

APPROVED MINUTES

KITTERY TOWN COUNCIL

August 13, 2012

COUNCIL CHAMBERS

1. Call to Order

Chairperson Spiller called the meeting to order at 7:00 P.M.

2. Introductory

Chairperson Spiller read the introductory.

3. Pledge of Allegiance

Chairperson Spiller led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll were Chairperson Judith Spiller, Vice Chairperson George Dow, Councilors Frank Dennett, Jeffrey Pelletier, Gary Beers, Leo Guy and Jeffrey Thomson.

5. Agenda Amendment and Adoption –

**CHAIRPERSON SPILLER MOVED TO ADD A NEW ITEM K TO APPOINT HEATHER ROSS AS THE PRIMARY BUILDING OFFICIAL AND ROCHELLE BISHOP AS THE ALTERNATE BUILDING OFFICIAL UNTIL 4/30/13, SECONDED BY COUNCILOR PELLETIER, WITH ALL IN FAVOR.**

The agenda was accepted as amended.

6. The Kittery Town Council recognizes Officer Zachary Harmon as he received a commendation for life saving from the Chief of Police.

Chief Callaghan called Officer Harmon up and presented him with a lifesaving award for performing CPR on an elderly woman in distress at a Seadogs game. Chief Callaghan stated that he was extremely proud of Officer Harmon and that he exhibited the traits, skills and compassion of a great police officer.

7. Acceptance of Previous Minutes –

The minutes of 7/9/12 and 7/23/12 were accepted as amended.

8. Interviews for the Board of Appeals – None

9. PUBLIC HEARINGS -

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a. (080112-1) The Kittery Town Council moves to hold a public hearing to ordain an ordinance to authorize the execution of a multi-year contract, “CodeRed Services Agreement” between Emergency Communications Network, LLC and the Town of Kittery, in accordance with Section 6.11(2) of the Kittery Town Charter.

Chairperson Spiller noted that this public hearing was advertised in the Portsmouth Herald on 7/27/12. Chairperson Spiller then opened the public hearing and no response being heard, closed the public hearing.

**COUNCILOR DOW MOVED TO ORDAIN AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A MULTI-YEAR CONTRACT, “CODERED SERVICES AGREEMENT” BETWEEN EMERGENCY COMMUNICATIONS NETWORK, LLC AND THE TOWN OF KITTEY IN ACCORDANCE WITH SECTION 6.11(2) OF THE KITTEY TOWN CHARTER, SECONDED BY CHAIRPERSON SPILLER.**

Chief Callaghan came to the podium and indicated that this program would let the town notify residents of local or national emergencies. He continued that if there was a local emergency they would be able to reach all residents in about 15 minutes. Councilor Dow asked who would be responsible for issuing the alerts. Chief Callaghan responded that he and the town manager would have the authority to issue the alerts. Town Manager Markel stated that they would be drafting up a policy for issuing alerts and he thought the police chief, fire chief and he should be allowed to issue the alerts. He continued he thought if the system was used sparingly, the public would be better informed and would appreciate the service. Chief Callaghan stated that the town website would provide a link for residents to sign up for the service and that the town would not hold any information. Town Manager Markel indicated that if a resident had a listed landline, they would automatically be on the call list but it would be 100% opt in for mobile numbers. Councilor Dennett stated that he would vote against this item as he thought that it should be 100% opt in and also that there was a problem with the indemnity agreement. Councilor Guy indicated that he could not comfortably commit to this and that he was in favor of putting this issue in front of the public to vote on.

**A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR GUY, COUNCILOR DENNETT, COUNCILOR DOW AND COUNCILOR BEERS OPPOSED. MOTION DOES NOT CARRY 3/4.**

b. (080112-2) The Kittery Town Council moves to hold a public hearing to ordain an ordinance to authorize the execution of a multi-year contract, “Solids Disposal Hauling Contract” between Soil Preparation, Inc. and the Town of Kittery Sewer Department, in accordance with Section 6.11(2) of the Kittery Town Charter.

