

**Kittery Town Council
Regular Meeting – Council Chambers
January 8, 2018**

1. Call to Order: Chairperson Lemont called the meeting to order at 7:04 p.m.
2. Introductory: Chairperson Lemont read the introductory.
3. Pledge of Allegiance: Chairperson Lemont led all present in the Pledge of Allegiance.
4. Roll Call: Answering the roll were Councilors Gary Beers, Matthew Brock, Jeffrey Thomson, Jeffrey Pelletier, Frank Dennett, Vice-Chairperson Charles Denault and Chairperson Kenneth Lemont.
5. Agenda Amendment and Adoption: Chairperson Lemont said he had one adjustment, adding 13-J under “New Business” to accept the letter of resignation from Niles Pinkham from the Board of Appeals.
6. Town Manager’s Report: Kendra Amaral reported the deadline for implementation of legalized retail sales of marijuana by the State of Maine is February 1st but the Legislative Committee is working on legislation that will extend the deadline. She asked Drummond Woodsum to perform a “stress test” of the town’s ordinances that were put into place to make sure that marijuana is not an allowed use in any of the zones, and they said the town is in a protected state.

Town Manager Amaral updated the Council on the Government Street Pier Reconstruction project. She said looking at the CIP Plan for FY’18-’22, \$50,000 is going toward that project. She said that Mr. Crawford, a member of the Port Authority, has been working on submitting the application for the Small Harbor Improvement Program (SHIP) for grant funding for the reconstruction of the pier. She said if approved, the town could be awarded up to 50% of the cost of the project.

Town Manager Amaral has been in touch with the responsible party regarding back taxes on the abandoned trailer, which have been paid. She said she spoke with the Code Enforcement Officer for demolition and the town has written the responsible party that a permit must be pulled for demolition by the end of January or this will be remanded back to Council for further action.

Town Manager Amaral said she is promoting opportunities for residents to get involved in town by volunteering on boards and commissions and to that end they have added a “Get Involved” button on the town’s home page of their website that provides information on current positions available and instructions on how to apply.

7. Acceptance of Previous Minutes: Chairperson Lemont declared the minutes of December 27, 2017 accepted as amended.
8. Interviews for the Board of Appeals and Planning Board: None
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials. - none

10. PUBLIC HEARINGS:

a. (010118-1) The Kittery Town Council moves to hold a public hearing and hereby ordains amendments to Title 2, Administration and Personnel – Town Clerk, of the Kittery Town Code.

Councilor Thomson requested, through the Chair, that before he opens the public hearing, the Town Manager provide an explanation on the amendments so the public could comment on them.

Town Manager Amaral said that they are asking for amendments to Title 2 for the Town Clerk's purpose, as she will be retiring in the Spring. She said they need to make sure that the Title is accurate for what the job is currently and what we seek it to be.

Chairperson Lemont opened the public hearing at 7:15 pm and asked if any members of the public wished to speak to, for or offer any information for the Town Council's deliberations. Hearing none, he closed the public hearing.

COUNCILOR THOMSON MOVED THAT, PURSUANT TO TITLE 30-A, M.R.S. 3001, 2.14 OF THE TOWN CHARTER, THE TOWN COUNCIL HEREBY ORDAINS AMENDMENTS TO ADMINISTRATION AND PERSONNEL, TITLE 2, TOWN CLERK, OF THE KITTERY TOWN CODE, AS PUBLICLY HEARD THIS EVENING. COUNCILOR BEERS SECONDED THE MOTION.

Councilor Dennett said he discussed this with the Town Manager and the Town Clerk but the resolution does not appear to be in this document this evening. He said that he proposed a Compliance Officer, also known as a Public Access Officer should be added for the dissemination of information in accordance with the Freedom of Access Act, and that he believes the Town Clerk acts in that capacity. He said he did not see anything in the draft to make it formal.

Town Manager Amaral said she intended that to be the Town Manager, who could delegate that to another member of the staff because, as an example, the information requested by the public may have legal ramifications.

Councilor Dennett asked if that would be in writing.

Town Manager Amaral replied that the Town Council would have to appoint her.

