

Town of Kittery
Public Service Handbook
JUNE 2006

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Welcome to Public Service!

The purpose of this handbook is to provide you with background information on the Town and its government and to introduce you to your role in that structure. It includes, first, a general history of the Town and a description of its government and administration. The majority of the handbook is directed specifically to operation procedures, and the responsibilities of Board and Committee members. Finally, the handbook reviews conflict of interest laws and Freedom of Access Laws that apply to Board, Committee and Council members.

The Town of Kittery considers volunteers a great natural resource. The mission of the volunteer program is to enhance town programs and services by matching the varied talents of concerned individuals of all ages, interests and skills with a wide variety of interesting and challenging municipal projects. Volunteering doesn't demand special training or education - only a degree of care, concern and commitment. How much time is required? It all depends on your schedule

and the board/committee you choose. It could be several hours each week or only a few hours now and then.

While you will find that your role requires time, effort, and some long evening meetings, it also provides an opportunity for genuine public service. You will be able to help shape the future of Kittery and to make decisions affecting every citizen's satisfaction with the Town. The Town of Kittery needs your personal resources and enthusiasm in order to maintain the qualities of the Town that are enjoyed by its residents. Volunteer Board, Committee and Council Members work together to accomplish policy formation for the Town. The performance of public service brings with it the feeling of contribution and you will most likely develop a close relationship with other volunteers, all working toward a common end of providing for the community, its citizens and its future.

As members of Boards, Committees or the Town Council, you are essential to the Town's commitment to developing policies and services that reflect the needs and values of the community. In carrying out your responsibilities, you will work closely with your fellow Board members, the Town Council, and staff - all of who play a critical role in the Town organization. The Town Council may also appoint citizens to study particular, short-term issues.

We think that you will enjoy your role as a Board, Committee or Council member and that at the end of your term you will find that you have played an important part in shaping Kittery's future.

Jonathan L. Carter, Town Manager

PURPOSE

The purpose of this guide is to introduce the Town of Kittery to volunteers and residents, and to provide information that will better enable the Town Officials to:

- " Accomplish their mission
- " Establish community involvement
- " Improve volunteer and team effectiveness

VISION

Recognized as the oldest incorporated town in the State of Maine, and be one of Maine's most forward thinking residential and business communities. By working together and focusing on initiatives that support controlled growth and promote policies that will strengthen our Town's economy and lifestyle.

MISSION

The mission statement for volunteers is to serve the residents and businesses of the Town of Kittery and be its voice in the betterment of the community.

GOALS/OBJECTIVES

1. To provide creative leadership and effective coordination of all interested parties in solving community problems and in initiating constructive community action;
2. Foster and support private enterprise, economic vitality and stability;
3. To provide a forum for idea exchange
4. To create broad understanding and appreciation of the great opportunities in the surrounding area, and to promote the advantages of the community;
5. To create a climate conducive to developing individual volunteers through participation and interaction;

6. To create an enthusiastic working partnership between staff and member volunteers built on trust and mutual respect.

HISTORY OF KITTERY

One act of the court of elections held on October 20, 1647, was memorable: the erection of the Piscataqua Plantations into a town, the first in our present State of Maine, by the name of Kittery, which embraced the present town of that name, the Berwicks and Eliot.

The Town of Kittery, Maine, takes its name from the manor of Kittery Court located on Kittery Point in Kingsweare, Devon, England, across the river Dart from the city of Dartmouth. The old manor house is standing. From Kingsweare the Shapleigh family, first settlers and proprietors of Kittery Point, Maine, came to New England. Colonel Charles Banks, to whom the discovery of the origin of the name is due, also mentions the word Godmorrock, an early name of the castle of Kingsweare, the home of the Shapleighs, which was given to land in Kittery, but remained for only a brief time.

Nicholas Shapleigh, the builder of the first house at Kittery Point, Maine, and the only emigrant to come in his own vessel, was a man of substance and influence. During the troublesome times of the changing governments in the seventeenth century in the Province of Maine, he was either elected or appointed to most of the offices in the hands of the government or the people. A loyal follower of Gorges and his King, as Provincial Councillor, he was, however, among the first to take the oath of allegiance to Massachusetts in 1652, where by his weight of character and popularity, he became special commissioner for holding courts, county treasurer and seargeant-major of the Yorkshire militia.

Many of the first settlers at Kittery who were there as early as 1623 were fishermen, hunters, and trappers and workers in timber, which was easily shipped to England or the West Indies.

Captain Francis Champernowne was another Kittery pioneer. His birthplace was at Champernowne manor, Dartington Hall, ten miles above the home of the Shapleighs in England. The southern part of Kittery, Maine was first called Champernowne's.

Three brothers from Wales, John, Robert and Richard Cutts, were also early comers. Mr. Edward Godfrey had charge of a trading post in Kittery in 1632. Among the other early settlers were John Andrews, Philip Babb, Mary Baylie, John Bursley, Humphrey Chadbourne, William Chadbourne, Nicholas Frost, Charles Frost, William Everett, Thomas Withers, Edwin Small, John Heard, John Edgecomb, John Fernald and Peter Wyer.

The first selectmen of Kittery after its incorporation in 1647, were Nicholas Shapleigh, John Heard, and Nicholas Frost; the town clerk was Humphrey Chadbourne, who held office for twenty years.

John Josselyn, writing in 1663, said: "Towns there are not many in this province. Kittery situated not far from Passacataway is the most populous." In 1652, when the people of Kittery submitted to Massachusetts, it was recognized as a

municipal township and along with York received a guaranty of equal privileges with other towns of Massachusetts.

Taken from Maine Place Names and The Peopling of It's Towns by Ava Harriet Chadbourne, Professor Emeritus of Education, University of Maine. Printed by Furbush-Roberts Co., Inc., Bangor, Me. c1955.

TOWN GOVERNMENT

The Town of Kittery operates under a Council-manager form of government, an organizational framework which has grown widely in popularity since its inception in the early 1900's. It provides town government with policy direction from the Town Council and professional administration through the Town Manager.

The Town Council

The Town Council acts as the governing body of the Town, with all the regulatory and corporate powers of a municipal corporation provided under the Maine law. In general, the Council supervises the operations of town government by establishing Town policies and programs and appropriating funds for each Town department.

The Town Council consists of seven (7) Council members. The Council is the policy-making body of the Town and is held ultimately responsible for implementation of all programs and services provided by the Town. The Council approves most ordinances, resolutions and contracts. The Council reviews proposals for community needs, initiates actions for new programs and determines the ability to provide financing. The Council approves and modifies the budget as prepared by the Town Manager and staff.

Regular Council meetings are held on the second and fourth Mondays of the month, except as provided by Charter, commencing at 7:00PM. Council Meetings are video- taped and replayed on Comcast Cable Channel 22 on the following Tuesday evening at 7:00PM.

Committees and Boards

Committees and Boards are standing bodies established by a State statute, Town ordinance and/or Town Charter and appointed by the Town Council to provide ongoing citizen input on major policy areas. Most appointments are for three years and terms are staggered to provide for continuity. The term "board" or "Committee" members will be used interchangeably and in lieu of Commission/ Committee/ Commissioners." In this handbook, the generic term "Board" includes Authority; Commission; Committee; Council; Trust. The responsibilities of the members include:

1. Providing ongoing recommendations to the Town Council and staff regarding special program areas.
2. Holding public hearings to solicit community input on current issues.
3. Identifying issues that the Committee/Board believes should be addressed by the Town Council or staff.

The Town Council benefits by using Committees and Boards in their decision-making process by relying on these bodies to:

1. Focus attention on specific issues.
2. Encourage broad citizen participation through public hearings.

3. Weigh community values in making recommendations to the Council.
4. Thoroughly research and review alternatives to accompany formal recommendations to the Council.

Staff

The Town Staff, under the direction of the Town Manager, is responsible for carrying out the policy of the Town Council, enforcing ordinances and implementing programs and services. The Town Manager is appointed by and reports to the Town Council. All other Department Heads and staff members are hired by, and responsible to, the Town Manager. As the Town's Chief Executive Officer, the Town Manager oversees responsibilities for the day-to-day administrative affairs of the town, including assigning staff liaisons to assist the various boards and Committees. Committees and Boards work closely with the staff liaisons; however, they do not have the authority to supervise or direct the work of staff. Special assignments to staff are made through the Town Manager.

ADMINISTRATIVE ORGANIZATION

The organizational chart located in the Appendix reflects the relationship between the elected officials, appointed official, Town departments and Town Committee /Board members. A general explanation of the responsibilities of the appointed officers and departments is provided below:

Town Manager

The Town Manager is appointed by the Council and serves under the terms of an employment contract. The Manager is the administrative head of the Town Government and is subject to the direction of the Town Council. The Manager is responsible for the efficient administration of all the affairs of the Town, which are under his/her control. The Town Manager's responsibilities include the following: enforcement of ordinances; responsibility and direction over all employees; preparation and submittal of the annual budget, and chief advisor to the Town Council. The Town Manager reports to the Town Council and holds a non-elected, salaried position. The Manager has the further responsibility to project future program needs and services and determines the financial, personnel and social impacts of these decisions.

Town Attorney

The Town Attorney is contracted by the Town Council to provide legal services on an hourly basis to the Town. The Attorney's services are coordinated at the management level. The Town Attorney also provides day-to-day information to the Town staff on legal matters and acts as the Town's representative in legal actions. The Town Attorney is accessed through the Town Manager by request of a Chairperson.

Town Consulting Engineer

The Town retains the services of an engineering firm as the Town Engineer. This is on a contract for service basis and utilization of the service is dependent upon need. Periodically, additional services are required and they, too, are provided on a contract basis. Engineering services are available to all functions within the Town organization.

Personnel/staff

The Town of Kittery has over 100 volunteer appointed Board and Committee members, 62 full-time employees, 16 permanent part-time employees, 56 stipend employees, seven elected Town Councilors and a number of seasonal employees.

The responsibility for compliance with appropriate hiring procedures and other employment laws lies with the Town Manager with assistance of the Manager's staff and the Personnel Board. The Town Manager, through the Personnel system or Union contracts, oversees the compensation and is responsible for the hiring, firing, promoting, disciplining and motivating of Town employees. Day-to-day personnel actions are handled at the department level.

ORGANIZATION FOR POLICY-MAKING

In keeping with the Town's philosophy of citizen involvement, the Town Council appoints citizens to Committees and Boards to assist in the formulation of Town policy.

The strength and the success of Kittery Town Government is, to a large degree, reflective of the quality of service performed by these volunteers.

Boards and Committees:

There should be a two-way communication so that the Boards and Committees are aware of the long and short-term goals and policies that the Town Council has adopted or may be promoting. The Town Council should know of the work in progress or being planned by the Boards and Committees so that the Council is receptive to new ideas that may be presented to them.

