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**Complaint Appealing Tiverton Withholding of Documents
Under the Access to Public Records Act**

January 22, 2020

Sean Lyness
Special Assistant Attorney General
Rhode Island Office of Attorney General
150 South Main St.
Providence, RI 02903
opengovernment@riag.ri.gov

Dear Mr. Lyness,

On October 21, 2019, at 9:01 a.m., I submitted to the Town of Tiverton a request for records under the Access to Public Records Act (APRA). Specifically, I requested the minutes and audio recordings for all executive sessions conducted by the Town Council between November 7, 2006, and October 21, 2019 (see Exhibit A). These documents became publicly accessible upon the council's 6-0 passage of an Open Government and Release of Executive Session Records Policy on August 26, 2019, followed by a 6-0 vote to unseal all minutes (see Exhibit B for the policy and Exhibit C for the minutes of the meeting at which these two votes were taken).

The Monday following my request, October 28, the council purported to rescind the relevant policy, asserting along the way that the requirements for release had not been met under the policy (see Exhibit D for the relevant council minutes).

On November 1, 2019, Assistant Town Solicitor Matthew Fabisch transmitted a letter of denial to me, withholding the requested records (see Exhibit E).

I appealed this decision to Town Administrator Jan Reitsma on November 9 (see Exhibit F). Mr. Reitsma replied on November 13, upholding Mr. Fabisch's ruling (see Exhibit G).

This complaint seeks relief from your office as applicable and permitted under Rhode Island General Law § 38-2-8(b) and § 42-46-8. The following sections will show that the Tiverton Town Council failed to properly rescind the policy pertaining to the release of executive session minutes. Even if the policy had been properly rescinded, the grounds for denying my request misconstrued the policy as it existed prior to the attempt to rescind it. Furthermore, even if the solicitor's interpretation of the policy as it applied to my request were correct, the council has now rescinded the policy without re-sealing the minutes, making those minutes subject to APRA without limitation.

Policy Not Properly Rescinded

The rapid change of the Tiverton Town Council's policy on this matter followed a recall election that successfully removed me and another council member. According to the terms of the recall provision of the Tiverton Home Rule Charter, section 1209, the recall "shall become effective upon certification of the results of the voting thereon" (see Exhibit H). This certification occurred on October 17 (see Exhibit I).

According to the same section of the Charter, the vacancy thereby created is to "be filled in the manner provided in the provisions of this Charter." Under Section 403 of the Charter, Town Council vacancies are "filled by the candidate for the Council with the next highest vote total from the last election" (see Exhibit J). Furthermore, "the new member shall be sworn in at the next regular Council meeting." Put differently, the council cannot fill the vacancy *until* its next regular meeting.

According to the Tiverton Town Council Meeting Schedule for 2019, as filed with the Secretary of State (see Exhibit K), the next regular meeting following October 17 was to be held on October 28. Instead, the council called a *special* meeting for October 21, at which the new members were seated. This being contrary to the Home Rule Charter, the new members have yet to be properly sworn in.

Notably, the other significant non-routine item on the agenda on the 21st (and perhaps the motivation for the rush) was "reconsideration/suspension" of the transparency policy here under discussion. However, that discussion and vote was moved to the next meeting because it had not properly been placed on the agenda.

Given that the council was not properly seated following the faulty swearing in on October 21, rescinding the policy governing the release of executive session minutes was not accomplished. Indeed, even where a quorum or vote total would not be changed by removing the activities of the improperly sworn in council members — indeed, even if the swearing in were considered automatic on the 28th — every subsequent action of the council must come into question. The first order of business of the improper council on the 21st was to elect leadership, which affects all of its governance, including setting the agenda (which determines what items are properly before the body) and conducting debate and business (which can affect the outcome).

Minutes Unsealed, Even if Not Released

Turning to questions of policy, the central question that this complaint poses is whether minutes that had been unsealed, but not yet released, can be sealed again — let alone retroactively resealed so as to deny an existing APRA request. In denying the APRA request, Mr. Fabisch failed to address two sets of critical distinctions:

1. The distinction between the various statuses that could apply to executive session minutes.
2. The distinction between past minutes unsealed immediately after passage of the policy and future minutes that would be unsealed automatically once the policy was in effect.

Distinction Between Various Document Statuses

Citizens have very little need to submit APRA requests for documents that are public and *already released*, in which case APRA is merely a policy for convenience rather than access. It is important, therefore, to note four distinct states in which a document can exist:

- Sealed and therefore not public
- Unsealed and still not public for some other reason (such as exceptions to APRA)
- Unsealed and public, but not yet released
- Unsealed, public, and already released

It cannot be disputed that the council unsealed all prior minutes as of August 26, 2019. As the minutes for that meeting show, President Robert Coulter made the motion to “Unseal Closed (Executive) Session Minutes when Matters have concluded, subject to policy, and all other applicable law.” As of this vote, all such minutes were unsealed if the matters had “concluded, subject to policy.”

Section 3 of the policy defines when different topics have concluded. For example, “Collective Bargaining” topics are considered concluded “when [a] contract [is] finally executed and ratified.” Minutes related to collective bargaining matters subject to my APRA request are therefore unsealed if the contracts have been executed and ratified. Whether they are public under “all other applicable law” is a question to be resolved in the same manner as for ordinary unsealed documents.

Section 4 of the policy further provides for an administrative review period, during which the Town Solicitor and Town Clerk collect all relevant sealed minutes of the concluded matter and prepare them for release, which is to say, publication. For example, in the ordinary course of events, under the policy, the town would have six months after a collective bargaining matter concluded before it must publish the minutes. This section merely serves to regulate the workload for the solicitor and clerk, without having substantive effect on the rights of the public.

Note that Sections 3 and 4 do not define when minutes are *unsealed*.

The policy does not purport to (and, indeed, cannot) supersede APRA. For illustration, consider a municipal government that created a policy to release/publish all employee payroll information on its website within six months of the close of a fiscal year. Such a municipal policy would not block the right of a citizen under APRA to access this information prior to that automatic publication or if the municipal government decided to stop publishing it automatically. The municipality would still have to comply with state law.

Distinction Between Past Minutes and Future Minutes

The Tiverton Town Council’s policy on the release of executive session minutes addresses when they are considered automatically unsealed in the first bullet of Section 5:

All motions to seal automatically sunset after twelve (12) months unless extended by an affirmative vote of the Town Council which must expressly determine that the subject matter has not yet concluded or that the administrative review period has not yet ended.

The fourth bullet of section 5 makes explicit the intent for the town to maintain a running list of sealed minutes and to regularly renew the seals as a matter of course for those subject matters that are not yet concluded or are within the review period. Thus, subsequent to adoption of the policy, minutes would be considered unsealed either 12 months after they were sealed or, with express reference of the council, at the end of an administrative review period following conclusion of the matter (both occasions as defined by the policy).

This schedule applies as follows to the different statuses of documents described above:

- Documents are sealed, and therefore not public
 - For 12 months after the motion to seal, or
 - Because the Town Council has expressly extended the seal because the matter has not yet concluded and/or the administrative review period is not yet complete
- Documents are unsealed and still not public if these conditions do not apply but some other law prevents their being public.
- Documents are unsealed and public, but not yet released, if 12 months have elapsed without the council's extending the seal, but the matter has not yet concluded or the administrative review period has not yet run its course.
- Documents are unsealed, public, and already released if the process described by the policy is complete.

However, the foregoing applies only to minutes generated after August 26, 2019. The policy adopted on that day creates no special definition covering matters' conclusion or the administrative review period applying to *historical minutes unsealed through a subsequent vote*. All matters that had already met the definition for conclusion at that moment became unsealed. The administrative review period would apply to the *release* of those minutes, but they were no longer sealed.

As argued above, documents that are unsealed and public, but not yet released, would be accessible via APRA requests. The exemptions permitted under RIGL §38-2-2(4) address sealed minutes under subsection J: "Any minutes of a meeting of a public body that are not required to be disclosed pursuant to chapter 46 of title 42." Section 42-26-7(c) states: "The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed." Thus, if the council, including by the adoption of an automatic policy, has unsealed minutes, they are *required* to be "made available" — that is, they are public under APRA. This is true whether or not a local policy for the automatic publication of the minutes exists.

Under Mr. Fabisch's guidance, the new Town Council made a finding "that the requirements of section 5 have yet to be satisfied relative to review of previously sealed executive session minutes," but that motion's effect is negated (or at least severely limited) by two facts. First, it is plainly false. The automatic 12-month sunset of votes to seal minutes had passed for the great majority of the minutes subject to my APRA request. Second, some minutes within twelve months of my request would have manifestly met the criteria for conclusion and/or administrative review, and the town cannot retroactively impose a finding on this APRA request just because the council did not extend the seal in a timely fashion before the request was submitted.

