

Town of Barnstable Town Council

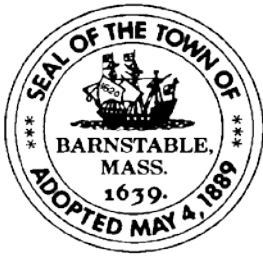
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MEETING AGENDA TOWN HALL HEARING ROOM September 17, 2015 7:00 PM



Councillors:

Jessica Rapp Grassetti
President
Precinct 7

Ann B. Canedy
Vice President
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Frederick Chirigotis
Precinct 4

James H. Crocker
Precinct 5

William Crocker, Jr.
Precinct 6

Debra S. Dagwan
Precinct 8

James M. Tinsley
Precinct 9

Sara Cushing
Precinct 10

Philip N. Wallace
Precinct 11

John T. Norman
Precinct 12

Jennifer L. Cullum
Precinct 13

Administrator to the
Town Council:
Cynthia A. Lovell

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

- **Associated Costs of Homelessness, Paul MacDonald, Barnstable Police Chief**
- **Report from Rick Presbrey, Housing Assistance Corporation CEO; Michael Sweeney, Vice President Administration and Finance, Housing Assistance Corporation (HAC)**
- **Report from Elizabeth Wurfbain, Executive Director, Hyannis Main Street Business Improvement District (BID); Chair of the Day Center Executive Committee on the Task Force progress**
- **Report from Deb Krau, Vice President, Hyannis Civic Association; Day Center Executive Committee member on proposed model framing**
- **Report on Homeless Survey conducted by Paula Schnepf, Network Coordinator of the Cape and Islands Regional Network on Homelessness**

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, staff, commission reports, correspondence and announcements

9. ORDERS OF THE DAY

A. **Old Business**

B. **New Business**

10. ADJOURNMENT

NEXT REGULAR MEETING: October 1, 2015

A. OLD BUSINESS

2015-180	Appropriation Order of \$504,000.00 Community Preservation Funds for affordable housing Hi River Road, Marstons Mills (Public hearing) (Roll call)	3-4
2016-008	Amendment to Chapter 121 of the Code of the Town of Barnstable, “Licensing” by adding “Article III, Civil Fingerprinting Criminal History Record Check for Certain Licenses” (Public hearing) (Roll call)	5-8
2016-021	Appointments to a Board/Committee/Commission: Library Committee: Elena Schuck, 56 Cinderella Terrace, Marstons Mills, as a member with a term expiring 6/30/16 (Second reading)(May be acted upon)	9

B. NEW BUSINESS

2016-026	Appropriation and Transfer Order in the amount of \$35,000 for the installation of groundwater monitoring wells at the West Barnstable Shooting Range (Refer to Public hearing 10/01/15)	10-11
2016-027	Order amending General Ordinances of the Code of the Town of Barnstable, Chapter 228, Vehicles, Storage of (Refer to Public hearing 10/01/15)	12-13
2016-028	Order amending the Code of the Town of Barnstable General Ordinances by adding Chapter 54 Building and Premises Maintenance (Refer to Public hearing 10/01/15)	14-17
2016-029	Order amending the Code of the Town of Barnstable General Ordinances Chapter 224 Vacant and Foreclosing Properties (Refer to Public hearing 10/01/15)	18-21
2016-031	Appropriation and Loan Order of \$450,000 for repairs and renovations to the Craigville Beach Bathhouse (Refer to Public hearing 10/01/15)	22-23

Approve Minutes – September 3, 2015

Please Note: The list of matters, are those reasonably anticipated by the council president, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda. Persons interested are advised, that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, may be put off to a continued session of this meeting, and with proper notice. Anyone requiring hearing assistance devices please inform the Town Clerk at the meeting.

