



# TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1329 Fax: (207) 439-6806

June 25, 2018

Council Chambers

Kittery Town Council  
Regular Meeting  
6:00 p.m.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes – **Regular meeting-** May 30, 2018
8. Interviews for the Board of Appeals and Planning Board
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials.
  - a. (060318-1) The Kittery Town Council approves a resolution to recognize the Maine National Guard for their efforts and contributions to the restoration of Wood Island.
  - b. (060318-2) The Kittery Town Council moves to receive a presentation from Jen Thayer and approve her request for a "Little Free Library" to be placed at Inspiration Park.
10. PUBLIC HEARINGS
11. DISCUSSION
  - a. Discussion by members of the public (three minutes per person)
  - b. Response to public comment directed to a particular Councilor
  - c. Chairperson's response to public comments
12. UNFINISHED BUSINESS
  - a. (0603-18-3) The Kittery Town Council hereby ordains Title 15 – Code of Ethics of the Kittery Town Code, as presented.
13. NEW BUSINESS
  - a. Donations/gifts received for Council disposition.
  - b. The Kittery Town Council moves to approve the disbursement warrants.
14. COUNCILOR ISSUES OR COMMENTS
15. COMMITTEE AND OTHER REPORTS

16. EXECUTIVE SESSION

(060318-3) The Kittery Town Council moves to go into executive session in accordance with 1 M.R.S. § 405(6) (A) to discuss a personnel matter.

17. ADJOURNMENT

Posted: June 21, 2018



# TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

kamaral@kitteryme.org

## Town Manager's Report to the Town Council June 25, 2018

- 1. Hazardous Waste** – Councilor Denault requested information regarding the town's policy on household hazardous waste (HHW). The Department of Public Works recently updated their Materials Disposal flyer that indicates the types of household hazardous waste accepted at the RRF and the cost of disposal. Because these items cannot be placed in the normal waste stream, we have vendors that dispose of the hazardous items in the proper manner. We accept most all HHW, excepting pesticides. We are not able to find a vendor who will accept pesticides and dispose of them properly. HHW is collected during normal business hours for the RRF, year-round.
- 2. Seasonal Traffic** – I contacted Mr. Illian of MaineDOT about investigating lowering speed limits on certain roads as a deterrent to seasonal cut-through traffic. Mr. Illian was very helpful and spent a great deal of time speaking with me about the process, limitations, and challenges with the proposed plan. Specifically, to have a speed limit changed, MDOT would need to conduct a speed study, which could in fact result in an increase of speed limits based on the applicable engineering principals. He also explained that MDOT will not post a speed lower than 25mph unless the road is less than 14 feet wide with two-way traffic, is a dead-end street, or is geometrically unsafe to travel faster than 20mph. Finally, he noted that they are backed-up on speed study requests and that it would take some time for MDOT to be able to address Kittery's requests.

If the Council is still interested in pursuing the speed limit discussions, we can put forward those roads for speed study that we believe may be successful candidates for speed reduction.

In the meantime, I am researching technology-based solutions that we may be able to deploy for this coming season.

- 3. Aquaculture Proposal** – Mr. Gunnar Ek approached the Port Authority and the Council Chair about making a proposal to expand aquaculture opportunities in Kittery waters. His first stop will be a presentation to the Kittery Port Authority at their meeting on July 5<sup>th</sup>. The Council will receive a copy of his presentation early next week, and Council members are welcome to attend the KPA meeting to learn more.

Respectfully Submitted,

Kendra Amaral  
Town Manager



# TOWN OF KITTEERY RESOURCE RECOVERY FACILITY

## MATERIALS DISPOSAL FEE SCHEDULE

updated: April 2018 Thank you for your patience with our changes!

David Rich, Commissioner    Office: 439-0333, drich@kitteryme.org

Re-Use or Compostable Items			
Yard Waste - Leaves, Grass, garden waste		FREE	
			Freebie Barn Items: Books, Clothing, Toys
			FREE

Item Classification Description		Fee
Non-Recoverable Landfill, Misc. Materials		
1	Bags/Barrels - Mixed Materials	\$2.00 Each
2	Ashes, up to 10 Gallons Demo, Shingles, Drywall materials and/or treated or painted wood.	\$2.00 Total
3	Small Trailer or Pickup (4 x6)	\$45.00 Total
4	Large Trailer or Pickup, 1 Ton Truck (5 x 8)	\$60.00 Total

Non-Recoverable Landfill, Furnishings		
5	Mattress, Box Spring Sofa	\$10.00 Each
6	Sleeper/Sectional	\$15.00 Each
7	Stuffed Chair, Bureau, Table	\$5.00 Each
8	Recliner	\$10.00 Each
9	Wooden Chair	\$0.50 Each
10	Headboard/Footboard	\$1.00 Each
11	Carpet (4x6)	\$5.00 Each
12	Carpet (6x8)	\$8.00 Each
13	Carpet (8x10)	\$10.00 Each

Recoverable Materials		
14	Brush/Branches/Clean Wood to be Chipped/Burned Mixture of Ferrous Metals: Aluminum, Steel, Stainless; Non-Ferrous Metals: Copper, Brass and/or Gravel/Bricks/Blocks Free of Rubbish	\$10.00 CY
15	Less Than ½ Cubic Yard, Min. Charge	\$5.00 Total
16	½ Cubic Yards – 3 Cubic Yards	\$10.00 Total
17	3+ Cubic Yards – 6 Cubic Yards	\$10.00 Total
18	Christmas Trees	\$1.00 Each

Motor Oil & Antifreeze		
19	Gallon or Less	\$1.00 Gal

Tires		
20	Motorcycle, Bicycle, Etc. With or Without Rim	\$1.00 Each
21	Car/Pickup Tires 16 ½” or Less	\$3.00 Each
22	Car/Pickup Tires > 17”	\$4.00 Each
23	Car/Pickup Tires on Rims	\$6.00 Each
24	Construction/Heavy Truck	\$25.00 Each
25	Heavy Equip/Tractor Tires	\$60.00 Each

Item Classification Description		Fee
Paints, Solvents		
26	Gallon Container	\$3.00 Each
27	Quart or Less Container	\$1.00 Total

Propane Tanks		
28	20 lb (Gas Grill Size or Smaller)	\$2.00 Each
29	Over 20 lb	\$20.00 Each

Universal & Electronic Waste		
30	Monitors	\$5.00 Each
31	CPU’s (Desktops & Towers), Laptops, Household Electronics	\$2.00 Each
32	Copiers, Printers, Scanners & Fax Machines	\$5.00 Each
33	Floor Model Copier, Printer	\$25.00 Each
34	Keyboard, Mouse, Pair Computer Speakers	\$1.00 Each
35	TV – Up to 24”	\$10.00 Each
36	TV – 25” & Larger	\$15.00 Each
37	TV – Consoles & Cabinets	\$25.00 Each

Batteries		
38	Nickel, Lead Acid, Lithium, Vehicle Batteries	\$1.00 Each

White Goods		
39	Refrigerator, Freezer, Air Conditioner, Dehumidifier	\$15.00 Each
40	Stoves, Microwaves, Washers, Dryers, Dishwashers, Hot Water Tanks, Furnaces	\$5.00 Each

Lamp Ballast (Removed)		
41	PCB Ballast	\$3.00 Each
42	Non-PCB Ballast	\$1.00 Each

Fluorescent Lamps		
43	Straight Lamps, U-Tubes, Compact, Circlines	\$1.00 Each
44	HHD, HPS, LPS, Merc Vapor, Metal Halide	\$1.50 Each
45	Broken Lamps	\$2.00 Each
46	Shatter Shield Cover Guard	\$1.50 Each

**Kittery Town Council****Wednesday, May 30, 2018  
Regular Meeting – 6:00 p.m.  
Council Chambers**

1. Call to order: Chairperson Lemont called the meeting to order at 6:00 p.m.
2. Introductory: Chairperson Lemont read the introductory.
3. Pledge of Allegiance: Chairperson Lemont led those present in the Pledge of Allegiance.
4. Roll call: Answering the roll were Councilors Frank Dennett, Jeffrey Pelletier, Jeffrey Thomson, Matthew Brock, Vice-Chair Charles Denault and Chair Kenneth Lemont. Councilor Gary Beers was excused absent.
5. Agenda Amendment and Adoption: Chairperson Lemont asked if there were any amendments to the agenda and, seeing none, cast one vote to adopt the agenda as presented.
6. Town Manager's Report: Town Manager Amaral reminded everyone that the June 12<sup>th</sup> election will be held from 8 am – 8 pm at the Kittery Community Center and that absentee ballots are available. She said Voter Registration is ongoing. She said this year Rank Choice Voting will be taking place for the first time and a link has been provided on the town's website for more information.

Town Manager Amaral said that they have been discussing the Wind Turbine, which has not been operating for some time. She said it did not generate the energy that was expected. She said with the assistance of Julia O'Connell and Steve Bilski, who did a significant amount of research and spoke with a number of experts as well as people in the field. She said they looked at all possible options to dispose of the Wind Turbine and the report is included in Council's packets. She said she is looking for Council consensus to implement Option 1, as recommended, and that is to put out an RFP or Bids for sale of the surplus Wind Turbine as is.

Town Manager Amaral said she. She said the report concludes that the revenues received did not produce a sufficient amount of income to offset the cost savings.

Town Manager Amaral said the online permitting process is up and running and they can now submit applications to the Code Enforcement Officer through the town's website 24/7. She said the software allows someone to apply, see if the permit has been issued, track inspections to see if they have been completed and also see if a Certificate of Occupancy or Completion has been issued. She said people can login to see what is going on with the application process and they pay online.

Town Manager Amaral said she has included in Council's packet is quick screen shot to see where the permits are being pulled and staff can also run reports to see how long it takes step-by-step and to improve the process. She said also they need to learn how to use this tool more effectively. She said currently they do have sewer permits, but she hopes to bring other departments into the permitting process, i.e. Fire Dept., Parks & Rec., Harbormaster. She said she is looking forward to getting feedback from the community.

**Construction Update:**

Town Manager Amaral had a construction season update and asked Council if they remembered the Whipple Road project, which has been in the queue for years? She said Fairpoint has notified the

property owners within the project area of the utility easement needs, primarily for pole-guy wires and pole placements. She said the town will also need to grant an easement, which she will bring to Council in June. She said once this phase is completed, MDOT will seek a Right-of-Way easement and design will be concluded. She hoped that this project will be out to bid by 2019 with construction following.

Town Manager Amaral said they just got approval from the Regional Transportation Agency for an additional \$795,000 to complete the Walker/Wentworth project, from Walker and State Road to the Wentworth intersection and Wentworth to Whipple Road. She said the project includes sidewalks on both sides of Wentworth and parking on one side, as requested. She said this also includes a full upgrade of the Walker/Wentworth intersection that serves Gate 1 and is slated to begin in 2021.

Town Manager Amaral said MDOT has received bids for the crosswalk installation on Badger's Island. She said this project will provide safe, ADA-compliant 4-way crossing for pedestrians. She said there is a slight add-on and the town will be making additional sidewalk improvements that will provide a delineation of the sidewalk from the parking lot as it is unclear in some spots. She said this project is expected to be completed this season.

Town Manager Amaral said KACTS has recently approved the reallocation of \$464,000 to re-pave Government Street. She said DOT originally approved allocated funds for the final section of Rte. 103 connecting to York. She said after discussion with MDOT, they are swapping resources and will do an overlay on Route 103, which is already in the town's 5-year pavement management plan, rather than a broader reconstruction. She said the Government Street project will go out to bid this Fall.

Town Manager Amaral said the National Guard will be at Fort Foster on Friday while they finalize their work on the Wood Island project. She said they will be addressing the facility needs, perform construction and repair work and will be reconstructing the sea wall. She said they will be setting up camp behind the main bathrooms and they will not be impeding any entrance to the facilities. She said they will have their own list of things that are required, including low-noise generators for their electricity.

Town Manager Amaral said she is looking forward to them being at Fort Foster and they will be there through June. She said they are planning on offering tours and speaking to visitors as well as showing them their encampment while at Fort Foster.

Town Manager Amaral said that the Dept. of Public Works has been making adjustments to the recycling program. She said they are now requiring #1 PETE and #3-7 materials be sorted. She said she has spoken about this before, that China is making cuts in importation recyclables, and, as part of that sorting opportunity they can sell #3-7 to offset the costs. She said folks will see that there is a change in sorting that will help keep costs low.

Town Manager Amaral wished to announced a couple of positions and asked everyone to join her in congratulating staff:

- John Brosnihan, retired Police Sergeant will be starting June 7<sup>th</sup> as Harbor Master. She said he will be applying his Coast Guard experience and police training to assist the town and Port Authority in providing responsive service to the boating public and enforcing rules and regulations.
- Jeremy Paul will be the next Recreation Director and has been employed by the town for almost 20 years and has been successful in activating the KCC, managing the theater space and

helping grow the programs and opportunities offered by the department. She said he will bring his own vision and energy to the Rec. Dept. to bring it to the next level and into the future.

Town Manager Amaral thanked Mel Bates and John Navish of the VFW, Gary Hildreth of the USS New Mexico and Jerry Milroy and Dave Lincoln for putting up the flags on State Road. She said they went up before Memorial Day and will stay through Veteran's Day. She said between all three groups, they made sure the flags were installed and will help maintain the flags.

Town Manager Amaral summarized some important upcoming dates:

June 6<sup>th</sup> –Voter Registration

June 12<sup>th</sup> - Sarah Mildred Long Bridge grand reopening ceremony

June 13<sup>th</sup> – Janice Grady's Retirement Party – tickets are still on sale. See Suzanne Esposito for tickets

Chairperson Lemont asked if there were any questions of the Town Manager. Seeing none, he thanked the Town Manager for her report.

7. Acceptance of Previous Minutes:

April 23, 2018: Chairperson Lemont reviewed the minutes and asked for any corrections and a few were noted.

Chairperson Lemont cast one vote to place the minutes of April 23, 2018 on file as amended.

Special Meeting, May 7, 2018: Chairperson Lemont asked if there were any corrections to the May 7<sup>th</sup> minutes and a few were noted.

Chairperson Lemont cast one vote to place the minutes of May 7, 2018 on file 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.

(050318-1) The Kittery moves to recognize the recipients of the 2018 Educational Recycling Scholarships.

Vice-Chairperson Denault said that he will announce the candidates for the 2018 scholarships. Jeffery Brake was also present to hand out the Certificates.

