

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COUNTY OF NEWPORT**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton Town Hall, 343 Highland Road, on the 9th day of August 2016 A.D. at 7:00 p.m.

President deMedeiros opened the meeting with the Pledge of Allegiance to the Flag.

<b>Roll Call:</b>	<b>Denise M. deMedeiros - President</b>	<b>Jay J. Lambert</b>	<b>Peter A. Mello</b>
	<b>Joan B. Chabot – Vice President</b>	<b>Brett N. Pelletier</b>	<b>David Perry</b>
	<b>Joseph R. Sousa</b>		

Town Administrator, Matthew Wojcik and Assistant Town Solicitor Peter Skwirz were also present.

**PROCLAMATION RECOGNIZING BOY SCOUT JONATHAN KLINKER**

President deMedeiros read the Proclamation recognizing the accomplishments of Boy Scout Jonathan Klinker.

**Approval of Consent Agenda:**

All items listed with “(CA) “are to be considered routine by the Town Council and will ordinarily be enacted by one motion. There will be no separate discussion of these items unless a member of the Council, or a member of the public so requests and the Town Council President permits, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

Council President deMedeiros read the items on the Consent Agenda. Councilor Pelletier requested removal of items CA1d, Executive Session minutes from July 11, 2016 and item CA3e, regarding DPW Director.

Councilor Lambert made a motion to Approve the rest of the Consent Agenda. The motion, seconded by Councilor Perry passed unanimously.

The Consent Agenda was as follows:

**CONSENT AGENDA:**

**A-1-Approval of Minutes of Previous Meetings:**

- a. Approval of Special Council Meeting Minutes of June 22, 2016
- b. Approval of Regular Council Meeting Minutes of June 27, 2016
- c. Approval of Executive Session Minutes Meeting of June 27, 2016
- d. Approval of Executive Session Minutes Meeting of July 25, 2016

**A-2-Receipt of Minutes from the Following Boards, Commissions**

- a. Historic Preservation Advisory Board (6)
- b. Arts Council

**A-3-Correspondence – Receive and File**

- a. Edward and Betty Jerome, 610 Highland Road Regarding Trash Pick-up
- b. Paula M. Dansereau, 20 Captain’s Circle Regarding Trash Collection
- c. John Christo – Regarding Yard Waste Pickup
- d. Petition to Wastewater Management Regarding Sewer Systems- Referred to Tiverton Wastewater District

**A-4-Approval of Tax Assessor’s Abatements**

**A-5-Town Administrator - Police and Fire Department Overtime Reports for June 2016**

**a. Police Chief Thomas Blakey – Explanation of Police Department Overtime**

**A-6-Town Administrator – Distribution of Department Monthly Reports for July 2016**

## **BUSINESS BROUGHT BEFORE THE COUNCIL**

### **CA1d-Approval of Executive Session Minutes Meeting of July 11, 2016**

Councilor Pelletier had abstained from most of these minutes, wanted to abstain from approving them.

Councilor Perry made a motion to Approve item CA1d, Executive Session Minutes Meeting of July 11, 2016. The motion, seconded by Councilor P. Mello passed on a vote of 6-0-1, Councilor Pelletier abstained.

### **CA-3-Correspondence – Receive and File**

#### **e. Tiverton Planning Board – Regarding Concern Over Absence of a Qualified DPW Director**

Councilor Pelletier noted the letter listed fairly substantive issue as the DPW Director served as an in-house engineer. A recent turnover with the consulting engineer raises concerns. Town Administrator Wojcik thanked Deidre Paiva who served the Town exceptionally well now has an opportunity with RIDOT. Steve Parker is a registered professional engineer who will be taking Ms. Pavia's place. There were three finalists for the job of DPW Director, offered it to one but was unable to take it. At this point rather than re-advertising will use the funds budgeted for that position to pay for trash. The temp help will be used on as needed basis. Councilor P. Mello questioned how this reconciles with the Charter which requires a DPW Director. President deMedeiros noted the savings since July; don't anticipate hiring someone in August. The Administrator estimated it would probably be close to January by the time that position is filled. Councilor Pelletier was concerned with the absence of historic knowledge; need to be more diligent and proactive in following up on issues. President deMedeiros added, even if this is advertised in the next couple of weeks the Council would still have to figure out some money for trash. Councilor Sousa suggested looking at this position again, hard to find someone to fill this at this pay level. The T/A stated the Charter requires this position to be a professional engineer. Managing the day to day of the DPW is a very important aspect of the job. Councilor Pelletier noted this was discussed at a Land Use ad hoc committee meeting; easier to get a professional engineer who could manage the day to day functions than a manager who was a professional engineer. Councilor Pelletier wanted to make sure the Council was keeping an eye on this.

Councilor Lambert made a motion to Approve CA3e, seconded by Councilor Pelletier passed unanimously.

### **A-7-OPEN PUBLIC FORUM FOR ANNOUNCEMENTS, COMMENTS, QUESTIONS:**

Bruce Hathaway gave a one page handout to the Clerk regarding Legacy's proposal dated 7/29/16. Legacy proposes \$5 million, requires Tiverton to use 50% for beautification for the DPW and Police Station. Legacy is also requiring the Town to set aside \$1.25 million to develop the park per the 2015 Financial Town Resolution (FTR). They are requiring the cell tower be moved which has rental income of \$400,000 and if the cell tower lease can be broken that estimated cost is \$500k. The total net benefit to the Town is about \$350k for 108 acres. Carol Herrmann, Main Road, commented on the Legacy proposal, majority of Tiverton voters do not support a large retail operation. Ms. Hermann urged the Council to pursue the energy park that provides steady income to the Town. Louise Durfee, Highland Road, commented on Legacy proposal which appears to be a cash subsidy by the Town. Ms. Durfee opined the cell tower lease could not be broken because there was no termination clause by the landlord. Cell towers have precise location; this appears to be a cash subsidy for the sale of the land.

### **PUBLIC HEARINGS & PUBLIC PRESENTATIONS:**

#### **Advertised Public Hearings**

#### **1. Michael Dennett and Elizabeth Hyder, 145 Lepes Road – Public Hearing for Sound Variance Special Event/Outdoor Entertainment Wedding Reception To Take Place On Saturday, August 27, 2016 from 11a.m. to Sunset**

President deMedeiros opened the public hearing for comment from the audience, noted all abutters had been notified. Town Clerk Mello cited the lot map provided to the Council which had lot 200 highlighted.

Councilor Lambert made a motion to Approve the request for a Sound Variance Special Event/Outdoor Entertainment Wedding Reception To Take Place On Saturday, August 27, 2016 from 11a.m. to Sunset. The motion, seconded by Councilor Pelletier passed unanimously.

**2. Proposed Amendment to Chapter 30, COURTS, ARTICLE II, MUNICIPAL COURT of the Tiverton Code of Ordinances. Regarding the Term of the Municipal Court Judge's Appointment, the Manner of Appointing an Acting Municipal Court Judge or Clerk in Cases of Sickness, Absence, or Other Disability, Effect Municipal Court Rules of Procedure, and Various Other Changes with Regard to the Municipal Court – Continued from July 25<sup>th</sup> Meeting**

Assistant Solicitor Skwirz explained Section 30-62, Rule 12, Pre-Trial conference and trial language that was proposed prior to this Solicitor. Solicitor DeSisto proposed deleting that existing language and replacing that with: A pre-trial conference and trial shall be had at the place and time determined by Municipal Court Judge and the calendar of Municipal Court dates shall be posted on the Town of Tiverton website with adequate time for the Defendant to prepare for any pre-trial conference and trial. The other recommended change would be on page 5, Section 30-67, Rule 17, to delete the word “sentence” after 9 (a) and in subsection (b) delete the phrase “after imposing sentence”. Councilor P. Mello questioned what would happen with zoning violations under these new rules. Solicitor Skwirz explained it would be pretty much the same; before they just followed the customary written rules of procedure. One change is the complaint form that was changed to a civil style of pleading. Violations will still go to Superior Court as well as seeking injunctive relief. Administrator Wojcik explained the administrative court rules for this came from the Land Use Improvements Committee (LUPI) meetings; should have rules in writing so people know what they are coming into and to not violate due process rights. This has been vetted by the Municipal Court judge. Trish Hilton, Peaceful Way, questioned the appeal process for a zoning complaint; where does that appeal go? Solicitor Skwirz explained that appeal goes to Superior Court, heard in a different posture if it starts in Superior Court. With Municipal Court there is a difference of remedies; if you want to force compliance then Superior Court is the way to go. To have someone come into compliance Municipal Court is quicker. It's appealed as Superior Court de novo, anything the Municipal Court decided is thrown out and a new trial is started. Right now Tiverton Municipal Court appeals are sent to the Superior Court criminal calendar. It's not clear, cannot send someone to jail for a zoning violation, more in the line of a civil violation.

