



TOWN OF KENNEBUNKPORT, MAINE

**Board of Selectmen Agenda
July 14, 2022 @ 6:00 PM
VILLAGE FIRE STATION
32 North Street**

This is an in-person meeting, but the public may join in Zoom webinar format

Join by **computer or mobile device** and click on:

<https://us06web.zoom.us/j/84111266776>

or go to **ZOOM** and enter the **webinar ID**: 841 1126 6776

By **phone** 1(929) 205 6099 US

1. Call to Order.
2. Approve the June 18 and June 23, 2022, selectmen meeting minutes.
3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)
4. Consider proposed ordinance revisions for the November ballot:
 - a. Healthy Ecosystem Ordinance
 - b. Kennebunk River Ordinance
 - c. Administrative Code
 - d. Shellfish Conservation
 - e. Land Use Ordinance – Residential Rental Accommodations
 - f. Comprehensive Plan
5. Annual board/committee appointments
6. Consider reemployment upon retirement with MePERS of Michael Caiola.
7. Adopt the updated [York County Hazard Mitigation Plan](#).
8. Consider awarding Pier Road Causeway Project engineering contract.
9. Award Winter salt bid.
10. Consider and authorize bids for a new single axle dump truck.

11. Street opening permit by Kennebunk Kennebunkport Wells Water District for Wildwood Ave to Broadway Ave.
12. Authorization of the Chowder House lease.
13. Ballot for Election to MMA's Legislative Policy Committee.
14. Accept \$125.00 from Lexi Stockwell towards the emergency fuel account.
15. Accept \$150.00 from Bree and Scott Clark in memory of Carole Chamberlain dedicated to the general nurses' account.
16. Other Business.
17. Approve the July 14, 2022, Treasurer's Warrant.
18. Adjournment.

AGENDA ITEM DIVIDER

**Town of Kennebunkport
Board of Selectmen Meeting
June 18, 2022 – immediately following Annual Town Meeting
Consolidated School, School Street**

Minutes of the Selectmen's Meeting of June 18, 2022.

Selectmen Attending: Sheila Matthews-Bull, Allen Daggett, Edward Hutchins, D. Michael Weston and Jon Dykstra.

1. Call to Order.

Town Clerk, Tracey O'Roak, called the meeting to order at 9:17 AM.

2. Elect a Chair.

Motion by Selectman Daggett seconded by Selectman Dykstra to nominate Edward Hutchins as Chair of the Board of Selectmen.

VOTE: 5-0

3. Elect a Vice-Chair.

Motion by Selectman Matthews-Bull seconded by Selectman Dagget to nominate D. Michael Weston as Vice-chair of the Board of Selectmen.

VOTE: 5-0

4. Other business and communications. There was no other business.

5. Adjournment.

Motion by Selectman Matthews-Bull to adjourn, seconded by Selectman Dykstra.

VOTE: 5-0

The meeting was adjourned at 9:18 AM.

Submitted by

Laurie A. Smith
Town Manager

Town of Kennebunkport
Board of Selectmen Meeting
June 23, 2022
6:00 PM

MINUTES

Selectmen attending: Jon Dykstra, Allen Daggett, Edward Hutchins, Sheila Matthews-Bull, and D. Michael Weston.

Others attending: Laurie Smith, Yanina Nickless, Werner Gilliam, Christopher Simeoni.

1. Call to Order

Selectman Hutchins called the meeting to order at 6:01 PM.

2. Approve the June 9, 2022 meeting minutes.

Motion by Selectman Matthews-Bull seconded by Selectman Daggett to approve the June 9, 2022, selectmen meeting minutes. **Voted:** 4-0-1. Selectman Dykstra abstained as he was not present at the last meeting. **Motion passed.**

3. Public Forum. (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)

Becky Nolette, the Tax Assessor, gave the status update on the market adjustment. Vision and Becky have finished the analysis and all the data entry and sent out the notices to all the residents. More so, the information about the market adjustment was posted on the Town's website.

Palmer Higgins, a President of Mainely Grass, raised concerns about the Pesticides ordinance drafted by the Conservation Commission. He was not aware of any educational programs that the Commission put together. Also, the draft of the ordinance was introduced during the last Commission meeting, and the public did not have much time to ask questions.

Michael Dunlay, a resident, also raised concerns about the Conservation Commission's Pesticide Ordinance. He said he did not see proper research supporting the ordinance's basis and need. Michael has also pointed out that the ordinance seemed too intrusive and required people to report what pesticides they would use on their property.

Nina Perlmutter, a resident, talked about the landscapers' parking issues. She referred to the previous Board of Selectmen meeting, where the landscaping workers discussed the parking ordinance and asked for leeway to park on the road. Nina said it was not safe and, as a resident, she wanted to know that emergency vehicles would be able to pass the street and get to the house freely. On the other unrelated note, Nina asked for the community gardens for the residents to socialize.

David James asked if a new mill rate was established yet for the Town based on the new evaluations. Becky said it had not been set yet, and every year it happens in July right before the commitment.

4. Consider the consent agreement for 133 Arundel Road, owned by Martha and Michael Kelley.

Werner Gilliam, the Director of Planning and Development, reminded us that, during the last meeting, the Board voted to consider the consent agreement for 133 Arundel Rd, which was specific to the setback violation for a detached garage. Werner said he was working with the Town attorney to draft the consent. He asked for the authorization so that they could move forward with the paperwork.

Motion by Selectman Weston, seconded by Selectman Daggett, to consider a Consent agreement for 133 Arundel Road owned by Martha and Michael Kelley.

Voted: 5-0. Motion passed.

5. Appointment of Climate Action Plan Task Force

Yanina Nickless, Assistant to the Town Manager, reminded the Board that, in May, Eli Rubin, Community Planner, asked for the authorization to put together a Climate Action Plan Task Force. Since then, the Town has advertised for the Task Force and received five applications. One of the applications came from Jon Dykstra, who, at the time, was not on the Board of Selectmen. Yanina asked to appoint four community members, two Selectmen, and two staff members for the Climate Action Task Force.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull to appoint the Climate Action Plan Task Force (4 community members: Jen Armstrong, Jamie Houtz, Pam Morgan, Jono Anzalone; 2 Selectmen: Jon Dykstra and D. Michael Weston; 2 staff members: Yanina Nickless and Eli Rubin). **Voted:** 5-0. **Motion passed.**

6. Post Office request to move mail drop off.

Laurie Smith, Town Manager, said that the Post Office has requested to move a mail drop-box to a new location because they have more vehicles in their parking lot. The box is located at the exit to the Post Office's parking lot. This means people must drive through the parking lot to drop off their mail. The Postmaster asked for a new location on North Street at the small parking area, which would require the removal of two parking spaces.

No action was necessary. No action was taken.

7. Street opening permit by Dearborn Construction for Old Cape Road.

Chris Simeoni, Public Works Director, informed the Board that, pursuing a notification that we have sent out to all the abutters on Old Cape Road to let them know that the Town will be reconstructing the road, we received a street opening permit.

Motion by Selectman Weston, seconded by Selectman Daggett, to approve the street opening permit by Dearborn Construction for Old Cape Road. **Voted:** 5-0.

Motion passed.

8. Consider an amendment to Chapter 240 – 7.14 of the Land Use Ordinance regarding Residential Rental Accommodations or “Roomers” permit.

Werner Gilliam, Planning and Development Director, said that the Board discussed this during their last meeting and pointed out that this is just another reminder and opportunity to ask any questions. He asked the Board to consider this for the November warrant. This has been discussed at the Zoning Board of Appeals meetings: they are the ones who currently review applications for residential rental accommodations. The proposed amendment is more of an administrative item, which can be handled at the Code Office level without engaging ZBA.

No action was necessary. No action was taken.

9. Discussion of Summer Schedule.

Laurie Smith, Town Manager, reminded the Board that during the past few years, Selectmen had the reduced summer schedule having the first meeting of the month as a regular meeting and the second meeting as the warrant signing only. She also highlighted that the Board would have to have regular meetings in case of emergency.

No action was necessary. No action was taken.

10. Quit Claims on 89 Wildes District Road and 49 Turbats Creek Road.

Laurie Smith, Town Manager, said that earlier this year, we foreclosed on two properties in town (89 Wildes District and 49 Turbats Creek Rd). As a part of a regular process for foreclosures, the Town keeps contacting the property owners to make arrangements for payments. In this instance, the staff successfully got the full payments for both properties, so the staff recommended authorizing the quit claim deeds.

