

# BARNSTABLE COUNTY

In the Year Two Thousand and One

Ordinance 01-19

To establish a District of Critical Planning Concern pursuant to the Cape Cod Commission Act within the Town of Barnstable in Barnstable, MA.

## SECTION 1. SOURCE OF AUTHORITY AND GENERAL PURPOSES

As authorized by Section 10 and 11 of the Cape Cod Commission Act ("Act"), Barnstable County hereby designates within the Town of Barnstable, as hereinafter described, a District of Critical Planning Concern ("District or "DCPC"). The purposes of this District shall be to schedule the rate of new residential development to ensure that the Town has the infrastructure to support this development, and to encourage the provision of affordable housing to meet the 10% goal stated in the Barnstable Local Comprehensive Plan (LCP) and M.G.L. Chapter 40B.

## SECTION 2. EFFECTIVE DATE

The Ordinance shall take effect upon the effective date of this Ordinance or upon recording of this Ordinance at the Barnstable County Registry of Deeds, whichever occurs later.

## SECTION 3. WRITTEN DESCRIPTION OF THE AREA

The area nominated for District designation is as follows:

The District encompasses lands within the corporate boundaries of the Town of Barnstable. The Town of Barnstable consists of approximately 60 square miles (from 1990 U.S. Census – area excludes 2.74 square miles of open water, ponds, and rivers, but includes wetlands and marsh area). Similar to an overlay district, the DCPC includes all vacant, buildable parcels within the Town capable of being used for new residential development, including approximately 2,685 potentially developable lots for single-family residential development at full build-out and an estimated potential 1,145 multi-family dwelling units (assuming LCP re-zoning recommendations are implemented).

A map showing the boundaries of the District and those properties available for new residential development is attached as Appendix A for the purpose of general information for the public and is hereby incorporated by reference. The map is representative of the distribution of lots throughout the Town, but is not intended for identification of a particular lot. The District boundary shall be based on the narrative description set forth in this Section and shall take precedence over any map.

Barnstable is an attractive place to live and work because of its proximity to numerous fresh and salt surface waters and availability of safe and affordable drinking water. The groundwater beneath Barnstable is replenished solely by rainfall and it naturally discharges to the surrounding marine waters. The groundwater system is the only source of drinking water to the residents of Barnstable and was designated as a portion of the regional Sole Source Aquifer by the EPA in 1982. Drinking water contamination is a regional concern because Cape communities share this sole source aquifer. Although the permeable deposits provide a high yielding aquifer, they also make the drinking water vulnerable to contamination from incompatible land use.

This groundwater system is also linked to all the surface waters in the town. The groundwater system feeds fresh water to the over 65 lakes and ponds. It also brings necessary nutrients to the coastal waters to allow the growth of shellfish and commercially important fin fish. These resources provide numerous opportunities for recreation, fishing and boating, which are enjoyed by residents of the entire Cape, as well as off-Cape visitors.

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Since the water quality in the groundwater system is impacted by the amount of development on the land and the types of wastewater treatment, the increased growth in the town has created water quality problems in many of the surface waters and concerns about sustainable drinking water quality. Although the water quality of the drinking water supply wells meets all state and federal drinking water health standards, water quality has been altered from land use development. Approximately two-thirds of the water in the town's public supply wells have been altered by nitrogen derived from septic systems associated with residential development. Barnstable's coastal embayments have also been impacted by existing development, becoming eutrophic, losing shellfish habitat and becoming unfit for recreation.

Ensuring adequate protection for drinking water and surface water ecosystems while accommodating anticipated residential growth, including accelerated development of affordable housing, will require improvements to existing wastewater treatment systems and controlled and coordinated development of future growth. Wastewater infrastructure changes will require adequate funding and community determination of appropriate nitrogen management methods. Measured planning of these activities will require adequate time. The Barnstable DCPC provides an opportunity to address the town's growth rate, affordable housing and infrastructure improvements.

In addition, as described in Section 4.1.2 below, the Town of Barnstable is facing massive capital costs in the near future. Additional municipal infrastructure and services are needed town-wide to serve new residential units being built and projected to be built in the future. Failure to adequately fund identified capital improvements will have a direct, adverse impact on the quality of life for Barnstable residents, businesses and visitors alike. Scheduling the rate of residential growth will help the Town to keep pace with infrastructure costs associated with roads, town administration, police, and other services.

