$1,000 of valuation. The single tax rate for FY2013 will be \$7.89. The maximum permissible shift would increase the CIP tax rate by 150%, a CIP factor of 1.5. If the maximum, 1.5 shift is adopted by the Council, the corresponding rate for the residential class would be \$7.36, while the CIP rate would rise to \$11.84. This means if the maximum shift is adopted that the average residential property owner would pay 6.7 percent less in taxes and all CIP property owners would pay 50 percent more in taxes. At a CIP factor of 1.25, the residential tax rate would be \$7.63 (3.3% less) and the CIP tax rate would be \$9.86 (25% more).

Since 2007, the Town Council’s policy has been to select a Residential Factor of “1”. Please see tax factor information handouts provided prior to the meeting.

The Town Manager recommends approving a tax factor of 1.

**B. NEW BUSINESS (Public hearing) (Roll-call)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-049**  
**INTRO: 12/06/12**

**2013-049 ALLOCATION OF TAX LEVY FY13 – RESIDENTIAL EXEMPTION**

**RESOLVED**, that the Town Council hereby votes to adopt a Residential Exemption percentage of 20% for fiscal year 2013.

**SPONSOR:** Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-049**  
**INTRO: 12/06/12**

**TO:** Town Council  
**FROM:** Town Manager  
**DATE:** December 6, 2012  
**SUBJECT:** Allocation of Tax Levy FY13– Residential Exemption

**BACKGROUND:** According to Massachusetts General Law, Chapter 40, Section 56, of the Acts of 1982 and Chapter 79 of the Acts of 1983, require that the Town Council annually determine the Allocation of Local Property Taxes by the adoption of a Residential Factor; a Residential Exemption; and/or the adoption of a Small Business Exemption.

These tax levy-shifting tools will not change the overall amount of money that will be raised through property taxes; rather they allow the town to shift portions of the tax levy between property owners within certain property classes based on statutory criteria.

The Town Council can choose to adopt a “residential exemption”. The maximum exemption allowed is 20% of the average assessed value of all Class One (or Residential) parcels. This exemption would be applied to residential parcels which are qualified as the principal residence of the taxpayer. Principal residence is a taxpayer’s domicile, that is, their fixed place of habitation, permanent home, and legal residence, as used for federal and state income tax purposes. This option shifts property taxes between residential taxpayers only and does not affect the CIP class of taxpayers. If the full 20% exemption amount is adopted, residential taxpayers whose principal residence is in the Town of Barnstable will receive a tax reduction as long as their property assessment is approximately less than \$878,300 (\$87,228 tax value exemption for FY13) and the residential tax rate for all taxpayers will rise from \$7.89 to \$8.76. The tax savings these property owners realize will be shifted to all non-resident property owners and residential property owners whose assessments are greater than \$878,300.

At the 10% level of exemption (\$43,614 tax value exemption for FY13), the “break-even” valuation is \$882,000 and the tax rate will rise from \$7.89 to \$8.30. Under this option, property tax savings are greater as the assessed value of the property declines (progressive) and the percentage exemption adopted increases. See the tax factor informational handouts provided prior to the meeting for analysis.

The town council has voted to adopt a 20% residential exemption for the past 7 fiscal years.

Board of Assessors recommends that the residential exemption not, be adopted.

**B. NEW BUSINESS (Public hearing) (Roll-call)**

**BARNSTABLE TOWN COUNCIL**

**ITEM#: 2013-050**

**INTRO: 12/06/12**

**2013-050 ALLOCATION OF TAX LEVY FY13 – SMALL COMMERCIAL EXEMPTION**

**RESOLVED**, that the Town Council hereby votes to adopt a Small Commercial Exemption of 10% for fiscal year 2013.

**SPONSOR:** Town Manager Thomas K. Lynch

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-050**

**INTRO: 12/06/12**

**TO:** Town Council  
**FROM:** Town Manager  
**DATE:** December 6, 2012  
**SUBJECT:** Allocation of Tax Levy FY13 – Small Commercial Exemption

**BACKGROUND:** According to Massachusetts General Law, Chapter 40, Section 56, of the Acts of 1982 and Chapter 79 of the Acts of 1983, require that the Town Council annually determine the allocation of local property taxes by the adoption of a Residential Factor; a Residential Exemption; and/or the adoption of a Small Business Exemption.