Vice-Chairperson Denault said the Educational Recycling Scholarship Committee is composed of himself and Jeffrey Pelletier, Jeffery Brake, George Dow and Herbert Kingsbury and explained the process. He said all the applications are reviewed and the money they get is from the recycling of cans at the Kittery Resource Recovery Facility. He said they did not have that many applicants this year. He read the names of the recipients: Chelsea Hoyt, \$750 who is attending the University of New Hampshire for Equine Science; Emma Kemp, \$500, who is attending Smith College as an English Major, Spanish minor; Amy Leung, \$1,000 – Kaplan University, for Business Administration, Emily Jones, \$500, attending the University of New Hampshire for Biomedical Science; Rachel Potter, \$500 attending the University of New England for Nursing and Auden Barbour - \$500, who is attending Barnard College for Liberal Arts. Those who were presented received their Certificates.

Vice-Chairperson Denault said other recipients were Odyssey of the Mind for \$1,000 and End 68 Hours of Hunger in the amount of \$1,250. Pauli Rines and Kris Lynes were on hand to receive the Certificate from Mr. Brake. Ms. Lynes said since its inception in March of 2012, this program has helped over 400 children in Kittery and they have packed 16,027 bags.

Vice-Chairperson Denault said congratulated the scholarship recipients.

## 10. PUBLIC HEARINGS

a. (050318-2) The Kittery Town Council moves to hold a public hearing and hereby ordains the adoption of the recodification of the Kittery Town Code.

Chairperson Lemont opened the public hearing at 6:28 and asked if anyone wished to speak to, for or against this item. Seeing none, he closed the public hearing.

**COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN CODE BE RECODIFIED AND ADOPTED AS PUBLICLY HEARD AND RECEIVED BY THE KITTERY TOWN COUNCIL. VICE-CHAIRPERSON DENAULT SECONDED THE MOTION.**

Councilor Brock said he had a question for the Town Manager, through the Chair. He asked, for the record, could she clarify this proposal of the code is not intended to provide substantive changes, is that correct?

Town Manager Amaral replied correct, they are non-substantive changes, developed over the years, and put in a new format. She said this allows for on-going updates to not only our book, and the company will help us with that, but also online. She said there are no substantive changes.

Councilor Dennett asked the Town Manager if she had a correction to what was handed out to Council?

Town Manager Amaral said that Councilor Dennett identified an issue on line 148 of the ordinance which says it takes effect after adoption by the Town Council. She said as per the Town Charter, it would take effect 30 days after adoption, so strike from "upon" to the end of the line so that it reads "This ordinance takes effect 30 days after adoption, pursuant to the Town Charter, Sec.2.14, Ordinances in General."

Councilor Dennett asked now that there is clarification, is there agreement by the mover and second to include this change? Both Councilor Thomson and Vice-Chairperson Denault replied yes.

**ROLL CALL VOTE WAS TAKEN WITH SIX VOTING IN FAVOR, NONE OPPOSED, MOTION CARRIES.**

b. (050318-3) The Kittery Town Council moves to hold a public hearing on the application from Bapashree of New England, Inc., 169 State Road, Kittery, Maine for a Victualers' License for the 7'Eleven at 169 State Road, Kittery, Maine.

Chairperson Lemont said the Code Enforcement Officer has conducted an inspection of the establishment and it was found to be in compliance with the Kittery Town Code.

Chairperson Lemont opened the public hearing at 6:31 p.m. and asked if anyone wished to speak to, for or against the application. Seeing none, he closed the public hearing.



204 **COUNCILOR THOMSON MOVED THE TOWN COUNCIL APPROVED THE APPLICATION FROM**  
205 **BAPASHREE OF NEW ENGLAND, INC., 169 STATE ROAD, KITTERY, MAINE FOR A**  
206 **VICTUALER'S LICENSE FOR THE 7 ELEVEN, 169 STATE ROAD, KITTERY. COUNCILOR**  
207 **PELLETIER SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN WITH SIX VOTING IN**  
208 **FAVOR, NONE OPPOSED, MOTION CARRIES.**  
209

210 c. (050318-4) The Kittery Town Council moves to hold a public hearing on the application from  
211 Thai & I Corporation, 20 Hillside Ave., Boylston, MA for a Victualers' License for Thai & I Restaurant,  
212 340 U.S. Route 1.  
213

214 Chairperson Lemont said the Code Enforcement Officer has conducted an inspection of the  
215 establishment and it was found to be in compliance with the Kittery Town Code.  
216

217 Chairperson Lemont opened the public hearing at 6:33 p.m. and asked if anyone wished to speak to,  
218 for or against the application.  
219

220 Achara Weydt, owner of the Thai & I Restaurant thanked the Town Council for the opportunity to open  
221 their restaurant, which is the first one in Maine, and they are working hard to open in time for the  
222 summer so they will be able to serve authentic Thai food to the community.  
223

224 Chairperson Lemont said he appreciated Ms. Weydt introducing herself and for her comments. He  
225 closed the public hearing.  
226

227 **VICE-CHAIRPERSON DENAULT MOVED THE KITTERY TOWN COUNCIL APPROVE THE**  
228 **APPLICATION FROM THAI & I CORPORATION, 20 HILLSIDE AVENUE, BOYLSTON, MA FOR A**  
229 **VICTUALERS LICENSE FOR THAI & I RESTAURANT, 340 U.S. ROUTE ONE, KITTERY.**  
230 **COUNCILOR PELLETIER SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN WITH SIX**  
231 **VOTING IN FAVOR, NONE OPPOSED, MOTION CARRIES.**  
232

233 d. (050318-5) The Kittery Town Council moves to hold a public hearing on the application from  
234 Thai & I Corporation, 20 Hillside Ave., Boylston, MA for a Malt and Vinous Liquor License for Thai & I  
235 Restaurant, 340 U.S. Route 1.  
236

237 Chairperson Lemont said the Code Enforcement Officer has conducted an inspection of the  
238 establishment and it was found to be in compliance with the Kittery Town Code.  
239

240 Chairperson Lemont opened the public hearing at 6:35 p.m. and asked if anyone wished to speak to,  
241 for or against the application.  
242

243 Ms. Weydt said they will have good authentic Thai food and good old beer and wine.  
244

245 Chairperson Lemont thanked her and said it was an excellent way for Ms. Weydt to advertise her  
246 business. He closed the public hearing.  
247

248 **COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN CONCIL APPROVE THE**  
249 **APPLICATION FROM THAI & I CORPORATION, 20 HILLSIDE AVE., BOYLSTON, MA FOR A MALT**  
250 **AND VINOUS LIQUOR LICENSE FOR THAI & I RESTAURANT, 340 U.S. ROUTE ONE, KITTERY.**  
251 **VICE-CHAIRPERSON DENAULT SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN**  
252 **WITH SIX IN FAVOR, NONE OPPOSED, MOTION CARRIES.**  
253

e. (050318-6) The Kittery Town Council moves to hold a public hearing on the application from Suzanne's Village Café + Bistro LLC, 373 Southside Road, York, Maine for a Special Activity Amusement Permit for Misto! At 436 U.S. Route 1.

Chairperson Lemont said the Code Enforcement Officer has conducted an inspection of the establishment and it was found to be in compliance with the Kittery Town Code.

Chairperson Lemont opened the public hearing at 6:36 p.m. and asked if anyone wished to speak to, for or against the application. Seeing none, he closed the public hearing.

**COUNCILOR THOMSON MOVED THE KITTERY TOWN COUNCIL APPROVE THE APPLICATION FROM SUZANNE'S VILLAGE CAFÉ + BISTRO LLC, 373 SOUTHSIDE ROAD, YORK FOR A SPECIAL ACTIVITY AMUSEMENT PERMIT FOR MISTO! 436 U.S. ROUTE ONE, KITTERY. VICE-CHAIRPERSON DENAULT SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN WITH SIX VOTING IN FAVOR, NONE OPPOSED, MOTION CARRIES.**

f. (050318-7) The Kittery Town Council moves to hold a public hearing on the application from Maine Ocean Lobster, LLC, PO Box 904, Kittery, Maine, for a Special Activity Amusement Permit for The Pointe at 31 Badgers Island West.

Chairperson Lemont said the Code Enforcement Officer has conducted an inspection of the establishment and it was found to be in compliance with the Kittery Town Code.

Chairperson Lemont opened the public hearing at 6:37 p.m. and asked if anyone wished to speak to, for or against the application. Seeing none, he closed the public hearing.

**COUNCILOR THOMSON MOVED THE KITTERY TOWN COUNCIL APPROVE THE APPLICATION FROM MAINE OCEAN LOBSTER, LLC, P.O. BOX 904, KITTERY FOR A SPECIAL ACTIVITY AMUSEMENT PERMIT FOR THE POINTE, 31 BADGERS ISLAND WEST. VICE-CHAIRPERSON DENAULT SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN WITH SIX VOTING IN FAVOR, NONE OPPOSED, MOTION CARRIES.**

g. (050318-8) The Kittery Town Council moves to hold a public hearing on an application from Capital Video Corporation, 44 Bedson Road, Cranston, RI for a Viewing Booth License for Amazing.Net at 92 Route 236.

Chairperson Lemont said the Code Enforcement Officer has conducted an inspection of the establishment and it was found to be in compliance with the Kittery Town Code.

Chairperson Lemont opened the public hearing at 6:38 p.m. and asked if anyone wished to speak to, for or against the application. Seeing none, he closed the public hearing.

**COUNCILOR PELLETIER MOVED THE KITTERY TOWN COUNCIL APPROVE THE APPLICATION FROM CAPITAL VIDEO CORPORATION, 44 BEDSON ROAD, CRANSTON, RI FOR A VIEWING BOOTH LICENSE FOR AMAZING.NET, 92 ROUTE 236, SECONDED BY COUNCILOR DENNETT.**

Vice-Chairperson Denault said that he has been opposed to facing this before and is still really bothered by it; however, after speaking with the Town Manager, and based on the fact that Capital Video Corp. has paid the previous fines against the establishment and on the way the ordinance reads, he has no choice but to support it. He said he hopes that the Police Dept. is still checking on this business as required but he is still adamant that the ordinance should be changed.

**ROLL CALL VOTE WAS TAKEN WITH SIX VOTING IN FAVOR, NONE OPPOSED, MOTION CARRIES.**

**11. DISCUSSION**

**a. Discussion by members of the public**

Judy Spiller, 3 Rosellen Drive, Kittery Point, said she has a concern and a suggestion, both involving the National Guard at Fort Foster. She said she understands that they will be fully armed while deployed there. She said people are familiar with the area and it is a small area. She said the area is used before dawn until after dusk and people go in and out. She did not think that any one is aware that they will be armed, you are. She said she cannot see any reason why the National Guard would need to be armed at Fort Foster.

Ms. Spiller said her suggestion is, during some of their down time, they could use help rebuilding some of the trails along the ocean. She wanted to know, as part of their outreach program, when they are involved in their regular duties, if the Town Manager could ask if they would be willing to do that.

Chairperson Lemont said to answer your response, the Town Manager has reached out to the National Guard regarding this issue and he asked her to share her comments.

Town Manager Amaral said they are not going be fully armed. She said some members of the National Guard are also law enforcement personnel who will be armed as a matter of course but they will not be fully armed as a military installation would be armed.

Chairperson Lemont asked the Town Manager if she could follow up with the National Guard, in the scope of their tasks, would they look at the trails if they are so inclined?

Town Manager Amaral said yes.

Chairperson Lemont asked if there was any other discussion?

Councilor Brock wanted to know, through the Chair, before they enlist any significant money or town resources are put into that, maybe they should take a look and ask should we be rebuilding the trail as it was or is there a better engineering or technical way to do that because we will be getting more storms.

Councilor Brock said he appreciates the suggestion but they should have a plan on what to do out there. He said they could do a temporary dressing for the summer but a long-term strategy is required.

Chairperson Lemont asked Councilor Brock if he would want the Town Manager to investigate that.

Councilor Brock replied that he would, yes, if she could put it on her small "to-do" list.

Chairperson Lemont asked if Council was comfortable with that and there was a Council consensus. Council agreed.

Councilor Thomson said, as a point of clarification, through the Chair, that the Town Manager mentioned some of the National Guard are also law enforcement officers. He wanted to know, when they are here, are they law enforcement officers or are they members of the National Guard?

Town Manager Amaral responded they are serving as members of the National Guard but as she understands it, they do carry fire arms. She said the Police Chief has been notified that they are still carrying fire arms and the Police Dept. is aware of that.

Councilor Thomson asked if some of them do not need weapons, why do some of them do? He said he did not mean to put the Town Manager on the spot, he is just trying to understand this.

Town Manager Amaral replied she never wants to answer a Councilor in a deflative manner, but she has been advised by the National Guard that they do not want to see a broadcast discussion of their safety protocols and how they intend to maintain safety in their camp. She said she feels uncomfortable getting into a discussion about that.

Councilor Thomson retorted it is not "their camp," it is the Town's property.

Councilor Pelletier assumed that there is a military police element to this and they are required to carry fire arms to facilitate their duties. He said he is not particularly worried they are carrying fire arms. He said there are people working at the Ship Yard who carry fire arms and he does not think it will be an issue. He said he appreciated the discussion.

Chairperson Lemont asked if there was any further discussion? Seeing none, he said they have no unfinished business tonight.

### 13. NEW BUSINESS

a. Donations/gifts received for Council disposition – none

b. (050318-9) The Kittery Town Council moves to approve the disbursement warrants.

Chairperson Lemont asked Councilor Denault if the Town and Sewer payable were in due form?

Vice-Chair Denault responded yes, they are.

Chairperson Lemont asked Councilor Pelletier if the School Payable was in due form?

Councilor Pelletier replied yes, it is.

Chairperson Lemont read the amounts of the disbursement warrants: Town - \$184,658.38; Sewer = \$1,343.93 and School = \$131,813.18.

**COUNCILOR THOMSON MOVED THAT THE DISBURSEMENT WARRANTS SHOULD BE PAID AS PRESENTED, SECONDED BY VICE-CHAIR DENAULT. ALL WERE IN FAVOR BY A VOICE VOTE, 6-0, MOTION CARRIES.**

c. (050318-10) The Kittery Town Council hereby ordains amendments to Title 13.04 – Taxpayer Relief Program.

Chairperson Lemont said what they have before them this evening reflects the changes made in April to the original amendments.

Councilor Brock asked if the version that they now have is the same version they had for the public hearing?

Chairperson Lemont replied yes.

Councilor Dennett said before they go further, he said the agenda states Title 13.04, which should be changed to 13.4.

Chairperson Lemont thanked Councilor Dennett. He asked if they need an official action to move and second or deny the action?

Councilor Thomson asked what happened after the public hearing? He wanted to know wasn't it moved and seconded that night?

