

MINUTES
Bar Harbor Town Council
March 7, 2023

I. CALL TO ORDER – 6:30 p.m. In attendance were Councilors Valerie Peacock, Jefferson Dobbs, Matthew Hochman, Gary Friedmann, Joe Minutolo, Erin Cough, Jill Goldthwait; and Interim Town Manager Sarah Gilbert.

A. Excused Absence(s)—None

Ms. Peacock said how the March weather was living up to its reputation by coming in like a lion. She also gave a shout out to the staff members that she felt were total rock stars; Sarah Gilbert for stepping up as Interim Town Manager at the possible worst time, saying how much she appreciated her knowledge and guidance. And she appreciated Town Clerk Liz Graves’ hard work and knowledge, as well as all staff members considerable contributions. She said how the last few months the Town Council meetings have begun with the motion for excused absences, but not tonight. She said how happy she was to welcome back Councilor Jeff Dobbs.

II. READING OF THE MEETING GROUND RULES

III. 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.*—None.

IV. APPROVAL OF MINUTES

A. February 21, 2023 Regular Meeting

B. February 28, 2023 Special Meeting

C. February 28, 2023 Joint Meeting with the Warrant Committee

D. March 2, 2023 Special Meeting

Mr. Hochman, with second by Ms. Cough, moved to approve the February 21, 2023 Regular Meeting minutes; February 28, 2023 Special Meeting minutes; February 28, 2023 Joint Meeting with the Warrant Committee minutes and March 2, 2023 Special Meeting minutes as presented. Roll Call Vote:

Dobbs Y

Hochman Y

Peacock Y

Friedmann Y

Minutolo Y

Goldthwait Y

Cough Y

Motion passed 7-0.

V. ADOPTION OF AGENDA—Mr. Hochman, with second by Ms. Cough, moved to suspend the rules pursuant to Rule 4.M of the Council Rules of Order and amend the agenda to add an executive session pursuant to 1 MRS 405(6)E to discuss with legal counsel rights and responsibilities of the council concerning the conflict of interest advice pertaining to APPLL et al v. Town of Bar Harbor after Item XII B. Roll Call Vote:

Dobbs Y
Hochman Y
Peacock Y
Friedmann Y
Minutolo Y
Goldthwait Y
Cough Y

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. Quitclaim Deeds—*Possible motion to release the Town’s interest in 119 Lookout Point Road (Tax Map: 210-009-000) and 19 Wayman Lane (Tax Map: 108-029-000) and authorize Town Manager to sign quitclaim deeds for said properties.*

Mr. Hochman, with second by Ms. Cough, moved to approve the consent agenda as published. Roll Call Vote:

Dobbs Y
Hochman Y
Peacock Y
Friedmann Y
Minutolo Y
Goldthwait Y
Cough Y

Motion passed 7-0.

VII. PUBLIC HEARINGS

A. Flavored Tobacco and Nicotine Ordinance Amendment 2023-01—*Public comment and possible motion to adopt new ordinance. After numerous public comments and then discussion by Council members, Mr. Friedmann, with second by Mr. Hochman, moved to adopt the ordinance Chapter 89 Flavored Tobacco and Nicotine Products as presented. Roll Call Vote:*

Dobbs Y
Hochman Y
Peacock Y
Friedmann Y
Minutolo Y
Goldthwait Y
Cough Y

Motion passed 7-0.

Flavored Tobacco and Nicotine Ordinance Amendment
Town of Bar Harbor
2023-01

An amendment to the Town Code to enact a Flavored Tobacco and Nicotine Ordinance.

The Town of Bar Harbor hereby ordains that Chapter 89, Flavored Tobacco and Nicotine, of the Town Code is appended as follows:

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

Chapter 89 Flavored Tobacco and Nicotine Products

§ 89-1. Definitions.

As used in this chapter, the following terms have the following meanings:

ELECTRONIC SMOKING DEVICE – Any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq.)

FLAVORED TOBACCO PRODUCT –

- A. Any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice; or
- B. Any tobacco product that is, within the Town of Bar Harbor and by a retailer, advertised, displayed, or packaged in such a way as to convey that it imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

RETAILER – Any person or entity that sells tobacco products to consumers in the Town of Bar Harbor.

TOBACCO PRODUCT –

- A. Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- B. Any electronic smoking device and any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- C. Any component, part, or accessory of Subsection A or B, whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes.
- D. Specifically excluded from this definition are drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act; and any product containing cannabis, as defined by 28-B MRSA §102, unless these products contain, are made of, or are derived from tobacco or nicotine.

