



# Town of Barnstable Town Council

James H. Crocker Jr Hearing Room  
367 Main Street, 2<sup>nd</sup> floor,  
Hyannis, MA 02601  
Office 508.862.4738 • Fax 508.862.4770  
E-mail: [council@town.barnstable.ma.us](mailto:council@town.barnstable.ma.us)

## TOWN COUNCIL MEETING AGENDA December 16, 2021 7:00 PM

### Councillors:

Matthew Levesque  
President  
Precinct 10

Paula Schnepf  
Vice President  
Precinct 12

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Paul Hebert  
Precinct 3

Nikolas Atsalis  
Precinct 4

David W. Bogan  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grassetti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Jennifer L. Cullum  
Precinct 13

Administrator:  
Cynthia A. Lovell  
[Cynthia.Lovell@town.barnstable.ma.us](mailto:Cynthia.Lovell@town.barnstable.ma.us)

Administrative  
Assistant:  
Kelly Crahan  
[Kelly.Crahan@town.barnstable.ma.us](mailto:Kelly.Crahan@town.barnstable.ma.us)

The December 16, 2021 Town Council Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

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

Join Zoom Meeting <https://zoom.us/j/99807442850> Meeting ID: 998 0744 2850  
US Toll-free 888 475 4499

3. Written Comments may be submitted to:  
[https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town\\_Council/Agenda-Comment.asp](https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp)

### PUBLIC SESSION

#### 1. ROLL CALL

#### 2. PLEDGE OF ALLEGIANCE

#### 3. MOMENT OF SILENCE

#### 4. PUBLIC COMMENT

#### 5. COUNCIL RESPONSE TO PUBLIC COMMENT

#### 6. TOWN MANAGER COMMUNICATIONS

#### 7. ACT ON MINUTES (Including Executive Session)

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

#### 9. ORDERS OF THE DAY

- A. Old Business
- B. New Business

- Approval of 2022 Town Council Calendar of Meetings

#### 10. ADJOURNMENT

NEXT REGULAR MEETING: January 6, 2021

| ITEM NO.               | INDEX TITLE  | PAGE  |
|------------------------|--|-------|
| <b>A. OLD BUSINESS</b> |  |       |
| 2022-044               | Appropriation and Loan Order in the amount of \$2,750,000 for the Design and Permitting of the Vineyard Wind 2 Route Sewer Expansion Project <b>(Public Hearing) (Roll Call 2/3 Full Council)</b> .....  | 4-5   |
| 2022-045               | Appropriation and Loan Order in the amount of <b>\$3,500,000</b> for the Design and Permitting of the Route 28 West Sewer Expansion Project <b>(Public Hearing) (Roll Call 2/3 Full Council)</b> .....   | 6-7   |
| 2022-050               | Supplemental Appropriation Order in the amount of <b>\$8,490</b> for the Heavy Duty Truck Scale Replacement Project at the Solid Waste Division of the Department of Public Works <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....  | 8-9   |
| 2022-052               | Supplemental Appropriation and Loan Order in the amount of <b>\$1,075,000</b> for the Construction of Sewer Infrastructure to be Installed as Part of MassDOT’s Route 28 and Yarmouth Road Intersection Improvement Project <b>(Public Hearing) (Roll Call 2/3 Full Council)</b> .....   | 10-11 |
| 2022-053               | Supplemental Appropriation Order in the amount of <b>\$48,000</b> for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger which is serving as outside counsel to the Town with respect to two lawsuits filed against the Town by the Conservation Law Foundation <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....   | 12-13 |
| 2022-056               | Supplemental Appropriation Order in the amount of <b>\$350,000</b> for the purpose of funding the Fiscal Year 2022 Department of Public Work’s Fiscal Year 2022 Operating Capital Budget <b>(Public Hearing) (Roll Call Majority Full Council)</b> .....   | 14-15 |
| <b>B. NEW BUSINESS</b> |  |       |
| 2022-059               | Order to approve Term of Contract for Barnstable Public Schools Food Service Management Contract <b>(First Reading) (Refer to Second Reading 01/06/2022)</b> .....   | 16-17 |
| 2022-060               | Authorization to expend a Federal Fiscal Year 2021 Emergency Management Performance Grant in the amount of <b>\$20,150</b> from the Massachusetts Emergency Management Agency <b>(May be acted upon) (Roll Call Majority)</b> .....  | 18-19 |
| 2022-061               | Authorization to expend a 2021 Massachusetts Dredging Grant from the Commonwealth of Massachusetts, Executive Office of Housing and Economic Development in the amount of <b>\$55,000</b> for the Barnstable Harbor Outer Entrance Channel Dredging Project <b>(May be acted upon) (Roll Call Majority)</b> .....  | 20-21 |
| 2022-062               | Authorization to expend a Fiscal Year 2022 Technical Assistance Grant from the Commonwealth of Massachusetts, Department of Environmental Protection Bureau of Waste Site Cleanup in the amount of <b>\$15,000</b> for hiring technical services for technical review and public engagement of disposal site cleanup response actions associated with the Barnstable Fire Training Academy disposal site <b>(May be acted upon) (Roll Call Majority)</b> ..... | 22-23 |
| 2022-063               | Authorizing the Town Manager to execute a Regulatory Agreement between the Town of Barnstable and Lyon Investment Realty Trust for 80 Pearl Street, Hyannis <b>(First Reading) (Refer to Public Hearing 01/06/2022)</b> .....  | 24-30 |
| 2022-064               | Resolve directing the Town Manager or his designee(s) to prepare and submit for the Town Council’s consideration a proposed ordinance providing for the Town’s adoption of the Stretch Energy Code <b>(May be acted upon) (Roll Call Majority)</b> .....   | 31    |

**2022-065** Adoption of the 2020 Town of Barnstable Precinct map, which map supersedes and replaces the map previously approved on October 7, 2021 **(May be acted upon) (Roll Call Majority)** .....32-33

Approve Minutes: December 02, 2021

---

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

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-044  
INTRO: 11/18/2021, 12/16/2021**