Chairperson Lemont replied no, but it should have been.

Town Manager Amaral said that what was on the agenda simply read "moves to hold a public hearing" and did not state "hereby ordains the changes" and that is why it is shown without the public hearing.

**VICE-CHAIRPERSON DENAULT MOVED THAT THE KITTERY TOWN COUNCIL HEREBY ORDAINS AMENDMENTS TO TITLE 13.4 – TAXPAYER RELIEF PROGRAM AS PRESENTED, SECONDED BY COUNCILOR THOMSON.**

Councilor Thomson said to gain a better understanding, he wanted to know why the asset test is part of the process and will not be included in the ordinance.

Chairperson Lemont replied it is better served in front of us as during a public hearing. He said the asset test is a Draconian change and is certainly not immune to taking another look at it one year from now to see how the process worked.

Councilor Thomson said he understood the process.

Councilor Dennett said he finds having the means test included here almost essential. He said there is a test for age which helps people pay their taxes or rent, aged 70 or over and they have a homestead in Kittery. He said the way it reads now the means test is only for income.

Councilor Dennett asked, through the Chair, if the Town Manager could give us information on the Federal Poverty level figures on income?

Chairperson Lemont asked Councilor Dennett if he first wanted to address the asset test?

Councilor Dennett responded someone can be cash poor and property rich and the only thing they are considering is income, then "John Doe" can have a half-million-dollar property and only be making \$15,000 but he doesn't want to sell the property.

**COUNCILOR DENNETT MOVED TO AMEND THE MOTION THAT, ONE OF THE CRITERIA UNDER SEC. 13.4.3.2 READS THAT THE APPLICANT HAS ASSETS, EXCLUDING THE HOMESTEAD, OF NO MORE THAN \$40,000 FOR SINGLE AND NO MORE THAN \$50,000 FOR MARRIED. COUNCILOR THOMSON SECONDED THE MOTION FOR DISCUSSION.**

Vice-Chairperson Denault asked Chairperson Lemont if he had any experience, while he was on the Legislature, in applying an asset formula to these types of programs that are popping up all over Maine with relative success?

Chairperson Lemont thanked Vice-Chair Denault and said he would like to talk about this. He said he was approached by the Chair of the Town Council, Ann Grinnell to see if something could be done about property taxes on a local level. He said she was impressed with the Circuit Breaker program that benefited taxpayers all over Maine He said there was an enabling State Statute that allowed him to do that, but the Kittery Town Council chose not to do this. He said a few years later, the Legislature passed the Homestead Exemption. He said there was a great deal of debate on how to put value on an asset and they through their hands up and said "we can't debate this". He said the Homestead Exemption does not have an asset test. He said it is modeled after other communities and he is very satisfied with the program and how it works.

Chairperson Lemont said it is disingenuous to say someone has a "half-million-dollar property" but if the couple's assets are set at \$50,000, they are disqualified.

Chairperson Lemont said if someone bought a vehicle, a '63 Corvette for \$1500 and kept it for years. He said now he wants to turn it over to the kids and the car has to be worth \$80,000, but the maximum is \$50,000 so he is disqualified. He said there are a lot of ways to look at this and they struggled on what the asset limit was and how do they find out? He said if they have only allocated \$50,000 for this. He said it benefits long-term Kittery residents. He said he can't imagine someone moving into town in the last 8 years and buying a half-million-dollar house who doesn't have the income.

Chairperson Lemont said he is very comfortable with this program and, once again, this is a small way to reward the many citizens of this community who have paid their taxes for years and years. He said it was his idea but the Town Manager deserves the credit because she did all the work. He said she reached out to MMA and talked with Legislative leaders. He said he thought they have come a long way and the program is well vetted. He said he would like to move forward with the three requirements within this program. He said he would certainly like this Town Council, or whatever Town Council, go forward and take a look at this again to see how well it worked.

Councilor Dennett said he believes that our good neighbors to the south in Massachusetts have the means test and asked if the Town Manager if she could clarify?

Chairperson Lemont replied he does not know if they want the Town Manager to debate this. He said based on his own experience on the Town Council, and while serving on the Legislature, he is not crazy about anything Massachusetts does. He said he is not sure how the Town would administer this. He said this is about a program within our community in our borders and he doesn't want to go there, but if Councilor Dennett wants to talk about it, he believes their asset test is \$250,000, not \$50,000.

Councilor Dennett said, inasmuch as this is it would allow him to get more information. He wanted to know, through the Chair to the Town Manager, since this is based on a percentage of the Federal poverty level, if she has any figures?

Chairperson Lemont thanked Councilor Dennett and said that was an appropriate question.

Town Manager Amaral replied the 2018 individual figure is \$12,140 and Two-person/family is \$16,460 but based on the way the ordinance reads, people can qualify if they make up to 300% of the Federal Poverty level which is \$36,420 annually for an individual and \$49,380 for a family of two.

Councilor Dennett asked what was the figure for two people?

Town Manager Amaral replied \$49,380.

Councilor Dennett wanted to know, in short, if a family of two, as he understands correctly, with an income under \$49,380 would be eligible for this program?

Town Manager Amaral responded yes, providing they are 70 years old or over and have been residents in the Town for 10 years or more.

Chairperson Lemont acknowledged Councilor Dennett had another comment.

Councilor Dennett addressed Chairperson Lemont and said while he appreciated the eloquence in which he presented his basis, he still has to disagree. He said just fears there are far too many cases where people are beating the system. He said he has to stick with his original intent to add a means test, but if someone wants to make the levels higher, he is willing to entertain higher figures but to allow this to go on without another means test, as far as other assets are concerned, is not correct in his mind.

Councilor Dennett said that Chairperson Lemont's story about the Corvette reminds him about a man who owned a Rolls Royce, Silver Shadow, valued at \$185,000 but he was not going to give it up for anybody because he did not want to pay his taxes out of his income, which was low.

Councilor Brock said he wanted to have a better understanding of how this will operate as proposed. He said in the first year, let's assume an individual qualifies, but during the course of the year, he inherits money or something and wanted to know if the income is reviewed on an annual basis, or is it once you are in, you are in? He asked how it work?

Chairperson Lemont replied it is reviewed annually and they would have to apply every year.

Councilor Brock said okay, but he had a separate comment about the means test. He said if they have to apply on an annual basis, then the Town Council reserves the right to amend the ordinance if we determine it is being misused. He said he would rather start with the more-inclusive approach that the Chair is offering. He said with the implementation of a "means test" he believes the Town Manager and staff could be tied up significantly trying to value various assets different people have. He said he would like to see how the program plays out and if problems are brought to their attention, they can address them at that time.

Vice-Chairperson Denault moved the question.

Councilor Pelletier asked Chairperson for a chance to discuss this a little more?

Chairperson Lemont acknowledged Councilor Pelletier.

Councilor Pelletier said he appreciated Councilor Dennett's questions around the means test. He said Councilor Brock took a little bit of his thunder. He wanted to know, from an administrative perspective, how would they determine what someone's assets were? He said certainly they would take a look at their income tax returns, but it only tells you so much. He said while the means test philosophically makes sense, he thought administratively, it would be quite difficult to determine what their means are. He said he was curious about the figures he used, \$40,000 for single and \$50,000 for married, and asked Councilor Dennett what was he basing that on?

Councilor Dennett replied that it was based on his discussions with someone in town government.

Councilor Pelletier said okay, but he will not support the amendment. He thought that if the Town Manager reviews the applications and tax returns they could deal with that on an annual basis, but otherwise it would be administratively impossible. He said he will support the main motion.

**ROLL CALL VOTE WAS TAKEN ON THE AMENDMENT TO THE MOTION AND VOTED 1-5 (COUNCILOR BROCK, COUNCILOR PELLETIER, COUNCILOR THOMSON, VICE-CHAIRPERSON DENAULT AND CHAIRPERSON LEMONT VOTED IN OPPOSITION). MOTION FAILS.**

Chairperson Lemont said once again, he brought up Chairperson Grinnell's name because she deserves the credit, bringing the Circuit Breaker program to the local level. He said he cared about this and thought about it ever since she brought that forward. He said this is a huge way to say thank you to our long-term residents of Kittery, all over the age of 50 and on a fixed income.

**ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION WITH SIX IN FAVOR, NONE OPPOSED. MOTION CARRIES.**

d. (050318-11) The Kittery Town Council moves to approve the policy of Collection of Unpaid Property Taxes.

**COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN COUNCIL APPROVE THE POLICY FOR COLLECTION OF UNPAID TAXES AS PRESENTED TO US, SECONDED BY VICE-CHAIRPERSON DENAULT.**

Chairperson Lemont asked if there was any discussion?

Councilor Dennett said he would like to try again. He said one of the provisions of this policy for collection of taxes indicates delinquent taxes of \$20 or less will be written off in the current year and not pursued for collection. He said Downeasters are pretty smart people sometimes and if he knew he was about to get his tax bill, he will make a fast \$20 and discount the bill \$20 and pay it accordingly and put the money in his pocket.

Councilor Dennett said there was a situation in Kittery many years ago – an emporium called Kittery TV & Electric. He said it was pretty big in appliances and the owner decided he was going to be king of the food freezer market. He said this owner had a deal, in order to sell freezers, that people could buy the freezer with free food and all was good and wonderful. He said they were selling freezers like crazy but 120 days later, when the first bills came due, and most of the freezers were financed, repossession started. He said people did not want the freezer because there was no food. He said they kept the food for their own consumption and the owner had to repossess the freezers. He said this is a true story, by the way.

Councilor Dennett did not think it was a good idea to write off \$20 or less and would make a motion to amend.

**COUNCILOR DENNETT MOVED TO AMEND THE POLICY OF COLLECTION OF UNPAID PROPERTY TAXES, IN PARTICULAR LINE ITEM 28 FROM \$20 TO \$5 OR LESS WILL BE WRITTEN OFF, SECONDED BY VICE-CHAIRPERSON DENAULT.**

Councilor Thomson asked, through the Chair to the Town Manager could Council hear from the proposer of the policy why the \$20 amount was chosen and wanted to know if there is a financial, logistical rationale for it?



Town Manager Amaral said they reviewed the over and under payments of folks' real estate tax bills for the last couple of years and found that the average was \$2.50, but some were in the range of \$17 and a few were up to \$18. She said these amounts get charged interest and, based on the policy, we would put a lien and foreclose on. She said it just seems process-wise appropriate that we could write off up to \$20 so we are not going through the process of a liening and foreclosing on properties that may have had a transposing error and the interest accumulated over time and the taxpayer was unaware.

Town Manager Amaral said it is her understanding that the Finance Director and Manager had written these off as past practice as a matter of course and not in the policy. She said she is a process person and she put it in the policy to make it a more consistent application and agreed upon policy.

Chairperson Lemont asked if everyone understood the amendment, that the amount is being changed from \$20 to \$5?

**ROLL CALL VOTE WAS TAKEN ON THE AMENDMENT AND VOTED 1-5 (COUNCILOR PELLETIER, COUNCILOR THOMSON, COUNCILOR BROCK, VICE-CHAIRPERSON DENAULT AND CHAIRPERSON LEMONT VOTED IN OPPOSITION). MOTION FAILS.**

Chairperson Lemont asked if there was any discussion on the main motion? Hearing none, he asked for a roll call.

**ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION, 6-0, SIX IN FAVOR, NONE OPPOSED, MOTION CARRIES.**

Chairperson Lemont thanked the Town Manager for all her work that he did on this policy.

e. (050318-12) The Kittery Town Council moves to approve the renewal application from Suzanne's Village Café and Bistro LLC, for a Malt, Spirituous and Vinous Liquor License for Misto!, 436 U.S. Route 1.

Chairperson Lemont said the Code Enforcement Officer has conducted the inspection and found the establishment to be in compliance with Town Code.

**COUNCILOR THOMSON MOVED THAT THE TOWN COUNCIL APPROVE THE RENEWAL APPLICATION FROM SUZANNE'S VILLAGE CAFÉ AND BISTRO LLC FOR A MALT SPIRITUOUS AND VINOUS LIQUOR LICENSE FOR MISTO!, 436 U.S. ROUTE ONE. COUNCILOR PELLETIER SECONDED THE MOTION.**

**ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0. MOTION CARRIES.**

f. (050318-13) The Kittery Town Council moves to approve the annual renewal list for Victualers Licenses.

**VICE-CHAIRPERSON DENAULT MOVED THAT THE TOWN COUNCIL APPROVE THE ANNUAL RENEWAL LIST FOR VICTUALERS LICENSES AS PRESENTED, SECONDED BY COUNCILOR PELLETIER. ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0. MOTION CARRIES.**

g. (050318-14) The Kittery Town Council moves to approve the annual renewal list for Amusement Device Licenses.

661 **COUNCILOR PELLETIER MOVED THAT THE KITTERY TOWN COUNCIL APPROVE THE ANNUAL**  
662 **RENEWAL LIST FOR AMUSEMENT DEVICE LICENSES AS PRESENTED, SECONDED BY VICE-**  
663 **CHAIRPERSON DENAULT. ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0.**  
664 **MOTION CARRIES.**

665  
666 h. (050318-15) The Kittery Town Council moves to authorize the Shapleigh 6<sup>th</sup> Grade Odyssey  
667 of the Mind students to collect donations at the Kittery Resource Recovery Center on June 9<sup>th</sup> from 9:00  
668 a.m. to 2:00 p.m. to raise money to attend the World finals at the University of Iowa.

669  
670 **COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN COUNCIL AUTHORIZE THE**  
671 **SHAPLEIGH 6<sup>TH</sup> GRADE ODYSSEY OF THE MIND STUDENTS TO COLLECT DONATIONS AT THE**  
672 **KITTERY RESOURCE RECOVERY CENTER ON JUNE 9<sup>TH</sup> FROM 9:00 A.M. TO 2:00 P.M. TO**  
673 **RAISE MONEY TO ATTEND THE WORLD FINALS AT THE UNIVERSITY OF IOWA. COUNCILOR**  
674 **PELLEITER SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN**  
675 **FAVOR, 6-0, MOTION PASSES.**

676  
677 i. (050318-16) The Kittery Town Council moves to approve a request from the Kittery Block  
678 Party Committee to place banners at the following locations: Each building location for the Rice Public  
679 Library, Bob's Clam Hut, York Hospital in Kittery, Kittery Trading Post, Kennebunk Savings and Lil's  
680 Café. The banners will be hung from June 1<sup>st</sup> to June 18<sup>th</sup>, 2018 and to post directional signs at various  
681 locations around town to help direct traffic.