At times the Town Council may not accept the recommendation of Boards and Committees. Recommendations are an important component of Town Council decision-making and will be weighed carefully with other information the Council may receive.

Members of Town Boards/ Committees are appointed by the Town Council.

1. Each member has an obligation to vote his/her conscience and will have to resolve conflicts he/she may have between a personal viewpoint and what is perceived as the public's interest.
2. The members' contact with the Town Council should always be open and never used to circumvent the staff or Committee /Board. Therefore, an individual Committee/Board member should not attempt to persuade the Council to take a position which is contrary to the wishes of the Committee as a whole.
3. Members should not willingly and openly embarrass the Town, Town Council or staff.
4. Members should assist the Town Council in developing public trust in the advisory Committee/Board system.
5. Members should remember to solicit input from the public and forward recommendations to the Town Council. In carrying out this role, Boards and Committees should neither advocate for nor oppose a specific position.
6. Should a controversy arise within a Board or Committee, guidance is available from the Town Manager and staff.

Town Boards and Staff

In most cases, there is one staff person or Town Councilor assigned to serve as a liaison between the Board/Committee, the Council and staff to research and investigate questions raised by the Committee or Board. More than likely, staff will be responsible for letting the Boards and Committees know what is happening in the organization, what issues need Committee/Board direction, and will probably suggest alternatives that the Boards and Committees may consider. Staff or Council liaison suggestions may not be accepted all the time, but it is important that good relationships exist between the Boards and Committees and staff, so that together a reasonable solution can be derived. The following are some ways to avoid misunderstandings and to keep the channels of communication open:

1. Contacts should be with the staff member or Town Council liaison assigned to the Boards and Committees rather than to other staff.
2. Discussions with staff members or Town Council liaison should be related to the Boards and Committees functions.
3. Members of Boards and Committees should not ask for individual reports, favors, or special considerations.
4. Citizen complaints heard by Boards and Committees should be referred directly to the staff person or Town Council liaison assigned to the Boards and Committees or to the Town Manager.
5. Boards and Committees should realize that the assigned staff person or Town Council liaison who works with the Boards and Committees reports directly to a supervisor and may not be able to carry out every recommendation that the Boards and Committees may have.

6. If any Board and Committee desires information or a report, which will require a large amount of staff time, the Boards and Committees should request the Town Manager's or Town Council's permission to pursue the project. Following this procedure will prevent staff being diverted from priority projects. The staff and Town Council liaison has a responsibility to keep the Boards and Committees informed. Staff does this by making sure that other employees, and all Boards and Committee members know the purpose and goals of the organization. The staff person is also responsible for suggesting methods whereby the Boards and Committees can accomplish these goals by:

1. Initiate suggestions so the Boards and Committees have an idea how to seek out information or resolution of the problem.
2. Promote team spirit, so that all Boards and Committees can participate in a manner that will maximize their satisfaction in the organization. Recognizing Boards' and Committee's contributions and encouraging involvement are two ways to let everyone know that their ideas are welcome.
3. Take the initiative to inform Boards and Committees about activities, projects and work that is taking place elsewhere in the town government and among other Boards / Committees.

Appointment to Boards and Committees

In order to qualify for appointment to Boards and Committees of the Town, applicants must be a resident and registered voter of the Town. Town Boards and Committee's terms vary.

Boards and Committees have a varying number of members appointed by the Town Council for usually a three-year term. The Town Council will interview applicants to the different Boards and Committees, as per its Selection Procedures, either through an individual Councilor interviewing the applicant or for applicants to the Planning Board, Cable Rate Regulation Board and Zoning Board of Appeals, the entire Town Council - or with at least a quorum present - is required to interview the candidate for appointment. Members on Boards and Committees are asked if they wish to be considered for reappointment by the Town Clerk, who sends a letter with a re-appointment form, 60 days prior to the extension of the member's term.

Application forms for seats on all Boards and Committees are available from the Town Clerk or on the town's website (www.kittery.org) and may be completed at any time. The Town Council will normally avoid appointing more than one member of the same family to the same Committee/Board.

From time-to-time a vacancy occurs on a Boards and Committees during a term. When this occurs, the waiting list of available applicants for the vacant board will be used. If there is no waiting list of available applicants, the Town staff will advertise that a seat is available and ask for applications. The Town Council will then appoint a person to complete the vacated term, following the established procedure.

Role of Members Serving on Boards and Committees

Boards and Committees, as well as the Kittery Port Authority, find themselves uniquely situated in the government organization. Appointed volunteers receive no compensation. Members are appointed, not elected, and they may not represent an identifiable constituency. In some cases, they have considerable authority and staff can easily implement their recommendations, while in other areas their function is as advisors to Town Council, without any authority. The Town's Boards and Committees exercise the authority delegated to them by the Town Council as set forth in the Town's ordinances and Charter, with exception of the Kittery Port Authority, which has its authority defined under State statute.

OPERATING PROCEDURES

General Guidelines

Regular Boards and Committees meetings are held according to the Boards and Committee's adopted schedule.

Special meetings may be called when needed for the transaction of business.

The calling of all meetings must satisfy the requirements of the Town Charter, Ordinances and State and Federal Laws, and meetings will be conducted using Robert's Rules of Order. Business may take place only at special or regular meetings if a quorum of the Board's and Committee's members is present.

Procurement

Purchases relating to or in conjunction with the work of the Boards and Committees may be made using the Board's and Committee's budgeted funds.

Once a majority of the Boards and Committees at a meeting votes in favor of expenditure or grants the Chairperson the authority to purchase, the procurement must be approved by town staff (and Town Manager based on amount). This helps assure that the funds, which are public funds, are expended in accordance with applicable laws and Town financial procedures.

Public Meetings

All Boards and Committees meetings are open to the public and must be held in a publicly owned building or facility that accommodates ADA requirements. Most meetings should have an agenda posted prior to the meeting. Location of the agenda posting is at the Municipal Complex 200 Rogers Road Extension. An additional posting should take place at the building or facility that the meeting is actually held if it is not the Municipal Complex. All agendas should have the basic information of the Meeting date, location (including room number), time and items to be discussed.

Meeting Cancellation Policy

A Chairperson of a Board or Committee who finds their meeting of the Board and Committee requires cancellation, shall notify their staff or Council liaison person or the Town Manager's staff of the cancellation. The posted agenda will be replaced with a notice of cancellation at each of the posting locations. During inclement weather, the Town Manager may close the Municipal Complex for safety reasons. When that occurs, meetings scheduled for that day will be cancelled. The Town Manager's staff will notify the affected Board's and/or Committee's chairperson.

Executive Sessions

Executive Sessions should be rarely used and are regulated as to their use. The following are the only reasons for calling an executive session:

Reason for Executive Session Statutory Citation

1. Personnel Matters 1 M.R.S.A. § 405(6)(A)
2. Suspension or expulsion of a public school student 1 M.R.S.A. § 405(6)(B)
3. Acquisition of real property or economic development 1 M.R.S.A. § 405(6)(C)
4. Labor negotiations 1 M.R.S.A. § 405(6)(D)
5. Consultations with legal counsel 1 M.R.S.A. § 405(6)(E)
6. Discussion of confidential records 1 M.R.S.A. § 405(6)(F)

(However, this section of the Freedom of Access Act at present does not also reference each of the State laws that make these records confidential, and this reference should be added to make the citation complete. Legislative staff is supposed to prepare a bill for the Legislature to enact that will list all of these records that are made confidential by statute, but until such an amendment is passed, consult your municipal attorney or MMA Legal Services for the legal citation to the statute that makes a particular record confidential.)

7. Discussion of examination results 1 M.R.S.A. § 405(6)(G)

8. Consultation with code enforcement officer on pending 1 M.R.S.A. § 405(6)(H) enforcement matter in District Court
9. 36 M.R.S.A. § 841(2) requires that hearings and proceedings related to poverty abatements be held in executive session.

If an Executive Session is being considered, it should be a meeting agenda item that clearly indicates the purpose of the Executive Session. An open meeting motion is required to enter and exit from the Executive Session. The motion to go into the Executive Session must state one, or more, as necessary, of the nine above reasons and must be recorded in the minutes of the meeting. During the Executive Session, no minutes or votes can take place. Those allowed into the session are board members, staff/ Committee consultant, Town Attorney and others that the board believes are proper to discuss the issue. Boards and Committees should refrain from using Executive Sessions without first consulting the Town Manager or Town Attorney before scheduling an Executive Session. Conflict of Interest (See Appendix on this issue)

By-laws

Committee/Board by-laws or rules should be consistent with Town ordinances and State statutes including the guidance of this handbook

Public Records

In general, records created or received by members of Boards and Committees (regardless of their form) concerning Town business or Town related issues are public records with the exception of certain personnel information or issues and Legal Counsel's internal guidance correspondence to Boards and Committees on a specific issue and must be available to the public for review. In those areas where documents are thought to be confidential, please obtain an opinion from the Town Manager or Town Attorney.

E-Mail Policy

As noted above, the Town of Kittery is required by law to maintain public records. This is often most challenging when records are in the form of email. However, the law allows e-mails to be discoverable as part of litigation. All Boards and Committees e-mail communications should also be copied to your staff and Town Council liaison so that they are kept appropriately informed.

E-mail cannot be used as a means of discussion of town business between all or a quorum of members.

E-mail cannot be used to facilitate or form a "hub and spoke" communication whereby one member of a Board or Committee acts as a go-between disseminating communications between other Board and Committee members on matters that require action by the full Board at a public meeting.

E-mail cannot be used as a means of taking straw polls on town issues.

In summary, communications by e-mail cannot be used as a means of circumventing the right to know law. A Board or Committee member may use e-mail to distribute informational material to all other members as long as it is available to the general public. However, such distributions should not be made with the intent to initiate responses from other Committee /Board members. Any discussion of such informational communications should be reserved for public

meetings. E-mail of informational material should be preserved in the manner provided above.

Confidential messages should never be sent electronically for two reasons; 1) messages may be sent to the wrong addressee, and 2) e-mail should always be used with the assumption that messages will be read by someone other than the intended recipient.

Public Information/Input vs. Advocating a Position

Boards and Committees are encouraged to obtain public input prior to making recommendations. However, Committees, and Committee /Board members in their official capacity, must be careful not to promote their position, whether for or against an issue. Information provided to the public during the public input process should be factually based.

Meeting Attendance

Members of Boards and Committees are expected to attend all meetings. Members missing a meeting or multiple meetings should inform the Chairperson of their absence and reason(s). It is the duty of the chairperson to notify the Staff or Town Council liaison when this occurs. If members of Boards and Committees are unable to continue service due to health, missing multiple consecutive meetings, business requirements, personal reasons, or moving out of Town, they should submit a formal letter of resignation to the Town Council. Advance notice is appreciated so that advertising can be done to obtain a replacement.

