

**MINUTES  
SELECTMEN'S MEETING  
GRIFFIN ROOM, TOWN HALL  
MONDAY, JUNE 24, 2013  
7:00 P.M.**

**APPROVED**

**SELECTMEN PRESENT:** Ballantine, Cebula, LaMantia, McManus

**OTHERS PRESENT:** Town Administrator James Merriam, Chief Clarke, Ginny Hewitt, Joann Rys, Larry Cole, and others.

**MEETING CALLED TO ORDER** at 7:20 p.m. by Chairman LaMantia.

Chairman LaMantia stated that the Board just came out of Executive Session where they discussed litigation and other legal matters.

**CONSENT AGENDA**

- A. Approve Minutes –
  - 1. June 10, 2013 Regular Meeting
  - 2. June 17, 2013 Executive Session
- B. Vote to award contract for legal advertising for FY14 to FY16
- C. Vote to approve Miscellaneous Committee Appointments
- D. Vote to approve application for change of location to Common Victualler license for Andale Café to 554 Route 28, Harwich Port
- E. Vote to approve FY14 VNA Nursing Services Contract
- F. Request for One-Day Entertainment License for First Congregational Church
- G. Vote to sign Fire union collective bargaining agreement
- H. Vote to sign Orders of Taking for 1055 Oak St. and Main Street Extension properties

Mr. McManus moved to approve the Consent Agenda and the recommended actions thereon.  
Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

**PUBLIC HEARINGS/PRESENTATIONS** *(Not earlier than 7:00 P.M.)*

- A. **Public Hearing** – Application for Alteration of Premises to Seasonal, Innholder, All Alcoholic Beverages License for Phoenix Park, Inc. d/b/a The Irish Pub

Ms. Cebula read the hearing notice into record. Brendan O'Reilly provided abutter notification documentation to the Board. He noted that the application is to extend the premises to serve on the outside deck. Mr. Ballantine expressed concern about potential noise and Mr. O'Reilly said they are not going to play music out there. Mr. Ballantine moved to close the Public Hearing. Ms. Cebula seconded the motion and the motion carried by a unanimous vote. Mr. Ballantine moved to approve Chapter 138 of the General Laws as amended, the application for the Alteration of Premises for the Seasonal, Innholder, All Alcoholic Liquor License now held by Phoenix Park, Inc. known as The Irish Pub, Brendan O'Reilly, Manager, on the premises at 126 Route 28, West Harwich, and such this allows the alteration of the premises to include outdoor

seating on the existing attached outdoor deck. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

#### **B. Public Hearing – Ambulance Billing Rates**

Ms. Cebula read the hearing notice into record. After discussion with Chief Clarke and Mary McIsaac, Mr. McManus moved to close the public hearing. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote. Mr. McManus moved that we adopt the recommended proposed ambulance rates outlined in the memorandum from Mary T. McIsaac, Town Treasurer, dated June 20, 2013 (see attached). Ms. Cebula seconded the motion and the motion carried by a unanimous vote.

### **OLD BUSINESS**

#### **A. Appointment of Interim Town Administrator – *discussion & possible vote***

Ms. Cebula moved to appoint Mr. Lawton as our Interim Town Administrator and allow the Chair to sign the contract. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

#### **B. Facilities Maintenance Manager job description – *discussion***

Ms. Cebula was concerned that this reads more as a working foreman position rather than a management position. Mr. Merriam responded that this is a compromise between two different visions. Mr. McManus said the job description is more of what he was looking for. Mr. Ballantine said the top priority is the planning and supervision rather than the hands-on aspect but generally he likes the way this reads. Mr. McManus said once the planning is done and the tasks are outlined, it will be the best utilization of our resources to have someone who can help out in the field and get things done and Chairman LaMantia concurred. Mr. McManus said it is just the nature of jobs like this. Ms. Cebula said Mr. McManus is being somewhat cavalier about what it takes to develop, plan and manage. Chairman LaMantia said no motion is needed as this falls under the purview of the Town Administrator and our next step is to go forward and hire.