The Town's obligation to provide 10% affordable housing cannot be equitably addressed on less than a town-wide basis. The goals of the Affordable Housing Plan are to disperse affordable housing throughout the six villages of Barnstable. Further, the provision of affordable housing throughout the Town of Barnstable is a goal of the Barnstable Local Comprehensive Plan, Goal 5.1 of the Regional Policy Plan and M.G.L. Chapter 40B. The area designated is a logical planning area and is suitable for the adoption of coordinated regulations for the District as a whole. Developable residential land is scattered throughout the Town, as illustrated on the map of the DCPC in Appendix A.

Within the municipal boundaries of the Town of Barnstable, the District shall include:

- a) all vacant land within those zoning districts in the Town where residential use is permitted as a matter of right;
- b) all developed land within those zoning districts in the Town where residential use is permitted as a matter of right, where an owner or developer proposes to:
  - i) create a residential dwelling unit where none now exists or
  - ii) add one or more residential dwelling unit to that or those units already existing on the lot; and
- c) all land within those zoning districts in the Town where residential use is not allowed as of right where zoning relief has been granted with respect to a lot (or lots) which allows residential use thereof.

#### **SECTION 4. TYPE OF DISTRICT/REASONS FOR DESIGNATION**

The Town of Barnstable District described above qualifies under Section 10(a) of the Cape Cod Commission Act for designation as a District due to the following factors:

- the presence of significant natural, coastal, scientific, cultural, archaeological, historic, economic and recreational resources or values of regional, state-wide or national significance, specifically groundwater and surface water quality which affect regional natural, coastal, economic and recreational resources and values and the provision of affordable housing, which is an issue of regional significance and an economic resource; and
- the presence or proposed establishment of a major capital public facility or area of public investment. Specifically, infrastructure is needed town-wide to support residential development. The Capital Facilities Plan is attached as Appendix B. "Capital facilities" is defined in Section 2(c) of the Act as "public facilities and services necessary to support development, including but not limited to roads, water, sewers, waste disposal, affordable housing, schools, and police... facilities."

The purpose of the Barnstable DCPC is to encourage the provision of affordable housing, and to ensure that uncontrolled residential development does not out pace the ability of the Town to provide adequate municipal infrastructure and services. The Barnstable DCPC will protect against development that would negatively impact the region's infrastructure capacity, economic resources, water resources, and affordable housing.

The provision of an adequate supply of fair affordable housing and ensuring a responsible, controlled level of growth are issues of regional significance as defined by the Act and M.G.L. Chapter 40B. In addition, the Barnstable County Regional Policy Plan (RPP) includes as one of its goals the need to "encourage sustainable growth and development consistent with the carrying capacity of Cape Cod's natural environment in order to maintain the Cape's economic health and quality of life." The RPP further notes that "the rate of growth for any town should not exceed the ability of that town to provide the services necessary to support that growth." These regional objectives are of critical importance to the communities on Cape Cod, as they experience an unprecedented influx of new residents. New census figures attached as Appendix C show that while state-wide population growth between 1990 -2000 was only 5.5%, in Barnstable County that figure climbed to 19.1%. The Town of Barnstable grew by 17% during that period. The Town of Barnstable is of regional importance as the Cape's most urbanized community and a regional commercial center, as well as a regional transportation hub and location for regional medical facilities. Controlled development of residentially developable land within the Town of Barnstable District is important to the protection of regional economic resources, water resources, the infrastructure capacity of the Town, and the provision of affordable housing supply to meet the Town's stated 10% goal. Through this designation, the Town has opportunity to develop a regulatory structure to guide future residential development in the Town.

Set forth below are the reasons why the area is of critical concern to the region, the problems associated with uncontrolled or inappropriate development and the advantages to be gained by development of the area in a controlled manner.