682  
683 **COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN COUNCIL APPROVE THE REQUEST**  
684 **FROM THE KITTERY BLOCK PARTY COMMITTEE TO PLACE BANNERS AT THE FOLLOWING**  
685 **LOCATIONS: EACH BUILDING FOR THE RICE PUBLIC LIBRARY, BOB'S CLAM HUT, YORK**  
686 **HOSPITAL IN KITTERY, KITTERY TRADING POST, KENNEBUNK SAVINGS AND LIL'S CAFÉ, TO**  
687 **BE HUNG FROM JUNE 1<sup>ST</sup> TO JUNE 18<sup>TH</sup> AND TO POST DIRECTIONAL SIGNS AT VARIOUS**  
688 **LOCATIONS AROUND TOWN TO HELP DIRECT TRAFFIC. VICE-CHAIRPERSON DENAULT**  
689 **SECONDED THE MOTION.**

690  
691 Councilor Thomson said this was brought up two weeks' ago and asked if this was again a banner for  
692 the town. Town Manager Amaral replied yes.

693  
694 **ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0, MOTION CARRIES.**

695  
696 j. (050318-17) The Kittery Town Council moves to appoint a representative to meet with the  
697 Chair of the KCC Board of Directors to interview Michael Downs for his re-appointment to that board  
698 until 12/31/21.

699 **COUNCILOR THOMSON MOVED THAT THE KITTERY TOWN COUNCIL RE-APPOINT MICHAEL**  
700 **DOWNS TO THE KCC BOARD OF DIRECTORS TO THAT BOARD UNTIL 12/31/21 WITHOUT THE**  
701 **BENEFIT OF AN INTERVIEW. VICE-CHAIRPERSON DENAULT SECONDED THE MOTION. ROLL**  
702 **CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0. MOTION CARRIES.**

703  
704 k. (050318-18) The Kittery Town Council moves to schedule a public hearing and Amend  
705 Appendix A – Sewer Service Rates on June 11, 2018.

706  
707 **COUNCILOR THOMSON MOVED THE KITTERY TOWN COUNCIL SCHEDULE A PUBLIC**  
708 **HEARING FOR JUNE 11<sup>TH</sup> AS REQUESTED, SECONDED BY COUNCILOR PELETIER. ROLL**  
709 **CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR 6-0. MOTION CARRIES.**

I. (050318-19) The Kittery Town Council moves to schedule a public hearing and hereby ordains an amendment to Title 13 – Rates and Charges on June 11, 2018.

**COUNCILOR THOMSON MOVED THE KITTERY TOWN COUNCIL SCHEDULE A PUBLIC HEARING FOR JUNE 11<sup>TH</sup> AS REQUESTED AND HEREBY ORDAINS AN AMENDMENT TO TITLE 13, RATES AND CHARGES. COUNCILOR PELLETIER SECONDED THE MOTION. ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0. MOTION CARRIES.**

#### 14. COUNCILOR ISSUES OR COMMENTS

Chairperson Lemont asked if any Councilors had any comments this evening?

Councilor Thomson said there have been agenda requests for signage from various individuals and the Fire Dept. has placed signs advertising their “Ham and Bean Suppers” or “Road Race” in various locations in town.

Councilor Thomson showed everyone a “NOW HIRING” sign from Crate & Barrell. He said he does not want to see the Town of Kittery be a giant “WANT AD” space. He said we all have seen the “Mattress Sale” signs and in the Spring, the ever popular, and oh-so-holy Helicopter Egg Drop and he is looking for clarification.

Councilor Thomson wanted to know why do these signs appear, and does anyone know that they are happening? He said we have a sign ordinance and he would like to see it followed.

Vice-Chairperson Denault said Councilor Thomson beat me, he was going to have show and tell but he did not want to bring in all the poop bags he saw lying in the roads at Fort Foster. He said it doesn’t seem to stop. He said if you see people picking up the poop bags, thank them but if you see someone leaving a poop bag, say something or get their plate number. He said sooner or later this will come to a head and these people are ruining it.

Vice-Chairperson Denault said he would like to acknowledge those who have passed away recently and gave a brief synopsis of their life: John McArdle; Marian Clough; Milton Hall; Robert Tobey; Dr. Henry Altenberg; Caleb Revak; John Rick Emery; Karen Slaughenhoup (Jankauskas) Judy Neal; Barbara Mae Tapley and Daniele Weyand.

Vice-Chairperson Denault expressed the sentiment of the Council and said they are saddened by their loss.

Chairperson Lemont wanted to know if Councilor Denault was going to mention the Town employee who went above and beyond the call of duty. He said they both saw her but he did not want to steal Councilor Denault’s thunder.

Vice-Chairperson Denault said that he and Chairperson Lemont saw something the other day. He said this customer had to go back and forth several times and left his briefcase. He said the clerk got up and chased the guy down as he was leaving the parking lot. He said we hear so many sad, bad and picayune things about town employees and this was exceptional. He said she went above and beyond her call of duty and was outstanding.

Councilor Brock said the Inclusionary Housing Committee continues to meet. He wanted to express thanks to the Seacoast Work Force Housing Coalition in Portsmouth. He said they have agreed to

761 provide us with technical and expert support. He said there will be a Charette public discussion to talk  
762 about housing options, probably in October. He thanked the Chair and thanked them.

763  
764 Chairperson Lemont asked if Councilor Pelletier had anything and he said he did not.

765  
766 Councilor Dennett wanted to only say that he has fought the good fight and has lost the battle, but he  
767 shall go home tonight and lick his wounds and come back another evening to fight.

768  
769 Chairperson Lemont said he did not know how to respond to Councilor Dennett, but he thanked him.

770  
771 Chairperson Lemont asked if there were any other comments?

772  
773 Town Manager Amaral said she is seeking Council consensus on the Wind turbine.

774  
775 Chairperson Lemont asked if she had a consensus. Councilors Pelletier, Thomson and Brock agreed  
776 as well as Vice-Chairperson Denault.

777  
778 Councilor Dennett had a question. He said this is a new subject and he feels rejuvenated now. He  
779 said he does not understand what the Town Manager is seeking and it seems to be double edged. He  
780 asked his only question is this a request for bids or RFP or is it both? He said the way it reads it is  
781 both.

782  
783 Town Manager Amaral said they would probably do an RFP.

784  
785 Councilor Dennett said he agrees with option 1A.

786  
787 Chairperson Lemont asked if Councilor Dennett agreed to option 1?

788  
789 Councilor Dennett replied 1A, option 1 is for both A and B. He said he is in favor of option 1-A.

790  
791 Vice-Chairperson Denault asked the Town Manager for the name of the clerk who sits at the first desk  
792 as you go in.

793  
794 Town Manager Amaral replied Jillian.

795  
796 15. COMMITTEES AND OTHER REPORTS

797  
798 Chairperson Lemont asked if there were any Committee reports this evening?

799  
800 Councilor Brock asked if he could go back to the Wind Turbine? He thanked Julia O'Connell and Steve  
801 Bilski for working hard to get this done. He said he was curious. He said the unit is a respected unit  
802 but the problem is not in the technology, but the site.

803  
804 Steve Bilski, 26 High Pasture Road, Kittery Point approached the podium. He said a little bit of due  
805 diligence did not arrive when the unit was cited. He said most of the expected energy, based on site  
806 maps, really did not prove to be accurate enough; however, when the unit was installed, it had about 9  
807 months of very accurate data that the machine generated. He said they looked back at the data and,  
808 although the expected annual average wind speed of 5 meters per second, it actually turned out to be  
809 3.2 meters per second. He said the machine does not start to produce energy until 5.2 meters per  
810 second. He said a lot of time went by and the machine did not produce anything at all.

Mr. Bilski said several machines are operating around the world, most are in Alaska and are still producing energy, at the average of 7 to 10 meters per second. He said unfortunately this unit will never produce what it was initially hoped for.

Councilor Brock thanked Mr. Bilski for better clarification. He said when Kittery does venture back into energy, they will do a better job of matching technology with siting. He said it looks like we need to move on from this one.

Mr. Bilski said he had one comment on the difference between option 1A and B. He said there is a possibility that you go ahead with an RFP from educational institutions and you may not get any response back. He said it may be possible, that there may actually be people in the outside world, who are interested in using the machine for its intended use. He said to keep that separate of why the machine actually exists in the world. He said this would be useful for them as well as if Educational Institutions are interested and it was just a thought on the matter.

#### 16. EXECUTIVE SESSION

(050318-20) The Kittery Town Council moves to go into Executive Session with the Town Manager in accordance with 1 M.R.S. §405 (6) (A) to discuss a personnel matter.

**COUNCILOR THOMSON MOVED TO ENTER EXECUTIVE SESSION AT 7:28 P.M. IN ACCORDANCE WITH 1 M.R.S., §405 (6) (A) TO DISCUSS A PERSONNEL MATTER, SECONDED BY COUNCILOR PELLETIER. ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0, MOTION CARRIES.**

Chairperson Lemont said that Council will not be taking any action once they exit Executive Session.

**COUNCILOR THOMSON MOVED TO EXIT EXECUTIVE SESSION AT 7:40 P.M., SECONDED BY COUNCILOR PELLETIER. ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR, 6-0. MOTION CARRIES.**

#### 17. ADJOURNMENT

**VICE-CHAIRPERSON DENAULT MOVED TO ADJOURN THE MEETING AT 7:41 P.M., SECONDED BY COUNCILOR THOMSON. ALL WERE IN FAVOR BY A VOICE VOTE, MOTION CARRIES.**

Respectfully submitted,

Barbara Boggiano  
Recording Secretary





**TOWN OF KITTERY**  
200 Rogers Road, Kittery, ME 03904  
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**REPORT TO TOWN COUNCIL**

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Meeting Date: October 11, 2017, Update May 30, 2018

From: Kendra Amaral, Town Manager

Subject: Code of Ethics – Proposed Title 15

Councilor Sponsor: Councilor Gary Beers

**FOR YOUR INFORMATION**

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**EXECUTIVE SUMMARY**

The Council identified adoption of Procedures and a Code of Ethics as a priority in its annual goals and Town Manager goals for the 2016-2017 year.

The proposed Title 15 Code of Ethics establishes a standard of expectations and requirements for the ethical behavior for all municipal officials including the Town Council, Board members, and Employees.

**STATEMENT OF NEED**

We cannot simply relay on the principle of “do the right thing” for our ethical guidance. The “right thing” is not always a black and white absolute. Moreover, Kittery has experienced that opinions on what is the “right thing” as it relates to municipal officials may vary, creating a source of conflict that divides and distracts the town government from its core function of service.

Adoption of a code will not prevent all possible issues. However, with this code, we will have a shared basis from which to evaluate behavior, in a manner that is more specific than “do the right thing”. Title 15 will also define a process if the actions of a municipal official are called into question.

The State of Maine statutes yield significant local control relative to Council procedures and code of ethics. The Maine Municipal Association advocates that communities adopt a code of ethics as a means of guiding or building competencies in ethics.

The proposed Title 15 reflects a compilation of model ordinances and policies, with adjustments to address specific objectives of the town.

**UPDATE**

The proposed Title 15 and Council Rules and Procedures Manual has been updated to incorporate the Town Attorney’s comments and edits.

**PROPOSED SOLUTION/RECOMMENDATION**

Approve amendments as proposed.

**KITTERY TOWN CODE  
TITLE 15 - CODE OF ETHICS  
ENACTMENT**

**AN ORDINANCE** relating to the municipality's authority for Town governance to give due and proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine Revised Statutes, and more particularly where imposed by Maine Revised Statutes Title 30-A, Municipalities and Counties, §2605, Conflicts of interest.

**WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers that authorize the town, under certain circumstances, to provide for the public health, welfare, morals, and safety, and does not intend for this Ordinance to conflict with any existing state or federal laws; and

**WHEREAS**, in their discretion, the municipal officers may adopt an ethics policy governing the conduct of elected and appointed municipal officials; and

**WHEREAS**, the basic rationale for regulation of ethics among Kittery's municipal officials is to foster and preserve public trust in the fundamental integrity of local government; and

**WHEREAS**, the proper operation of democratic government requires that municipal officials be fair, impartial and responsive to the needs of the people and each other in the performance of their respective functions and duties; decisions and policy be made in proper channels of the Town's governmental structure; public office not be used for personal gain; and municipal officials maintain a standard of conduct that will inspire public confidence in the integrity of the Town's government; and

**WHEREAS**, the Town Council desires to establish ethics regulations for Kittery's municipal officials and establish a process to address complaints against municipal officials;

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS TITLE 15, CODE of ETHICS, OF THE TOWN CODE, AS PRESENTED.

**Approved as to form:** \_\_\_\_\_ {NAME}, Town Attorney

**INTRODUCED** and read in a public session of the Town Council on the \_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor

\_\_\_\_\_, {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and  
passed by a vote of \_\_\_\_\_.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, {NAME}, \_\_\_\_\_, Chairperson

**Attest:** {NAME}, \_\_\_\_\_ Town Clerk



## 15.1 ESTABLISHMENT

The proper operation of democratic government requires that Town Councilors and their appointees be fair, impartial, and responsive to the needs of the people and each other in the performance of their respective functions and duties; that decisions and policy be made in proper channels of the Town's governmental structure; that public office not be used for personal gain; and that Town Employees, Town Councilors and Town appointees maintain a standard of conduct that will inspire public confidence in the integrity of the Town's government. In recognition of these goals, this Code of Ethics is hereby established for all Town Employees, Town Councilors, and **Town Board Members** now existing or hereafter created.

## 15.2 DEFINITIONS

**Board** means all statutory and non-statutory boards, commissions, authorities, and committees now existing or hereafter created under the Town Charter or by virtue of any ordinance, order or resolve adopted by the Town Council.

**Board Member** means any person appointed by or under the authority of the Town Council to membership or associate membership on a Town Board, excluding the School Committee.

**Business** means any corporation, partnership, individual, sole proprietorship, joint venture, or any other legally recognized organized entity ~~for the purposes of making a profit~~ (may include a non-profit organization).

**Conflict of Interest** means a situation in which any Municipal Official or Town Employee by reason of personal or financial interest, is placed in a situation of temptation to serve their own personal interest to the prejudice of the interests of those for whom the law authorized and required them to act.

**Council** means the Town Council of the Town of Kittery. An individual member of the Town Council is known as Councilor.

**Financial Interest** means a direct or indirect interest having monetary or pecuniary value, including, but not limited to, the ownership of shares of stock. Any Employee, Councilor, or Board Member or any member of that person's immediate family who holds a financial interest in a disclosed blind trust is not deemed to have a conflict of interest with regard to matters pertaining to assets held by the trust.