Motion by Selectman Daggett, seconded by Selectman Dykstra, to authorize the quit claims on 89 Wildes District Road and 49 Turbats Creek Road. **Voted:** 5-0.

Motion passed.

11. Consider Treasurer Disbursement Warrant Policy.

This Policy allows any one of the Selectmen to sign Payroll Warrants.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to authorize the Treasurer Disbursement Warrant Policy. **Voted:** 5-0. **Motion passed.**

12. Consider appointment of Interim Treasurer.

Laurie Smith, Town Manager, reminded the Board that Denise Brown's last official day was last Friday, June 17, even though she is still helping the town while we are looking for a new Finance Director. Laurie requested to be appointed as the Interim Treasurer in the meantime.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to appoint Laurie Smith as the Interim Treasurer. **Voted: 5-0. Motion passed.**

13. Accept \$100.00 from an anonymous donor dedicated to the general nurse's account.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to accept \$100.00 from an anonymous donor dedicated to the general nurse's account. **Voted: 5-0. Motion passed.**

14. Other Business.

There was no other business.

15. Approve the June 23, 2022, Treasurer's Warrant.

Motion by Selectman Hutchins seconded by Selectman Daggett to approve the June 23, 2022, Treasurer's Warrant. **Voted: 5-0. Motion passed.**

16. Executive session per (MRSA 1, §405-6E) for consultation with the Town attorney to discuss legal rights and duties.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to go into the executive session. **Voted: 5-0. Motion passed.**

No other actions were taken during the session.

17. Executive session per (MRSA 1, §405-6E) for consultation with the Town attorney to discuss legal rights and duties.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to go into the executive session. **Voted: 5-0. Motion passed.**

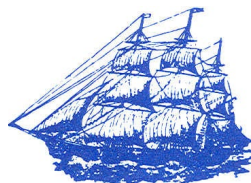
No other actions were taken during the session.

18. Adjournment.

Motion by Selectman Matthews-Bull seconded by Selectman Dykstra to adjourn. **Voted: 5-0. Motion passed.** Meeting adjourned at 8:00 PM.

Submitted by,
Yanina Nickless,
Assistant to the Town Manager

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

Memorandum

To: Board of Selectmen; Laurie Smith, Town Manager
Fr: Tracey O’Roak, Town Clerk
Re: Proposed ordinance revisions for November ballot
Dt: June 29, 2022

We have six ordinances to bring to the voters in November. I have broken down the proposed ordinances below.

- a) Healthy Ecosystem Ordinance – this is a new ordinance proposed by the Conservation Commission.
- b) Kennebunk River Ordinance – River Harbormaster Jamie Houtz has proposed revisions to the definitions section regarding commercial vessels and commercial fishing.
- c) Administrative Code – proposed changes include qualifications for Town Meeting Moderator and removal of elected officials.
- d) Shellfish Conservation Commission – proposed revision requires applicants to apply in person and clarify the requirements for the fee waiver of diggers under 12 years of age.
- e) Land Use Ordinance – Werner Gilliam has proposed revisions to the application process for Residential Rental Accommodations (“roomers”). The request was brought forward by the Zoning Board of Appeals.
- f) Comprehensive Plan – this is the voter’s opportunity to approve the Kennebunkport 2030 Comprehensive Plan.

MEMORANDUM

To: Kennebunkport Board of Selectmen
Fr: Kennebunkport Conservation Commission
Re: Proposed Healthy Ecosystem Ordinance
Dt: July 6, 2022

Request for Placement of Proposed Ordinance on the November 2022 Ballot

The Kennebunkport Conservation Commission respectfully requests the Board of Selectmen to approve the previously submitted Healthy Ecosystem Ordinance for the November 2022 Town ballot for potential approval by Kennebunkport voters. The below information provides background on our assessment of the need for and benefits of this ordinance. We thank you for your consideration.

Background

A question on the 2018 Comprehensive Plan survey indicated that 82% of respondents believed “the Town should play a more active role in protecting sensitive environmental areas through measures such as enhanced regulations for...fertilizer and pesticide application.” The Conservation Commission (KCC) serves as a research, advisory, and advocacy group on town environmental and conservation issues, we felt it was important to learn more. Consequently, a new, more focused survey was created by the KCC to better understand community members’ thoughts and opinions on the use of synthetic and organic pesticides and fertilizers in town.

KCC Healthy Ecosystem Survey Results

Survey results indicated that a significant number of respondents had a concern about the use of synthetic pesticides and fertilizers in the region:

- Almost 50% had “lots of concern” about the effects that pesticide use could be having on air and water quality, human health, pollinators, or general ecological health.
- Another 35% indicated “some concern,” for a total of 85% indicating some or more concern with pesticide use.

When asked what level of action the town should take to protect water, pollinators, and the environment, there was a significant minority on each end of the opinion spectrum:

- 29% wanted the town to “take no action.”
- 29% wanted the town to “take a lot of action by banning all pesticides.”
- A larger group (43%) took the middle road, wanting the town to take “some action” to reduce the use of pesticides.

Finally, when asked specifically about the link between algae bloom and the overuse of fertilizers on land adjacent to water bodies:

- Fully half of the respondents wanted both a town regulation *and* an educational campaign to address this practice.
- 28% wanted only an educational campaign.
- A total of 78% wanted some level of action.
- Just 7% wanted only a town regulation.
- 15% wanted neither.

Why an Ordinance is Needed

The KCC agrees that given the town's location and physical environment, this is an important issue for the community. Like most New England coastal villages, Kennebunkport has been a fishing community for a few millennia. We have approximately 50 miles of shoreline, including islands, beaches and rocky shores, marshes, and rivers (Kennebunk and Little and Batson). It is important to preserve the water quality, the vegetation (e.g., marsh grass and seaweed), and the many fish and crustaceans, and mollusk species. This requires us to minimize the amounts of pesticides and fertilizers used since a significant fraction is transported into the water and has been shown to adversely affect the vegetation and the living creatures in the water. **As is true of all environmental pollutants, pesticides do not remain in the area where they were initially applied. They are transported and dispersed in the air by wind and turbulence, in the water by currents, in underground water aquifers by slow currents and dispersion, and in soils by transport in fissures/cracks and by dispersion. The viewpoint that applying these chemicals on private property should be allowed does not take these facts into account – *what is applied on private property does not stay on private property.***

While there is clearly support from much of the public for some level of action on this issue, there is overwhelming support for education. And while there is an appetite on the KCC for an outright ban of these substances, the complexity of that issue prompted the committee to begin with this ordinance, which is aimed at creating a baseline of information on the amount and type of pesticides and fertilizers applied by commercial applicators in Kennebunkport.

At the same time, the KCC would create and publicize an ongoing education process for community members on the benefits of moving towards more organic and less harmful processes. It is our belief, based on the survey information as well as informal discussions with the public, that this approach will be welcomed. It is also our belief that there is a trend towards offering organic alternatives among commercial applicators, and we would hope this ordinance, along with the separate educational program, would support this trend.

Commercial applicators are already required to be licensed by the State and to report annually in a similar fashion to the State. The data generated by this ordinance will provide the Town and the KCC with a better understanding of the level and type of substances applied within our town borders, and whether an educational process alone can be effective.

Ordinance Summary

Below is a summary of the proposed Ordinance:

- It applies to any entity that has a commercial applicator license in the State of Maine.
- It requires commercial applicators to register separately with the Town of Kennebunkport.
- It requires commercial applicators to report annually on the amount and location (based on five existing zoning designations, not individual addresses) of synthetic pesticides and fertilizers applied
- It restricts synthetic fertilizer applications as below:

- The application of fertilizers is prohibited between 1 December and 31 March.
 - No fertilizer shall remain on an impermeable surface (e.g., driveway, parking lot, road). The applier is responsible for sweeping off that surface, in the direction of the vegetated area that was fertilized.
 - No fertilizer shall be applied within 24 hours of an expected heavy rain (heavy rain is defined as a total storm rainfall greater than 0.5 inches), to avoid runoff into water bodies.
- Violations can be reported to the Code Officer and the KCC.
- Failure to register or provide adequate reports (see Sections 4 and 5) will result in a \$250 fine. Repeated reports of improper applications of fertilizer could result in public censure by the Conservation Commission.
- The Code Officer will implement, administer, and enforce the provisions of the Ordinance.
- Appeals will be reviewed by the Conservation Commission with a recommendation forwarded to the Code Enforcement Officer/Board of Selectmen.