Ms. Hilton noted there was no determining factor as to what goes to Municipal Court and what goes to Superior Court and for the citizen who has protection for property rights they end up in criminal court trying to get property rights restored. Ms. Hilton opined this could be more burdensome, should not have to send aggrieved parties to criminal court. Solicitor Skwirz explained the ordinance does allow for some sort of prosecutorial discretion on the part of the Town. A set of guidelines could be drafted, did not think the Town wanted to have be tied to the guidelines. Ms. Hilton suggested having some sort of guidelines as to what sorts of things go to Municipal Court and to Superior Court that are not overly burdensome so there's some fairness. Solicitor Skwirz explained you can't tie the Town's discretion to a particular thing if there's an ordinance that says you must do this or that. Guidelines could be published for the Town and written more broadly. Councilor Pelletier opined that was not unreasonable, it's just to set expectations and make Municipal Court easier for the public to use. President deMedeiros called for any other comments from the audience, hearing none closed this part of the public hearing. Councilor P. Mello questioned why all the case from here are assigned to criminal; Solicitor Skwirz explained the Clerk's office in Newport does this, don't know that all matters will be taken as a criminal matter as some are not addressed. Councilor Chabot summarized this was just adding procedures into the ordinance, documenting the procedure and formalizing the process to go through. Solicitor Skwirz cited Rule 3, Summons and Complaint which shows what the summons consists of, how it's created and served. Councilor Chabot opined this was a good thing, makes it clearer for the public to understand and shows the parameters. Councilor P. Mello questioned if Municipal Court fines someone and they appeal if that automatically make it a criminal case. Solicitor Skwirz explained it did not, criminal cases in part came from the form that was used. Councilor Pelletier questioned Section 30-53, subsection (b) that says a Municipal Court complaint shall be signed by building/zoning official but Section 30-51 references housing. Councilor Pelletier suggested this could be expanded so that the zoning official is the agent for

all code violations, Solicitor Skwirz agreed that was a good catch. Councilor Pelletier opined it was important to have professional guidelines. President deMedeiros noted it would be separate from the ordinance.

Councilor Pelletier made a motion to Approve the Proposed Amendment to Chapter 30 as drafted and with Solicitor amendments to Section 30-53-3, subsection (b), the proposed amendments in the memo, B2, and also request Guidelines be drafted for violation procedures. The motion, seconded by Councilor Perry passed on a vote of 6-1, Councilor Sousa opposed.

**CODE AMENDMENT ATTACHED AT END OF MINUTES.**

**3. Town Administrator – Public Hearing Continued from July 11th - Approval of Proposed Amendments to Fees and Fines Resolution Regarding Building Inspection Fees**

Administrator Wojcik explained the Building Official was away on vacation, waiting to have the residential and commercial cases compared to Middletown, request continuance to August 22 meeting.

Councilor Perry made a motion, seconded by Councilor Pelletier to continue this Public Hearing to August 22, 2016. The motion passed unanimously.

**C-TOWN COUNCIL SITTING AS BOARD OF LICENSING:**

**NON ADVERTISED LICENSE**

There were no items for this topic on the agenda.

**D-APPOINTMENTS & RESIGNATIONS:**

**Resignations**

**1. Melissa Hutchinson, 203 Hooper Street – Economic Development Commission**

Councilor Perry made a motion to Accept with Regret and Thanks for Service to the Town the Resignation of Melissa Hutchinson from the Economic Development Commission. The motion, seconded by Councilor Chabot passed unanimously.

**E-UNFINISHED BUSINESS:**

**1. Susan Anderson, Historic Preservation Advisory Board– Stone Wall Protection Ordinance Recommendation**

Solicitor Skwirz explained there were a couple of draft proposal, left other draft copies in the office. The first draft, for the Code of Ordinances, essentially gives the Building Official the discretion to make the determination under the ordinance for the type of stone wall. The language has been cleaned up as to what applies and the guidelines as to who qualifies. The second draft is similar and based on a zoning ordinance; opined this would be stronger linked to the Zoning Enabling Act. The third draft allows a Town to provide a tax credit; much of that language is borrowed from State statute. Susan Anderson, Chair of the Historic Preservation Advisory Board, explained the Board voted to keep the Stone Wall Protection Ordinance as a stand-alone document and not part of the Zoning Ordinance. Solicitor Skwirz noted the changes made were to change the wall height from 3ft to 2ft and added a provision for the Historic commission to act in an advisory capacity to the Building Official in determining if a stone wall is historic and falls under the ordinance and advise the Building Official on whether to grant some type of relief from the ordinance. Ms. Anderson noted this Board also acts in an advisory capacity to the Planning Board relative to the Comprehensive Community Plan (Comp Plan). Dave Robert, Tax Assessor, was concerned with the height of the wall because State statute says 3ft. Solicitor Skwirz drafted the tax exemption ordinance in conjunction with the Stone Wall ordinance; State ordinance defines a wall as being 3ft in height and what qualifies an historic stone wall from 1900. The wording was taken out of the State exemption Statute. Mr. Robert was concerned with the tax exemption element to it, one ordinance talks about inspection by the Building Official the other one by the DPW Director and questioned who would inspect on an annual basis. Ms. Anderson noted the Board did not go along with the tax exemption ordinance.

Councilor Sousa, in the past, had discussed incentivizing similar to writing off on your taxes, an exemption. Councilor Sousa saw this onetime thing, not an annual inspection; seems to penalize home owners, cannot move a wall without permission. Councilor Pelletier noted this seemed to deviate from State Law, should write this in a legally defensible manner and not set a date. Councilor Pelletier preferred an ordinance that doesn't unduly burden the Building Official; agreed with Ms. Anderson's suggestions. Suggested changing the 1900 to 100 years from the date or some other kind of number that is significant; someday a historic structure will be built in 1990. Solicitor Skwirz agreed with that if the Council does not go along with the tax exemption route. Solicitor Skwirz can draft a document with those changes and forward to the Town Clerk. Ms. Anderson noted if this was a stand-alone document, not tied to the tax exemption and the Board was added in an advisory capacity then the Board could support this. Councilor Chabot questioned why the wall height was going from 3ft to 2ft. Ms. Anderson explained that most stone walls have shriveled over time and most are somewhere between 2 and 3ft. Councilor Chabot noted under Definitions a stone wall is used to designate a property boundary or to separate agricultural activities within a farmstead. Councilor Chabot questioned what would happen if a farmer wanted to move a wall for farming purposes. Ms. Anderson explained if it was a boundary wall then they would have to go through the Planning Board.

Councilor Pelletier made a motion to have the Solicitor make the changes to the ordinance and advertise for a public hearing. The Town Clerk will set the hearing on September 12 or 26. The motion was seconded by Councilor P. Mello and passed on a vote of 4-3, Councilors Sousa, Perry and Chabot opposed.