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

BARNSTABLE TOWN COUNCIL

ITEM # 2015-180
INTRO: 06/04/15, 06/18/15, 09/17/15

2015-180 APPROPRIATION ORDER OF \$504,000.00 COMMUNITY PRESERVATION FUNDS FOR AFFORDABLE HOUSING HI RIVER ROAD, MARSTONS MILLS

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the sum of Five Hundred Four Thousand and NO/100 (\$504,000.00) Dollars be appropriated and transferred from the amount set aside for community resources in the Community Preservation Fund, for a grant to Habitat for Humanity, Inc. for the acquisition, creation and support of affordable housing on nine (9) acres, more or less, on Hi River Road in Marstons Mills shown as Parcels 33 – 36 on Assessors Map 0600; and that the Town Manager is authorized to contract for and expend the appropriation made available and execute and record documents on behalf of the Town for this purpose to be secured by grant agreements, regulatory agreements, deed riders, title insurance policies, notes and mortgages, subject to the oversight of the Community Preservation Committee.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
<u>06/04/15</u>	<u>Opened Public hearing & Continued to 06/18/15</u>
<u>06/18/15</u>	<u>Referred to Public hearing & Continued to 09/17/15</u>

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

BARNSTABLE TOWN COUNCIL

ITEM # 2015-180

INTRO: 06/04/15, 06/18/18, 09/17/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lindsey Counsell, Community Preservation Committee
DATE: June 1, 2015
SUBJECT: Appropriation Order in the amount of \$504,000 for the Habitat for Humanity Property Acquisition on Hi River Road, Marstons Mills

BACKGROUND: The Town of Barnstable is seeking approval from the Town Council for Community Preservation Act (CPA) funding in the amount of \$504,000 for the acquisition by Habitat for Humanity Cape Cod of 9 acres of property on Hi River Road in Marstons Mills for the creation of affordable housing. Habitat for Humanity has entered into an Offer to Purchase that is contingent on Habitat receiving a CPC grant for the land purchase. Habitat believes the site will comfortably support approximately 12 affordable homes with a Comprehensive Permit under Massachusetts General Law Chapter 40B. Based on 12 homes, this represents \$42,000 per unit, the bulk of which will go towards land acquisition and the remainder which will fund pre-development, including architectural, engineering and legal costs.

ANALYSIS: The project meets the criteria for CPA funds as it creates community housing and helps preserve Barnstable's character by providing much needed housing opportunities that help maintain a diverse and vibrant community.

FISCAL IMPACT: There is no impact to the general fund. All funds are drawn from the Community Preservation Fund.

TOWN MANAGER RECOMMENDATION: Thomas K. Lynch, Town Manager recommends acceptance.

VOLUNTEER ASSISTANCE: Lindsey Counsell, Chair, Community Preservation Committee

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-008

INTRO: 08/13/15, 09/03/15, 09/17/15

2016-008 AMENDMENT TO CHAPTER 121 OF THE CODE OF THE TOWN OF BARNSTABLE, "LICENSING" BY ADDING ARTICLE III, CIVIL FINGERPRINTING CRIMINAL HISTORY RECORD CHECK FOR CERTAIN LICENSES

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

"§121-8 Criminal History Record Check Procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

§121.9 Use of Criminal History Record by Licensing Authorities:

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

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

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

§121.9. Fees:

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be fifty dollars (\$50.00). A portion of the fee, as specified in **MGL c. 6, § 172B 1/2**, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

§121.10. Severability

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

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
<u>08/13/15</u>	<u>Referred to Public hearing 09/03/15</u>
<u>09/03/15</u>	<u>Opened Public hearing and continued to 09/17/15</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-008

INTRO: 08/13/15, 09/03/15, 09/17/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Paul B. MacDonald, Police Chief
DATE: August 13, 2015
SUBJECT: Chapter 121 of the Code of the Town of Barnstable "Article III, Licensing" is hereby amended by adding thereto Article III, Civil Fingerprinting Criminal History Record Checks for Certain Licenses

BACKGROUND: Massachusetts General Law Ch. 6 §172B ½, which went into effect in May 2012, states that cities and towns may institute ordinances and bylaws requiring applicants for certain licenses to submit to state and federal criminal history records checks via fingerprinting. Without an ordinance in place, the Barnstable Police Department cannot submit fingerprints for this background check.

