

**General Building Cap Ordinance
Barnstable, MA
Enacted – 7/19/2001**

Building Cap Ordinance

ZONING AMENDMENT – GROWTH MANAGEMENT

APPROVED VERSION
SUBSTITUTE MOTION AS OF JULY 19, 2001.Rev 2

ZONING AMENDMENT – GROWTH MANAGEMENT:

ORDERED:

That Chapter III, Article III of the Ordinances is hereby amended by inserting, after Section 4-8, the following:

SECTION 4.9. GROWTH MANAGEMENT

1.0 Authority

This section is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, MGL Chapters 40A, Chapter 41 Sections 81L – 81GG, and Chapter 111.

2.0 Purposes

The purpose of this Section is to ensure that a harmonious pattern and predictable rate of development occurs in Barnstable, which protects the health, safety and welfare of current and future Barnstable residents. The consequences of the historical and current patterns and rates of development in Barnstable such as our historic inability to fund our capital needs and the further degradation of our environmental assets, are described in the Local Comprehensive Plan. The rate of residential development in Barnstable is determined by and should not exceed the ability of the town to provide adequate infrastructure and to protect the natural environment. In addition, this development rate is intended to further the legitimate Commonwealth and local interests in the provision of a fair share of housing that is affordable to persons with both low and moderate incomes. This development rate will also guard against potential increases in the growth rate, which could adversely affect the town's environmental resources, economy and land values.

This ordinance establishes a development rate adequate to ensure that the town, with prudent reliance on local and other financial sources and in compliance with the

revenue generating guidelines of Proposition 2 ½, can and will provide infrastructure and operate in a manner which provides current and future Barnstable residents

with an adequate and responsible level of town services, as defined by relevant, commonly-accepted professional standards. This ordinance also establishes a

development rate adequate to ensure that the town has the ability to implement its affordable housing goals, as set forth in the Barnstable Local Comprehensive Plan

as updated by the Barnstable Affordable Housing Plan dated January 31, 2001.

It is anticipated by this Ordinance that during the time until buildout occurs, the town will strive to upgrade its infrastructure to keep pace with its total population, as

outlined in the Capital Improvements Plan and consistent with the growth rate established by this ordinance. This includes the preparation of a long-term capital plan

and a commitment to make contributions, as practical, to infrastructure and to the established capital trust fund as appropriate to fund infrastructure, promote

affordable housing and protect the environment.

3.0 Definitions

For the purposes of this Section 4.9 only, the following terms shall have the following meanings:

Affordable Dwelling Unit: A Residential Dwelling Unit:

a) subject to a valid Chapter 40B Comprehensive Permit and meeting the requirements of the Commonwealth's Department of Housing and Community Development (the "DHCD") to be counted as affordable in the state count toward the 10% goal, as that goal may be amended by the general court (the "Affordable Goal"); or

b) otherwise meeting the affordability requirements of the DHCD as evidenced by receipt of a Certificate of Affordability, as defined below.

Affordable Permit: A Building Permit to construct an Affordable Dwelling Unit.

Building Permit: A permit to construct an affordable or market rate Residential Dwelling Unit, issued pursuant to the State Building Code, state law and local ordinances and regulations. When a single structure is proposed to accommodate three or more Residential Dwelling Units, the issuance of the first building permit shall authorize construction of the entire structure, however, only three (3) dwelling units shall receive a Certificate of Occupancy per building permit issued.

Certificate of Affordability: A certificate issued by the Barnstable Office of Community Development authorizing an applicant to apply for a Building Permit to construct an Affordable Dwelling Unit. A Certificate shall issue for all units that meet the requirements of the DHCD to be counted as affordable in the state count toward the Affordable Goal.

Calendar Year: January 1st through December 31st of a given year.

Date of Filing: The date of the Building Department's date and time stamp on a fully completed application to construct a new Residential Dwelling Unit.

Market Permit: A Building Permit to construct a market rate Residential Dwelling Unit.

Person: An individual, corporation, business trust, estate, trust, partnership, association, joint venture, two or more persons having a joint or common interest, or any legal entity.

Residential Dwelling Unit: A single unit providing complete independent living facilities for one or more Persons including permanent provisions for living, sleeping, eating, cooking and sanitation. The term "residential dwelling unit" shall include assisted living facilities as defined in MGL chapter 19D, Sec. 1 and independent living facilities, but shall not include family apartments, group homes and congregate facilities, hotels, motels and other uses that are not considered residential for purposes of zoning, as determined by the Town Attorney.

Substantial Financial Interest: A 1% or greater legal or equitable interest. A Person is deemed to have a substantial financial interest in an application for a Building Permit in which that Person has a current, or had within the last twelve months a 1% or greater legal or equitable interest in the real property that is the subject of the Building Permit application. A security interest, such as a mechanics lien or encumbrance, shall not be deemed to constitute a substantial financial interest.

Town Manager: The Town Manager or his designee(s).