Healthy Ecosystem Ordinance

As submitted to Board of Selectmen on June 22, 2022 by

Kennebunkport Conservation Commission

1. Introduction

This ordinance is intended to address inadequacies in the current State Board of Pesticide Control regulations in order to improve human and environmental health in Kennebunkport. The new ordinance concerns registration of commercial pesticide applicators and reporting requirements for amounts applied, locations and times of application, and guidance for fertilizer applications. The Town will use the reported application data to determine whether total use is increasing or decreasing from year to year; identified trends may guide development of future new ordinances.

As is true of all environmental pollutants, a significant fraction of pesticides and synthetic fertilizers do not remain on the area where they were initially applied. They are transported and dispersed in the air by wind and turbulence, in the water by currents, in underground water aquifers by slow currents and dispersion, and in soils by transport in fissures/cracks and by dispersion. The EPA has carried out observational studies of all these processes and has developed and uses basic science models that can predict the concentration of a pesticide anywhere around the location of its application.

A key aspect of maintaining environmental health in Kennebunkport is protection of the coastal area, including the shoreline and the offshore waters. Like most New England coastal villages, Kennebunkport has been a fishing community for a few millenia. We have about 50 miles of shoreline, including the many islands, the beaches and rocky shores, the marshes, and the rivers (Kennebunk and Little and Batson). The Town shoreline and shoreland zones can be seen in the map at:

https://www.kennebunkportme.gov/sites/g/files/vyhli3306/f/uploads/kennebunkport_shoreland_zoning_map_june_2015_1.pdf

Due to the high proportion of shoreline, it is important to preserve water quality, maintaining healthy vegetation (e.g., marsh grass and seaweed) and protect the environment for fish, crustaceans and mollusks. It is optimal to minimize the amounts of pesticides and fertilizers used, since a significant fraction of what is applied is transported into the water and has been shown to adversely affect both the vegetation and living creatures in the water.

Sections 2 and 3 provide definitions and a sample pesticide/fertilizer table, and Sections 4 through 7 provide specific guidance.

2. Definitions

Application: The use of pesticides and/or fertilizers on public or private property, including but not limited to lawns and landscapes, trees and shrubs, athletic fields, outdoor recreation facilities, campgrounds and golf courses.

Commercial Applicator: A sole proprietorship or business entity, whose use and application of pesticide and/or fertilizer is provided as a service for which compensation is received.

Drift: Pesticide aerosol or vapor that is transported by the wind.

EPA: The US Environmental Protection Agency.

Fertilizer: Any material of synthetic, natural, or organic origin that is applied to soils or to plant tissues to supply one or more nutrients that facilitate the growth of plants.

Herbicide: Included under the “pesticide” category, and designed to control, dessicate or kill plants, trees, weeds, or grasses, and their seeds.

MBPC: Maine Board of Pesticide Control.

Natural, Organic, or “Non-Synthetic”: A substance that is derived from mineral, plant, or animal matter and does not undergo a “synthetic” process as defined in the Organic Foods Production Act, 7 U.S.C. & 6502(21), as the same may be amended from time to time.

Neonicotinoid: A class of neuro-active insecticides including, but not limited to, acetamiprid, clothianidin, imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam.

Nonsynthetic: A natural substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process.

Pesticide: Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. Herbicides, fungicides, insecticides, miticides, and rodenticides are considered pesticides. This includes any pesticide regulated by state or federal law. This does not include other biological agents not regulated as pesticides by the Maine BPC or the EPA, such as substances used to control mites, nematodes, parasitic wasps, snails.

Runoff: Water flowing over the land surface or artificial surfaces, and possibly entering a stream and finally the ocean. Pesticides and fertilizer can be carried along with the runoff water. Even if the runoff water evaporates before it travels 100 feet or more, it deposits the pesticide or fertilizer at the location where it evaporates.

Spraying: - Any pesticide application made by using pressurized apparatus to disperse the pesticide in the air as small aerosol drops.

Synthetic: A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally-occurring sources, except that such

term shall not apply to substances created by naturally occurring biological processes.

Toxic: Containing or being poisonous material when capable of causing significant health effects.

Water Body: Any lake, pond, river, stream, ocean, or tidal areas as those terms are defined in the Town's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

Wetland: A coastal saltwater or inland freshwater wetland (includes intermittent water cover and soil saturated with water) as defined in the Town's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

3. Table of basic pesticides and fertilizers

There are many pesticides and fertilizers, and they have various chemical names and product names. At the garden store or hardware store, for each specific pesticide or fertilizer use, there are multiple different bags with multiple brand names on the shelves. Since the typical Town resident cannot keep up with all the brand name options and their chemical composition, the table below attempts to summarize the major categories in a simple table. There are three columns. This first column describes the purpose, and the second column lists some organic and synthetic names.

Table 1. List of Major Categories of Pesticides and Fertilizers

Purpose	Chemical name
Kill or deter ticks and mosquitos and wasps	pyrethrins (organic) neonicotinoids (synthetic) pyrethroids (synthetic) permethrin (synthetic)
Kill grubs and other insects and larvae in soil	milky spore (organic) carbonyl (synthetic) trichlorfon (synthetic)
Kill cabbage caterpillars and other leaf eaters	bacillus thuringiensis (organic) carbaryl (synthetic) zeta-cypermethrin (synthetic)
Kill termites, wasps, ants	boric acid (organic) white vinegar (organic) fiprinol (synthetic) imidacloprid (synthetic)
Herbicide (either stand-alone or mixed with fertilizer) to kill broadleaf and other weeds and vine growth	herbicidal soap (organic) 2,4-D, MCPs, dicamba (synthetic)

Herbicide (either stand-alone or mixed with fertilizer) to prevent seeds sprouting (pre-emergent)	corn gluten (organic) long list of synthetic: trifluren, siduron, isoxben, dithiopyr, prodiamir
Fertilizers without pesticides or herbicides	manure (organic) sludge from municipal plant (organic, except contains residual pollutants), mulch/compost (organic), seaweed/fish products (organic) classic NPK fertilizer (synthetic) - Three numbers represent percent Nitrogen (N), Phosphate (P ₂ O ₅), and Potash (K ₂ O).

4. Pesticide and Fertilizer Applicant Registration Required.

Any sole proprietor or business entity that engages in the application of pesticides and/or fertilizers containing pesticides within the Town must first register to do so. This requirement applies to any entity who carries a Maine Board of Pesticide Control license, including an Agricultural Basic, Private, or Commercial Applicators License. Registrations should be renewed annually and are valid from 1 January through 31 December of the following year. Registration forms and processes shall be administered by the Code Officer or his designee. Registration shall include, as a minimum, the following information:

1. Company name, address, and website; contact person name, phone number, and email address.
2. Copy of State of Maine Pesticide Applicator license.
3. Annual registration fees shall be as described on a fee schedule established by the Board of Selectmen. Said fee schedule may be amended by Board order from time to time.

5. Pesticide and Fertilizer Application Reporting.

By 31 January of each year, any sole proprietor or business entity that received compensation for the application of pesticides and/or fertilizers containing pesticides must provide a summary report of applications made in the Town for the past year. The Town will use the reported application data to determine whether total use is increasing or decreasing from year to year.

Reports must include the following for pesticides:

- a.* General location of applications, identified as five areas, based on designations in the Kennebunkport shoreland zoning map:

https://www.kennebunkportme.gov/sites/g/files/vyhlf3306/f/uploads/kennebunkport_shoreland_zoning_map_june_2015_1.pdf

The five areas are the following:

- 1) Village area: DS (Dock Square), VR (Village Residential), VRE (Village Residential East), CA (Cape Arundel), RF (RiverFront)
- 2) GR (Goose Rocks)
3. Cape Porpoise area: CPE (Cape Porpoise East), CPS (Cape Porpoise Square), CPW (Cape Porpoise West)
- 4) FE (Free Enterprise)
- 5) F&F (Farm and Forest)

A map is attached where the five areas are clearly indicated. (MAP TO COME)

b. Week of application

c. For each week (defined as Sunday through Saturday) and area, list the EPA registration number for each pesticide used, where applicable. Provide the pesticide and combination product names used, whether identified as synthetic or non-synthetic, and total undiluted formulation (in pounds), and total land areas (in square feet or acres) treated as listed. This is in addition to the Commercial Applicator Annual Summary Report required by the Maine BPC.

Reports must include the following for fertilizers containing pesticides:

- a. General location of applications, identified using the same five areas listed above under pesticides
- b. Week of application
- c. Fertilizer and combination product names used, whether identified as synthetic or non-synthetic, including total granular or undiluted or liquid formulation (in pounds), including the ratio of nitrogen (N), phosphorous (P) and potassium (K). The weight of the pesticides in the fertilizer should be included.
- d. Square feet or acres applied.