§ 89-2. Prohibited acts.

No retailer shall sell or offer for sale any flavored tobacco product, or display, market, or advertise for sale, within the Town of Bar Harbor, any flavored tobacco product.

§ 89-3. Enforcement, violations, and penalties.

The Police Chief or the Police Chief’s designee(s) shall have the primary responsibility for enforcement of this chapter. If the Police Chief or said designee(s) determine(s) that a violation of this chapter has occurred, the Police Chief or said designee(s) shall issue a written warning giving notice to the retailer that a violation has occurred. Subsequent violations of this chapter shall be subject to the penalties set forth below. Violations of this chapter shall be punishable by administrative fines, levied against the retailer, as follows:

- A. A fine not less than \$50 nor more than \$100 for the first violation in a twenty-four-month period;

- B. A fine not less than \$300 nor more than \$1,000 for the second and each subsequent violation in a twenty-four-month period.

§ 89-4. Effective date.

This chapter shall become effective June 1, 2023.

§ 162-5. Severability.

If any part or provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.

B. Short-Term Rental Registration Ordinance Amendment 2023-02—Public comment and possible motion to adopt changes. Mr. Hochman, with second by Ms. Cough, moved to approve the amendment as presented to adjust penalties and fees for violations of Chapter 174 Short-Term Rental Registration. Roll Call Vote:

Dobbs Y
Hochman Y
Peacock Y
Friedmann Y
Minutolo Y
Goldthwait Y
Cough Y
Motion passed 7-0.

Short-Term Rental Registration Ordinance Amendment

Town of Bar Harbor
#2023-02

An amendment to adjust penalties and fees for violations.

The Town of Bar Harbor hereby ordains that Chapter 174, Short-term Rental Registration of the Town Code is amended as follows:

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

Chapter 174

Short-Term Rental Registration

§ 174-9 Violations and penalties.

A. ~~Violation of operating without a registration.~~ It shall be a violation of this chapter for any person to advertise for rent, rent, or operate an STR without a valid registration. If, after investigation, the Code Enforcement Officer finds that an STR is being advertised for rent, ~~(or is being rented)~~ without a valid registration, written notice shall be given by certified mail, return receipt requested, of such violation to the property owner. A copy of such notice shall be submitted to the Town Council and shall be maintained as a permanent record. This violation shall prohibit the property owner from applying for an STR registration, including an application for the waitlist, until payment of the applicable fine has been made. ~~for the property in violation for 12 months from the date of the payment of the applicable fine.~~ The fine for advertising for rent, renting, or operating without a valid registration shall be \$1,500. ~~\$250 per day for each day of operation without a valid registration as determined by the Code Enforcement Officer.~~ Should the Code Enforcement Officer determine that a second violation of this section has occurred within one year of the first violation, the property owner shall be prohibited from applying for, or obtaining a STR registration, within 12 months of the date of the second notice of violation and may only apply for a registration after payment of a fine of \$3,000.

B. Violation of registration.

(1) The Code Enforcement Officer shall investigate all alleged violations and enforce the provisions of this chapter and the terms and conditions of the registration. If, after investigation, the Code Enforcement Officer finds that any provision of this chapter or any term or condition of any registration granted under this chapter is being violated, written notice shall be given by certified mail, return receipt requested, of such violation to the owner and to any other person responsible for such violation, indicating the nature of the violation and ordering that action necessary to correct it be taken within a reasonable time determined by the Code Enforcement Officer. A copy of such notice shall be submitted to the Town Council and shall be maintained as a permanent record.

(2) If, after notice given pursuant to § 174-9B(1), the violation is not abated or corrected within the specified time, the Code Enforcement Officer shall report same to the Town Council. The Code Enforcement Officer's report shall indicate the additional enforcement actions under consideration and whether the Town Attorney has been consulted or will subsequently be involved. At its next meeting, the Town Council shall vote to accept the Code Enforcement Officer's report. The Town Council shall not entertain comment from the person alleged to have violated this chapter nor shall it take any evidence relating to whether a violation has in fact occurred.

C. Suspension and revocation of registration.

(1) Suspension - minor violation. The Code Enforcement Officer shall suspend a registration for failure to correct a violation, per § 174-9B. The suspension may not exceed three months. Operation of the STR during the period of suspension shall be a violation subject to a fine of \$500 per day.