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Chairperson Spiller stated that this public hearing was advertised in the Portsmouth Herald on 7/27. Chairperson Spiller then opened the public hearing and no response being heard, closed the public hearing.

**COUNCILOR THOMSON MOVED TO ORDAIN AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A MULTI-YEAR CONTRACT, “SOLIDS DISPOSAL HAULING CONTRACT” BETWEEN SOIL PREPARATION, INC. AND THE TOWN OF KITTEERY SEWER DEPARTMENT, IN ACCORDANCE WITH SECTION 6.11(2) OF THE KITTEERY TOWN CHARTER, SECONDED BY COUNCILOR PELLETIER.**

Town Manager Markel indicated that this was a renewal agreement to haul away sludge and residue from the treatment facility. Councilor Dennett submitted that this was not a valid contract as it was made out to the Kittery Sewer Department which was not a legal entity.

**COUNCILOR DENNETT MOVED TO POSTPONE ACTION UNTIL 8/27/12, SECONDED BY COUNCILOR PELLETIER.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

c. (080112-3) The Kittery Town Council moves to hold a public hearing to authorize the purchase of a new Two Ram Baler, American Baler Model 4020XP-75 for the Solid Waste Facility using a five year lease agreement in accordance with Section 6.11(2) of the Kittery Town Charter and an alternative procurement method.

Chairperson Spiller indicated that this public hearing was advertised in the Portsmouth Herald on 7/27/12. Chairperson Spiller then opened the public hearing and no response being heard, closed the public hearing.

**COUNCILOR DOW MOVED TO AUTHORIZE THE PURCHASE OF A NEW TWO RAM BALER, AMERICAN BALER MODEL 4020XP-75 FOR THE SOLID WASTE FACILITY USING A FIVE YEAR LEASE AGREEMENT IN ACCORDANCE WITH SECTION 6.11(2) OF THE KITTEERY TOWN CHARTER AND AN ALTERNATIVE PROCUREMENT METHOD, SECONDED BY COUNCILOR PELLETIER.**

Councilor Beers indicated that according to the town charter this issue would require an ordinance.

**COUNCILOR THOMSON MOVED TO AMEND THE MAIN MOTION TO READ “THE TOWN OF KITTEERY HEREBY ORDAINS AN ORDINANCE TO AUTHORIZE THE PURCHASE OF A NEW TWO RAM BALER, AMERICAN BALER**

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**MODEL 4020XP-75 FOR THE SOLID WASTE FACILITY USING A FIVE YEAR LEASE AGREEMENT IN ACCORDANCE WITH SECTION 6.11(2) OF THE KITTEERY TOWN CHARTER AND AN ALTERNATIVE PROCUREMENT METHOD”, SECONDED BY CHAIRPERSON SPILLER.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

Councilor Dennett stated that he was looking for the financing agreement and stated that he had other issues with the agreement. Councilor Beers stated that he concurred with Councilor Dennett and suggested that this item be postponed.

**COUNCILOR BEERS MOVED TO POSTPONE ACTION UNTIL 8/27/12, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR THOMSON OPPOSED. MOTION PASSES 6/1.**

d. (080112-4) The Kittery Town Council moves to hold a public hearing to ordain an ordinance to transfer budget amounts from certain municipal department major medical accounts to other accounts, in accordance with Section 6.09(4) of the Kittery Town Charter.

Chairperson Spiller noted that this public hearing was advertised in the Portsmouth Herald on 7/27. Chairperson Spiller then opened the public hearing and no response being heard, closed the public hearing.