**Harm** means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested.

**Immediate Family** means a Municipal Official's spouse, and the following when living in the household of an Employee, Councilor, or Board Member: children, parents, brothers and sisters, when living in the household of a Municipal Official.

**Municipal Official** for the purpose of Title 15 means any elected or appointed member of Kittery's Town government including Town Council, members of boards, commissions, authorities or committees ~~excluding the School Committee, and Town employees.~~

**Special Interest** means a direct or indirect interest having value peculiar to a certain person or group, whether economic or otherwise, which value may inure to such person or group as a result of the passage or denial of any order, ordinance or resolution or the approval or

disapproval thereof, by the Council or Board and which interest is not shared by the general public.

**Town Councilor** means a member of the Kittery Town Council.

**Town Employee/Employee** means any person working for, on a permanent or temporary basis, and drawing an hourly wage or salary from the Town of Kittery. This term does not include **School Department employees**, outside consultants or professional personnel providing services to the Town as independent contractors under a written professional services contract or other similar engagement.

### **15.3 STANDARDS of CONDUCT**

This Code establishes ethical standards of conduct for all Town Employees **and Municipal Officials** by setting forth those acts or actions deemed to be in conflict or incompatible, or to create the appearance of conflict or incompatibility, with the best interests of the Town Kittery.

#### **15.3.1. Statutory Standards.**

There are certain provisions of the general statutes of the State of Maine and the Kittery Town Charter which should, while not set forth herein, be considered an integral part of this Code. Accordingly, the provisions of the following sections of the general statutes of the State of Maine, as may be superseded or amended, are hereby incorporated by reference and made a part of this Code of Ethics, and apply to all Town Employees **and Municipal Officials** whenever applicable as if more fully set forth therein, to wit:

17-A MRS § 456 Tampering with Public Records or Information

17-A MRS § 602 Bribery in Official and Political Matters

17-A MRS § 603 Improper Influence

17-A MRS § 604 Improper Compensation for Past Action

17-A MRS § 605 Improper Gifts to Public Servants

17-A MRS § 606 Improper Compensation for Services

17-A MRS § 607 Purchase of Public Office

17-A MRS § 608 Official Oppression

17-A MRS § 609 Misuse of Information

17-A MRS § 903 Misuse of Entrusted Property

21-A MRS § 504 Persons Ineligible to Serve

30-A MRS § 2605 Conflicts of Interest

30-A MRS § 2606 Prohibited Appointments

30-A MRS § 2607 Neglect of Official Duty

30-A MRS § 5122 Interest of Public officials, Trustees or Employees

#### **15.3.2. Contracts, Purchases, and Employment.**

##### **15.3.2.1. Prohibition - Purchasing.**

Town Employees **and Municipal Officials** may not participate directly in deliberation, approval or disapproval, or recommendation, in the purchase of goods and services for the Town, and the award of any contracts with the Town, except as permitted under the Town's Purchasing Regulations and under the laws of the State of Maine, where to their knowledge **they have a financial interest, or special interest other than that possessed by the public generally,** in such purchase or award, held by:

a. such persons or a member of their immediate family;

b. a business in which such persons or a member of their immediate family serves as an officer, director, trustee, partner or employee in a supervisory or management position; or

c. any other person or business with whom such persons or a member of their immediate family are in business, or are negotiating or have an arrangement concerning future employment.

#### **15.3.2.2. Council – Boards Prohibition – Hiring.**

**Municipal Officials** may not participate by way of deliberation, approval or disapproval, or recommendation, in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for Town employment or Town employee, where said applicant or employee is:

a. a member of the **Municipal Official's** immediate family; or

b. a person with whom either the **Municipal Official** or a member of their immediate family, is in business.

#### **15.3.2.3. Employee Prohibition – Hiring.**

Except as authorized under the Town's published Personnel Rules and Regulations, no Town Employee may participate by way of deliberation, approval or disapproval, or recommendation, in the decision to hire, promote, discipline, lay off or to take any other personnel action in respect to any applicant for employment, where said applicant or employee is:

a. a member of the Employee's immediate family; or

b. a person with whom either the Employee or a member of their immediate family is in business.

#### **15.3.3. Disclosure of Confidential Information.**

##### **15.3.3.1. Prohibition.**

Town Employees or **Municipal Officials** may not, without proper legal authorization, disclose confidential information; nor may they use such information to advance their financial or private interest or the financial or private interest of others.

For purposes of this subsection, the term, "confidential information" means any information, oral or written, which comes to the attention of, or is available to, such Employee or **Municipal Official** only because of their position with the Town, and is not a matter of public record.

##### **15.3.3.2. Executive Session Information.**

Information received and discussed during an executive session ~~of the Town Council or any Town Board~~ called pursuant to 1 MRS §405 must not be disclosed to any third party ~~where such disclosure would violate any state statute or any decision or rule of court and unless permitted by affirmative vote of the~~ **entity that called the executive session.**

##### **15.3.4. Gifts and Favors Prohibition.**

Employees and **Municipal Officials** may not accept any gift, favor or thing of value **greater than twenty-five dollars (\$25.00)**, whether in the form of service, loan, item, or promise, from any person or business which to their knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the Town; ~~nor may any Employee, Councilor, or Board Member- or:~~

~~(1) accept any gift, favor or thing with a value greater than twenty-five dollars (\$25.00); or~~

~~(2) grant in the discharge of their official duties any improper favor, service, or thing of value.~~

Nothing herein prohibits the acceptance of gifts or favors by Employees or Municipal Officials from members of their immediate families, such that are not intended to influence that person in the discharge of their official duties.

Employees and Municipal Officials may not, unless so authorized by the Town Council or Town Manager, use or permit the use of any Town-owned property, including but not limited to, motor vehicles, equipment, and buildings, for any private purposes. Nothing herein prohibits the use of Town buildings and equipment at rates and/or on terms or conditions as may be established by the Town Council or Town Manager.

#### **15.3.5. Representing Third Party Interest before Town Agencies.**

##### **15.3.5.1. Employees.**

Employees may not appear on behalf of any third-party interest before any Town agency, or represent a third-party interest in any action, proceeding, or litigation in which the Town or one of its agencies is a party. Nothing herein prohibits any Employee from appearing as a witness when duly called by a party for the purpose of giving non-privileged testimony before any Town agency or in any such action, proceeding or litigation. Nothing herein prohibits any Employees, on behalf of their personal interest, from appearing before any Town agency. "Personal interest" includes, for this purpose, any interest of the Town Employee concerned as a resident, landowner, or taxpayer affected by the matter under consideration.

##### **15.3.5.2. Councilors.**

Councilors may not either appear on behalf of any third-party interest before any Town agency, or represent a third-party interest in any action, proceeding, or litigation in which the Town or one of its agencies is a party. Nothing herein prohibits a Councilor, on behalf of a constituent in the course of their duties as a representative of the electorate, or any Councilor, on behalf of their personal interest, from appearing before a Town agency.

##### **15.3.5.3. Board Members.**

Board Members may not appear on behalf of any third-party interest before a Town agency of which they are a current member. Nothing herein prohibits a Board Member, on behalf of their personal interest, from appearing before any Town agency including that of which they are a current member, but such Board Member must recuse themselves and in no way participate, deliberate, or vote on the item concerned.

#### **15.3.6. Conflicts/Bias/Influence.**

##### **15.3.6.1. Conflict of Interest.**

Councilors or Board Members may not, in such capacity, participate in the deliberation or vote, or otherwise take part in the decision-making process, on any agenda or other item before their collective body in which they or a member of their immediate family has a financial or special interest, other than an interest held by the public generally.

##### **15.3.6.2. Bias.**

Councilors and Board Members must abstain from the discussion and the vote on any item before that Board, if the member is so biased against the applicant or the item that prevents the member from making an impartial decision, thereby depriving the applicant of the due process right to a fair and objective hearing. If the bias issue of a Councilor or Board Member is raised, it will be deliberated and resolved by majority vote of the remaining Council or Board Members present.

**15.3.6.3. Improper Influence or Official Oppression.**

No Councilor or Board member may:

A. Threaten any harm to a public servant, municipal official, or voter, with the purpose of influencing their action, decision, opinion, recommendation, nomination, vote or other exercise of discretion;

B. Privately address to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the intention of influencing that discretion on the basis of considerations other than those authorized by law; or

~~Fail to report to a law enforcement officer conduct perceived to influence action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion.~~

C. Act with the intention to benefit themselves or another, or to harm another, and knowingly commit an unauthorized act which purports to be an act of office

D. Knowingly refrain from performing a duty imposed by law or clearly inherent in the nature of their office with the intention to benefit themselves or another, or to harm another.

**15.3.6.4. Disclosure, Recusal, or Abstention.**

Councilors or Board Members who believe that they or a member of their immediate family has a financial or special interest, other than an interest held by the public generally, in any agenda item before their collective body, must disclose the nature and extent of such interest to the Council or Board Chairperson and Town Manager or designee, who shall make a record of such disclosure.

Such disclosure must be made no later than the date of the first meeting of the Council or Board thereof, at which the agenda item concerned is to be taken up for consideration, recommendation, discussion or vote and at which the Councilor or Board Member is present.

To avoid the appearance of a violation of this section, once any Councilor or Board Member is determined to have a conflict of interest in respect to any agenda item, and once all conflict of interest questions relating to the agenda item concerned have been determined as provided herein, the Councilor or Board member must immediately remove themselves from their regular seat as a member of the body.

The Councilor or Board Member may not return to their regular seat as a member of the body until deliberation and action on the item is completed.

**15.3.6.5. Challenge of a Councilor or Board Member.**

Appellants, petitioners, members of the public, and Municipal Officials present, are allowed to challenge a Councilor or Board Member as to a perceived or alleged conflict of interest or bias.

All conflict of interest and bias challenges relating to a particular agenda item must be raised and resolved prior to any consideration of the item concerned otherwise such challenges are deemed to be waived. Each Councilor or Board Member present is entitled to vote on all conflict of interest questions except those questions pertaining to that individual Councilor or Board Member's alleged conflict of interest or bias.

A majority vote of the Council or Board members, except the member being challenged, decides whether such alleged conflict or bias is such that it:



(a) may reasonably be seen to prevent the challenged Member's ability to fairly hear and act on the item at issue; or

(b) whether it would reasonably be seen to give the appearance to the public of an inappropriate communication, conflict, or bias, so as to undermine the public confidence in the fairness of the meeting.

All votes of conflict of interest and bias challenges must be recorded.

Upon determination that a conflict of interest or bias in fact exists, the Councilor or Board Member concerned must be excused from participating in discussion, deliberation or vote on the relevant agenda item.

#### **15.3.6.6. Rule of Necessity.**

If so many members are disqualified due to a conflict of interest, bias, or other legal reason that the Board will not be able to meet its quorum requirement, and there is no other body legally authorized to act, those members may be able to participate under a legal theory called "the rule of necessity". The Council or Board should consult with the Town Attorney before applying the "rule of necessity" in order to determine whether some other alternative is possible, such as the creation of a special Board to hear that particular case.

### **15.4 COMPLAINTS PROCESS**

#### **15.4.1. Submission of Complaints**

Any Councilor, Board Member, or member of the public believing a municipal official has failed to observe this Code, who may wish to pursue a formal complaint, must report such complaint directly to the Town Manager in writing setting forth the full details supporting their complaint and the provisions of this Code alleged to be violated.

#### **15.4.2 Review of Complaints Against Employees**

The Town Manager will address and determine complaints against Employees in accordance with state and federal employment laws, Town Code Title 2, Town Policy, and any applicable Collective Bargaining Agreements.

#### **15.4.3 Review of Complaints Against Councilors or Board Members**

The Town Manager will review any complaint made against a Councilor or Board Member to determine if it is based in fact and if it is relevant to this Code, and take the following action:

(a) If the complaint is found not to be based in fact nor sufficiently appears to raise a violation of this Code, no further action will be taken;

(b) If the complaint is found to be based in fact and sufficiently appears to raise a violation related to this Code, the Town Manager must report the complaint to the Council; or

(c) If the complaint is found to be based in fact and not related to a violation of this Code, the Town Manager will refer the complaint to the proper authorities and report such action to the Council.

The Council will determine, by majority vote, whether or not to conduct a hearing on any such complaint reported by the Town Manager under 15.4.3(b) and, if so, will determine an appropriate procedural and hearing process to hear and determining such complaints consistent with 15.5.1 herein.

### **15.5 VIOLATION and PENALTIES**

251 **15.5.1. Determination of Violation.**

252 Should the Council proceed with any complaint under 15.4.3(b), it shall determine if a Councilor or  
253 Board Member has violated this Code only after notice is given to accused Councilor or Board  
254 Member, and conducting a hearing.

255 The Council will conduct their hearing with the Councilor or Board Member in executive session,  
256 unless the Councilor or Board Member requests the hearing to occur in public consistent with  
257 due process protections for such Councilor or Board Member.

258 **15.5.2. Penalties.**

259 Violations of this Code constitute cause for penalty. Councilors found in violation of this Code  
260 may be censured ~~or deemed to forfeit~~ by the Council or may be subject to forfeiture of their  
261 office in accordance with the Charter 2.12(2). Board Members found in violation of this Code  
262 may be censured or removed from office by the Council.

263 Penalties will be determined by a majority vote of the Council participating in the hearing upon  
264 concluding a violation has occurred.



**TOWN COUNCIL**

**RULES AND PROCEDURES MANUAL**

**ADOPTED:**



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## CHAPTER 1 - PURPOSE

The Town Council of Kittery, Maine has prepared and adopted these rules and procedures to assist the Council by documenting accepted practices and clarifying expectations. Administration of Council affairs is greatly enhanced through the adoption of these rules and procedures. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated. These procedures will aid Council in taking responsible action.

### A. Council Values

The following values should be maintained by the Council:

1. Objective, open-minded, achievement-oriented;
2. Have respect and care for each other;
3. Be straightforward, no hidden agendas;
4. Maintain humor;
5. Traditions are respected, but not binding;
6. Deliberate in many voices, but govern in one; and
7. Collective rather than individual decision-making.

### B. Orientation of New Members

It is important that members of the Council gain an understanding of the full range of services and programs provided by the Town. As new members join the Council, the Town Manager shall provide critical organizational information, arrange for opportunities to tour facilities and meet with key staff. At any time, if there are facilities or programs about which a Councilor would like more information, arrangements will be made to provide the information and increase the Councilor's awareness.

### C. Councilor Awareness

The Council realizes that Councilors should make an effort to broaden and increase their knowledge of information and skills directly related to their responsibility to govern the Town, and that efforts should be made to appropriate sufficient funds for this purpose.