Councilor Dennett said he assumed that the Town Manager would be putting that in writing for the Town Council's action in the near future.

Town Manager Amaral said yes.

ROLL CALL VOTE WAS TAKEN, SEVEN IN FAVOR, NONE OPPOSED, MOTION CARRIES.

b. (010118-2) The Kittery Town Council moves to hold a public hearing and hereby ordains amendments to Title 2, Administration and Personnel – 2.3 of the Kittery Town Code.

Chairperson Lemont asked the Town Manager to provide background information on the amendment.

Town Manager Amaral said that there has been a change to Title 2 and they are looking to accomplish a few things. She said, as voted on in November, the Personnel Board has been taken out of the Charter and the Human Resources Director position had been removed from the Town Code and they are not filling the position. She said they have a Human Resources Generalist and

these proposed amendments are to make the ordinance consistent with that. She said they are striking out a section of the ordinance.

Town Manager Amaral said that the Town Council will come out of the role of reviewing and approving job descriptions. She said the Town Council will still approve the creation and purpose of a position, but the specific work tasks remain with administration, who is responsible for developing the job description for this particular position that the Town Clerk is responsible for the assembly of the Town Council packets, or another position is.

Chairperson Lemont opened the public hearing at 7:21 pm and asked if any members of the public wishes to speak to, for or provide information for Town Council deliberations. Hearing none, he closed the public hearing.

COUNCILOR THOMSON MOVED PURSUANT TO TITLE 30, M.R.S. 3001, TOWN CHARTER SEC. 2.14, THAT THE TOWN COUNCIL HEREBY ORDAINS AMENDMENTS TO TITLE 2, ADMINISTRATION AND PERSONNEL, AS PUBLICLY HEARD THIS EVENING. VICE-CHAIRPERSON DENAULT SECONDED THE MOTION.

Councilor Dennett noted on page 7, after line 267, the prior section allowing a grievant ruled against by a decision of the Town Manager to refer the case to the Human Resources Manager to send to the Personnel Board who could not change the Manager's decision, but make an advisory decision. He said this is for non-union employees, but noted there are no way for appeals whatsoever. He said he thinks this is a little contrary to what the law should provide and there should be a marker there, to a certain extent, that the decision against the grievant by the Town Manager may be appealed in accordance with State Statute.

Town Manager Amaral said that she discussed this with Councilor Dennett and she does not think it is necessary. She said there are a lot of avenues employees have to address various labor issues by going to the level of State law or to court. She said it does not necessarily change the overall effect of it, but if it creates a level of comfort for Councilor Dennett, she has no objections.

Councilor Dennett responded it would give him a great deal of comfort. He said Title 16 of the town ordinance is devoted to appeals, relating to variances and decisions of the Planning Board or Code Enforcement Officer. He felt that something should be added, to the effect that there may be appeals, and other avenues, but it's up to you to find them if you are aggrieved.

Councilor Beers said he supports the Town Manager's contention and does not see a need to add anything. He said there are avenues in the workplace that are adequately conveyed and rights relating to this matter.

Councilor Dennett said he disagreed, and amended the original motion to include a new sentence.

MOTION MADE BY COUNCILOR DENNETT TO ADD THE FOLLOWING, AFTER LINE 267: AN EMPLOYEE AGGRIEVED BY THE DECISION OF THE TOWN MANAGER IS ENTITLED TO PURSUE SUCH REMEDIES AS MAY BE AVAILABLE BY LAW. VICE-CHAIRPERSON DENAULT SECONDED THE MOTION.

Vice-Chairperson Denault said he has full faith in the Town Manager's abilities, but he is a former employee of the town, and does not see how it would hurt anything by putting in writing to have an avenue there for aggrieved employees that is not in there now.

ROLL CALL VOTE WAS TAKEN ON THE AMENDED MOTION AND VOTED 6-1, WITH COUNCILOR BEERS IN OPPOSITION. SIX IN FAVOR, ONE OPPOSED, MOTION CARRIES.