**COUNCILOR THOMSON MOVED TO TRANSFER \$16,320.89 FROM ACCOUNT 101110-64090; \$6,577.06 FROM ACCOUNT 101410-64090; \$2,012.30 FROM ACCOUNT 101721-64090; \$1,692.93 FROM ACCOUNT 101730-64090 AND \$6,871.84 FROM ACCOUNT 101830-64090 TO THE FY '12 ADMINISTRATION BUDGET ACCOUNT 101110-65480 OTHER PROFESSIONAL SERVICES, SECONDED BY COUNCILOR BEERS.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

**COUNCILOR THOMSON MOVED TO TRANSFER \$877.28 FROM ACCOUNT 103000-64090 TO ACCOUNT 101210-65090 AND TRANSFER \$728.49 FROM ACCOUNT 103000-64090 TO ACCOUNT 101710-64090, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

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**COUNCILOR THOMSON MOVED TO TRANSFER \$6,187.58 FROM ACCOUNT 103000-64090; \$2,444.21 FROM ACCOUNT 101930-64090 AND \$4,071.05 FROM ACCOUNT 101830-64090 TO ACCOUNT 101840-65480, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

e. (080112-5) The Kittery Town Council moves to hold a public hearing on an application from Gage F. Olcott, 48 Pocahontas Road, Kittery Point, ME for a Victualer's License for Henry VIII Carvery, 447 Route 1.

Chairperson Spiller noted that this public hearing was advertised in the Portsmouth Herald on 8/6/12. Chairperson Spiller opened the public hearing and no response being heard, closed the public hearing.

**COUNCILOR DOW MOVED TO APPROVE AN APPLICATION FROM GAGE F. OLCOTT, 48 POCAHONTAS ROAD, KITTEERY POINT, ME FOR A VICTUALER'S LICENSE FOR HENRY VIII CARVERY, 447 ROUTE 1, SECONDED BY COUNCILOR THOMSON.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

10. DISCUSSION

a. Discussion by members of the public (three minutes per person) –

Chris Andrews came to the podium and stated he wanted to thank Maryann Conroy for allowing the team to volunteer to get donations for the field hockey team which allowed them to get new equipment.

b. Chairperson's response to public –

Chairperson Spiller thanked Mr. Andrews and the field hockey team for donating their services.

11. UNFINISHED BUSINESS –

12. NEW BUSINESS

a. (080112-6) The Kittery Town Council moves to receive a report on the Zero Waste Program from the Commissioner of Public Works.

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Maryann Conroy came to the podium and stated that she had received an outline for the Zero Waste Program from a conference she attended in Austin. She continued they were going to have a kickoff event and were going to create a community based zero waste initiative for residents and businesses. Ms. Conroy stated they were going to partner with the Seaside 4 Miler race which would be held on September 23<sup>rd</sup> and there would also be vendors, games and music.

b. (080112-7) The Kittery Town Council moves to receive a report from the Port Authority regarding Frisbee Pier rebuild costs and the SHIP grant.

John Carson, Chair of the KPA, came to the podium. He stated that he had submitted a report to Council regarding the current status of the Frisbee Pier costs and the SHIP grant. Chairperson Spiller asked why the Frisbee Pier project ended up costing more than they originally anticipated. Councilor Dow stated that he was concerned with the process in that the project ended up being \$40,000 over budget. Mr. Carson indicated that there were a lot of extra things that had to be done in order for the project to come together. He continued that all of the items were reviewed by him and that most were submitted to the town manager. Councilor Beers indicated that someone should have come back to Council for authorization to spend the extra funds and that he thought the KPA owed those funds to the town. Mr. Carson indicated that he thought the town manager was fully informed as to what was being spent and that no one told him that he needed to come back to Council. Town Manager Markel stated that Mr. Carson did provide him with many updates and he had signed a couple of change orders which he had emailed to Council. Chairperson Spiller stated she thought it was a mistake that the town had rushed ahead with the project and submitted that she did not want to rush into the next project without knowing exactly how much it was going to cost. Mr. Carson indicated relative to the SHIP grant, that they had a request that was not fully completed and if they could get approval from Council on a grant match that evening, they would be able to complete the application. Councilor Dennett noted that he could not approve that request and that they needed to move forward as a consolidated front. Chairperson Spiller indicated that there was no consensus by Council to move forward with the grant match.

c. (080112-8) The Kittery Town Council moves to approve the disbursement warrants.