The language of the motion that Mr. Coulter made as a council member on August 26 reinforces this interpretation. By explicitly unsealing minutes “when Matters have concluded,” the council gave effect to Section 3 of the policy relative to then-extant minutes. This prevented a loophole for non-concluded matters sealed prior to the policy, but by the same token, it makes clear that any matters that met the definition for conclusion were immediately unsealed.

Furthermore, by referencing “conclusion” (to wit, policy section 3), but not the “administrative review period” (policy section 4), the council was clearly not making the unsealing contingent upon *administrative review*, but only upon the *conclusion*. (Although, the administrative review period would still apply to release.) Indeed, the fifth bullet of section 5 provides guidance to the solicitor and clerk as they “prepare” the minutes of previously concluded matters “for release.” Namely, they should “work backwards in time starting from the date of adoption” of the policy.

Note that this subsection does not extend the seals on such minutes, but merely provides for their release or publication. This point is reinforced by the fact that the first bullet of section 5 requires action to extend a seal *prior to* the conclusion of the subject matter and the administrative review period. Again, completion of administrative review is not the trigger for *unsealing*, but for *release*.

Intent of Policy Reinforces APRA Request

The town is likely to maintain, as the administrator already has, that the intent of the council upon passage of this policy was to shield closed executive minutes from APRA requests until after the administrative review period had passed.

Over months of discussion and multiple meetings it is certainly possible for legislators to have different ideas what the language of a policy does. In this case, the disagreement centers on a change of language made just prior to passage of the policy, removing the phrase, “subject to APRA,” in the fifth bullet of section 5, addressing prioritization of release. The town will argue that this change was meant to keep minutes from being subject to APRA until the town solicitor and clerk had completed their review, “work[ing] backwards in time starting from the date of adoption.”

That was not my intent as a council member participating in that discussion. Over multiple discussions and, indeed, toward the end of the one on August 26th, some council members expressed concern that somebody might request a large number of minutes, thus overburdening the clerk’s office. The response was that the town could charge a substantial fee to an individual or group making such a request, and perhaps work with the requestor to narrow the focus.

At the time, my concern with the language “prioritizing any matters subject to APRA requests” was that it would remove this leverage, because the person making the request could claim that Tiverton’s policy explicitly required the town to put requested minutes at the top of the list “in the ordinary course of business.” In other words, if the town sought to impose a fee, the person could claim that the town did not experience any additional expense for the APRA because the policy required its release anyway.

Moreover, as a council member, I thought that removing that language might dissuade voluminous requests while the policy was being faithfully executed. Similarly, the council included language

excluding audio recordings from the policy of unsealing minutes despite doubts that the distinction would have legal force. Walking that fine line would encourage the town and any person making a request to work together to address the legitimate interests of each.

I have confirmed with a majority of council members voting on August 26th that they shared my interpretation of the policy. Furthermore, I have confirmed their willingness to provide affidavits affirming this interpretation if necessary.

As soon as the new council made known its intent to rescind the policy, it was clear that it would *not* be faithfully executed. In addressing their concerns, the new council deliberately chose to “rescind” the policy rather than merely “suspend” it, which would have indicated an intention of bringing it back into force at some future date. Rescinding the policy shows that the new intent is to return executive sessions to a permanently sealed box into which the public can never look.

I am willing to work with the town to develop a time frame to answer my request that does not create insurmountable burdens, but by the language of the policy as it was in effect at the time of my APRA request and by the stated intent of a majority of the council that approved it, any executive session meeting minutes addressing concluded matters are public documents that I have a right to review.

Rescinding the Release Policy Expanded Access, Rather Than Eliminating It

On August 26, the Tiverton Town Council unanimously passed two motions:

1. “To adopt Town Council policy for the Unsealing and Release of Closed (Executive) session minutes when matters have concluded.”
2. “To Unseal Closed (Executive) Session Minutes when Matters have concluded, subject to policy, and all other applicable law.”

Discussion of the second motion made clear its purpose. The first motion created the policy, but the second motion gave it force by officially unsealing all minutes. The first motion built the vessel by which the material would be dispersed, and the second motion allowed the material to flow.

By “rescinding” the policy, on October 28, but not re-sealing the minutes (which would have been of dubious legality), the council removed the vessel but did not stop the flow. Putting the verb, “rescind,” in terms of contracts, *Black’s Law Dictionary* notes the totality of the action: “To declare a contract void in its inception and to put an end to it as though it never were... Not merely to terminate it... but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made.” Declaring the release policy “void in its inception” would mean that the second vote of August 26 (to unseal) had no restrictions.

The minutes were unsealed “subject to policy,” whatever policy might be in place according to the action of the council, but in the absence of additional verbiage, the policy is now simple compliance with APRA. To the extent the new council is deemed appropriately seated, therefore, minutes addressing all concluded subject matters are now public without limitation. (Of course, other law may still apply.) The council’s contemporaneous finding that “the requirements of section 5 have yet to be

satisfied” is moot, because the policy containing that section was rescinded. Indeed, the Tiverton Town Council may have violated the Open Meetings Act § 42-46-7(c) by failing to release unsealed minutes from a closed session at the “next regularly scheduled meeting.”

Conclusion

The public policy statement of Rhode Island’s Open Meetings Act reads as follows:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

In August, the Tiverton Town Council bore this sentiment out by unsealing minutes that had been sealed indefinitely and creating a policy to ensure the principle of transparency would continue on, with the onus for secrecy on elected officials to assert, track, and justify. The actions of the new council, beginning in October, show precisely the caprice and injustice that makes open-government regulations so necessary for “the maintenance of a democratic society.”

After an unprecedented and unjustified recall election to flip the majority of the local policy-making body, town officials rushed to reverse a signature transparency initiative of the prior majority. They did so without provocation, inasmuch as no APRA request was made before the intent to eliminate the policy was announced on an agenda.


Moreover, they did so without regard to process. In their zeal to eliminate transparency, town officials failed to follow the council’s governance policy for placing items on the agenda. They also failed to follow the town charter’s provision for filling vacancies of the council.

Then, rather than simply suspending the policy to some later date in order to provide more time for development of a process, they rescinded it entirely. In doing so, they attempted to take the unprecedented action of resealing unsealed minutes, but without explicitly voting to do so.

Thus, they have left the minutes unsealed without any guiding policy and, indeed, are conducting all town business without having properly sworn in the primary governing body of the town.

Your office can help Tiverton find a path through this morass by agreeing that I have a right to the documents that I requested on October 21 and encouraging the town to work with me in good faith on their release.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Justin Katz", with a long horizontal line extending to the right.

Justin Katz



RECEIVED
TOWN OF TIVERTON
2019 OCT 21 A 9:01

Town of Tiverton, Rhode Island
343 Highland Road
Tiverton RI 02878
Tel 625-6710

Request for records under the Access to Public Records Act

Date: 10/21/19

Name: Justin Katz

Address: 189 Cottrell Rd.

Tiverton, RI 02878

Telephone: (401) 835-7156

Records being requested:

Access to and copies of (1) all minutes of all closed/executive sessions of the Tiverton Town Council for all meetings held between November 7, 2006 and October 21, 2019, and (2) all audio recordings for all such sessions.

This request should be given the widest possible interpretation under the Open Government and Release of Executive Session Records Policy adopted by the Town Council by a vote of 6-0 on August 26, 2019, Section 1201 of the Tiverton Home Rule Charter, Chapter 38-2 (Access to Public Records) of the Rhode Island General Laws, or Chapter 42-46 (Open Meetings) of the Rhode Island General Laws.

It should be noted that on August 26, 2019, the Tiverton Town Council adopted by a vote of 6-0 to unseal all closed/executive session minutes. This request is intended to reach all matters which concluded between November 7, 2006 and October 21, 2019, as well as all matters have not yet concluded. For such matters which have not yet concluded and are still active at the time of this request, this request should be considered as applying and continuing to all those matters, consistent with the August 26, 2019, vote to unseal and the council policy in effect at the time of this request understanding that minutes and audio might not be released until the respective matters conclude.

Office Use Only

Request taken by: _____ Request Number: _____
Date: _____ Time: _____
Records to be available on: _____ Fee: _____ @ .15 _____
@ 1.50 _____
Retrieval time @ 15.00/hr _____
(First hour of retrieval is free of charge.)

Open Government and Release of Executive Session Records

1. Overview

This policy sets forth the Town Council's policy and practices for the maintenance and release of executive (closed) session minutes and related records.

The policy is intended to further the goals of transparent and open government, and to increase the public's access to information, while conforming with applicable law and balancing against protecting Town interests and administrative workload.

2. General

In general, the intent is to automatically release all executive sessions minutes and related records when the subject matter has concluded, after and subject to an administrative review period, on a rolling basis.

The intent is to release not only formal written minutes and all related documentary materials. The release of audio is withheld pending further review and study.

