

PORTSMOUTH TOWN COUNCIL MEETING
MARCH 12, 2018 MINUTES

6:00 PM – Town Council Chambers, Portsmouth Town Hall, 2200 East Main Road

MEMBERS PRESENT: Keith E. Hamilton, Kevin M. Aguiar, David M. Gleason, Paul F. Kesson, Elizabeth A. Pedro, Linda L. Ujifusa, J. Mark Ryan

Time: 6:00 PM

EXECUTIVE SESSION – Motion to go into Executive Session made by Mr. Kesson, seconded by Dr. Ryan. Motion passed 7-0.

1. RIGL §42-46-5(a)(5) – Any discussions or considerations related to the acquisition or lease of real property for public purposes wherein advanced public information would be detrimental to the public interest.
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Mr. Kesson left room at 6:23 PM

3. RIGL §42-46-5 (a)(2) Potential Litigation

ADJOURN – Motion to Adjourn and seal the minutes made by Ms. Ujifusa, seconded by Mr. Aguiar. Motion passed 6-0-1. Mr. Kesson had recused himself.

Time: 6:48 PM – Break

Mr. Kesson returned 6:49 PM

Time: 7:00 PM – Return

7:00 PM – Town Council Chambers, Portsmouth Town Hall, 2200 East Main Road

PLEDGE OF ALLEGIANCE – The Pledge of Allegiance was followed by a Moment of Silence for our men and women serving around the world in harm's way.

SITTING AS THE PORTSMOUTH TOWN COUNCIL

PRESIDENT'S EXECUTIVE SUMMARY – Two pieces of property for potential purchase was discussed as well as potential litigation. No votes were taken.

CONSENT AGENDA

1. Bills – Motion to approve and place on file made by Dr. Ryan, seconded by Mr. Aguiar. Motion passed 6-1. Mr. Kesson in dissent.

2. CRMC – PUBLIC NOTICE:

The Application of Mellissa Taylor & Manuel Lopes, 1184 Bulgarmarsh Road, Tiverton, RI for a State of Rhode Island Assent to Create and Maintain a Three Acre Oyster Farm Using Bottom Cages. – Motion to place on file made by Ms. Ujifusa, seconded by Dr. Ryan. Motion passed 7-0.

3. Request from the Armenian National Committee of Rhode Island to Fly the Armenian Flag on April 24, 2018. – Motion to approve made by Ms. Ujifusa, seconded by Dr. Ryan. Motion passed 7-0.

4. Final Approval of Plastic Bag Regulations Ordinance. – Motion to receive and place on file made by Dr. Ryan, seconded by Ms. Pedro. Motion passed 6-1. Mr. Kesson in dissent.

TOWN OF PORTSMOUTH, RI
ORDINANCE AMENDMENT
Ordinance # 2018-03-12

PART II: GENERAL LEGISLATION

Be it ORDAINED by the Town Council of the Town of Portsmouth:

Section 1. The Town Code, Chapter 326, entitled “Solid Waste” is hereby amended by adding the following new article:

Article VI
PLASTIC BAG REGULATIONS

§ 326-33. Legislative Findings and Intent.

- A. The Town Council has the authority under Article 13 of the Rhode Island Constitution and the Portsmouth Town Charter to regulate issues of solid waste, litter and pollution as a local concern.
- B. The production, use and disposal of plastic checkout bags, which are commonly not recycled, has been shown to have significant detrimental impacts on the environment, including but not limited to contributing to pollution of the terrestrial and coastal environment, clogging storm water drainage systems, and contributing to the injury and death of terrestrial and marine life through ingestion and entanglement.
- C. The manufacture, transport and recycling of plastic checkout bags requires substantial energy consumption and contributes to greenhouse gases.
- D. Plastic checkout bags create a burden to solid waste collection and recycling facilities.
- E. Prohibiting the use of plastic checkout bags is necessary to protect the environment and the public health, safety, and welfare of all residents and visitors.

§ 326-34. Purpose.

The purpose of this chapter is to improve the environment in and around the town and the health, safety, and welfare of its residents by reducing the number of plastic and paper bags being used, encouraging the use and sale of reusable checkout bags and banning the use of plastic bags for retail checkout of goods.