### **NEW BUSINESS**

#### **A. Letter from Voter Information Committee regarding role of the Committee – *discussion & possible vote***

Joann Rys reviewed her memo to the Board dated June 18, 2013 (see attached) in which she requested that the appendix to the Committee Handbook be included as part of that document again as it had been taken out. She further asked to revise the language in the appendix describing the role of the Voter Information Committee in special town elections as indicated in the memo. Chairman LaMantia noted that they will be looking at the Committee Handbook, Charter and other Town documents. Ms. Rys also stated that they would like the website changed to reflect accurately what they do and the Board agreed.

- B. Appoint Chairman as signatory at times when Town Administrator or Interim Town Administrator are not available – *discussion & possible vote*

Ms. Cebula moved to appoint the Chair as signatory at times when Town Administrator or Interim Town Administrator are not available. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

## **TOWN ADMINISTRATOR'S REPORT**

Mr. Merriam delivered the following report to the Board:

### Chatham Joint Statement re: Wastewater Plant

Please be advised that the Chatham Selectmen voted 4-1 on June 18, 2013 to sign the statement to extend the date until December 31, 2013.

### Ambulance Billing

As you know, I've expressed to you the Finance Team's concern that FY 13 Ambulance receipts were running \$400k short of budget. With further research, there has been a discovery that Coastal Billing's turnovers do not reconcile with the Town's postings and the Treasurer and Town Accountant are attempting to reconcile the differences (\$245k). The shortfall may be close to erased once the differences are identified and properly posted.

### Route 124 project update

I wanted to share with you and the Board that at last Friday's CCJTC meeting we voted to recommend a \$4,000,000 funding level for the Route 124 project. The first page of the attachment shows the available funding for the entire Cape with approximately \$7m available in Federal Fiscal year 2015 and Harwich programmed for \$4m of that. Endorsement of the CCJTC's recommendation is expected at the June 24th meeting of the MPO.

Route 124 survey has been completed, the baseline plan has been developed and Chris and I went to Boston a few weeks ago to meeting with DCR over potential easements and Chapter 97 legislation that will need to be filed. The meeting with DCR went very well and they appear amenable to working with town on this project since we need a fair amount of their easements to build the road. I have tentatively scheduled a public workshop meeting for July 18th at 7 pm at the Community Center. It is my intent to invite to all direct abutters of this project to this meeting by leaving letters in their doors and posting it as a public meeting. At the meeting I plan to give a brief overview of the project goals and ask the abutters to find their house on one of 4 plans that will be laid out on tables. The plans will be existing conditions only and I will ask each abutter to show us their areas of concern and what they would like to see come out of this project.

Link

### Fox News confirming July 5<sup>th</sup> Red River Beach

I spoke to Andy Devine and they are all set with the site location. They are going to use the western portion of Red River Beach and close off access at Old Warf Rd. and Deep Hole Rd at

the Beach. They will also block off a little further down before the rest rooms. A few things we will need to make sure of:

A couple police details for traffic issues (will be able to come down Old Warf and turn around Deep Hole I think or can detour at Rte 28

The western beach portion will need to be cleaned by 3 am and the rest by around 5am (I know Fourth of July may make this a little more challenging) filming starts live at 5:45

I think that is about it for now. At your convenience, I think we should sit down with Recreation, Highways, Police and maybe a Selectman to hammer out the details.

Hi Jim,

I am very pleased to report construction of the 350-mile fiber optic OpenCape Network is completed. See attached press release.

CapeNet is now receiving many more inquiries asking about the types of broadband services available, including internet access, backup services, VoIP services, the building of additional laterals, dark fiber, etc.

This would be a great time to check out CapeNet's website, [www.capenet.com](http://www.capenet.com). It's a useful resource to get answers to initial questions and learn more about the availability of high speed broadband services delivered over new fiber optic cable in southeastern MA, Cape Cod, and Islands.

Best Regards,

Tony DaSilva, CISSP

Legal opinion re: Firearms sales

Dear Mr. Larsen:

You have requested an opinion as to whether a business involving the sale of firearms at a residential dwelling at 12 Purmackene Lane would be in compliance with the Town Zoning Bylaw, Chapter 325 of the Town Code ("Bylaw"), if it were to be operated as a "Home Occupation" under Article VIII of the Bylaw, Sections 325-36, "Regulations for Home Occupations" ("Regulations"). Per Table 1 of the Bylaw, "Use Regulations," a home occupation is permitted in any zoning district, provided that the home occupation complies with the Regulations.