**2022-044 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$2,750,000 FOR THE PURPOSE OF FUNDING DESIGN AND PERMITTING OF THE VINEYARD WIND 2 ROUTE SEWER EXPANSION PROJECT**

**ORDERED:** That the sum of **\$2,750,000** be appropriated for the purpose of funding the Vineyard Wind 2 Route Sewer Expansion Project, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$2,750,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>11/18/2021</u> | <u>Refer to Public Hearing 12/16/2021</u> |

\_\_\_\_\_

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-044  
INTRO: 11/18/2021, 12/16/2021

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** November 18, 2021  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$2,750,000** for the Design and Permitting of the Vineyard Wind 2 Route Sewer Expansion Project

**BACKGROUND:** This project will install sewer infrastructure along the proposed Vineyard Wind 2 on-shore duct bank route. Additionally, sewer infrastructure will be installed from the intersection of Old Stage and Main Street, northeasterly on Main Street and Phinney's Lane to Route 28, inclusive of a proposed pump station in the area of Mother's Park Road. The project will require the installation of at least five (5) new sewer pump stations, including the Mother's Park Road pump station, the locations of which will be determined during the design phase. The design will also consider potential pedestrian facilities (sidewalks, etc.) improvements along the route.

**ANALYSIS:** The Vineyard Wind 2 Route is located within areas identified in the Comprehensive Wastewater Management Plan as requiring sewer expansion. Similar to the Strawberry Hill Road Sewer Expansion Project, which was designed and executed in coordination with the Vineyard Wind 1 on-shore construction, there will be cost savings, efficiencies and reduced disturbance realized by installing sewers in coordination with the Vineyard Wind 2 construction. The Host Agreement with Vineyard Wind will require Vineyard Wind to repave all of the disturbed roadways, which will result in substantial savings to the Town's sewer expansion project.

A portion of the sewers to be installed along the Vineyard Wind 2 Route requires a proposed pump station in the area of Mother's Park Road to be functional. Construction of that pump station as a part of this project will allow the Town to consider selling the Town owned property at 310 Main Street sooner than anticipated.

The southern portion of the project is identified in the CWMP as a needs area for nitrogen removal within the Centerville River Watershed by Massachusetts Estuaries Program (MEP) modeling. The northerly portions of the project are a needs area for pond protection as residences in this area are located in close proximity to Lake Wequaquet. As a result, the project area was identified as a needs area for nitrogen removal and pond protection and identified in the CWMP as requiring sewer expansion. This project will install approximately 5.3 miles of sewers, connect approximately 350 properties to municipal sewer, collect approximately 66,000 gallons per day of wastewater and remove approximately 6.6 kg/day of nitrogen from the Centerville River Watershed.

**FINANCIAL IMPACT:** Funding for this project will be provided from the issuance of a municipal bond and future operating budgets will include the annual debt service on the bond.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this appropriation order.

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

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-045  
INTRO: 11/18/2021, 12/16/2021**

**2022-045 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$3,500,000 FOR THE PURPOSE OF FUNDING DESIGN AND PERMITTING OF THE ROUTE 28 WEST SEWER EXPANSION PROJECT**

**ORDERED:** That the sum of **\$3,500,000** be appropriated for the purpose of funding the Route 28 West Sewer Expansion Project, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$3,500,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>11/18/2021</u> | <u>Refer to Public Hearing 12/16/2021</u> |

\_\_\_\_\_

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-045**  
**INTRO: 11/18/2021, 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** November 18, 2021  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$3,500,000** for the Design and Permitting of the Route 28 West Sewer Expansion Project

**BACKGROUND:** The proposed project will extend municipal sewer on Route 28 from Phinney's Lane to Route 149 in Marstons Mills. Also included in this project would be the conversion of the existing Marstons Mills Wastewater Treatment Plant (MMWWTP) to a municipal wastewater pump station which would be designed to sewer the nearby properties, as part of a future Phase 1 project, and associated sewers in East Osterville Road and Old East Osterville Road. The project will include the construction of approximately 5 miles of new sewers and four new sewer pump stations (including the MMWWTP conversion). The project is identified in Phase 1 of the Comprehensive Wastewater Management Plan (CWMP). Construction is anticipated to begin in Fiscal Year 2025 and be completed in Fiscal Year 2027.

**ANALYSIS:** The project will install critical infrastructure which will facilitate sewer expansion to the western portion of the Town as required by the CWMP. Additionally, the project will decommission the MMWWTP which was constructed in 1993 and is beyond its 20-year design life. The project combines the Route 28 Centerville and Route 28 Marstons Mills Projects in order to expedite the Route 28 sewer "backbone". Without the infrastructure to be installed as part of this project, the further western expansion of the municipal sewer system into the Three Bays and Popponeset Bay Watersheds as required in the CWMP cannot be achieved.

**FINANCIAL IMPACT:** Funding for this project will be provided from the issuance of a municipal bond and future operating budgets will include the annual debt service on the bond.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this appropriation and loan order.

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

**A. OLD BUSINESS (Public Hearing) (Roll Call Majority Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-050**  
**INTRO: 11/18/2021, 12/06/2021**

**2022-050 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$8,490 FOR THE HEAVY DUTY TRUCK SCALE REPLACEMENT PROJECT AT THE SOLID WASTE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS**

**ORDERED:** That the amount of **\$8,490** be appropriated and added to the \$100,000 appropriated under Town Council Order 2020-125 for a revised appropriation amount of \$108,490 for the purpose of funding the Heavy Duty Truck Scale Replacement Project at the Solid Waste Division; and that \$8,490 be transferred from the Solid Waste Enterprise Fund reserves to fund this appropriation.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>11/18/2021</u> | <u>Refer to Public Hearing 12/06/2021</u> |

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-050**  
**INTRO: 11/18/2021, 12/06/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** November 18, 2021  
**SUBJECT:** Supplemental Appropriation Order in the amount of **\$8,490** for the Heavy Duty Truck Scale Replacement Project at the Solid Waste Division of the Department of Public Works

**BACKGROUND:** The Solid Waste Division operates the Transfer Station & Recycling Center. The Transfer Station operates a Construction & Demolition Disposal (C&D) program at the facility. Residents and small businesses are weighed in and out on a truck scale and the fee is determined by the weight of the material disposed of. The scale has exceeded its useful life and is showing significant wear. The Town Council approved a Capital Improvement Project for replacement of the scale in the amount of \$100,000.