§ 326-35. Definitions.

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

BUSINESS ESTABLISHMENT – Any commercial enterprise that provides carryout bags to its customers, including sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity and includes all employees of the business and any independent contractors associated with the business. “Business Establishment” does not include sales of goods at yard sales, tag sales, other sales by residents at their homes, and sales by nonprofit organizations.

CARRYOUT BAG – A bag provided by a business establishment to a customer, typically at the point of sale, for the purpose of transporting purchases.

DOUBLE-OPENING PLASTIC BAG – Any thin plastic bag with a double opening (top and bottom) to protect clothing or other items for transport.

PLASTIC BARRIER BAG – Any thin plastic bag with a single opening used to:

- (1) Transport fruit, vegetables, nuts, grains, small hardware items, or other items selected by customers at the point of sale;
- (2) Contain or wrap fresh or frozen foods, meat, or fish, whether prepackaged or not;
- (3) Contain or wrap flowers, potted plants, or other items where damage to a good or contamination of other goods placed together in the same bag may be a problem; or
- (4) Contain unwrapped prepared foods or bakery goods.

PLASTIC CARRYOUT BAG – Any plastic carry-out bag that is provided by a business establishment to a customer, typically at the point of sale, for the purpose of transporting purchases. “Plastic Carryout Bag” does not include plastic barrier bags or double-opening plastic bags, as defined herein, or plastic bags measuring larger than 28 inches by 36 inches.

RECYCLABLE PAPER BAG – A paper bag that is fully recyclable overall and contains a minimum of 40% post-consumer recycled content and contains no old growth fiber. The bag should display the words “Reusable” and “Recyclable” or the universal recycling log on the outside of the bag.

REUSABLE BAG – A bag with handles that is specifically designed and manufactured for multiple reuse and is made primarily of cloth or other nonwoven textile or durable plastic with a minimum thickness of four mils. Any straps must be stitched and not heat fused.

§ 326-36. Prohibited Acts.

A. No business establishment shall provide or make available any plastic carryout bag (either complementary or for a fee) for any sales transaction or other use to members of the public, that does not comply with the definition of a Reusable Bag under § 326-35 of this chapter.

B. All business establishments that provide plastic barrier bags or double-opening bags shall offer a recycling opportunity onsite for the recycling of any plastic bags or clean plastic bag film as defined by the Rhode Island Resource Recovery Corporation RESTORE program.

C. Nothing in this section shall preclude business establishments from making reusable bags or recycling paper bags, as defined under § 326-35 of this chapter, available to customers, by sale or otherwise.

§ 326-37. Exemptions.

This chapter does not apply to:

A. Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;

B. Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities, provided that the bags are recyclable within the state’s recycling program; and

C. Plastic barrier bags, double-opening plastic bags used by a consumer inside a business establishment to:

- (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
- (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
- (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases;
- (4) Contain unwrapped prepared foods or bakery goods; or
- (5) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items.

§ 326-38. Enforcement; Violations; Penalties.

This chapter shall be enforced by the Police Department, or any other Town Department designated by the Town Administrator. Any Business Establishment who violates any of the provisions of this chapter shall be subject to the following penalties:

A. For a first offense, the Business Establishment charged with a violation of this chapter shall be served with a warning letter by delivering it to the Business Establishment personally, or by posting a copy upon a conspicuous portion of the retail sales establishment and sending a copy of the same by certified mail to the Business Establishment to whom the notice is directed. The warning letter shall inform the Business Establishment charged of the nature of the violation and that it must be corrected within 14 days of the date of the letter, and shall include a copy of this chapter.

B. For a second offense, more than 14 days after service of a warning letter, a fine of \$150 shall be assessed and imposed. The Business Establishment charged shall be given the opportunity to pay the fine assessed by mail, which shall be indicated on the summons issued by the charging officer. Should the alleged violator elect not to pay the fine assessed by mail, the violation shall be heard and adjudicated by the Municipal Court.

C. For a third or subsequent offense, a fine of \$300 shall be assessed, and the violation shall be heard and adjudicated by the Municipal Court.