4.0 Effective Date and Applicability

a) Effective Date

The provisions of this ordinance shall take effect upon the termination of the limited moratorium establishing a lottery system for the issuance of Building Permits, as established through the District of Critical Planning Concern nomination under the provisions of Sections 10 and 11 of the Cape Cod Commission Act.

b) Applicability

This Section applies to all new residential construction, including new structures and expansions, changes or alterations of existing structures that result in an increase in Residential Dwelling Units, as that term is defined in Section 3.0 above. It is intended that the cap established by this ordinance shall apply to both market rate units and affordable units.

The development of additional dwelling units protected by MGL, c. 40A, §6 shall be subject to the delays imposed by this growth management ordinance; provided, however, this section is not intended to diminish the ability ultimately to construct a dwelling unit.

5.0 Rate of Residential Development

a) Affordable Growth Rate

Subject to adjustments provided in this Section 4.9, the Building Commissioner shall issue Building Permits for construction of additional Affordable Dwelling Units only if the aggregate of permits issued therefore will not result in authorizing construction, within each consecutive Calendar Year, of greater than 36 additional Affordable Dwelling Units [the "Annual Affordable Distribution"]. In the event the Building Commissioner is required pursuant a Chapter 40B comprehensive permit to issue Affordable Permit(s) in excess of the Annual Affordable Distribution, or the Town Manager authorizes issuance of Affordable Permit(s) pursuant to a Certificate of Affordability in excess of the Annual Affordable Distribution, future Annual Affordable Distribution(s) shall be decreased by the same number, as necessary. In the event the Building Commissioner does not issue all of the Affordable Permits made available through an Annual Affordable Distribution, as adjusted, the next Calendar Year Annual Affordable Distribution shall be increased by the amount of remaining Affordable Permits.

b) Market Growth Rate

(i) Subject to adjustments provided in this Section 4.9, the Building Commissioner shall issue Building Permits for construction of additional market rate Residential Dwelling Units only if the aggregate of permits issued therefore will not result in authorizing construction, within each consecutive Calendar Year, of greater than 96 Market Permits [the "Annual Market Distribution"].

In the event the Building Commissioner is required to issue Market Permit(s) in excess of the Annual Market Distribution pursuant to Section 5(d), Adjustments, below, future Annual Market Distribution(s) shall be decreased by the same number, as necessary.

(ii) In order to lessen the impact of this ordinance at the time of its adoption, this ordinance: 1) contains the following graduated scale for implementation of the target growth rate -

Graduated Annual Market Distribution Schedule

2002 = 132 Market Permits

2003 = 126 Market Permits

2004 = 108 Market Permits

2005 and forward = 96 Market Permits = Target Annual Market Distribution; and

2) provides a hardship exemption procedure (Section 8.0).

iii) Transition Year 2001

The following provisions shall remain in effect from the effective date of this ordinance through December 31, 2001:

The Building Commissioner shall issue Building Permits for construction of additional market rate and affordable Residential Dwelling Units only if the aggregate of permits issued will not result in authorizing construction, within the 2001 Calendar Year, of greater than 183 Building Permits.

No Person shall submit a Building Permit application within ten (10) days from the date of their last Building Permit application in which they have a Substantial Financial Interest, and no Person shall submit more than three (3) Building Permit applications per month in which they have a Substantial Financial Interest. In a given month, no Person or Entity shall receive more than three (3) Building Permits in which the Person or Entity has a Substantial Financial Interest.

During Calendar Year 2001 no Person shall receive more than 30 Building Permits in which they have a Substantial Financial Interest. Any Person issued 30 or more Building Permits in Calendar Year 2001 Permits in which they have a Substantial Financial Interest shall, upon receipt of the 30th Building Permit, immediately withdraw all pending Building Permit application(s); said withdrawn application(s) may be re-submitted consistent with the terms of the preceding paragraph.

c) CHAPTER 40B PERMITS

It is the intention of the town to phase the development of all Residential Dwelling Units constructed under the provisions of Chapter 40B. Within Chapter 40B comprehensive permit developments, those units that are included in the DHCD tally of affordable units counted toward the Affordable Goal, as determined by the town, shall apply for Affordable Permits. Those units that are not included in the DHCD count toward the Affordable Goal, as determined by the town, shall apply for Market Permits.

d) ADJUSTMENTS

The following activities shall result in the adjustment of Annual Affordable and Market Distributions, as the case may be:

(i) Revocation and Abandonment

Building Permits issued on or after July 1, 2000, but revoked or subsequently abandoned under the provisions of the State Building Code, shall be added to the next Annual Distribution. Building Permits issued pursuant to this section shall be exercised in a continuous and expeditious manner. Construction shall commence within six months of issuance of a Building Permit; provided, however that the Building Commissioner shall grant one six-month extension upon request.

(ii) Single Lot Protection

A Building Permit to construct a market rate single-family dwelling unit on a lot in single ownership, to be owned and occupied by the owner of that parcel of land, applied-for but not issued within 24 months from the Date of Filing shall be issued and future Annual Market Distributions shall be decreased by the same amount, if necessary.

(iii) Other Required Permits

Permits required to be issued under Chapter 40B or by a final court or administrative order shall be issued as required and future Annual Affordable and/or Market

Distributions, as the case may be, shall be decreased by the same amount, if necessary.