**ANALYSIS:** The Solid Waste Division issued an Invitation For Bid (IFB) through the Procurement Office for replacement of the heavy duty truck scale. The Town received three bids for the project. Due to the increases to material, most notably steel, the low bid was submitted for \$108,490.00. The vendor submitting the low bid is a responsible bidder for the project with a history in this type of replacement project. Funding of this request will allow the C&D operation to continue with accurate weights and fees.

**FISCAL IMPACT:** There are adequate cash reserves to cover this funds transfer. Current certified cash reserves are \$1,481,144.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, requests favorable action by the Town Council.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works; P. J. Kelliher, Supervisor, Solid Waste Division

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-052  
INTRO: 12/02/2021, 12/16/2021**

**2022-052 SUPPLEMENTAL APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,075,000 FOR THE PURPOSE OF FUNDING THE CONSTRUCTION OF SEWER INFRASTRUCTURE TO BE INSTALLED AS PART OF MASSDOT'S ROUTE 28 AND YARMOUTH ROAD INTERSECTION IMPROVEMENT PROJECT**

**ORDERED:** That the sum of \$700,000 appropriated under Town Council order 2020-002 be increased by **\$1,075,000** for a total revised appropriation amount of \$1,775,000 for the purpose of funding the construction of sewer infrastructure to be installed as part of the Massachusetts Department of Transportation (MassDOT) Route 28 and Yarmouth Road Intersection Improvement Project, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$1,775,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>12/02/2021</u> | <u>Refer to Public Hearing 12/16/2021</u> |

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-052  
INTRO: 12/02/2021, 12/16/2021

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** December 02, 2021  
**SUBJECT:** Supplemental Appropriation and Loan Order in the amount of **\$1,075,000** for the Construction of Sewer Infrastructure to be installed as Part of MassDOT's Route 28 and Yarmouth Road Intersection Improvement Project

**BACKGROUND:** This Massachusetts Department of Transportation (MassDOT) is scheduled to commence construction this winter on a project to modify the intersection of Route 28 and Yarmouth Road in Hyannis. During the design phase, the Town requested that (MassDOT) include in the project the installation of sewer infrastructure to facility the future expansion of sewer to the Yarmouth Road area north of the project as well as Route 28 east of the intersection. These areas are identified in the Town's Comprehensive Wastewater Management Plan (CWMP) as requiring sewer expansion to support economic development, protect adjacent water supply wells, and reduce nutrient loading to Lewis Bay. In 2019, the Town Council appropriated \$700,000 for this infrastructure based upon an estimate provided by (MassDOT) (2020-002). MassDOT opened bids this fall and the bid price of \$1,601,440 for the sewer construction exceeded the Town's available budget by over \$900,000. This request is for additional funding to fund this overage as well as the cost of police details associated with the sewer construction and project contingency.

**ANALYSIS:** MassDOT is scheduled to begin construction this winter on the project. Upon completion of the work (anticipated for 2025/2026) MassDOT will impose a 5-year construction moratorium, prohibiting construction in the roadways associated with this project. Failure to partner with MassDOT on the installation of this sewer infrastructure as part of this project will result in the sewer being delayed by about a decade, likely until Phase 2 of the CWMP. These delays would be projected to result in future higher costs of construction. In addition, given the traffic impacts of construction at this intersection, it is advisable to complete any identified work during one construction project, rather than as part of multiple, disruptive construction efforts.

**FINANCIAL IMPACT:** Funding for this project will be provided from the issuance of a loan through the State's Revolving Loan Trust. The subsequent loan payments will be included in the future operating budgets of the Sewer Enterprise Fund with a transfer from the Sewer Construction and Private Ways Fund to cover the loan payments. Existing appropriations for this project total \$700,000 (2020-002). With this appropriation, the total available project funding will be \$1,775,000. The project is listed on the 2021 Clean Water State Revolving Fund Intended Use Plan and a 25% subsidy from the Cape Cod and Islands Water Protection Fund has been awarded.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Appropriation Order.

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

**A. OLD BUSINESS (Public Hearing) (Roll Call Majority Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-053  
INTRO: 12/02/2021, 12/16/2021**

**2022-053 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$48,000 FOR THE PURPOSE OF PAYING OPERATING EXPENSES OF THE LEGAL DEPARTMENT FOR THE SERVICES OF THE LAW FIRM OF ANDERSON & KREIGER WHICH IS SERVING AS OUTSIDE COUNSEL TO THE TOWN WITH RESPECT TO TWO LAWSUITS FILED AGAINST THE TOWN BY THE CONSERVATION LAW FOUNDATION**

**ORDERED:** That the amount of **\$48,000** be appropriated for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger, which is serving as outside counsel to the Town with respect to two lawsuits filed against the Town by the Conservation Law Foundation; and that to fund the appropriation, that \$48,000 be transferred from the General Fund surplus.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>12/02/2021</u> | <u>Refer to Public Hearing 12/16/2021</u> |

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

## BARNSTABLE TOWN COUNCIL

**ITEM# 2022-053**

**INTRO: 12/02/2021, 12/16/2021**

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney  
**DATE:** December 02, 2021  
**SUBJECT:** Supplemental Appropriation Order in the amount of **\$48,000** for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger which is serving as outside counsel to the Town with respect to two lawsuits filed against the Town by the Conservation Law Foundation

**BACKGROUND:** In February 2021, the Conservation Law Foundation (“CLF”) filed a lawsuit against the Town of Barnstable alleging violation of the federal Clean Water Act for operating the Town’s wastewater treatment facility without obtaining a National Pollutant Discharge Elimination System permit for discharges from the facility to groundwater. In June 2021, CLF filed a second lawsuit against the Town alleging violations of the Massachusetts Title 5 regulations of septic systems. CLF has served the Town with both lawsuits. The law firm of Anderson & Kreiger has been representing the Town in both of these matters and has been engaged in ongoing discussions with CLF to determine whether the parties can reach a settlement in both lawsuits, ideally before litigation proceeds too far. The Town has filed a Motion to Dismiss the Clean Water Act lawsuit, and CLF has filed its response to that motion. The requested supplemental appropriation is intended to cover the costs of continued settlement negotiations with CLF. If the Town is required to litigate and defend these matters, then additional funding will be required and another appropriation request will be made as necessary.

