

BARNSTABLE COUNTY

In the Year Two Thousand Eighteen

Proposed Ordinance 18- 05

To amend Chapter G, Growth Incentive Zone Regulations of the Code of Cape Cod Commission Regulations of General Application.

BARNSTABLE COUNTY, hereby ordains:

That Chapter G of the Code of Cape Cod Commission Regulations of General Application be deleted in its entirety and replaced with the following:

Section 1. General Provisions

A. Source of Authority

These regulations are established pursuant to Section 6 of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended (the Act),

B. Purposes

Pursuant to the powers and authority conferred to the Cape Cod Commission under, without limitation, Sections 4 and 12 of the Act, these regulations set out a process whereby the Cape Cod Commission and Cape Cod Municipalities may coordinate their efforts to identify and designate Growth Incentive Zones (GIZs), areas particularly desirable and appropriate for concentrated growth and development, and establish corresponding Development of Regional Impact review thresholds unique to and in support of such designated areas. Such a designation furthers values and interests set out in Section 1 of the Act: to maintain and enhance sustainable and balanced year-round economies; to provide opportunities for economic development and growth; to maintain and enhance a variety of housing types and opportunities; to maintain and enhance the availability of desired goods, services and amenities; and to direct and incentivize development to locate into areas with a system of existing or planned synergistic uses, capital facilities, amenities, infrastructure and compact development and away from areas less appropriate or undesirable for this type of development.

C. Effective Date

These regulations shall be effective following their adoption and approval as an ordinance and upon recording of the ordinance with the Barnstable County Registry of Deeds. Provided the ordinance is recorded, the effective date of these regulations is the date on which they have been adopted as an ordinance.

D. Definitions

Terms used but not defined herein shall have the same meanings as those terms are used and defined in other Chapters of the Code of Cape Cod Commission Regulations of General Application, and in the Act.

E. Index and Mapping of Approved GIZ Designations

The Commission will maintain a collective public index and map of the GIZ designations it has approved and that are in effect, which will include reference to revised Development of Regional Impact Thresholds corresponding to respective GIZ designations.

Section 2. GIZ Designation- Application, Review and Decision-making Process

A. A Municipality, through its Board of Selectmen or Town Council, and as otherwise authorized and provided for under the respective Municipality's laws, charter, rules and regulations, may request, upon application to the Commission, that the Commission designate a defined area within such Municipality's jurisdictional limits as a Growth Incentive Zone (GIZ), for purposes consistent with those set out in Section 1 of these regulations.

1. A GIZ shall be a contiguous geographic area with clearly delineated boundaries, which area may be located within one or more Municipalities. A request for a GIZ designation proposed in more than one Municipality shall be coordinated under a single GIZ application by the respective Boards of Selectmen or Town Council of such Municipalities in which the GIZ designation is proposed.

B. Prior to submitting an application to the Commission for a proposed GIZ designation, a Municipality shall schedule a pre-application meeting with Commission staff, and shall conduct at least one advertised public hearing on it in the Municipality in which a GIZ designation is proposed.

C. Following a pre-application meeting with Commission staff and the public hearing referenced in subsection B. above, a Municipality may propose a GIZ by submitting a signed GIZ Application Form and supporting information referenced therein to the Clerk of the Cape Cod Commission, both in hard copy and electronic format.

D. The Cape Cod Commission shall conduct a public hearing to review and vote on a proposed GIZ designation, which hearing shall be held and noticed by publication in accordance with Section 5 of the Act. In its decision-making, the Commission shall consider the review and approval criteria contained in Section 3 herein. The Commission shall adopt a written decision after review of a proposed GIZ designation, which decision reflects its vote and reasons therefor.

1. The Commission's Committee on Planning and Regulation may meet to review and make a recommendation to the Commission regarding a proposed GIZ designation.
2. The Commission shall not schedule, notice or commence the public hearing process on a proposed GIZ designation until the Commission's Executive Director, or designee, determines that a GIZ application is complete. A complete GIZ application shall:
 - a. Include evidence of the filing of a copy of the GIZ application with the Town Clerk of any Municipality abutting a Municipality in which the GIZ designation is proposed;
 - b. Include evidence that prior to submitting a GIZ application at least one advertised public hearing has been held by and in the Municipality on the proposed GIZ designation;
 - c. Include supporting information specified in the GIZ Application Form, including without limitation a map defining the proposed GIZ, as well as submission of other materials identified by Commission staff during the pre-application meeting. Staff will determine whether such submissions are sufficiently detailed and comprehensive to allow for review of the proposed GIZ designation under the criteria set out in Section 3 of these regulations.