The purpose of this law, and therefore the proposed ordinance, is to ensure the safety of the residents and visitors to the Town of Barnstable, and to regulate the issuance and use of licenses to be certain they are used responsibly and lawfully.

Although the law allows for any town-issued licenses to be included in the ordinance, it has been limited to the licenses the Police Department feels would be best impacted and improved by fingerprint-based backgrounds: hawking and peddling, or other door-to-door salespeople, and ice cream truck vendors.

The results of the fingerprint-based background checks may only be utilized for the purpose of determining the suitability of license applicants. Also, suitability is determined by the Police Department and a recommendation made to the licensing authority. As stated in the ordinance, "No such suitability evaluation or communication shall be disseminated to unauthorized entities."

Finally, applicants have an avenue of appeal if they feel the results of the fingerprint-based background check are inaccurate, and no license determination will be made during that challenge.

ANALYSIS: This ordinance allows the Barnstable Police Department to exercise the legal entitlements permitted via MGL 6 §172B ½ to better protect potentially vulnerable populations within the Town of Barnstable.

FISCAL IMPACT: None anticipated.

TOWN MANAGER RECOMMENDATION: Thomas K. Lynch, Town Manager recommends acceptance.

STAFF ASSISTANCE: Paul MacDonald, Chief of Police; Kathleen Hinckley, Barnstable Police Department Records/Property Supervisor; Gretchen Allen, Barnstable Police Department Patrol Officer Ruth Weil, Town Attorney

A. OLD BUSINESS (Second reading) (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM #2016-021
INTRO: 09/03/15, 09/17/15

2016-021 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

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

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

DATE	ACTION TAKEN
<u>09/03/15</u>	<u>Second reading 09/17/15</u>
_____	_____

- Read Item
- Council Discussion
- Move/Vote

B. NEW BUSINESS (Refer to public hearing 10/01/15)

BARNSTABLE TOWN COUNCIL

**ITEM #2016-026
INTRO: 09/17/15**

**2016-026 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$35,000
FOR THE INSTALLATION OF GROUNDWATER MONITORING WELLS
AT THE BARNSTABLE SHOOTING RANGE**

ORDERED: That the sum of \$35,000 be appropriated for the purpose of funding the installation of groundwater monitoring wells and other associated costs at the Barnstable Shooting Range, and that to meet this appropriation, that \$35,000 be transferred from available funds within the Town's Capital Trust Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM #2016-026
INTRO: 09/17/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
DATE: September 17, 2015
SUBJECT: Appropriation and Transfer Order in the amount of \$35,000 for the installation of groundwater monitoring wells at the Barnstable shooting range

BACKGROUND: The Barnstable shooting range, located off the Service Road in West Barnstable has been the location of small arms recreational shooting and police arms training for approximately fifty years. During that time period large quantities of lead bullets and shot were, as a consequence of that activity, deposited over a large land area. After the range was temporarily closed in December 2012, it was determined that as a condition of possible reopening that an environmental site assessment should be conducted to determine the nature and extent of lead contamination at the site. The site assessment was conducted in November 2014. The site assessment concluded that there are significant areas of lead contamination in soil at the range that exceed Mass. DEP standards.

ANALYSIS: The nature of lead in the environment is that it tends to be bound to shallow soils and is not considered very mobile. However, the lead may break down if exposed to acidic rain and possibly move further in the soil towards groundwater. In order to provide a complete and thorough analysis of possible contamination at the site, the DPW is proposing to install one up-gradient (or background conditions) groundwater monitoring well and two down-gradient wells, which would intercept flow leaving the site.

FISCAL IMPACT: Funds for this project are proposed from the Capital Trust Fund with no negative fiscal impacts to the current Capital program or Operating Budget.

TOWN MANAGER RECOMMENDATION: Thomas K. Lynch, Town Manager recommends approval of the transfer order.