3. When is a Matter Concluded?

To determine when a matter has "concluded" the following guidelines apply:

- (1) § 42-46-5(a)(1) – Job Performance / Character / Health: Conclusion of discussion or related action taken, if any (or related litigation).
- (2) § 42-46-5(a)(2) – Collective Bargaining / Litigation: When contract finally executed and ratified. / When settled or all appeals run on matter (and any related matters).
- (3) § 42-46-5(a)(3) – Security: Conclusion of discussion or related action taken, if any.
- (4) § 42-46-5(a)(4) – Investigations: Conclusion of investigation or related action taken, if any.
- (5) § 42-46-5(a)(5) – Property: Conclusion of discussion or lease / acquisition / disposition.
- (6) § 42-46-5(a)(6) – Prospective Business: Conclusion of discussion or related action taken, if any.
- (7) § 42-46-5(a)(7) – Investment of Public Funds: Conclusion of discussion or related action taken, if any.
- (8) § 42-46-5(a)(8) – Student Discipline/Privacy: [Not applicable to town councils]

- (9) § 42-46-5(a)(9) – Collective Bargaining Grievances: When grievance settled or adjudicated and after all appeal periods run.
- (10) § 42-46-5(a)(9) – Finances of Prospective Library Donor: Conclusion of discussion or related action taken, if any.

4. What is the Administrative Review Period?

The administrative review period is:

- (1) § 42-46-5(a)(1) – Job Performance / Character / Health: Thirteen (13) months.
- (2) § 42-46-5(a)(2) – Collective Bargaining / Litigation: Six (6) months.
- (3) § 42-46-5(a)(3) – Security: Five (5) years.
- (4) § 42-46-5(a)(4) – Investigations: Six (6) months.
- (5) § 42-46-5(a)(5) – Property: Six (6) months.
- (6) § 42-46-5(a)(6) – Prospective Business: Six (6) months.
- (7) § 42-46-5(a)(7) – Investment of Public Funds: Six (6) months.
- (8) § 42-46-5(a)(8) – Student Discipline/Privacy: [Not applicable to town councils]
- (9) § 42-46-5(a)(9) – Collective Bargaining Grievances: Six (6) months.
- (10) § 42-46-5(a)(9) – Finances of Prospective Library Donor: Two (2) years.

5. Practices

The following practices apply to implement this policy:

- All motions to seal automatically sunset after twelve (12) months unless extended by an affirmative vote of the Town Council which must expressly determine that the subject matter has not yet concluded or that the administrative review period has not yet ended. In addition, where applicable, in cases of property, prospective business, or investment of public funds, the Town Council must (and in all other cases the Town Council is encouraged to) expressly state any findings of potential detrimental or adverse impact on the Town if the sealing is not extended.
- During the administrative review period, the Town Solicitor with the assistance of the Clerk of the Town Council (Town Clerk), and with assistance of the Town Administrator if requested, shall gather and review all minutes and related records to prepare for them for release, proposing any redactions which may be needed to comport with applicable

law. During the administrative review period, the currently-serving members of the Town Council, Clerk of the Town Council, and Town Administrator (except for matters where he or she is the subject of the open meeting exception) may review and offer feedback to the Town Solicitor as to any proposed redactions.

- If requested by a currently-serving councilor, Town Solicitor, or Town Clerk, any concerns or objections to proposed redactions as to minutes will be determined by majority vote of the Town Council, and for all other records as the Access to Public Records Act provides. Debate on such redactions may occur in an executive session if permissible under the Open Meetings Law.
- All matters subject to seal will be tracked. At least one (1) month before an automatic unsealing, a report will be distributed to the Town Council. If not affirmatively extended, minutes and records will be released on a rolling basis.
- For matters which concluded before the adoption of this policy (subject to the administrative period), the Town Solicitor and Town Clerk shall work backwards in time starting from the date of adoption and prepare records for release in the ordinary course of business as time and resources permit, subject to and prioritizing any matters.subject to guidance of Town Council.
- Nothing in this policy requires the Town Council to seal and maintain the seal of any matter even if it has not concluded or even if the administrative period has not yet ended.

6. **Applicability**

This policy is applicable to the Town Council only (including, for the avoidance of doubt, minutes and related records of prior terms of the Town Council). This policy is not intended to impact the maintenance and release of minutes and records of other town boards, commissions, committees, or other public bodies, subject to applicable authority.

7. **Coordination**

This policy is not meant to, and shall be interpreted not to, conflict with the Town Charter, the Open Meetings Law, the Rhode Island Access to Public Records Act, or other applicable law. Any provision hereof deemed to be contrary to such authority shall be deemed void, and this policy shall then be interpreted in the manner most liberally giving force to its intent, absent that provision.

8. **Related Authority**

Open Meetings Law
Access to Public Records Act
Charter § 1201, § 1202

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS COUNTY OF NEWPORT

The Town Council of the Town of Tiverton, County and State aforesaid held a Regular Council Meeting on **Monday, August 26, 2019 at 7:00** at the Tiverton Town Hall, 343 Highland Road.

1. CALL TO ORDER**2. PLEDGE OF ALLEGIANCE TO THE FLAG**

Council President Coulter called the meeting to order with the pledge of allegiance to the flag.

3. ROLL CALLMembers Present

Council President Coulter
Vice-President Katz
Councilor Driggs

Councilor Hilton
Councilor deMedeiros
Councilor Cook

Town Administrator Jan Reitsma
Town Clerk Mello
Solicitor Cicione

Members Absent - Councilor Perry

Due to the large turnout of persons interested in the proposed development, the capacity of Town Hall chambers slightly exceeded 100 persons. Not to risk violating fire code, Council President Coulter made the decision to move the agenda item to a special meeting. It was proposed that the meeting be held at the Tiverton High School on 9/4/2019 at 7 pm, pending availability.

BUSINESS BROUGHT BEFORE THE COUNCIL

President Coulter read the items on the Consent Agenda.

4. CONSENT AGENDA

- A. Approval of Town Council Minutes
 - 1. [July 29, 2019](#) – Special Workshop
 - 2. July 22, 2019 – Executive Session
- B. Acknowledge Receipt of Minutes from Boards/Commissions/Committees
 - 1. Harbor Commission – [June 3, 2019](#)
 - 2. Harbor Commission – [July 8, 2019](#)
 - 3. Open Space and Land Preservation Commission – [May 20, 2019](#)
 - 4. Open Space and Land Preservation Commission – [June 17, 2019](#)
- C. Acknowledge Receipt of Reports
 - 1. Treasurer – Denise Saurette – July Budget and Revenue [Reports](#)
- D. Acknowledge Receipt of Correspondence
 - 1. Town of Charleston – [Resolution](#) Relative to Public Access to the Shoreline

Councilor Katz motioned to approve the Consent Agenda. Councilor Hilton seconded the motion. The Motion passed unanimously; 6/0.

5. PUBLIC PRESENTATIONS/ANNOUNCEMENTS/COMMENTS

A. Carpionato Group, LLC – [Proposed](#) Development of Souza Road Property (Map 110, Lot 102 and Map 301, Lot 220)

Agenda item was carried forward to a Special Meeting – date/time/location be determined.

B. Public Comment – One resident requested and received confirmation that the Carpionato Group item would not be heard at a later time tonight.

6. PUBLIC HEARINGS (ADVERTISED)

- A. Attorney Mark Russo – Twin River Tiverton – [Request](#) Approval to Amend Chapter 22 - Section 22-11 and Section 22-11.1 - Hours of Operation for Casino Gaming Facility within the Casino Gaming and Entertainment Overlay District-CGE for Consideration of 24-hour Ordinance

Councilor President Coulter opened public hearing for any comments or questions from the public.

Citizen Barbara Pelletier addressed the Council noting that the Town has enjoyed a tax reduction for the first time in many years and given the limited police and fire issues; we should be supportive of the Amendment to allow the 24 hour operation.

Councilor Katz motioned to approve to Amend Chapter 22 - Section 22- 11 and Section 22-11.1 - Hours of Operation for Casino Gaming Facility within the Casino Gaming and Entertainment Overlay District. Councilor Cook seconded the motion. The motion passed unanimously; 6/0.

- B. Public Hearing on [Proposed](#) Amendment(s) to Code of Ordinances Article XII, Section 8, 10, or Otherwise Appendix A Zoning in Order to Increase the Number and Time Permitted for Display of Special Event Signs for Charitable Purposes – Discussion of Continuance to Allow Additional Time for Planning Board Review

Councilor President Coulter opened public hearing for any comments or questions from the public.

Councilor Katz motioned to extend the relative Public Hearing to Monday October 28th, 2019 to allow additional time for Planning Board review. Councilor deMedeiros seconded the motion. The motion passed unanimously; 6/0.

7. BOARD OF LICENSING

- A. Michael J. Roderick, 264 Bulgarmarsh Road – [Requesting](#) Special Event Permit for the “Courtney Roderick Run For Recovery” 5K Run/Walk Event - July 25, 2020 from 9-11 am. Start and Finish at Grinnell’s Beach.