To ensure effective management of the annual budget, prior to incurring and requesting reimbursement for such expenses, individual Councilors must obtain the approval of the Council. Such approval is required for any individual expense that would be paid from the Council Expense accounts.

## CHAPTER 2 - DEFINITIONS

**Ordinance** means a local law of the Town of Kittery, duly enacted by the Council or by referendum, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs or the government of its inhabitants of the municipality. Ordinances govern the administrative code, zoning, building, safety, and other matters of the municipality.

**Order** means a mandate; precept; command or direction authoritatively given; policy or procedure. The Town Council can give instructions to the Town Manager in the form of an order.

**Resolution** means a term usually employed to denote the subject matter of which would not

properly constitute an ordinance, such as a mere expression of opinion; a vote of thanks or of censure, etc. Such is not law but merely a form in which the Town Council expresses an opinion, will, or intent.

**NOTE:** The chief distinction between a “resolution” and an “order” is that a resolution is used whenever the Town Council wishes merely to express an opinion as to some given matter or thing, while by an “order” it is intended to direct and control matters applying to persons or things in general.

**Appropriation** means the Council authorization for the expenditure of monies and stipulating the amount, manner and purpose of the item of expenditure. Adoption of the budget constitutes appropriations of the amounts specified therein.

**Appropriation Order** means the Town Council order adopting the budget. An appropriation order need not be confined to one subject. Appropriation orders include supplemental appropriations, emergency appropriations, reduction of appropriations, and transfer of appropriations including transfers from one fund to another.

### CHAPTER 3 - OVERVIEW OF BASIC TOWN DOCUMENTS

These rules provide a summary of important aspects of Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of a Town Council. Many other laws, plans, and documents, exist which guide or bind the Council to certain courses of action and practices. A summary of some of the most notable documents that establish Council direction is provided below.

#### A. Kittery Town Charter

The Charter defines the home rule authority of the Inhabitants of the Town of Kittery. It is like the Town Constitution. It was approved by the voters and can be changed only by them through a ballot measure and/or Charter Commission process. The Charter governs the Town Code. Also described within the Charter is the Council-Manager form of government, which is practiced in Kittery. This form of government prescribes that the Council’s role is to establish policies and priorities, while the Town Manager serves as chief executive officer.

#### B. Kittery Town Code

The Town Code contains local laws and regulations adopted by ordinances. It describes the organization of the municipal officers and officials and responsibilities as well as the appointment of certain Town staff positions and advisory commissions. It includes the local laws and regulations pertaining to administrative operations as well as the local inhabitant laws.

Title 1 – General Provisions	Title 9 – Public Peace, Morals & Welfare
Title 2 - Administration & Personnel	Title 10 – Vehicles & Traffic
Title 3 – Revenue & Finance	Title 11 – General Assistance
Title 4 – Boards, Commissions & Committees	Title 12 – Streets, Sidewalks & Public Places
Title 5 – Business Licenses & Regulations	Title 13 – Public Services
Title 6 - Animals	Title 14 – Reserved
Title 7 – Cable Television	Title 15 – Code of Ethics (Proposed)

Title 8 – Health & Safety

Title 16 – Land Use & Development

Appendix A of the Town Code is the municipal Fee Schedule for permitting, licensing, services, application, appeal, or the like, ordained in any title of the Town Code.

**C. Maine Statutes**

State Law contains many requirements for the operation of town government and administration of towns throughout the state. Kittery is organized in accordance with provisions of the statutes and charter. Kittery is a “Charter Town” and has adopted local provisions to determine how the Town is structured.

Councilors should become familiar with Maine Revised Statutes (MRS) Title 30-A, Municipalities and Counties.

**D. Annual Budget**

The fiscal year of the Town begins on the first day of July and ends on the last day of June of the ensuing year. The Town’s annual budget provides a description of Town services and the resources used to provide those services. The Town’s budget process is defined in Town Charter Article 6, Financial Procedures.

**E. Capital Improvement Plan (CIP)**

The Town has developed an extensive capital plan which provides a 5-year outlook for asset management and capital investment projects. The Town’s capital program process is defined in Town Charter, Section 6.05.

**F. Comprehensive Plan**

Pursuant to a state mandate and Charter Section 8.02, the comprehensive plan is adopted by the voters and provides the overarching vision and goals for the Town including future land use and development plans and policies. The comprehensive plan is updated every 10 years.

**G. Disaster Plan**

The Town has established Emergency Management Regulations that guide the Town in its response protocols and procedures in the event a major manmade or natural disaster occurs.

**CHAPTER 4 - COUNCIL GENERAL POWERS AND RESPONSIBILITIES**

**A. Town Council Generally**

The powers of a Town Council in Maine to establish policy are quite broad. Essentially, Councils may undertake any action related to Town affairs other than those forbidden or preempted by State or Federal law, or local Charter. Specifically, the Council has the power, in the name of the Town, to do and perform all acts and things appropriate to a municipal corporation and the general welfare of its inhabitants and which the Constitution and laws of the State of Maine do not specifically forbid.

**B. Powers**

It is important to note that the Council acts as a body. No member has any extraordinary powers beyond those of other members. While the Chairperson has some additional ceremonial and other responsibilities as described below, in the establishment of policies, voting, and in other significant areas, all members are equal.

**C. Policy**

It is also important to note that policy is established by at least a majority vote of the Council. While individual members may disagree with decisions of the majority, a decision of the majority does bind the Town to a course of action. In turn, it is the Town Manager's responsibility to ensure the policy of the Council is upheld. Actions of the administration to pursue the policy direction established by a majority of Council do not reflect any bias against Councilors who held a minority opinion on an issue.

**D. Ethical Behavior**

The basic rationale for regulation of ethics among Kittery's municipal officials is to foster and preserve public trust in the fundamental integrity of local government. Even where an official's conduct may not be legally proscribed, personal relationships or competing interests may create an appearance of impropriety sufficient to undermine public confidence in the fairness and honesty of local officials. 30-A MRS §2605(6)) therefore encourages officials to avoid the appearance of a conflict of interest by disclosure or by abstention in such cases.

The Town also has a Code of Ethics Ordinance (Title 15) that governs the Town Council and other municipal officials in their conduct.

**E. Other Service**

Limitations are imposed on a Council member's ability to serve on advisory boards of the Town. No member of the Council may be appointed to or serve as a voting member of any Town board, committee, or commission, whether composed of citizen volunteers, Town employees, or a combination of both except as duly authorized by the Council. This is not construed as prohibiting members of the Council from serving on committees or subcommittees of the Council itself, or of agencies representing other levels of government.

Councilors are assigned as liaison to the following established committees:

- Capital Improvement Program Committee
- Comprehensive Plan Update Committee
- Economic Development Committee
- Kittery Community Center Board of Directors
- Mary Safford Wildes Trust
- Open Space Advisory Committee
- Recycling Scholarship Selection Committee
- Warrant Review
- Other assignments may arise as needed.

**F. Other Participation**

Councilors are encouraged to participate and provide leadership in regional, state, and national programs and meetings. Councilors are strongly encouraged to report to the Council on matters discussed at subcommittees and other regional, state, and national board/agency/group activities in which they have been involved.

## **G. Community Activities**

Councilors may choose to participate in community activities, committees, events, and task forces. When a Council member participates in these types of activities, the Council member is acting as an interested party rather than acting on behalf of the Town Council and must ensure that is clearly understood by all parties engaged in such activities.

## **CHAPTER 5 - SUPPORT PROVIDED TO TOWN COUNCIL**

### **A. Staff/Clerical Support**

General staff and administrative support to members of the Council is provided through the Town Manager's Office.

### **B. E-Mail and Computer Access**

Each Councilor is offered a Town of Kittery email account for corresponding with constituents, other members of Council, and other town-related contacts. The Town's e-mail system is for the conduct of official business, and not for personal or political reasons.

1. All email correspondence, both in- and out-of-, town issued email accounts is public records under the "Right to Know Law". This means that they are open for public viewing in the event of any legal discovery and inquiries under the Freedom of Access Act (FOAA). Emails are retained via backup procedures for these purposes. This includes emails deleted from town-issued mailboxes.

2. Distribution of email accounts and email access is given after a Councilor is sworn in.

### **C. Meeting Rooms**

Conference rooms are available on the first floor of Town Hall for shared use by staff and members of the Council. Large meeting room space in Town facilities can also be reserved for use of Councilors by the Town Manager's Office staff.

### **D. Mail, Deliveries**

Members of the Council receive-mail and other materials from the public, private interests, and staff, at Town Hall. A mailbox is maintained in the mail room at Town Hall for each member. In addition, the Police Department will hold Council materials for pick-up outside of normal Town Hall business hours. Meeting agenda hard copy materials are available by noon on Thursday prior to a scheduled Regular or Special Council meeting. However, members who prefer to use their computers to access council packet materials can opt out of receiving a hard copy of the Council packet. Time sensitive communications or materials may be delivered via email or facsimile.

## **CHAPTER 6 - COMMUNICATIONS**

### **A. Overview**

Perhaps the most fundamental role of the Council as a group is communication; communication with the public to assess community opinions and needs; communication with the Town Manager to provide policy direction and to gain an understanding of the implications of various policy alternatives; and, communication with each other in the performance of Council duties. Because the Council performs as a body (that is, acting based on the will of the majority



as opposed to individuals), it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public should be so advised.

## **B. Correspondence from Councilors**

Members of the Council could be called upon to write letters to citizens, businesses, or other public agencies. Typically, however, the Town Manager will be charged with transmitting the Town's position on policy matters to outside agencies on behalf of the Council.

### **1. Personal Communications**

On occasion, members may wish to transmit correspondence on an issue upon which the Council has yet to take a position or about an issue for which the Council has no position. In these circumstances, members should clearly indicate within their correspondence that they are not speaking for the Council as a whole, but for themselves as one member of Council.

### **2. Council Positions**

After the Town Council has taken a position on an issue, official correspondence should reflect that position.

### **3. Speaking for "the Town"**

Similar to written correspondence, when members are requested to speak to groups, or are asked the Council's position on an issue, the response should reflect the position of the Council as a whole. Of course, a member may clarify their vote on a matter by stating, "While I voted against X, the Town Council voted in support of it." When representing the Town at meetings or other venues, it is important that those in attendance gain an understanding of the Council's position as well as that of an individual member.

### **4. Press Conference**

Prior to holding a press conference, the Chairperson or Town Manager should, as a courtesy inform all members of the Council. Similarly, prior to holding a press conference a Council member should, as a courtesy, inform the Chairperson or Town Manager and other members of the Council. Statements representing community positions on any issue requires a prior affirmative Council vote endorsing the stated position.

## **C. Liaison Role**

Members of the Council may be assigned to serve in a liaison capacity with one or more Town boards, commissions, or committees. The purpose of the liaison assignment is to facilitate communication between the Council and the advisory body. The liaison also helps to increase the Council's familiarity with the membership, programs, and issues of the advisory body. In fulfilling their liaison assignment, members may elect to attend meetings periodically to observe the activities of the advisory body or simply maintain communication with the chair on a regular basis.

When interacting with boards/commissions/committees, Councilors are to reflect the views of the Council as a body. Typically, assignments to liaison positions are made at the beginning of a Council term. The Chairperson will request liaison assignments which are desired by each member and will submit recommendations to the full Council of the various committees, boards, and commissions which Councilors will represent as a liaison. A vote of the Council will be taken to confirm all appointments.

## **CHAPTER 7 - INTERACTION WITH TOWN STAFF/OFFICIALS**

### **A. Overview**

Council policy is implemented through professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. The Town of Kittery has a long tradition of positive relationships between members of the Council and staff. To maintain these effective relationships, it is important that roles be clearly recognized.

### **B. Council- Manager Form of Government**

Kittery has adopted a Town Council-Town Manager form of government, as defined in the Charter, Articles 2 and 3. This structure reflects that it is the Town Council's role to establish Town policy and priorities. The Council appoints a Town Manager to implement this policy and undertake the administration of the organization.

### **C. Town Manager**

The Manager is appointed by the Town Council to enforce its laws; to direct the daily operations of Town government; to prepare and monitor the budget; and, to implement the policies and programs initiated by the Council. The Town Manager is responsible to the Council as a whole rather than to individual Councilors, and directs and coordinates the various departments.

### **D. Council-Manager Relationship**

The employment relationship between the Council and Town Manager honors the fact that the Town Manager is the chief executive officer of the Town. Council and the Town Manager are a participatory team and the Council is to avoid situations that can result in Town staff being directed, intentionally or unintentionally, by one or more members of the Council. Regular communication between the Council and Town Manager is important in maintaining open communications. All dealings with the Town Manager, whether in public or private, should respect the responsibilities of the Town Manager in administrative matters. Disagreements should be expressed in policy terms, rather than in terms that question satisfaction with or support of the Town Manager.

### **E. Manager Evaluation**

The Town Council is to evaluate the Town Manager on a regular basis to ensure that both the Town Council and Town Manager are in agreement about performance and goals based on mutual trust and common objectives. The Town Council establishes the evaluation criteria and performance review process for the Town Manager

### **F. Council Informed**

As in any professional relationship, it is important that the Town Manager keep the Council informed. The Town Manager respects and is sensitive to the political responsibility of the Council and acknowledges that the final responsibility for establishing the policy direction of the Town is held by the Council. The Town Manager communicates with Council in various ways. In addition to the formal Council meetings, the Town Manager sends email communication, has individual meetings or discussion with Councilors, all to ensure the Council is kept informed on topics.

Communication must be undertaken in such a way that all Councilors are treated similarly and

kept equally informed. It is equally important that the Council provide ongoing feedback, information, and perceptions to the Town Manager including some response to written communication requesting feedback.

#### **G. Council/Town Attorney Relationship**

The Town Attorney is the chief legal advisor for the Town. The Town Attorney serves at the will of the Town Manager. The Council has the right to employ or retain special attorneys, if it deems it to be in the best interests of the Town. No member of the Council may request a legal opinion relative to Town business from the Town's appointed attorneys without prior assent of the Council. All such requests must be made through the Town Manager.

#### **H. Interference with Administration**

Except for the purposes of inquiries, the Council or any of its members may deal with Town officials and employees who are subject to the direction and supervision of the Town Manager solely through the Town Manager. Neither the Council nor any of its members may give orders to any such official or employees either publicly or privately.

#### **I. Ordinance Power**

The Council by ordinance, may create, change, and abolish offices, departments and agencies, other than the offices, departments and agencies established by the Charter. The Council, by ordinance, may assign additional functions or duties to offices, departments or agencies established by the Charter or by statute, but may neither discontinue nor assign to any other office, department or agency any function or duty assigned by the Charter to a particular office, department or agency.

