

PORTSMOUTH TOWN COUNCIL MEETING
JANUARY 23, 2023
MINUTES

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

MEMBERS PRESENT TOWN COUNCIL: Kevin M. Aguiar, Leonard B. Katzman, David M. Gleason, Keith E. Hamilton, Charles J. Levesque and J. Mark Ryan

MEMBERS ABSENT TOWN COUNCIL: Daniela T. Abbott

MEMBERS PRESENT SCHOOL COMMITTEE: Sondra Blank, Frederick Faerber III, Isabelle Kelly, Karen McDaid, Emily Skeeahan and Juan Carlos Payero

MEMBERS ABSENT SCHOOL COMMITTEE: Emily Copeland

Time: 6:01 PM

EMERGENCY EVACUATION PLAN

PLEDGE OF ALLEGIANCE

SITTING AS THE PORTSMOUTH TOWN COUNCIL

1. Roll Call

NEW BUSINESS (Discussion/Action)

1. Joint Town Council/School Committee Legislative Priorities for 2023 – No votes taken.

Town Legislative Priorities

1. Reinstigate General Revenue Sharing to Cities and Towns

General revenue to Cities and Towns was cut by the Legislature in 2010 during the difficult budget years due to the crash of 2009. The past 3 years have seen budget surpluses of \$417, \$878 and Est. \$610 million over the past 3 years. Cities and Towns were forced to increase regressive property taxes to make up the reduction in State Revenue. The past Surpluses and Estimated 2023 Surplus allow the State to help relieve the burden of property taxes on the citizens.

2. Increase Funding Available to Schools

Again, with the estimated surplus in 2023, the State should be increasing the funds available to School Systems. The Pandemic has left our children behind 1-2 years where they should be in their respective learning progression. Further State Aid to schools would allow all school systems to invest in buildings, staff and most important highly effective teachers to help provide the support our children need.

3. Support for Alternative LNG Supply to Aquidneck Island

The 2019 outage showed just how fragile the LNG Supply to Aquidneck Island is. We all witnessed 2 weeks of families without heat and restaurants without gas supply to fuel their kitchens. The Legislature and Governor need to support and push for the installation of a secondary source onto the island to provide a looped system to provide a consistent supply. RI Energies current peak shaving system located in Portsmouth is not a viable or reliable long-term solution. The system on Old Mill Lane is located in a residential area and needs to be removed or relocated ASAP.

4. Prevailing Wage Law

R.I. Gen. Laws § 37-13-7 sets the threshold for paying prevailing wage at \$1000. The cost for smaller projects that can be performed by qualified individuals are excessively expensive due to the limit of \$1000. The threshold should be raised to \$100,000.

5. Broadband Service and poor service by Cox

The reliability of the Cox Broadband service was suspect at best; before the pandemic and has only gotten worse. Aquidneck Island is RI's main hospitality and defense revenue center for the State. We need better more reliable internet and Cox has not been able to provide a solution.

6. Pressure RIDOT with our issues of East Main Road, especially the intersection at Clement's and for sidewalks on Sprague St

7. Work with RIDEM to open more of Portsmouth waters to shell fishing

8. Portsmouth support legislation for the creation of a Special Education Ombudsman Office.

The bill would establish an office independent of RIDE where parents can bring their complaints when their child's rights have been violated and would begin to collect data allowing the State to see which districts are in compliance and which are not. The Special Education ombudsman bill was introduced 3 years ago by Lauren Carson and in the last session, the bill passed the Senate, but not the House due to their not being a line item in the budget for it.

9. Enact a cannabis education to the driving school curriculum similar to what Massachusetts has done and is being supported by law enforcement

Provide support and education for employers, particularly those in public safety roles.