Minutes

A record of resolutions, transactions, findings and other determinations shall be kept by the Board or Committee secretary, staff or Council liaison. Board and/or Committee meetings are sometimes taped to facilitate the preparation of minutes. The written minutes are the official record of the proceedings. Minutes of both regular and special meetings must be prepared.

The minutes must contain the following: the members of the Boards and Committees and staff who were present; the time the meeting convenes and adjourns; a description of the items discussed; the names and addresses of the people who have spoken at the meeting and their opinion for or against a decision. The minutes of all meetings should be reviewed as soon as possible after receipt and approved by the members of the Boards and Committees at their next regular meeting. Findings of facts are also involved with certain boards and committees and should be reviewed when the minutes are presented.

Minutes are not a verbatim transcription of meetings. Lengthy discussions are often briefly summarized. When reviewing the minutes, members of Boards and Committees should check to make sure that they reflect the meeting overall, that the direction given or motions made are correct. Any major revisions (changes in content) needed must be made at the time the minutes are being considered for approval. Minor revisions such as grammar or spelling errors should be given to staff in advance or at the beginning of the meeting in which the minutes are being considered for approval. Minor revisions do not require a motion.

Copies of minutes of meetings should be submitted to the Town Clerk's office for official record-keeping purposes at the Town Office to be available for public review. Electronic and/or paper copies are to be submitted.

Role of the Chair

The chair is the key to the proper functioning of any Board and Committee. The chair has the important responsibility of ensuring that the meetings operate efficiently and he or she maintains the unity of the Boards and Committees. Consequently, the election of the chair should be viewed as an important Boards and Committees task. Although any member of the Boards and Committees may request an agenda item, it is the Chair's responsibility to work closely with the staff to develop the meeting agendas and review the requested agenda items from the other members of the Boards and Committees. In Kittery, the chair and vice chair are elected from among the members for a one-year term by the Boards and Committees.

There are some general rules for an effective chair:

1. The chairperson shall use Robert's Rules of Order in conducting the meetings.
2. The chairperson should attempt to educate the public as to the process and policies of the Town.
3. The Board or Committee chair should see that consideration be given to major issues and not become sidetracked by insignificant concerns.
4. The chair should attempt to reach a consensus; however, non-consensus should not be allowed to delay voting on items indefinitely.
5. The chair should be the last member to give his/her opinion after all others have spoken.
6. The chairperson should be capable of representing his/her Board or Committee effectively to other groups. It is also important that the vice chair be an effective leader, since he/she will run the meeting in the chair's absence.

Public Hearing Procedures

Public hearings may be held at any Boards and Committees meeting, but will usually take place at the Zoning Board of Appeals and Planning Board meetings. The rules for public hearings listed below have been prepared to give you guidance in conducting a Public Hearing.

It is recommended that if a member misses all or part of a public hearing, the member should abstain from voting on the matter unless he/she has become familiar with all the evidence presented at the hearing. It is suggested that the member listen to a tape recording of the hearing (if available), examine all written materials, and state at the meeting that he/she has done so and feels competent to vote on the item.

Conducting a Public Hearing

1. The chair states the purpose of the Public Hearing.
2. If requested, the staff gives an oral report explaining the action requested, the facts and issues, and the staff report.
3. If applicable, the applicant gives his/her presentation on the issue.
4. The chair acknowledges any correspondence about the application that has been received.
5. The public hearing is opened.

6. Members of the public are heard. All interested speakers are given an opportunity to speak once before speakers are heard a second time. The Chairperson has many responsibilities, including assessing the time allocated for public comments. Time management is required by the Chair to properly run an effective hearing and attempts should be made to control repetitive comments.

7. Applicants and members of the public are given the opportunity to rebut earlier comments.

8. The public hearing is closed. Action is not taken during public hearings. A separate action item will either be listed on that same agenda, or on a later agenda for consideration.

Suggestions for Speakers

1. All speakers will be expected to state their name and address for the record. If a number of speakers are present, each speaker may be asked to file a written statement of their concerns with the Town Staff.

2. Questions for Board and Committee members, other people in the audience, and the staff should be directed through the Chairperson.

3. As much as possible, speakers should express their comments concisely and briefly, with the exception of public hearings. The Chair may designate a specific amount of time for each speaker. The Chair should make sure sufficient time is allocated to speakers for Board /Committee members to understand the facts or concerns being presented. If the number of people wishing to speak necessitates, groups may be asked, but not required, to designate a spokesperson for the group.

RESPONSIBILITIES OF COMMITTEE/BOARD MEMBERS

To be selected as an active member of Town Boards and Committees is a privilege and provides an opportunity for genuine public service. Although the duties of each of Kittery's Boards and Committees vary widely, there are certain responsibilities that are common to all Board and Committee members. The following is a summary of the important responsibilities to appointed members:

Understand the Role and Responsibilities of the Boards and Committees

One of the first responsibilities of a new member is to understand the Boards and Committees scope of responsibility and operating procedures. This information may be obtained by referring to the Town Code excerpts and Policy and Goals Statements included in the appendix of this handbook.

The department head or Town Manager is responsible for the programs within each Board's and Committee's scope of interest and is available to assist new members in becoming familiar with their roles and duties. They also will provide information about Town policies, minutes of past meetings, and other helpful data.

Represent the Entire Board or Committee

Individual members should refrain from representing their views or recommendations as those of their Board or Committee unless it has officially voted to approve the recommendation. Members making recommendations or expressing views not approved by the majority of their Board or Committee

should indicate that they are representing only themselves as individuals. Statements to the press should be made by the Chairperson of each Board or Committee unless a spokesperson has been designated.

If the vote on an agenda item is not unanimous, a minority report may be submitted to the Town Council by individual members of a Board /Committee. The disagreement should be stated in the minutes and a copy of the minority report should be placed in the Committee/Board records. If the member was absent at the time action was taken, he/she may state the desire for a minority report at the next meeting. If time does not allow, the member should submit his/her concerns to the Town Council, stating that he/she is speaking as an individual and not for the Committee as a whole.

Be Representative of the Whole Town

Although Boards and Committee members may be selected, in part, because they represent clearly defined groups, once selected each appointed member should represent the entire public interest of the Town and not just his/her respective group interest. The question, "What is best for the entire community?" should take precedence over "What is best for my interest group?"

Keep the Lines of Communication Open

As an influential member of the community, a member is in the unique position of serving as a liaison between the Town and the general public in helping to reconcile contradictory viewpoints and building a consensus around common goals and objectives. An appointed member must serve as a link between the community, staff and Town, by presenting Town programs and recommendations and also providing a channel for citizen expression. A primary role of the Boards and Committees is to determine the attitudes of the citizens concerning Town programs.

Do your Homework and Be Thorough in your Recommendations:

Board and Committee members, in connection with their role, may spend hours in research on a particular problem. Appointed members should be familiar with the portions of the Comprehensive Plan, the Town Charter and Code, and the Zoning Code applicable to their area of responsibility and should thoroughly review staff reports, plans, and materials submitted by the applicant in advance of meetings. Planning Board and Zoning Board of Appeals packets are provided to their members.

Be conscious of your relationship with the Town Council

The responsibility for allocating scarce public resources rests with the community's elected representatives, the Town Council, and cannot be designated to an outside group, however capable and interested it may be. Boards and Committees should review Town policies related to programs under their scope of interest and make recommendations for changes to the Town Council. Boards and s must adhere to the policies approved by the Council as expressed in the Comprehensive Plan, the Town Code and other official documents.

The Town Staff works for the Town Manager, and through him/her, for the Town Council. Staff does not work for Board members with the exception of the Harbor Master, who works for the Kittery Port Authority.

It is therefore not appropriate for members to direct staff, or to become involved in the administrative or operational concerns of the Town Departments. While the Staff can provide routine information regarding on-going projects, a formal request to the Town Manager must be made for Staff involvement in projects. If Committee/Board members have questions or are concerned with Staff services provided to the Committee/Board, the Town Manager should be contacted immediately to review the matter. Town Staff is required by the Town Manager to make individual professional recommendations which may, or may not, agree with those of the Committee/Board. The Staff is required to present fairly the Board's recommendations and explain them, but will not defend them if in disagreement.

When appropriate, the Board/Committee chair or delegated representative may be present at the Town Council meeting to report on the Board's or Committee's recommendations, but he/she should contact the Town Manager or Council Chair by no later than 4 p.m. on the Tuesday prior to the Town Council meeting to make a presentation to Council and be placed on the agenda.

Establish a Good Working Relationship with other Board/Committee Members

On many occasions the success or failure of the efforts of a Board or Committee member is largely dependent on the degree of cooperation among the individual members of the Committee/Board.

To help build a consensus around common goals and objectives, members will often have to reconcile contradictory viewpoints.

Each Board or Committee member should do his/her part to ensure that meetings proceed in an orderly and constructive manner. The chair is primarily responsible for seeing that consideration of items on the agenda moves along without delay, but with reasonable time allocated to each item.

Each Board or Committee member can assist the chair by becoming familiar with the basic rules of parliamentary procedure and by adequately preparing any presentations he/she makes to the Board or Committee.

Political solicitation

1. The Town expects all Board and Committee members to adhere to the Code of Ethics during their term of membership.
2. Conflict of Interest Agreement (see attached)
3. No town official shall directly or indirectly, orally, by letter or otherwise solicit or assist in soliciting from any person in the employ of the town any assessment, subscription or contribution for any political party or political purpose whatever. (Amended by vote of the people 6-11-02)

MEETINGS AND HOW TO RUN THEM EFFECTIVELY

Committee/Boards operate by meeting and discussing issues

The trick is to make sure that meetings are not unnecessarily scheduled and discussions are not unduly long-winded. Everyone has something valuable to contribute, but knowing when, and how, to control discussions can make the difference between side-tracked dialogue, and an insightful observation. Public meetings are the place where most Committee Board members spend the majority of their working time and where their public reputations are made. All too often, the impressions upon public are negative because the Boards /Committees commit one or more of the five (5) "cardinal sins" of conducting a public meeting. They are:

1. Not Controlling the Meeting

If many people want to speak in a limited time, speaking time should be rationed (except at a public hearing) so all may be heard. A helpful method is requesting a show of hands of those who wish to speak on a particular subject, then making a time allocation and holding to it. It is not necessary to permit individuals to have second and third opportunities. However, a statement concerning this should be made at the onset.

2. Appearing to Seem Unfair

Committee/Board members should not bring up the pros and cons of an agenda item before all testimony and evidence have been presented. Then, the discussion should stay on the facts presented, not on the presenters.