Individual members of the Town Council should not attempt to pressure or influence staff decisions, recommendations, workloads, schedules, and department priorities. If a Council member wishes to influence the actions, decisions, recommendations, workloads, work schedule, and priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy or order to the Town Manager.

Should Council members become dissatisfied about a department, they must raise their concerns with the Town Manager, not the department head. Individual Councilors are responsible to communicate concerns as soon as possible and not let them fester.

### **CHAPTER 8 - ACCESS TO INFORMATION**

#### **A. Access to Information**

Individual Councilors as well as the Council as a whole are permitted complete freedom of access to any information requested and are to receive the full cooperation and candor of the Town Manager in being provided with any requested information. The Town Manager will always inform the Council when a critical or unusual event occurs about which the public would be concerned.

Councilors should come to meetings prepared – having read item documents as well as any additional information or memoranda that include an update on major projects or evolving issues. Additional information may be requested from the Town Manager, if necessary.

## **B. Public Records**

The law's definition of "public records," while broad, excludes records designated confidential by other laws (see 1 MRS §402(3)). Note that while Council may have the "right-to-know" town confidential information, routine access is limited by the principle of "need-to-know". For example, General Assistance case details are not available to Councilors except for a Fair Hearing proceeding.

Moreover, because statutes regarding confidentiality are enacted almost annually, a thorough search of Maine statutes should be undertaken before making a request for records.

## **C. Magnitude of Information Request**

Any information, service-related needs, or policy positions perceived as necessary by individual Councilors which cannot be fulfilled based on these guidelines should be scheduled for a Council meeting. If so directed by action of the Council, the Town Manager will proceed to complete the work within a Council-established timeline.

## **D. Copy Costs**

The cost charged by the Town for making copies of any materials, excluding those produced by the Planning Department, access to which the public is entitled, is twenty-five (25) cents a copy.

# **CHAPTER 9 - TOWN COUNCIL MEETINGS & WORKSHOPS**

## **A. Council Meetings**

### **1. Regular Meetings**

The regular meetings of the Council are held in the Council Chambers of the Town Hall on the second and fourth Monday of each calendar month, **excepting in July, August and December, when only one meeting is held on either the second or fourth Monday**. Public proceedings commence at the time stated on the posted agenda for each meeting.

When said meeting falls on a holiday or is otherwise postponed, the regular meeting is held on the following Wednesday, at the same time and place.

The Maine Freedom of Access Law, 1 MRS §406 requires notice to be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public.

Items for consideration by the Council may be reviewed at a workshop of the Council; however no action may be taken during a workshop.

Councilors should inform the Chairperson as soon as possible if they expect to be unable to attend on a set meeting date.

### **2. Special Meetings**

Special meetings may be called by the Chairperson or by four members of the Town Council. Notice of such meeting must, when possible, be given at least twelve (12) hours before the time for holding the meeting. The call for the meeting must set forth the matters to be acted upon and nothing else may be considered.

Special meetings include public comment time as provided at regular Council meetings, but such public comment is limited to the matters on the agenda for the meeting. Notices of such

meetings must include the name(s) of the person(s) requesting the meeting.

Notice requirements of the Right to Know Law must be complied with for all meetings; minutes of the meeting are to be taken by the Town Clerk, or designee, and be made available for public inspection.

### **3. Other Locations**

The date and venue of any regular meeting may be changed upon the vote of the Council, provided, however, that said change in date, or venue, will still provide for at least one regular meeting in each month.

### **4. Canceled Meetings**

When the Council deems appropriate, one or more regular meetings may be canceled by a majority vote of the Council. The Council must meet regularly, however, at least once each month. The Chairperson may cancel a Council meeting during a winter storm event, or other emergency situation.

### **5. Placing Items on Agenda**

Town Council: Any Council member may request an item to be considered on a future agenda. Such request must be submitted to the Town Clerk no later than 4:00pm on the Tuesday preceding a Regular Meeting.

Members of the public: A member of the public may request an item/and or petition to be placed on a future agenda through communication with Councilors. The Chairperson will review and act upon the request. Some requests may not require Council action.

### **6. Items not on the Agenda**

Items not on the agenda may be added to the agenda only if the Council makes findings that (1) the need to consider the item arose after the posting of the agenda; and, (2) there is a need to take immediate action at this meeting of the Town Council.

### **7. Deadlines**

The agenda closes at 4:00pm on the Tuesday before a Monday meeting. All agenda item reports, commentaries, and supporting documentation from Councilors for Council meetings and workshops must be turned in by 4:00pm the Tuesday before the scheduled meeting, so that the agenda and packets can be prepared and ready for distribution by noon on the Thursday prior to the meeting.

### **8. Council Action**

The Town Council shall act only by ordinance, order, resolve, and by consensus. Actions of the Council are recorded in the minutes of the Council meeting.

### **9. Effective Date Of Council Actions**

All actions of the Council, except ordinances, take effect immediately upon passage. The effective date of ordinances is governed by Section 2.14, Paragraph 3 of the Town Charter. Emergency Ordinances take effect immediately, when adopted in accordance with Town Charter Section 2.15.

## **10. Duties Of The Chairperson**

The Chairperson shall assume the chair at the time appointed for the meeting; call the members to order; provide for introductory and pledge of allegiance; cause the roll to be called; and, a quorum being present, proceed to conduct the business of the Council according to the published agenda.

The Chairperson shall preserve decorum and order; speak to points of order in preference to other members; and, decide all questions of order subject to an appeal to the Council by motion regularly made and seconded, and no other business is in order until the question on appeal be decided.

The Chairperson shall declare all votes, but if any member doubts a vote, the Chairperson shall cause a return of the members voting in the affirmative and in the negative without debate.

All persons wishing to speak, whether they are Council members or members of the general public must first be recognized by the Chairperson.

The Chairperson enjoys the same rights and privileges as other members of the Council, including the introduction and seconding of motions and participation in debate.

## **11. Vice Chairperson**

The position of Vice Chairperson serves in the temporary absence or disability of the Chairperson.

## **12. Voting**

Voting is by a randomly sequenced roll call with the Chairperson voting last. Councilors shall indicate their vote by an Aye or Nay, or by abstention, when polled. No Councilor may be excluded from participation in debate on any question except as required by Town Charter, state statute, or Town Code (currently Section 12.01, 30-A MRS §2605, or Title 15, respectively).

Councilors have the right to change their vote up to the time the vote is announced by the Chairperson.

The vote must be recorded in the minutes of the meeting to indicate each Councilor's vote, or abstention.

## **B. Televised Meetings**

As part of its franchise agreement with the Town of Kittery, the licensed cable provider provides the Town with a channel (22) on the local cable television system as a means for providing municipal information to the citizens of Kittery, broadcast live. The Town also provides live-streaming video for global internet access.

### **1. Open Microphones**

Use caution when discussing matters near a microphone before the meeting starts. During the cable television setup process, microphones are on and televising background sounds even before the meeting starts.

### **2. Public Comment – Lectern**

Have all speakers come forward to the lectern. Do not allow people to speak from the audience, as those viewing on television cannot hear them. See Appendix A – Decorum of the Public.



## C. Agenda / Order of Business

### 1. Agenda

In order that advance notice of the matters to be discussed at Council meetings is afforded interested parties, all meetings of the Council will be conducted according to the agenda.

An agenda will be prepared for each regular meeting and posted by the Thursday preceding said meeting.

When practicable, an agenda will be prepared at least twelve hours in advance of a special meeting; delivered to all Council members and posted as normal meetings are posted.

All Town Manager's memoranda of interest to the Council members will be issued to them at least seventy-two hours before a regular meeting.

To the extent possible, matters to be discussed at a meeting by the Town Manager or Chairperson will be listed on the agenda under Chairperson Communications, or Town Manager's Report, respectively.

The category of Unfinished Business is specifically reserved for Council business discussed at a previous meeting that has been postponed or continued to the meeting for which the present agenda is prepared.

The New Business section of the agenda is reserved for those matters which a Councilor wishes to introduce anew.

Except as provided in Charter Article 11, no proposal for ordinance enacting, repeal, or amendment, may lie before the Council unless introduced by a Council member or the Town Manager.

All reports or proposals made to the Council, which require or request that an action be taken by the Council, are to be submitted in written form. The content will be presented in as concise and direct a manner as possible and may include:

- Executive Summary
- Statement of Need
- Background
- Proposed Solution / Recommendation with Rationale (including costs)

**NOTE:** Not every header category is needed for every report. For example, a brief topic without funding may have only "Background", and "Recommendation".

The agenda consists of the following categories:

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's report

7. Acceptance of previous minutes

8. All items involving municipal officials or guests.

Allocated for topics requiring the presence of Town staff, Attorney, Auditor, engineering, etc.  
Also the item for conducting the Charter-required interviews for the Board of Appeals and Planning Board.

Persons who are represented by legal or engineering consultants, who are present and wish to address the Council, shall notify the Chairperson prior to the Council Call to Order of the subject they wish to speak on and will be heard at this time.

9. Public hearings

10. Public Comment

a. Comment by members of the public (3 minutes per person)

b. Response to public comment directed to a particular Councilor

c. Chairperson's response to public comments.

11. Unfinished business

12. New business

a. Donations/gifts received for Council disposition

b. Disbursement Warrants

13. Councilor issues or comment

14. Committee and other reports

a. Communications from the Chairperson

b. Committee reports

15. Executive session, if required

16. Adjournment

## **2. Order of Business**

Immediately following the roll call, the Chairperson may amend and must adopt the agenda, except no matter requiring public notice may be added without such notice. Agenda amendment after adoption may be made only by majority vote.

## **3. Town Manager Report**

The Town Manager provides an update on relevant and pertinent activities, issues of the town operation, responses to Council requests, and seeks when appropriate Council direction on pending matters.

## **4. Approval/Correction of Minutes**

Minutes of the Town Council meetings are "Action Based" minutes, wherein little narrative is included, and only motions and votes are shown in the record. Such minutes are to be submitted to the Council for approval and/or correction in draft form at a subsequent regular meeting. It is the policy of the Council only the members of the Council, the Town Manager, and the Town Clerk have the authority to revise the minutes subject to a majority vote of the Council.



Councilors having only typographical corrections to minutes are encouraged to provide such corrections to the Town Clerk directly and need not wait to submit such corrections at a meeting. As a time saving measure, even full correction items should be communicated to the Town Clerk before the meeting.

## **5. Action Items**

Items requiring Council vote that may require additional information. A Council member may ask questions on any item on the agenda. Councilors are encouraged to seek clarifications prior to the meeting, if possible. A member may move that an item be postponed to the next Council meeting, to a date specific, or upon a contingent requirement, for further attention by motion, with a second and majority vote to approve.

## **6. Executive Session**

The ability of a Council to conduct executive sessions, closed to the public, is restricted by state law. The Maine Freedom of Access Law, 1 MRS §405, states that “Executive sessions may be called only by a public recorded vote of five of the members present and voting. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business.”

A motion to go into executive session must indicate whom the Council will admit to, or meet with, in Executive Session. Certain defined circumstances exist wherein a Town Council may meet without the public in attendance. Such circumstances include:

- a. Real Property: The purchase, sale, exchange or lease of real property.
- b. Litigation: Pending or a significant exposure to litigation, or the decision to initiate litigation.
- c. Personnel: An executive session is held to discuss the appointment, employment, evaluation of performance, or dismissal of the Town Manager or other public employees directly hired by the Town Council; to hear complaints against the Town Manager or other public employees directly hired by the Town Council, or an Advisory Board member, unless the subject of the hearing requests a public hearing.
- d. Labor: Labor contracts, proposals, and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions.
- e. Property Tax Abatements. Under 36 MRS §841, municipalities may abate (forgive) a property tax for “error or mistake” including illegality or irregularity, or for reason of “infirmary or poverty”.
- f. General Assistance Hearing 22 MRS §4306.

It is critical to stress that there must be no violation of closed session confidential information. Members of the Council, employees of the Town, or anyone else present must not disclose to any person, including affected/opposing parties, the press, or anyone else, the content or substance of any discussion, which takes place in a closed session without Council direction and concurrence.

Typically, executive sessions are scheduled at the conclusion of the public portions of the meeting. This is done so public portions of the meeting are not interrupted by closed sessions.

In addition, such sessions may require the attendance of special legal counsel and consultants. In an attempt to manage the costs of these professionals, it is beneficial to conduct closed sessions at a time certain.

## **D. General Procedures**

### **1. Robert's Rules of Order Adopted**

The Town Council has adopted a modified version of Roberts Rules of Order. While utilizing all of Roberts Rules by reference, this adoption of modified rules was undertaken to simplify procedures. Roberts Rules was developed for large-scale legislative bodies. A scaled-down and modified version is more appropriate for a Council having seven members. The full resolution detailing these modified rules as periodically amended appears in Appendix B.

### **2. Parliamentary Procedure Policy**

It is the policy of the Council not to become involved in the entanglements over a parliamentary procedure. Consistent with the Town Charter, and any applicable Town ordinance, statute, or other legal requirement, any issue of procedure relating to the conduct of a meeting or hearing not otherwise provided for herein may be determined by the Chairperson, subject to appeal to the full Council.

### **3. Presiding Officer**

The Chairperson is the Presiding Officer at Council meetings. In the absence or incapacity of the Chairperson, the Vice Chairperson serves as presiding officer. The Chairperson has authority to preserve order at all Council meetings, to remove any person from any meeting of the Council for disorderly conduct pursuant to Appendix A, to enforce the rules of the Council. The Chairperson is the facilitator of Council meeting. In the role as facilitator, the Chairperson will assist the Council to focus on their agenda, discussions and deliberations.

### **4. Quorum**

Four of the Councilors constitute a quorum for the transaction of business.

### **5. Discussion Rules**

Proper decorum befitting the gravity of their solemn duties, is expected of all Councilors during the conduct of meetings.

Councilors wishing to speak shall respectfully address the Chairperson, and confine their comments to the question under debate, or the issue the Councilor wants to raise.

No member may be interrupted by another, but for a point of order or to correct a mistake, and only upon recognition by the Chairperson.

### **6. Comments for the Record**

If a Council Member desires for a comment to be included in the minutes, it is the Councilor's responsibility to indicate that the statement is "for the record" before making the comments.

### **7. Discussion Limit**

A Council member should not speak more than once on a particular subject until every other Council member has had the opportunity to speak. Councilors are encouraged to discuss items during the decision-making process and may ask the Town Manager, through the Chairperson, to respond when appropriate. The Chairperson should allow other members to speak first and then offer views and summarize.