ROLL CALL VOTE WAS TAKEN ON THE ORIGINAL MOTION, WITH THE AMENDMENT, AND VOTED 7-0. SEVEN IN FAVOR, NONE OPPOSED, MOTION CARRIES.

11. DISCUSSION:

- a. By members of the public }
- b. Response to public comment directed to a particular Councilor } none
- c. Chairperson's response to public comments }

12. UNFINISHED BUSINESS: none

13. NEW BUSINESS

- a. Donations/gifts received for Council disposition – none
- b. (010118-3) The Kittery Town Council moves to approve the disbursement warrants.

COUNCILOR THOMSON MOVED THE APPROVAL OF THE DISBURSEMENT WARRANTS, TOWN PAYABLE IN THE AMOUNT OF \$111,345.81 AND SCHOOL PAYABLE IN THE AMOUNT OF \$498,036.33, SECONDED BY VICE-CHAIRPERSON DENAULT. ALL WERE IN FAVOR 7-0 BY A VOICE VOTE, AYE, MOTION CARRIES.

c.(010118-4) The Kittery Town Council moves to set the 2018 Town Manager and Town Council goals.

Chairperson Lemont asked the Town Manager for her comments. Town Manager Amaral said that last year Council set her goals and they were reported on quarterly. She said the proposed Manager's goals are included in Council's packets, as well as Council's goals as has approved in 2017, which are high-level goals and lend themselves to continuing forward. She said it was voted that the majority of the goals would be carried forward from the year prior. She said the Town Manager's goals have been carried forward.

Town Manager Amaral recommended carrying forward some of her goals as well, and read the list, specifically supporting the long-term planning, and working with regional agencies, supporting the process 2015 through 2025, updating the Comprehensive Plan to propose and implement Charter and ordinance changes for town efficiency and continuation of improving town-generated communications. She said she is looking for input, reaction and changes to the proposed goals.

Chairperson Lemont said he would look to Councilor Beers and Councilor Thomson as former chairs, for guidance and asked if this requires a formal vote.

Councilor Beers replied it has been done in the past.

Councilor Thomson said they should endorse the Manager's goals, and carry-forward goals for us as well and have a brief workshop, maybe 5:30 pm, before the Special Meeting on the 17th, and give us something to act on at the first meeting in February.

Chairperson Lemont asked if Council was comfortable in doing that and the other Councilors agreed.

Councilor Beers asked if they would be addressing budget goals, and secondly, if Councilors could send suggestions for hand-out materials to the Town Manager for their workshop at 5:30 p.m.

Chairperson Lemont said he would schedule that.

d. (010118-5) The Kittery Town Council moves to appoint Niles Pinkham to the Port Authority pending his resignation from the Board of Appeals effective 1/9/18 until 1/1/23.

COUNCILOR BROCK MOVED TO APPOINT NILES PINKHAM TO THE PORT AUTHORITY, FROM JANUARY 9, 2018 UNTIL JANUARY 1, 2023, PENDING HIS RESIGNATION FROM THE BOARD OF APPEALS, SECONDED BY VICE-CHAIRPERSON DENAULT.

Councilor Thomson thought they had to act on Mr. Pinkham's resignation first.

Councilor Brock said he thought that is what Chairperson Lemont did when he had mentioned adjusting the agenda.

Chairperson Lemont asked for clarification on what the Council would like to do.

Councilor Thomson noted that the resignation letter from Mr. Pinkham and specified that his "resignation is hereby effective upon his appointment to the Port Authority" so he thought that covers it.

ROLL CALL VOTE WAS TAKEN WITH SEVEN IN FAVOR, NONE OPPOSED. MOTION CARRIES.

e. (010118-6) The Kittery Town Council moves to approve the proposed amendment to the KCC Board By-Laws to now state a meeting schedule during the year of January, March, May, August, September and November.

VICE-CHAIRPERSON DENAULT MOVED THAT COUNCIL APPROVE THE PROPOSED AMENDMENT TO THE KCC BOARD BY-LAWS TO STATE A MEETING SCHEDULE DURING THE YEAR OF JANUARY, MARCH, MAY, AUGUST, SEPTEMBER AND NOVEMBER, SECONDED BY COUNCILOR BEERS.