- E. Should the Commission vote to approve a proposed GIZ designation, the Commission shall record a copy of the GIZ designation decision with the Barnstable County Registry of Deeds.
- F. The GIZ designation, and any revised DRI Thresholds approved under the GIZ designation decision, shall take effect upon recording the decision in the Barnstable County Registry of Deeds, unless some later effective date is set out in the decision. The decision may include conditions, the performance and satisfaction of which are required to maintain the continued validity of the GIZ designation.

Section 3. GIZ Designation- Review and Approval Criteria

The Municipality shall demonstrate to the Commission in its GIZ application consistency with or satisfaction of the following criteria:

- A. A Municipality shall have, either existing or proposed, within the GIZ: Development By-laws; design guidelines and standards, and capital facilities and infrastructure and a corresponding capital facilities and infrastructure plan sufficient to fulfill the purposes of the GIZ designation and to protect or promote those values, purposes and interests set out in Section 1 of the Act and in the Goals of the Cape Cod Regional Policy Plan.
 - 1. The Municipality shall provide a map of the proposed GIZ designation boundaries, which map shall be appended to and incorporated into any decision approving the proposed GIZ designation.
 - 2. The Municipality shall provide a general inventory of the existing types and forms of development, public assets, amenities, capital facilities and infrastructure, historic and cultural resources, and sensitive natural resource areas in the proposed GIZ.
 - 3. The Municipality shall present funding and investment strategies to maintain, or provide additional, capital facilities, amenities, and infrastructure necessary to support growth and development in the GIZ.
 - 4. Capital Facilities and infrastructure shall be adequately provided and timed to meet the anticipated demand created by new development and redevelopment, including:
 - a. Demonstrated capacity to provide public water supply for maximum day demand periods;
 - b. Infrastructure consistent with the goals and recommendations set forth under the Cape Cod Area Wide Water Quality Management Plan (the 208 Plan) adopted under Section 208 of the Federal Water Pollution Control Act, for: collection, treatment, or collection and treatment of wastewater and effluent disposal; and management or management and treatment of stormwater runoff;
 - c. Transportation infrastructure, including transit, bicycle, and pedestrian provisions to reduce the number of automobile trips made within the designated GIZ, as well as roadway, parking and circulation improvements, to accommodate expected traffic flow;
 - d. Marine/maritime infrastructure, where applicable, to ensure the continuance of traditional maritime industries.
 - 5. Anticipated or planned development in a GIZ shall consist of uses and forms that support the purposes of the GIZ.

6. The Municipality shall provide a survey of existing development by-laws, ordinances or regulations in the proposed GIZ, and any new proposed, or planned or anticipated changes to such, by-laws, ordinance or regulations necessary and desirable to address anticipated growth and development in, and meet the purposes of, the proposed GIZ.
 - a. If the GIZ designation is approved, the Commission shall require in its decision that the Municipality submit to the Commission any proposed amendments to Development By-laws in the designated GIZ for review and comment, and if ultimately adopted, amendments to Development By-laws in the designated GIZ. Amendments to Development By-laws in a designated GIZ shall be consistent with the purpose of the respective GIZ designation and the terms and conditions of respective GIZ designation decision.
- B. The Municipality shall provide a statement of purpose and goals for the proposed GIZ designation, which shall be consistent with the purposes set out in these regulations.
- C. A proposed GIZ shall be located primarily in or adjacent to areas of extensive, existing development served by existing infrastructure, providing opportunities for redevelopment, infill development, and intensification of uses.
- D. The Commission will consider a proposed GIZ designation's relationship to and consistency with the applicable area-wide plans in its review and decision-making on a proposed GIZ, including the following:
 - The Municipality's Commission-certified Local Comprehensive Plan (LCP);
 - The goals of the Cape Cod Regional Policy Plan;
 - The Regional Transportation Plan;
 - The Cape Cod Ocean Management Plan;
 - The Cape Cod Area Wide Water Quality Management Plan (the 208 Plan) adopted under Section 208 of the Federal Water Pollution Control Act.
- E. A Municipality shall propose performance measures to track progress in fulfilling the purposes and goals of the designated GIZ as well as meeting other criteria contained in this Section 3, which performance measures shall be incorporated into any decision approving a GIZ designation.
 1. Decisions approving a GIZ designation shall include a review procedure where the Commission's Executive Director or designee shall review Municipal consistency with GIZ performance measures at intervals of not more than five-years.
 2. The GIZ Designation decision may require that the Municipality request and obtain Certificates from the Commission, in order to maintain the validity of the GIZ designation decision, at said intervals and upon the Executive Director or designee's review concerning Municipal consistency with performance measures.
- F. The GIZ application shall include a schedule of specific activities the Municipality intends to pursue to promote public and private investment, provide infrastructure, services and amenities, support natural, built and economic systems in a GIZ, and guide the form of development and uses consistent with GIZ purposes and goals, which schedule shall be incorporated into any decision approving a GIZ designation. This