## **F-FINANCIAL BUSINESS:**

### **1. Town Administrator – Request Approval of FY2016 Transfers For a Total of \$4,033.36 From Acct#1020-7152 (Advertising/Comp Plan) to the Following Accounts:**

**Acct#1040-6910 (Town Hall/Heat) for \$302.99**

**Acct#1040-6912 (Electric) for \$1,990.08**

**Acct#1040-6914 (Water & Supplies) for \$143.73**

**Acct#1040-7840 (Building Maintenance) for \$2,174.44**

Councilor Lambert questioned the Solicitor if all of these transfers have to be read. Administrator Wojcik explained there were 13 items on the agenda for transfers; the first 12 are for the last fiscal year that has already ended. This is to clean up the books, trying to get the actual spent in each line item. The end of year surplus for last year was \$250k and for this year the surplus was \$480k. The restricted paving account ends up with whatever is left over in the DPW accounts and a proportion of the surplus also goes into this account. Of the \$480k that was not spent this year, well over \$200k is going back into paving. The rest of it is savings that go into the General Fund; often one time savings. The Administrator explained the transfers were to make sure there was no red in any one account. Funds were transferred within the sub-accounts whenever possible. If that was not possible the T/A tried to take from a similar account.

Councilor Perry read the items listed above and made a motion to Approve the Transfers. The motion, seconded by Councilor Sousa passed unanimously.

### **2. Town Administrator – Request Approval of FY2016 Transfers**

**a. \$3,332.09 From Acct#1050-7160(Legal Services/Prosecutions) to Acct#1050-7191 (Labor Counsel)**

**b. \$881.37 From Acct#1050-7175(Legal Services/Zoning) to Acct#1050-7191 (Labor Counsel)**

**c. \$8,312.82 From Acct#3310-5111(Fire Dept/Ems Inc.) to Acct#1050-7191 (Labor Counsel)**

**d. \$8,300.00 From Acct#3330-5102(Police Dept/Staff AFSCME) to Acct#1050-7191 (Labor Counsel)**

Councilor Perry read the items listed above and made a motion to Approve the Transfers. The motion, seconded by Councilor Sousa which passed unanimously.

### **3. Town Administrator – Request Approval of FY2016 Transfer**

**\$5,999.98 From Acct#3330-5102(Police Dept/Staff AFSCME) to Acct#1060-5100 (Building/Zoning Salary)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion, some discussion followed. Councilor P. Mello questioned this transfer; Administrator Wojcik

explained the petitioner's budget reduced this contractual line item. This transfer is to replenish those funds. The motion passed unanimously.

**4. Town Administrator – Request Approval of FY2016 Transfer**

**\$8,766.92 From Acct#3310-5111(EMS Incentive/Fire) to Acct#1120-7590 (Computer Service)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion which passed unanimously.

**5. Town Administrator – Request Approval of FY2016 Transfers**

**For a Total of \$3,788.49 From Acct#3330-5101 (TPD/Personnel Services) to the Following Accounts:**

<b><u>Acct#3330-6167 (Uniform Equipment) for \$160.79</u></b>	<b><u>Acct#3330-6648 (Tires, Parts Maintenance) for \$799.86</u></b>
<b><u>Acct#3330-6735 (Photocopier Lease) for \$.61</u></b>	<b><u>Acct#3330-6912 (TPD Electricity) for \$146.24</u></b>
<b><u>Acct#3330-6914 (Water Supplies) for \$32.49</u></b>	<b><u>Acct#3330-6928 (Education/Seminars) for \$163.65</u></b>
<b><u>Acct#3330-6935 (Telephone) for \$388.22</u></b>	<b><u>Acct#3330-7840 (Station Maintenance) for \$2,096.63</u></b>

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion which passed unanimously.

**6. Town Administrator – Request Approval of FY2016 Transfers Totaling \$10,185.80**

**a. \$30,333.33 From Acct#2190-5260(ER HSA Contribution) to Acct#2190-5269 (Health Ins/Retirees)**

**b. \$16,779.68 From Acct#2190-7920(Town Bldgs/Pers Prop) to Acct#2190-5269 (Health Ins/Retirees)**

**c. \$8,894.00 From Acct#2190-7925(Workers Comp) to Acct#2190-5269 (Health Ins/Retirees)**

**d. \$943.68 From Acct#2220-5262(Fire Pension (1534)) to Acct#2190-5269 (Health Ins/Retirees)**

**e. \$5,570.37 From Acct#3310-5101(Fire/Personnel Svcs) to Acct#2190-5272 (Life Ins/Actives)**

**f. \$1,050.92 From Acct#2220-5262(Fire Pension (1534)) to Acct#2190-5271 (Dental Ins/Retirees)**

**g. \$2,482.29 From Acct#2220-5262(Fire Pension (1534)) to Acct#2190-5268 (Health Ins/Actives)**

**h. \$138.54 From Acct#2220-5262(Fire Pension (1534)) to Acct#2190-5270(Dental Ins/Actives)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion, some discussion followed. Councilor Pelletier questioned the total \$10,185.80 because when adding these figures up they exceed that amount. The T/A explained that was the aggregate total within that group insurance account. The motion passed unanimously.

**7. Town Administrator – Request Approval of FY2016 Transfer**

**\$24,442.80 From Acct#3330-5101(TPD/Personnel) to Acct#3380-6745 (Street Lights)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion, some discussion followed. Councilor P. Mello questioned the account. The T/A explained they were still waiting for National Grid to determine the purchase price of new street lights; it's a very complicated project. The motion passed unanimously.

**8. Town Administrator – Request Approval of FY2016 Transfer**

**\$4,443.97 From Acct#5540-5101(DPW Personnel) to Acct#5130-5102 (Maintenance/Salaries)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion which passed unanimously.

**9. Town Administrator – Request Approval of FY2016 Transfer**

**\$4,916.13 From Acct#5540-7645(DPW Building Repairs) to Acct#5530-7645 (Landfill/Bulldozer)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion, some discussion followed. Administrator Wojcik explained a review of the budget showed two of the exact same accounts with different descriptions with the same amount in each account. The T/A noted there was no need for this transfer and the description should be Bulldozer Repairs and not Building Repairs. Councilor Perry withdrew the motion, Councilor Chabot seconded the withdrawal.

**10. Town Administrator – Request Approval of FY2016 Transfers Totaling \$6,124.82**

**a. \$4,566.00 From Acct#8830-5181(Rec Comm/Seasonal Emp) to Acct#8790-5181 (Beaches/Seasonal Emp)**

**b. \$281.60 From Acct#8830-5114(Rec Director) to Acct#8790-5181 (Beaches/Seasonal Emp)**

**c. \$1,277.22 From Acct#8830-5114(Rec Director) to Acct#8790-6690 (Beaches/Supplies)**

**d. \$966.28 From Acct#8830-5114(Rec Director) to Acct#8830-6629 (Rec/Transportation)**

**e. \$733.81 From Acct#8830-5114(Rec Director) to Acct#8830-7470 (Rec/Supplies)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion, some discussion followed. Councilor Perry questioned if there was a Recreation Director. The T/A explained there was no Director only a Head Lifeguard who collects the fees and brings to the bank daily. This person is being paid for mileage. Councilor Perry noted the good job this person has been doing, do not want to lose her, should be compensated more with the \$5k not being used for the Director this year. The Administrator agreed, was going to come to the Council with that recommendation. The motion passed on a vote of 6-0-1, Councilor deMedeiros abstained, not at Council table.

**11. Town Administrator – Request Approval of FY2016 Transfers Totaling \$6,022.17**

**a. \$3,082.15 From Acct#6110-6420(Sr Ctr/Bus Service) to Acct#8840-6459 (Mowing Services)**

**b. \$714.95 From Acct#8840-6749(Preventive Maintenance) to Acct#8840-6630 (Field Rehab)**

**c. \$2,940.02 From Acct#2250-5365(Social Security) to Acct#8840-6630 (Field Rehab)**

Councilor Perry read the item listed above and made a motion to Approve the Transfers. Councilor Chabot seconded the motion which passed unanimously.

**12. Town Administrator – Request Approval of FY2016 Transfer**

**\$9,108 From Acct#3310-5104(Fire/Overtime) to Acct#1050-7159 (Legal Services/Litigation)**

Councilor Perry read the item listed above and made a motion to Approve the Transfer. Councilor Chabot seconded the motion, some discussion followed. The T/A explained this was reconciled separately as this relates to the Town's share of arbitration. The bill arrived in late July for services from FY 2016. Councilor Perry noted the transfer was coming out of Fire Department Overtime, had to be a first, commend the Chief for getting overtime reduced. The motion passed unanimously.