(2) Suspension - major violation. After three or more of the following: substantiated disorderly events as defined in Chapter 64 or other violations of this chapter in a twenty-four-month period, the Code Enforcement Officer, shall suspend a registration for a minimum of three months and a maximum of 12 months. Minor and major violations can be either concurrent or cumulative. Operation of the STR during the period of suspension shall be a violation subject to a fine of \$500 per day.

D. Revocation. In cases of recurring major violations or in certain cases of criminal activity at the STR property, the Code Enforcement Officer may revoke a registration.

VIII. UNFINISHED BUSINESS

A. FY2024 Budget—*Possible motion to tentatively adopt and schedule a public hearing for March 21, 2023.* Mr. Hochman, with second by Ms. Cough, moved to tentatively adopt the proposed FY2024 budget and schedule a public hearing for March 21, 2024.
Roll Call Vote:

- Dobbs Y
 - Hochman Y
 - Peacock Y
 - Friedmann Y
 - Minutolo Y
 - Goldthwait Y
 - Cough Y
- Motion passed 7-0.

B. Jackson Laboratory—*State grant for upgrades to Route 3 update.* Mike McKernan, Director of Government-Community Relations for Jackson Laboratory as well as Bar Harbor resident, and Project Manager John Scheckel with Engineering Facility Group, presented the project taking place at the campus and answered Council member questions. The project includes safety improvements, creation of a multi-use path and various means of traffic calming. One third of the cost for this Route 3 project would be granted by the State, and the remainder would be funded by the Jackson Laboratory. There would not be any financial responsibility to the Town, only

assistance receiving and distributing the State grant money. The Route 3 upgrades are projected to be completed in 2024. Mr. Friedmann, with second by Ms. Cough, moved to instruct the Town Manager to draft a letter in support of a Business Partnership Initiative (BPI.) application with the State. Roll Call Vote:

- Dobbs Y
 - Hochman Y
 - Peacock Y
 - Friedmann Y
 - Minutolo Y
 - Goldthwait Y
 - Cough Y
- Motion passed 7-0.

C. Black Friar Inn—*Update on potential June warrant article for sale of Town property.* Following discussion and questions answered by Ms. Chamberlain and the Town Attorney, Ms. Goldthwait motioned, with a second by Ms. Cough, to sell Town property of 969 square feet (Map 104, Lot 58) to Steve Voitasek and Deborah Vickers for the amount already paid in rent (\$5,500.00) plus \$1,000.00. Roll Call Vote:

- Dobbs Y
 - Hochman Y
 - Peacock N
 - Friedmann N
 - Minutolo N
 - Goldthwait Y
 - Cough Y
- Motion passed 4-3.

Mr. Friedmann then motioned, with second by Mr. Hochman, for an Order to be prepared for the June 6, 2023 Town Meeting to authorize the sale of Town property of 969 square feet (Map 104, Lot 58) to Steve Voitasek and Deborah Vickers. Roll Call Vote:

- Dobbs Y
 - Hochman Y
 - Peacock Y
 - Friedmann Y
 - Minutolo Y
 - Goldthwait Y
 - Cough Y
- Motion passed 7-0.

D. Treasurer’s Warrant—*Request of Treasurer to authorize paid bills.* Mr. Hochman, with second by Ms. Cough, moved to sign the Treasurer’s warrants for paid bills. Roll Call Vote:

- Dobbs Y
- Hochman Y
- Peacock Y
- Friedmann Y
- Minutolo Y
- Goldthwait Y

Cough Y
Motion passed 7-0.

IX. NEW BUSINESS

A. **Ethics Ordinance**—*Update Regarding Timeline for upcoming review.* Along with the town attorney’s review of the Ethic Ordinance, a survey is being prepared for thoughts and input by the town citizens. This survey will be posted online as well as distributed to committee chairs. The goal of the survey is to address any discrepancies and recurring questions, better training and education for committee members and staff. The completion of the survey will be after the June elections, and a Public Hearing will be scheduled for an Ordinance amendment.

X. **TOWN MANAGER’S COMMENTS**—Ms. Gilbert re-invited everyone to a meeting with bond Advisor Joe Cuetara on April 5th, 2023 at 5:00 pm. This meeting will focus on the Town’s bond position and fiscal capacity.

XI. COUNCIL COMMENTS—

Mr. Dobbs read a prepared speech that effect March 8th, 2023 at noon he would be resigning his seat on the Town Council. He said how much he enjoyed working with each Council member, and despite disagreements he considered each one his friend. He said he still had a long road towards recovery, and he needed to focus on that and his family. He still planned to participate on the Parks and Recreation Committee, Bar Harbor Village Improvement and the Bar Harbor Historical Society. Mr. Dobbs later added that his one wish for the business and residential communities is to work better together and with the Town Council towards a common goal for Bar Harbor and cruise ships.