To simplify the reporting and analysis of the results by the Town's designee (Conservation Commission), a standard Excel spreadsheet is available online with the needed information clearly listed. An electronic version of the document must be submitted.

6. Restrictions on Fertilizer Applications.

The application of fertilizers is prohibited between 1 December and 31 March.

No fertilizer shall remain on an impermeable surface (e.g., driveway, parking lot, road). The applicator is responsible for sweeping off that surface, in the direction of the vegetated area that was fertilized.

No fertilizer shall be applied within 24 hours of an expected heavy rain (heavy rain is defined as a total storm rainfall greater than 0.5 inches), to avoid runoff into water bodies.

7. Violations; Penalties for Non-compliance, Administration and Appeals.

Violations can be reported to the Code Officer and Conservation Commission by anyone.

Failure to register or provide adequate reports (see Sections 4 and 5) will result in a \$250 fine for each instance. Repeated reports of improper applications of fertilizer (Section 7) by commercial applicators could result in public censure by the Conservation Commission.

The Code Officer will implement, administer, and enforce the provisions of the Ordinance. Appeals will be reviewed by the Conservation Commission with a recommendation forwarded to the Code Enforcement Officer/Board of Selectmen.

These definitions copied from: <https://www.kennebunkportme.gov/town-clerk/pages/kennebunk-river-ordinance>

Section X – Definitions

Vessel

The word “vessel” as used herein shall include boats of all sizes powered by sail, machinery or hand, scows, dredges, lobster, crab and shellfish cars, and craft of any kind.

Commercial Vessel

~~A vessel from which the owner obtains in excess of 67% of his earned income. The definition of Commercial Vessel includes Commercial Fishing Vessel, unless otherwise indicated.~~

Commercial Vessel

~~A vessel that is primarily used for commercial fishing.~~

Commercial Fishing Vessel

~~A vessel from which the owner obtains in excess of 67% of his earned income from commercial fishing. Commercial fishing is defined as fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade.~~

Commercial Fishing

~~Commercial fishing is defined as fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade.~~

PART I. GENERAL ORDINANCES

Chapter 5. Administrative Code

Article I. Elected Officers

§ 5-1 Town Meeting Moderator.

A. Election. Each Town Meeting shall elect a Moderator as prescribed by statute.

~~B. Qualification. The Town Meeting Moderator shall be a registered voter of the Town.~~

B. Duties. In addition to the duties prescribed by statute, the Town Meeting Moderator shall appoint a sufficient number of members to the Budget Board to constitute a Board consisting of 12 members, the terms of four members expiring every three years.

§ 5-3 Removal.

Any elected official of the Town of Kennebunkport, including RSU #21 Directors, may be removed from elective office by the voters of the Town of Kennebunkport in the following manner:

- A. A number of voters equal to at least 10% of votes cast in the Town at the last gubernatorial election, but in no case less than 10, may present a written petition, which petition shall fully set forth the reasons therefor, to those members of the Board of Selectmen having no conflict of interest in the subject matter of said petition;
- B. In or within 15 days after the receipt of such petition, said Selectmen shall hold a public hearing on said petition, which hearing shall be restricted and limited to presentation and discussion of those matters set forth in the petition. Said public hearing shall be conducted by said Selectmen having no interest in the subject matter of the petition in accordance with rules of conduct and guidelines established by and set forth by them at the outset of the hearing;
- C. Notice for the aforesaid public hearing shall be given in the same manner as is provided for and established with regard to notice for a Town Meeting;
- D. In or within 15 days after the aforesaid public hearing, a Town Meeting shall be called by the said Selectmen and a vote by secret ballot shall be taken; and
- E. In the event of an affirmative vote for such removal, such vote shall take effect and such removal shall be effective as of recording thereof in the record of the meeting, subject to such recount of the vote as may be requested and provided by statute.

§ 127-5 Municipal shellfish digging license required.

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this chapter.

A. Designation, scope and qualifications.

- (1) Resident recreational shellfish license. The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
- (2) Nonresident recreational shellfish license. The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of himself and his family.
- (3) Resident commercial shellfish license. The license is available to residents of this municipality and entitles the holder to dig and take no more than the amount of shellfish as recommended by the Shellfish Conservation Committee and approved by the Board of Selectmen in any one day, unassisted only. Commercial license holders must keep a daily log of clams harvested. This license shall be revoked if the license holder ceases to reside in the municipality.
- (4) Nonresident commercial shellfish license. The license is available to nonresidents of this municipality and entitles the holder to dig and take no more than the amount of shellfish as recommended by the Shellfish Conservation Committee and approved by the Board of Selectmen in any one day, unassisted only. Commercial license holders must keep a daily log of clams harvested.
- (5) Daily recreational shellfish license. The license is available to residents and nonresidents of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family. The license is good only for the date stated on the license.
- (6) License must be signed. The licensee must sign the license to make it valid.

B. Application procedure. Any person who would like to obtain a license must apply in person with the Town Clerk for the licenses required by this chapter on forms provided by the municipality.

- (1) Contents of application. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
- (2) Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees. The fees for the licenses shall be set by the municipal officers upon the approval of the Commissioner of the Department of Marine Resources and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

D. Limitation of diggers. Clam resources vary in density and size distribution from year to year and

over the limited soft-clam-producing area of the Town. It is essential that the Town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size distribution, abundance, and the Warden's reports, as required by § **127-3**, the Shellfish Conservation Committee in consultation with the Department of Marine Resources Area Biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- (1) Prior to January 1, the Committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.
 - (2) After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to January 1, the Shellfish Conservation Committee shall notify the Town Clerk, in writing, of the number and allocation of shellfish licenses to be issued.
 - (3) Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation that the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the period of issuance. This information shall also be posted in the municipal offices until the period concludes.
 - (4) The Town Clerk shall issue licenses to residents and nonresidents as allocated [Subsection **D(1)**] from mid-April and until June 30, after which licenses shall be issued without regard to residency on a first-come, first-served basis. [**Amended 11-3-2020**]
- E. License expiration date. Each license issued under authority of this chapter expires at midnight on December 31 next following date of issuance. Each daily license issued under the authority of this chapter shall be valid only for the date stated on the license.
- F. Reciprocal harvesting privileges. Licensees from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.
- G. License fee waiver. Recreational shellfish license fees will be waived for residents 65 years or older and 12 years or younger accompanied by an adult holding a valid Kennebunkport recreational shellfish license.
- H. A shellfish license is not available to anyone whose municipal or state shellfish license is under suspension or who has been convicted of violating Maine marine statutes or state wildlife statutes within a prior twenty-four-month period or who has a valid commercial license in another Maine municipality.
- I. Suspension/revocation. A shellfish license issued under this chapter is subject to suspension as follows:
- (1) In cases where a court enforcement proceeding is brought under this chapter or state law.
 - (a) In the case of a first court judgment finding any violation, an automatic suspension of 60 days;
 - (b) In the case of a second court judgment finding any violation against the same licensee, an automatic revocation of the existing license, and the person found in violation is prohibited from reapplying for

a license under this chapter for one year.

- (2) In cases where the Shellfish Warden believes that a licensee has violated this chapter, he may give notice to the licensee of such belief. If, after providing the licensee with an opportunity to rebut any evidence he has, the Shellfish Warden concludes that a violation has occurred, he may issue a notice of suspension not to exceed 30 days.
 - (a) A licensee who has received a notice of suspension may appeal to the Board of Selectmen by filing a written request with the Town Clerk within seven days of the day the Shellfish Warden's decision is rendered. Upon filing the request, the suspension is stayed pending the Board's decision.
 - (b) The Board of Selectmen shall hear the appeal as soon as practicable and shall provide the appellant with at least seven days' written notice of hearing. It shall hear all the evidence and decide whether to uphold or reverse the decision of the Shellfish Warden. The rules of evidence do not apply.