**13. Town Administrator – Request Approval of FY2017 Transfers Totaling \$151,456**

**a. \$111,456 From Acct#96608857/58(Debt Service) to Acct#5500-6457 (Rubbish Contract)**

**b. \$40,000 From Acct#5540-5100(DPW Manager Salary) to Acct#5500-6457 (Rubbish Contract)**

The Administrator explained this allows the trash contract to continue until the expiration June 30, 2017. The Budget Committee had \$645k presented to them in the Trash Contract line; they reduced that by \$500k. The T/A was directed by the Council to close that gap, have identified \$200k in savings in the budget. Some cannot be transferred until September; the savings from the refinancing of the school bond debt were anticipated to be \$93k. This savings actually came higher than expected at \$111,456.

Councilor Perry read the item listed above and made a motion to Approve the Transfers. Councilor Chabot seconded the motion, some discussion followed. Councilor Pelletier noted some funds were coming out of the DPW Director salary; President deMedeiros explained if someone was hired then funds would again have to be transferred. Councilor Pelletier confirmed this transfer was not coming out of a capital account. The motion passed on a vote of 6-1, Councilor Pelletier opposed to taking funds out of the DPW Director salary account.

## **D-NEW BUSINESS:**

### **1.Rebecca Elwell, Representing Tiverton Prevention Coalition – Discussion and Possible Vote for Town of Tiverton to Draft Letter of Support for the Tiverton Prevention Coalition’s Participation in Newport County Prevention Coalition.**

Ms. Ellwell appeared before the Council recently regarding Tiverton as being the fiscal agent. The development proposal is moving along well, now looking for a letter of support to the establishment of the new regional coalition. The letter, if approved, will be submitted along with the proposal. Councilor Perry, a member of this board, voiced strong support. Councilor Sousa questioned the types of programs. Ms. Ellwell has an office at the High School and provides education on substance abuse and seminars on a variety of topics, including peer support groups, alcohol prevention education, parent education and compliance.

Councilor Perry made a motion to Recommend the Draft Letter of Support for Tiverton Prevention Coalition. The motion, seconded by Councilor Pelletier passed unanimously.

### **2. Councilor Joan Chabot – Amendment to the Town Council Governance Policy**

Councilor Chabot mentioned this at the public hearing on the proposed Charter Amendments; opined the one proposed by Madeline O’Dell was better served in the Town Council Governance Policy. Councilor Chabot proposed adding section d, Executive Session as follows: Except in an emergency situation, the order of the agenda of all regular and special meetings of the Town Council shall be such that any executive session (s) shall be the final item (s) on the agenda. President deMedeiros was in favor however there are times when attorneys are being paid \$400/hour and may need to be taken earlier in the agenda. Councilor Lambert proposed alternative language to that, except in an emergency or situation when the Town or the applicant incurs substantial fees and costs. Councilor Perry proposed other language, except when the Council President deems necessary with an affirmative vote of the Council to move up in the agenda. Councilor Pelletier had attended a Selectman’s meeting in MA where that meeting started at 6:30 pm and had benchmarks for taking business. The regular business was moved back in order to take care of licenses and approvals so that people would know what time their item was going to be addressed. Councilor Pelletier suggested more of the routine items like transfers or resignations could be moved to the end of the agenda. President deMedeiros suggested having Executive Session at 10:00 pm. Councilor Pelletier suggested breaking at a defined time for Executive Session. Councilor Chabot felt rushed when Executive Session is at the beginning of the meeting. Councilor Pelletier suggested to that language 10 or 10:30 pm; agrees Executive should be taken at the end of the meeting. Councilor Perry suggested leaving at the discretion of the Council President. Solicitor Skwirz noted the Council could say other than Executive Session everything else will be taken first and still leave at the discretion of the President. Councilor Pelletier noted that does not address public concerns or predictability on the input. The Council could start the meeting, read the Consent Agenda and then break for Executive Session. Councilor Pelletier suggested adding language with a 10pm time frame for special counsel or professionals being paid hourly. Councilor Chabot suggested continuing this to the next agenda with any suggestions and forwarding them to the Clerk and with those suggestions will try to rewrite.

Councilor Perry made a motion to continue this item to the next agenda and forward any suggestions to the Town Clerk. The motion, seconded by Councilor P. Mello passed unanimously.

Councilor Pelletier requested a final version of the Governance Policy from the Town Clerk.

### **3. Town Administrator Request for Guidance/Response to DEM Regarding Grinnell’s Beach Application**

Trish Hilton, Chair of the Grinnell’s Beach Improvement Committee, received an email from RIDEM asking if the grant was approved would the Council abide by a newly adopted policy regarding fees. The new policy involves differential in prices between residents and non-residents. Would we be willing to adopt a beach parking fee related only to Grinnell’s that is compatible to DEM guidelines, that is if residents do not pay a fee to park then non-residents living in RI do not pay a fee to park. The good news is that the grant application has been favorably

received and DEM wants to know if the Town is agreeable to these fee requirements. President deMedeiros noted the only change now would be that any RI resident would not be charged. Ms. Hilton explained the Council could continue to set whatever rate they want for out of state residents. Ms. Hilton explained this only applied to Grinnell's and only in the event the Town was awarded the grant money. The grant application was for \$400k; indicates a high level of interest in the application.

Councilor Pelletier made a motion to instruct the Town Administrator and the Grinnell's Beach Improvement Committee to communicate with DEM regarding the Grant Application for Grinnell's Beach and acknowledge at the time the grant is awarded and accepted the Town will comply with National Park Service guidelines. The motion, seconded by Councilor Chabot passed on a vote of 6-1, Councilor Sousa opposed.

#### **4. Councilors Sousa and Perry – New Offer Received from Legacy LLC**

Councilor Sousa believed the initial conversations were productive, opined the need to spend money and modernize the DPW and Police Station. Councilor Sousa opined negotiations could happen to move the cell tower, have a chance to do the infrastructure. Councilor Perry agreed with most of what Councilor Sousa said and wanted to keep open the line of communication. Councilor Perry did not recall seeing this letter; President deMedeiros noted this was just received July 29, 2016. The Administrator noted it was sent to the gmail accounts. Councilor Perry noted this was only a recommendation, the \$5million for the land was respectable; we will tell them what we want to do. Councilor Perry opined there was enough room for Emera and Bluesphere. President deMedeiros believed the T/A needs clear direction, should be in the form of a motion. Councilor Lambert agreed with the two previous speakers; had some problem with moving the cell towers but suggested keeping communication open. President deMedeiros noted Legacy had come before the Council with a presentation. Councilor P. Mello requested the Administrator elaborate on the comments that were in the newspaper.

Administrator Wojcik noted the Charter requires the Council direct the T/A activities, did not want to do anything without a vote of the Town Council. The cell tower is a 30 year deal, is not going anywhere; never going to resolve that esthetic problem. From the Administrator's perspective, the people voted not to sell that lot unless it went to public referendum. That sends a strong indication that retail is not an option. The \$2.5 million does not resolve issues with that infrastructure; estimated cost for the DPW is \$1.8 million and \$6.5 million for the Police Station. The T/A has never seen restrictions in a proposal, did not want to say no to this proposal without direction from the Council. Councilor P. Mello noted the letter mentioned a Phase II build out; questioned the Town Planner on what that meant. Town Planner Marc Rousseau noted that was not specifically mentioned but another 225k feet was mentioned initially. Councilor P. Mello recalled a hotel in their initial discussion; appears they are telling the Town what to do with them, opines it would call for a referendum.

The Administrator cited restrictive covenants, can use for suitors who don't tell you what they want to do with the land. Councilor Lambert read the letter several times and still had many questions. Councilor Chabot did not like the last proposal or this one. Councilor Chabot noted issues with retail development and the water supply, the DPW and a transfer station. On top of that they are trying to get State money, still the taxpayers' money; opined there were other viable options.