**FISCAL IMPACT:** The relief and penalties sought by CLF in these two complaints would have a substantial financial impact on the Town, and it is therefore critically important that the Town continue to have the benefit of representation by counsel with significant experience and expertise in these types of matters.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Supplemental Appropriation Order.

**STAFF SUPPORT:** Karen L. Nober, Town Attorney

**A. OLD BUSINESS (Public Hearing) (Roll Call Majority Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-056**  
**INTRO: 12/02/2021, 12/16/2021**

**2022-056 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$350,000 FOR THE PURPOSE OF FUNDING THE FISCAL YEAR 2022 DEPARTMENT OF PUBLIC WORK'S FISCAL YEAR 2022 OPERATING CAPITAL BUDGET**

**ORDERED:** That the amount of **\$350,000** be appropriated for the purpose of funding the Fiscal Year 2022 Department of Public Work's Fiscal Year 2022 Operating Capital Budget and that to fund the appropriation, that \$350,000 be transferred from the General Fund surplus.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>12/02/2021</u> | <u>Refer to Public Hearing 12/16/2021</u> |

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-056**  
**INTRO: 12/02/2021, 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Mark A. Milne, C.P.A., Director of Finance  
**DATE:** December 02, 2021  
**SUBJECT:** Supplemental Appropriation Order in the amount of **\$350,000** for the purpose of funding the Fiscal Year 2022 Department of Public Work's Fiscal Year 2022 operating capital budget

**BACKGROUND:** Town Council order 2022-046 authorized the transfer of \$350,000 from the Fiscal Year 2022 Public Work's Department Operating Capital budget for the purpose of paying for the assistance of outside contractors for storm cleanup costs associated with the October 27, 2021 Nor'easter. This action allowed for the department to immediately contract for the services as the winter snow season is approaching and it is imperative that trees and limbs be removed as soon as practicable so as not to impact snow clearing operations. This order seeks to restore the funds so that the department can continue with their planned vehicle and equipment replacements.

**FISCAL IMPACT:** Funding for this order is provide from the General Fund surplus which was last certified at \$24,427,135 as of July 1, 2021.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Appropriation Order.

**STAFF SUPPORT:** Mark A. Milne, C.P.A., Director of Finance

**B. NEW BUSINESS (First Reading) (Refer to a Second Reading 01/06/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-059  
INTRO: 12/16/2021**

**2022-059 ORDER TO APPROVE TERM OF CONTRACT FOR BARNSTABLE PUBLIC SCHOOLS FOOD SERVICE MANAGEMENT CONTRACT**

**ORDERED:** That the Town Council, under the provisions of M.G.L. c. 30B, § 12 (b), does hereby authorize the School Committee to enter into a one (1) year contract with up to four (4) one year extensions for the management of the Barnstable Public Schools Food Service program.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-059**  
**INTRO: 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Meg Mayo-Brown, Superintendent of Schools  
**DATE:** December 16, 2021  
**SUBJECT:** Order to approve term of contract for Barnstable Public Schools Food Service Management Contract

**BACKGROUND:** Barnstable Public Schools during the 2020-21 school year served 446,000 lunch and breakfast meals to the students of Barnstable. The food service program is fiscally managed within a revolving fund structure with revenue between \$1.8-\$2.1 million annually. The program has closed each fiscal year in a positive fiscal position over the last fifteen years, covering all operating and minor capital improvement costs. Program operations are provided by a food service management company (FSMC) currently Aramark Educational Services LLC, and overseen by the district employed Food and Nutrition Coordinator.

**ANALYSIS:** M.G.L. c. 30B, § 12 (b) requires unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option. The current three (3) year contract with Aramark Educational Services expires June 30<sup>th</sup>, 2022. The district will be seeking requests for proposals (RFP) January 2022 from eligible management companies to provide daily breakfast and lunch services to students beginning July 01, 2022. The National School Nutrition Program administered by the United States Department of Agriculture allows school districts to contract with FSMC's for one (1) year with up to four (4) one year contract extensions (total five years). The three year cycle of requests for proposal -issue, evaluates and award is a laborious activity on district and municipal resources. It has been determined that a longer five year term would be more advantageous while providing program stability and possibly increase interest in the food service management contract bidding environment. At the November 10<sup>th</sup>, 2021 School Committee Meeting, the Committee voted unanimously to support the request to seek a five-year FSMC contract term.

**FISCAL IMPACT:** No fiscal impact is expected with the addition of the two year term beyond contract increases as defined in the request for proposal. Historically FSMC management fees beyond the first year are tied to a Consumer Price Index (CPI) and regulated by the National School Nutrition Program.

**STAFF ASSISTANCE:** Gareth Markwell, Deputy Finance Director; David Badot, Barnstable Food and Nutrition Coordinator

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-060  
INTRO: 12/16/2021**

**2022-060 AUTHORIZATION TO EXPEND A FEDERAL FISCAL YEAR 2021  
EMERGENCY MANAGEMENT PERFORMANCE GRANT IN THE AMOUNT  
OF \$20,150 FROM THE MASSACHUSETTS EMERGENCY MANAGEMENT  
AGENCY**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for a Federal Fiscal Year 2021 Emergency Management Performance Grant in the amount of **\$20,150** from the Massachusetts Emergency Management Agency for the purpose of funding costs associated with purchasing and set-up of a Town of Barnstable AM radio transmitter to be located at the Town transfer station, and further authorizes the Town Manager or his designee to expend such grant for the purpose stated herein.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-060**  
**INTRO: 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** December 16, 2021  
**SUBJECT:** Authorization to expend a Federal Fiscal Year 2021 Emergency Management Performance Grant in the amount of **\$20,150** from the Massachusetts Emergency Management Agency

**BACKGROUND:** The Department has been awarded a grant in the amount of \$20,150 relative to our role as the Emergency Operation Center.