3. Failing to Bring Issues to a Vote

Many Board and/or Committee members get so bogged down in petty details, endless searches for new data and procedural distractions that matters brought before them never seem to be resolved. Some Boards /Committees have taken so long to make a decision that, by the time a decision reaches the next level of government, conditions have changed the affected proposal and, therefore, the recommendations are obsolete.

4. Wasting People's Time

According to Sec. 12.05, Town Meetings, of the Kittery Town Charter, a vote must be taken to extend the meeting past 10:00 p.m. and that all meetings must end no later than 11:00 p.m. Therefore, don't make people who have come for a 7:00 p.m. hearing wait hours to be heard, or worse yet, make them come back again because there was not enough time. Try to stick to the items listed on the agenda.

Since the Board/Committee usually has the time to make decisions after the public hearing, don't fear holding the Board/Committee discussion over until the next meeting when sufficient time does not remain at a meeting. Schedule an extra meeting now and then to clear any backlog of items that need to be considered.

5. Avoid the appearance of impropriety

Trust in the government must be continuously earned. Committee /Board members who have business or financial interest, or relatives or close friends who would stand to profit from a decision obviously should not participate in the decision-making and should recuse themselves from the entire hearing so no opportunity exists for them to appear to influence their colleagues. Councilors, Committee and/or board members are elected or appointed to make tough decisions, not to avoid them.

See Appendices -

Please note the appendices have been extracted from the Town Charter and/or Town Code and are subject to revision

APPENDICES

May 23, 2006

Mr. Jonathan L. Carter
Kittery Town Manager
P. O. Box 808
Kittery, ME 03904

Re: Conflicts of Interest

Dear Jon:

You have asked for an opinion addressing the issue of conflicts of interest as they may apply to members of our municipal boards. I will direct my comments principally to members of the Planning Board, Zoning Board of Appeals, and Port Authority. Each of these boards [along with other things they do] deal with various rights and property interests of applicants seeking approvals or permits to undertake some activity.

As a general statement, no one would doubt that conflicts of interest as well as the appearance of conflicts of interest must always be avoided by members of any of our boards. Members with real or apparent conflicts should refrain from participating at board meetings on pending matters in which a board member would appear to have a conflict. Some conflicts may be quite obvious to the member and the board. Others may be apparent to the member but not to the board.

FINANCIAL CONFLICTS

Section 12.01 of the Kittery Town Charter as well as Title 30-A M.R.S.A. ' 2605 address the issue of conflicts of interest directed primarily at direct or indirect financial conflicts. Section 12.01(2) requires a board member to disclose his or her financial interests [and that of extended family members] and abstain from all board discussion, voting, and debate on any such conflict issue that falls within the statute. Since I don't believe statutorily defined financial conflicts have generated any real issues the boards, I will not get into these unless you wish me to.

NON-FINANCIAL CONFLICTS

The Kittery Planning Board, Board of Zoning Appeals, and, to a lesser extent, the Port Authority deal with issues directly involving the adjudication of important property interests and rights before it. It is essential for board members when making judgments and determinations on these applications and appeals to act in a fair and impartial manner. Applicants are entitled to nothing less. Moreover, it is important that board members be perceived as acting fairly with no undisclosed motivations when dealing with these issues.

Board members determine facts and apply evidence to existing ordinances, statutes, codes, and regulations to determine a result. The integrity of the boards' decision-making process depends on the impartiality and fairness of the individual board members throughout this process. Applicants must be able to have a degree of confidence that whatever the outcome of a particular board decision, it is rendered fairly without no preconceived notions or biases for or against an applicant's proposal.

Conflicts can take many forms. A board member, for example, may sign a petition or speak out publicly for or against a matter that is likely to come before the board on which that member sits. If this happens, the member puts himself

or herself in a position of trying to appear as an objective and impartial decision maker on an issue that the member has already taken a position or it appears that the member has. Again, by way of example, a board member may become involved as a party to some litigation for or against a particular cause. The member's participation in such endeavors merely leads to speculation as to whether that member can be fair and objective should that issue come before a board on which that individual sits. This is so even if the litigation is dropped or later withdrawn. A board member may also have some personal stake in the outcome of a board decision, that is, some personal benefit from a particular result. Decisions under these circumstances tend to compromise objectivity and could reflect poorly on the member and the board. It could also create an opening for a challenge that could possibly jeopardize the board's decision.

PELKEY V. CITY OF PRESQUE ISLE

In *Pelkey v. City of Presque Isle*, the Maine Supreme Court dealt with a claim of conflict of interest by a zoning board member in the Town of Presque Isle, Maine. Prior to that member's appointment to the zoning board, the member had been a vocal opponent and had spoken at public hearings against a project that later came before the zoning board for consideration. By that time, the opponent had become a member of the zoning board and proceeded to participate and vote on the matter. The Supreme Court reversed the decision of the board and remanded the matter back to the board for a new hearing "before only those board members who, as then members of the public, did not oppose or support [the] application at previous hearings." Whether the board member actually believes that he could deliberate fairly and impartially on the issue before the board despite an earlier position against the project was not really at issue. The appearance of a conflict was manifest and out in the public for all to observe. As shown by the *Pelkey* decision, it is difficult for a board member to appear fair and impartial when the board member has taken a pre-board hearing positions for or against a particular matter. The price board members pay for serving on boards is that they must refrain from taking positions on matters that are likely to come before the board for adjudication.

SUMMARY

In an earlier opinion, I stated that there was nothing wrong with having a conflict of interest. This is so. Conflicts may develop from time to time at any time. The problem is not that a conflict arises. It is how that conflict (real or perceived) is handled once it does arise. Whether how that conflict is acknowledged or disclosed and how it is dealt with is the important thing.

The only real way of policing and assuring compliance to any conflicts rule is for each member to be honest and forthright about disclosing such situations. I believe that over the years our various board members have been very mindful of their responsibilities on these issues. There have been little if any problems that have arisen involving board member conflicts. Frankly, the best guide in all these situations is a sound sense of honesty, fairness, and common sense as

well as an appreciation for the fairness and integrity of a board's decision-making process.

Should you need for me to address any issues in more specific detail, please let me know.

Very truly yours,

Duncan A. McEachern

DAMcE/cn

TOWN OF KITTERY, MAINE

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Article XII. General Provisions

Sec. 12.01. Financial conflict of interest.

(1) General standard. All town officials shall attempt to avoid an actual or perceived financial conflict of interest by abstention or disclosure. The Town of Kittery establishes these provisions in addition to those set forth in 30-A M.R.S.A. Sec. 2605. (Added by vote of the people 6-11-02)

(2) Definitions. For the purposes of this Sec. 12-01 the following definitions apply:

Official means an elected or appointed member of a town hoard. Family member means an official's spouse, parent, child, sister, brother, stepparent, stepchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law,

sister-in-law, son-in-law, daughter-in-law, and a person with whom any of the foregoing share a committed relationship. Financial interest means any direct or indirect interest involving at least 10% ownership in a public or private economic entity, or direct or indirect ownership or control of real property. (Added by vote of the people 6-11-02)

(3) Disclosure. If an official or family member has a financial interest in an issue before the official's board, the official shall disclose that interest and:

(a) abstain from all board discussion debate, and voting on the issue until concluded, or

(b) request a determination be made on the question if the issue involves a financial conflict of interest sufficient to disqualify the member from participation.

(c) An official involved in the negotiation or award of a contract does not have a financial conflict of interest when the contract is the result of a publicly advertised bid procedure. (Added by vote of the people 6-11-02)

(4) Determination protocol. Upon disclosure and request for determination, the determination is made by the board members present, excluding the member in question, by majority vote, unless a greater number is required by rule, ordinance, or this charter. If the vote favors disqualification the member is excused from all board discussion, debate, and voting on the issue until concluded and is recorded as abstaining. (Added by vote of the people 6-11-02)

(5) Record of conflict.

The board chairperson shall make a written summary of any abstention under this section and file the summary with the town clerk. The clerk must maintain this record for a period of 5 years. (Added by vote of the people 6-11-02)

(6) Penalties.

An official who violates any of the provisions of section 12.01 shall forfeit office and shall be ineligible for a period of 5 years thereafter to hold any town office or position.

The procedures for determination of violation are governed by:

(a) Sec. 2.09 applies to town council members;

(b) Sec. 4.07 applies to school members;

(c) Sec. 2.07 applies to council appointees.

(Added by vote of the people 6-11-02)

(7) Rights retained.

An official who is excused from an issue due to the provisions of this section retains the right to such participation as is afforded members of the public.

(Added by vote of the people 6-11-02)

Sec. 12.02. Code of ethics and prohibited conduct.

(1) Equal opportunity. No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any town position or appointive town administrative office because of race, gender, age, nationality,

handicap, sexual orientation, political or religious opinions or affiliations.
(Amended by vote of the people 6-11-02)

(2) Impartiality. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations. (Amended by vote of the people 6-11-02)

(3) Wrongful monetary consideration. No person who seeks appointment or promotion with respect to any town position or appointive town administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with any test, appointment, proposed appointment, promotion or proposed promotion. (Amended by vote of the people 6-11-02)

(4) Political solicitation. No town official shall directly or indirectly, orally, by letter or otherwise solicit or assist in soliciting from any person in the employ of the town any assessment, subscription or contribution for any political party or political purpose whatever. (Amended by vote of the people 6-11-02)

(5) Withholding information. With the exception of information which is confidential by statute, no town official shall withhold information of any nature relevant to a matter before any board. (Added by vote of the people 6-11-02)

(6) Use of public resources. No town official shall use public resources that are not available to the general public for private or personal gain, e.g. town staff time, equipment, supplies or facilities. (Added by vote of the people 6-11-02)

(7) Gifts and favors. No town official shall, by virtue of public office or position, take advantage of services or opportunities for personal gain that are not available to the public in general. Examples of services or opportunities for personal gain are gifts of any kind, favors, promises of future gifts or gain.
(Added by vote of the people 6-11-02)

(8) Penalties. Any person who violates any of the provisions of section 12.02 shall forfeit office or position and shall be ineligible for a period of 5 years thereafter to hold any town office or position.

The procedures for determination of violation are governed by:

Sec. 2.09 applies to town council members;

Sec. 4.07 applies to school members;

Sec 2.07 applies to council appointees;

Sec. 3.04 applies to appointees of the town manager.

(Amended by vote of the people 6-11-02)

Sec. 12.03. Summons before town council.

The clerks of the Supreme Judicial, Superior and District Courts may issue summonses for witnesses to attend and produce books, documents and papers at any meeting of the town council for the Town of Kittery at which a hearing is had in any matter regarding any alleged dereliction of duty by town officers or employees. (Amended by vote of the people 6-11-02)

Sec. 12.04. Oath of office.