Councilor Katz motioned to approve the relative Special Event Permit, subject to all legal requirements and the Recreation Commission’s approval, if necessary. Councilor deMedeiros seconded the motion. The motion passed unanimously; 6/0.

8. APPOINTMENTS & RESIGNATIONS

- A. [Harbor Commission](#) - (9) Member Board/(2) Year Terms/(4) Vacancies
1. Acknowledge [Resignation](#) of Steven W. Anderson as of August 15, 2019
 2. David E. Stewart, 593 Highland Road – [Requests](#) Re-Appointment to Expire 7/15/2021
 3. Roger F. Winiarski, 130 Bulgarmarsh Road – [Requests](#) Re-Appointment to Expire 7/15/2021
 4. Charles E. Lawrence, 108 Long Pasture Way – [Requests](#) Re-Appointment to Expire 7/15/2021

Councilor deMedeiros motioned to acknowledged the resignation of Steven W. Anderson. Councilor Hilton seconded the motion. The Motion passed unanimously; 6/0. The Council also expressed appreciation for Mr. Anderson’s service to the town.

Councilor Hilton motioned to waive policy and approve (at this meeting) the relative re-appointments of David E. Stewart, Roger F. Winiarski, and Charles E. Lawrence to Harbor Commission. Councilor deMedeiros seconded the motion. The Motion passed unanimously; 6/0.

- B. [Arts Council](#) – (5) Member Board/Staggered 2 Year Terms /(5) Vacancies
1. James William Pelletier, 104 Bonniefield Drive - [Requests](#) Re-Appointment to Expire 4/15/2021
 2. Barbara Pelletier, 104 Bonniefield Drive - [Requests](#) Re-Appointment to Expire 4/15/2021

Councilor Katz motioned to waive policy and approve (at this meeting) the relative re- appointments of James William Pelletier and Barbara Pelletier to Arts Council. Councilor Driggs seconded the motion. The Motion passed unanimously; 6/0.

- C. Economic Development Commission – (5) Member Board/(4) Year Terms/(3) Vacancies
1. Martin Van Hof, 170 Bulgarmarsh Road - [Requests](#) Re-Appointment to Expire 7/15/2023
 2. Marc C. Pfeiffer, 20 South Court - [Requests](#) Re-Appointment to Expire 7/15/2023

Councilor Hilton motioned to waive policy and approve (at this meeting) the relative re-appointments of Martin Van Hof and Marc C. Pfeiffer to Economic Development Commission. Councilor Katz seconded the motion. The Motion passed unanimously; 6/0.

- D. Building Code Board of Appeals – (5) Member Board/(5) Year Terms/(3) Vacancies
1. Douglas E. Denninger, 226 April Lane - [Requests](#) Re-Appointment to Expire 6/30/2024
 2. Adam Rapoza, 31 Carpenter Street – [Requests](#) New Appointment to Expire 6/30/2024

It was noted by the Council, that members of the Building Code Board of Appeals, under the Town Code of Ordinances (section 18.32), are to be appointed by the Town Administrator. Hence, the Council referred the candidates to the Town Administrator for appointment.

- E. Zoning Board - (5) Member Board/(5) Year Terms/(1) Vacancy(2) Alternate Vacancies
1. Lise J. Gescheidt, 938 Lake Road - [Requests](#) Re-Appointment to Expire 7/15/2024
 2. Joel Bishop, 241 Cornell Road - [Requests](#) New Appointment

Applicant Lise J. Gescheidt was not in attendance. Applicant Joel Bishop was interviewed. Councilor Coulter noted that the matter would be carried to the next meeting.

- F. Recreation Commission – (7) Member Board/(3) Year Terms/(1) Vacancy
1. Robert Sedoma, 19 Bayview Ave. - [Requests](#) New Appointment to Expire 4/15/2022

Councilor Hilton motioned to waive policy and approve (at this meeting) the relative appointment of Robert Sedoma to Recreation Commission. Councilor deMedeiros seconded the motion. The Motion passed unanimously; 6/0.

- G. Planning Board – (9) Member Board/(3) Year Terms/(3) Vacancies
1. Janice Gomes, 58 Massey Road - [Requests](#) New Appointment to Expire 7/15/2022

Councilor Hilton motioned to waive policy and approve (at this meeting) the relative appointment of Janice Gomes to Planning Board. Councilor Katz seconded the motion. The Motion passed unanimously; 6/0.

9. BIDS AND REQUESTS FOR PROPOSALS – None

10. GENERAL BUSINESS

- A. Town Administrator – [Request](#) Approval to Increase Stipend for David Robert from \$200 to \$450 per Month to Reflect Increase in Scope and Volume of Information Technology (IT) Related Work

Councilor deMedeiros motioned to approve the relative Stipend Increase for David Robert from \$200 to \$450 per month. Councilor Cook seconded the motion. The motion passed unanimously; 6/0.

- B. Town Administrator – [Request](#) Approval of, and Authorization to Sign an Amended Sewer Easement Agreement with the Tiverton Wastewater District (TWWD) and Tiverton Recreation, LLC (aka Longplex)

Councilor Katz motioned to approve the relative Authorization to Sign an Amended Sewer Easement Agreement with the Tiverton Wastewater District (TWWD) and Tiverton Recreation, LLC (aka Longplex), subject to Tiverton Wastewater District approval. Councilor Driggs seconded the motion. The motion passed unanimously; 6/0.

- C. Town Administrator – [Purchase](#) of Police Cruisers and Senior Center Bus

1. [Request](#) approval of, and authorization to sign, a Community Facilities Grant Agreement with the U.S. Department of Agriculture (USDA), providing for a total of \$198,000 in capital improvement funding, of which \$136,500 are Town funds already budgeted or otherwise available for purchase of three new cruisers by the Tiverton Police Department; and \$61,500 will be a USDA grant to be used for the purchase of a senior citizen bus.

Councilor Hilton motioned to approve the request to sign the relative Community Facilities Grant Agreement with the U.S. Department of Agriculture (USDA). Councilor deMedeiros seconded the motion. The motion passed unanimously; 6/0.

2. [Request](#) approval for the Tiverton Police Department to purchase three police cruisers in accordance with the RI Master Price Agreement, for a total cost to the Town not to exceed \$136,500.

Councilor Hilton motioned to approve the relative request for the Tiverton Police Department to purchase three police cruisers. Councilor deMedeiros seconded the motion. The motion passed unanimously; 6/0.

3. Request approval for the Senior Center to proceed with the purchase of a senior citizen bus by either issuing a request for bids or utilizing the RI Master Price Agreement or equivalent Agreement in a New England State, for a total cost to the Town not to exceed \$61,500.

Councilor Hilton motioned to approve the relative request for the Senior Center to proceed with the purchase of a senior citizen bus. Councilor deMedeiros seconded the motion. The motion passed unanimously; 6/0.

D. Councilor Katz – [Updates](#) on Outstanding Issues

1. Town Farm Playground - Recreation Committee

Town Administrator Reitsma reported that he was not yet aware of any specific updates, but that the Recreation Committee is invested and has started discussions. He noted that work is needed to determine cost and budgets as well as the potential for securing grants and fundraising.

2. Administrative Officer (Administrator/Planning)

Town Administrator Reitsma summarized that at this time the Town has neither a Planner, nor an Administrative Officer, thus Matt Fabisch was still filling in two mornings a week. He noted that, financially and otherwise, it is not a perfect solution. Planning Board Chair, Susan Gill, who previously held the position, is awaiting an Ethics Commission opinion. Reitsma furthered that we are nearing the deadline for planning position applications and the interview process should begin soon.

E. Councilor Coulter – Town Council Policy For Unsealing Executive Session Minutes

1. [Request](#) Formal Approval of Town Council Policy for Unsealing and Release of Closed (Executive) Session Minutes and Related Records

Councilor Coulter motioned to adopt Town Council policy for the Unsealing and Release of Closed (Executive) session minutes when matters have concluded, subject to modifications discussed. Release of Audio is to be withheld pending further review and study. Councilor Katz seconded the motion. The motion passed unanimously; 6/0.

2. Request Vote to Unseal Closed (Executive) Session Minutes and Related Records as to Closed or

Completed Matters

Councilor Coulter motioned to approve the request to Unseal Closed (Executive) Session Minutes when Matters have concluded, subject to policy, and all other applicable law. Release of Audio is to be withheld pending further review and study. Councilor Katz seconded the motion. The motion passed unanimously; 6/0.

F. Consent Agenda Items Removed for Separate Consideration (See Note 3) – None

11. OTHER ITEMS/ANNOUNCEMENTS/COMMENTS

A. Town Administrator – None

B. Town Clerk - Town Clerk Mello noted that there has been confirmation from the Tiverton Superintendent that the High School is available for the continued agenda item Carpionato Group, LLC. (5. A.)