Code of Kennebunkport
Part II – Zoning Ordinances
Chapter 240 - Land Use

§ 240-4.3 Village Residential Zone.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Animal husbandry
Agriculture	Cemetery	Home occupation
Essential services	Church	Residential rental accommodation
Farm stand	Community building	
Single-family dwelling	Community use	
Storage and repair of fishing equipment	Elder-care facility	
<p>Parking of motor vehicles limited to any publicly owned lot in excess of 2 January 1, 2008 acres in size, with frontage on and access from a state-controlled highway. The maximum number of parking spaces for this use may not exceed 150, and there shall be no bus or large recreational vehicle parking on the lot. Further, with the exception of road frontage, dense vegetative buffering, a minimum of 6 feet in height, is required beginning at the property line and extending inward for a distance of 10 feet.</p>		
Parking, temporary overflow public	Library	
Timber harvesting	Multiplex	
Timber management	Museum	
Two-family dwelling	Park	
<u>Residential rental accommodation</u>	School	*See § 240-7.1J

§ 240-4.4 Village Residential East Zone.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Animal husbandry
Agriculture	Cemetery	Home occupation
Essential services	Church	Residential rental accommodation
Farm stand	Community building	
Single-family dwelling	Community use	
Storage and repair of fishing equipment	Elder-care facility	
Timber harvesting	Hotel and motel expansion	
Timber management	Library	
Two-family dwelling	Multiplex	
	Residential rental accommodation	
	Museum	
	Park	
	School	*See § 240-7.1J

§ 240-4.5 Dock Square Zone.
[Amended 6-8-2021]

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment**	Child-care center
Essential services	Bed-and-breakfast	Handcrafts
Single-family dwelling	Boatyard	Home occupation
Storage and repair of fishing equipment	Club	Residential rental accommodation
Two-family dwelling	Commercial center	
<u>Residential rental accommodation</u>		
	Financial institution	
	Hotel	
	Inn	
	Marina	
	Motel	
	Multiplex	
	Park	
	Parking, commercial	
	Professional and business offices	
	Public hospitality facility	
	Residential mixed use	
	Restaurant	
	Retail business	
	Ship chandlery	
	Theater	

NOTES:

* Exceptions to the requirement for Planning Board Site Plan Review Approval are set forth in § 490-10.2B(3).

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
**	See § 490-7.1J.	

§ 240-4.6 **Riverfront Zone.**

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Child-care center
Agriculture	Bed-and-breakfast	Handcrafts
Essential services	Boatyard	Home occupation
Farm stand	Club	Residential rental accommodation
Single-family dwelling	Commercial center	
Storage and repair of fishing equipment	Community building	
Two-family dwelling	Community use	
<u>Residential rental accommodation</u>		
	Financial institution	
	Fish processing	
	Hotel	
	Inn	
	Library	
	Marina	
	Marine transport services	
	Motel	
	Multiplex	
	Museum	
	Park	
	Professional and business offices	

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
	Residential mixed use	
	Restaurant	
	Retail business	
	School	
	Ship chandlery	
	Theater	*See § 240-7.1J

§ 240-4.7 Cape Arundel Zone.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Home occupation
Agriculture	Cemetery	Residential rental accommodations
Essential services	Church	
Farm stand	Museum	
Library	Commercial center	
Park	Community building	
Single-family dwelling		
Storage and repair of fishing equipment		
Timber harvesting		
Timber management		
Two-family dwelling		*See § 240-7.1J

~~Residential rental accommodations~~

§ 240-4.8 **Goose Rocks Zone.**

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Child-care center
Agriculture	Cemetery	Home occupation
Essential services	Club	Residential rental accommodations
Farm stand	Community building	
Public hospitality facility, temporary	Community use	
Single-family dwelling	Library	
Storage and repair of fishing equipment	Museum	
Timber harvesting	Park	
Timber management		
Two-family dwelling		*See § 240-7.1J

~~Residential rental accommodations~~

§ 240-4.9 Cape Porpoise East and Cape Porpoise West Zones.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Home occupation
Agriculture	Boatyard	Residential rental accommodations
Essential services	Commercial marina	
Farm stand	Community use	
Single-family dwelling	Elder-care facility	
Storage and repair of fishing equipment	Fish processing	
Timber harvesting	Library	
Timber management	Museum	
Two-family dwelling	Park	
<u>Residential rental accommodations</u>		
	Residential mixed use	
	Ship chandlery	*See § 240-7.1J

§ 240-4.10 Cape Porpoise Square Zone.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Child-care center
Agriculture	Automobile repair shop	Handcrafts
Essential services	Automobile service station	Home occupation
Farm stand	Bed-and-breakfast	Residential rental accommodation
Single-family dwelling	Boatyard	
Storage and repair of fishing equipment	Church	
Two-family dwelling	Club	
<u>Residential rental accommodation</u>		
	Commercial center	
	Commercial marina	
	Community building	
	Community use	
	Financial institution	
	Fish processing	
	Inn	
	Library	
	Multiplex	
	Museum	
	Park	
	Professional and business offices	
	Residential mixed use	
	Restaurant	
	Retail business	
	School	

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
	Ship chandlery	
	Theater	*See § 240-7.1J

§ 240-4.11 Free Enterprise Zone.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Child-care center
Agriculture	Automobile-oriented business	Handcrafts
Animal husbandry	Automobile repair shop	Home occupation
Essential services	Automobile service station	Residential rental accommodation
Farm stand	Bed-and-breakfast	
Manufactured housing	Boatyard	
Single-family dwelling	Campground	
Storage and repair of fishing equipment	Cemetery	
Timber harvesting	Club	
Timber management	Commercial center	
Two-family dwelling	Commercial complex	
Parking, temporary overflow public	Commercial recreation, indoor	
<u>Residential rental accommodation</u>		
	Commercial recreation, outdoor	
	Community building	
	Community use	
	Elder-care facility	
	Extractive Industry	
	Financial institution	

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
	Fish processing	
	Funeral home	
	Golf course	
	Health institution	
	Hotel	
	Inn	
	Kennel	
	Library	
	Manufacturing	
	Marina	
	Mobile home park	
	Motel	
	Museum	
	Nursing home	
	Park	
	Parking, commercial	
	Professional and business offices	
	Public utilities	
	Residential mixed use	
	Restaurant	
	Retail business	
	School	
	Ship chandlery	
	Theater	
	Veterinary clinic	

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
	Warehouse	
	Wireless telecommunications facilities	
	Wholesaling	*See § 240-7.1J

§ 240-4.12 Farm and Forest Zone.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory apartment	Accessory apartment*	Child-care center
Agriculture	Bed-and-breakfast	Handcrafts
Animal husbandry	Boatyard	Home occupation
Essential services	Campground	Residential rental accommodation
Farm stand	Cemetery	
Manufactured housing	Club	
Single-family dwelling	Commercial Recreation, outdoor	
Storage and repair of fishing equipment	Community building	
Timber harvesting	Community use	
Timber management	Extractive industry	
Two-family dwelling	Fish processing	
<u>Residential rental accommodation</u>		
	Funeral home	
	Golf course	
	Health institution	
	Hotel	
	Inn	
	Kennel	

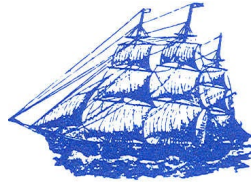
Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
	Library	
	Manufacturing	
	Mobile home park	
	Motel	
	Museum	
	Nursing Home	
	Park	
	Professional and business offices	
	Public utilities	
	Restaurant	
	Retail business	
	Theater	
	Veterinary clinic	
	Warehouse	
	Wholesaling	*See § 240-7.1J

§ 240-7.14 **Residential rental accommodations.**

C. Approval; permit; appeal.

- (1) Approval to operate a residential rental accommodation shall be granted by the Code Enforcement Officer upon a successful property inspection and complete permit application. ~~Zoning Board of Appeals contingent upon a successful property inspection by the Code Enforcement Officer subject to Subsection B above. Following such approval, the Code Enforcement Officer shall issue a permit.~~ Such permit shall be issued to the property owner only and is subject to sufficient evidence that the property is owner occupied.
- (2) A permit to operate a residential rental accommodation shall expire upon a change in ownership or a change in owner residency status.
- (3) A single-family dwelling approved to accommodate roomers prior to November 8, 2016, may continue to operate under the conditions of approval as specified by the Zoning Board of Appeals, including the Land Use Ordinance requirements and restrictions in effect at the time of such approval.
- (4) Permit shall be revoked upon confirmation of a second confirmed noise or barking dog citation related to use of a dwelling unit by a roomer. Permit shall also be revoked upon any confirmed violation of the requirements contained within the definition of residential rental accommodation located in Article 2. Any such permit having been revoked shall not be reissued to the same property owner within one year (365 days) from the date of revocation, which shall require Code Enforcement Officer reapproval ~~Zoning Board of Appeals reapproval.~~
- (5) An appeal from any decision of the Code Enforcement Officer related to the issuance, non-issuance, suspension or revocation of a residential rental accommodation permit shall be taken by an aggrieved party to the Zoning Board of Appeals within 30 days of the decision.

