

PORTSMOUTH TOWN COUNCIL MEETING
FEBRUARY 14, 2022
MINUTES

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

MEMBERS PRESENT: Kevin M. Aguiar, Linda L. Ujifusa, Daniela T. Abbott, Keith E. Hamilton, Leonard B. Katzman, Andrew V. Kelly and J. Mark Ryan

Time: 7:02 PM

EMERGENCY EVACUATION PLAN

PLEDGE OF ALLEGIANCE

SITTING AS THE PORTSMOUTH TOWN COUNCIL

1. Roll Call

PRESIDENT’S EXECUTIVE SUMMARY – There was no Executive Session held.

PRESENTATIONS/RECOGNITIONS

CONSENT AGENDA – Motion to receive and place on file made by Mr. Hamilton, seconded by Mr. Katzman. Motion passed 7-0.

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

SITTING AS THE BOARD OF LICENSE COMMISSIONERS

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. Victualler License – Annual, New:

Andrew Viele d/b/a Andy’s 19th Hole, 500 Anthony Road, Portsmouth (#2034) – Motion to approve made by Mr. Hamilton, seconded by Mr. Katzman. Motion passed 7-0.

2. Entertainment License:

Rhode Island Rugby Football Foundation, Beast of the East Collegiate Rugby Tournament, Gardner Seveney Sports Complex, April 23 & 24, 2022 (#1667) – Motion to approve made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

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

MINUTES – Motion to approve made by Dr. Ryan, seconded by Ms. Ujifusa. Motion passed 7-0.
1/24/22

TOWN ADMINISTRATOR’S REPORT

1. New audiovisual system – The newly renovated A/Visual system is now operational and online. There is still one part on back-order and when that is received, the fourth monitor will be functional. The system includes directional microphones with on/off buttons. For the benefit of everyone in the chamber and participating at home, it is best if you ensure the microphone is pointed at you when you speak. Councilors may keep their microphones on as your

- microphones may all be on at the same time.
2. Opioid litigation update – It was announced two weeks ago that Rhode Island will join the national opioid settlement with three major opioid distributors. The proceeds of this settlement are meant to provide funding for state and local efforts to address Rhode Island’s opioid crisis. The terms of this deal for RI, ensures the State and its cities and towns will receive these funds whether or not the national settlement takes effect next July. Payments will be spread out over 18 years. We expect to start receiving the first distribution of funds soon and will place them in a restricted account. We will come back to the Council with a recommended distribution of these funds once we have received clearer guidance on appropriate and authorized uses.
 3. Covid 19 home test update – The first distribution of free Covid test kits from the State have been distributed in accordance with RI Dept. of Health and FEMA guidance. In addition, we have distributed kits to homebound families. We have now completed the priority distribution in accordance with the guidance received. We expect more test kits over the next two weeks and are planning to establish a drive-thru distribution in town later this month.
 4. West Side Development Advisory Committee update – The West Side Development Advisory Committee has elected a new chairperson. He is aware of the Council’s desire to review the Committee and for me to provide a recommendation on whether to keep it in place, dissolve it, or have it incorporated into another Town committee. I’ve spoken at length with the Chair and I agree with him that the committee should have time over the next couple months to evaluate their goals and priorities prior to me reporting back to the Council.
 5. Storm after action report – We all know DPW has been working hard over the last few weeks keeping the roads safe for travel. I would particularly like to commend their work during the blizzard conditions two weeks ago. Of note, the State has collected data from all 39 cities and towns regarding the costs associated with the blizzard and there is a possibility FEMA will reimburse the town 75% of our response costs.

RESIGNATIONS AND APPOINTMENTS

1. Appointments:

a. School Committee – Mr. Katzman nominated Sondra Blank, Mr. Hamilton and Ms. Abbott nominated Lisa Janssen. Motion to appoint Ms. Blank was 4-3. Ms. Abbott, Mr. Hamilton and Mr. Aguiar in dissent. Motion to appoint Ms. Janssen was 3-4. Ms. Ujifusa, Mr. Katzman, Mr. Kelly and Dr. Ryan in dissent. Ms. Blank was appointed.

b. Dog Park Committee (Re-Appt.) – Motion to reappoint Michael Cranson made by Ms. Ujifusa, seconded by Mr. Hamilton. Motion passed 7-0.

OLD BUSINESS (Discussion/Action)

1. Option to Lease Agreement with Church Community Housing for property located at 110 Bristol Ferry Road. – Motion to add “The Town” in the last sentence of Section 1, after “required by” made by Mr. Hamilton, seconded by Ms. Ujifusa. Motion passed 7-0. Motion to approve as amended made by Ms. Ujifusa, seconded by Mr. Hamilton. Motion passed 7-0.