In my opinion, if you determine that the firearms sales business meets the various requirements of the Regulations, the business will be in compliance with the Bylaw (provided, of course, that any other applicable requirements of the Bylaw are met). I offer no opinion as to whether the proposed business does, in fact, meet the requirements of the Regulations, as that is a factual matter for you to determine, and is subject to your interpretation of those requirements, in your role as the zoning enforcement officer.

As you are aware, firearm sales are also subject to the licensing requirements established in G.L. c. 140, §§121 et seq. (“Firearms Statutes”). Such licenses (“state sales licenses”) are issued by the Chief of Police. Under G.L. c. 140, §123, among the conditions for a state sales license is a requirement that the licensee conduct all transactions, and maintain records, in “a permanent place of business that is not a residence or dwelling.” Therefore, it is possible that the holder of a state sales license may meet the requirements of the Bylaw to operate a Home Occupation, but will not be able to fulfill the separate requirements of the Firearms Statutes. However, as Building Inspector, it is my opinion that your jurisdiction to enforce, and require compliance with, the Bylaw (and the Building Code) does not extend to enforcing laws that are within the jurisdiction of other public officials, boards, and departments, unless those laws so provide.

For your information, the operator of the proposed business contends that he is not required to have a license issued under the Firearms Statutes, because his business will consist solely of internet sales between himself as a Federal Firearms License (“FFL”) holder and other FFL holders, with no delivery or in-person transactions taking place at his residence. On that basis, the Chief of Police has determined that the operator does not need to have a state sales license. Therefore, in my opinion, the conditions of G.L. c. 140, §123 that are imposed on the holder of a state sales license are inapplicable in this situation; instead, the operator will be subject to federal requirements for such sales. I have spoken with the supervisor of the Firearms Records Bureau in the Massachusetts Department of Criminal Justice Information Services, who has confirmed that, in her opinion, the Firearms Statutes do not require a state sales license for this limited type of activity.

Please feel free to contact me with any further questions concerning this matter.

John J. Goldrosen, Esq.  
Kopelman and Paige, P.C.

Dear Chief Mason:

As a follow-up to my e-mail opinion to the Building Inspector today (6/13/13) concerning the potential allowance of a firearms sales business as a “home occupation” under the Zoning Bylaw, you have asked for an opinion as to whether a state firearms sales license holder who obtained a license prior to the enactment of the current statutory prohibition on the use of a residence or dwelling is exempt (i.e., “grandfathered”) from that prohibition. In my opinion, the exemption for pre-existing license holders expired in 1999, and any current license holders are, therefore, subject to the prohibition.

As you know, licenses to sell firearms and ammunition (“Licenses”) are issued by municipal chiefs of police pursuant to G.L. c. 140, §121 et seq. (the “Firearms Statutes”). Section 123 of the Firearms Statutes contains a series of conditions that are imposed on License holders. Among these conditions is the following: “...all licensees shall maintain a permanent place of building that is not a residence or dwelling wherein all transactions described in this section shall be conducted and where all records required to be kept under this section shall be so kept.” (G.L. c. 140, §123 cl.(15)) (“Clause 15”).

The Firearms Statutes were amended by St. 1998, c. 180 ("Chapter 180"). Clause 15 was among several conditions that were added to G.L. c. 140, §123 by Chapter 180, §19. Although Chapter 180 was approved on July 22, 1998, Section 78 of that chapter provided that Clause 15 "shall not apply to any person licensed under [G.L. c. 140, §122] until September 1, 1999."

In my opinion, Chapter 180, §78 exempted License holders for a limited time, but it did not mean that persons who had obtained their Licenses prior to the approval of Chapter 180 were to be permanently exempted from Clause 15. This opinion is supported by the facts stated in Sullivan v. Department of State Police, 57 Mass. App. Ct. 10 (2003). In Sullivan, the plaintiff had been licensed to sell firearms beginning in 1990, using a former garage within his single-family residence as his place of business. When the plaintiff applied for a License renewal in November 1999, the renewal was denied. The Appeals Court affirmed the Superior Court decision upholding the denial, and quoted with approval the Superior Court's observation that the "apparent purpose of the delay [until September 1, 1999] was to give current licensees who conducted business out of their residence an opportunity to move their businesses" to a non-residential structure. Therefore, in my opinion, all License holders have been subject to Clause 15 since September 1, 1999.