**COUNCILOR THOMSON MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR BEERS.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

d. (080112-9) The Kittery Town Council moves to re-appoint Dean Bensley to the Conservation Commission as an associate member until 5/31/13.

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**COUNCILOR THOMSON MOVED TO RE-APPOINT DEAN BENSLEY TO THE CONSERVATION COMMISSION AS AN ASSOCIATE MEMBER UNTIL 5/31/13, SECONDED BY CHAIRPERSON SPILLER.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

e. (080112-10) The Kittery Town Council moves to approve an application from Central Maine Power for a pole permit for Brave Boat Harbor Road.

**COUNCILOR THOMSON MOVED TO APPROVE AN APPLICATION FROM CENTRAL MAINE POWER FOR A POLE PERMIT FOR BRAVE BOAT HARBOR ROAD, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

f. (080112-11) The Kittery Town Council moves to accept the resignation of Gary Beers effective August 13, 2012.

**COUNCILOR BEERS MOVED TO ACCEPT THE RESIGNATION OF GARY BEERS WITH IMMEDIATE EFFECT, SECONDED BY COUNCILOR THOMSON.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.**

g. (080112-12) The Kittery Town Council moves to schedule a special election for November 6, 2012 to fill the unexpired term of Gary Beers.

**COUNCILOR THOMSON MOVED TO SCHEDULE A SPECIAL ELECTION FOR NOVEMBER 6, 2012 TO FILL THE UNEXPIRED TERM OF GARY BEERS, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.**

h. (080112-13) The Kittery Town Council moves to approve a request from Susan Johnson to place a banner across Rogers Road from August 14<sup>th</sup> through September 24<sup>th</sup> for the Seaside 4 Miler Road Race.

**COUNCILOR DOW MOVED TO APPROVE A REQUEST FROM SUSAN JOHNSON TO PLACE A BANNER ACROSS ROGERS ROAD FROM AUGUST 14<sup>TH</sup> THROUGH SEPTEMBER 24<sup>TH</sup> FOR THE SEASIDE 4 MILER ROAD RACE, SECONDED BY COUNCILOR GUY.**

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**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
6/0.**

i. (080112-14) The Kittery Town Council moves to accept gifts or donations to the Town.

**COUNCILOR PELLETIER MOVED TO ACCEPT GIFTS OR DONATIONS TO THE TOWN, SECONDED BY COUNCILOR BEERS.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
5/0.**

j. (080112-15) The Kittery Town Council moves to discuss establishing alcohol consumption at certain events held at the Kittery Community Center at Frisbee Common.

Councilor Thomson stated they had received a legal opinion from the town attorney. He continued that an ordinance would need to be drafted and approved by Council if they were to go forward. Councilor Thomson indicated that the community center was able to hold events that the town was previously not able to hold and the board thought that alcohol should be allowed for certain events. He continued the alcohol would be served by a caterer or someone with proper insurance and the board was looking for authorization to have the town attorney move forward. Councilor Guy stated that he was opposed to the issue. Councilor Dennett stated he agreed with Councilor Guy and thought that it was nothing but trouble. Councilor Thomson indicated that he thought it was worth exploring. Councilor Dow stated that he was okay with it. Councilor Pelletier noted that he did not want to dismiss it completely and that he was willing to entertain the idea. Chairperson Spiller stated there was a consensus to have the town attorney move forward with drafting an ordinance. Councilor Pelletier stated he would like the board to come back to Council with a proposal.

k. The Kittery Town Council moves to appoint Heather Ross as the Primary Building Official and Rochelle Bishop as the Alternate Building Official until April 30, 2013.