This grant will fund the purchasing and setup of a Town of Barnstable AM radio transmitter to be located at the Town Solid Waste site. This AM radio transmitter will transmit information during any kind of emergency. The transmitter is independent of any other infrastructure which might be affected by the emergency. This would enable residents to tune-in via AM reception to hear the status of vital emergency communications in the event that their phone system, cellular network or internet is interrupted. The AM Radio Transmitter would be placed at the Town of Barnstable Transfer Station in a secured location and protective housing.

**ANALYSIS:** Acceptance of this grant will enable the department to modify a large communication room into a technologically advanced emergency operation center.

**GRANT DETAIL:** \$20,150 will be directed to pay for TR-6000 TIS Transmitter and Electrical wiring and hookup components

**FISCAL IMPACT:** This grant requires a 100% match, which is met via the annual maintenance contract for the Reverse 911 public notification system purchased through PCMG, Inc., and exceeds the match requirement of \$20,150. All costs associated with this grant contract must be completed by June 30, 2022.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this grant.

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief of Police; Anne Spillane, Finance and Support Services Director; Lena Bevilacqua, Police Grant Coordinator

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-061  
INTRO: 12/16/2021**

**2022-061 AUTHORIZATION TO EXPEND A 2021 MASSACHUSETTS DREDGING GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT IN THE AMOUNT OF \$55,000 FOR THE BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING PROJECT**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for a 2021 Massachusetts Dredging Grant in the amount of **\$55,000** from the Commonwealth of Massachusetts, Executive Office of Housing and Economic Development for the purpose of executing Phase 3 of the Dead Neck/Sampson’s Island Dredging Project, and further authorizes the Town Manager or his designee to expend the grant funds for the purpose stated herein.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- Read Item
- Rational
- Council Discussion
- Move/Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2022-061  
INTRO: 12/16/2021

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, Director of Public Works  
**DATE:** December 16, 2021  
**SUBJECT:** Authorization to expend a 2021 Massachusetts Dredging Grant from the Commonwealth of Massachusetts, Executive Office of Housing and Economic Development in the amount of **\$55,000** for the Barnstable Harbor Outer Entrance Channel Dredging Project

**BACKGROUND:** The Town of Barnstable has been awarded a \$55,000.00 Massachusetts Dredging Grant from the Commonwealth of Massachusetts for the execution of the Barnstable Harbor Outer Entrance Channel Dredging Project. The Massachusetts Dredging Grant provides construction-phase funding to coastal communities for saltwater dredging projects. Grants are competitively awarded, with a focus on shovel-ready projects that contribute to the economic significance, public safety, recreational value, and/or coastal resiliency of the Commonwealth's coastal harbors. Dredging is scheduled to be completed in December and January of this year.

**ANALYSIS:** The Barnstable Harbor Outer Entrance Channel requires regular maintenance dredging to maintain the navigation channel. Sediments have accumulated in the channel to the point where dredging is now necessary. The channel will be dredged by a mechanical dredge and the dredged sediments will be transported by barge to a contractor identified offloading site. These sediments will then be trucked to Sandy Neck Beach for use in the spring to nourish the dune adjacent to the Sandy Neck Beach Parking Lot which has experienced erosion damage in recent storm events. Bids were opened for the project on December 1, 2021 and the Town is in the process of contracting with the low bidder to complete the project.

**FISCAL IMPACT:** The as bid price of the project is \$456,036, which will be funded by an existing appropriation (2020-108). The \$55,000 grant will offset a portion of this cost.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this grant.

**STAFF ASSISTANCE:** Daniel W. Santos, Director, Department of Public Works

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-062  
INTRO: 12/16/2021**

**2022-062 AUTHORIZATION TO EXPEND A FISCAL YEAR 2022 TECHNICAL ASSISTANCE GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WASTE SITE CLEANUP IN THE AMOUNT OF \$15,000 FOR HIRING TECHNICAL SERVICES FOR TECHNICAL REVIEW AND PUBLIC ENGAGEMENT OF DISPOSAL SITE CLEANUP RESPONSE ACTIONS ASSOCIATED WITH THE BARNSTABLE FIRE TRAINING ACADEMY DISPOSAL SITE**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for a Fiscal Year 2022 Technical Assistance Grant from the Commonwealth of Massachusetts, Department of Environmental Protection Bureau of Waste Site Cleanup in the amount of **\$15,000** for hiring technical services for technical review and public engagement of disposal site cleanup response actions associated with the Barnstable Fire Training Academy disposal site, and further authorizes the Town Manager or his designee to expend the grant funds for the purpose stated herein.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- Read Item
- Rational
- Council Discussion
- Move/Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-062**  
**INTRO: 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** December 16, 2021  
**SUBJECT:** Authorization to expend a Fiscal Year 2022 Technical Assistance Grant from the Commonwealth of Massachusetts, Department of Environmental Protection Bureau of Waste Site Cleanup in the amount of **\$15,000** for hiring technical services for technical review and public engagement of disposal site cleanup response actions associated with the Barnstable Fire Training Academy disposal site.

**BACKGROUND:** The Town of Barnstable Department of Public Works has received a grant award in the amount of \$15,000 for the purpose of hiring services to assist with interpretation and presentation of cleanup activities at the Barnstable County Fire Training Academy. The Barnstable County Fire Training Academy is a Tier 1 site for both petroleum hydrocarbons and PFAS compounds. It is located in a Zone II to the Water Supply Division of Barnstable Mary Dunn wells. Due to existing PFAS in soil, the Barnstable County Fire Training Academy has begun to implement an Immediate Response Action (IRA). Through petition from the local community the site has been designated a Public Involvement Plan site. This grant will provide funding to hire a Licensed Site Professional to assist the Town and the community by providing written comment, advice, and analysis to the Town and members of the community to help them better understand the disposal site assessment and cleanup activities.