Every official of the town shall, before entering upon the duties of the office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the town clerk:

"I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of Maine; that I will, in all respects, observe the provisions of the charter and ordinances of the Town of Kittery, and will faithfully discharge the duties of the office of _____"
(Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 12.05. Time of meetings.

No town board, including but not limited to the town council, school committee, planning board and zoning board of appeals, shall conduct business after 10:00 PM. This deadline may be extended to not later than 11:00 PM by a majority vote of the members present unless a greater number is required by rule, ordinance or this charter. (Added by vote of the people 6-11-02)

TOWN OF KITTELY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD/COMMITTEE NAME: CONSERVATION COMMISSION

APPOINTED ON BOARD/COMMITTEE: 7 Regular, Unlimited number of associates

TYPE OF BOARD/COMMITTEE:

STAFF PERSON ASSIGNED:

MEETING DATE AND TIME: 1st and 3rd Thursday at 5:30 p.m.

Chapter 2.12

CONSERVATION COMMISSION

Sections:

- 2.12.010 Appointment--Purpose.
- 2.12.020 Duties.
- 2.12.030 Powers.
- 2.12.040 Membership.

2.12.010 Appointment--Purpose.

Pursuant to the provisions of Title 30-A, MRSA Section 3261, the town council shall appoint a conservation commission for the protection and use of the natural resources located within the territorial limits of the town. (Ord. 4-92 § 2: Ord. 2-92 § 2: prior code § 2-2 (part))

2.12.020 Duties.

The Commission shall:

A. Keep an index of all open areas within the municipality, whether publicly or privately owned, including open marshlands, swamps and other wetlands, for the purpose of obtaining information relating to the proper protection, development or use of those open areas.

The Commission may recommend to the municipal officers or any municipal body or board, or any body politic or public agency of the state, a program for the better protection, development or use of those areas, which may include the acquisition of conservation easements;

B. Conduct research, in conjunction with the planning board, into the local land areas;

C. Keep records of its meetings, finances and activities and make an annual report to the municipality; and

D. Seek to coordinate the activities of conservation bodies organized for similar purposes. (Ord. 4-92 § 3: Ord. 2-92 § 3: prior code § 2-2 (part))

2.12.030 Powers.

The Commission may:

A. Make recommendations for use of land to the planning board and park commission;

B. Prepare and print books, charts, maps, and plans as it deems necessary;

C. Serve as an advisory body to the public works department to review and advise, at least twice a year, at the call of the town manager, in conjunction with the management plan and maintenance of public parks and shade trees in public parks;

D. With the approval of the majority of the Kittery town council, receive gifts in the municipality's name for any of the Commission's purposes and shall administer the gift for those purposes, subject to the terms of the gift; acquire land or easements and trusts, and accept gifts of land or money or easements, for conservation purposes; and

E. Develop and implement a management plan for Rogers Park with approval of the Kittery town council. (Ord. 4-92 § 4: Ord. 2-92 § 4: Ord. 2-91; prior code § 2-2 (part))

2.12.040 Membership.

A. The municipal officers may appoint at least three, but not more than seven, Conservation Commission members. The Commission members shall be selected from the qualified resident voters of the town. Members shall initially be appointed for terms of one, two and three years, such that the terms of approximately one third of the members will expire each year. Their successors shall be appointed for terms of three years each. Members shall serve until their successors are appointed and qualified.

B. The Commission may recommend to the municipal officers that associate members be appointed to assist the Commission as the Commission requires. Associate members are nonvoting members, except when a quorum is absent. Their terms of office shall be for one, two or three years. Associate members shall be selected from the qualified resident voters of the town. (Ord. 4-92 § 5: Ord. 2-92 § 5: Ord. 7-88; prior code § 2-2 (part))

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD/COMMITTEE NAME: PARKS COMMISSION

APPOINTED ON BOARD/COMMITTEE: 7 Regular Members, 2 alternates

TYPE OF BOARD/COMMITTEE: Advisory

STAFF PERSON ASSIGNED: Town Manager

MEETING DATE AND TIME: 2nd Thursday of each month at 5:30 p.m.

Chapter 2.13

PARKS COMMISSION

Sections:

2.13.010 Purpose.

2.13.020 Duties.

- 2.13.030 Powers.
- 2.13.040 Membership.

2.13.010 Purpose.

The town council may appoint a parks commission to provide ongoing citizen recommendations relating to the improvements or development of town-owned property that is or is likely to be developed into town parks to insure the preservation, beauty and protection of these most valuable sites. (Ord. 7-99 (part))

2.13.020 Duties.

The Commission shall:

- A. Recommend to the town council an overall park management plan for the identification, protection, development or use of park lands and facilities;
- B. Meet with the town manager to review and advise, at least twice a year, on the status and progress of the park management plan and other pertinent issues;
- C. Coordinate its activities with those of the park, recreation, school and conservation bodies organized for similar purposes;
- D. Keep records of Commission finances and activities, post agendas and minutes of meetings and make an annual report to the municipality;
- E. Assure that any recommended changes affecting municipal park properties are made in conjunction with the conservation commission;
- F. Formulate a Commission budget to be presented to the town council for approval. (Ord. 7-99 (part))

2.13.030 Powers.

The Commission may:

- A. Make recommendations for use of the parks and park facilities to the town manager and Commission or the planning board;
- B. Prepare and print books, maps and plans as it deems necessary;
- C. With the approval of the majority of the town council, apply for grants or receive gifts in the municipality's name for any of the Commission's purposes and to administer these grants or gifts for those stated purposes, as specified by the terms of the grant or gift consistent with all appropriate state statutes;
- D. Make recommendations to the town council for revisions to the park fee policy and rate schedules. (Ord. 7-99 (part))

2.13.040 Membership.

- A. The Commission consists of seven members, qualified under Section 2.07(2) of the town charter, who have demonstrated an interest in the town parks and facilities. Members shall initially be appointed for terms of one, two and three years, such that the terms of approximately one third of the members will expire each year. Their successors will be appointed for terms of three years each.
- B. The Commission may recommend to the municipal officers that associate members be appointed to assist the Commission, as the Commission requires.

Associate members are nonvoting members except when a quorum is absent. Their terms of office shall be for one, two or three years. Associate members shall be selected from the qualified resident voters of the town. (Ord. 7-99 (part))

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: BOARD OF TRUSTEES OF TRUST FUNDS

APPOINTED ON BOARD: 3, with Town Clerk and Council Chair as ex-officio members

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Town Clerk

MEETING DATE AND TIME: Quarterly

Chapter 2.16

BOARD OF TRUSTEES OF TRUST FUNDS

Sections:

2.16.010 Created--Duties.

2.16.020 Membership.

2.16.010 Created--Duties.

A board of trustees of trust funds is created to have the care and management of the Mary Safford Wildes Estate, or any other similar funds. (Prior code § 8-2(a))

2.16.020 Membership.

The board shall consist of five members, the chairperson of the town council and the town clerk to be ex officio members and the clerk to be treasurer of said fund, and three additional members to be appointed by the moderator for one, two and three years respectively; and hereafter each year one member is to be appointed by the majority vote of the Kittery town council for a three-year term and thereafter for successive three-year terms. In the event that the office of trustee shall become vacant for any reason, the Kittery town council by majority vote shall fill such vacancy for the unexpired term thereof. (Prior code § 8-2(b))

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: PERSONNEL BOARD

APPOINTED ON BOARD: 5 with two alternates

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Town Manager

MEETING DATE AND TIME: As needed

Chapter 2.20.030 -B

Personnel Board Established--Composition--Qualifications, Terms, Removal, Compensation of Members--Filling of Vacancies--Duties Generally. A personnel board is established, consisting of five members appointed by the town council. No member of the board shall be employed by the town, nor hold or be a candidate for any elective office. Each member of the board shall serve a term of three years; provided, however, that of the members originally appointed, one shall serve for a term of one year, two for a term of two years, and two for a term of three years. All terms expire on the same date in their respective years.

Members serve conditioned only upon good behavior and may be removed for cause after notice and hearing. However, no member of the personnel board may serve for more than two consecutive three-year terms. Vacancies occurring during a term are filled by the town council for the balance of the term. Members of the board serve without compensation, but funds will be provided for reasonable and necessary expenses. The board elects its own chairperson. In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Advise the town manager on matters of personnel policy and problems of personnel administration, including the development of personnel rules, a job classification plan, and a uniform pay plan;

2. Represent the public interest in the improvement of personnel administration in the town service;

3. Make any inquiry which it may consider desirable concerning personnel administration in the town service, and make advisory recommendations to the town manager, with respect thereto.

C. Personnel Board Responsible for Hearing Grievances. The personnel board is responsible for hearing grievances involving employees covered by this chapter in the manner and under the provisions specified by this chapter.

D. Opinions and Decisions of Personnel Board. All opinions and decisions issued by the personnel board are advisory in nature and are issued to the town manager and to the employee(s) requesting the grievance hearing or separation/demotion hearing.

E. Function of Personnel Board Generally. It is not the personnel board's function to exclusively represent the interests of the employee or the employer; it is the board's function to fairly and impartially represent the interests of both parties and to clearly and continually work for the development of mutual respect, understanding, and cooperation between the parties. (Ord 3-00 (part): prior code § 91Committee2-3)

TOWN OF KITTEERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: Port Authority

APPOINTED ON BOARD: 7

TYPE OF BOARD:

STAFF PERSON ASSIGNED:

MEETING DATE AND TIME: 1st Thursday of the month at 7:00 p.m.

Article IX. Port Authority

There shall be a port authority as provided by special Maine statutes as amended.

Editor's note--The Town of Kittery Port Authority was established by P. & S.L. 1961, Ch. 163, as amended; article IX of the charter is maintained as it was enacted. As you will note, there are no sections designated within the article.

16.04.060 Port authority.

A. Establishment. The Kittery port authority, hereinafter also known as KPA, was established by the 100th Legislature of the State of Maine, HP 682, Document 960, as amended.

B. Appointment and Composition. As provided in the legislative document.

C. Powers and Duties. As provided in the legislature document

D. Water Area Development Powers and Duties.

1. The KPA shall provide advice to the planning board on development applications dealing with piers, docks, wharfs, marinas and other uses projecting into water bodies.

2. Where KPA review is required, such review must be completed prior to planning board review.

3. When a Kittery comprehensive harbor plan is completed, this code shall be reviewed for amendment to further define KPA's role under this title.

(Land use and dev. code § 1.6, 1994)

TOWN OF KITTELY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: Zoning Board of Appeals

APPOINTED ON BOARD: 7

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Code Enforcement Officer

MEETING DATE AND TIME: 2nd and 4th Tuesdays at 7:00 p.m.

