

Minutes
Bar Harbor Town Council
January 15, 2019

- I. CALL TO ORDER – 7:00 P.M.** - In attendance were Councilors: Gary Friedmann, Matthew Hochman, Stephen Coston, Paul Paradis, Joe Minutolo, Erin Cough, Judie Noonan; and Town Manager Cornell Knight.
- A. Excused Absence(s)** – *All were present.*
- II. PUBLIC COMMENT PERIOD** - *The Town Council allows at this time up to fifteen minutes of public comment on any subject not on the agenda and not in litigation with a maximum of three minutes per person.* – Jim O’Connell spoke about the UMaine study on the Economic Impact of Cruise Ship Passengers Visiting Bar Harbor in 2016, citing criticisms of the study and that it is problematic, exaggerated and has major flaws. He conducted his own analysis of the fiscal impact of cruise ships. Mr. O’Connell made a motion to delete this study from the Town’s website.
- III. APPROVAL OF MINUTES – December 18, 2018 Regular Meeting**
- Mr. Paradis, with second by Mr. Hochman, moved to approve the minutes of the December 18, 2018 Regular Meeting as presented. Motion passed 7-0.
- IV. ADOPTION OF AGENDA** – Mr. Paradis, with second by Mr. Hochman, moved to adopt the agenda as presented. Motion passed 7-0.
- V. FINANCIAL REPORT** - *Review and possible adoption of a motion to accept the financial statements as presented.* – Following a summary by Finance Director Stan Harmon, Mr. Paradis, with second by Mr. Hochman, moved to accept and file the financial statements as presented in the Finance Director’s memo dated January 10, 2019. Motion passed 7-0.
- VI. CONSENT AGENDA** - *A single vote has been scheduled to approve the following routine items of business without discussion, unless individual agenda item action is requested by a Councilor:*
- A. Certification of Property Owners and Abutters Mailing Lists** – *Possible motion to sign the certification of the mailing list used for the notice of the Planning Board’s January 16, 2019 public hearing on two Land Use Ordinance Amendments, Appendix A – Historic Properties and Design Review Overlay District Map and Expansion of Design Review Board Jurisdiction.*
- B. Social Media Policy for boards and committees** – *Possible motion to approve the Social Media Policy as amended.*
- Mr. Paradis, with second by Mr. Hochman, moved to approve all items on the Consent Agenda as published. Motion passed 7-0.

VII. PUBLIC HEARINGS

Cornell Knight presented de minimis changes to the two plastics ordinances, A & B below. Given that both ordinances will be articles under Chapter 94, and to be consistent with the first part of the chapter, change “ordinance” references to “article”, and regarding violations and enforcement, replace the Town Manager with the Code Enforcement Officer.

A. Single Use Carryout Bag Ordinance #2019-xx – Public comment and possible adoption of the ordinance. The following residents spoke to this issue: Darrin Stavnesli (against), Laura Blandford, Julie Veilleux, Peter Jeffery, Donna Karlson and Dixie Hathaway (all for). Dick Atlee of Southwest Harbor responded to issues raised by residents. Students Logan Wilbur and Charlotte Partin, who presented the ordinances in December, also spoke. Following Council comments, Ms. Noonan, with second by Mr. Hochman, moved to approve the Single Use Carryout Bag Ordinance Chapter 94 as amended. Motion passed 5-2 (Nay: Mr. Coston, Mr. Paradis).

Single-Use Carryout Bag Ordinance Amendment
Town of Bar Harbor
#2019-01

An Amendment to create a Single-Use Carryout Bag Ordinance.

The Town of Bar Harbor hereby ordains that Chapter 94, Food and Merchandise Sales, Article II, Single-Use Carryout Bags, of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

CHAPTER 94 – FOOD AND MERCHANDISE SALES

Article II: Single-Use Carryout Bags

§94-7 Purpose.

It is in the best interests of the citizens of and visitors to the Town of Bar Harbor to protect the environment and natural resources of the Town and the State of Maine and the bodies of water within and adjacent to the Town by: prohibiting the use and distribution of plastic single use carryout bags, discouraging the distribution of disposable paper single use carryout shopping bags, and encouraging the use of reusable shopping bags.