C. Town Solicitor

1. Solicitor Ciccone informed the Council that re: Harrop V. RI Division of Lotteries; P.C. 19-5273, a hearing is set for tomorrow morning and he will report back at next meeting.
2. Solicitor Ciccone briefly addressed an insinuation made at the previous meeting regarding the unavailability of Assistant Solicitor Fabisch during the summer months. Solicitor Ciccone remarked that not only is he always available for council; the Town additionally enjoys access to their firm of 21 lawyers.

D. Town Councilors - None

12. CLOSED EXECUTIVE SESSION – None**13. ADJOURNMENT**

Councilor deMedeiros motioned to adjourn the meeting. Councilor Cook seconded the motion. The motion passed 6/0. The meeting adjourned at 11:25 p.m.

A True Copy.

ATTEST _____
Nancy L. Mello, Town Clerk.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS COUNTY OF NEWPORT

The Town Council of the Town of Tiverton, County and State aforesaid held a Regular Council Meeting on **Monday, October 28, 2019 at 7:00** at the Tiverton Town Hall, 343 Highland Road.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE TO THE FLAG

Council President Hilton called the meeting to order with the pledge of allegiance to the flag.

3. ROLL CALL

Members present

Council President Hilton
Vice-President DeMedeiros
Councilor Cook
Councilor Clarke

Councilor Perry
Councilor Driggs
Councilor Edwards

Town Administrator Jan Reitsma
Town Clerk Mello
Solicitor Fabisch

Members absent – None

BUSINESS BROUGHT BEFORE THE COUNCIL

President Hilton read the items on the Consent Agenda.

4. CONSENT AGENDA

- A. Approval of Town Council Minutes
 - 1. September 30, 2019 – Special Workshop [Meeting](#)
- B. Acknowledge Receipt of Minutes from Boards/Commissions/Committees
 - 1. [Zoning](#) Board of Review – (1)
 - 2. [Board](#) of Canvassers – (2)
 - 3. [Planning](#) Board – (1)
- C. Acknowledge Receipt of Reports
 - 1. Treasurer – Denise Saurette – September Budget and Revenue [Reports](#)
- D. Acknowledge Receipt of Correspondence
 - 1. [Resolution](#) of the Exeter-West Greenwich Regional School District School Committee Field Trip Funding Law
- E. Approval of Tax Assessor [Abatements](#)

Councilor deMedeiros motioned to approve the Consent Agenda items. Councilor Edwards seconded the motion. The Motion passed unanimously.

A citizen had presented a request to speak. Normal policy disallows open forum if the meeting also includes an Executive Session. President Hilton queried the Council as to waiving policy to allow Open Forum.

Councilor Cook motioned to waive policy to allow Open Forum during Executive Session. Councilor deMedeiros seconded the motion. The Motion passed unanimously.

Mr. Alexander Moreau of 92 Campion Avenue approached the Council with a request for relief/abatement of his property taxes citing financial hardship. He disclosed that he was alone, 91 years old and wished to be able to remain in his home until the end of his life. President Hilton responded that although no decision could be made at this council meeting, his request would be brought to the tax assessor's office for possible hardship consideration.

5. PUBLIC PRESENTATIONS/ANNOUNCEMENTS/COMMENTS

- A. Town Administrator – Introduce Jeffrey A. Brown with Compensation Planning – Annual Actuarial [Valuation](#) of the Police Department Pension Plan

Jeffrey A. Brown with Compensation Planning summarized the annual actuarial valuation of the Town of Tiverton Police Department Pension Plan performed as of July 1, 2019. The report was recently presented to the Board of Trustees with regard to long term financial planning and budgeting. The purpose of the valuation threefold: 1. Compare the current value of Trust assets with the accrued liabilities to assess the funded condition of the Pension Plan. 2. Compute the Town's recommended contribution rate for the Fiscal Year ending June 30, 2019 3. Provide information which may be required by the Town's auditors under GASB 67/68.

6. PUBLIC HEARINGS (ADVERTISED) - None**7. BOARD OF LICENSING - None****8. APPOINTMENTS & RESIGNATIONS**

- A. Police Chief Jones – [Appointment](#) of Reserve Police Officers
1. Lieutenant Scott Beaulieu
 2. Corporal Joseph Wieszbicki

Councilor deMedeiros motioned to appoint Lieutenant Scott Beaulieu and Corporal Joseph Wieszbicki as reserve Tiverton police officers. Councilor Edwards seconded the motion. The Motion passed unanimously.

- B. Budget Committee - (11) Member Board (4) Year Terms (1) Vacancy
1. Alexander J. Cote, 67 Wampanoag Lane

Councilor Perry motioned to approve the relative appointments of Alexander J. Cote to Budget Committee. Councilor Edwards seconded the motion. The Motion passed unanimously.

- C. Acknowledgement of the [Resignation](#) of Solicitor Cicione

President Hilton announced receipt of the resignation from October 21, 2019. She noted “as the professional that he is” Solicitor Cicione had offered to remain in position until a new Solicitor has been selected. Attorney Fabisch spoke on behalf of Solicitor Cicione, who was unable to be present, that he had appreciated the opportunity to serve the people of Tiverton.

9. BIDS AND REQUESTS FOR PROPOSALS

- A. DPW Director Rogers – [Requests](#) Permission to Advertise and Hire One (1) New Truck Driver/Laborer According to Attached Job Description

Councilor Edwards motioned to approve the relative request to Advertise and Hire One (1) New Truck Driver/Laborer. Councilor Perry seconded the motion. The Motion passed unanimously.

- B. Assessor David Robert - [Request](#) Award of Bid/Contract to Northeast Revaluation Group for 2020 Full Revaluation

Councilor Cook motioned to approve the relative request to Award of Bid/Contract to Northeast Revaluation Group for 2020 Full Revaluation. Councilor Edwards seconded the motion. The Motion passed unanimously.

10. GENERAL BUSINESS

- A. Planning Board Chair Susan Gill - Proposed Recommendations for Temporary Signs Ordinance, Zoning Code- Article XII-Section 8

1. Solicitor Cicione [Memorandum](#) and previously distributed backup

Chair Gill addressed the Council to discuss the Planning Board’s Proposed Recommendations for Zoning Code Article XII. Section 8. Temporary Signs. She noted the Board had reviewed relative documents from former Council President Rob Coulter, as well as Solicitor Cicione. Feedback was requested from both the Zoning and Building officials. She noted that ultimately, a revised definition was developed, with parameters for permitted and non-permitted temporary signs and general provisions to clarify the existing ordinance.

President Hilton asked Solicitor Fabisch for input in light of the recent Supreme Court decision. Solicitor Fabisch noted that Solicitor Cicione’s recent memo was apt. and referenced the Reed v. Gilbert opinion whereas municipalities are generally no longer able to distinguish between types of signs. President Hilton commented that she has noted various sign styles and sizes around town and is unsure how the town can go forward in light of potential legal risks. Solicitor Fabisch added that most municipal sign ordinances are unconstitutional, and that although the Planning Board’s work could be an improvement on what is already in place, the Board needs to make a decision as to what its regulatory priorities are. Councilor Edwards declared that the Council’s efforts would be better spent elsewhere. Councilor Driggs agreed and asked if the topic should be tabled. Councilor Hilton surmised voluntary compliance is all we have with the existing ordinance. Administrator Reitsma noted concern about sign size/safety issues. Solicitor Fabisch declared the Reed decision was a seismic shift in the understanding of municipal authority to regulate signs, but that dimensional restrictions are among the few remaining areas of residual authority.

Councilor Perry made a motion to table Temporary Sign Ordinance changes indefinitely. Councilor deMedeiros seconded the motion. The motion passed unanimously.

B. Councilor Hilton - Approval to [Advertise](#) RFP for Town Solicitor

Councilor Edwards requested that the relative RFP be edited to change #13 to request applicants provide “1 hard copy and 1 electronic copy” and it was determined that #8 be edited to “no more than \$100,000 for general legal services and \$30,000 for land use services.”

Councilor Perry motioned to approve the relative request to Advertise RFP for Town Solicitor. Councilor Edwards seconded the motion. The Motion passed unanimously.

C. Councilor deMedeiros – [Appointment](#) of Council Liaisons and Representative for Negotiations

Councilor deMedeiros noted several vacancies for the various Boards & Commissions and requested fellow Councilors to consider volunteering as liaisons.

Councilor Driggs announced her resignation as Teamsters liaison. Councilor deMedeiros offered to be a replacement, along with Councilor Clarke. Councilor Edwards volunteered to join as AFSME liaison.

Councilor Cook relayed concerns of purported connections between the AFL- CIO and supporters of the recent recall election. President Hilton repeatedly advised Councilor Cook she was out of order and ultimately called for a 10 minute recess at 8:35pm.

President Hilton reconvened the meeting at 8:45pm, noting that the purpose of Town Council meetings is to conduct the Peoples’ business, and should not be used to air political grievances.