These tax levy-shifting tools will not change the overall amount of money that will be raised through property taxes; rather they allow the town to shift portions of the tax levy between classes of property and/or between property owners within certain property classes.

The Town Council has the option of granting up to a 10% exemption to the owner of commercial property, which is occupied by qualified small businesses. This option shifts property taxes between commercial and industrial property owners only. It does not impact residential or personal property taxpayers. Qualifying property must be commercial, assessed under \$1,000,000 and be totally occupied by businesses with less than 10 employees.

Adoption of the 10% level of this exemption would result in an increase in the commercial and industrial tax rate increasing from \$7.89 to \$7.96 for all commercial and industrial properties only, including those receiving the exemption. Unlike the residential exemption, this exemption is calculated as 10% of the individual parcel's value, rather than being a flat amount for all properties and is less progressive as a result. In the prior 6 fiscal years, the Town council voted not to adopt the small business exemption.

Board of Assessors recommends that the small commercial exemption, not be adopted.

**B. NEW BUSINESS (First Reading)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-054**

**INTRO: 12/06/12**

**2013-054 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

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

**LICENSING AUTHORITY**

David Nunheimer, 221 Saddler Lane, W. Barnstable, as an associate member with a term expiring 06/30/2013

**YOUTH COMMISSION**

Samuel Spillane, c/o HYCC, Youth Commission, 141 Bassett Lane, as a member with a term expiring 06/30/2013

Colleen Morin, c/o HYCC, Youth Commission, 141 Bassett Lane, as a member with a term expiring 06/30/2013

**SPONSOR:** Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

☐ Read item  
☐ Council discussion  
☐ Move/vote

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

### **BARNSTABLE TOWN COUNCIL**

**ITEM# 2013-055**

**INTRO: 12/06/12**

#### **2013-055 AMENDING CHAPTER 240, ARTICLE III, OF THE ZONING ORDINANCES**

##### **Section 1**

That Chapter 240, Article III of the Zoning Ordinance is hereby amended by adding a new §240-30 "Medical Marijuana Treatment Center Overlay District" as follows:

##### **§240-30 Medical Marijuana Treatment Center Overlay District.**

- A. District established.** A Medical Marijuana Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to §240-6, Zoning Map, herein.
- B. Medical Marijuana Treatment Center Special Permit.** Within the Medical Marijuana Treatment Center Overlay District, and only within the Medical Marijuana Treatment Center Overlay District, a Medical Marijuana Treatment Center may be permitted, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the following standards and conditions.
- C. Application.** The Medical Marijuana Treatment Center property owner of record and MMTC proposed operator or owner shall complete an application containing the following.
- (1) Owners shall provide demonstration that the proposed Medical Marijuana Treatment Center is eligible for Department of Public Health approval and is within all DPH registration limitations including number of treatment center limits for both the state and the county.
  - (2) Owners shall demonstrate that the Medical Marijuana Treatment Center is a not-for-profit entity as defined under the laws of the Commonwealth.
  - (3) If the MMTC proposes to cultivate medical marijuana, the application shall indicate the parcel upon which the cultivation is proposed.
  - (4) Owners shall demonstrate that the Medical Marijuana Treatment Center has applied for registration with the Massachusetts Department of Public Health and shall not commence operations until the registration is approved.
  - (5) A manager responsible for the operation of the establishment shall be designated by the owner, if the owner is not the manager. The manager shall register with the Police Chief, the Building Commissioner and the Board of Health.
  - (6) The business license history of the MMTC applicant for any marijuana retail, treatment center or marijuana medical facility, including whether such person, in previously operating in this or another municipality, county, or state under license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;
  - (7) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;
  - (8) The names of all employees, volunteers, independent contractors, and other persons who will work at the MMTC and the cultivation parcel if any;