Mr. Hamilton and Ms. Ujifusa asked that NB5 be heard after OB1 so that Mr. Woodhead could go home and get some sleep after being up all night due to the snowstorm.

NB5. Request approval for DPW to partner with the Portsmouth Water and Fire District for the installation of the DPW water main extension. – Motion to approve made by Ms. Ujifusa, seconded by Dr. Ryan. Motion passed 6-0-1. Mr. Kelly recused.

2. Presentation by the Southeast New England Program Network (SNEP) of their recently

completed Portsmouth, RI Climate Resilience Planning and Financing Strategy Report. – No votes taken.

NEW BUSINESS (Discussion/Action)

1. Request to approve a resolution to support an Island-wide celebration for Earth Day 2022. – Motion to approve made by Mr. Katzman, seconded by Ms. Ujifusa. Motion passed 7-0.

THE TOWN OF PORTSMOUTH
RESOLUTION #2022-02-14A

RESOLUTION FOR EARTH DAY 2022 CELEBRATION,
AQUIDNECK ISLAND EARTH WEEK (AIEW)

WHEREAS, all species play a unique role in the complex web of life and contribute to the ecosystem services on which all life on Earth depends, and hence, protecting our species is crucial to the survival of this planet and its inhabitants; and

WHEREAS, species provide important services to the people, such as generating oxygen and purifying the air; controlling other animals considered pests or that spread disease; pollinating plants and crops; providing recreation opportunities and well-being, etc.; and

WHEREAS, many plants, wild animals, and pollinators live in urbanized landscapes, and cities thereby have a responsibility to examine the ecological impacts of expanding urban areas and how to protect biodiversity; and

WHEREAS, it is understood that sustainability will only be achieved by meeting the needs of the present without compromising the needs of future generations; and

WHEREAS, Aquidneck Island communities are impacted by coastal hazards that are being exacerbated by sea-level rise and climate change; and

WHEREAS, given previous and ongoing events, we now find ourselves in a new era of more unpredictable and severe weather that can potentially cause extensive damage to our community's land and infrastructure; and

WHEREAS, it is essential to expand and diversify the local environmental movement to increase the resiliency of our communities; and

WHEREAS, it is more important than ever to cooperate locally to build on the environmental progress that has been heretofore gained; and

WHEREAS, Earth Day is an annual reminder of the constant need for environmental activism, stewardship commitments, and sustainability efforts; and

WHEREAS, Earth Day was founded in 1970 and celebrated by over 190 countries around the world; and

WHEREAS, more than two dozen local groups, including non-profits, Town committees, schools, and businesses created an extensive public program for AIEW 2021 (Aquidneck Island Earth Week) that can be leveraged in creating programming for AIEW 2022.

WHEREAS, Aquidneck Island Earth Week partners commit to building on the success of Aquidneck Island Earth Week in 2022. These include:

- Portsmouth Recreation Committee
- Portsmouth High School's Green Team
- Portsmouth School Department
- Portsmouth AgInnovation
- Middletown Open Space and Fields Committee
- The Aquidneck Land Trust
- Clean Ocean Access
- The Norman Bird Sanctuary
- Newport Energy & Environment Commission

- Newport Tree Conservancy
- Middletown Open Space and Fields Committee
- Middletown Tree Commission
- Eastern Rhode Island Conservation District
- Tiverton Land Trust
- Tightline Consulting
- Bike Newport
- Newport Film
- The Greenlove Foundation
- Aquidneck Community Table
- Aquidneck Island Climate Caucus
- Friends of King Park

NOW THEREFORE, BE IT RESOLVED, the Town Council of the Town of Portsmouth hereby declares the week of April 16, 2022 to April 23, 2022 Aquidneck Island Earth Week, a celebration of the 52nd Anniversary of Earth Day, and supports an island-wide effort to share in the celebration of our interconnectedness with nature, environmental sustainability, and conservation of natural resources.

BE IT FURTHER RESOLVED that the Town Council requests the administration to put forth an effort to engage the entire community of Portsmouth and the neighboring communities of Newport and Middletown to join the effort to create Aquidneck Island Earth Week.

Adopted this 14th day of February 2022.

ATTEST: _____
Jennifer M. West, Town Clerk

Kevin M. Aguiar, President
Portsmouth Town Council

2. Request to approve a proclamation stating March 7-12, 2022, as Wellness Week with Herren. – Motion to approve made by Mr. Hamilton, seconded by Mr. Kelly. Motion passed 7-0.