D. Councilor deMedeiros - Possible Vote for [Reconsideration](#)/Suspension of Town Council Policy for Unsealing and Release of Closed (Executive) Session Minutes and Related Records

Councilor deMedeiros noted that the Council needs to determine definitively who is able to place agenda items; therefore, review of the Governance Policy should happen in the near future. She went on to acknowledge previously voting in favor of unsealing executive session records, but furthered it was clear more research was necessary, especially with regard to release of audio tapes. Her concerns included countless processing hours, handling redactions, legal/liability issues as well as there being no current guidelines in place by the Attorney General’s office. She felt it unfair to burden a new Solicitor to enact a policy with problems.

Town Clerk Mello reiterated her concerns citing executive session minutes have never been indexed. She had recently started indexing process of 390+ sets of minutes, adding many audio tapes were inaudible cassette tapes. She stated that she cannot be the person to determine what should be released. She had contacted the Attorney General’s office with her concerns of liability, and had received a reply letter indicating that there would be no leniency for violation of potential APRA requests.

Councilor Driggs stated the policy was to be subject to time and resources and that determining “matters concluded” is clearly governed by Rhode Island law. She volunteered to assist with the process. Clerk Mello replied the minutes were still technically confidential. Councilor Edwards asked the Solicitor’s opinion on the consequence of a current executive session APRA request, if the Council voted to rescind current policy on releasing executive session minutes. Fabisch replied there were many layers of analyses and ultimately, a court would need to decide if individuals’ interest in privacy outweighs the interest in public disclosure. Regarding the audio he added that section 5 of the current policy was subject to an administrative review period, which has not been satisfied and potentially has not yet begun to run. He furthered that Rhode Island Law section 38-2-3G, specifically requires that public bodies must release records in whatever form they are held subject to the requestors instructions, therefore Board cannot release minutes without releasing audio.

Councilor Clarke stated firstly, the Council must decide if they should rescind or suspend the previous decision and if not, determine how to proceed. Solicitor Fabisch interjected that the Attorney General’s office has expressly taken the position that they refuse to offer guidance with regard to unsealing minutes. Councilor Cook stated though the process may be enormous, in the interest of public trust, anything that can, should be unsealed. President Hilton agreed

transparency is a wonderful thing however; executive session is at times warranted and protects public interest. She furthered because of the insurmountable task of processing/redacting 600+ audio tapes, privacy and liability concerns, and the lack of clarity with RI law, current policy is not ready. Discussion continued regarding the questions and legalities of suspension or rescission of current policy.

Councilor deMedeiros motioned to rescind the policy and to find that the requirements of section 5 have yet to be satisfied relative to review of previously sealed executive session minutes. Councilor Perry seconded the motion. The Motion passed 4 to 3 with Councilors Clarke, Cook and Driggs opposed.

E. Councilor Hilton – Progress Update on Comprehensive Community Plan

Town Administrator Reitsma discussed the status of work by Solicitor Cicione and two other attorneys relative to the conclusions and implementation plan from the Comprehensive Community Plan via a spreadsheet of items needing to be addressed. He noted there had been some characterization of the work completed as being “cut and pasted” from the implementation table. Reitsma added that Solicitor Cicione believed a lot more work was done including developed proposals, yet questions remain if they are ready to be proposed as amendments.

President Hilton requested a copy of the written work completed thus far. Attorney Fabisch spoke on behalf of Solicitor Cicione and Attorney Jeanne Scott, with respect to the schedule of their upcoming deliverables and scheduling of public hearings. President Hilton noted the original RFP provided that the Planning Board was to review the draft summary proposed recommendations; therefore the materials should be provided as soon as possible.

Councilor deMedeiros questioned total monies spent to date and what accounts were being drawn from. Administrator Reitsma advised there was a \$30,000 budget and final invoices were being held until all deliverables were received/reviewed.

F. Councilor Hilton – Scheduling of Public Hearing on Landfill Closure Options Including Presentation by Pare Engineering (to be held at Tiverton High School)

President Hilton opened noting that as the landfill closure was imminent and the Council had been given options by Pare Engineering; a public hearing was of vital importance to allow the town to participate. Councilor Driggs asked for clarification with regard to the July 29, 2019 meeting that she had missed. Hilton responded that the Town is a long way from having absolute decisions and a public hearing should be scheduled and well-advertised to encourage good attendance. The date of December 3rd, 2019, at the high school auditorium, was agreed upon.

G. Councilor Hilton – Proposed Ordinance Amendment to Chapter 22 Businesses and Scheduling of Public Hearing

Clerk Mello updated that the Town had been currently working with a State sponsored LEAN Program to assist in streamlining licensing. She continued that the ordinance would allow the Clerk’s office to issue simple renewals only; those that do not need public hearing and have met all legal requirements. Councilor Driggs expressed some concern relative to potential legal licensure issues. Clerk Mello responded that the building official would now be preliminarily involved and would be notifying the Clerk’s office of any violations. The license list for approval would be on the Consent Agenda prior to licensure. Clerk Mello requested November 12, 2019 as public hearing date.

Councilor Edwards motioned to approve to schedule the relative public hearing on November 12, 2019. Councilor Perry seconded the motion. The Motion passed unanimously.

11. OTHER ITEMS/ANNOUNCEMENTS/COMMENTS

- A. Town Administrator – Jan Reitsma wished to give credit to Fire Chief Mollo as approval for a \$4000 grant application appeared imminent. The money will be used to purchase a positive pressure ventilation fan which will significantly improve safety for personnel and the public.
- B. Town Clerk – Clerk Mello noted that her senior clerk Kathy Wood will be retiring at the end of December.
- C. Town Solicitor
- D. Town Councilors - Councilor Perry wished to thank the Trunk or Treat crew, noting that the recent event

hosted over 3000 attendees. Councilor Edwards noted that the Tiverton Days Committee will be meeting this coming Saturday at 9am at Lil' Bear. He also asked if the Council would reach out to Tiverton Wastewater Department for a Phase I update in the near future.

12. CLOSED EXECUTIVE SESSION - Potential Litigation - 42-46-5(a)(2)

Councilor deMedeiros motioned to enter Executive Session pursuant to 42-46 -5(a)(2) Potential Litigation - 42-46-5(a)(2). Councilor Edwards seconded the motion. The motion passed unanimously on a roll call vote.

The Council entered Executive Session at approximately 10:25 p.m.

The Council returned to Open Session at approximately 11:00 p.m.

Council President Hilton announced no formal action was taken in executive session.

Councilor Edwards motioned to seal the minutes of Executive Session. Councilor deMedeiros seconded the motion. The motion passed unanimously.

Councilor Edwards motioned to direct the Solicitor and the Town Administrator to negotiate a contract with West Place Kennel. Councilor deMedeiros seconded the motion. The motion passed unanimously.

13. ADJOURNMENT

Councilor Edwards motioned to adjourn the meeting. Councilor deMedeiros seconded the motion. The motion passed unanimously. The meeting adjourned at 11:05 p.m.

A True Copy.

ATTEST

Nancy L. Mello, Town Clerk

FABISCH LAW OFFICES

Tax · Estate Planning · Probate · Appeals

Office Address

4474 Post Road
East Greenwich, RI
02818

Matthew L. Fabisch

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Mailling Address

664 Pearl Street
Brockton, MA
02301

November 1, 2019

VIA ELECTRONIC AND REGULAR MAIL

Mr. Justin Katz
189 Cottrel Road
Tiverton, RI 02878
Justin@Justinkatz.com

Re: Public Records Request to the Town of Tiverton dated October 21, 2019

Dear Mr. Katz:

I am writing in my capacity as Assistant Solicitor of the Town of Tiverton in response to your access to public records request transmitted to the Town on October 21, 2019. A copy of your request is attached hereto for reference.

Your request specifically seeks "access to and copies of (1) all minutes of all closed/executive sessions of the Tiverton Town Council for all meetings held between November 7, 2006 and October 21, 2019, and (2) all audio recordings for all such sessions." Your request goes on to suggest that on August 26, 2019, "the Tiverton Town Council adopted by a vote of 6-0 (sic) to unseal all closed/executive session minutes." However, your request fails to note that the August 26, 2019 vote "to Unseal Closed Executive Session Minutes When Matters have concluded" was specifically made "subject to policy, and all other applicable law." See Tiverton Town Council Minutes of August 26, 2019, item 10(E)(2). Also on August 26, 2019, and prior to the vote noted above, the Town of Tiverton adopted a policy, entitled "Open Government and Release of Executive Session Records" (the "Policy"). Sections Four (4) and Five (5) of that policy, establishes an administrative review period of between six months and five years for the purpose of reviewing meeting minutes for redaction and other legal obligations to keep the minutes sealed in preparation for release. Prior to the expiration of the administrative review period executive sessions minutes remain sealed. On Monday, October 28, 2019, the Tiverton Town Council expressly found that the requirements of Section 5 of the

Policy permitting release of the sealed executive session minutes have not yet been satisfied with respect to any sets of minutes. In addition, that evening the Town Council repealed the policy. As such, your request for access and copies of (1) all minutes of all closed/executive sessions of the Tiverton Town Council for all meetings held between November 7, 2006 and October 21, 2019, and (2) all audio recordings for all such sessions must be DENIED on the grounds that the subject records as the records are exempt from disclosure under RIGL 38-2-2(4)(J). In addition, without making any representation that the subject records have been specifically reviewed for this content, upon information and belief the requested records may contain the additional categories of information made exempt from disclosure under RIGL 38-2-2(4):

(A)(I)(a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files.