- (9) Demonstration that the proposed security arrangements for the MMTC and any MMTC cultivation parcel, adequately ensure the safety of MMTC personnel and adequately protect the MMTC premises and any cultivation parcel from theft;
- (10) Authorization for the Town, its agents and employees to seek verification of the information contained within the application;
- (11) Owners, operators, employees, volunteers and designated managers of the establishment shall attest and demonstrate that:
  - (a) They have not been convicted of violating MGL Ch. 94C §§ 32, 32A-K, 33-35 (crimes involving controlled substances); MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272 § 28, (Matter harmful to minors, etc.), or similar laws in other states. The Zoning Board of Appeals shall not issue a special permit to an owner convicted of violating the above referenced laws.
  - (b) They have not had a previous registration revoked in Massachusetts or another jurisdiction.

**D. Special Permit Issuance.**

- (1) Before the issuance of a special permit, the Board of Appeals shall find that the proposal complies with the criteria of this section. With regard to criteria C.6 and C.7, the Board may seek a recommendation from the Chief of Police as to the applicant's suitability to operate an MMTC within the Town of Barnstable.
- (2) The special permit shall be issued to the owner of the Medical Marijuana Treatment Center and shall not transfer with a change in ownership of the business and/or property.
- (3) Where necessary to shield adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
- (4) A Medical Marijuana Treatment Center shall not be allowed within a building containing residential use, or upon a lot with residential use. Medical Marijuana Treatment Centers shall not be located within 500 feet of a church, school or youth center.
- (5) The Zoning Board of Appeals may establish the hours of operation.
- (6) The Zoning Board of Appeals may require periodic inspections during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the licensed premises are operated in accordance with the requirements the special permit.
- (7) The special permit shall lapse after two years, unless a shorter term is specified by the Zoning Board of Appeals. Upon receipt of a valid application, the Zoning Board of Appeals may grant a subsequent special permit, provided that the Board finds:
  - (a) Property and use have remained in compliance with all standards and conditions of this Section 240-30 and,
  - (b) Property and use have remained in compliance with all conditions of approval of the Zoning Board of Appeals.

**E. Revocation/Non-renewal.**

- (1) The Board of Appeals shall condition the MMTC special permit to be null and void if the Medical Marijuana Treatment Center's registration is revoked by the Massachusetts Department of Public Health. The special permit shall not be renewed and may be subject to revocation if any illegal activity has taken place on the premises
- (2) Violation of any of the conditions of approval of the special permit shall be grounds for non-renewal of the special permit as provided for in this section.



- F. Relationship to Other Laws.** Nothing in this law poses an obstacle to federal enforcement of federal law. Nothing in this law supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for non-medical purposes. Nothing in this law requires the violation of federal law or purports to give immunity under federal law.
- G. Severability.** The provisions of this law are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or application adjudged invalid.

## **Section 2**

That Chapter 240, Article XIII §240-128 “Definitions” of the Zoning Ordinance is hereby amended by adding the following definitions:

**Dispensary Agent** - an employee, staff volunteer, officer, or board member of a non-profit medical marijuana treatment center, who shall be at least twenty-one (21) years of age.

**Enclosed, locked facility** - a closet, room, greenhouse, or other area equipped with locks or other security devices, accessible only to dispensary agents, patients, or personal caregivers.

**Marijuana** - has the meaning given “marihuana” in Chapter 94C of the General Laws.

**Medical Marijuana Treatment Center** - A non-profit, as defined by Massachusetts law, treatment center that transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana and related supplies to Department of Public Health (DPH) registered patients or their DPH registered caregivers. Treatment Centers may also cultivate marijuana as may be necessary for the operation of the treatment center and may also develop related products such as food, tinctures, aerosols, oils, or ointments.