3. Request to approve a resolution requesting and supporting legislation to amend the Rhode Island Zoning Enabling Act of 1991. – Motion to approve made by Ms. Ujifusa, seconded by Mr. Katzman. Motion passed 7-0.

TOWN OF PORTSMOUTH, RI
RESOLUTION # 2022-02-14C

RESOLUTION REQUESTING AND SUPPORTING LEGISLATION
TO AMEND THE RHODE ISLAND ZONING ENABLING ACT OF 1991

WHEREAS: In 1991, the R.I. General Assembly enacted the Rhode Island Zoning Enabling Act of 1991 (P.L. 1991, ch. 307, § 1), R.I. Gen. Laws § 45-24-27 *et seq.*, (the “Act”), which required each city and town to review its zoning ordinance and make amendments or revisions as necessary to bring its zoning ordinance into conformance with the Act by December 31, 1994; and

WHEREAS: Portsmouth adopted a new Zoning Ordinance effective July 1, 1994; and

WHEREAS: In accordance with § 45-24-37 the Act (“General provisions – Permitted uses”), Article V of the Portsmouth Zoning Ordinance (“Use Regulations”) specifies uses that are permitted as a matter of right within the zoning districts of the Town; and

WHEREAS: In accordance with § 45-24-42 the Act (“General provisions – Special use permits”), Article V of the Portsmouth Zoning Ordinance specifies uses that require a special-use permit in each zoning district; and

WHEREAS: Article V(1) of the Zoning Ordinance provides as follows:

Except as otherwise provided in this Ordinance, in each district no building, structure, or land shall be used or occupied except for the purposes permitted in the accompanying Table of Use Regulations, Section B.

Proposed uses not so listed may be presented to the Zoning Board of Review by the property owner. Such uses shall be evaluated by the Zoning Board of Review according to the most similar use(s) that is

(are) listed, as well as the purposes and uses generally permitted in the subject use district. The Zoning Board of Review may approve the proposed use as permitted, or deny the proposed use as not permitted, or allow the proposed use subject to a Special Use Permit.

(The second paragraph of Art. V(1) is referred to as the “Non-Listed Uses Provision.”); and

WHEREAS: Several other Rhode Island municipalities have zoning ordinances which contain similar provisions setting forth a procedure whereby a municipal board or official may consider and evaluate proposed land uses that are not expressly listed in the table of uses; and

WHEREAS: On July 27, 2018, in the case of *Fontaine vs. Edwards, et al.* (C.A. No. NC-2017-0261), the Newport County Superior Court (Van Couyghen, J. presiding) issued a written decision in which the Superior Court ruled, in part, that the Non-Listed Uses Provision in Portsmouth’s Zoning Ordinance is legally invalid and prohibited under the Zoning Enabling Act; and

WHEREAS: By invalidating the Non-Listed Uses Provision, the Newport Superior Court in effect created a town-wide prohibition and exclusion of any proposed land use that is not specifically listed in the table of uses—no matter how legitimate, benign or beneficial the proposed use may be; and

WHEREAS: By virtue of the Newport Superior Court’s decision and ruling, any property owner wishing to engage in a land use which is not specifically listed will now be forced to petition the Town Council to adopt an amendment to the Zoning Ordinance to add the specific new land use to the table of uses, a process which is lengthy, expensive and fraught with uncertainty; and

WHEREAS, The Town filed a petition to the R.I. Supreme Court for a writ of certiorari (Case No. SU-2018-0278-M.P.) requesting that the R.I. Supreme Court review the Newport Superior Court’s decision and ruling which invalidated Portsmouth’s Non-Listed Uses Provision; and

WHEREAS, The Supreme Court declined to exercise its discretion to review the Newport Superior Court’s decision and ruling; and,

WHEREAS, The decision and ruling of the Newport Superior Court which invalidated Portsmouth’s Non-Listed Uses Provision remains in effect; and

WHEREAS: Senate Bill S 2088 and House Bill H 7201 have been introduced in the 2022 Session of the R.I. General Assembly; and

WHEREAS, These Bills would amend § 45-24-37 of the Act to add the following clarifying language: “The ordinance may provide for a procedure under which a proposed land use that is not specifically listed may be presented by the property owner to the zoning board of review or to a local official or agency charged with administration and enforcement of the ordinance for an evaluation and determination of whether the proposed use is of a similar type, character and intensity as a listed permitted use. Upon such determination, the proposed use may be considered to be a permitted use.”; and