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

A. NEW BUSINESS (Refer to Public hearing 10/01/15)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-027
INTRO: 09/17/2015**

2016-027 ORDER AMENDING THE GENERAL ORDINANCES OF THE CODE OF THE TOWN OF BARNSTABLE, CHAPTER 228, VEHICLES, STORAGE OF

ORDERED: That the General Ordinances of the Code of the Town of Barnstable, Chapter 228, Vehicles, Storage of, be amended as follows:

SECTION 1: by adding to the title, after the word “vehicle” the words “and boats,” the title to read after amendment “Vehicles and Boats, Storage of.”

SECTION 2: by striking § 228-1, Limit of one vehicle on premises, and substituting the following.

“§ 228-1. Limit of boats and vehicles on premises.

No person shall have any unregistered boat, motor vehicle or trailer, any or all of which are required by law to be registered, or any part or portion thereof, ungaraged on premises owned, occupied or controlled by him or her at any time unless screened from neighbors' view and from public view by shrink wrap, fencing, evergreen trees or other plants capable of providing year-round screening.

SPONSOR: Vice President Ann Canedy, 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

ITEM# 2016-027
INTRO: 09/17/2015

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
DATE: September 17, 2015
SUBJECT: Order Amending the General Ordinances of the Code of the Town of Barnstable, Chapter 228, Vehicles, Storage of

RATIONALE: Due to repeated constituent complaints of tarped or openly exposed unregistered boats, vehicles, and/or trailers. This existing ordinance is being amended to only allow unregistered vehicles to be stored on premise **if** properly screened from public view or garaged.
(NOTE) There is no prohibition if the boat, vehicle and or trailer is registered.

FISCAL IMPACT: None

TOWN MANAGER RECOMMENDATION: Thomas K. Lynch, Town Manager recommends approval of this Amendment

STAFF ASSISTANCE: Ruth Weil, Town Attorney

B. NEW BUSINESS (Refer to Public hearing 10/01/15)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-028
INTRO: 09/17/2015**

**2016-028 ORDER AMENDING CODE OF THE TOWN OF BARNSTABLE GENERAL
ORDINANCES BY ADDING CHAPTER 54 BUILDING AND PREMISES
MAINTENANCE**

ORDERED: That the General Ordinances of the Code of the Town of Barnstable be amended by deleting the existing Chapter 54, and by substituting in its place the following Chapter 54 Building and Premises Maintenance and by amending Chapter 1, Article I, Noncriminal Enforcement of Violations.

SECTION 1: by adding the following Chapter 54.

“Chapter 54. Building and Premises Maintenance”

§ 54-1. Purpose and intent.

The purpose and intent of this chapter is to eliminate nuisances in the Town. Nuisances such as trash, debris and stagnant pools of water cause and contribute to blight within neighborhoods and commercial areas and impair the health, safety and general welfare of the inhabitants of the Town.

§ 54-2. Applicability; compliance with other regulations.

Every owner shall maintain premises in compliance with this chapter and with applicable provisions of the sanitary and building codes (hereinafter "code") and regulations. Every occupant shall comply with the provisions of § **54-5B**.

§ 54-3. Outdoor storage.

A. Indoor items, such as furniture, appliances, plumbing fixtures and bedding, shall be kept within enclosed structures after seven (7) calendar days; all other personal property shall be kept within enclosed structures or screened from public view after fifteen (15) calendar days. In no case shall property covered by this subsection be stored outdoors for a cumulative total of more than forty-five (45) calendar days in any calendar year.

B. Functional outdoor items, such as fixtures, landscape elements, outdoor furniture, outdoor appliances, children's play structures, firewood, compost materials, construction materials, while construction is ongoing, proceeding in good faith and in a timely manner and commenced under a valid building permit if required, boats and inventory, (where such outdoor storage of inventory is in compliance with zoning), shall not be subject to the requirements of this section.

C. Motor vehicles and trailers shall be kept in compliance with Chapter **228**, Vehicles, Storage of.

§ 54-4. Stagnant water.

Water shall not be permitted to continuously stagnate outside of any building or structure for more than 10 days except under natural conditions. Nothing in this chapter 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. Owners' responsibilities.

(1) 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 and for the final collection and disposal of rubbish, garbage and other refuse at a permitted transfer station or facility.