schedule of activities may be expressed through a GIZ strategic plan, detailing planned land use controls, capital planning and other municipal actions.

1. The schedule of activities shall include a proposed schedule of adoption for regulations, a schedule of anticipated receipt of proposed funding and details about the source of proposed funding, and proposed timing for the completion of capital projects, infrastructure and public amenities.

Section 4. GIZ Designation- Revised DRI Thresholds

A. Sections 2 and 3 of Chapter A of the Code of Cape Cod Commission Regulations of General Application, the *Enabling Regulations Governing Review of Developments of Regional Impact*, (“Enabling Regulations”) set forth a number of thresholds (“DRI Thresholds”) that establish the types of development presumed to be Developments of Regional Impact (DRIs) and over which the Commission has mandatory jurisdiction to review. In its GIZ application, a Municipality may request revision to one or more of the DRI Thresholds to establish the applicability and extent of such thresholds, and DRI review under such DRI Thresholds, that will relate to proposed development within a designated GIZ, or portions thereof.

Without limiting the foregoing, a Municipality may request that:

1. any particular DRI Threshold that would otherwise apply to and require DRI review for proposed development within the designated GIZ, shall not apply to and shall not require DRI review for development within the designated GIZ, or a defined portion thereof;
2. building development and re-development that would otherwise require mandatory DRI Review under relevant DRI Thresholds may proceed in a designated GIZ without the requirement for mandatory DRI review, unless and until total new building development in a designated GIZ meets or exceeds a cumulative building floor area and housing unit threshold established under a GIZ designation decision. If such a cumulative DRI Threshold revision is requested and approved under a GIZ designation decision, the Municipality shall monitor and report to the Commission all building development by type that has occurred within the designated GIZ in accordance with the terms and conditions of an GIZ designation decision and in conjunction with the regular performance review meetings set forth in Section 3, and certify to the Commission annually whether such cumulative threshold has been met.

B. The Commission may approve a request for DRI Threshold revision in a GIZ designation decision where it determines that such revision will assist in furthering the stated purposes and goals of the proposed GIZ designation, the revised DRI Threshold is less restrictive than the particular DRI Threshold proposed to be revised, and that the Municipality has or has planned development review standards, land use controls and mitigation measures, including appropriate infrastructure, to adequately protect and preserve the values, interests and resources referenced in Section 1 of the Act and in the Goals of the Cape Cod Regional Policy Plan.

C. The approval of a revised DRI Threshold within a designated GIZ shall not limit the authority of a Municipal Agency or others entitled thereto to request a Discretionary Referral of a proposed development in a designated GIZ, as provided for in Section 12(e) of the Act and Section 2 of the Enabling Regulations.