Therefore, the purpose of this article is to limit the use of single use carryout bags to reduce litter and to reduce the environmental impact caused by the use of single use plastic bags.

§94-8 Authority.

This article is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Article VIII, Part 2, Section 1, the provisions of Title 30-A MRS Chapter 141, and the general power of municipalities to enact police power ordinances.

§94-9 Definitions.

As used in this article, the following terms shall have the meanings indicated:

CUSTOMER

An individual who purchases or accepts food, beverage or merchandise for use or consumption.

PRODUCT AND PRODUCE BAGS

Bags without handles used exclusively to carry produce, meats, seafood and bulk items, for the purpose of containing those items or preventing direct contact between those items and other items. These bags are used to carry items to the point of sale inside a Store or to prevent such items from coming into direct contact with other purchased items.

REUSABLE BAG

A bag specifically designed and manufactured for the repeated use of carrying food, beverage or merchandise, whether made of cloth, fiber or plastic; is machine washable or made from a material that can be cleaned and disinfected regularly; has the capability of carrying 18 pounds or more; and, if plastic, is at least 4.0 mil thick.

SINGLE-USE CARRYOUT BAG

A bag other than a Reusable Bag, as defined above, provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the Store. The term Single Use Carry-Out Bag includes compostable and biodegradable bags, but does not include Reusable Bags, Produce Bags, Product Bags required for special handling, or bags provided by pharmacists to contain prescription drugs.

STORE

Any commercial enterprise engaged in the sale of food and merchandise, including – but not limited to – grocery and convenient stores, markets, pharmacies, restaurants, take out food, temporary and seasonal businesses, and other merchant retailers.

§94-10 Restriction on Single-Use Carryout Bags.

Except as provided below, no Store as defined above shall provide or sell a Single-Use Carryout Bag to a customer at a checkout stand, cash register, point-of-sale or other point of departure for the purpose of transporting any goods or merchandise out of the establishment.

§94-11 Permitted Bags.

- A. A Store may, at its discretion, make a Reusable Bag or a paper bag available to the customer either for free or for a fee at the checkout stand, cash register, point of sale or other point of departure for the purposes of transporting food or merchandise out of the establishment. Businesses shall keep any proceeds from the sale of Reusable Bags and paper bags at point of sale.
- B. Customers are encouraged to bring Reusable Bags to Stores, which may choose to provide a rebate for such.
- C. Customers may use bags of any type that they bring into the Store for their own use.

§94-12 Exemptions.

- A. A Store shall be exempt from the provisions of this article in a situation deemed to be an emergency by the Town Council.
- B. A store is allowed to draw down and deplete existing inventory of single use plastic shopping bags by December 2019.

§94-13 Violations and Enforcement.

- A. The Code Enforcement Officer shall have the primary responsibility of the enforcement of this article. If the CEO determines that a violation of the article has occurred, a written warning notice shall be issued to the Store. If an additional violation occurs after a written warning has been issued, the CEO shall issue a written Notice of Violation (NOV) and shall impose a penalty as set forth below.
- B. Violations of this article shall be punishable by fines as follows:
 1. A fine not exceeding \$100 for the first written NOV violation in a one-year period.

- 2. A fine not exceeding \$200 for the second and each subsequent written NOV in a one-year period. Each day that a violation occurs shall be considered a subsequent violation.
- 3. Fines are payable within 15 days of receipt of written notice of violation.

§94-14 Appeals.

Any decision, action, or inaction pertaining to this article may be appealed to the Maine Superior Court (Hancock County) within 30 days of the decision, action or inaction.

§94-15 Severability.

In the event any portion of this article shall be found to be invalid by a court of competent jurisdiction, the remaining portions of the article shall remain in effect.

§94-16 Effective Date.

The provisions of this article shall become effective 30 days after the Town Council’s passage.