Councilor Thomson said he would speak to this as Councilor rep on this Board, that, for the last two years, with the very smooth-running of the KCC and the addition of Barbara MacLeod, they thought it would be suitable not to clutter staff time with unnecessary meetings and their recommendation is to go with six meetings.

Councilor Dennett presumed that the other Councilors are in favor of this, but there seems to be a slight fly in the ointment. He said there is no meeting in the month of December; however, Section 5 of the KCC rules provides that "at the regular meeting in December, the Board shall elect a Chair, Vice-Chair and Secretary and wanted to know if there is no meeting, when would it be done. Councilor Thomson said they can do that in November.

Councilor Dennett asked if he would make that change in Section 5 and Councilor Thomson agreed.

Chairperson Lemont if the maker of the motion and the second would agree to amending the motion to include that language.

VICE CHAIRPERSON DENAULT MOVED AN AMENDMENT TO THE ORIGINAL MOTION TO REVISED LANGUAGE IN SEC. 5 TO READ: "AT THE REGULAR MEETING IN NOVEMBER, THE BOARD SHALL ELECT A CHAIR, VICE-CHAIR AND SECRETARY." COUNCILOR BEERS SECONDED THE AMENDMENT TO THE MOTION.

ROLL CALL VOTE WAS TAKEN WITH SEVEN IN FAVOR, NONE OPPOSED, MOTION CARRIES.

- f. (010118-7) The Kittery Town Council moves to amend Council Rules as presented

COUNCILOR BEERS MOVED THE AMENDMENT TO THE COUNCIL RULES AS PRESENTED, SECONDED BY VICE-CHAIRPERSON DENAULT.

Councilor Dennett said he does not have any particular objection to this in that there will only be one meeting in July, August and December, and the meetings will start at 6:00 p.m., but he does not understand lines 36, 37 and 38 regarding public proceedings commencing at 6:00 p.m. and asked Councilor Beers to explain what that means.

Councilor Beers said that routinely, all regular meetings would be targeted for 6:00 p.m., unless the Chair and the Town Manager determine a workshop or an Executive Session must be conducted at an earlier point in time, in which case the regular meeting would begin afterward.

Councilor Dennett said the meeting with an Executive Session would start at 5:00 p.m. and the regular meeting at 6:00 p.m.

Councilor Beers replied it would be, at the call of the Chairperson and Town Manager, and the regular meeting would be thereafter.

Councilor Dennett said that is not how it reads.

Councilor Beers said he drafted it the best he could but said that Councilor Dennett should feel free to offer another suggestion.

Councilor Dennett said starting a meeting at 5:00 pm with an Executive Session or Workshop, and the regular meeting at 6:00 p.m. would be okay. He said this came up several years ago when the Town Council had a workshop that started at 6, but didn't finish until 6:40 pm and the Chair ruled the regular meeting would start immediately, 20 minutes earlier. He said he did not want to see the meeting begin earlier than 6 or an Executive Session or Workshop spill over 6:00 p.m.

Councilor Beers said his intention would be that after the workshop or Executive Session the Chair could go into the meeting at that point or be set at the following hour that the Chair calls.

Councilor Dennett said the regular proceedings would commence at 6 or 7 or whatever the hour is, regardless of whether the item is finished or not. He said that public notice law requires a date, place and time.

Councilor Beers said he would strike the words "except if the Chair scheduled a workshop or Executive Session prior to the regular meeting" and retain "whether or not it is proceeded by an Executive Session or a Workshop."

Councilor Dennett said the regular meeting would commence at 6:00 p.m.

Councilor Dennett asked if this time would start at the next meeting. Chairperson Lemont replied yes, that is his intent.

COUNCILOR BEERS SAID HE WOULD AMEND HIS MOTION TO REFLECT THE REVISED LANGUAGE AND VICE-CHAIRPERSON DENAULT SECONDED THE AMENDED MOTION.