##### **SECTION 4.1.1. GROWTH MANAGEMENT**

One of the regional principles stated in the RPP is the following: "The rate of growth for any town should not exceed the ability of that town to provide the services necessary to support that growth." The Regional Policy Plan is attached as Appendix D. Potential impacts from the immediate and/or short-term development of approximately 2,685 potentially developable lots for single-family residential development in the Town of Barnstable, and, depending on their location,

1,145 additional multi-family units, would have a very serious impact on municipal infrastructure and would outstrip the ability of the Town to provide necessary municipal services, and will move the Town further away from its goal of 10% affordable housing stock. It is unacceptable to allow residential development to continue at a pace that the Town cannot financially support and which could endanger the regional aquifer and related natural resources.

#### SECTION 4.1.2. CAPITAL FACILITIES AND INFRASTRUCTURE

Due to the rapid growth during the 1980s and 1990s, the Town is facing a backlog of public infrastructure projects. These include transportation system improvements, environmental protection measures such as nitrogen management and pond remediation, Police and Town Hall improvements. The Town of Barnstable has \$178 million in capital project requests over the next five years, of which \$134 million is from the general fund. The Town has proposed a \$20 million general fund capital program for FY 2002 and projections indicate that the Town will be able to provide funding for only \$48 million over the next five years. This will leave \$86 million of general fund capital expenditures unfunded for the next five years. These figures do not account for capital needs for sixteen public schools within the Town beyond the year 2002.

New residential development exacerbates the need for significant infrastructure improvements in the Town of Barnstable, including water supply and wastewater treatment. Projected summertime drinking water demand for 2020 is over 20 million gallons per day. Although the water suppliers have plans to meet this demand, this is contingent on adequate protection of existing supplies. Barnstable residents pay only half as much as off-Cape residents for their drinking water. If drinking water resources are adversely impacted by uncontrolled or poorly planned growth, including increased nitrogen loads from residential wastewater discharges, lawn fertilization and storm water runoff, treatment infrastructure costs and health concerns will rise.

Wastewater improvements are needed for portions of eastern Barnstable that are connected by sewers to the Wastewater Pollution Control Facility. This facility has a treatment capacity of 4 million gallons per day, but has limited ability to discharge wastewater over 2 MGD. This discharge limitation is due to a significant groundwater mound that can flood surrounding properties during high groundwater conditions. Although the facility provides an excellent level of treatment to allow its discharge within a Zone II, it cannot accommodate additional volumes from new development. This means that new growth in Hyannis and eastern Barnstable is problematic for projects requiring wastewater treatment.

Non-point source wastewater management to protect and restore nitrogen sensitive embayments throughout the Town represents a significant infrastructure challenge. The potential remediation and protection costs for the Town are extraordinary. Preliminary wastewater infrastructure cost estimates indicate that restoration of water quality in coastal embayments will require tens of millions of dollars and thousands in annual operation and maintenance costs. Restoring water quality to nitrogen overloaded embayments will require innovative wastewater treatment solutions, including better management strategies, denitrifying septic systems, neighborhood and community wastewater package plants, and perhaps new centralized wastewater districts for Growth/Activity Centers. Other efforts may include public education about lawn fertilizers and a Town-wide storm water management plan to reduce runoff.

Better control of the rate of development will allow improved planning of the necessary changes in capital facilities and infrastructure. The identified rate of development will establish a linkage between new residential development, the development of new affordable housing, the ability of the Town to monitor the condition of its environmental resources, and to finance necessary infrastructure and municipal services. In addition, encouraging cluster development and denitrifying wastewater systems, where feasible and sensible, can significantly reduce adverse impacts to local and regional resources. Limiting the rate of growth should help the Town to plan,

finance and implement measures to protect the regional aquifer.

#### SECTION 4.1.3. AFFORDABLE HOUSING

The Town of Barnstable contains the largest land area and has the largest population of all of the Cape towns. The Town is the Cape's most urbanized area and has the largest number of low and moderate-income residents, and therefore the greatest need for affordable housing. The continued development of market-rate residential dwelling units at the current rate moves the Town further and further away from meeting its goal of providing 10% affordable housing stock at build-out. Development rate scheduling, coupled with an aggressive affordable housing implementation plan, will allow the Town to link new residential growth with its affordable housing goals. Residential development that occurs at a rate that outstrips the Town's ability to develop affordable housing is inconsistent with the Local Comprehensive Plan and the Affordable Housing Plan and is therefore inappropriate.