[End of Ordinance]

B. Polystyrene Foam Food Service Container Ordinance #2019-xx – Public comment and possible adoption of the ordinance. No public comment. Ms. Noonan, with second by Mr. Hochman, moved to approve the Polystyrene Foam Food Service Container Ordinance Chapter 94 as amended. Motion passed 5-2 (Nay: Mr. Coston, Mr. Paradis).

Polystyrene Foam Food Service Container Ordinance Amendment

Town of Bar Harbor

#2019-02

An Amendment to create a Polystyrene Foam Food Service Container Ordinance.

The Town of Bar Harbor hereby ordains that Chapter 94, Food and Merchandise Sales, Article III, Polystyrene Foam Food Service Containers, of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

CHAPTER 94 – FOOD AND MERCHANDISE SALES

Article III: Polystyrene Foam Food Service Containers

§94-17 Purpose.

It is in the best interests of the citizens of and visitors to the Town of Bar Harbor to protect the environment and natural resources of the Town and the State of Maine and the bodies of water within and adjacent to the Town by prohibiting the use and distribution of polystyrene foam food service containers.

Therefore the purpose of this article is to ban the use of polystyrene foam food service containers to reduce litter, to minimize impact on the Town Transfer Station while increasing recyclables, and to reduce the environmental impact caused by the use of polystyrene foam food service containers.

§94-18 Authority.

This article is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Article VIII, Part 2, Section 1, the provisions of Title 30-A M.R.S. Chapter 141, and the general power of municipalities to enact police power ordinances.

§94-19 Definitions.

As used in this article, the following terms shall have the meanings indicated:

ESTABLISHMENT

A person or entity engaging in the sale or distribution of Prepared Food or beverages to consumers. This includes, but is not limited to, retail vendors of food or beverages, restaurants, take-outs, schools, hospitals, religious institutions, governmental institutions, community centers, markets, temporary and/or seasonal vendors and on-site events.

FOOD PACKAGER

Any person who places food in packaging materials for the purpose of retail sale of those products.

POLYSTYRENE FOAM

Expanded and extruded polystyrene foam and blown polystyrene, generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons. This does not include oriented (clear) polystyrene.

POLYSTYRENE FOAM FOOD SERVICE CONTAINER

Any food container made, in whole or in part, of polystyrene foam and used to package or hold food or beverage for onsite or offsite consumption.

PREPARED FOOD

Food or beverages which are served or sold at an establishment having been either previously prepared elsewhere or prepared at the establishment.

§94-20 Restrictions.

- A. No Establishment in the Town of Bar Harbor shall serve or sell prepared food in – and no Food Packager shall package food in – polystyrene foam food service containers.
- B. No party shall sell or distribute polystyrene foam food service containers within the Town of Bar Harbor.

§94-21 Exemptions.

- A. Items pre-packaged in polystyrene foam food service containers outside the Town of Bar Harbor may be sold without repackaging those items.
- B. Uncooked meat and seafood may be sold in polystyrene foam food service containers.
- C. Items to be shipped to points outside Bar Harbor may be packaged in polystyrene foam food service containers for shipping.
- D. An Establishment or Food Packager shall be exempt from the provisions of this article in a situation deemed to be an emergency by the Town Council, for the immediate preservation of the public health and safety.
- E. An Establishment or Food Packager is allowed to draw down and deplete existing inventory of polystyrene food service containers by December 2019.

§94-22 Violations and Enforcement.

- A. The Code Enforcement Officer shall have the primary responsibility of the enforcement of this article. If the CEO determines that a violation of the article has occurred, a written warning notice shall be issued to the Establishment. If an additional violation occurs after a written warning has been issued, the CEO shall issue a written Notice of Violation (NOV) and shall impose a penalty as set forth below.
- B. Violations of this article shall be punishable by fines as follows:
 1. A fine not exceeding \$100 for the first written NOV violation in a one-year period.
 2. A fine not exceeding \$200 for the second and each subsequent written NOV in a one-year period. Each day that a violation occurs shall be considered a subsequent violation.
 3. Fines are payable within 15 days of receipt of written notice of violation.

§94-23 Appeals.

Any decision, action, or inaction pertaining to this article may be appealed to the Maine Superior Court (Hancock County) within 30 days of the decision, action or inaction.