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

Memorandum

To: Laurie Smith, Town Manager
Fr: Eli Rubin, Community Planner
Re: Comprehensive Plan Update
Dt: July 11, 2022

Background

The Kennebunkport 2030 Comprehensive Plan is now complete. The final product is two volumes that have been combined into one bound copy and submitted to the Maine Municipal Planning Assistance Program on 6/14/22. State review and final approval is expected to conclude before the selectboard meeting on Aug 11th.

The complete plan can be found at Town Hall, Graves Memorial Library, Cape Porpoise Library and online:

https://kennebunkportcp.info/wp-content/uploads/2022/06/KPTCompPlan_ConsolidatedVol12_6.2.22_reduced.pdf

Remaining Timeline

- Aug 11: Public discussion and input at Selectboard meeting
- Sept 13: 30-day noticing for Comprehensive Plan Public Hearing
- Sept 22: Selectboard signs warrant
- Oct 13: Public Hearing (with Growth Planning Committee)
- Nov 8: Election Day

AGENDA ITEM DIVIDER

2022 Committee/Board Re-Appointments				
Last Name	First Name	Committee	New Term Exp	Comments
Dufoe	April	Administrative Code Committee	Jul-23	Reappointment
Smith	Richard	Administrative Code Committee	Jul-23	Reappointment
Weston	Michael	Administrative Code Committee	Jul-23	Reappointment
Dufoe	April	Board of Assessment Review	Jul-25	Reappointment
Schlegel	Karen	Board of Assessment Review	Jul-25	Reappointment
Dow	George	Cape Porpoise Pier Advisory Committee	Jul-23	Reappointment
Eaton	Peter	Cape Porpoise Pier Advisory Committee	Jul-23	Reappointment
Bryan	Lynda	Cemetery Committee	Jul-23	Reappointment
Fernandez	Ruth	Cemetery Committee	Jul-23	Reappointment
Pargellis	Greg	Cemetery Committee	Jul-23	Reappointment
Sanders	Ann	Cemetery Committee	Jul-23	Reappointment
Schlegel	Rita	Cemetery Committee	Jul-23	Reappointment
Francoeur	Ron	Government Wharf Committee	Jul-23	Reappointment
Welch	Andrew	Government Wharf Committee	Jul-23	Reappointment
Welch	Chris	Government Wharf Committee	Jul-23	Reappointment
McMann	James	Growth Planning Committee	Jul-25	Reappointment
Danzilo	Robert	Kennebunk River Committee	Jul-25	Reappointment
Inoue	Susan	Kennebunk River Committee	Jul-25	Reappointment
Spang	Louise	Parsons Way Committee	Jul-25	Reappointment
Carroll	Joseph	Public Safety Committee	Jul-23	Reappointment
Everett	John 'Jay'	Public Safety Committee	Jul-23	Reappointment
Sanford	Craig	Public Safety Committee	Jul-23	Reappointment
Simeoni	Christopher	Public Safety Committee	Jul-23	Reappointment
Convery	Bob	Wastewater Advisory Committee	Jul-22	Reappointment
Mead	Joseph	Wastewater Advisory Committee	Jul-22	Reappointment
Myatt	Margaret	Wastewater Advisory Committee	Jul-22	Reappointment
Concannon	Tricia	Shade Tree Committee	Jul-22	Reappointment
Hanna	Steven	Shade Tree Committee	Jul-22	Reappointment
Pearlmutter	Nina	Shade Tree Committee	Jul-22	Reappointment
Powell	Stephen	Shade Tree Committee	Jul-22	Reappointment
Dufoe	April	Zoning Board of Appeals	Jul-22	Reappointment

2022 Committee/Board New Appointments				
Last Name	First Name	Committee	New Term	Comments
Gilbert	Marybeth	Board of Assesment Review	Jul-24	Appointment
Emmons	Kyle	Cape Porpoise Pier Advisory Committee	Jul-23	Appointment
Audley	Christopher	Government Wharf Committee	Jul-23	Appointment
Gilbert	Marybeth	Zoning Board of Appeals	Jul-23	Appointment
Powell	Michelle	Zoning Board of Appeals	Jul-23	Appointment

SELECTMEN REPRESENTATIVES

Committees	As of July 2021	As of July 2022
Cape Porpoise Pier Committee	Edward W. Hutchins	
Goose Rocks Beach Advisory Committee	Edward W. Hutchins	
Government Wharf	Allan A. Daggett	
Growth Planning Committee	Allan A. Daggett	
Graves Library Board	D. Michael Weston	
Investment Committee	Allen A. Daggett, Patrick Briggs	
Kennebunkport Heritage Housing Trust	Patrick Briggs	
K.E.M.S.	Patrick A. Briggs	
Planning Board	Sheila Matthews-Bull	
Public Safety Committee	Patrick A. Briggs	
S.M.R.P.C.	D. Michael Weston	
Shade Tree Committee	Sheila Matthews-Bull	
Zoning Board of Appeals	Sheila Matthews-Bull	

TOWN OF KENNEBUNKPORT
Application for Boards, Committees & Commissions

To the Town Manager:

I hereby request to be considered for membership to the following board(s) and/or committee(s): (If more than one, please indicate your preference: 1,2,3...)

- | | |
|---|---|
| <input type="checkbox"/> Administrative Code Committee | <input type="checkbox"/> Lighting Committee |
| <input type="checkbox"/> Board of Assessment Review | <input type="checkbox"/> Parsons Way |
| <input type="checkbox"/> Budget Board | <input type="checkbox"/> Planning Board |
| <input checked="" type="checkbox"/> Cape Porpoise Pier Advisory Committee | <input type="checkbox"/> Road Book Committee |
| <input type="checkbox"/> Cemetery Committee | <input type="checkbox"/> Sewer Advisory Committee |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Shade Tree Committee |
| <input type="checkbox"/> Government Wharf Committee | <input type="checkbox"/> Shellfish Advisory Committee |
| <input type="checkbox"/> Growth Planning Committee | <input type="checkbox"/> Solid Waste Committee |
| <input type="checkbox"/> Kennebunk River Committee | <input type="checkbox"/> Zoning Board of Appeals |


Signature of Applicant

7-8-22
Date

Preliminary Information

Name (Print): Kyle Emmons

Residence Address: 8 turbats creeK rd KPortME Phone: 207-604-4636

Business Address: _____ Phone: _____

Mailing Address: _____

(if different) _____

E-mail Address: Kyle Lemmons 205mcc me . edu

Membership in community organizations:

Organization	Dates	Activities
<u>Cape Porpoise Pier member</u>	_____	<u>LoBstering, Purse seining, oysters/</u> <u>Aquaculture</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do you have any skills, experience, or training you would like to mention?

Lobsterman

What is your reason for wanting to serve on this board or committee?

Help the pier improve

Are you registered to vote in Kennebunkport? Please check one: ☒ Yes ☐ No

Please return the completed application to: Town Manager, 6 Elm St., P.O. Box 566, Kennebunkport, ME 04046. You will be contacted upon receipt.



Kennebunkport

M A I N E

Published on *Town of Kennebunkport, ME* (<https://www.kennebunkportme.gov>)

[Home](#) > [Boards & Committees](#) > [Board of Selectmen](#) > [Online Application for Boards/Committees](#) > [Webform results](#) > Online Application for Boards/Committees

Submission information

Form: [Online Application for Boards/Committees](#) [1]

Submitted by Anonymous (not verified)

June 18, 2022 - 1:33pm

98.11.1.119

Choose from the following:

Zoning Board of Appeals

Please provide the following information:

Full Name

Michelle Powell

Email

powellmc@gmail.com

Residential Address

19 North Street Kennebunkport

Residential Phone

(207) 967-2006

Business Address**Business Phone**

(207) 251-3663

Mailing Address (if different)

P.O. Box 323

Are you registered to vote in Kennebunkport?

Yes

Please list Membership in community organizations, dates involved, and activities performed:

Budget Board for last 12 years (I think) with reappointment this year

Do you have any skills, experience, or training you would like to mention?

Budgeting process with the town, I have a degree in accounting and am currently a Sr Global Mobility Specialist with Liberty Mutual Insurance

What is your reason for wanting to serve on this board or committee?

To better serve my community

List the top 3 choices that you would like to serve on(1. 2. 3. in desired order)?