As of July 1, 1997, only 4.35% of the Town of Barnstable's housing stock is counted as "affordable" through various local, state and federal programs. That percentage is expected to decrease with the results of the latest census. Goal 5.2 of the Barnstable LCP states: "The Town should raise its affordable housing stock to ten percent (10%) of the year-round units which are permanently affordable, with an effort to achieve this goal by the year 2015." The LCP states that this goal will be achieved through the addition of over 1,150 additional qualifying units during that period. This will require the increase of qualifying units at the rate of almost 6% of the gap per year, or 68 units per year on the average. The Barnstable Affordable Housing Plan sets an ambitious goal of increasing the total number of affordable units by 760 within the next six years, or 126 units per year for six years to meet its share of the regional need for affordable housing.

The Regional Policy Plan includes the goal to "promote the provision of air, decent, safe, affordable housing for rental or purchase that meets the needs of present and future Cape Cod residents. At a minimum each town shall seek to raise its affordable housing stock to 10% of all year-round units by the year 2015." The Barnstable Local Comprehensive Plan mirrors this objective and undertakes to address the Town's share of the regional need. Provision of affordable housing throughout Cape Cod is especially critical, given that approximately 51% of the year-round population could be classified as low and moderate-income. See Appendix E, Barnstable County Affordable Housing Needs Analysis, Cape Cod Commission (1999).

#### SECTION 4.1.4. WATER RESOURCES

Approximately 85% of Barnstable residents dispose of wastewater through septic systems. Septic systems provide a direct route for contaminants to enter the regional aquifer and to impact drinking water, ponds, and coastal embayments. The primary contaminant of concern from septic systems is nitrogen. Nitrogen is also derived from lawn fertilization and road runoff. Nitrogen is a contaminant in drinking water and acts like a fertilizer in coastal waters. Both the aquifer and the coastal embayments are critical regional resources.

Groundwater in Barnstable water supply wells has been impacted by the existing wastewater infrastructure. Of the supply wells tested in 1999, nitrate-nitrogen was measured below 1 ppm, which is considered near background concentration in approximately 34% of the wells. Approximately 52% are between 1 and 3 ppm and 14% are above 3 ppm.

Shallow coastal embayments can be even more sensitive to nitrogen than drinking water. The amount of nitrogen that can lead to coastal eutrophication is as little as 0.35 ppm, well below the regional 5 ppm drinking water standard. On-going studies have documented water quality problems in a number of Barnstable's coastal waters including Shoestring Bay, Three Bay, particularly Prince Cove, and the Centerville River/East Bay system. This decline has the potential

to adversely impact shellfishing resources, recreational resources and property values for residents and businesses. The Town is facing significant costs to restore water quality in the impacted waters, while ensuring that future growth allows the preservation of the unimpacted areas.

The Town of Barnstable has recognized the need to identify and address concerns in the embayment systems and has embarked on a new comprehensive nitrogen management program. A primary component of this program will be wastewater management throughout the Town. The DCPC will begin to address this need by developing regulations authorizing limitation of nitrogen discharged from new residential subdivisions when appropriate.

## **SECTION 5. SUGGESTED GUIDELINES FOR DEVELOPMENT**

The following guidelines shall serve as the basis for the future establishment of implementing regulations to be adopted by the Town pursuant to Section 11 of the Cape Cod Commission Act to control development within the Town of Barnstable District.

### **SECTION 5.1. INTRODUCTION AND GENERAL GUIDELINES**

The Barnstable Town Council and Barnstable Town Manager shall oversee the development, adoption, and enforcement of Implementing Regulations consistent with the Guidelines described herein. Implementing Regulations for the District may take the form of zoning ordinances, regulations, management initiatives, or other means identified by the Town of Barnstable, which help to achieve the goals and interests of the District. Commission staff will assist the Town of Barnstable in performing development and resource analyses within the District and in drafting appropriate management plans and regulations.

The Town of Barnstable shall propose Implementing Regulations for the District to the Cape Cod Commission. In order to be approved, Implementing Regulations adopted by the Town of Barnstable must be found by the Commission to be consistent with these Guidelines, pursuant to Section 11(d) of the Act. The Cape Cod Commission shall determine whether the Implementing Regulations proposed by the Town are sufficient to protect the goals and interests of the District and may then issue a Certificate of Consistency.