**ANALYSIS:** The Barnstable Fire Training Academy is responsible for cleanup of the disposal site and disseminating information to the Town. It is required that they provide reports, scopes, and monitoring data associated with the disposal site cleanup actions. Acceptance of this grant will allow the Town to hire a Licensed Site Professional to assist the Town and the community in understanding the disposal site cleanup findings and promoting public involvement in the disposal site cleanup decisions. Public engagement activities associated with this grant are anticipated to take place over the next couple months.

**FISCAL IMPACT:** This grant is a reimbursement grant in the amount of \$15,000. The Town must expend and request reimbursement of the costs. All costs associated with this grant must be expended prior to June 30, 2022.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this grant.

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

**B. NEW BUSINESS (First Reading) (Refer to Public Hearing 01/06/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-063  
INTRO: 12/16/2021**

**2022-063 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND LYON INVESTMENT REALTY TRUST FOR 80 PEARL STREET, HYANNIS**

**ORDERED:** That the Town Council hereby authorizes the Town Manager pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable (the “Code”), to enter into and execute a Regulatory Agreement between the Town of Barnstable and Lyon Investment Realty Trust, for the property at 80 Pearl Street, Hyannis, 0.94± acres, shown on Town of Barnstable Assessor’s Map 326 as Parcel 008, and whose boundaries are shown on Land Court Plan 25652-A (“the Property”); and further authorizing the renovation and reuse of the Property and granting the requested zoning relief pursuant to and as described in this Regulatory Agreement.

**REGULATORY AGREEMENT  
LYON INVESTMENT REALTY TRUST  
80 PEARL STREET, HYANNIS, MA 02601**

This Regulatory Agreement (the “Agreement”) is entered into by Jennifer and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02647 (the “Applicant” and the “Developer”), including successors and assigns, and the Town of Barnstable, a municipal corporation with a place of business at 367 Main Street, Hyannis, MA 02601 (the “Town”) on this \_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code.

WHEREAS, this Agreement shall establish the permitted use and density with the development on the hereinafter identified Property, the duration of the Agreement, and any other terms or conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the Applicant is the legal owner of the real property located at 80 Pearl Street, Hyannis, Massachusetts which has an area of approximately 0.94 acres and is shown on Barnstable Assessor’s Map 326, Page 008, the title to which is evidenced by Certificate of Title No. 222052 recorded with the Barnstable Registry District of the Land Court and whose boundaries are shown on Land Court Plan 25652-A (“Property”);

WHEREAS, the Property is located in the SF Single Family Residential District §240.24.1.5;

WHEREAS, the Property is improved with a two-story building with 3,285 square feet on the first and second floor and 1,196 square feet of a walkout basement (the “Building”);

WHEREAS, the Building was constructed circa 1820 and has been used for the last forty plus years as office, day care, and commercial kitchen space by Cape Cod Child Development as an exempt zoning use;

WHEREAS, the Applicant proposes to renovate the Building into eight apartments (one rear walkout, four first floor, and three second floor units) which would be studio and one bedroom units as set forth in proposed plans submitted with the application for this Regulatory Agreement;

WHEREAS, the Property has sufficient parking in a pre-existing parking lot on the Property which is being modified solely to improve handicap parking;

WHEREAS, to proceed with the project, the Applicant requires relief from Section 240-24.1.5.A to allow a multi-family dwelling in a single family residence district;

WHEREAS all properties which abut the Property are not currently being used for single residential use and the Property is buffered from impacting the nearest single family neighborhood by natural and manmade impediments;

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapter 168 of the Barnstable Code;

WHEREAS, the Town and the Applicant desire to set forth their respective understandings and agreements regarding the reuse of the Property;

WHEREAS, the Applicant shall reuse the Property substantially in accordance with this Agreement;

WHEREAS, the proposed development of the Property will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Development is located in the Downtown Hyannis Growth Incentive Zone (GIZ) as originally approved by the Cape Cod Commission by decision dated April 6, 2006, and re-designated by decision dated April 19, 2018, as authorized by Barnstable County Ordinance 2005-13, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02 Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS, the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02, establishing revised development thresholds within the GIZ, under which this development may proceed and Developer has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, prior to applying for approval of this Agreement, the Development was reviewed by the Town of Barnstable Site Plan Review Committee and the Site Plan Review Committee voted to find the development proposal approvable subject to the grant of a Regulatory Agreement and other conditions on January 21, 2021 and Formal Site Plan Review on September 16, 2021;

WHEREAS, the Town acknowledges that this Regulatory Agreement will result in a material increase in the number of year-round residential units for lower to middle income residents;

WHEREAS, the Town acknowledged through the recently completed Housing Needs Assessment dated December 2014 that the Town of Barnstable's primary housing need is additional year-round rental housing and Hyannis is in need of additional rental housing stock;

WHEREAS, Applicant would require zoning relief to allow for multi-family residential development in the Single Family Residential District;

WHEREAS, the Applicant has obtained administrative approval from the Barnstable Historical Commission (BHC) Chair to replace the existing window on the rear elevation with a door providing access to the proposed deck;

WHEREAS, the project is consistent with the Downtown Hyannis Design & Infrastructure Plan in that it contributes to the plan's goals of creating livable neighborhoods for year-round residents; creates housing opportunities for persons and households of all income levels; is compatible with the historic and maritime character of the Downtown Hyannis as it shall preserve an existing historic structure;

WHEREAS, the Property is within walking distance to the Downtown Hyannis business district and Cape Cod Regional Transit Authority Hyannis Transportation Center, making the multi-family residential reuse of Property appropriate;

WHEREAS, the proposal has undergone a public hearing opened on August 23, 2021 and closed on November 8, 2021 on the Agreement application and received an affirmative majority vote from the Planning Board on November 8, 2021;

WHEREAS, the proposal has undergone a public hearing opened on \_\_\_\_\_ and closed on \_\_\_\_\_ on the Agreement application before the Town Council and received no less than a two-thirds vote approving the application on \_\_\_\_\_;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledged to each other, the Applicant and Town do enter into this Agreement, and hereby agree to covenant as follows:

1. The Applicant shall renovate and maintain the Building and Property at 80 Pearl Street and construct eight apartment units, in substantial compliance with the site plan entitled "Site Improvement Plan" 80 Pearl Street, Hyannis, MA prepared for "Jeffrey Lyon" dated October 8, 2021 as revised November 5, 2021, scale 1"=20', prepared and stamped by Tarja McGrail, P.E., Coastal Engineering Co., 260 Cranberry Hwy, Orleans, MA 02653; and the floor plans entitled "Initial Drawing Release As Built Plan Showing Proposed Building Floor Plan" 5 Pages, client Jeff Lyon, 80 Pearl Street, Hyannis, MA dated December 22, 2020, prepared by Glen A. Mitchell.
2. The Applicant shall not change the exterior of the Building in any substantial or material manner.
3. This Agreement shall vest land use development rights with the Applicant/Owner and/or its successors for the duration of this Agreement and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health.
4. This Agreement authorizes only the uses and intensity of use and mitigation stipulation, if any, specified herein. Any minor amendment to the authorized terms of this Agreement may be made by the Town Manager pursuant to Section 168-5D; any substantial amendment to the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Section 168-10 of the Town Code.
5. The Applicant is permitted to the use of one (1) residential unit in accordance with §240-24.1.5.A. In addition, this Agreement permits the construction of a total of seven additional units as shown on the Plan on file with the Barnstable Planning Board. All units shall remain rental units in perpetuity and shall not be converted into a condominium form of ownership.
6. Any future partial and/or to total demolition of the Building shall constitute a substantial change to the Property and require review by Town Council and Planning Board pursuant to Section 168-10 of the Town Code, in addition to any partial and/or total demolition of the Building shall require review and approval from the Barnstable Historical Commission (BHC) in accordance with Article I, Chapter 112, Sections 1-7.
7. The Applicant shall be responsible for obtaining all necessary building permits and all necessary approvals from the Town of Barnstable Public Works Water Supply Division as necessary and their use and construction of the Building shall be in compliance with all Building, Fire and Health Codes.
8. Prior to the issuance of any building permit, the Developer shall submit a Landscape Plan for the Property that is consistent with Downtown Hyannis Design & Infrastructure Plan. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides. The Landscape Plan shall be approved by the Director of Planning & Development, or their designee, prior to issuance of any building permit. The implementation and completion of the Landscape Plan shall be

reviewed and approved by the Director of Planning and Development, or their designee, prior to occupancy permit.

9. Lighting for the Development shall be contained on-site, shall be down cast, and shall not contribute to light pollution of the area.
10. The existing detached structure on the property shall be used exclusively for storage accessory to the multi-family use and shall not be used as living area.
11. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity.
12. Developer shall be responsible for providing trash removal on the Development site in perpetuity as is required by Section 54-5(2) of the Code of the Town of Barnstable.
13. All plumbing fixtures in the new units and any replacement plumbing fixtures in the existing units shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project.
14. Developer's minimum lease term of rental units shall be twelve (12) months. Sublease of rental units, if permitted by the Developer, shall be for a minimum term of ninety (90) days. The lease documents shall be reviewed by the Town Attorney for consistency with the conditions of this Agreement prior to issuance of the first Certificate of Occupancy.
15. Subsequent to the issuance of a Certificate of Occupancy for the units, each apartment shall be registered with the Health Division's Rental Registration Program.
16. The Project shall be completed in compliance with all requirements and conditions of the Site Plan Review approval issued on January 21, 2021 and Formal Site Plan Review on September 16, 2021; the conditions of that approval are attached and shall be incorporated herein.
17. All development rights granted under the Agreement shall run with the land and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant. However, the Applicant agrees that 30 days prior to any change of ownership of the Property that written notice shall be sent to the Planning Board, Town Council, and the Town Manager and further agrees that all terms and conditions of this Regulatory Agreement and amendments thereto, shall be binding on successive owners of the Property.
18. All terms, conditions, and obligations contained in this Regulatory Agreement shall be binding on any successor or assignee of the Applicant.
19. The Town hereby grants the following waiver from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
  - A. Section 240-24.1.5.A Principal permitted uses to allow multi-family development comprised of eight units in a single family residence district.
20. The Redevelopment provides, without limitation, the following site design, traffic safety, and community benefits:

An enhanced landscape setback along Pearl Street to improve the neighborhood streetscape and to provide a buffer between the redevelopment and the adjacent property to the south.
21. The term of this Agreement shall be five (5) years from the effective date of the Agreement (hereafter, the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term of this Agreement or it shall be null and void. Once the development rights authorized herein have been timely exercised, all terms and conditions of this Agreement shall remain in effect until the Property is no

longer used in accordance with the Redevelopment Plans in a manner that requires additional zoning relief.

22. The development allowed in this permit shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added without compliance with §168-10 of the Barnstable Code.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the date first above written.

Town of Barnstable, Lyon Investment Realty Trust,  
By, By,

\_\_\_\_\_  
Mark S. Ells, Town Manager

\_\_\_\_\_  
Jennifer Lyon, Trustee

\_\_\_\_\_  
Jeffrey Lyon, Trustee

#### Certificate of Trustee

We, Jennifer Lyon and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust, u u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02601, hereby certify as follows:

1. We are presently the Trustees of said Trust;
2. That said Trust has not been altered, revoked, or terminated since its inception of August 13, 2019;
3. That pursuant to said Trust, upon the specific direction of the Beneficiaries of the Trust, the Trustee(s) have the power and authority to purchase and sell real estate, to construct or alter buildings, to borrow money, to grant the Trust estate as security for such borrowing and to execute and deliver all notes, mortgages, discharges, and assignments to implement the purposes of the Trust including the power and authority to enter into a regulatory agreement; with the Town of Barnstable
4. That all of the Beneficiaries of the Trust have authorized and directed the Trustee(s) to enter into a regulatory agreement with the Town of Barnstable.
5. That pursuant to the terms of the Trust every agreement or action authorization to be taken by the Trustee(s) may be taken by the Trustee(s) of record;
6. That the undersigned Trustee has been authorized and empowered to execute such documentation as they deem necessary in order to effectuate the above-described documentation as they deem necessary in order to effectuate the above described conveyance as the Trustee(s) so determines; and
7. That all of the beneficiaries of the Trust are the age of majority and are not under any disability.