You have also asked for an opinion as to whether Clause 15 bars the use of a freestanding garage that is an accessory building on a residential lot, or a garage attached to a residence where there is no direct means of access to the garage from the residence. Based on the text of the statute and the holding of the Sullivan decision, it is my opinion that neither of these examples would satisfy Clause 15. The Appeals Court quoted the Superior Court's reasoning that the legislature intended that "firearms businesses be conducted in commercial settings and not in private residences. The fact that a portion of a private residence has been earmarked by its owners as 'separate' and 'solely for business purposes' does not satisfy the requirements of [Clause 15]." The Appeals Court noted, further, that Section 123 included a requirement (added by Chapter 180, §21) providing for an annual inspection of "the commercial premises owned or leased by any licensee." The Appeals Court concluded that, based on the "obvious purpose of [Chapter 180] to enhance the safety of sales, rentals, and storage of guns," Clause 15 precluded the plaintiff from using his garage as the business space for selling firearms.

I have discussed this question with the Director of the Firearms Records Bureau in the Massachusetts Department of Criminal Justice Information Services, the agency that is responsible for administering the Firearms Statutes. She informed me that the Bureau's current interpretation is that Clause 15 is not satisfied by the use of a garage that is attached to a residence (regardless of whether the garage lacks access to the residence), and that a detached garage or other accessory building will not suffice unless a separate legal lot, with a separate street address, is created that contains the structure—i.e., the building in which the business is operated must be located on a separate lot from the residence's lot.

Based on my conversation with the Bureau Director, it is my impression that the Bureau leaves it up to the local police chiefs to apply Clause 15 to License holders whose businesses pre-date Chapter 180, and that the Bureau does not independently enforce the requirement against such businesses. (The Bureau does have a means to enforce Clause 15's requirement on new businesses, because the Bureau oversees the installation of the equipment that is required for a License holder to transmit sales data to the Bureau: a business located in a residence would not

be allowed to install the equipment.) If, as you have informed me, there are License holders in the Town whose business locations do not comply with Clause 15, it is my opinion that you may enforce Clause 15 against such businesses, and that you have discretion to determine an appropriate length of time for compliance. Further, it is my opinion that a License should not be renewed if the place of business does not comply with Clause 15.

For your convenience, here is a link to the Sullivan decision:  
<http://www.mass.gov/eopss/docs/chsb/firearms/dealer-business-location-requirements.pdf>.

Please feel free to contact me if you have any further questions concerning this matter.

Very truly yours,

John J. Goldrosen, Esq.  
Kopelman and Paige, P.C.

Inquiry to Board about County Charter amendments

Are the Board of Selectmen going to provide any sort of relevant public comment, feedback and/or discussion, either individually or collectively, to the Barnstable County Charter Review Committee regarding recent controversial proposals for the restructuring of our Cape Cod Regional Government? If so, when?

Nancy Palmer-White

I will forward your question to Ron Bergstrom. He is the Committee Chair. The short answer is no, not yet.

Mark Zielinski, County Administrator

**SELECTMEN'S REPORT**

A. Board of Selectmen goals – *discussion*

Chairman LaMantia noted that he assigned the proposed goals to specific Selectmen which the Board reviewed. No action was taken.

B. Board of Selectmen Liaison Policy – *second reading*

The Board agreed to move this forward to a third reading. No action was taken.

C. Town Administrator candidates interview session process – *discussion/possible vote*

Chairman LaMantia noted that interviews will be held this coming Thursday with discussion and/or selection process being held until July 1.

**ADJOURNMENT**

Ms. Cebula moved to adjourn at 9:01 p.m. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

Respectfully submitted,

Ann Steidel  
Recording Secretary



**TOWN OF HARWICH**  
**OFFICE OF THE TREASURER/COLLECTOR**  
 732 MAIN STREET, HARWICH, MA 02645  
 TEL: 508-430-7501 FAX: 508-430-7504

Mary T. McIsaac, CMMT  
 Treasurer/ Collector

Amy E. Duffy, CMMAT  
 Assistant Treasurer/ Collector

Memorandum

June 20, 2013

To: Mr. Angelo LaMantia, Chairman, and Board of Selectmen  
 From: Mary T. McIsaac

Re: Proposed Ambulance Rates

The following rate structure is proposed for ambulance billing effective on June 30<sup>th</sup>, 2013. The Town of Harwich ambulance rates have been in effect since 2006. The chart below sets out the Town of Harwich current rates, the proposed rates and the 2013 Medicare Fee Schedule.