The Town of Barnstable shall adopt and incorporate Implementing Regulations within twelve (12) months of the District's designation by ordinance. If the Town of Barnstable fails to adopt and incorporate implementing regulations that are consistent with the Guidelines within twelve (12) months, the Commission may grant an additional ninety (90) days. After the additional ninety (90) days, the Commission may propose and the Assembly and County Commissioners may adopt by ordinance implementing regulations for the District; however, the Commission found that it would not adopt implementing regulations for the DCPC unless those regulations have the approval of the Barnstable Town Council. Upon the adoption of certified Implementing Regulations, local permitting previously stayed by the District nomination may proceed consistent with the newly adopted Implementing Regulations.

### **SECTION 5.2. GOALS AND INTERESTS**

The goals and interests of this District shall be to encourage the provision of affordable housing to meet the 10% goal stated in the Barnstable Local Comprehensive Plan; to schedule the rate of new residential development to ensure that the Town has the infrastructure to support this development and the opportunity to meet its 10% affordable housing goal; to encourage compact development patterns through clustered residential developments; and to limit nitrogen loading to ground and surface waters.

These goals and interests are consistent with the Growth Policy of the Regional Policy Plan, which states that "the rate of growth for any town should not exceed the ability of that town to provide the services necessary to support that growth. New development should be required to pay its own way – i.e. to either provide or contribute to the provision of the necessary facilities and services to manage the demands created by that development. The provision of those services should be timed to meet the demand created by new development. Public and private investments should be coordinated to both control the rate of growth and direct new development into appropriate locations" (RPP, p. 12, Growth Rate).

### SECTION 5.3. DEFINITIONS

Definitions shall be the same as those included in the Cape Cod Commission Act, the Regional Policy Plan, and the Town of Barnstable Ordinances and Regulations.

### SECTION 5.4. REVIEW OF DEVELOPMENTS OF REGIONAL IMPACT (DRIs) WITHIN THE DCPC

The regulations adopted pursuant to these Guidelines in no way alter the process for referral and review of Developments of Regional Impact according to the Act and Regulations of the Cape Cod Commission.

### SECTION 5.5. GROWTH MANAGEMENT AND RESOURCE PROTECTION

5.5.1. The Town should establish regulations to limit the number of new residential units that are constructed annually in order to provide necessary infrastructure improvements to support existing residents and new residential growth. **The limit on the number of new residential units shall be phased in over a period of years in order to make it predictable and fair, and to minimize economic impacts on the building trades.**

5.5.2. The Town should develop means to ensure the Town's cluster zoning provisions are utilized more frequently.

5.5.3. The Town should provide means of ensuring that, where appropriate, the Board of Health may require shared denitrifying systems to reduce nitrogen inputs and should provide other means, including management plans, of limiting nitrogen input to ground and surface waters.

5.5.4. The Town should continue to develop its Wastewater Facility Plan for the wastewater treatment facility.

5.5.5. The Town should continue to develop and implement a comprehensive water quality monitoring program for the Town's coastal embayments and some of the fresh water ponds.

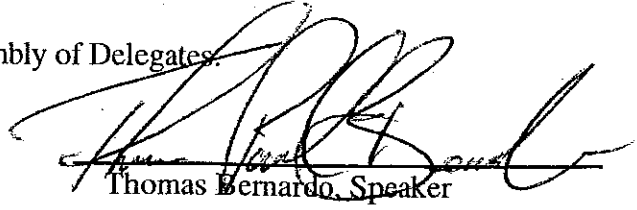
### SECTION 5.6. AFFORDABLE HOUSING

5.6.1. The Town should establish regulations which encourage the development of affordable housing to ensure that the Town can develop affordable housing at a pace that is in relation to general residential growth and the Town's ability to provide necessary infrastructure to support such development.

5.6.2. The Town should continue to implement its land acquisition strategy for affordable housing as outlined in the Affordable Housing Plan dated January 31, 2001.

5.6.3. The Town should continue to implement its Housing Amnesty Program allowing existing and new accessory units in existing residences.

Adopted on September 5, 2001 by the Assembly of Delegates.

  
Thomas Bernardo, Speaker

Approved by the Board of County Commissioners, Sept. 12, 2001, at, 11:00  
Date Time