(2) The owner of any dwelling that contains three or more units, and the owner of any dwelling which contains one or two units that are 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. Occupants' responsibilities.

(1) 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 occupants shall also ensure that all tight-fitting covers are kept so that all rubbish, garbage and other refuse that is stored outside a building or structure is properly covered. Said occupants shall be responsible for the proper use and cleaning of the receptacles and keeping the premises free of rubbish, garbage and other refuse.

(2) Unless a written lease agreement specifies otherwise, the occupant(s) of any dwelling that contains one or two units and that 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. Screening Requirements for Receptacles.

All outdoor rubbish and garbage storage areas shall be located in an area which is screened from public view. Said screening may be in the form of fencing, evergreen trees or other plants capable of providing year-round screening, located around the refuse storage area in such a manner to block the view of the rubbish and garbage storage area from the neighbors and from other persons passing-by, provided that receptacles may be placed in the open near a street within 24 hours of scheduled collection and disposal by a contractor as provided in this chapter and returned to a screened location within 24 hours thereafter. Receptacles shall be located in such a manner that no objectionable odors enter any other building, structure or premises and so as to provide maximum screening from the street,

§ 54-6. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OCCUPANT

Any person who alone or severally with others rents or leases premises, or resides overnight other than as a guest.

OWNER

Any person who alone or severally with others has legal title to buildings, structures or 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.

§ 54-7. Enforcement; removal or abatement of nuisance.

A. The Director of the Health Department or her or his designee is hereby designated as the enforcing authority for this chapter.

B. The enforcing authority shall notify the owner or occupant, in writing, of any alleged violation or violations of this chapter and order the owner or occupant to remove or abate the nuisance by a date certain not more than 10 days after service of notice of the violation(s); provided, however, that if the violation is determined to be such that the public health and safety will be jeopardized by that delay, the enforcing authority 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. If the violation is not removed or abated after notice, the enforcing authority may commence enforcement action through noncriminal, criminal or civil proceedings, and no action shall preclude any other enforcement action or actions. Each day of continued violation may be deemed a separate offense.

C. In addition to any penalties or enforcement actions hereunder, after final determination of three 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 30 days of submission and, if unpaid thereafter, shall be subject to a municipal charges lien as provided in MGL c. 40, § 58.

§ 54-8. Interpretation of provisions; severability; period of effect.

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

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

SECTION 2: by amending section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances by adding after “Ch. 51, Numbering of Buildings \$50” the following in the respective columns: “Ch. 54 Building and Premises Maintenance \$100 ” in the respective columns.

SPONSOR: Vice President Ann Canedy, 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# 2016-028
INTRO: 09/17/2015

TO: Town Council
FROM: Vice President Ann Canedy, Councilor Jennifer Cullum
DATE: September 17, 2015
SUBJECT: Amending the Code of Barnstable General Ordinances, Chapter 54

RATIONALE: Due to this Chapter having a sunset clause of June 16, 2015 and based upon the previous two years in effect, this is a reauthorization of this ordinance with minor revisions. These revisions stem from experience in application and enforcement of the ordinance. The purpose and intent of this Chapter is to eliminate nuisances throughout the town. These nuisances include accumulated trash, debris, abandoned and discarded appliances and stagnant pools of water that contribute to the blight to neighborhoods and commercial areas and further impair the health and safety and general welfare of the inhabitants of the town.

FISCAL IMPACT: None

TOWN MANAGER RECOMMENDATION: Thomas K. Lynch, Town Manager recommends approval of this Amendment

STAFF ASSISTANCE: Ruth Weil, Town Attorney

B. NEW BUSINESS (Refer to Public hearing 10/01/15)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-029
INTRO: 09/17/2015**

**2016-029 ORDER AMENDING CODE OF THE TOWN OF BARNSTABLE GENERAL
ORDINANCES CHAPTER 224 VACANT AND FORECLOSING PROPERTIES**

ORDERED: That the General Ordinances of the Code of the Town of Barnstable, Chapter 224, Vacant and Foreclosing Properties, be amended as follows:

Section 1. That § 224-4B shall be amended as follows:

By striking § 224-4 B (1) (c) and § 224-4 B (1) (h) in their entirety and by sequentially re-lettering the remaining paragraphs thereunder.