Source URL: <https://www.kennebunkportme.gov/node/2661/submission/16531>

Links

[1] <https://www.kennebunkportme.gov/board-selectmen/webforms/online-application-boardscommittees>

Yanina Nickless

From: Marybeth Gilbert via Town of Kennebunkport, ME <cmsmailer@civicplus.com>
Sent: Wednesday, June 22, 2022 4:58 PM
To: Yanina Nickless
Subject: Form submission from: Online Application for Boards/Committees

Submitted on Wednesday, June 22, 2022 - 4:58pm

Submitted values are:

Choose from the following: Board of Assessment Review

==Please provide the following information:==

Full Name: Marybeth Gilbert

Email: GRBMaine45@Charter.net

Residential Address: 6 Guinea Rd, Kennebunkport Maine 04046

Residential Phone: 585 520-7477

Business Address:

Business Phone:

Mailing Address (if different): 7 Kings Lane Kennebunkport Maine
04046

Are you registered to vote in Kennebunkport? Yes

Please list Membership in community organizations, dates involved, and activities performed:

Vice President of Xerox Production Business (retired Jan 2022; 35year career)

Mentor for young professionals (2012- 2021)

Catholic Family Association Marketing Board Member (2018- 2021)

Do you have any skills, experience, or training you would like to mention? Retired after 35yrs Executive Career at Xerox Corporations. Last role was Vice President of the Xerox Production business. I was accountable for the global \$3B business including strategy, quarterly and annually business profit and loss. I have a Bachelor of Science in Mechanical Engineering (1986 Clarkson University), MBA (2001 University of Rochester Simon school of Business). I have a very strong business acumen coupled with excellent communication and listening skills. My history and recommendation are available on LinkedIn; Marybeth Gilbert (Xerox)

What is your reason for wanting to serve on this board or committee? We made the permanent move to Kennebunkport in Oct 2020. We had co owed a family property at Goose Rocks beach and my husband's family has been here for several decades. A few years ago, we purchased our own house at the beach and then another one inland. I am a big proponent of volunteering where my skill set can be utilized. I look forward to helping where I am needed.

List the top 3 choices that you would like to serve on(1. 2. 3. in desired order)?

1. Board of assessment review

2. I would be willing to be on other boards also if needed (ZBA)

The results of this submission may be viewed at:

<https://www.kennebunkportme.gov/node/2661/submission/16561>

AGENDA ITEM DIVIDER

Memorandum

To: Laurie Smith, Town Manager

Fr: Craig Sanford, Chief of Police 

Re: Retire/Rehire Officer Michael Caiola

Dt: June 29, 2022

Sergeant Michael Caiola has given notice that he intends to retire from his current position of Sergeant during the month of August 2022 once he has completed his mandatory twenty years making him eligible to draw on his retirement benefits. Michael has also asked to be allowed to return to the work force under section **11.5.1 Re-employment upon retirement** of the town's personnel policy. In brief, this section allows for the Town to consider the re-employment to a full-time position an employee who has retired from the Town under the Maine PERS System subject to a number of conditions. Officer Caiola meets all of the specified conditions but would eventually need the approval of the Town Manager as well as the Board of Selectmen.

With current difficulties in finding qualified candidates to enter the police profession and our need to send a new employee to the academy, we could potentially be down two full-time positions for several months. This would create substantial overtime costs as well as pressure on current staff to work open shifts.

I am recommending that Officer Caiola be allowed to retire and be re-hired as a patrol officer. Officer Caiola would lose all seniority and his current rank of Sergeant. The agency would benefit from keeping an experienced employee and not be the pressured to find another qualified applicant as many agencies across the country are doing now.

AGENDA ITEM DIVIDER

Memorandum

To: Laurie Smith, Town Manager

Fr: Craig Sanford, Chief of Police 

Re: York County Hazard Mitigation Plan

Dt: June 30, 2022

In 2004, the York County Emergency Management Agency (YCEMA) prepared a multi-jurisdictional hazard mitigation plan, in accordance with the Federal Disaster Mitigation Act of 2000. This plan was updated in 2010, 2015, and again in 2022. The 2022 update to the 2015 plan fulfills the Federal Emergency Management Agency (FEMA) requirement that local hazard mitigation plans be updated every five years. This plan is required to be in place for the Town of Kennebunkport to receive current and future state and federal hazard mitigation grant funding.

To keep the town in compliance with federal grant programs, I am recommending that the selectboard adopt the updated York County Hazard Mitigation Plan that is attached to this memo.

YORK COUNTY, MAINE
HAZARD MITIGATION PLAN

RESOLUTION OF ADOPTION

Whereas, natural and man-made disasters may occur at any time, we recognize that to lessen the impacts of these disasters we will save resources, property and lives in York County;

And whereas the creation of a Hazard Mitigation Plan is necessary for the development of a risk assessment and effective mitigation strategy;

And whereas, the 26 towns and 3 cities of York County are committed to the mitigation goals and measures as presented in this plan;

Therefore, **the Town of Kennebunkport** hereby adopts the 2022 York County Hazard Mitigation Plan.

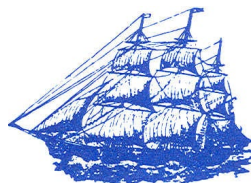
AUTHORIZING SIGNATURES

Print name	Signature	Title	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

City/Town Office Address: _____

Contact person _____

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

Memorandum

To: Laurie Smith, Town Manager
 CC: Christopher Simeoni, Eric Labelle, Michael Claus
 Fr: Eli Rubin, Community Planner
 Re: Contract Selection for Pier Rd. Causeway Adaptation Project
 Dt: July 7, 2022

RFP Submission Selection Process

The town received four excellent project proposals in response to our RFP for the design and engineering of necessary flood-adaptation measures on Pier Rd. Causeway. While each firm demonstrated the technical ability needed to complete the project, staff scrutinized each firm's timelines, contingency plans, ability to accommodate access to the island, public process, and the ability of each firm to engage in meaningful neighborhood outreach. Staff interviewed the two firms who seemed to have the appropriate number of hours dedicated to the project as well as past experience in similar work.

Staff Recommendation

After interviewing two firms, the staff is recommending the project be awarded to **Woodard and Curran** who have an established track record of adequately accommodating site-specific and abutter concerns during prior Kennebunkport projects and satisfied all other staff questions. We anticipate that this project will require a fair amount of public input and neighborhood engagement and the Town's partner should be prepared to undertake that work. The cost breakdown of the four firms is below:

	Woodard and Curran	Gorrill-Palmer	CMA Engineers	Main-Land Development
Not-to-exceed Design Cost:	\$189,700	\$177,855	\$108,600	\$69,000
Construction Administration (estimate):	\$65,000	\$74,500	\$39,500	TBD
Total:	\$254,700	\$252,355	\$148,100	\$69,000 +?

TOWN OF KENNEBUNKPORT, MAINE

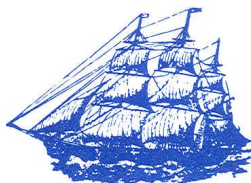
– INCORPORATED 1653 –

Staff is recommending the Selectboard select Woodard and Curran for the design and engineering of the project and authorize the Town Manager, Laurie Smith, to enter a contract not-to-exceed \$189,700.

Background

Persistent King Tide and storm surge flooding of the Pier Rd. causeway has been a growing public safety concern. When the Maine DOT Climate Resilience Adaptation grant funds were announced this spring, the town applied for the grant, which has up to a 95% match, for the estimated \$2.2 million construction cost of this project. We are expected to receive the final determination of our grant application by July 15th. Once the design and engineering contract is approved, construction bidding will occur in December 2022 with construction being completed in 2023.

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

MEMORANDUM

To: Laurie Smith

Fr: Chris Simeoni, Director of the Public Works Department

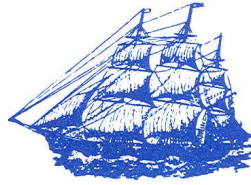
Re: Item for July 14th Selectmen's meeting- 2022/2023 Winter Salt Bid Recommendation

Dt: July 6th, 2022

Winter salt bids were recently received from the Southern Maine Planning and Development Commission. The two responsive bidders consisted of Morton Salt and Eastern Salt Co. The low bidder was Eastern Salt Company at \$78.00 per ton. This price is up \$20.00 per ton from last year's price of \$58.00 per ton. I recommend the Town accept the low bid from Eastern Salt Company of \$78.00 per ton delivered.