Section 5. Modification to GIZ Designation Decisions

- A. Should a Municipality in which a designated GIZ is located desire to modify the subject GIZ designation decision, the respective Board of Selectmen or Town Council shall submit a written request for such modification, with supporting materials, to the Commission's Executive Director.
 - 1. In a designated GIZ located in more than one Municipality, the Board of Selectmen or Town Council in each Municipality in which the designated GIZ is located must either consent to or join in the modification request.
- B. Without limitation, a modification may be requested to authorize changes to the geographic boundary and extent of an approved GIZ designation, the conditions in a GIZ designation decision, or DRI thresholds revised under a GIZ designation decision.
- C. The Executive Director shall determine whether the proposed modification constitutes a Minor Modification or a Major Modification, and upon such determination forward the request to either the Committee on Planning and Regulation or the Commission for review as provided for below.
 - 1. In making its determination, the Executive Director shall consider the extent of the proposed modification relative to the GIZ designation decision, the significance of the proposed modification relative to the values, interests and resources set out in Section 1 of the Act and in the Goals of the Cape Cod Regional Policy Plan, and the relation of the proposed modification to the stated purposes of the GIZ designation.
- D. Modifications requests shall be reviewed pursuant to Section 3 herein, "GIZ Designation-Review and Approval Criteria."
- E. Modification Categories.

Minor Modification: The Commission's Committee on Planning and Regulation shall consider and may approve a Minor Modification without the requirement for a public hearing. The Committee on Planning and Regulation may refer the proposed modification to the Commission for review if it determines during its review that such modification constitutes a Major Modification.

Major Modification: The Commission shall consider and may approve a Major Modification at a public hearing noticed by publication in accordance with Section 5 of the Act.

- F. As set out above, either the Commission or Committee on Planning and Regulation shall adopt a written decision following review of a Modification request. The decision shall reflect the vote of the respective body, and reasons therefor. The decision may include conditions, the performance and satisfaction of which are required to maintain the continued validity of the GIZ designation, as modified.
- G. Should the body vote to approve a Modification, including one revising or further revising a DRI Threshold, the Commission shall record such Modification decision. Such Modification shall be effective when the decision is recorded in the Barnstable County Registry of Deeds, unless some later effective date is established in the Modification decision.

Section 6. GIZ Designation- Duration

A. Unless specified otherwise in a GIZ designation decision, a GIZ designation, including any DRI Thresholds revised therein, shall remain valid and in effect without expiration, unless and until revoked or rescinded pursuant to Section 7.

B. A Municipality with a GIZ designation approved prior to the effective date of these regulations may request modification to its GIZ designation decision to accept the applicability of the terms and provisions in these regulations, including this Section 6. Such a request shall be deemed a Minor Modification hereunder.

Section 7. GIZ Designation- Revocation and Rescission

A. In the event the Executive Director determines that development is proceeding in a designated GIZ substantially inconsistent with the GIZ goals, performance measures and purposes set out in the subject GIZ designation decision, or that a Municipality has repeatedly failed to satisfy conditions or other obligations set out in said decision, the Executive Director shall submit such written determination, along with a recommendation concerning revocation or rescission, to the Commission and to the Board of Selectmen or Town Council in each Municipality in which the GIZ designation is located.

B. Upon submission of such determination and recommendation, and after notice has been provided by publication and to the Board of Selectmen or Town Council in each Municipality in which the GIZ designation is located in accordance with Section 5 of the Act, the Commission shall consider and vote whether to revoke or rescind the GIZ designation at a public hearing.

C. The Commission may vote to rescind or revoke the GIZ designation in whole or part, including by revoking, rescinding or reforming any DRI Thresholds revised under a GIZ designation decision, or by contracting and changing the geographic boundaries of a designated GIZ.

D. If the Commission votes to rescind or revoke a GIZ designation, it shall adopt and record with the Barnstable Registry of Deeds a written decision memorializing such vote and reasons therefor.

E. Revocation or rescission of the GIZ designation, including revocation, rescission or reformation of any revised DRI Thresholds previously approved in the GIZ designation decision, shall be effective upon issuance of the written GIZ revocation or rescission decision.

F. If the Commission votes to rescind or revoke a GIZ designation in part and adopts a written decision for the same, the respective GIZ designation decision shall be modified thereby by the terms and conditions set out in such GIZ Revocation or Rescission decision.

(Submitted by the Cape Cod Commission Acting Executive Director Kristy Senatori (as a result of a vote taken by the Cape Cod Commission on 2/22/18) at a regular meeting of the Assembly of Delegates on March 7, 2018)