WHEREAS: These Bills would amend § 45-24-42 of the Act to add the following clarifying language: “the ordinance may provide for a procedure under which a proposed land use that is not specifically listed may be presented by the property owner to the zoning board of review or to a local official or agency charged with administration and enforcement of the ordinance for an evaluation and determination of whether the proposed use is of a similar type, character and intensity as a listed use requiring a special-use permit. Upon such determination, the proposed use may be considered to be a use requiring a special-use permit.”;

NOW, THEREFORE, BE IT RESOLVED, that the Portsmouth Town Council hereby requests and urges the Rhode Island General Assembly to pass and enact Senate Bill S 2088 and House Bill H 7201, to amend § 45-24-37 and § 45-24-42 of the Zoning Enabling Act as necessary to validate the legality and efficacy of Portsmouth’s Non-Listed Uses Provision and similar provisions contained in the zoning ordinances of other municipalities; and

BE IT FURTHER RESOLVED, that the Town Clerk submit a copy of this Resolution to the Town of Portsmouth’s State Senator and Representatives, the Speaker of the House of Representatives, the President of the Senate, the Rhode Island Governor, and every Rhode Island municipality.

Adopted this 14 day of February 2022.

ATTEST: _____
Jennifer M. West, Town Clerk

Kevin M. Aguiar, President
Portsmouth Town Council

4. Portsmouth Housing Authority Annual Report for 2020 & 2021. – No votes taken.
6. Request approval for the use of ARPA funds, not to exceed \$20,000, for the School Department to make repairs to a water main pipe at Hathaway Elementary School. – Motion to approve made by Mr. Katzman, seconded by Mr. Hamilton. Motion passed 7-0.
7. Request approval for the use of ARPA funds, not to exceed \$383,812 to help Portsmouth Water and Fire Department (PWFD) rehabilitate existing emergency interconnection with Stone Bridge Water in Tiverton (Sakonnet River Pipeline). – Motion to approve made by Ms. Abbott, seconded by Mr. Hamilton. Motion passed 6-0-1. Mr. Kelly recused.
8. Town Council review and approval of Civic Support requests. – Motion to cap Civic Support to no more than \$960,350 made by Mr. Hamilton, seconded by Mr. Kelly. Motion passed 7-0.
9. Resolution authorizing the Town of Portsmouth to issue not to exceed \$21,439,299 General Obligation Bonds, Notes and other Evidences of Indebtedness to finance the construction, additions, renovation, improvement, alteration, repair, furnishing and equipping of schools and school facilities throughout the Town. – Motion to approved by Mr. Hamilton, seconded by Mr. Katzman. Motion passed 7-0.

TOWN OF PORTSMOUTH, RI
RESOLUTION #2022-02-14B

RESOLUTION AUTHORIZING THE TOWN OF PORTSMOUTH TO ISSUE NOT TO EXCEED \$21,439,299
GENERAL OBLIGATION BONDS, NOTES AND OTHER EVIDENCES OF INDEBTEDNESS TO
FINANCE THE CONSTRUCTION, ADDITIONS, RENOVATION, IMPROVEMENT, ALTERATION,
REPAIR, FURNISHING AND EQUIPPING OF SCHOOLS AND SCHOOL FACILITIES THROUGHOUT
THE TOWN

SECTION 1. Pursuant to Local Acts 73 and 75 of 2020 and a vote of the electorate on November 2, 2021, an amount not to exceed \$21,439,299 is appropriated for the purpose of financing the construction, renovation, improvement, alteration, repair, furnishing and equipping of schools and school facilities throughout the Town (the "Project").

SECTION 2. The President of the Town Council, the Finance Director and the Town Administrator (the "Authorized Officers") be and hereby are authorized to issue on behalf of the Town, an amount not exceeding Twenty-One Million Four Hundred Thirty-Nine Thousand Two Hundred Ninety-Nine Dollars (\$21,439,299) bonds of the Town, at one time, or from time to time in order to meet the foregoing appropriation.

SECTION 3. The said officers from time to time may issue and refund not exceeding \$21,439,299 interest bearing or discounted notes in anticipation of the issue of said bonds or in anticipation of the receipt of federal or state aid for the purpose specified in Section 1 hereof.

SECTION 4. The manner of sale, amount, denominations, maturities, conversion or registration privileges, interest rates, medium of payment, and other terms, conditions and details of the bonds or notes may be fixed by the officers authorized to sign the bonds or notes. The Town may enter into a financing and/or other agreements with the Rhode Island Health and Educational Building Corporation pursuant to Title 45, Chapter 38.1 of the General Laws or the Rhode Island Infrastructure Bank pursuant to the provisions of Title 46, Chapter 12.2 of the General Laws.

SECTION 5. The said officers from time to time may apply for, contract for and expend any federal or state advances or other grants or assistance which may be available for the purposes specified in Section 1 hereof.