Councilor Pelletier opined it may make sense from a development standpoint to sell land in the Park but from a business standpoint this is a bad business decision; troubled by the language as a fiduciary of the town and as a real estate professional. In the letter Legacy was taking the TIF off the table; it is not a concession to agree to pay taxes, the local property tax TIF, meaning the State model would still be viable. The language in paragraph 2 about the Town keeping their own land; they want to restrict what the Town could do with \$5million. The Town has not hired a broker so there is no brokerage fee to pay; they propose a 560 day diligence period. The Town would be shouldering all the risk, tie up the land and if they get no permits then can walk away. Councilor Pelletier opined this was a very strange way to do business; also had a problem in general with retail development in the Park. Three different energy developers have expressed interest in the Park and a lease option in progress; not necessarily compatible uses with retail. Councilor Pelletier strongly suggested the Town Council not to do business with this developer.

Councilor Pelletier made a motion to instruct the Town Administrator to draft a letter in his own pen to Legacy Development indicating we are not interested in pursuing further retail developments in the Industrial Park. The motion was seconded by Councilor Chabot, some discussion followed. Councilor Sousa opined they offered 3-4 times the assessed value, assumed the cell tower was negotiable, not willing to close the door on this developer. Councilor Lambert agreed the letter and the proposal could be characterized as fairly absurd; not ready to end the discussion. Councilor Lambert was looking for some type of commercial development in Tiverton; has made the argument the Town does not have enough revenue. The populations of Tiverton, Portsmouth and Middletown are roughly the same. The total tax levy for commercial property in Tiverton was \$3.2 million, Portsmouth -\$4.7 million and Middletown \$11.9 million. Tiverton's revenue last year was \$48.6 million, Portsmouth - \$60.6 million and Middletown \$78.2 million. The General Fund in Tiverton as of last year was \$2.3million, Portsmouth has \$9.8 million and Middletown has \$9.5 million. Tiverton has general debt obligation of \$36.5 million, Portsmouth \$12.million and Middletown \$25.2 million. Councilor Lambert opined it does not mean the Council should not be talking to them. The Council President did not think this developer was good for the Town; was not suggesting she did not want any development. Councilor Pelletier opined this was a bad deal for the Town, did not believe this developer had the capacity to come before the Town with a respectful deal. Councilor Sousa opined using the State EDC helps to bring in business, cited Quonset Point and the Lincoln Industrial Park. Councilor Pelletier, a consultant to real estate developers for over ten years did not see the retail sector as a large enough business to have taxpayer financing. The motion passed on a vote of 4-1-2, Councilors P. Mello, deMedeiros, Chabot and Pelletier in favor, Councilor Sousa opposed and Councilors Perry and Lambert abstained.

**5. Chief Blakey – Request Permission to Advertise to Hire a School Crossing Guard for the Pocasset School Main Road Location**

Chief Blakey explained the school crossing guard for the last 21 years passed recently. Councilor Sousa did not see why the parents could not handle this. President deMedeiros believed it was in State Law; Chief Blakey was not sure but found this position to be necessary. This person would work one hour in the morning and one hour in the afternoon in conjunction with the School calendar, need to have some type of supervision; is money well spent.

Councilor Pelletier made a motion to Authorize Chief Blakey to Advertise to Hire a School Crossing Guard for the Pocasset School. The motion, seconded by Councilor Chabot passed on a vote of 6-1, Councilor Sousa opposed.

**H-BIDS AND REQUESTS FOR PROPOSALS:**

**1. Town Administrator – Request Authorization to Advertise Bids for Roof Station 3 and Town Hall**

Administrator Wojcik prepared this bid to repair the Town Hall roof but not the entire roof just the eastern side near the Administrator's office, the kitchen, bathroom and a small section in the Clerk's office. This is a combined bid to also repair the roof on Station 3 to fix the back section, the western part of that station. The specs were reviewed by several professionals. Councilor Pelletier questioned, under material specifications, the 30 year warranty. The T/A explained it was for standard architectural shingles.

Councilor Pelletier made a motion to Authorize the Town Administrator to Advertise Bids for Roof Contract Station 3 and Town Hall per H1. The motion, seconded by Councilor Chabot passed unanimously.

**I-TOWN ADMINISTRATOR ANNOUNCEMENTS:**

There were no announcements from the Town Administrator.

**J-COUNCIL ANNOUNCEMENTS:**

Councilor Pelletier updated, upon authorization of the Stone Bridge Abutment committee met with VHB and will submit the signed application to CRMC by the end of the week. Councilor Pelletier followed up with the T/A on the

lawn mowing for the Library. The T/A instructed the contractor to cut the grass but found it had already been mowed, will keep on top of it.

**K-TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:**

There were no announcements from the Town Solicitor.

**L-TOWN CLERK ITEMS AND ANNOUNCEMENTS**

The State of RI has implemented on line voter registration at [vote.ri.gov](http://vote.ri.gov). That information will also be posted on the Town website. This Sunday, August 14 is the last day to register to vote for the September primary. The Clerk's office will be open from 8:30 am to 4pm. At the next Council meeting on August 22 a representative from the Secretary of State's office will be demonstrating the new voting equipment.

**CLOSED EXECUTIVE SESSION:**

**1. Town Solicitor – 42-46-5(a) (2) – Litigation, Toolin & Thorpe et. als. v. town of Tiverton, C.A. No.: NC 2616-0286**

Councilor Lambert made a motion to enter into Closed Executive Session pursuant to RIGL 42-46-5(a) (2) – Litigation, Toolin & Thorpe et. als. v. town of Tiverton. The motion, seconded by Councilor Chabot, on a roll call vote, passed on a vote of 6-0-1, Councilor Pelletier, recused, and abstained from voting.

The Council entered into Executive Session at approximately 10:20 p.m.

The Council returned to Open Session at approximately 10:40 p.m.

**OPEN SESSION:**

In Open Session Councilor Perry motioned to direct the Town Administrator and Town Solicitor to act in accordance with the direction given in Executive Session. Seconded by Councilor Chabot, motion passed unanimously.

Councilor Chabot motioned to seal the minutes of Closed Executive Session. Seconded by Councilor Mello motion passed unanimously.

**ADJOURNMENT:**

Councilor Chabot motioned to adjourn, seconded by Councilor Mello. The motion passed unanimously.

Council adjourned at approximately 10:45 pm

A True Copy.

ATTEST: \_\_\_\_\_  
Nancy L. Mello, Town Clerk

**PROCLAMATION**

WHEREAS, Jonathan Klinker of 38 April Lane in Tiverton is a member of Boy Scout Troop 4218 based in Tiverton; and,

WHEREAS, Jonathan at the age of 17 has earned all 136 merit badges currently awarded by the Boy Scouts of America; and,

WHEREAS, Jonathan has also earned one discontinued badge, Computers; and,

WHEREAS, the Boy Scouts of America decided to recreate four historic badges last offered in 1910 in celebration of its 100<sup>th</sup> anniversary in 2010; and,

WHEREAS, Jonathan earned all of these, including his last, Landscape Architecture, awarded on June 28,2016, bringing his total earned Boy Scout merit badges to 141; and,

WHEREAS, this achievement makes Jonathan the first Scout in the Northeast Region and only the fourth in the country to have met this milestone; and,

WHEREAS, his Scoutmaster Ray Deslauriers, his Troop 4218, this Town Council and the entire Town of Tiverton are immensely proud of Jonathan's hard work, commitment, and extraordinary achievement,

IT IS HEREBY RESOLVED:

That the Town Council of Tiverton hereby extends, on behalf of the entire Town, sincere congratulations to Jonathan Klinker upon his outstanding accomplishment; and,

That the Town Council offers its best wishes for continued success to Jonathan, Troop 4218 and all of the Boy Scouts of America personnel who continue to support Scouting in Tiverton.

**ADOPTED BY THE TIVERTON TOWN COUNCIL**

AUGUST 9, 2016

**TOWN OF TIVERTON  
TOWN COUNCIL**

**ORDINANCE NO. 2016**

**Chapter 30, COURTS  
ARTICLE II. Municipal Court**

**WHEREAS:** The Town Council adopts these ordinances for the purpose of establishing procedures to be followed to provide for the operation and management of the court.