By adding a new § 224-4 B (1) (k) as follows:

(k) Drain all water from the plumbing between September 15 and June 15 of each calendar year to guard against burst pipes.”

And by striking § 224-4 B (2) (a) in its entirety and by sequentially re-lettering the remaining paragraphs thereunder.

So that § 224-4B as revised shall now read:

B. Owner or mortgagee responsibilities.

(1) Any owner or mortgagee of a vacant property, having taken ownership or possession as provided in Subsection A (1) of this § 224-4, shall also comply with the following within the time periods set forth in Subsection A:

(a) Register the property as a mortgagee irrespective of entry into ownership or possession as a mortgagee as provided under § 224-3A.

(b) As may be required by the Fire Chief for commercial property, file one set of space utilization floor plans for any buildings on said property with the Fire Chief and one set of said plans with the Building Commissioner and certify space utilization plans as accurate twice annually, in January and July.

(c) Secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration National Arson Prevention Initiative Board up Procedures or provide twenty-four-hour on-site security personnel on the property.

(d) Post "No Trespassing" signs on the property.

(e) Ensure that structures are maintained in sound condition.

(f) Maintain lawns and shrubs free from excessive overgrowth.

(g) Maintain the property in accordance with the Barnstable Zoning Ordinance, definition of "maintenance" in this chapter, and any other provision of this chapter; and dispose of trash, debris and pools of stagnant water as provided in Chapter 54 of the Town of Barnstable General Ordinances concerning the maintenance of property.

(h) Maintain all fences around swimming pools or install fences as required by Chapter 210 of the Barnstable General Ordinances and maintain existing fences or install fences around spas.

(i) Provide the Fire Chief and Building Commissioner with the name, local address, telephone number and e-mail address of a responsible person, if different from the person named in the registration under § 224-3A, who can be contacted in case of emergency and cause the name and contact number to be marked on the front of the property as may be required by the Fire Chief or Building Commissioner.

(j) Maintain liability insurance on the property and furnish the Building Commissioner with a copy of said certificate of insurance.

(k) Drain all water from the plumbing between September 15 and June 15 of each calendar year to guard against burst pipes.

(2) A mortgagee of foreclosing property shall additionally provide the following:

(a) Schedule inspections with the Building Commissioner and Health Director, who may at his or her discretion include the Fire Chief, within a reasonable time after notification under Subsection A(1) in order to confirm that the land and the interior of all structures comply with the provisions of this chapter and/or identify the provisions with which the property does not comply and establish a program to bring the property into full compliance; and

(b) Notify the Building Commissioner in writing when the property is sold or transferred."

Section 2. That § 224-8 shall be amended as follows

By striking paragraphs § **224-8B**, § **224-8C** and § **224-8D** in their entirety and by adding the following as a new § **224-8B**:

B. If the owner fails to pay or reimburse the Town within 30 days of the notice of expenses, the Town may, as part of any court order sought pursuant to § **224-6** or by a separate civil action, seek to recover the balance due for reimbursement of its expenses incurred pursuant to this section and establish a lien on the property to be recorded in the Barnstable County Registry of Deeds or Land Registration.

So, as revised § **224-8** shall now read:

"§ 224-8. Expenses for court-ordered inspection and securing and cleaning of property.

The Building Commissioner may demand reimbursement for the expenses incurred by the Town for actions taken to inspect and secure the property, clean the property, and remove any stagnant

pools of water, rubbish, overgrowth of vegetation and snow under a court order obtained pursuant to § 224-7.

A.

The Building Commissioner shall provide the owner or mortgagee with a written statement of all associated costs.

B.

If the owner fails to pay or reimburse the Town within 30 days of the notice of expenses, the Town may, as part of any court order sought pursuant to § 224-6 or by a separate civil action, seek to recover the balance due for reimbursement of its expenses incurred pursuant to this section and establish a lien on the property to be recorded in the Barnstable County Registry of Deeds or Land Registration.”