ROLL CALL VOTE WAS TAKEN AND VOTED SEVEN IN FAVOR, NONE OPPOSED. MOTION CARRIES.

g. (010118-8) The Kittery Town Council moves to schedule a public hearing to amend Title 2 Administration and Personnel – Lead Dispatcher, of the Kittery Town Code.

COUNCILOR THOMSON MOVED TO SCHEDULE A PUBLIC HEARING ON JANUARY 22ND TO AMEND TITLE 2, ADMINISTRATION AND PERSONNEL – LEAD DISPATCHER, OF THE KITTERY TOWN CODE SECONDED BY VICE-CHAIRPERSON DENAULT. ROLL CALL VOTE WAS TAKEN, AND VOTED SEVEN IN FAVOR, NONE OPPOSED, MOTION CARRIES.

h. (010118-9) The Kittery Town Council moves to sign a Release Deed, releasing tax liens to Robert Mason, for property located at 34 Stevenson Road, Kittery, Maine, identified as Assessor's Tax Map 29, Lot 27.

Chairperson Lemont asked for the Town Manager to comment.

Town Manager Amaral said that this issue was identified by Jan Fisk in the Assessing Dept. saying that the property was recently sold, and through the title search, it was discovered that past due taxes were not identified when the property was sold the last time. She said the lien needs to be released clearing the title and transferring the property.

Councilor Brock asked if the Town Attorney had reviewed this.

Town Manager Amaral replied that Atty. McEachern had reviewed this.

Vice-Chairperson Denault wanted to know if the town was waiving fees.

Town Manager Amaral answered all fees were included as well as the interest rate of 9%. She said they could not re-create the interest rates that far back, so they took the average over the last 15 years and applied 9%, which will be collected.

THERE WAS NO MOTION MADE OR SECONDED. ROLL CALL VOTE WAS TAKEN, AND VOTED SEVEN IN FAVOR, NONE OPPOSED, MOTION CARRIES.

i. (010118-10) The Kittery Town Council moves to create three library committees as recommended by the Town Manager.

Chairperson Lemont asked the Town Manager to comment.

Town Manager Amaral said as was suggested at the last meeting, she met with the Library Board of Directors to discuss some ideas moving the Library project forward in addition to the Library becoming a Town Department. She said this is an administrative proposal and is not coming from the Library Board of Directors, but she is suggesting three Committees be created.

Town Manager Amaral said the first committee would be to help negotiate the Library becoming a town department. She said this Committee would need to work out some issues, namely employee wages, and since the Library has assets, the Board would dissolve the 503c funds, and figure out what happens with those assets as well as figure out what happens to the KCC. She said they would have to come up with special language for the Board of Directors to become a Town Board.

Town Manager Amaral said she is seeking representatives from the Board of Directors and the Town Council and it would come before both the Board and Council for approval and would like to get the

work done by the start of the fiscal year. She said she has included a draft charge for Council's consideration.

Town Manager Amaral said the second committee is the Library Building Project Committee, which is like a standard building committee, which would be responsible for driving the project forward, developing a scope of services, and recommending an architectural and engineering team, and seeing through the construction.

Town Manager Amaral said since this committee has the most interest, she is proposing it be a larger committee which would include 3 Councilors, 3 Board of Directors and 3 citizens to be selected by the six members.

Town Manager Amaral said the third Committee is the Taylor Building Disposition Committee – but the Library Board of Directors is still considering this and has not yet approved this Committee. She said to have property in the Foreside for development, which is a focused area, they have to make sure they decide what the development of the Taylor Building will be rather than go with the highest bid. She said this Committee will go through the process, develop an RFP and evaluation criteria, review the proposals and recommend disposition of the property. The Committee would be comprised of Town Councilors, Board of Directors and staff. She said she included a draft charge for Council's review.

Town Manager Amaral said the Board of Directors has voted to support the Library Building Project Committee as well as the Negotiations/Transition group, but not the disposition of the Taylor Building. She said they would still need to meet on these suggestions and asked if there were any questions.

Councilor Thomson wanted to know if Council was expected to act on this item this evening.

Town Manager Amaral said if they would like to, but Council may want to come back to discuss these committees.