**NOW, THEREFORE, IT IS HEREBY ORDAINED:** In accordance with the powers vested in it by Rhode Island General Laws 45-2-34(3) the town council of the town hereby enacts these ordinances in amendment to the following existing ordinances:

AN ORDINANCE IN AMENDMENT OF CHAPTER 30 Article II OF THE REVISED ORDINANCES OF THE TOWN OF TIVERTON, RHODE ISLAND, AS AMENDED, ENTITLED

**DIVISION 1. IN GENERAL.**

**Sec. 30-26. Established.**

Pursuant to G.L. 1956, § 45-2-34, there is established a municipal court in the town.

**Sec. 30-27. Appointment; term; qualifications of municipal judge.**

- (a) The court shall be composed of one judge appointed by the council. The judge shall serve until his successor shall be duly appointed.
- (b) Pursuant to Charter the appointment shall be for a term of two (2) years, commencing in November of the year between general elections.
- (c) The judge shall be a lawyer admitted to practice before the state supreme court, in good standing, and shall have not less than five years experience in the active practice of law.

**Sec. 30-28. Witnesses; attendance; subpoenas.**

The court shall have the power to issue writs or summonses for witnesses, and compel their attendance, and to punish for contempt by fines or imprisonment. The court may also issue writs of habeas corpus and testificandum, upon continuance of any complaint or proceeding before it, may take recognizance to the state, with sureties in such sum as the court shall deem proper, with the condition to appear before the court and make further answer to such complaint or proceeding, and in the meantime to keep the peace, and, in want thereof, may commit the same to the state adult correctional institutions until such recognizance shall be given, or the parties lawfully discharged therefrom.

**Cross References— § 30-53 summonses; §§ 30-55, -61, -72 attendance and presence of the defendant; § 30-61 subpoenas.**

**Sec. 30-29. Municipal court clerk; appointment and duties and records.**

(a) Pursuant to Section 801 of the Charter, the Town Clerk shall be the clerk of the municipal court. The Town Clerk may utilize clerical staff of the Town to perform, under the supervision of the Town Clerk, some or all of the duties of clerk of the municipal court.

(b) In any trial of a violation of the Town Ordinances excluding minimum housing ordinances, or R.I. Gen. Laws 1956, § 45-24.3-1, the Rhode Island Housing, Maintenance and Occupancy Code, the clerk shall keep a record of the trial which shall include a copy of the notice of violation, the summons(es) and complaint(s), entries of appearance, motions and/or briefs filed by the parties, any judicial orders issued and the decision of the judge. Such records shall be maintained as a public record and shall constitute the Record On Appeal. The clerk shall furnish certified copies of the record upon request for which copies the clerk shall charge the same fees as are by law allowed to clerks of the superior court.

(c) The clerk of court shall keep a regular docket of all cases disposed of; shall record the judgments, orders, and sentences of the court; and shall furnish certified copies of such documents when required, for which copies the clerk shall charge the same fees as are by law allowed to clerks of the superior court. The clerk shall keep the office open to the public during such hours as the court shall determine, and shall also serve as magistrate and bail commissioner, setting bail for defendant until the court is in session.

(d) Nothing contained in this section shall prohibit the police department or the town administration or the Town Clerk from providing the secretarial and administrative assistance necessary for the court to perform its duties and responsibilities.

(e) An electronic record shall be made of the proceedings in the trial or hearing of every action in the municipal court under these provisions, but such record shall not be deemed to be part of the Record on Appeal. If requested, a copy of the aural recording shall be provided as a "Public Record" under the Access To Public Records act, and reasonable fees may be charged for the electronic or tape media utilized. In the event a typewritten transcription is sought for use in subsequent proceedings, the typing of the transcript and the cost thereof shall be borne by the requesting party.

**Cross References— Regarding the Clerk's role under the Rules of Procedures, see § 30-61 subpoenas and attendance; § 30-70 appeals to the Superior Court; § 30-76 notice of orders and filing of pleadings and other papers with the court; § 30-77 appearance of attorneys; § 30-78 the calendar of cases.**

**Sec. 30-30. Seal; oaths.**

(a) The municipal court shall have a seal which shall contain such words and device as the council shall adopt and approve.

(b) The judge and municipal court clerk shall have the power to administer oaths and affirmations.

**Sec. 30-31. Sessions; time; place.**

The municipal court shall be considered to be in session at all times, and at such places in the town as the court, or judge holding the court, shall appoint.

**Cross Reference— See § 30-62 place of prosecution and trial.**

**Sec. 30-32. Jurisdiction.**

(a) The council hereby confers on the municipal court original jurisdiction to hear and determine causes involving violations of:

(1) Any ordinance of the town.

(2) Minimum housing ordinances, including any violation of G.L. 1956, § 45-24.3-1, the Rhode Island Housing, Maintenance and Occupancy Code.

(3) Any other jurisdiction conferred by state law.

(b) Any defendant found guilty of any offense, excluding violations of the minimum housing ordinances, or G.L. 1956, § 45-24.3-1 et seq., may within seven days of such conviction file an appeal from such conviction to the superior court and be entitled in the latter court to a trial de novo. The appeal may be claimed by filing a written notice of appeal with the clerk of the Municipal Court. The party claiming the appeal shall certify that he/she has sent a copy of the notice of appeal to the opposing party or parties, or if represented by counsel, to their counsel of record. Provided further, however, that any defendant found guilty of any violation of a minimum housing ordinance, or of G.L. 1956, § 45-24.3-1 et seq. within seven days of such conviction file an appeal from such conviction to the Second Division of the District Court and be entitled to a trial de novo in accordance with G.L. 1956, §§ 8-8-3(a)(4) and 8-8-3.2.

(c) With respect to violations of municipal ordinances dealing with minimum housing, or G.L. 1956, § 45-24.3-1 et seq., the council hereby confers upon the municipal court, in furtherance of such jurisdiction, the power to proceed according to equity to:

(1) Restrain, prevent, enjoin, abate, or correct a violation;

(2) Order the repair, vacating, or demolition of any dwelling existing in violation; or

(3) Otherwise compel compliance with all provisions of such ordinances and statutes.

*(Code 1967, § 25-7)*

#### **Sec. 30-33. Fines; penalties; imprisonment.**

The municipal court may impose a sentence not to exceed 30 days in jail and impose a fine not in excess of \$500.00, or both, and shall be empowered to punish persons for contempt. Each day on which a violation exists may be deemed to be a separate offence.

*(Code 1967, § 25-8)*

**Cross References— See § 30-67 imposition of a penalty; § 30-72 defendant's right to presence at imposition of a penalty.**

#### **Sec. 30-34. Complaints; warrants; writs.**

It shall be lawful for the judge of the court to prescribe and vary the form of all complaints, warrants, writs, or other process as to make the same consistent with the organization, style, and jurisdiction of the court. Such complaints, warrants, writs, and other process shall have the same effect, validity, and extent, and be served, obeyed, enforced, and returned, in the same manner and by the same officers, as if issued from the district courts. They may be served by any constables of the town who are authorized to serve process in civil or criminal cases.

#### **Sec. 30-35. Costs.**

(a) The municipal court shall be authorized to impose court costs in the amount which shall be set from time to time by the town council by resolution, and the payment of such costs shall be a part of the sentence.

(b) All payments shall be deposited in the general treasury of the town, and the treasurer shall remit to the state those assessments required by the General Laws.

(Code 1967, § 25-10)

**Cross Reference— See Division 2 for Rules of Procedure regarding the forms of complaints, warrants, writs, or other process as may be required by the court.**

**Sec. 30-36. Compensation of municipal court judge and municipal court clerk.**

(a) The compensation of the judge of the municipal court shall be set by the council.

(b) The compensation of the clerk of the municipal court shall be set by the council.

**Sec. 30-37. Acting judge and acting clerk.**

(a) In cases of sickness, absence, or other disability or ineligibility of the municipal court clerk the Town Clerk may appoint an acting clerk, at the same compensation, or at such salary as the council may determine, for the term of such sickness, absence, disability, or ineligibility of the clerk.

(b) An acting municipal court judge or acting municipal court clerk shall perform all duties of the municipal court judge or municipal court clerk, respectively.