§94-24 Severability.

In the event any portion of this article shall be found to be invalid by a court of competent jurisdiction, the remaining portions of the article shall remain in effect.

§94-25 Effective Date.

The provisions of this article shall become effective 30 days after the Town Council’s passage.

[End of Ordinance]

C. Age Friendly Committee Ordinance Amendment #2019-xx – *Public comment and possible adoption of the ordinance amendment.* No public comment. Mr. Paradis, with second by Mr. Hochman, moved to approve the amendment to the Age Friendly Committee Chapter 31 as presented. Motion passed 7-0.

Age Friendly Committee Ordinance Amendment
Town of Bar Harbor
#2019-03

An Amendment to change the terms of appointment on the Age Friendly Committee.

The Town of Bar Harbor hereby ordains that Chapter 31, Boards, Committees and Commissions, Article IX, Age Friendly Committee, of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

CHAPTER 31 – BOARDS, COMMITTEES AND COMMISSIONS

Article IX: Age Friendly Committee

§31-51 Appointment.

The Town Council shall appoint Bar Harbor residents to the Committee.

The Committee shall consist of 7 members with one member being a Town Councilor. There will also be 2 alternate members that serve 1 year terms and do not have voting rights.

The term of each resident member shall be for three years, except the initial appointments which shall be two appointments for 1 year; two appointments for two years and ~~three~~ two appointments for three years. The Council representative shall be appointed annually. All newly designated committee members are to be sworn in by the Town Clerk.

[End of Ordinance]

D. Campaign Reports & Finances Ordinance #2019-xx - *Public comment and possible adoption of the ordinance.* Jamie McKown spoke, raising concerns about the section on candidates and requested delaying the vote on the candidate portion. Mr. Paradis, with second by Mr. Hochman, moved to table this item to the next scheduled regular meeting to clarify the questions raised this evening concerning candidate expenditures. Motion passed 7-0.

VIII. REGULAR BUSINESS:

- A. Planning Director** – *Confirmation of Town Manager’s appointment of Michele Gagnon of Bar Harbor as Planning Director.* Councilor Minutolo requested recusal due to his relationship with Ms. Gagnon. Mr. Paradis, with second by Mr. Hochman, moved to find that Councilor Minutolo has the appearance of a conflict of interest in this matter as disclosed. Motion passed 6-0-1(Recused: Mr. Minutolo.) Ms. Gagnon was present and spoke briefly. Mr. Paradis, with second by Ms. Noonan, moved to approve the town manager’s appointment of Michele Gagnon of Bar Harbor as Planning Director for the Town of Bar Harbor. Motion passed 6-0-1 (Recused: Mr. Minutolo).
- B. Parking Meter System** –
1. *Parking Solutions Task Force Recommendations and Progress Report.* Town Manager Knight presented the report and recommendations. Mr. Paradis, with second by Mr. Hochman, moved to accept the progress report and recommendation and thank the Task Force for their work. Motion passed 7-0.
 2. *Purchase Meters and Kiosks – possible motion to purchase.* Mr. Knight presented a handout with pictures of the meters and kiosks and summarized the quote. He stated that this was the only vendor that does everything; it is their software, their equipment. Mr. Paradis, with second by Mr. Hochman, moved to approve the initial purchase of parking meters, kiosks, and equipment from IPS in the amount of \$506,335.50 as outlined in the proposal dated December 20, 2018. Motion passed 7-0.
- C. Vacation Rentals Ordinance Amendment** – *Review of draft ordinance to make the registration fee annually and possible motion to schedule a public hearing.* Mr. Paradis, with second by Mr. Hochman, moved to schedule a public hearing on the amendment to Chapter 190 Vacation Rentals of the Municipal Code for the February 19th Council meeting as presented. Motion passed 7-0.
- D. Alcoholic Beverage Policy** – *Proposed revisions presented by Councilor Paradis and possible motion to approve.* Mr. Hochman, with second by Ms. Noonan moved to amend the Alcoholic Beverage Policy as presented. Councilor Coston stated this stemmed from the Winter Beer Fest where he was recused. Since this item has no bearing on the event itself, Mr. Paradis, with second by Mr. Hochman, moved that Councilor Coston does not have a conflict of interest in this matter as defined in the Town’s Ethics Ordinance. Motion passed 6-0-1 (Abstention: Mr. Coston). Original motion passed 7-0.
- E. Acadia National Park Boundary** – *Request of Councilor Friedmann regarding the transfer of a Town Hill parcel from the Park to the Town.* Mr. Hochman, with second by Ms. Noonan, moved to request that the Congressional Delegation add the transfer of the Park’s 40 acre parcel in Town Hill to the Town of Bar Harbor into the new ANP Boundary legislation bill when submitted. Motion passed 7-0.