16.04.050 Zoning board of appeals.

A. Appointment and composition.

1. The zoning board of appeals, hereinafter also known as ZBA, is established by the Kittery Town Charter, Article VIII, Section 8.04, and other Maine Statutes (MRSA Title 30-A, paragraph 2691).

2. Appointments to the zoning board of appeals shall be made by the town council.

3. The ZBA shall consist of seven members, who shall be residents of Kittery, serving staggered terms of three years. The number of consecutive terms by any board member is limited by Sec. 8.04(3) of the Town Charter. The ZBA shall elect annually a chairperson and secretary from its membership. The secretary shall provide for the keeping and maintaining of a permanent record of all board meetings of the ZBA, and shall show the vote of each member upon each question. All records of the ZBA are public record, except as excluded under the Maine Freedom of Access (Right to Know) statute. A quorum consists of four members. All decisions shall be made by a minimum of four like votes, except on procedural matters.

4. A municipal officer or spouse thereof may not serve as a member of the ZBA.

5. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members present, except the member who is being challenged.

6. A member of the ZBA may be dismissed for cause by the municipal officers before the expiration of such member's term after notice and hearing.

7. When a vacancy occurs, short of completion of a term, the town council shall appoint a person to the vacated seat for the unexpired portion of the term.

B. Powers and Duties.

1. An agenda shall be prepared for each meeting.

Appellants/requestors may be placed on the agenda in the order that their applications are considered complete by the code enforcement officer. Drawings and information must be available to ZBA members at least two weeks before the appellant/requestor is to appear before the ZBA. Ten sets of all submissions are required.

2. The ZBA shall review appeals in the following petition categories:

a. Administrative Appeals. To hear and decide where it is alleged there is an error in any order, requirement, decision or determination made by the code enforcement officer in the enforcement of this title. The action of the code enforcement officer may be upheld, modified or reversed by the ZBA.

b. Variance Appeals. To hear and decide, upon appeal, in specific cases such variance from the terms of this title as will not be contrary to

the public interest where, owing to special conditions, a literal enforcement of the provision of this title would result in unnecessary hardship. In granting any variance, the ZBA shall prescribe conditions and safeguards as are appropriate under this title. In accordance with MRSA, Title 30-A, paragraph 4353(4), or subsequent amendments or revisions thereto, variance may only be granted where:

- i. Such hardship exists that the land in question cannot yield a reasonable return unless the variance is granted; and
- ii. Such hardship is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and
- iii. Granting of such variance will not alter the essential character of the locality; and
- iv. Such hardship is not the result of action taken by the applicant or prior owner.

c. Miscellaneous Appeals. To hear and decide those appeals specifically mentioned herein, to permit variations in:

- i. Nonconformance as prescribed in Article III of Chapter 16.28, Nonconformance;
- ii. Standards contained in Article XI of Chapter 16.32 or Section 16.32.630;
- iii. To permit variations in non-subdivision right-of-way widths.

3. The ZBA may only grant zoning special exceptions which are specifically authorized by Chapter 16.12; decide such questions as are involved in determining whether such special exceptions should be granted; and, establish conditions and safeguards as are appropriate under this code, or to deny such special exceptions, when not in harmony with the purposes and intent of this code and the Kittery comprehensive plan(s). (Ord. 19-99: land use and dev. code § 1.5, 1994)

TOWN OF KITTELY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: Town Council

APPOINTED ON BOARD: 7

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Town Manager

MEETING DATE AND TIME: 2nd and 4th Mondays of each month

Article II. Town Council

Sec. 2.01. Officers.

The members of the town council shall be and constitute the municipal officers of the Town of Kittery for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to, and perform all duties required of, municipal officers under the laws of this State.

Sec. 2.02. Composition and eligibility.

(1) Composition. The town council shall be composed of 7 members, elected at large by the qualified voters of the town.

(2) Eligibility. Only qualified voters who at all times during their term of office shall be and remain residents of the town, shall be eligible to hold the office of councilor. (Amended by vote of the people 10-4-94)

Sec. 2.03. Election and terms.

The regular election of council members shall be held each year in the manner provided in Article X.

Each member shall be elected for a term of 3 years and shall serve until his successor is elected and qualified, except that, at the first election after adoption of this charter, the 3 members-elect receiving the largest number of votes shall serve until October of 1970, the 2 members-elect receiving the next largest number of votes shall serve until October of 1969, and the 2 members-elect receiving the next largest number of votes shall serve until October of 1968. In case any candidates receive an equal number of votes, their relative positions shall be determined by lot. (Amended by vote of the people 10-4-94)

Sec. 2.03-A. Recall.

(1) Applicability. A member of the town council may be recalled and removed from office by the qualified voters of the Town as hereinafter provided. (Added by vote of the people 6-11-02)

(2) Petition by voters. On the written petition of a number of voters equal to at least 15% of the number of qualified voters registered at the time of the most recent municipal regular election, the town council shall, by order, provide for a special recall election as hereinafter provided. (Added by vote of the people 6-11-02)

(3) Petition procedure; procedure after filing. Petition procedures shall be those set forth in 30-A, MRSA, Sec. 2102, subsections 3 and 4, or any successor statute, except:

(a) The required wording in subsection 3.B.(1) shall be as follows:

"Town of Kittery"

"Each of the undersigned voters respectfully requests the town council to provide for a special election on the question of recalling and removal of (insert name and address) from the office of town councilor." (Added by vote of the people 6-11-02)

(b) This required wording is to be followed by a statement of the reason(s) why recall and removal is sought. (Added by vote of the people 6-11-02)

(c) Any notice required to be furnished to the petitioners' must also be given the councilor whose recall is sought, by the same means and in the same time frame. (Added by vote of the people 6-11-02)

(4) Calling of election. Within 20 days of receiving the clerk's certificate of sufficiency, or of the town council's determination of sufficiency, the council shall, by order, call for a special election on the recall question, such election to be held not earlier than 45 days nor later than 60 days after the order. (Added by vote of the people 6-11-02)

(5) Form of ballot. The question submitted to the voters shall be in substance as follows:

"Do you favor recalling and removing (name and address) from the office of town councilor?" YES NO
(Added by vote of the people 6-11-02)

(6) Count of ballot. For any councilor to be recalled and removed from office, both the following criteria must be satisfied:

(a) The majority of valid votes cast must favor recall and removal.

(b) The total number of valid votes cast must equal or exceed 40% of the number of voters registered at the time of the most recent municipal regular election. (Added by vote of the people 6-11-02)

(7) Limitation on recall. During the first 6 months of any term, no councilor shall be subject to a recall election nor shall a councilor be subject to more than 2 recall elections in any term. (Added by vote of the people 6-11-02)

Sec. 2.04. Compensation; expenses.

Council members shall each be entitled to receive \$20.00 for each regular and/or special meeting attended, plus their actual and necessary expenses. Such compensation may be changed by ordinance, but no ordinance increasing such compensation shall become effective until the date of commencement of the terms of the councilors elected at the next regular election, provided that such election follows the adoption of such ordinance by at least 6 months. (Ord. No. 1-74, 3-11-74; amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 2.05. Chairperson.

(1) Election. At its first meeting or as soon thereafter as practicable, the council shall elect, by majority vote of the entire seven-member council, one of its members to serve as chairperson for the ensuing year.

(2) Vacancy. The council shall fill any vacancy that may occur in the office of chairperson, from among its members, for the unexpired term by a majority vote of the council. In the temporary absence or disability of the chairperson, the council may elect from among its members, a chairperson pro tempore who shall exercise all the powers of the chairperson during such temporary absence or disability of the chairperson.

(3) Duties. The chairperson shall preside at meetings of the council, shall be recognized as the head of the town government for all ceremonial purposes and be the Governor for purposes of military law, but shall have no administrative duties. The chairperson shall be entitled to vote on council matters and that vote shall be counted as a vote of the other members of the council. (Amended by vote of the people 10-4-94)

Sec. 2.06. General powers and duties.

All powers of the town shall be vested in the council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the town by law.

Sec. 2.07. Enumeration of powers.

(1) The council shall have the power to appoint, suspend, and remove the town manager, but suspension or removal shall be in accordance with Section 3.02 of this charter. The council shall have the power to appoint, and to remove for cause after notice and hearing, all members of boards created by statute, ordinance, this charter or by council action unless otherwise provided therein. (Amended by vote of the people 6-11-02)

(2) All appointments of voting members, regular and/or ad hoc, shall be made from among the qualified resident voters of the town and each appointee during term of office must remain a qualified resident voter in order to retain appointment. Applicants for the planning board, zoning board of appeals, and cable TV rate regulation board must be interviewed by the council, with at least a quorum present, before any vote is taken by the council on the appointment. (Amended by vote of the people 6-11-02)

(3) The council shall have the power to enact, alter and repeal ordinances; adopt resolutions, codes and rules; and issue proclamations.

(4) The council shall have the power to, by ordinance, create, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter. The council, by ordinance, may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency.

(5) The council shall provide for an independent annual audit of all town accounts and may provide for such additional audits as it deems necessary. Such audits shall be made by the State Department of Audit or by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its offices.

(6) The council shall provide for a review of the town charter at intervals not to exceed 10 years. (Amended by vote of the people 10-4-94)

Sec. 2.08. Induction of council into office.

At the next regular meeting following the day of election, or as soon thereafter as practicable, all council members-elect shall be sworn to the faithful discharge of their duties by the town clerk or by any other person authorized to administer an oath. (Amended by vote of the people 10-4-94)

Sec. 2.09. Judge of qualifications.

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 2.12, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A council member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the Superior Court.

Sec. 2.10. Procedure.

(1) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the chairperson or of 4 or more members and, when practicable, upon no less than 12 hours' notice, to each member. All meetings shall be public. However, the council may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the manager or qualified officers and advisors concerned with the matter to be discussed, any matter which qualifies under State statute, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the council until the matter is placed on the agenda.

(2) Rules and journal. The council shall, by resolution, adopt its own rules and order of business. The town clerk or deputy town clerk shall give notice of special council meetings to its members and to the public, and shall keep a journal of its proceedings. This journal shall be a public record.

(3) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to

the penalties prescribed by the rules of the council. At least 12 hours' notice of the time and place of holding such adjourned meetings shall be given to all members who were not present at the meeting from which adjournment was taken and to the public. No action of the council, except as otherwise provided in the 2nd sentence of this subsection and in section 2.12, subsection 3, shall be valid or binding unless adopted by the affirmative vote of 4 or more members of the council. (Amended by vote of the people 10-4-94)

Sec. 2.11. Prohibitions.