D. Each occurrence of a violation more than 14 days after service of a warning letter, and each day that such violation continues, shall constitute a separate violation and cited as such.

§ 326-39. Hardship Variance.

A. The Town Council may grant a variance from the requirements of this chapter only after determining that: (1) application of this chapter would cause undue hardship based upon unique circumstances; or (2) application of this chapter would deprive a person or business of a legally protected right.

B. The requested variance shall be submitted on the town’s prescribed forms.

C. Any variance granted under this section must be the minimum variance necessary to address the hardship.

§ 326-40. Effective Date. This chapter shall take effect upon passage, provided however, that enforcement shall be stayed until September 1, 2018.

Section 2. This Ordinance shall take effect upon passage.

ADOPTED BY TOWN COUNCIL
ACTION ON _____

Jennifer M. West, Town Clerk

SITTING AS THE BOARD OF LICENSE COMMISSIONERS – Motion to go into a Public Hearing made by Mr. Kesson, seconded by Dr. Ryan. Motion passed 7-0.

1. PUBLIC HEARING: Transfer of a Class BV Alcoholic Beverage License
Application to Transfer a Class BV Alcoholic Beverage License from R and M 506, LLC, d/b/a The Beachcomber to KW Nelson, Inc. d/b/a Park Avenue Pub, 506 Park Avenue, Portsmouth

- a. Application for a Class BV Alcoholic Beverage License: KW Nelson, Inc. d/b/a Park Avenue Pub, 506 Park Avenue, Portsmouth. Owner: Karl W. Nelson, 25 Bartlett Rd, Middletown, RI 02842
- b. Objection to the Transfer of Class BV Liquor License from R and M 506, LLC d/b/a The Beachcomber to KW Nelson, Inc. d/b/a Park Avenue Pub Unless Indebtedness is Paid in Full to Rhode Island Distributing Co. / G. Mancini, Sinapi Law Associates, Ltd.
- c. Objection to the Transfer of a Class BV Liquor License from R and M 506, LLC d/b/a The Beachcomber to KW Nelson, Inc. d/b/a Park Avenue Pub Unless Indebtedness is Paid in Full to McLaughlin & Moran, Inc. / D. Silva, Credit Manager, McLaughlin & Moran, Inc.

Motion to close the Public Hearing made by Mr. Kesson, seconded by Dr. Ryan. Motion passed 7-0.

Motion to approve the transfer of the Class BV Liquor License contingent upon the outstanding debts to Rhode Island Distributing and McLaughlin & Moran be paid in full made by Ms. Pedro, seconded by Mr. Kesson. Motion passed 7-0.

2. Victualler License – Annual
KW Nelson, Inc. d/b/a Park Avenue Pub, 506 Park Avenue
3. Amusement Games License – Annual
KW Nelson, Inc. d/b/a Park Avenue Pub, 506 Park Avenue (1 game) – Motion to approve both the Annual Victualler License and Amusement Games License made by Mr. Kesson, seconded by Ms. Pedro. Motion passed 7-0.
4. Entertainment License
St. Barnabas Church, Annual Festival & Carnival, 1697 East Main Rd, June 22-24, 2018
5. Class F Daily Liquor License
St. Barnabas Church, Annual Festival & Carnival, 1697 East Main Rd, June 22-24, 2018 – Motion to approve both the Entertainment License and the Class F Daily Liquor License to St. Barnabas Church made by Dr. Ryan, seconded by Ms. Ujifusa. Motion passed 7-0.
6. Victualler License – Specific Event with Fee Waiver Request
St. Barnabas Church, Annual Festival & Carnival, 1697 East Main Rd, June 22-24, 2018 – Motion to Approve the Victualler License request with fee waiver made by Mr. Gleason, seconded by Mr. Kesson. Motion passed 7-0.

ADJOURN – Motion to adjourn as the Board of License Commissioners made by Dr. Ryan, seconded by Ms. Pedro. Motion passed 7-0.

MINUTES

TCM 2/12/18

TCM 2/26/18

– Motion to approve the minutes from 2/12/18 and 2/26/18 made by Ms. Ujifusa, seconded by Mr. Aguiar. Motion passed 7-0.