Section 3. That § **224-10** be amended as follows:

By striking out § **224-10 Review of Provisions** in its entirety and by substituting in its place the following:

“§ 224-10 Severability.

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

SPONSOR: Vice President Ann Canedy, 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# 2016-029
INTRO: 09/17/2015

TO: Town Council
FROM: Vice President Ann Canedy, Councilor Jennifer Cullum
DATE: September 17, 2015
SUBJECT: Order amending the Code of the Town of Barnstable General Ordinances Chapter 224
Vacant and Foreclosing Properties

RATIONALE: In the recent case of Easthampton Savings v. City of Springfield, 470 Mass 284 (2014) the Massachusetts Supreme Judicial struck down several provisions of the City of Springfield's ordinance regulating abandoned and foreclosed properties as being inconsistent with other state laws and therefore, not within the City's Home Rule authority. Chapter 224, Vacant and Foreclosing Properties, contains a requirement for the posting of security for bank-owned foreclosed properties which the Supreme Judicial Court held was preempted by the state's foreclosure statute. Also, Chapter 224 contained a requirement regarding hazardous materials which was also found impermissible under Springfield's ordinance. The proposed amendments remove the provisions found by the Supreme Judicial Court as being inconsistent with municipal Home Rule authority. Further, the building commissioner requested that the provision requiring electricity to be shut-off deleted so that existing alarm systems remain operative.

FISCAL IMPACT: None

TOWN MANAGER RECOMMENDATION: Thomas K. Lynch, Town Manager recommends approval of this Amendment

STAFF ASSISTANCE: Ruth Weil, Town Attorney

B. NEW BUSINESS (Refer to Public Hearing 10/01/15)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-031
INTRO: 09/17/15**

2016-031 APPROPRIATION AND LOAN ORDER OF \$450,000.00 FOR REPAIRS AND RENOVATIONS TO THE CRAIGVILLE BEACH BATHHOUSE

ORDERED: That the sum of \$450,000 be appropriated for the purpose of funding the repairs and renovations to the Craigville Beach bathhouse, and that to meet this appropriation, the Town Treasurer with the approval of the Town Manager, is authorized to borrow \$450,000.00 and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2016-031

INTRO: 09/17/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
DATE: September 17, 2015
THROUGH: Daniel W. Santos, P.E., Director of Public Works; John Juros, AIA, Town Architect
SUBJECT: Appropriation and Loan order in the amount of \$450,000 for repairs and renovations to the Craigville Beach bathhouse

BACKGROUND: The Craigville Beach bathhouse located at 997 Craigville Beach Road in Centerville is a wood-frame building constructed in the 1920's with later additions. The building is in poor condition, does not meet the operational needs of the Recreation Division and does not meet current sanitary, safety, and accessibility code requirements. A Department of Public Works (DPW) evaluation of beach facilities identified this facility as the one with the most significant needs. In 2012, the Recreation Commission reported that the condition of the facility was "deplorable" and considered it their number one priority for repairs and improvement.

ANALYSIS: In early 2015, DPW contracted with an engineering firm to conduct a feasibility study to analyze the issues surrounding the construction and/or renovation to the Craigville Beach bathhouse. The most significant issue identified with the construction of a new bathhouse is the requirement to comply with the Massachusetts Building Code Floodplain regulations, which would result in the first floor elevation being at approximately 19 feet above base flood elevation (14 feet higher than the existing building). The feasibility study further concluded that a renovation project that was not considered "substantial improvement" could be undertaken, without the need to comply with the floodplain regulations. DPW has developed a project that will renovate the existing building in compliance with all Building Code requirements including sanitary, safety and accessibility, as well as meet the needs of the Recreation Division and users of the facility.

FISCAL IMPACT: Funding for this project will be provided from a bond issue. The bond for this project will be combined with the other borrowing authorizations approved as part of the FY 2016 Capital Improvement Program which the town plans to issue in February 2016. The annual principal and interest payments on the bond are anticipated to begin in FY 2017 and will be provided for in the FY17 general fund budget.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works
John Juros, AIA, Town Architect