(iv) Borrowing Against Future Distributions

In the event that no market permits are available to be issued in a given month, the Building Commissioner shall issue six (6) Market Permits in that month and shall decrease subsequent Annual Market Distribution(s) by the same number.

6.0 Issuance of Residential Building Permits

a) The Building Commissioner shall issue Building Permits for construction of additional Residential Dwelling Units only if permit issuance complies with the requirements of this Section.

Building Permits shall be issued on a monthly basis. Prior to issuing Market Permits within each month, the Building Commissioner shall determine the number of Market Permits remaining available within the Annual Market Distribution and shall increase or decrease the number of available Market Permits consistent with any Adjustments required by Section 5(d) above. The Building Commissioner shall then divide the number of available Market Permits by the number of months remaining in the Calendar Year, which shall be the number of Market Permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.

Prior to issuing Affordable Permits within each month, the Building Commissioner shall determine the number of Affordable Permits remaining available within the Annual Affordable Distribution and shall increase or decrease the number of available Affordable Permits consistent with any Adjustments required by Section 5(a) and (d) above. The Building Commissioner shall then divide the number of available Affordable Permits by the number of months remaining in the Calendar Year, which shall be the number of Affordable Permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.

In the event that no Affordable or Market Permits are available to be issued in a given month, only those permits requiring issuance or authorized for issuance pursuant to Section 5(a) and (d) above shall be issued until: (1) any Adjustments result in additional available permits; or (2) the next Annual Distribution becomes available.

b) Limitations and Transferability of Building Permits:

The following restrictions shall apply to the submission of Building Permit applications and the issuance of Building Permits:

(i) within any Calendar Year, no Person shall submit to the Building Department more than twenty (20) Building Permit applications in which such application(s) that Person has a Substantial Financial Interest;

(ii) no Person shall submit a Building Permit application within ten (10) days from the date of their last Building Permit application in which that Person has a Substantial Financial Interest and no Person shall submit more than three (3) Building Permit applications per month in which that Person has a Substantial Financial Interest. In a given month, no Person or Entity shall receive more than three (3) Building Permits

in which the Person or Entity has a Substantial Financial Interest.

(iii) During any Calendar Year no Person shall receive more than 20 Building Permits in which that Person has a Substantial Financial Interest.

(iv) Any applicant who has received a Building Permit under this ordinance may transfer said Building Permit to another lot owned by the same applicant. This provision shall not be deemed to extend the time period for exercising a building permit.

c) Affordable Permits - Application and Issuance:

(i) In order to be deemed complete, applications for Affordable Permits shall include a valid Certificate of Affordability or shall include a copy of a valid Chapter 40B Comprehensive Permit providing that the unit constructed will meet the requirements of the DHCD to be counted as affordable in the state count toward the Affordable Goal.

(ii) Affordable Permits shall be issued based upon the Date of Filing. Applications filed prior in time shall be issued a Building Permit prior to subsequently filed applications.

d) Market Permit Issuance:

Market Permits shall be issued based upon the Date of Filing. Applications filed prior in time shall be issued a Building Permit prior to subsequently filed applications.

7.0 Exemptions

The following uses shall be exempt from the residential building permit limitations established by this section:

- a) municipal uses;
- b) affordable housing dwelling units created pursuant to Section LXV of the General Ordinances of the Town of Barnstable, the Amnesty Ordinance, so-called;
- c) non-residential development; and
- d) reconstruction, extension, alteration, modification, and upgrade of an existing dwelling unit that does not result in the creation of a new Residential Dwelling Unit.

8.0 Hardship Procedure

The Town Manager shall establish a procedure for holding hearings and rendering decisions on whether to grant an exemption from the provisions of this section, in

whole or in part, to relieve a substantial hardship, financial or otherwise.

9.0 Determination of Buildability

The Town Manager shall establish a procedure for issuance of Determinations of Buildability to establish the residential development potential of a lot or lots. Such

procedure shall include consultation with the Planning Board if such lot or lots are included in an approved subdivision or approval not required plan. Other boards

and officials may be consulted to determine potential limitations on development.

10.0 Violations

Any Person who knowingly violates the provisions of this section shall be prosecuted to the fullest extent of the law. Fraud and conspiracy in connection herewith

shall remain separate offenses.

11.0 Ordinance Review

The Town Council shall review this section within 1 year of adoption and every three years thereafter, and may review this section upon achieving its goal of supplying 10% affordable housing, to determine whether adjustments are necessary for the public health, safety or welfare.

12.0 Scope and Validity

Nothing in this Section shall nullify or exempt any property or use from any other provisions of these ordinances or other Town regulations. The invalidity of any

section or provision of this ordinance shall not invalidate any other section or provision hereof, nor shall it invalidate any Building Permit, occupancy permit or special

permit issued in reliance on said section or provision prior to the determination of its invalidity.

13.0 Severability

If for any reason the proposed District of Critical Planning Concern nomination under consideration by the Barnstable County government fails, the provisions of this ordinance shall become effective under the authority of

the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, MGL Chapter 40A, and Chapter 41 Sections 81L – 81GG.