TAX VOUCHERS

Request Approval for Tax Voucher #20183012-01. – Motion to approve made by Ms. Pedro, seconded by Mr. Kesson. Motion passed 7-0.

TOWN ADMINISTRATOR'S REPORT

1. Report on nor'easter storm damage – I'd like to recognize and thank our DPW, Police, Fire and EMA for their work throughout the nor'easter that blew through town last week. In all: DPW responded to 31 tree calls here and on Prudence Island; Dog Park had 6 fallen trees and significant fence damage; There were 3 large fallen trees on Linden Ln that were removed. Final raking of the smaller twigs along the wall and 1 stump removal to be completed as weather permits; The Phelps House Roadway to Glen Farm Rd in front of the Phelps needs to be regraded; Some downed trees in the Glen Park Grove need removal; The Town Hall and Seveney Complex Signs were destroyed; and, wind damage to the Glen Farm indoor riding ring. We've submitted claims to our insurance company, The RI Trust, regarding the storm damage and DPW is working, as able, to either clear remaining debris or coordinate with appropriate agencies to do so.

2. Announcement of grant to Veterans Honor Roll Committee – On March 5th, I received a legislative grant check from the State for the Portsmouth Veterans Memorial. The check will be used to pay for maintenance and upgrades to our new memorial. I'd like to sincerely thank our State legislature representatives, and particularly Senator Seveney, for making this grant happen.

3. Update on request to RI State Traffic Commission to study a Road Diet on East Main Road – At a hearing on Wed. March 7th, the State Traffic Commission discussed the Town's resolution regarding a Road Diet on East Main Road from Turnpike to the town line at Middletown. The Hearing was attended by: Senator Seveney, Councilor Ujifusa, Terri Cortrivend, Allen Shers, and Thomas Vadney of the School Committee, and Chief Lee. The State Traffic Commission approved the town's request to conduct a study and report their findings back to the Town.

4. Short-term rentals working group update – A working group was formed to develop a draft short-term ordinance as directed at the last TC meeting on Feb. 26. The working group consists of myself and the Town Planner, Solicitor, Police Chief, Fire Chief, Business Development Director, and all residents who appeared before the Council that night. We have developed a draft for further review at our next meeting and intend to present a suggested ordinance for your review at the next Town Council meeting on March 26th.

5. Update on search for new Finance Director – Applications for the Finance Director position were due last Friday, March 9th. The opening was advertised via: RILCT; ICMA; GFAO; RI State Government Web Site; Town Web Site; Indeed.com; LinkedIn; PROJO; Newport Daily News. We received 55 applications. The HR Director and I will review the applications this week and begin arranging interviews for the most qualified candidates as soon as possible.

6. Police Station construction project update – MILESTONES THIS PERIOD: Now that the foundation walls are complete, underground utilities are being constructed and installed, slabs are being prepped for installation. Total construction billings to date are \$1,161,657, which is underbudget for this point in the project. An updated Critical Path Schedule submitted to the Town and Architect confirms Substantial Completion of the new building in October 2018 with

demolition of the existing station to immediately follow. The Contractor acknowledges they have lost several weeks due to winter and unsuitable soil conditions and as reported earlier, they have re-sequenced some planned activities, including delaying the steel delivery until mid-March 2018 and plan on increased manpower to recover lost time. Overall, the project is going well and there are no significant construction or budget issues to report.

The Town Administrator also mentioned that there was a parking ban starting at 10 PM on March 12, 2018 and that the Town Hall and Transfer Station would be closed on March 13, 2018 due to impending inclement weather.

RESIGNATIONS AND APPOINTMENTS

1. Resignations:

a. Glen Park Working Committee – Motion to accept with regret the resignation of Ms. Alexandra Bonome made by Mr. Kesson, seconded by Mr. Aguiar. Motion passed 7-0.

2. Appointments:

a. Harbor Commission – Motion to appoint Mr. Clay Commons to the Harbor Commission made by Mr. Kesson, seconded by Ms. Pedro. Motion passed 7-0.

OLD BUSINESS

Time: 7:17 PM Mr. Kesson recuses himself and leaves the room.