Mr. Friedmann said he felt great sadness and surprise at Mr. Dobbs resignation. He said that Mr. Dobbs had put in so much time for the town of Bar Harbor. He felt that Mr. Dobbs was an example of a model citizen. He said that even though they didn’t always agree but that it had been a pleasure serving with Mr. Dobbs. He said that he placed great value to Mr. Dobbs’ opinion and loyal service to Bar Harbor.

Mr. Friedmann also said that the Town Council was taking a beating from the media. He wanted to point out that this Council has worked hard and most active to reduce cruise ship visitations. He felt that needed to be noted by the general community. He said that when he first became a member of the Town Council everyone was in favor of cruise ships. He said that for many years cruise ship revenues were very beneficial for Bar Harbor. And now for many reasons, we’ve changed our minds about cruise ships. He said that the struggle the Council members are dealing with now is the difficulty to “unwind” cruise ships entry than it was to bring them in. He felt that the disagreements regarded the methodology of unwinding the cruise ship entry rather than reducing it. He said that the Council was being denigrated and slammed for various viewpoints and he didn’t feel Council members deserved that. Council members have dedicated many, many hours trying to figure this issue out. Mr. Friedmann wanted to set the record straight; the support ten years ago for cruise ships was great in Bar Harbor and while this support has changed in just a few years, it just isn’t that easy to make instant changes.

Ms. Goldthwait said that unlike some, she and Mr. Dobbs have always agreed on issues. She shared that they would all miss him, and that Bar Harbor will never really know how much you have given over the decades and how well you know this town. She told him “you’ve done good kiddo, so hold your head up.” She said that she did not submit testimony on the bill concerning bike and pedestrian lanes as it became problematic. She also had a question for the schools regarding bill LD1053 that would allow schools to use an

activity bus and have different requirements rather than a bus that transports to and from school. The current law only allows private schools to use activity buses. She questioned whether this was different than a van and how requirements may differ. She said there was another bill to amend the State education equities formula. She did not know what that might mean for Bar Harbor, she felt the Council may want to research whether or not to provide testimony. In the school report she found a phrase that she planned on using whenever things went wrong, “blaming things on squirrel biologicals.”

Mr. Hochman said he greatly appreciated and that it has been a pleasure servicing with Mr. Dobbs on the Town Council. He said that he would miss Mr. Dobbs’ insight and institutional knowledge, and that he plans to pick at that knowledge at the Park and Recreation meetings. He said he was sorry to Mr. Dobbs’ resignation but that he was glad he chose to focus on his health and family. He thanked Mr. Dobbs for his service to Bar Harbor. He also wanted to give a shout out to the workers at Public Works and all their work during the recent storms.

Mr. Minutolo said thank you Jeff. He said that it seemed like yesterday that they were hanging out in Maui back in 1980, and that they both had come a long way. He said that sitting on the Council with Mr. Dobbs has been a great experience, and how Mr. Dobbs had been a great guy in service for Bar Harbor. Mr. Minutolo wished him the best with his health.

Ms. Cough said that she would miss Mr. Dobbs as a Council member, but that she was glad she would still see him at the Historical Society.

Ms. Peacock wished to remind everyone about the public workshop with David Barrett for the new Town Manager Search, Tuesday, March 14 at 4:30 pm.

XII. EXECUTIVE SESSION—9:05 pm. Mr. Dobbs did not attend Executive session.

A. Code Enforcement: Aloha—*To be held in executive session as permitted by 1 MRSA §405(6)(E) to consult with the town’s attorney on an enforcement issue.*—Mr. Hochman, with second by Ms. Cough, moved to enter into executive session to consult with the town attorney, Ms. Gilbert and Code Enforcement Officer Angela Chamberlain. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

B. Personnel Matter – *To be held in executive session as permitted by 1 MRSA §405(6)(A) for discussion or consideration of a personnel matter.*

C. APPLL et al. vs. Town of Bar Harbor—*To be held in executive session as permitted by 1 MRSA §405(6)(E) to consult with the town attorney and Interim town Manager concerning pending litigation, APPLL, et. al. vs. Town of Bar Harbor, Civil Action No. 1:22-cv-616-LEW.*

Regular meeting resumed at 10:28 pm.

XIII. ADJOURNMENT— Mr. Hochman with second by Ms. Cough, moved to adjourn the meeting at 10:30 p.m. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

Lynn Kenison Higgins, Deputy Clerk