<https://www.mass.gov/news/massachusetts-adding-cannabis-education-to-driving-school-curriculum>

10. Codify State rules for implementing the Financial Data Transparency Act (FDTA) of 2022

On December 27, 2022 President Biden signed the FY2023 National Defense Authorization Act (NDAA). Title LVIII of this legislation enacted the Financial Data Transparency Act (FDTA) of 2022. The Government Finance Officers Association (GFOA) opposed this legislation due to its unnecessary burdens on states and municipalities. The GFOA's Statement on the Financial Data Transparency Act of 2022 can be found here: <https://www.gfoa.org/new-financial-reporting-requirements-proposed>. The RI General Assembly should codify standard rules for all municipalities based on this new legislation to promote consistency and proper implementation of its requirements. Funding for municipalities may also be necessary to accomplish this change.

11. Real Estate Conveyance Tax R.I. Gen. Laws § 44-25-1

The Municipality retains 47.83% of the Real Estate Conveyances, which is \$2.30 per \$500.00 collected. The State retains 52.17%. This is the rate for property selling prices \$800,000.00 or less. Any amount over \$800,000 the State retains the entire \$2.30 per \$500.00 and the Municipality does not receive and additional funds. For example for a real estate purchase of \$1,000,000, the total real estate conveyance tax collected is \$4,600.00. The Municipality retains \$2,200.18 (based on the \$800,000), the State receives \$2,399.82 (based on the \$800,000) and then the State receives an additional \$920.00 for the amount over \$800,000.

School Committee Legislative Priorities

1. State Funding Formula and Financial Concerns

a) High-Cost Special Education

The cost of educating students with disabilities continues to increase even for the most well-managed school budget. For example, the 2023-24 cost of out-of-district tuition for Portsmouth is estimated to be over one million dollars. Portsmouth typically receives around \$100,000 from the high-cost special education categorical fund to help offset these costs. In Massachusetts, districts are responsible for a fixed amount. Then costs above that amount for high-cost special education are covered by the state.

We ask our State legislators to support an increase in the high-cost special education categorical fund included in the funding formula aid.

b) Statewide Transportation

Statewide transportation costs for Portsmouth alone will be over \$600,000 in FY 2023. The legislature enacted the "Statewide Transportation for students who Attend School Outside of Their Residence LEA" to provide fiscal efficiencies for student transportation outside of district. The system, while purportedly offering efficiencies has failed year over year to accomplish this, particularly as it relates to cost. It is not cost effective, and it is not efficient.

We request that the State address this issue by studying the effectiveness of statewide transportation to identify cost effective solutions for LEAs as it relates to transportation.

c) Allocating State Funds for Education/Funding Formula Revisions

If any changes are made to the funding formula we request that the State at least hold districts harmless for FY24. Districts are still recovering from the financial impacts of the pandemic. Unanticipated cuts in state aid will result in significant financial harm to school

districts and substantial reductions to educational programs for students.

2. ESSA (Every Student Succeeds Act) Determination Process

When students are under the care of the Rhode Island Department of Children, Youth, and Families (DCYF) and placed in a residential setting, that triggers what is known as an ESSA determination call to decide if the student should remain in their current district or transfer to the district of that residential setting. Districts have very little say in a final ESSA determination by DCYF.

When students reside in Portsmouth, we are responsible for paying for the out-of-district tuition they require. However, we have had situations where Portsmouth has had to continue to pay for the cost of an out-of-district placement EVEN AFTER the student no longer resides in Portsmouth. These decisions impact our already constrained school department budget.

We ask our state delegation to push for a review of the ESSA Determination Process with a particular focus on giving the districts more of a voice in how students are educated and clarifying the funding responsibilities based on residence.

3. Age-Appropriate Career Development for a Green Economy

We request that our State legislators keep us informed about any legislation focused on age-appropriate career development for a green economy and how that can be best utilized by Portsmouth students.

4. School Waste Recycling and Waste Removal

The School Waste Recycling and Waste Removal Law (SB 104 and H5328) went into effect on Jan. 1st, 2022. The law requires schools to divert food waste from the landfill and requires school food service providers to donate any unserved, non-perishable, or otherwise unspoiled food to local food banks. While it is well-intended, it is an unfunded mandate as the state provided no additional funding to schools to comply.

(Source: <https://ecori.org/recycling-program-aims-to-reduce-food-waste-in-r-i-schools/>).