**CHAIRPERSON SPILLER MOVED TO APPOINT HEATHER ROSS AS THE PRIMARY BUILDING OFFICIAL AND ROCHELLE BISHOP AS THE ALTERNATE BUILDING OFFICIAL UNTIL APRIL 30, 2013, SECONDED BY COUNCILOR DOW.**

Councilor Dennett stated that those positions did not exist.

**CHAIRPERSON SPILLER MOVED TO POSTPONE ACTION UNTIL 8/27/12, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
6/0.**

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### 13. COUNCILOR ISSUES OR COMMENT

Councilor Dennett stated there were two signs on Whipple Road pointing to Kittery Center and wanted to know where Kittery Center was located as he was not aware of such a place. Town Manager Markel stated he would find out the answer.

Councilor Thomson indicated that there was no stop sign at the intersection of Williams Avenue and Whipple Road.

Councilor Guy requested that the town manager talk with the Police Department to get a readout on disturbance calls relative to fireworks.

Chairperson Spiller stated the signs prohibiting pedestrians and bicycles on the Sarah Long Bridge were placed too far into the bridge and asked that they be moved closer to the road.

Councilor Guy wanted to know if there was any way to allow pedestrians to walk across the bridge.

### 14. COMMITTEE AND OTHER REPORTS

#### a. Communications from the Chairperson –

Chairperson Spiller stated there were nomination papers available for Council and the School Committee on August 15<sup>th</sup>. She continued the election would be held on November 6<sup>th</sup>.

#### b. Town Manager's Report –

Town Manager Markel stated relative to the plowing of private roads, that he had met with representatives of the affected areas and that he had asked the town attorney to draft a legal opinion. He continued he had sent the opinion to the neighbors and was awaiting a response.

Town Manager Markel noted they had hired a new finance director who would be starting on August 20<sup>th</sup>.

#### c. Committee Reports – None

### 15. EXECUTIVE SESSION

a. (080112-16) The Kittery Town Council moves to go into Executive Session in accordance with 1 MRS 405(6)(D) to meet with the Town Manager to discuss labor negotiations.

**COUNCILOR THOMSON MOVED TO GO INTO EXECUTIVE SESSION IN ACCORDANCE WITH 1 MRS 405(6)(D) TO MEET WITH THE TOWN MANAGER TO DISCUSS LABOR NEGOTIATIONS, SECONDED BY COUNCILOR PELLETIER.**

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**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
6/0. EXECUTIVE SESSION OPENED AT 9:23 P.M.**

b. (080112-17) The Kittery Town Council moves to go into Executive Session in accordance with 1 MRS 405(6)(a) to meet with the Town Manager to discuss personnel matters.

**COUNCILOR DOW MOVED TO GO INTO EXECUTIVE SESSION IN ACCORDANCE WITH 1 MRS 405(6)(A) TO MEET WITH THE TOWN MANAGER TO DISCUSS PERSONNEL MATTERS, SECONDED BY COUNCILOR GUY.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
6/0. EXECUTIVE SESSION OPENED AT 9:24 P.M.**

**COUNCILOR PETTIER MOVED TO COME OUT OF EXECUTIVE SESSION DISCUSSING LABOR NEGOTIATIONS, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
6/0. EXECUTIVE SESSION CLOSED AT 9:45 P.M.**

**COUNCILOR PELLETIER MOVED TO COME OUT OF EXECUTIVE SESSION DISCUSSING PERSONNEL MATTERS, SECONDED BY COUNCILOR DOW.**

**A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES  
6/0. EXECUTIVE SESSION CLOSED AT 9:46 P.M.**

16. ADJOURNMENT

COUNCILOR THOMSON MOVED TO ADJOURN, SECONDED BY COUNCILOR PELLETIER WITH ALL IN FAVOR. MEETING ADJOURNED AT 9:47 P.M.