(b) Personnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects that are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state, municipality, or public works contractor or subcontractor on public works projects, employment contract, work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) Could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings; (b) Would deprive a person of a right to a fair trial or an impartial adjudication; (c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; (d) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis, or the

information furnished by a confidential source; (e) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions; or (f) Could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

(E) Any records that would not be available by law or rule of court to an opposing party in litigation.

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records that disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical, or scholarly issues, whether in electronic or other format; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken, provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law or rule of court.

(X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.

(Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island general law § 9-1.1-6.

If you take issue with the response, you may present your concerns to the chief administrative officer (Tiverton Town Administrator Jan Reitsma) and appeal this decision. If the chief administrative officer rejects your appeal, or if you would simply prefer to bypass that step, you may also file a complaint with the Attorney General. The Attorney General shall investigate the complaint and if the Attorney General shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complaint in the superior court of the county where the record is maintained. Nothing within RIGL 38-2-8 shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

Thank you for your request. If you desire any further information regarding your request or this correspondence, please do not hesitate to contact me.

Town of Tiverton



Matthew L. Fabisch, Esq.
Assistant Town Solicitor

cc. Nancy Mello, Town Clerk
(via electronic mail only, to nmello@tiverton.ri.gov)
Jan Reitsma, Town Administrator
(via electronic mail only, to administrator@tiverton.ri.gov)

Justin Katz
189 Cottrell Rd.
Tiverton, RI 02878
justin@justinkatz.com
(401) 835-7156

Saturday, November 9, 2019

Jan Reitsma
Town Administrator
343 Highland Rd.
Tiverton, RI 02878
administrator@tiverton.ri.gov

Dear Mr. Reitsma:

In the interest of avoiding protracted appeals and litigation, I ask you to reverse the decision of Assistant Town Solicitor Matthew Fabisch to deny my Access to Public Records Act (APRA) request submitted October 21, 2019. Upon your doing so, and in consideration of the substantial work entailed in fulfilling the request, I would be amenable to discussion as to the pace at which the town provides the documents. As an initial step, I ask you to correct the solicitor's dismissal of the key fact under dispute — namely, that substantial portions of the executive session minutes for meetings within the scope of my request were certainly public documents at the time that my request was submitted.

So as to effectuate the current Town Council leadership's policy preference, Mr. Fabisch's determination of the law in this case, as described in his letter dated November 1, 2019, creates out of thin air a definition of "administrative review period" at odds with the policy duly passed by the Town Council as it was constituted in August of this year. In that policy, the review period is clearly defined as a minimum time before the unsealing of newly created minutes automatically without additional votes of the council. Nowhere is this period described as beginning upon the passage of the policy for all past minutes. Rather, the council's understanding of its action when it applied the review period to meetings that predated passage of the policy was that it was relevant only to minutes that would have still been within the review period had the policy been in place at the time that they were created.

At the October 28, 2019, meeting of the Tiverton Town Council, Assistant Solicitor Fabisch, himself, acknowledged that once minutes are unsealed that is it; they cannot be resealed. And indeed, the council voted to unseal all past minutes on August 26, 2019. The vast majority of the records that I requested were past their review periods at that time and were therefore public and ought to be provided to me — subject, of course, to additional restrictions allowed under APRA for all unsealed minutes.

Sincerely,



Justin Katz

Exhibit G, Katz APRA Appeal, 1/22/20, 1

TOWN OF TIVERTON, RHODE ISLAND

OFFICE OF TOWN ADMINISTRATOR

November 13, 2019

Justin Katz
189 Cottrell Rd.
Tiverton, RI 02878

Re: APRA Request

Dear Mr. Katz:

I am responding to your letter dated November 9, 2019, in which you appealed the denial by Assistant Solicitor Matthew Fabisch of the public records request you had submitted on October 21, 2019. Mr. Fabisch's correspondence to you was dated November 1, 2019.

First, this will confirm that your electronic submittal of the appeal is acceptable. Second, I share your desire to avoid "protracted appeals and litigation." To go one step further, I believe it is neither necessary nor appropriate to go there.

Your request was for "access to and copies of (1) all minutes of all closed/executive sessions of the Tiverton Town Council for all meetings held between November 7, 2006 and October 21, 2019, and (2) all audio recordings for all such sessions." Mr. Fabisch based his denial in part on a review of the discussion and votes by the Town Council on the subject matter on August 26, 2019. The first vote was to adopt a policy for the unsealing and release of closed (executive) session minutes when matters have concluded, "subject to modifications discussed." That vote excluded audio recordings "pending further review and study." The second vote was to unseal closed (executive) session minutes when matters have concluded, "subject to policy and all other applicable law." This vote also excluded audio recordings.

The minutes of the August 26 Council meeting did not capture the lengthy discussion preceding the votes, but a video recording of the meeting is available. Much of the discussion focused on the logistical challenge for the Town, and in particular the Town Clerk, to implement and comply with the proposed directive, given the sheer volume of documents; the time and effort required to review matters to determine whether they have concluded and, if so, what portions would need to be withheld or redacted in accordance with applicable law and regulations; and the lack of adequate staff resources. The Council recognized this challenge and tried to address it by allowing time to review, and perhaps prioritize, cases and documents before they would be released. It was suggested that the review would work backwards in time and proceed "as resources allow."

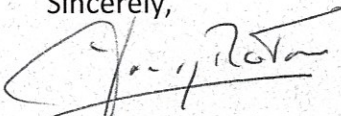
During the discussion, the question was posed repeatedly what would happen if the Town received a request "tomorrow" for all executive session minutes from multiple years, or for minutes from a long time (e.g., 20 years) ago. Each time the answer, from Mr. Coulter and yourself, was that the "administrative review" provision in the policy would take care of this. Also, when it was suggested that the Council would be voting to unseal everything, the explicit answer was that there would be no release pending review.

Under the circumstances, I cannot agree with your statement that Mr. Fabisch created "out of thin air" a definition of the administrative review period that is at odds with the policy as it was adopted on August 26. Instead, I believe, based on my own recollection as well as review of the video tape of the Council meeting, that his interpretation is consistent with what was said during that meeting, prior to the vote, about the nature and effect of the administrative review. Accordingly I also agree that the release of sealed minutes of past executive sessions was not required at the time of your request.

I hope that common sense can prevail. I do not believe it makes sense to insist that the Town do what is beyond its current capacity to do. I do not believe anyone is stonewalling or otherwise intent on hiding anything that deserves to be public. When the current Council decided to repeal the policy, it did so reluctantly, indicating a preference for developing a solution that would be more workable with the resources currently available, but could result in unsealing and release of past minutes to a substantial degree. I believe that the decision to repeal the policy was driven, not by a resistance to openness and disclosure, but by a desire to protect the Town against legal challenges based on different interpretations of the policy which could turn "as resources allow" into a topic of constant dispute rather than using it as a tool to achieve a common objective.

For the reasons stated above, I cannot grant your request to reverse the denial of your public records request. As you know, you have the option to file a complaint with the Attorney General. I sincerely hope you will not find it necessary to do so.

Sincerely,



Jan H. Reitsma
Town Administrator

This Charter may be amended or a new Charter adopted at any time in the manner provided by the Constitution of the State. All proposed amendments shall have a public hearing. Should two (2) or more amendments adopted at the same time have conflicting provisions, the one receiving the largest affirmative vote shall prevail. The sections of any amendments added to this Charter shall be appropriately numbered by the Town Clerk and inserted in their appropriate places. It shall not be necessary for the full text of the Charter or of amendments to the Charter to be printed on the ballot. Any digest or description thereof or any question or statement which substantially expresses the purpose, or identifies the subject matter to be voted upon shall be sufficient. When any question is to be submitted to the voters, the Town Council shall approve the statement of the question as it shall appear on the ballot. A copy of the full text of the Charter or amendments shall be posted in each polling place and such other places as may be designated by the Board of Canvassers. This Charter shall not be replaced nor amended for a period of at least two (2) years following adoption.

(a) Charter Review Commission

In November 1998 and at least every six (6) years thereafter, a nine (9) member non-partisan review commission shall be elected for a term of one year, commencing on the date of the certification of the election by the Board of Canvassers, whose duty it shall be to review the Charter and recommend for approval and adoption, amendments or revisions in a manner provided by the State Constitution.

Section 1206 Printing the Charter

The Town Council shall provide for the printing, publication and distribution of the Charter and may, at its discretion, require that a reasonable charge be made for copies thereof, provided, however, the Council shall provide a copy of the Charter to every town officer without charge.