We would support additional funding to fully implement the law and in particular educate students and provide additional support for our AG Innovation Farm in their sustainability and composting efforts.

5. High-Speed Internet for Aquidneck Island

Last year, the RI legislature established a Broadband Advisory Council, intended to develop a strategic plan (to be released spring 2023) for addressing broadband issues across the state. Access to high quality, affordable broadband continues to be an important concern for the Portsmouth community, which is "underserved" with regard to broadband, according to federal standards cited in a January, 2022 report from Connect Greater Newport*. Many families in the Portsmouth school community cannot reliably access high quality broadband at a reasonable rate, something that has become increasingly important to distance learning and other aspects of education.

We recognize that at present there is not much our state delegation can do while we await the report, but given the importance of this issue to Aquidneck island communities, we would urge our delegation to make access to high quality broadband a priority in their efforts to help Portsmouth families.

Connect Greater Newport Report:

https://www.connectgreaternewport.com/_files/ugd/e410a7_17946dd9b0fa45529d803fb474047f7c.pdf

2. Joint Town Council/School Committee budget presentation. – No votes taken.

Time: 7:18 PM – Break

Time: 7:29 PM – Resumed

PRESIDENT'S EXECUTIVE SUMMARY – Mr. Aguiar extend sympathies to the Ethier Family on the passing of Bill Ethier, retired Firefighter and Fire Marshal.

CONSENT AGENDA – Motion to receive as presented made by Dr. Ryan, seconded by Mr. Hamilton. Motion passed 6-0.

Directions to view licensing applications: 1) Click on [Viewpoint](#), 2) Click Records and then type in the record number which is listed on the agenda, 3) Click on the highlighted record to view the application

1. Bills

2. Peddler License – Mobile Food Establishment (MFE), Renewal:

Amano, LLC d/b/a A Mano Pizza & Gelato, 181 Bellevue Avenue #315, Newport, 1 vehicle (#2273)

MINUTES – Motion to approve made by Mr. Levesque, seconded by Dr. Ryan. Motion passed 6-0.
1/9/23

TOWN ADMINISTRATOR’S REPORT

1. Moody’s rating update – I informed you at the last Council meeting that Moody’s Investors Service has revised its rating methodology and Portsmouth was one of the Cities and Towns under review for a possible change in our bond rating. In a meeting with Moody’s our team successfully impressed upon the agency the strength of Portsmouth in all key areas. After their analysis, Moody’s has issued a decision to maintain Portsmouth’s Aa2 issuer rating. Together with the Standard and Poor’s AAA rating, Portsmouth remains one of the highest rated municipalities in Rhode Island.

2. Audit update – The annual audit report is in the final stage of completion. As stated at the last meeting, an extension was granted to Portsmouth – this was for one reason: Portsmouth experienced significant turnover in the Finance Department during the course of the fiscal year with the loss of both the Finance Director and the Deputy Finance Director. Additionally, the Accounts Payable Clerk was on extended leave due to medical reasons. Barring any State Division of Revenue delays, work has reached a point where we (and our auditor) believe the audit report will be ready for submission the Auditor General by the end of the month.

3. Ethics training reminder – Another friendly reminder, there will be a State required Ethics Training Session on Monday, January 30 at 7:00 PM. The Town Clerk has notified Council, staff, and committee members required to attend and sent another reminder this morning. The training will be available via Zoom and there will be a link available after the training for those unable to attend Monday evening.

Additionally, I am very happy to announce we received word this morning the Division of Statewide Planning has approved the Portsmouth Comprehensive Community Plan. This is a major accomplishment and reflects highly on everyone who was involved in the project. With this approval, we will now prepare our strategy to align the Zoning Ordinance with the Comp Plan.

Lastly, we marked the passing of Bill Ethier on Saturday at St. Barnabas. Bill loved Portsmouth and served the Town in many ways. He retired from the Fire Department as our Fire Marshal in April 2019. His passing deeply affects all who knew and worked with him. We offer our deepest sympathy to his wife and family, and all those who loved and knew him.