(1) Holding other office. Except where authorized by law, no councilor shall hold any other office or employment with the school department or in a town department during the term for which the councilor was elected to the council, and no former councilor shall hold any compensated appointive town or school office or employment until one year after the expiration of the term for which the councilor was elected.

(2) Appointments and removals. The council may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of any town administrative officers or employees whom the manager or any of his subordinates are empowered to appoint, but neither the council nor any of its members shall in any manner dictate the appointment or removal of any such officers and employees.

(3) Interference with administration. The council or its members shall deal with town officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately. This subsection does not prevent the town council from appointing s or s of its own members or of citizens to conduct investigations into the conduct of any official or department, or any matter relating to the welfare of the town. (Amended by vote of the people 10-4-94)

Sec. 2.12. Vacancies; forfeiture of office; filling of vacancies.

(1) Vacancies. A vacancy in a council office shall occur by one or more of the following means:

- (a) Non acceptance;
- (b) Resignation;
- (c) Death;
- (d) Failure to qualify for the office within 10 days after written demand by the municipal officers;
- (e) Failure of the municipality to elect a person to office;
- (f) Forfeiture of office;
- (g) Recall and removal; or
- (h) Any other manner authorized by law or this charter.

(2) Forfeiture of office. A councilor shall forfeit office if the councilor:

- (a) Lacks any qualification for the office prescribed by this charter or by law,
- (b) Violates any express prohibition of this charter,

(c) Is convicted of a crime involving moral turpitude, or
(d) Fails to attend 3 consecutive regular meetings of the council without being excused by the council.

(3) Filling of vacancies. If for any reason a vacancy shall exist in the membership of the town council more than 6 months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article X. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 2.13. Action requiring an ordinance.

In addition to other acts required by law or by specific provisions of this charter to be done by ordinance, those acts of the town council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any town department, office or agency;
- (2) Provide for a fine or establish a rule or regulation by which a fine is imposed;
- (3) Adopt with or without amendment ordinances proposed under the initiative power; and
- (4) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article XI with respect to repeal of ordinances reconsidered under the referendum power.

Acts other than those referred to in the preceding paragraph of this section may be done either by ordinance or by resolution. (Amended by vote of the people 6-11-02)

Sec. 2.14. Ordinances in general.

(1) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The Town of Kittery hereby ordains...". Any ordinance which repeals or amends an existing ordinance or part of the town code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

(2) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the council. The town clerk shall provide a copy to each council member and to the manager and shall make a reasonable number of copies available in the office of the town clerk, and shall publish in a newspaper of general circulation in the town a notice setting out the time and place for a public hearing thereon. The public hearing shall follow the publication by at least 7 days, may be held separately or in connection with a regular or

special council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard at the hearing. After the hearing, the council may adopt the ordinance with or without amendment or reject it.

(3) Effective date. Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

Sec. 2.15. Emergency ordinances.

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances in the form and manner prescribed for ordinances generally, but such emergency ordinances may not levy taxes or authorize the borrowing of money except as provided in section 6.10, subsection 2. An emergency ordinance may be adopted with or without amendment or rejected, but the affirmative vote of at least 5 members shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify.

Every emergency ordinance, except one made pursuant to section 6.10, subsection 2, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Sec. 2.16. Codes of technical regulations.

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that:

(1) The requirements of section 2.14 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

(2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the town clerk pursuant to section 2.17, subsection 1.

Copies of any adopted code of technical regulations shall be made available by the town clerk for distribution or for purchase at a price fixed by the council.

Sec. 2.17. Authentication and recording; codification; printing.

(1) Authentication and recording. The town clerk shall authenticate by his or her signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council.

(2) Codification. Within 3 years after adoption of this charter and at least every 10 years thereafter, the council shall provide for the preparation of a general codification of all town ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by

ordinance and shall be published promptly in bound or loose leaf form, together with this charter and any amendments thereto, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the Kittery Town Code. Copies of the code shall be furnished to town officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(3) Printing of ordinances and resolutions. The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the council. Following publication of the first Kittery Town Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code then currently in effect and shall be suitable in form for integration therein.

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD/COMMITTEE NAME: Superintending School Committee

APPOINTED ON BOARD/COMMITTEE: 7

TYPE OF BOARD/COMMITTEE:

STAFF PERSON ASSIGNED: Superintendent of Schools

MEETING DATE AND TIME: 1st and 3rd Tuesdays at 6:30 p.m.

Article IV. Department of Education

Sec. 4.01. Superintending school committee.

(1) Composition. There shall be a superintending school committee, hereinafter referred to as the school committee, composed of 7 members elected at large by the qualified voters of the town.

(2) Eligibility. Only qualified voters who at all times during their term of office shall be and remain residents of the town, shall be eligible to hold the office of school committee member. (Amended by vote of the people 10-4-94)

Sec. 4.02. Election and term.

The regular election of school committee members shall be held each year in the manner provided in Article X.

The terms of school committee members in office on the date of the adoption of this amendment shall not be affected by this amendment. Each member shall be elected for a term of 3 years and shall serve until the member's successor is elected and qualified, except that, at the first regular election after adoption of this charter amendment, 3 member positions shall be up for election representing the expiring 3 year term of 1 of the existing members and the 2 additional member positions created pursuant to Sec. 4.01(1). The 3 members-elect receiving the largest number of votes shall serve until the regular election and qualification of school committee members in 1998. In case any candidates receive an equal number of votes, their relative position within the elected terms shall be determined by lot. If the determination by lots would result in one of the tied candidates being denied elective office, a special election shall be held to resolve the tie vote. (Amended by vote of the people 10-4-94)

Sec. 4.02-A. Recall.

(1) Applicability. A member of the school committee may be recalled and removed from office by the qualified voters of the Town as hereinafter provided. (Added by vote of the people 6-11-02)

(2) Petition by voters. On the written petition of a number of voters equal to at least 15% of the number of qualified voters registered at the time of the most recent municipal general election, the town council shall, by order, provide for a special recall election as hereinafter provided. (Added by vote of the people 6-11-02)

(3) Petition procedure; procedure after filing. Petition procedures shall be those set forth in 30-A, MRSA, Sec. 2102, subsections 3 and 4, or any successor statute, except:

(a) The required wording in subsection 3.B.(1) shall be as follows:

"Town of Kittery"

"Each of the undersigned voters respectfully requests the town council to provide for a special election on the question of recalling and removal of (insert name and address) from the office of school " (Added by vote of the people 6-11-02)

(b) This required wording is to be followed by a statement of the reasons(s) why recall and removal is sought. (Added by vote of the people 6-11-02)

(c) Any notice required to be furnished to the petitioners' must also be given the member whose recall is sought, by the same means and in the same time frame. (Added by vote of the people 6-11-02)

(4) Calling of election. Within 20 days of receiving the clerk's certificate of sufficiency, or of the town council's determination of sufficiency, the council shall, by order, call for a special election on the recall question, such election to be held

not earlier than 45 days nor later than 60 days after the order. (Added by vote of the people 6-11-02)

(5) Form of ballot. The question submitted to the voters shall be in substance as follows:

"Do you favor recalling and removing (name and address) from the office of school ?" YES NO
(Added by vote of the people 6-11-02)

(6) Count of ballot. For any school committee member to be recalled and removed from office, both the following criteria must be satisfied:

(a) The majority of valid votes must favor recall and removal.

(b) The total number of valid votes cast must equal or exceed 40% of the number of voters registered at the time of the most recent municipal general election. (Added by vote of the people 6-11-02)

(7) Limitation on recall. During the first 6 months of any term, no Committee member shall be subject to a recall election nor shall a member be subject to more than 2 recall elections in any term. (Added by vote of the people 6-11-02)

Sec. 4.03. Compensation; expenses.

School Committee members shall each be entitled to receive \$20.00 per regular and/or special meeting attended as compensation for their services and the committee may provide in its budget for actual and necessary expenses. Such compensation may be changed by ordinance but no ordinance increasing the compensation shall become effective until the date of commencement of the terms of school committee members elected at the next regular election, provided that such election shall follow the adoption of such ordinance by at least 6 months. (Ord. No. 1-74, 3-11-74; amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

Sec. 4.04. Chairperson.

(1) Election. At its first meeting or as soon thereafter as practicable, the school committee shall elect, by majority vote of the entire seven-member committee, one of its members to serve as chairperson for the ensuing year.

(2) Vacancy. The school committee shall fill any vacancy that may occur in the office of chairperson, from among its members, for the unexpired term by a majority vote of the committee. In the temporary absence or disability of the chairperson, the committee may elect, from among its members, a chairperson pro tempore who shall exercise all the powers of the chairperson during such temporary absence or disability of the chairperson.

(3) Duties. The chairperson shall preside at meetings of the school committee. The chairperson shall be entitled to vote on school committee matters and that vote shall be counted as a vote of the other members of the committee. (Amended by vote of the people 10-4-94)

Sec. 4.05. General powers and duties.

The school committee shall have all the powers conferred by law and shall perform all the duties imposed by law upon school s in regard to the care and management of the public schools of the town.

The school committee shall provide for the method of preparing and submitting the annual school budget in detail to the town manager at least 90 days before the beginning of the fiscal year. It shall also submit a complete list of estimated receipts not less than 50 days before the beginning of the fiscal year. As an exception to this rule submission of estimated receipts may be deferred to a later date which may have been mandated for that year by the state legislature or the state board of education. (Ord. No. 14-77, 10-4-77)

Sec. 4.06. Induction of school committee into office.

At the next regular meeting following the day of election, or as soon thereafter as practicable, all committee members-elect shall be sworn to the faithful discharge of their duties by the town clerk or by any other person authorized to administer an oath. (Amended by vote of the people 10-4-94)

Sec. 4.07. Judge of qualifications.

The school committee shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 4.10, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A school committee member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the school committee under this section shall be subject to review by the Superior Court. (Amended by vote of the people 10-4-94)

Sec. 4.08. Procedure.

(1) Meetings. The school committee shall meet regularly at least once in every month at such times and places as the school committee may prescribe by rule. Special meetings may be held on the call of the chairman or of 3 or more members and, whenever practicable, upon no less than 12 hours' notice to each member as defined by the rules adopted under this section, subsection 2. All meetings shall be public. However, the Committee may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the school superintendent or qualified officers and advisors concerned with the matter to be discussed, any matter which qualifies under State statute, provided the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Committee until the matter is placed on the agenda.

(2) Rules and journal. The school committee shall adopt its own rules and order of business; shall provide for the manner of giving notice of special

meetings to its members and to the public; and of keeping a journal of its proceedings. This journal shall be a public record.