(c) In the event of that the municipal court judge is unable to preside, the judge of probate shall preside as the acting municipal court judge pursuant to Section 805(b) of the Town Charter.

**Secs. 30-38—30-50. – Reserved.**

**DIVISION 2. RULES OF PROCEDURE.**

**Subdivision I. Scope, Purpose, and Construction.**

**Sec. 30-51. Rule 1. Scope and applicability.**

These rules govern the procedure in the Tiverton Municipal Court in all matters related to the violation of the Town of Tiverton Code of Ordinances, including minimum housing ordinances of the town and any violation of the provisions of R.I. Gen. Laws Chapter §§ 45-24.3-1-45-24.3-23 entitled Housing Maintenance and Occupancy Code, Town of Tiverton Zoning Ordinances and the Rhode Island State Building Code, R. I. Gen. Laws § 23-27.3-1 *et seq.* When used in these rules, the term “code” shall refer to the Tiverton Code of Ordinances, the Tiverton Zoning Ordinance, the Housing Maintenance and Occupancy Code and the Rhode Island State Building Code collectively, unless otherwise specified. When used in these rules, the term “court” shall mean the Tiverton Municipal Court.

**Sec. 30-52. Rule 2. Purpose and construction.**

These rules are intended to provide for the just determination of every code violation proceeding to which they apply. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay; they shall also be construed consistent with the fact that they constitute the rules for the adjudication of civil violations of the code.

## **Subdivision II. Commencement of Code Violation Proceedings.**

### **Sec. 30-53. Rule 3. The summons and complaint.**

(a) The summons consists of a listing of the code violations alleged and a requirement that the defendant appear in Court on the date and time and at the place indicated thereon. The summons shall be on a form prescribed by the Judge of the Municipal Court and shall contain a proof of service of the summons and complaint upon the defendant. A separate summons shall issue for each named defendant. The summons shall be served in the same manner as if served in civil matters in the district courts of the State of Rhode Island.

(b) The summons shall be accompanied by a Town of Tiverton Municipal Court Complaint signed by the appropriate official. The truth and validity of the facts supporting the charge(s) shall be contained in the complaint and shall be sworn to before the Court at the first appearance date.

(c) A complaint which provides the defendant and the Court with adequate notice of the offense being charged shall be sufficient if the offense is charged by using the date of the offense and a declaration of the facts giving rise to the offense. The complaint shall also state for each count the official or customary citation of any statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. An error or an omission in the complaint shall not be grounds for dismissal of the complaint or for reversal of a judgment if the error or omission did not mislead the defendant to his or her prejudice.

(d) The Court may permit a complaint to be amended at any time before judgment or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. With the consent of the defendant, a complaint may be amended at any time before judgment or finding if a different offense is charged if the Court finds such amendment to be in the interests of justice.

### **Sec. 30-54. Rule 4. Joinder of offenses.**

Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses charged are based on the same act or transaction.

### **Sec. 30-55. Rule 5. Appearance.**

(a) *Procedure.* All defendants shall appear before the Municipal Court Judge for appearance on the date and time indicated and at the place indicated on the summons. The Town shall be represented by the Town Solicitor. Appearance shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the violation and calling on the defendant to answer thereto. The Municipal Court Judge shall accept an answer in the form prescribed by Rule 6 of these rules.

(b) *Default and/or dismissal.* If the defendant or the prosecution shall fail to appear judgment may enter accordingly pursuant to Rule 16.

### **Sec. 30-56. Rule 6. Answer.**

A defendant may answer, "admit" or "deny" to each of the violations listed in the complaint. If a defendant refuses to answer or if the Court refuses to accept an admission, the Court shall enter an answer of "deny". If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial.

### **Sec. 30-57. Rule 7. Pleadings and motions.**

(a) The filing of pleadings and motions in this Court shall follow the practice and procedure of the filing of pleadings and motions in the Rhode Island District Court Rules of Civil Procedure, Rules 7-16, inclusive.

(b) A motion for recusal of the Municipal Court Judge shall be made prior to the date of appearance indicated on the

summons and complaint. Failure to file a motion for recusal prior to the date of appearance shall constitute a waiver thereof.

**Sec. 30-58. Rule 8. Trial together of complaints.**

The Court may order two or more complaints to be tried together if the offenses could have been joined in a single complaint. The Court may order two or more defendants to be tried together if the property which is the subject of the violation is owned by more than one defendant or they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

**Sec. 30-59. Rule 9. Depositions.**

In cases of extraordinary and manifest necessity, in order to prevent a failure of justice, the Court at any time after the filing of the complaint may upon motion of a party order that a witness's testimony be taken by deposition. In such cases, the procedure for the taking of depositions in the Rhode Island District Court as set forth in rule 27 of the District Court Rules of Civil Procedure shall be followed with all expenses borne by the party movant.

**Sec. 30-60. Rule 10. Discovery and inspection.**

(a) *Other books, papers, documents, tangible objects or places.* Upon motion of a defendant the Court may order the Town Solicitor to permit the defendant(s) to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the Town, upon a showing of materiality to the preparation of the defendant's defense and that the request is reasonable.

(b) *Discovery by the Town.* If the Court grants relief sought by the defendant under subdivision (a) of this rule, it may, upon motion of the Town condition its order by requiring that the defendant permit the Town to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant's possession, custody or control, upon a showing of materiality to the preparation of the Town's case and the request is reasonable.

(c) *Protective orders.* Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted or deferred or make such other order as is appropriate.

(d) *Time of motions.* A motion or written request under this rule may be made only within fourteen (14) days after the first appearance or at such reasonable later time as the Court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(e) *Continuing duty to disclose; failure to comply.* If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the rule, the party shall promptly notify the other party's attorney or the Court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the Court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

**Sec. 30-61. Rule 11. Subpoena.**

(a) *For attendance of witnesses; form; issuance.* Every subpoena shall be issued by the clerk of Court, shall state the name of the Court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) *For production of documentary evidence and of objects.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein. The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct that books, papers, documents or objects designated in the subpoena be produced before the Court at a time prior to the trial or

prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(c) *Service.* A subpoena may be served by the sheriff, by the sheriff's deputy, by a constable, or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to the person the fee for one day's attendance and the mileage allowed by law.

(d) *Place of service.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the State of Rhode Island.

#### **Sec. 30-62. Rule 12. Pretrial conference and trial.**

A pretrial conference and trial shall be had at the place and time determined by the Municipal Court Judge and the calendar of Municipal Court dates shall be posted on the Town of Tiverton website with adequate time for the Defendant to prepare for any pretrial conference and trial.

#### **Sec. 30-63. Rule 13. Inability of Municipal Court Judge to hear case.**

In the event of the inability of the judge of the Tiverton Municipal Court to hear and decide a matter within the jurisdiction of the Court, and in the absence of the Council appointing an Acting Municipal Court Judge consistent with Section 30-37, the judge of the Probate Court shall preside as Acting Municipal Court Judge.

### **Subdivision III. Trial and Judgment.**

#### **Sec. 30-64. Rule 14. Trials.**

(a) *Opening statements.* Opening statements shall be permitted; a time limit of not less than five (5) minutes shall be set within the discretion of the Municipal Court Judge.

(b) *Evidence. Form and admissibility.* In all trials the testimony of witnesses shall be taken orally in open Court, unless otherwise provided by statute or by these rules. All evidence shall be admitted which is admissible under the statutes of this State, or under the rules of evidence applied in the courts of this State. The competency of a witness to testify shall be determined in like manner.

(c) *Closing arguments.* Closing arguments shall be permitted; a time limit of not less than five (5) minutes may be set within the discretion of the trial judge.

#### **Sec. 30-65. Rule 15. Motion to dismiss.**

The Court on motion of a defendant or of its own motion shall, at the close of the evidence offered by the Town, order the dismissal of one or more offenses charged in the summons if the evidence is insufficient to sustain a judgment of such offense or offenses to a standard of clear and convincing evidence. If a defendant's motion to dismiss is not granted, the defendant may offer evidence without having reserved the right.

#### **Sec. 30-66. Rule 16. Judgment.**

(a) *Burden of proof.* The burden of proof shall be on the prosecution to a standard of clear and convincing evidence. Judgment on the general issue shall be in favor of the Town or in favor of the Defendant.