RESIGNATIONS AND APPOINTMENTS

1. Resignations:

a. Economic Development – Motion to accept with regret the resignation of Amy Homan made by Mr. Katzman, seconded by Mr. Gleason. Motion passed 6-0.

OLD BUSINESS (Discussion/Action)

1. Monthly Finance Report. – Motion to receive and place on file made by Mr. Hamilton, seconded by Mr. Levesque. Motion passed 6-0.

NEW BUSINESS (Discussion/Action)

1. PUBLIC HEARING: Request approval for proposed amendment to Chapter 405 Zoning, Article V Use Regulations, Land Use Tables, Section A 14 Planned Resort Development and Article VIII Land Development Projects, Section D Planned unit developments 4(g) Planned Resort Development.

Cort Chappell, Esq., 171 Chase Road, representing the Aquidneck Club request to expand the jurisdictional limits of Article VIII Land Development Projects-Section D-planned unit developments-4(g) entitled “planned resort development.” On September 19, 2006, the Town Council amended the ordinance to include planned resort development. Under Article V Land Use Tables Section A 14, Planned resort development is, “limited to the area bounded by Willow Lane, West Main Road, Bristol Ferry Road and the Mount Hope Bridge” and one other lot on the Middletown line. The ordinance change merely seeks to expand the jurisdiction to include lots currently housing the Aquidneck Club that are located south of Willow Lane. The purpose is to give the Planning Board authority to modify and regulate the Aquidneck Club properties viewed as a whole as granted under previous special use permits of the Zoning Board under the previous codified resort ordinance before the Planning Board. Mr. Chappell also mentioned that David Allen was present, representing the Aquidneck Club, Jeff Saletin and Cris Crecelius of Saletin Real Estate Group and Dennis Dupree, an engineer.

Dave Gleason asked how much of the land is owned by the Abbey. Mr. Chappell said that everything in green on the map is owned by the Abbey, which cannot be built upon per the 99-year lease that the Abbey has with the Aquidneck Club. Mr. Gleason also asked Mr. Gavin to explain the concerns that he expressed in his memo to the Planning Board.

Mr. Gavin indicated in his memorandum dated November 8, 2022, while at the Planning Board special meeting on October 26, 2022, that he had some threshold questions involving the Town Council’s power and authority, under the R.I. Zoning Enabling Act of 1999, to adopt the new footnote language proposed by Aquidneck Country Club, Inc. The proposed language, which is underlined: All “Planned Unit Developments” are subject to Article VIII and are approved by the Planning Board. For purposes of this Section: (a) any and all parcels which were subject to the Special Use Permit dated January 18, 1999 and recorded at Book 1235/Page103 as extended and modified (“1999 SUP”); and (b) any and all parcels which were subject to the Special Use Permit dated March 25, 1988 and recorded at Book 546/Page 232 as extended and modified (“1988 SUP”) are deemed to be a Planned Resort Development in full compliance with Article VIII with the 1998 SUP and the 1999 SUP constituting the approved plans for the Planned Resort Development regardless of whether construction has commenced on any such parcels and regardless of any purported expiration/termination of any of the approved plans and said plans may be modified by the Planning Board pursuant to Article VIII.

Mr. Gavin suggested that the Planning Board presume the proposed amendments to the Zoning Ordinance would be valid if enacted, and considered them based on their merits. He believes the Board should make its recommendation to the Town Council based solely on the considerations set forth in Article XV, Section C of the Zoning Ordinance and R.I. General Laws § 45-24-52, which provides as follows:

§ 45-24-52. Adoption — Review by planning board or commission.

Among its findings and recommendations to the city or town council with respect to a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map, the planning board or commission shall:

- (1) Include a statement on the general consistency of the proposal with the comprehensive plan of the city or town, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and
- (2) Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as presented in § 45-24-30.

Scott Hallman, 288 Bristol Ferry Rd, had concerns that were related to the Newport Beach Club. Mr. Chappell stated that the amendment was only related to the Aquidneck Club, not the Newport Beach Club.