1. Update on the Mitigation Efforts for the Flicker and Noise Issues from the Wind Turbine – Mr. Kesson has recused himself from all conversations regarding the Wind Turbine as he is a concerned party on the topic. Mr. DePasquale was unable to attend the meeting and sent a written response to the different complaints that they have received. Mr. Hamilton asked that the Town Clerk place the letter on the Town’s website. (The letter may be found in the document center on the Town’s website under the Town Council folder.) Mr. Hamilton stated that, as a Council, it was their job to hopefully provide a conduit so that people could have conversations between the turbine operator and themselves to mitigate any issues they have. As of right now, that’s as far as the Town can go. Mr. Hamilton asked the Town Administrator to set up a meeting between Green Development and those with complaints. – No motions made.

Time: 8:30 Mr. Kesson reenters the room.

2. Discussion/Action – Request Revision of the By-Laws and Rules of Procedure for the Tank Farm Development Advisory Committee. – OB 2 removed at the request of Mr. Humphries.

3. Discussion/Action – Release of Impact Funds for School Safety Capital Budget. – Mr. Rainer spoke with the RI Auditor General and the Department of Revenue and found that the Town does not need to file an amended budget to show the release of Impact Funds. No motions made.

4. Discussion – Investigation Conducted to Inquire into the Circumstances Surrounding the FY 12-13 Warrants Fund Deficit Balance. – Mr. Kesson made a motion to table for four weeks. Motion was withdrawn. Motion to approve and place on file made by Dr. Ryan, seconded by Ms. Ujifusa. Motion passed 7-0.

(The full report is available for viewing at the Town Clerk's Office) Request was made to have the Town Administrator's Power Point available for viewing online.

NEW BUSINESS

1. Discussion/Action – Request Revision of Fee Schedules for:
 - a. Annual Licenses, Town Clerk – Motion table to March 26, 2018 made by Mr. Kesson, seconded by Mr. Gleason. Motion passed 7-0.
 - b. Building Permits – Motion to approve requested revisions made by Ms. Ujifusa, seconded by Dr. Ryan. Motion passed 6-1. Mr. Kesson in dissent.
 - c. Gardner Seveney Special Events Field – Motion to approve requested revisions made by Ms. Pedro, seconded by Mr. Gleason. Motion passed 7-0.

CORRESPONDENCE

1. Letter Requesting Modification to the Design Review Board Guidelines. / D. Goetzing
2. Letter of Thanks from Project ReGive. / M. Hadfield, Founder
3. Letter re: 2018 Merritt Neighborhood Fund Grant Application. / C. Allott, Executive Director, Aquidneck Land Trust
4. Portsmouth Water and Fire District's Quarterly Financial Reports for the Period Ending January 31, 2018. / N. Larsen, Senior Accountant, Portsmouth Water and Fire District
5. Gray Matter Marketing is Holding Two Events that will Impact Portsmouth: The Mount Hope Bridge 5K on Saturday August 11, 2018 and the 4 Bridges Ride on Sunday September 16, 2018. / M. Gray, President
6. Invitation to Participate in the 62nd Annual St. Patrick's Day Parade, Saturday March 17, 2018. / H. Winthrop, Mayor, City of Newport
7. Invitation to Attend a Community Information Session on Tuesday, March 13, 2018 from 6:00-8:00pm Regarding the National Grid OnIsland Project's Progress. / S. Blundell, Stakeholder Relations
8. Request to Attend, Purchase an Ad or Become a Sponsor/Patron of the 13th Annual Turning Around Ministries Dinner and Silent Auction on April 28, 2018. / C. Robinson, President, Turning Around Ministries, Inc.

Motion to receive all 8 items of Correspondence and place on file made by Mr. Kesson, seconded by Mr. Gleason. Motion passed 7-0.

FUTURE MEETINGS

Mar 26 7:00 PM – Town Council Meeting
Mar 31 10:00 AM – Executive Session
Apr 9 7:00 PM – Town Council Meeting

ADJOURN – Motion to adjourn made by Dr. Ryan, seconded by Mr. Kesson. Motion passed 7-0.

Time: 9:47 PM

Jennifer M. West, Town Clerk