Charges	2013 Medicare	Harwich-Current	Harwich-Proposed
BLS Emergency	368.13	475.00	1,056.23
BLS Non-Emergency	230.08		1,056.23
ALS Non-Emergency	276.10		1,927.76
ALS1 Emergency	437.16	635.00	1,927.76
ALSH Emergency	632.73		3,037.99
Specialty Care Transport	747.77		3,325.59
Mileage	7.09	15.00	29.76
Airways	-	140.00	Bundled
Defibrillation	-	140.00	Bundled
IV Administration	-	140.00	Bundled
Oxygen	-	55.00	Bundled

Ambulance billing rates are generally set using a Medicare fee plus a percentage. I have attached a comparison chart for several of our neighboring communities. The communities who have the most current rate structure are showing to have the higher fee schedules reflecting a commitment to set rates closer to the actual cost of service.

Generally, ambulance rates are described as the Medicare rate plus a percentage. This percentage ranges anywhere from Medicare plus 20% to Medicare plus 150%. Many communities meet or exceed Medicare plus 100%. Communities are also trending to bundle the ancillary charges (oxygen, IV therapy, airways, and defibrillation) into the base charges. Medicare does not allow for these separate charges.

The rate request is made to establish new rates prior to the new fiscal year. As we have discussed, the FY14 State Budget may deliver control over rate setting from the local level to the State's Group Insurance Commission. There is a great deal of uncertainty surrounding the proposed Section 92 in the budget and we will protect an overdue rate increase by implementing new rates as soon as possible. Additionally, the increase would be conservatively estimated to bring in an additional 75K-100K into the Town's local receipts in a time of extraordinary need. (The estimate is roughly 10% of the last several years' receipts.)

Office of the Treasurer  
HARWICH  
Ambulance Billing Rates  
Comparison Chart

<u>FY13 Charge Description</u>	<u>Harwich</u>	<u>Brewster</u>	<u>Chatham</u>	<u>C.O.M.M. Fire</u>	<u>Dennis</u>	<u>Orleans</u>	<u>Yarmouth</u>
BLS Non-Emergency		1,056.23	395.00	707.76	359.00	1,056.23	
BLS Emergency	475.00	1,056.23	650.55	707.76	573.00	1,056.23	731.46
ALS Non-Emergency		1,927.76	483.17	1,172.97	430.00		
ALS Emergency	635.00	1,927.76	772.54	1,172.97	681.00	1,927.76	868.62
		1,927.76	1,118.13	1,859.38	985.00	3,037.99	1,257.20
Specialty Care Transport		3,325.59		2,051.39		325.59	
Mileage	15.00	29.76	15.00	24.00	15.00	29.76	16.50
Oxygen	55.00	bundled	55.00	bundled	60.00	bundled	60.00
Airways	140.00	bundled	140.00	bundled	140.00	bundled	-
IV Therapy	140.00	bundled	140.00	bundled	140.00	bundled	140.00
Defibrillation	140.00	bundled	140.00	bundled	140.00	bundled	-
Year of Adoption	2006	2013	n/a	2013	2010	2012	2011

To: Harwich Board of Selectmen  
From: Voter Information Committee,  
Joanne Rys, Chair  
Re: The Role of the Committee  
Date: June 18, 2013

The Voter Information Committee respectfully requests consideration of the following:

- Include in "The Town of Harwich Committee Handbook" the appendix describing the Roles for Board and Committee members which was originally part of the January 24, 2000 edition.
- Revise the language in the appendix describing the Voter Information Committee to better reflect our role in special town elections. Specifically, the Committee asks that the description read as follows:

**"Voter Information Committee – (unlimited number; term indefinite) – The purpose of this Committee is to inform and prepare the voters of our community on important issues to be addressed at the Annual and Special Town Meetings and the local annual election and to encourage voter registration and participation."**

The Committee seeks the change, to replace the word "special" with the word "local" after consultation and agreement with Anita Doucette, Town Clerk, who provided helpful advice on the proper terminology. This change more accurately portrays the Voter Information Committee's role.

Finally, the Committee believes the Appendix describing all the Boards and Committees will be of great value to those interested in serving as well as to those who are serving.

Thank you for considering our request.