(b) *Default.* If a defendant shall fail to appear despite notice having been given, the case may be defaulted against the defendant. If the truth and validity of the allegations on the complaint have been sworn to by the officer issuing same, or if testimony is given providing proof of facts supporting the validity of the summons, and the service of the notice has been established, a default judgment may enter against the defendant.

(c) *Dismissal.* If the prosecution fails to appear for trial and/or arraignment, the matter may be dismissed.

**Sec. 30-67. Rule 17. Judgment.**

(a) Upon judgment against the defendant(s), penalty shall be imposed without unreasonable delay. Before imposing penalty the Court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask the defendant if the defendant wishes to make a statement in his or her own behalf and to present any information in mitigation of penalty.

(b) *Notification of right to appeal.* The Court shall advise the defendant of his or her right to appeal to the Newport County Superior Court in the manner prescribe in section 20 of these rules.

(c) *Judgment.* All judgments shall be in writing. A judgment of shall set forth the adjudication, and penalty. If the judgment is in favor of the defendant or the charge is dismissed, judgment shall be entered accordingly. The judgment shall be signed by the judge.

**Sec. 30-68. Rule 18. Clerical mistakes.**

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

**Sec. 30-69. Rule 19. Relief from judgment or order.**

On motion and upon such terms as are just the Court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment, in whole or in part.

The motion shall be made within a reasonable time, and not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

**Sec. 30-70. Rule 20. Appeals from decisions of the Tiverton Municipal Court.**

(a) Any defendant found liable for any code violation as defined herein may, within seven (7) days of judgment file an appeal from the judgment to the superior court and be entitled in the latter to a trial de novo.

(b) Appeal in accordance with this provision shall be made by filing a notice of appeal with the clerk of the Tiverton Municipal Court. Upon receipt of the notice of appeal, the clerk shall forward the record of the proceedings before the Tiverton Municipal Court to the Superior Court for Newport County. The documents, records, pleadings and motions maintained by the clerk of the Court in the Court file shall comprise the record on appeal.

(c) *In forma pauperis.* In appropriate cases, a defendant shall be permitted to proceed *in forma pauperis*.

**Subdivision IV. Post-Judgment Proceedings.**

**Sec. 30-71. Rule 21. Collection of judgments.**

Collection of judgments shall generally follow the course of civil practice in the district court as enumerated in rule 69 of the District Court Rules of Civil Procedure including execution, supplementary proceedings, the issuance of decree for installment payments, trustee process, and contempt proceedings to the extent applicable.

## **Subdivision V. General Provisions.**

### **Sec. 30-72. Rule 22. Presence of the defendant.**

(a) *Right to presence.* The defendant has the right to be present at the appearance and at the imposition of penalty, except as otherwise provided by statute or by these rules. The defendant shall be present at every stage of the trial, except that the defendant may be excluded from the proceedings if, after appropriate warning, the defendant persists in conducting himself or herself in a manner so disorderly, disruptive, and disrespectful of the Court that the trial cannot be carried on with the defendant in the courtroom.

(b) *Waiver of presence.* A defendant who is represented by counsel may waive his or her right to be present by filing a written waiver thereof.

(c) Corporate defendants. A corporation shall appear by counsel for all purposes.

### **Sec. 30-73. Rule 23. Time.**

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of Court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a holiday.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion

(1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) *For motions-affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

(d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, one (1) day shall be added to the prescribed period.

### **Sec. 30-74. Rule 24. Motions.**

An application to the Court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

### **Sec. 30-75. Rule 25. Dismissal.**

(a) *By Town Solicitor.* The Town Solicitor may dismiss a complaint and the prosecution shall thereupon terminate. The dismissal shall be in writing, either on the customary judgment form or on a separate writing. It shall be dated and signed; the name of the person dismissing the summons shall be printed legibly beneath the signature. A dismissal may not be filed during the trial without the consent of the defendant.

(b) *By the Court.* If a defendant is subjected to unreasonable and prejudicial delay in bringing a complaint to trial, a motion to dismiss may be heard and granted if it is found to be meritorious and in the interests of justice. If the Town is subjected to prejudicial delay in bringing a complaint to trial due to the abusive or dilatory actions of a defendant, a motion for the entry of default judgment may be heard and granted if it is found to be meritorious and in the interests of justice.

**Sec. 30-76. Rule 26. Service and filing of papers.**

(a) *Service: When required.* Written motions other than those which are heard ex parte, written notices and similar papers shall be served upon each of the parties.

(b) *Service: How made.* Whenever under these rules or by an order of the Court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself or herself is ordered by the Court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) *Notice of orders.* Immediately upon the entry of an order made on a written motion subsequent to arraignment and which is not issued orally from the bench, the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing.

(d) *Filing: No proof of service required.* All papers required to be served shall be filed with the Court either before service or within a reasonable time thereafter. Such filing by a party or party's attorney shall constitute a representation by him or her that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this rule. No further proof of service is required unless an adverse party raises a question of notice. In such instance the affidavit of the person making service shall be prima facie evidence.

(e) *Filing with the Court defined.* The filing of pleadings and other papers with the Court as required by these rules shall be made by filing them with the clerk of the Court, except that the judge may permit the papers to be filed with him or her, in which event he or she shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(f) *Effect of failure to file.* If any party to an action fails to file within five days after the service any of the papers required by this rule to be filed, the Court, on motion of any party or of its own initiative, may order the papers to be filed forthwith, and if the order be not obeyed, the Court may order them to be regarded as stricken and their service to be of no effect.

**Sec. 30-77. Rule 27. Appearance, withdrawal, and excusal of attorneys.**

(a) *Appearance.* The attorney for a defendant in a code violation action shall forthwith file his or her appearance in writing with the clerk of the Court wherein the action is pending.

(b) *Withdrawal.*

(1) *By motion.* An attorney who has appeared on behalf of any defendant in a code violation action may not withdraw unless he or she first obtains the consent of the Court. All withdrawals shall be upon motion with notice to the defendant and the Town Solicitor. A motion to withdraw shall not be granted unless the attorney who seeks to withdraw shall append to his or her motion the last known address of his or her client, which shall be the official address to which notices may be sent. A motion to withdraw shall be accompanied by an affidavit setting forth facts showing the military status of the defendant. If it appears that the defendant is in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, the motion shall not be granted unless the defendant consents thereto in writing or another attorney appears of record as counsel at the time of such withdrawal.

(2) *By stipulation.* Where a defendant for whom an attorney has filed an entry of appearance is desirous of substituting new counsel a stipulation may be entered pursuant to which the first counsel withdraws his or her entry and replacement counsel enters his or her appearance. Such a stipulation shall not be entered where the substitution of counsel shall be cited by the defendant as a justification for delay of proceedings.

(c) *Excusal.* No attorney shall be excused from attendance except upon application to the Municipal Court Judge, and such excuse from attendance shall be granted on such terms and conditions as the Court may set. In case of the sudden illness of an attorney, or the attorney's absence from a hearing for some other imperative and unforeseen cause, the Municipal Court Judge shall take such action, without notice, as shall appear reasonable in the circumstances.

**Sec. 30-78. Rule 28. Courts and clerks.**

(a) The calendar of cases to be heard will be posted at the Tiverton Municipal Court on the day of hearing.

(b) *Cancellation of calendars.* If a day's calendars are cancelled due to inclement weather or other unforeseen circumstance, all cases on said calendars shall be reassigned to the next day when the Court shall be open for business and shall be called at the same time as originally established.

**Sec. 30-79. Rule 29. Effective date.**

These rules shall take effect when approved by the Town Council after public hearing thereon. They shall govern all code violation proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

**Sec. 30-80. Rule 30. Title.**

These rules may be known and cited as the Tiverton Municipal Court Rules of Procedure and may be cited as Tiv. Mun. Ct. R. P.

**This ordinance shall take effect upon passage and all ordinances and parts of ordinances inconsistent herewith are hereby repealed.**

**Adopted by the Tiverton Town Council August 9, 2016**