WITNESS my hand and seal this \_\_\_ day of November 2021.

Lyon Investment Realty Trust,  
By,

\_\_\_\_\_  
Jennifer Lyon  
Trustee

\_\_\_\_\_  
Jeffrey Lyon  
Trustee

**EXHIBIT A: REDEVELOPMENT PLANS**

**SPONSOR:** Jennifer Cullum, Town Councilor Precinct 13

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- Read Item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-063**  
**INTRO: 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Lyon Investment Realty Trust  
**THROUGH:** Elizabeth Jenkins, Planning & Development Director  
**DATE:** December 16, 2021  
**SUBJECT:** Authorizing the Town Manager to execute a Regulatory Agreement between the Town of Barnstable and Lyon Investment Realty Trust for 80 Pearl Street, Hyannis

**RATIONALE:** The Developer, Lyon Investment Realty Trust, which entity has standing to proceed as owner of the property, the title to which is evidenced by Certificate of Title No. 222052 recorded with the Barnstable Registry District of the Land Court, located at and commonly known as 80 Pearl Street, Hyannis, Massachusetts shown on Town of Barnstable Assessor's Map 326 as Parcel 008, consisting of 0.94 ± acres, located within the Downtown Hyannis Growth Incentive Zone (GIZ), has filed an application to enter into a Regulatory Agreement with the Town of Barnstable under Chapter 168 and Chapter 240 of the Barnstable Code to renovate and reuse said property.

The Developer has undergone a public hearing on the Agreement application and received a unanimous vote from the Planning Board recommending an approval of the proposed Regulatory Agreement on November 8, 2021.

The Developer proposes to renovate and reuse the existing 1890 building on the property as eight (8) studio and one-bedroom residential rental units, along with associated landscaping. A waiver from Section 240-24.1.5(A) Principal permitted uses is requested to allow multi-family development comprised of eight units in a single family residence district.

The Redevelopment is proposed to provide the following community benefits:

- I. An enhanced landscape setback along Pearl Street to improve the neighborhood streetscape and to provide a buffer between the redevelopment and the adjacent property to the south.

**FINANCIAL IMPACT:** Approval of the proposed Regulatory Agreement will have no significant fiscal impact.

**STAFF ASSISTANCE:** Elizabeth S. Jenkins, AICP, Director of Planning & Development; Kate Maldonado, Assistant Director of Planning & Development; Jim Kupfer, Senior Planner, Kathleen Connolly, Assistant Town Attorney

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-064  
INTRO: 12/16/2021**

**2022-064 RESOLVE DIRECTING THE TOWN MANAGER OR HIS DESIGNEE(S) TO PREPARE AND SUBMIT FOR THE TOWN COUNCIL’S CONSIDERATION A PROPOSED ORDINANCE PROVIDING FOR THE TOWN’S ADOPTION OF THE STRETCH ENERGY CODE**

**RESOLVED:** That the Town Council does hereby direct the Town Manager or his designee(s) to prepare and submit for the Town Council’s consideration a proposed ordinance providing for the Town’s adoption of the Board of Building Regulations and Standards Stretch Energy Code, codified at 780 CMR 115.AA, an appendix to the Massachusetts State Building Code.

**SPONSOR:** Mark S. Ells, Town Manager

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- Read Item
- Rationale
- Council Discussion
- Vote

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2022-065  
INTRO: 12/16/2021**

**2022-065 ADOPTION OF THE 2020 TOWN OF BARNSTABLE PRECINCT MAP,  
WHICH MAP SUPERSEDES AND REPLACES THE MAP PREVIOUSLY  
APPROVED ON OCTOBER 7, 2021**

**ORDERED:** That the Town Council hereby approves the 2020 Re-precincting Map prepared for the Town of Barnstable through the courtesy of William F. Galvin, Secretary of the Commonwealth and Census Liaison, as presented to the Town Council at this meeting, which Map supersedes and replaces the Re-precincting Map previously approved by the Town Council on October 7, 2021; and requests that the Town Clerk forward said map, a physical boundary description of each precinct, population figures for each precinct, a list of census block numbers for each precinct, and a certified copy of this vote to the Local Election Districts Review Commission for approval.

**SPONSOR:** Ann Quirk, Town Clerk

# BARNSTABLE TOWN COUNCIL

**ITEM# 2022-065**  
**INTRO: 12/16/2021**

## SUMMARY

**TO:** Town Council  
**FROM:** Ann Quirk, Town Clerk  
**DATE:** December 16, 2021  
**SUBJECT:** Adoption of the 2020 Town of Barnstable Precinct map, which map supersedes and replaces the map previously approved on October 7, 2021

**RATIONALE:** Every ten (10) years all cities and towns must re-precinct their communities based on the numbers gathered through the Federal Census. The map that has been presented with this item reflects the gain in population in the Town of Barnstable from 45,193 at the 2010 census to 48,916 at the 2020 census.

The thirteen (13) Precinct maps have some boundary changes, but for the most part protect the integrity of the existing Precincts. The changes that have taken place must be made to give each precinct a population that is equal to the others with a differentiation at the most of 5% and maintaining the thirteen (13) Precincts.

The Town Council previously voted to accept the precinct maps; however, the state did a redistricting of the Representatives areas which resulted in splitting some precincts. The split would have required separate ballots within the same precinct on state elections. This new map removes the splitting of precincts. The map presented to the Town Council at this meeting supersedes and replaces the map previously approved by the Town Council on October 7, 2021.

Since all cities and towns must submit their new precinct maps to the Local Election Districts Review Commission by Friday, December 17, 2021, it is imperative that action be taken on this item as soon as possible. We are mandated to re-precinct, produce a map and submit it for approval.

Once approved, the map will be in effect for the 2022 Elections.

**STAFF SUPPORT:** Ann Quirk, Town Clerk