Thomas Linhares, 182 West Main Rd, asked if this change would affect the property at the corner of Willow Lane and West Main Rd. Mr. Linhares was told that the area he mentioned would not be included in the resort zone.

Motion to close the Public Hearing made by Mr. Levesque, seconded by Mr. Hamilton. Motion passed 6-0. Motion to approve the proposed amendment to the Zoning Ordinance as presented by Mr. Chappell made by Mr. Levesque, seconded by Mr. Katzman. Motion passed 6-0.

TOWN OF PORTSMOUTH, RI
Ordinance # 2023-01-23
AN ORDINANCE AMENDING THE TOWN CODE OF THE TOWN OF PORTSMOUTH

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

Section 1. The Town Code, Chapter 405 entitled “Zoning” is hereby amended as follows:

Chapter 405. Zoning

Article V. Use Regulations

PRINCIPAL USE DISTRICTS

	R10	R20	R30	R40	R60	C-1	I-L	I-H	WD	TC
A. RESIDENTIAL										
14. Planned Resort Development (PRD), as approved by the Planning Board *[2]	N	Y*	Y*	Y*	Y*	N	N	Y*	N	N

* Planned Resort Development (PRD) is permitted within the R20, R40 and HI Zones limited to (a) the areas bounded by Willow Lane, West Main Road, Bristol Ferry Road and the Mount Hope Bridge; and (b) the following lots within the R20, R40, R60 and HI zones, *to wit*:

Lots Covered by 1998 SUP (Golf Course)

325 & 335 Corys Lane	AP 32, Lot 2
185 and 163 Corys Lane	AP 32, Lot 3
515 West Main Road	AP 32, Lot 5
269 West Main Road	AP 32, Lot 8
0 Depot Avenue	AP 26, Lot 1
717 West Main Road	AP 38, Lot 4-B
125 Corys Lane	AP 32, Lot 3-CA
225 & 275 Depot Avenue	AP 26, Lot 1-CA

Lots Covered by 1999 SUP (South of Willow)

0 Willow Lane	AP 26, Lot 2C
0 Carnegie Harbor Drive	AP 26, Lot 2D
(Tower)	AP 26, Lot 2
(Residences)	AP 26, Lot 2A
(Cottages)	AP 26, Lot 2B

Planned Resort Development (PRD) is permitted within the R30 Zone limited to Map 55, Lot 1A.

* * *

[2] All “Planned Unit Developments” are subject to Article VIII and are approved by the Planning Board. For purposes of this Section: (a) any and all parcels which were subject to the Special Use Permit dated January 18, 1999 and recorded at Book 1235/Page103 as extended and modified (“1999 SUP”); and (b) any and all parcels which were subject to the Special Use Permit dated March 25, 1988 and recorded at Book 546/Page 232 as extended and modified (“1988 SUP”) are deemed to be a Planned Resort Development in full compliance with Article VIII with the 1998 SUP and the 1999 SUP constituting the approved plans for the Planned Resort Development regardless of whether construction has commenced on any such parcels and regardless of any purported expiration/termination of any of the approved plans and said plans may be modified by the Planning Board pursuant to Article VIII.

Section 2. This Ordinance shall take effect upon passage.

ADOPTED BY TOWN COUNCIL ACTION
 ON: January 23, 2023
 Jennifer M. West, Town Clerk

2. Request ARPA funds for the Prudence Island Water District system improvements. – Motion to release \$160,000 in ARPA funds to the Prudence Island Water District systems improvements made by Mr. Katzman, seconded by Mr. Levesque. Motion passed 6-0.
3. Request approval to amend resolution #2022-01-24 – Exemption from Taxation of the Real Estate of Certain Income Eligible Senior Citizens. – Motion to approve made by Mr. Hamilton, seconded by Mr. Katzman. Motion passed 6-0.