Section 1207 Oath of Office

Every officer of the Town shall, before entering upon the duties of their office, take and subscribe to the following oath of 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 obey the laws of the United States of America and of the State of Rhode Island; that I will, in all respects, observe the provisions of the Charter and ordinances of the Town of Tiverton, and will faithfully discharge the duties of the office of".

Section 1208 Separability

If any article, section or provision of this Charter is held invalid by a court of competent jurisdiction, the remainder of the Charter shall not be affected thereby. All provisions of this Charter shall be interpreted in a manner most favorable to the Town, and least restrictive of its powers and prerogatives.

Section 1209 Recall

Any elected official or elected officials of the Town may be recalled or removed from office by the electors of the Town as herein provided. Any elector or electors may file with the Town Clerk, a notarized petition, containing the name and title of the elected official or officials whose removal is sought and a statement of the grounds for removal. Said petition shall have the signatures of electors equal in number to at least twenty-five (25) percent of the number of electors in the last election voting for the person holding that office. If said petition contains the name and title of more than one elected official, then the number of signatures required shall be equal in number to at least twenty-five (25) percent of the number of electors voting for the person named in the petition who received the highest number of votes. Within seven (7) days after receipt of the petition, the Board of Canvassers having certified the petition, the Town Clerk shall notify the official(s) involved by certified mail. The recall vote shall be taken no earlier than fifty (50) days and not later than seventy-five (75) days thereafter. No such vote shall be taken if the elected official shall resign from office before the taking of such vote. Said recall election shall be called and conducted in the same manner as is provided in the General Laws of the State of Rhode Island for Special Elections. The form of the question to be voted shall be substantially as follows: "Shall (here insert the

name and title of the elected official whose recall is sought) be recalled?" If said petition contains the name and title of more than one elected official, there shall be a separate ballot question for each elected official. A majority vote of the electors to recall such elected official shall not be effective unless a total of at least forty (40) percent of the number of electors in the last election who voted for the person holding that office, shall have voted on the recall question. If approved, the recall of such elected official shall become effective upon certification of the results of the voting thereon. If any elected official shall be recalled, the vacancy created thereby shall be filled in the manner provided in the provisions of this Charter.

Section 1210 Removal from Office

(a) Appointed Town Officer or Employee

The Town Administrator shall have the power to remove any officer or employee appointed by him/her provided the officer or employee shall have been served with a written notice of intention to remove from office or position, containing a clear statement of the grounds for such removal, and of the time and place, not less than ten (10) days after the service of such notice, at which said officer or employee shall be given the opportunity to be heard thereon. A copy of the notice of intention to remove shall be forwarded to the Town Council. After such hearing, which shall be at the option of such officer or employee, the action of the Town Administrator shall be final. The Town Administrator may suspend from duty for not more than thirty (30) days any such officer or employee pending final action. Removal of Department Heads and the Building Official require Town Council approval.

(b) Absenteeism

Any member of an appointed Board, Commission, Committee, Agency, or any person who has been appointed to fill a vacancy in an elected office, who does not attend at least sixty-six and two-thirds (66 2/3) percent of regularly scheduled meetings of said Board, Commission, Committee or Agency, during any one (1) year period, shall be considered removed from such Board, Commission, Committee or Agency, and their place thereon shall be considered vacant. It shall be the duty of the Chairperson of that Board, Commission, Committee or Agency to give prompt written notice of such vacancy to the Town Administrator, copy to the Town Council. Exceptions for extenuating circumstances may be granted by the Town Council.

(c) Forfeiture of Office

An elector shall be disqualified as a candidate for elective or appointive town office or from holding such office if such elector has been convicted of or plead nolo contendere to a felony or if such elector has been convicted or plead nolo contendere to a misdemeanor resulting in a jail sentence of six (6) months or more, either suspended or to be served. Such elector shall not, once so convicted, attain or return to any office until three (3) years after the date of completion of such sentence and of probation or parole.

Section 1211 Enforcement

(a) Complaints by Citizens

Any qualified elector of the Town may file a sworn statement in the office of the Town Clerk charging that:

1. An elected or appointed official or member of a board or commission of the Town is serving in his or her office in violation of the provisions of this Charter; or
- 2.) That any elected or appointed official or member of any board or commission, or that any official body, board or commission in its corporate capacity, or any Town employee, has knowingly taken any action or failed to take any action, in his or her official capacity, in violation of any of the terms or provisions of this Charter, or of any ordinance, rule, or regulation adopted under the authority thereof.

TOWN OF TIVERTON, RHODE ISLAND

BOARD OF CANVASSERS

343 Highland Rd
Tiverton RI 02878
P (401) 625-6703

In accordance with the Open Meeting Law, Section 42-46-5, notice is hereby given that the BOARD OF CANVASSERS will hold a Meeting on Thursday, October 17, 2019 at 6:00 p.m. at the Tiverton Town Hall, 343 Highland Road, Tiverton, RI 02878.

AGENDA:

1. Approval of Minutes
 - October 9, 2019
 - October 10, 2019
2. Certification of Special Recall Election
3. Board Member Items and Comments

Nancy L. Mello
Town Clerk
Board of Canvass Clerk

A portion of this meeting may be held in executive session pursuant to the Open Meeting Law, Sections 42-46-5(a) of the General Laws of Rhode Island, 1956 (1977 Reenactment), as amended. Individuals requesting interpreter services for the hearing impaired must call 625-6700 three working days in advance of the meeting date

ARTICLE IV TOWN COUNCIL

Section 401 Organization

The non-partisan Town Council shall consist of seven (7) members each of whom shall be elected at large at the regular biennial election in even numbered years to serve for a term of two (2) years and until his/her successor is elected and qualified. The term of a Councilperson shall begin at the first regularly scheduled meeting of the Council following certification of the election by the Board of Canvassers. Four (4) members of the Council shall constitute a quorum.

Section 402 Qualification and Eligibility

Members of the Town Council shall be electors of the Town of Tiverton. A member of the Council shall hold no other Tiverton town office (elected or appointed), nor be an employee of the Town. A Council member shall not be eligible for appointment to any paid office in the Town during the term for which he/she was elected to the Council nor for one (1) year thereafter.

Section 403 Vacancy

Any vacancy in the membership of the Council shall be filled by the candidate for the Council with the next highest vote total from the last election. If the next highest candidate is unavailable, the next available candidate is chosen until the list is exhausted. In the event of a tie, the Council shall select. If no candidate is available from the list, the Council shall appoint a qualified elector to fill the vacancy for the remainder of the unexpired term. The new member shall be sworn in at the next regular Council meeting.

Section 404 Presiding Officers

The Council shall elect from among its members a President and Vice President, each of whom shall serve at the pleasure of the Council. The President shall preside at meetings and shall have the same rights as any other member. The Vice President shall act as President during the absence or temporary disability of the President. The Town Council President shall be recognized as head of Town Government for all ceremonial purposes and by the Governor for purposes of military law.

Section 405 Declaration of State of Emergency

The President of the Town Council shall have the power and authority to declare a state of emergency which shall be ratified by the Council as soon as circumstances permit. An emergency shall be defined as a situation wherein the public health, safety and/or general welfare of the Town is imminently imperiled by an unusual or unforeseen circumstance.

Section 406 Special Meetings

The Council President, or three (3) or more Council members, may call a special meeting, provided the special meeting conforms to the provisions of the State Open Meeting Law regarding such special meetings. Notice of a special meeting shall be delivered in writing to each member and the Town Administrator, or left for him/her at their residence or place of business at least twenty-four (24) hours prior to the time fixed for the special meeting. Any member may waive the requirement of written notice of a special meeting and such waiver shall be entered into the record of proceedings of the meeting. The purpose of a special meeting shall be stated in the notice of the meeting and no business shall be transacted at any special meeting other than that stated in the notice.

Section 407 Powers and Duties

TIVERTON TOWN COUNCIL MEETING SCHEDULE FOR 2019

Meeting time: 7:00 pm

Meeting Place: Tiverton Town Hall, 343 Highland Road, Tiverton, RI 02878

January 14, 2019

January 28, 2019

February 11, 2019

February 25, 2019

March 11, 2019

March 25, 2019

April 8, 2019

April 22, 2019

April 29, 2019 (Hold for Council Workshop)

May 13, 2019

May 28, 2019 (Tues. after Memorial Day)

June 10, 2019

June 24, 2019

July 8, 2019

July 22, 2019

July 29, 2019 (Hold for Council Workshop)

August 13, 2019 (Tues. after RI Victory Day)

August 26, 2019

September 9, 2019

September 23, 2019

September 30, 2019 (Hold for Council Workshop)

October 15, 2019 (Tues. after Columbus Day)

October 28, 2019

November 12, 2019 (Tues. after Veteran's Day)

November 25, 2019

December 9, 2019

December 23, 2019

December 30, 2019 (Hold for Council Workshop)

Approved by Tiverton Town Council
December 10, 2018