Councilor Thomson said for the Library Building Project Committee, he would like to have one fewer Town Councilor, one fewer Board member and increase the membership to five residents. He said it would be better to have more community members.

Chairperson Lemont asked if Council concurs with Councilor Thomson's recommendation.

Councilor Beers said he agrees with Councilor Thomson and the Town Manager. He would like to be a Town Council representative on the Negotiations/Transition working group.

Vice-Chairperson Denault said he would like to be involved on the Building Committee.

Councilor Brock said they are making good progress and there are important issues. He said he had a question about the status of the Taylor Building Disposition Committee since the Board of Directors are still considering the proposal. He said ideally, all three should be approved at the same time. He wanted to know if there is a timetable when the Library Board would be approving this committee. He asked what is the purpose of forming this committee if the Library Board of Directors has not bought into it yet. He said he would like to be on that Committee as well.

Town Manager Amaral said since former Town Councilor Judy Spiller is the one who drove this and had this focus, asked that she be involved in the working group and be considered going forward.

Chairperson Lemont said that Councilor Pelletier will have the first choice on whatever Committee he would like.

Chairperson Lemont asked if Council wanted to postpone this item.

Councilor Pelletier said, in response to the comment made by Councilor Brock, if the Board of Directors do not come back to us to resolve this issue of the Taylor Building Disposition, then he would love to be involved on the Library Building Project Committee.

Councilor Brock said that the mission of the Taylor Building Disposition Committee is to sell the property and would suggest language mean that it be sold, or may be another arrangement, but the language be broad enough to include or language be sufficiently broad to include the potential sale or other ways to utilize the property and we should not be pre-judging that.

Chairperson Lemont said they were not taking any action.

j. (010118-11) The Kittery Town Council moves to accept the letter of resignation from Niles Pinkham from the Board of Appeals.

COUNCILOR THOMSON MOVED TO ACCEPT THE LETTER OF RESIGNATION FROM NILES PINKHAM FROM THE BOARD OF APPEALS, WITH THANKS FOR HIS YEARS OF SERVICE, EFFECTIVE IMMEDIATELY, SECONDED BY COUNCILOR PELLETIER. ROLL CALL VOTE WAS TAKEN AND VOTED 7-0, SEVEN IN FAVOR, NONE OPPOSED, MOTION CARRIES.

14. COUNCILOR ISSUES OR COMMENTS

Councilor Thomson thanked the Public Works Dept. and safety personnel during the recent cold spell and the storm. He thought the workshop was very helpful with an informative overview of the Planning Board's approach to these issues. He said great suggestions were provided, remanding it back to the Planning Board.

Councilor Brock said he would like to add to what Councilor Thomson said, that e-mails back and forth from the Town Manager were responsive and that he appreciates the Public Works, Fire Dept. and Safety personnel.

Councilor Beers echoed what Councilors Thomson and Brock said regarding the Public Works and safety personnel during the last few weeks.

Vice-Chairperson Denault reported that the water is up to the windows of Warren's Lobster House and in the Spring, we should all go visit them to help them out.

Chairperson Lemont said he appreciated the Public Works Dept. and the safety personnel, who put in long hours as well as the Police Dept. and Fire Dept. and thanked the staff. He said he would like to reiterate what Councilor Brock said at the last meeting. He said the Economic Development Commission will be meeting the third Wednesday at 6 o'clock regarding the Business Park.

Councilor Beers said that the CIP Committee has met once and will meet this Wednesday afternoon. He said they expect to be complete for Council consideration at the February 12th meeting.

- 15. COMMITTEE AND OTHER REPORTS – none
 - a. Communications from the Chairperson
 - b. Committee Reports

- 16. EXECUTIVE SESSION – none

- 17. ADJOURNMENT

COUNCILOR THOMSON MOVED TO ADJOURN THE MEETING AT 8:00 P.M. COUNCILOR PELLETIER SECONDED THE MOTION. SEVEN IN FAVOR BY A UNANIMOUS VOICE VOTE. MOTION CARRIES. MEETING ADJOURNED.

Respectfully submitted,

Barbara Boggiano
Recording Secretary