TOWN OF PORTSMOUTH, RI
 RESOLUTION # 2023-01-23

Exemption from Taxation of the Real Estate of
 Certain Income Eligible Senior Citizens

	<u>IF YOUR INCOME IS:</u> <u>(DEC. 2022)</u>	<u>YOUR EXEMPTION IS:</u> <u>2023 TAX ROLL</u>
<u>CPL-U</u>	0 - \$11,695	85% of Assessed Value
<u>(6.5%)</u>	\$11,696 - \$14,576	75% of Assessed Value
	\$14,577 - \$17,456	65% of Assessed Value
	\$17,457 - \$20,339	55% of Assessed Value

\$20,340 - \$23,219	45% of Assessed Value
\$23,220 - \$26,105	35% of Assessed Value
\$26,106 - \$28,982	25% of Assessed Value
\$28,983 - \$31,869	15% of Assessed Value
\$31,870 - \$34,516	10% of Assessed Value

Ref.: Amends 2022-01-24 APPROVED BY TOWN COUNCIL ACTION ON January 23, 2023

Kevin M. Aguiar, President
Portsmouth Town Council

ATTEST: _____
Jennifer M. West, Town Clerk

- Request to advertise for a public hearing for a proposed amendment to Chapter 12 of the Town Code entitled “Court, Municipal”. – Motion to approve made by Mr. Levesque, seconded by Mr. Hamilton. Motion passed 6-0.
- Request approval of the Town of Portsmouth Pension Investment Policy Statement. – Motion to approve made by Mr. Hamilton, seconded by Mr. Levesque. Motion passed 6-0.

CORRESPONDENCE – Motion to move item number 7 to the February 13, 2023 New Business agenda and receive and place on file items 1-6 made by Mr. Hamilton, seconded by Mr. Levesque. Motion passed 6-0.

- Portsmouth Housing Authority Annual Report for 2022. / Portsmouth Housing Authority Board of Commissioners
- Monthly RIRRC Report. / Rhode Island Resource Recovery Corp.
- Public notice of Proposed Rule-Making and Public Hearing – Ocean State Adaptation and Resilience Fund (650-RICR-30-05-01). Public hearing to be held on January 24, 2023. / J. Willis, Executive Director CRMC
- Discover Newport Consolidated Annual Audit Report for June 30, 2022 and 2021. / A. Adkins, VP of Finance and Human Resources, Discover Newport
- RIDOH Regarding MEDS Program COVID 19 Response and Vaccine Campaign. / Brittan K. Bates-Manni, Medical Countermeasures Program Director RI Department of Health
- A Resolution Urging Rejection of Changes to the Rhode Island House of Representatives Land Use Commission dated November 10, 2022. / Town of Exeter Town Council
- Resolution Request to Join Narragansett Bay Area for support of South Gould Island Proposal No. 2022-14 & No. 2022-15. / Jamestown Town Council

FUTURE MEETINGS

- Jan 30 7:00 PM – Ethics Training
- Feb 13 7:00 PM – Town Council Meeting
- Feb 27 7:00 PM – Town Council Meeting
- Mar 13 7:00 PM – Town Council Meeting

Time: 9:13 PM

Time: 9:15 PM – Enter into Executive Session.

EXECUTIVE SESSION – Motion to go into Executive Session under R.I. Gen. Laws § 42-46-5(a)(5) made by Mr. Hamilton, seconded by Mr. Levesque. Motion passed 6-0. Motion to move item #2 before item #1 made by Mr. Hamilton, seconded by Mr. Gleason. Motion passed 6-0. Mr. Levesque recused himself from Executive Session item number 1.

- R.I. Gen. Laws § 42-46-5(a)(5): “Any discussions or considerations related to the acquisition

or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.” – Mayflower Wind – No votes taken.

2. R.I. Gen. Laws § 42-46-5(a)(5): “Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.” – Prudence Island Ferry Parking – No votes taken.

Time: 9:33 PM – Mr. Levesque leaves the room.

ADJOURN – Motion to seal the minutes and adjourn to open session made by Mr. Katzman, seconded by Mr. Hamilton. Motion passed 5-0.

RETURN TO OPEN SESSION

OPEN SESSION – Mr. Aguiar stated that there were no votes taken during the Executive Session.

ADJOURN – Motion to adjourn made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 5-0.

Time: 10:03 PM

Jennifer M. West, CMC, Town Clerk