(3) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the school committee shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the school committee. At least 12 hours' notice of the time and place of holding such adjourned meeting shall be given all members who were not present at the meeting from which adjournment was taken. No action of the school committee, except as otherwise provided in the second sentence of this subsection and in section 4.10 shall be valid or binding unless adopted by the affirmative vote of 4 or more members of the committee. (Amended by vote of the people 10-4-94)

Sec. 4.09. Prohibitions.

Except where authorized by law, no school member shall hold any other office or employment with the school department or in a town department during the term for which he/she was elected to the school committee, and no former school committee member shall hold any compensated appointive town or school office or employment until one year after the expiration of the term for which he/she was elected to the school committee.

Sec. 4.10. Vacancies; forfeiture of office; filling of vacancies.

(1) Vacancies. A vacancy in the office of a school committee member shall occur by one or more of the following means:

- (a) Non-acceptance;
- (b) Resignation;
- (c) Death;
- (d) Failure to qualify for office within 10 days after written demand by the municipal officers;
- (e) Failure of the municipality to elect a person to office;
- (f) Forfeiture of office;
- (g) Recall and removal; or
- (h) Any other manner authorized by law or this charter.

(2) Forfeiture of office. A school committee member shall forfeit office if the member:

- (a) Lacks any qualification for the office prescribed by this charter or by law,
- (b) Violates any express prohibition of this charter,
- (c) Is convicted of a crime involving moral turpitude, or
- (d) Fails to attend 3 consecutive regular meetings of the school without being excused by the school .

(3) Filling of vacancies. If for any reason a vacancy shall exist in the membership of the school committee more than 6 months prior to the regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6

months prior to the next regular municipal election, the vacancy may be filled for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article X. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: Cable television rate regulation board.

APPOINTED ON BOARD: 5 Regular, 1 Alt. -Staggered 3 Yr. Terms

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Town Manager

MEETING DATE AND TIME: As Needed

5.12.040 Cable television rate regulation board.

This article shall be administered by the Kittery cable television rate regulation board which shall consist of five members and one alternate appointed by the town council from the qualified voters of the town. Members shall serve for terms of three years and until their successors are appointed and qualified. Members may be removed by the town council for cause after notice and hearing. For the initial terms only, one shall be appointed for three years, two for two years, and two for one year. The alternate member shall be appointed for a term of three years. (Ord. 4-94 § 2.8 (part))

5.12.050 Rate setting procedures.

A. Cable Operator Submission. Within thirty (30) days of the date of the notice from the franchising authority to the cable operator, the cable operator shall file its rate justification with the franchising authority.

B. Franchising Authority Response. The franchising authority shall make a decision on the rate request within thirty (30) days after the cable operator submits its rate justification. The rates proposed by the cable operator shall automatically take effect after that thirty (30) day period unless the franchising authority issues a statement that it needs additional time to make its decision.

If the franchising authority decides that it needs longer than the initial thirty (30) day period to consider the rate request, it may issue a statement to that effect. Such statement may provide for up to ninety (90) additional days to review a rate request based upon a benchmark approach and up to one hundred fifty (150) days to review a rate request based upon a cost of service approach.

If the franchising authority cannot reach a decision by the end of the extended period set forth in the preceding paragraph, the rates proposed by the cable operator shall go into effect, subject to refund. If the franchising authority intends to seek refunds, it shall issue an order to the cable operator prior to expiration of the time period for response, notifying the cable operator to keep accurate records with respect to rates.

C. Public Hearing Required. A public hearing shall be held in connection with every rate setting proceeding. At least ten (10) days prior to the hearing date, the town clerk shall publish a notice of the hearing in a newspaper of general circulation in the town. The notice shall identify the name of the cable operator, indicate that a rate change has been requested, and identify the time and place of the public hearing.

D. Proprietary Information. The franchising authority may require the cable operator to furnish proprietary information in connection with any rate setting proceeding.

E. Calculation of Rates and Refunds. In setting basic tier rates and charges, and in setting any refunds, the franchising authority shall be governed by the FCC Rate Regulations as amended. The FCC Rate Regulations shall govern notwithstanding any different or inconsistent provisions in the franchise agreement.

F. Decision of Franchising Authority. The franchising authority shall issue a written rate decision with appropriate findings and conclusions if the franchising authority:

1. Disapproves, in whole or in part, the initial rate scheduled or a proposed rate increase; or
2. Approves the initial rate or proposed rate increase over the objection of an interested party.

Public notice must be given of any such written decision, which shall include release of the text of the written decision to the public.

No written decision shall be required to approve an unopposed existing or proposed rate.

G. Appeals. The FCC shall have exclusive jurisdiction to hear appeals challenging whether the franchising authority's decision is consistent with the 1992 Cable Act or any applicable FCC rules. Any participant in a franchising authority's rate regulation proceeding may appeal the franchising authority's decision on such grounds to the FCC within thirty (30) days of release of the public notice required under subsection F of this section.

Appeals on grounds other than those stated in the preceding paragraph shall be made to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure. (Ord. 4-94 §§ 3.1--3.7)

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD/COMMITTEE NAME: Shellfish Conservation Committee

APPOINTED ON BOARD: 7 Regular Members & 2 Alternate Members

TYPE OF BOARD/COMMITTEE:

STAFF PERSON ASSIGNED:

MEETING DATE AND TIME: 1st Monday -Town Hall

Shellfish conservation committee.

12.16.010 Authority.

The ordinance codified in this chapter is enacted in accordance with 12 MRSA Section 6671. (Ord. 16-99 (part); Ord. 12-96 § 1)

12.16.020 Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the town which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of clams taken;
- E. Limiting the amount of clams taken daily by a harvester. (Ord. 16-99 (part); Ord. 12-96 § 2)

12.16.030 Shellfish conservation committee.

The shellfish conservation program for the town will be administered by the shellfish conservation committee consisting of seven full members and two

alternate members to be appointed by the Kittery town council for terms of three years.

The 's responsibilities include:

- A. Establishing annually in conjunction with the department of marine resources the number of shellfish digging licenses to be issued;
 - B. Surveying each clam producing area at least once each three years to establish size distribution and density and annually estimating the status of the town's shellfish resources;
 - C. Submitting to the town council proposals for the expenditures of funds for the purpose of shellfish conservation;
 - D. Keeping this chapter under review and making recommendations for its amendments;
 - E. Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the department of marine resources;
 - F. Recommending conservation closures and openings to the town council in conjunction with the area biologists of the department of marine resources;
 - G. Submitting an annual report to the municipality and the department of marine resources covering the above topics and all other committee activities.
- (Ord. 16-99 (part): Ord. 12-96 § 3)

TOWN OF KITTERY, MAINE

Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: Planning Board

APPOINTED ON BOARD: 7 Full Members

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Town Planner

MEETING DATE AND TIME: 2nd & 4th Thursdays

Article VIII. Planning

Sec. 8.01. Planning board.

(1) Composition. There shall be a town planning board to consist of 7 members who shall be appointed as hereinbefore provided in this charter and shall have such powers and perform such duties as provided by law. (Amended by vote of the people 10-4-94; amended by vote of the people 6-11-02)

(2) Terms. Members shall serve terms of 3 years. (Added by vote of the people 6-11-02)

(3) Term limits. No member shall serve more than 3 consecutive terms of 3 years. Any member who has served 3 consecutive terms of 3 years is ineligible to serve on the board for a period of 1 year. Computation of term limits commences with the first term of 3 years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than 3 years after the effective date. (Added by vote of the people 6-11-02)

16.04.040 Planning board.

A. Appointment and Composition.

1. The planning board is established by the Kittery Town Charter, Article VIII, Section 8.01, Planning, and other applicable state statutes.

2. Appointments to the planning board shall be made by the town council.

3. The board consists of seven members, who are Kittery residents, and serve staggered terms of office of three years. The number of consecutive terms by any board member is limited by Sec. 8.01(3) of the Town Charter.

4. A municipal officer, or spouse thereof may not serve as a member or associate member of the board.

5. The board shall elect annually a chairperson and vice chair from its membership.

6. A quorum shall consist of four members. All decisions shall be made by a minimum of four like votes, except on procedural matters.

7. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged who shall not vote on the issue.

8. A member of the board may be dismissed for cause by the municipal officers before the expiration of such member's term after notice and hearing.

9. When a vacancy occurs, short of completion of a term, the town council shall appoint a person to the vacated seat for the unexpired portion of the term.

B. Powers and Duties.

1. An agenda shall be prepared for each regularly scheduled meeting.

2. Development applicants may be placed on the agenda for a scheduled hearing when their application is accepted by the town planner. Drawings and all other required information must be provided to board members at least two weeks prior to the applicant's appearance before the board.

Requests for waiver of submission contents may be accepted by the town planner. Such requests shall be acted upon by the board at the scheduled hearing prior to any other consideration being given to the application. Ten (10) sets of all submissions are required.

C. Bylaws. Planning board adopted bylaws govern routine board proceedings. (Land use and dev. code § 1.4, 1994)

TOWN OF KITTERY, MAINE
Phone: 207-439-1633 ext 329

Fax: 207-439-6806

Email: jcarter@kitteryme.org

BOARD NAME: Board of Assessment Review;

APPOINTED ON BOARD 3 Regular & 2 Alternates - 3 Yr Staggered Terms

TYPE OF BOARD:

STAFF PERSON ASSIGNED: Assessor

MEETING DATE AND TIME: As Needed

Article VII - Tax Administration

Sec. 7.02. Board of assessment review; appointment; vacancies.

There shall be a board of assessment review to consist of 3 members and two alternates, not otherwise connected with town government, who shall be appointed as hereinbefore provided in this charter for a term of 3 years, except that of those first appointed, one shall be for a term of 2 years and one for a term of one year. Vacancies in the membership of such board shall be filled by appointment by the town council for the unexpired term. (Amended by vote of the people 10-4-94)

Sec. 7.03. Board of assessment review; qualifications.

Only qualified voters of the town during the period of their residence in the town who at all times during their term of office shall be and remain residents of the town shall be eligible to serve on the board of assessment review.

Sec. 7.04. Board of assessment review; powers and duties.

The board of assessment review shall have conferred upon it such powers of review and abatement as are conferred upon boards of assessors by statute, and shall have the power to:

- (1) Review on complaint of property owners, and revise assessments for the purpose of taxation of real and personal property within the town limits made by the town assessor;
- (2) Administer oaths;
- (3) Hold hearings; and
- (4) Adopt regulations regarding the procedure of assessment review, not inconsistent with statutory provisions.

The board shall be required to keep an accurate record of all its proceedings, and this record will be available for public inspection.

State law reference--Abatement, 36 M.R.S.A. § 841, et seq.

Sec. 7.05. State statutes.

In the event of any conflict in the provisions of this article with the provisions of any present or future statute relating thereto, the provisions of the statute shall supersede the provisions of this Article.