SECTION 6. Pending the issuance of the bonds under Section 2 hereof or pending or in lieu of the issue of notes under Section 3 hereof, the Finance Director may expend funds from the general treasury of the Town for the purposes specified in Section 1 hereof. Any advances made under this section shall be repaid without interest from the proceeds of the bonds or notes issued hereunder or from the proceeds of applicable federal or state assistance or from other available funds.

SECTION 7. The Authorized Officers are also authorized, empowered and directed, on behalf of the Town, to: (i) execute, acknowledge and deliver any and all other documents, certificates or instruments necessary to effectuate such borrowing; (ii) amend, modify or supplement the bonds or notes any and all other documents, certificates or instruments at any time and from time to time, in such manner and for such purposes as such

officers shall deem necessary, desirable or advisable; (iii) do and perform all such other acts and things deemed by such officers to be necessary, desirable or advisable with respect to any matters contemplated by this resolution in order to effectuate said borrowing and the intent hereof.

SECTION 8. The Authorized Officers be, and hereby are, authorized to deliver the bonds or notes to the purchasers and said officers be, and hereby are, authorized and instructed to take all actions, on behalf of the Town, necessary to ensure that interest on the bonds or notes will be excludable from gross income for federal income tax purposes and to refrain from all actions which would cause interest on the bonds or notes to become subject to federal income taxes.

SECTION 9. This resolution is an affirmative action of the Town Council of the Town toward the issuance of bonds or notes in accordance with the purposes of the laws of the State. This resolution constitutes the Town's declaration of official intent, pursuant to Treasury Regulation §1.150-2, to reimburse the Town for certain capital expenditures for the Project paid on or after the date which is sixty (60) days prior to the date of this resolution but prior to the issuance of the bonds or notes. Such amounts to be reimbursed shall not exceed \$21,439,299 and shall be reimbursed not later than eighteen (18) months after (a) the date on which the expenditure is paid or (b) the date the Project is placed in service or abandoned but in no event later than three (3) years after the date the expenditure is paid.

SECTION 10. The Authorized Officers are authorized to take all actions necessary to comply with federal tax and securities laws including Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") and to execute and deliver a Continuing Disclosure Certificate in connection with the Bonds in the form as shall be deemed advisable by the Authorized Officers in order to comply with the Rule. The Town hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, as it may be amended from time to time. Notwithstanding any other provision of this Resolution or the Bonds, failure of the Town to comply with the Continuing Disclosure Certificate shall not be considered an event of default; however, any bondholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Town to comply with its obligations under this Section and under the Continuing Disclosure Certificate.

SECTION 11. The issuance of the Bonds and Notes hereunder is subject to approval of state housing aid at a reimbursement rate or state share ratio of not less than 35% for expenditures eligible for state aid and this authorization shall be reduced by any grant received from the school building authority capital fund.

SECTION 12. That this resolution shall become effective immediately upon its passage by the Town Council.

Adopted: February 14, 2022

ATTEST: _____
Jennifer M. West, Town Clerk

Kevin M. Aguiar, President,
Portsmouth Town Council

CORRESPONDENCE – Motion to receive and place on file made by Mr. Hamilton, seconded by Dr. Ryan. Motion passed 7-0.

1. Monthly RIRRC Report. / Rhode Island Resource Recovery Corp.
2. Requesting support for a resolution Prioritizing Quality Education for Middletown Students, Families and Residents. / Middletown Town Council
3. Resolution requesting amendments to the RI General Laws § 20-10-4 and 20-10-5 related to notification of aquaculture applications before the Coastal Resources Management Commission. / Tiverton Town Council
4. Resolution requesting the Governor and the General Assembly increase the number of basic Police Training Academy classes. / Tiverton Town Council
5. Resolution requesting a change to RI General Laws § 16-7-40 (c) and (d) relating to Increased school housing ratio. / Tiverton Town Council
6. U.S. Army Corps of Engineers – New England District is requesting a State of RI Water Quality Certification for all state waters of RI. / Dept. of Environmental Management, Office of Water Resources

FUTURE MEETINGS

- Feb 28 7:00 PM – Town Council Meeting
- Mar 07 7:00 PM – Town Council Comprehensive Plan Public Hearing
- Mar 14 7:00 PM – Town Council Meeting
- Mar 21 7:00 PM – Town Council Comprehensive Plan Public Hearing
- Mar 28 7:00 PM – Town Council Meeting
- Apr 04 7:00 PM – Town Council Comprehensive Plan Public Hearing

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

Time: 9:13 PM

Jennifer M. West, Town Clerk