The Chairperson may recognize the Town Manager or town staff, consultants, or others with

pertinent knowledge of the subject matter to answer questions or provide information for the Council consideration of the matter.

## **8. Recusal or Abstention from Voting**

A conflict of interest, bias, or other reason for abstention or recusal, must be declared whenever appropriate and in compliance with state law and Town Code Title 15. The affected Council member may not participate in the discussion or vote on the item. Councilors recusing themselves must remove themselves from their regular seat as a member of the body. If a Council member abstains because of a legal conflict, the member must briefly state on the record the nature of the conflict. The clerk will register an "Abstained" vote in the minutes.

## **9. Conducting business at a late hour**

After 10:00pm, a vote of four or more members of the Council is required to conclude a matter at hand or begin consideration of a new item of business.

## **10. Other Protocol**

Other guidelines have also been adopted to ensure meetings of the Council emphasize the importance of the business being conducted in a professional manner. Public decorum is addressed in Appendix A. Councilors and staff shall:

- a. Work to preserve appropriate order and decorum during all meetings,
- b. Discourage side conversations, disruptions, interruptions or delaying efforts,
- c. Councilors should inform the Chairperson when departing from a meeting,
- d. Limit disruptive behavior.

## **11. Meeting Break Limit**

The Council has authorized the Chairperson to resume the meeting if a quorum exists and other members have not returned from break within the allotted time.

## **12. Speaker Time Limit**

While the Town Council encourages and embraces the need for, and right of, public participation, it acknowledges that public comments must, at times, be limited. Speakers shall limit their comments to three (3) minutes. The Town Council authorizes the Chairperson, as presiding officer, to poll the audience for an indication of the number of people wishing to speak, and impose alternate time limits per speaker when necessary due to the volume of business. After the time limit, Council may ask questions of the speaker for clarification, if needed. Speakers will be thanked for their participation.

## **13. Enforcement of Order**

Any Council member may request the presiding officer to enforce the rules of protocol. Upon a point of order, the presiding officer shall rule accordingly.

## **14. Values of Respect**

The Council has also recognized the importance of approaching the public's business in an environment of personal respect and courtesy that places emphasis on the consideration of policy and avoids personalization of comments. Councilor members, staff, and members of the public participating in Council meetings are bound by the following guidelines:

- a. Discussion should focus on the specific matter before the Council,
- b. Personal criticism is inappropriate,
- c. Proper decorum should be displayed as others express their views, and
- d. All participants will be treated equally.

**15. Voting Procedures**

When present, all Councilors are to vote, unless they exercise their right of abstention. Voting is to be open, random roll call with the Chairperson voting last, and the Aye or Nay vote of each Councilor be recorded in the minutes, except for procedural or routine administrative matters which may be voice votes. No ordinance, resolution or motion may be passed or become effective without the affirmative vote of four or more members. Councilors may declare consensus at the discretion of the Chairperson, if there are no negative votes or objections. Upon the request of any Council member, a roll call vote will be taken and recorded.

**16. Motions in Writing**

Motions must be reduced to writing if the Chairperson so directs.

**17. Reconsideration of the Vote**

When a vote is concluded, it is in order for any member who voted on the prevailing side to move a reconsideration thereof at the same or next regular meeting.

**18. Suspension of the Rules**

The rules may not be dispensed with, or suspended, unless five members of the Council consent thereto. No rules may be adopted, amended, or deleted without notice in writing being given at the preceding regular meeting.

**19. Non Exclusive Rules**

The rules set forth are not exclusive and do not limit the inherent power and general legal authority of the Council, or of its presiding officer, to govern the conduct of Council meetings as may be considered appropriate from time to time or in particular circumstances for purposes of orderly and effective conduct of the affairs of the Town.

**20. Rules / Policy Copies**

The Town Clerk shall maintain copies of Council rules and policies and provide same to the Rice Public Library.

**CHAPTER 10 - OPEN MEETING LAW**

Operations and procedures of the Town and Council incorporate requirements of the state's Right to Know law. Because this law is such an important part of local government operations, some specific requirements of the law are highlighted below for your information and future reference.

**A. Applicability**

The entire Town organization conducts its business in compliance with the Freedom of Access Law. The intent of the Law is to ensure that deliberation and actions of local public agencies are conducted in open and summarized in this chapter.

The Law applies to Council and all commissions, boards, and committees that advise Council. Staff cannot promote actions that would violate the Law.

**B. Meetings**

All meetings are open and public. A Town Council meeting takes place whenever a quorum (4 or more members) is present and information about the business of the body is received; discussions qualify as a meeting. Social functions (e.g., receptions, dinners) do not fall under the Act unless Town business is discussed in public meetings.

**C. Correspondence**

All writings distributed for discussion or considerations at a public meeting are public records unless exempted by state law.

**CHAPTER 11 - PROCEDURAL ADMINISTRATION**

**A. Review of Town Council Rules**

The Council will review and revise the Town Council Rules as needed.

**B. Adherence to Rules**

During Town Council discussions, deliberations and proceedings, the Chairperson is responsible to ensure that the Town Council, staff and members of the public adhere to the Council's adopted rules and procedures.

**C. Town Manager as Rule Advisor**

The Town Manager assists the Chairperson as a resource to confer with and an advisor for interpreting the Council's adopted Rules.

**D. Adherence to Administrative Procedure and Process Procedures**

The Council has delegated the Chairperson responsible to discuss, on behalf of the full Council, any perceived or inappropriate administrative action with a Council member. The Chairperson will discuss with the Council member the action and suggest a more appropriate process or procedure to follow. After this discussion, if further inappropriate action continues, the Chairperson will report the concern to the full Council.

**CHAPTER 12 - ADDITIONAL TRAINING & RESOURCE MATERIALS**

**A. Maine Municipal Association (MMA)**

The MMA is an association of municipalities in Maine, of which the Town of Kittery is a member. It provides many levels of service including the production of educational conferences for local officials, publication of various newsletters and a monthly magazine The Maine Townsman. As well, MMA's member services legal staff is available to respond to questions with regard to policy and legal questions.

The MMA also has lobbyists on staff that represents the interest of cities before the state legislature and federal government. Committees having local officials as members are also organized around the interests of Town departments (e.g. Town Council, Town Manager, Town Clerk, Fire, Police, Community Services, Community Development) to address issues as they arise.

The MMA has an internet web site at [www.memun.org](http://www.memun.org). MMA annually holds an Elected Officials seminar. New Councilors are encouraged to attend.

**B. International Town Management Association (ICMA)**

ICMA is a professional association of local government chief executives, of which the Town Manager is a member. The association has an extensive list of publications to assist local officials. The Association's Elected Officials Handbook series can be of great value to Councilors. Publications have also been developed on every basic Town service.

**C. Resource Materials**

The reference material listed below is available upon request to the Town Manager's Office:

1. Roberts Rules of Order
3. A Guide to the Freedom of Access Law a/k/a "Right to Know Law"
4. Enacted Council and Town Manager Goals
5. Travel and Training Policy
6. Other Reference Material on File:
  - b. Town of Kittery Municipal Code
  - c. Maine Revised Statutes
  - d. Current Operating and Capital Budget
  - e. Annual Audit
  - f. York County Budget

**COUNCIL RULES APPENDIX A – DECORUM OF THE PUBLIC**

Council meetings are to be conducted with the gravitas deserving of conducting the Town's Business.

Any persons wishing to speak during the Public Comments portion of the meeting or on a Public Hearing item must first be recognized by the Chair.

Any person wishing to address the Council during Public Comments will be given an opportunity to do so in accordance with the following procedures limited to 3 minutes per person.

1. The Public Comment section of the agenda is reserved for members of the public who wish to address the Council on any matters listed on the agenda or on other matters they wish to bring to the Council's attention.

2. Persons wishing to address the Council during Public Comment will signify their desire by approaching the lectern, and when recognized by the Chairperson, giving their name and address for the public record.

3. Members of the public, addressing the Council during the Public Comment section of the agenda must limit their statements to the Council, to no more than three minutes per person unless the Chairperson finds it necessary to allow more time.

4. Persons wishing to address the Council on an item which appears on the agenda for public hearing, and is after Public Comment, must wait until the Chairperson announces the consideration of such item, at which time, after being recognized, they may address the Council on that particular item.

However, once the Council has begun its deliberation on the item, no person is permitted to address the Council unless the Chairperson, having determined that the Council's deliberations appear finished, and that the item under consideration is of great concern to members of the public gathered, permits persons in the audience to address the Council before closing the Comment and calling for Council vote.

5. Response to Public Comments.

In order to assure that the Council is speaking as one voice when responding to public comments all general responses shall be made by the Council Chairperson.

The Chairperson is responsible for any subsequent follow-up response to the speakers. In the event a member of the public addresses an issue to a particular Councilor, the Chairperson will invite such Councilor to respond directly, if that Councilor so desires.

Members of the audience and persons addressing the Council during Public Comment may not engage in boisterous conduct, including the utterance of threatening, belligerent, obscene, slanderous, or abusive, language or other acts of disorder which disrupt, impede or otherwise prevent the orderly conduct of the Town Council meeting from proceeding. If this occurs, the Chairperson should advise the speaker and/or disrupting individual(s) that such conduct must immediately cease and desist or the speaker and/or disrupter(s) will be ordered to be removed from the meeting if the disruptive behavior continues to prevent the orderly conduct of the meeting.

If public discussion of charges or complaints against a person or persons could reasonably be

834 expected to cause damage to an individual's reputation or the individual's right to privacy would  
835 be violated, such matters may not be addressed during Public Comments. A member of the  
836 audience engaging in such behavior or speech will be instructed by the Chair to cease and  
837 desist. Anyone repeatedly or continuously engaging in any such conduct, at the discretion of  
838 the Chair or a majority of the Council, is subject to being removed from that meeting.



## APPENDIX B – ROBERT’S RULES SUMMARY & MOTIONS TABLE

### Robert's Rules of Order - Summary Version For Fair and Orderly Meetings & Conventions

#### The Rules

- **Point of Privilege:** Pertains to noise, personal comfort, etc. - may interrupt only if necessary!
- **Parliamentary Inquiry:** Inquire as to the correct motion - to accomplish a desired result, or raise a point of order.
- **Point of Information:** Generally applies to information desired from the speaker: "I should like to ask the (speaker) a question."
- **Orders of the Day (Agenda):** A call to adhere to the agenda (a deviation from the agenda requires Suspending the Rules).
- **Point of Order:** Infraction of the rules, or improper decorum in speaking. Must be raised immediately after the error is made.
- **Main Motion:** Brings new business (the next item on the agenda) before the assembly.
- **Divide the Question:** Divides a motion into two or more separate motions (must be able to stand on their own).
- **Consider by Paragraph:** Adoption of paper is held until all paragraphs are debated and amended and entire paper is satisfactory; after all paragraphs are considered, the entire paper is then open to amendment, and paragraphs may be further amended. Any Preamble cannot be considered until debate on the body of the paper has ceased.
- **Amend:** Inserting or striking out words or paragraphs, or substituting whole paragraphs or resolutions.
- **Withdraw/Modify Motion:** Applies only after question is stated; mover can accept an amendment without obtaining the floor.
- **Commit /Refer/Recommit to Committee:** State the committee to receive the question or resolution; if no committee exists include size of committee desired and method of selecting the members (election or appointment).
- **Extend Debate:** Applies only to the immediately pending question; extends until a certain time or for a certain period of time.
- **Limit Debate:** Closing debate at a certain time, or limiting to a certain period of time.
- **Postpone to a Certain Time:** State the time the motion or agenda item will be resumed.
- **Object to Consideration:** Objection must be stated before discussion or another motion is stated.
- **Lay on the Table:** Temporarily suspends further consideration/action on pending question; may be made after motion to close debate has carried or is pending.
- **Take from the Table:** Resumes consideration of item previously "laid on the table" - state the motion to take from the table.

- 877 • **Reconsider:** Can be made only by one on the prevailing side.
- 878 • **Postpone Indefinitely:** Kills the question/resolution for this session - exception: the motion  
879 to reconsider can be made this session.
- 880 • **Previous Question:** Closes debate if successful - may be moved to "**Close Debate**" if  
881 preferred.
- 882 • **Informal Consideration:** Move that the assembly go into "**Committee of the Whole**" -  
883 informal debate as if in committee; this committee may limit number or length of speeches or  
884 close debate by other means by a 2/3 vote. All votes, however, are formal.
- 885 • **Appeal Decision of the Chair:** Appeal for the assembly to decide - must be made before  
886 other business is resumed; NOT debatable if relates to decorum, violation of rules or order of  
887 business.
- 888 • **Suspend the Rules:** Allows a violation of the assembly's own rules (except Constitution);  
889 the object of the suspension must be specified.
- 890 © 1997 Beverly Kennedy

**Robert's Rules of Order Motions Chart**Based on *Robert's Rules of Order Newly Revised (10th Edition)***Part 1, Main Motions.** These motions are listed in order of precedence. A motion can be introduced if it is higher on the chart than the pending motion. § indicates the section from Robert's Rules.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§21	Close meeting	I move to adjourn	No	Yes	No	No	Majority
§20	Take break	I move to recess for ...	No	Yes	No	Yes	Majority
§19	Register complaint	I rise to a question of privilege	Yes	No	No	No	None
§18	Make follow agenda	I call for the orders of the day	Yes	No	No	No	None
§17	Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
§16	Close debate	I move the previous question	No	Yes	No	No	2/3
§15	Limit or extend debate	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14	Postpone to a certain time	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13	Refer to committee	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12	Modify wording of motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority
§11	Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
§10	Bring business before assembly (a main motion)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

**Part 2, Incidental Motions.** No order of precedence. These motions arise incidentally and are decided immediately.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§23	Enforce rules	Point of Order	Yes	No	No	No	None
§24	Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority
§25	Suspend rules	I move to suspend the rules	No	Yes	No	No	2/3
§26	Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3
§27	Divide motion	I move to divide the question	No	Yes	No	Yes	Majority
§29	Demand a rising vote	I move for a rising vote	Yes	No	No	No	None
§33	Parliamentary law question	Parliamentary inquiry	Yes	No	No	No	None
§33	Request for information	Point of information	Yes	No	No	No	None

**Part 3, Motions That Bring a Question Again Before the Assembly.**

No order of precedence. Introduce only when nothing else is pending.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§34	Take matter from table	I move to take from the table ...	No	Yes	No	No	Majority
§35	Cancel previous action	I move to rescind ...	No	Yes	Yes	Yes	2/3 or Majority with notice
§37	Reconsider motion	I move to reconsider ...	No	Yes	Varies	No	Majority