F. FY20 Budget – *Town Manager’s introduction to the proposed FY20 Budget.*
Town Manager Knight highlighted his memo and stated the first review is this Thursday at 6:00pm. No action taken.

G. Treasurer’s Warrant - *Request of Treasurer to authorize paid bills.* – Mr. Hochman, with second by Mr. Paradis, moved to sign the Treasurer’s Warrants for paid bills. Motion passed 7-0.

IX. TOWN MANAGER’S COMMENTS – Mr. Knight stated regarding the Ferry Terminal transaction that the incoming Commissioner of MDOT will get up to speed and work with the new Governor. They are still shooting for closing January 31, but if they need to go beyond that, they would sign an extension of the purchase and sale agreement. If we do go to closing, we’ll use the Bond Anticipation Note money approved last year. It is better to delay going to market on the bond due to the uncertainty of Bay Ferries and the federal shutdown. Bay Ferries is still very committed to coming to Bar Harbor. The shutdown severely affected movement and is causing delays, especially with CBP being furloughed. With MDOT having given Bay Ferries right of entry for minor construction, they have hired RF Jordan to do mostly demo of the canopy, small buildings and regrade the site, but no interior work. It should start in the next few days. Time is critical for Bay Ferries if they are to restart operations this year.

X. COUNCIL COMMENTS AND REQUESTS FOR FUTURE AGENDAS

Ms. Cough welcomed the new Planner and is looking forward to having a Planner who is experienced, knowledgeable and more than up to the task to everything we have coming forward. She also wants to make sure we schedule village meetings this year.

Ms. Noonan echoed Ms. Cough and gave a shout out to businesses in town offering to run tabs for people affected by the shutdown. This is why I live here, a community of people that really do care about each other, I applaud you all.

Mr. Coston commented on the water quality report from 2018 Council just received. It notes the water is the cleanest ever, and since previous reports never showed it not to be clean, it is cleanest ever against clean results. Mr. Knight interjected that the report is on the next agenda. Mr. Coston referred to a comment earlier about a large lodging owner receiving complaints about cruise ship passengers. As a lodging owner that often works the front desk, he has never heard complaints from guests about cruise ship passengers. He has had passengers come in to request a brochure stating they are coming back.

Mr. Minutolo said that we’ve got a lot of work to do this year but a good group to do it. He also thanked Cornell for all the hard work with the ferry terminal and the government shutdown.

Mr. Paradis wished a Happy New Year to everybody. He stated he doesn’t mind a delay in closing on the Ferry Terminal property – it saves the Town the interest payments expense during the delay period.

Mr. Hochman also wished Happy New Year and hopes our federal government can get moving to get things reopened. He expressed concerns as to how this could affect the season as Acadia National Park and Bar Harbor are getting ready for hiring.

Mr. Friedmann extended a warm welcome to Michele. He commented on the housing crisis and how to deal with it. The enforcement and fees have generated a lot of

discussion on social media and email, it is a really big issue. He is looking forward to having a new Planner and working with the Planning Board on zoning changes and other measures. He is enthusiastic about addressing this issue in 2019 and working with everyone.

XI. EXECUTIVE SESSION: None

XII. ADJOURNMENT – Mr. Paradis, with second by Mr. Hochman, moved to adjourn at 8:37 p.m. Motion passed 7-0.

Sharon M Linscott, Town Clerk