A treatment center shall have a Department of Public Health (DPH) registration, be operated only by DPH registered personnel or DPH registered volunteers and operate according to procedures in compliance with DPH regulations, including cultivation and storage of marijuana only in enclosed, locked facilities. The treatment center shall not dispense medical marijuana to anyone other than a DPH registered patient or DPH registered caregiver that provide documentation of the required DPH registration granted accordance with DPH regulations.

**Medical Marijuana Cultivation—Medical Marijuana Treatment Center** - A Department of Public Health registered MMTC located in the Town of Barnstable may cultivate medical marijuana in accordance with the terms of an MMTC special permit issued by the Board of Appeals. Such cultivation shall take place in an enclosed, locked facility available only to MMTC personnel and may only cultivate the amount of medical marijuana necessary to operate the Medical Marijuana Treatment Center. Medical Marijuana Treatment Center Cultivation shall not be located within 500 feet of a church, school or youth center. The proposed security arrangements for the MMTC cultivation shall adequately ensure the safety of MMTC personnel and adequately protect the MMTC cultivation from theft.

**Medical Marijuana Cultivation - Hardship**—A qualifying Department of Public Health (DPH) registered patient or DPH registered caregiver providing to the Chief of Police cultivation registration documentation from DPH issued due to limited access to a treatment center through financial hardship, physical inability to access reasonable transportation, or distance may cultivate medical marijuana. Such cultivation is strictly limited to the number of plants necessary to yield a 60-day supply of marijuana for the registered patient's own use. This cultivation and storage of medical marijuana shall be limited to an enclosed, locked facility (such as a greenhouse) and is allowed only for the personal use of the registered patient. Such hardship cultivation by a DPH registered patient or DPH registered caregiver should be within or as close as reasonably possible to the patient or caregiver's home.

**Sixty-day Supply of Medical Marijuana**—The amount of marijuana that a qualifying patient would reasonably be expected to need over a period of sixty days for their personal medical use.

### **Section 3**

That the official zoning map of the Town of Barnstable is hereby amended by adding the Medical Marijuana Treatment Center Overlay District as shown on maps entitled "Proposed Amendment to the Town Zoning Map adding the Medical Marijuana Treatment Center Overlay District" and "Proposed Amendment to the Town Zoning Map - Hyannis- Sheet 3 of 7" both dated November \_\_\_\_, 2012 as prepared by the Town of Barnstable GIS Unit.

### **Section 4**

That Chapter 240, Article II, § 240-5 "Establishment of Districts" of the Zoning Ordinance is hereby amended by adding the "Medical Marijuana Treatment Center Overlay District" under "Overlay Districts."

**SPONSOR:** Town Councilor Frederick C. Chirigotis

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Motion to refer to Planning Board for its hearing
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close public hearing
- \_\_\_ Council discussion
- \_\_\_ Move/vote

# **BARNSTABLE TOWN COUNCIL**

## **SUMMARY**

**ITEM# 2013-055**

**INTRO: 12/06/12**

**TO:** Town Council  
**FROM:** Councilor Frederick Chirigotis  
**DATE:** November 28, 2012  
**SUBJECT:** New ordinance in response to passage of Ballot Question 3, November 2012

This ordinance amendment is brought forward in response to the passage of Ballot Question 3 in the November elections. The law enacted by the voters will take effect on January 1, 2013.

This amendment sets out an overlay district at the very east end of Main Street in Hyannis where Medical Marijuana Treatment Centers may be located. The Commonwealth will limit the number of treatment centers to thirty-five (35) statewide with five (5) in any given county in 2013. Given that limitation, the properties included in this overlay district location near Cape Cod Hospital will provide an area adequate for reasonable use.

This use is limited to locating outside 500' from schools, churches and youth centers. Nothing in this ordinance or the state law allows criminal activity to take place.