2022 - 2023 Road Salt Bid Results				
	Morton Salt (855) 665-4540	Eastern Salt Co (978) 251-8553	Safe Road Services, Inc. (508) 364-1739 or FAX: (508) 541-3121	Cargill Deicing (800) 600-7258
Sodium Chloride				NO BID
Inside Storage - Delivered	\$99.88	No Bid	No Bid	
Outside Storage - Delivered (Per Ton)	\$99.88	\$78.00	No Bid	
Treated salt w/Ice B'Gone (Per Ton)	\$115.54	No Bid	No Bid	
Calcium Chloride				
Liquid - Delivered (Per Gallon)	No Bid	No Bid	No Bid	
Magnesium Chloride/Organic Additive/Corrosion Inhibitor				
Liquid - Bulk Delivery (Min 4,500 gallons)	No Bid	No Bid	No Bid	
Pellet - Bulk Delivery	No Bid	No Bid	No Bid	
ProMelt Ultra 2000			No Bid	
Liquid - Bulk Delivery (Min 4,500 gallons)	No Bid	No Bid	No Bid	
Brine (Gallon)	No Bid	No Bid	No Bid	
Treated Salt w/Ice B'Gone II (Liquid)	No Bid	No Bid	No Bid	
Safe Melt Liquid (4500 Gallons) Full Trailer Load	No Bid	No Bid	\$1.48	
Safe Melt Liquid (2,000-4,499 Gallons)	No Bid	No Bid	\$1.58	

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

MEMORANDUM

To: Laurie Smith
 Fr: Chris Simeoni, Director of Public Works
 Re: Award bids for a new single axle dump truck
 Dt: July 7, 2022

On June 21st, the Public Works Department went out to bid on a new single axle dump truck to replace Truck 5. Please see attached bid specification and vendor list. We received the following bids from the following vendors:

Bidder	Contact Information	Proposal Amount
O'Connor Truck	187 Riverside Drive Augusta, ME 04330 Phone: (800) 850-4250	Western Star 47X- \$246,416 Mack- \$251,416
HP Fairfield	9 Green St Skowhegan, ME, 04976 Phone: (207)474-9836	International- \$247,305
Daigle & Houghton	154 Pleasant Hill Rd Scarborough, ME 04074 Phone: (207)289-6688	International- \$218,552
Viking	2085 Lisbon Road Lewiston, ME 04240 Phone: (207) 783-9500	Body only- \$107,052

In evaluating the bids, we made the following considerations:

- Visibility over the hood for driver and motorist safety.
- Reliability of the Detroit DD13 over the International models that have been problematic in the past.
- Convenience of having one brand of truck and engine to service, keeping costs down by not stocking parts for multiple brands of trucks
- The Western Star has a 50,000 lbs. GVW over the 39,000 lbs. GVW of the other truck options, increasing the durability of the truck.
- The Western Star will have a 12.24"X3.43"X.51" frame that exceeds both spec and the other truck option in size, increasing the durability of the truck.

6 Elm Street, P.O. Box 566, Kennebunkport, Maine 04046
 Tel: (207) 967-4243 Fax: (207) 967-8470

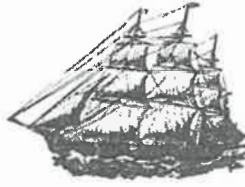
TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

- The Wester Star Cab will be made of aluminum that does not corrode as easily as the steel cab for the other truck option, increasing the durability of the truck.
- The DD13 engine has a higher horsepower and torque rating at lower RPMs than other options. This will allow the engine to run at a lower RPM thus decreasing the fuel consumption.
- The DD13 engine is equipped with engine brakes. This would save on brake maintenance and repair, as well as increase the truck's braking capabilities which results in increased safety.
- The DD13 engine is equipped with an aluminum oil pan which is much more durable than the steel one offered by the other option. We have had to replace 3 oil pans in the last 12 months at a cost of \$1100 per pan.

For the above reasons, I am recommending the Western Star with the Viking Body and plow set up Western Star 47X priced at \$246,416.

When we obtained pricing in February, we received an estimate of \$232,296 and budgeted slightly more (\$236,000) for inflation. Due to higher than anticipated steel prices and inflation rate, the truck price increased by \$14,120. This results in a \$10,416 deficit. We also budgeted \$70,000 to replace the Ford one-ton dump truck. We received no responsive bidders on that truck. (That invitation to bid went out on the same date.) This is due to the Ford order bank for new Super Duty's being closed until October. I am proposing that we meet the \$10,416 deficit for this truck when we sell the current vehicle.



TOWN OF KENNEBUNKPORT, MAINE

~ INCORPORATED 1653 ~

PROPOSAL SUMMARY FORM

Single Axle Dump Truck

In accordance with the Request for Proposals, Instructions, and Specifications; the following Proposals were received and opened:

Date: 7/6/22 Time: 1:00 p.m.

Bidder Name	Contact Information	Proposal Amount
O'Connor		WS 47X \$216,410 MAC \$251,410
HP Fairfield		Int'l \$247,305
Daisie & Houghton		Int'l \$218,552 WS
Viking		Body only \$107,552

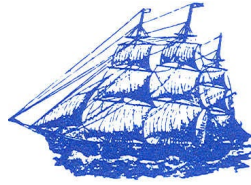
Opened By: Chris Sineoni

Signature: [Signature]

Witness: Nicole Francisca

Signature: [Signature]

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

– INCORPORATED 1653 –

MEMORANDUM

To: Laurie Smith

Fr: Chris Simeoni, Director of Public Works

Re: Agenda item for July 14th Selectmen's meeting- Request for Street Opening Permit by Kennebunk Kennebunkport Wells Water District for Wildwood Avenue

Dt: July 7th, 2022

On July 7th, the Public Works Department received a request from KKW for a street opening permit for Wildwood Avenue. Due to an emergency, KKW had to replace a failed seasonal water line serving residences on the dirt portion of roadway at the end of Broadway. The extent of the work was to cut a 4-5' wide section of pavement and trench across Wildwood Avenue to access the water line on the opposite side of the road.

They have submitted a street opening permit application as required by ordinance shortly in advance of the repair. (Please see attached documents.) After properly backfilling and compacting, KKW will be required to repair the pavement cut by adding two 1" lifts of base asphalt material. After material has been in place for one year, KKW will be required to mill/grind 10' on both sides of the cut and overlay the entire area with 1.5" of finish asphalt.

It is my recommendation to authorize the street opening permit due to the emergency with the conditions noted above.

TOWN OF KENNEBUNKPORT
Street Opening Permit

Name of Owner: KKW Date of Application: 7/7/22
(First, Middle Initial, Last)

Address: 92 Main St Kennebunk

Telephone: 985-3385 Tax Map _____, Block _____, Lot _____

Name of street to be excavated: Wildwood Ave - Broadway Ave

Approximate size of excavation: Length 120' Width 4'

Reason for Permit: Installing new main crossing Wildwood Ave
& going 100' +/- down Broadway

Permit Conditions: If there is any intrusion into the black top, road should be paved from curb to curb.

Date excavation is to take place: Week of 7/18

Contractor: KKW

Address: 92 Main St

Telephone: 985-3385 Fax: 985-3102

Bond Amount: \$ _____

Company: _____
(To be certified and given to Town Clerk to record)

Insurance Company & Certificates: _____

APPROVED: [Signature]
Highway Superintendent

Date: _____

Selectmen _____

Selectmen _____

Selectmen _____

Selectmen _____

FEE: \$25.00 _____ Selectmen (Town paid stamp here)

Please attach plan.



— area to be excavated
 ~~~ to be abandoned

60ft

70 408 43 403 Degrees

---

# **AGENDA ITEM DIVIDER**

---

## **LEASE AGREEMENT**

This Lease made and entered this \_\_\_\_ day of July, 2022 by and between the Inhabitants of the Town of Kennebunkport, a Maine municipality (hereinafter referred to as "Landlord"), and A and W LLC, d/b/a The Chowder (hereinafter referred to as "Tenant").

### **ARTICLE I**

#### Premises

Landlord hereby leases, demises and lets unto Tenant and Tenant hereby leases, takes and hires from Landlord, for the term and upon and subject to the terms and conditions set forth in this Lease Agreement (hereinafter the "Lease"), the building operated most recently as the "Cape Pier Chowder House", together with the outside deck area and as shown on Appendix A hereto and made a part hereof (hereinafter the "Premises" or the "Leased Premises"), which Premises arc, at the commencement of this lease, only a portion of the Landlord's property located at or near Cape Porpoise Pier in the Town of Kennebunkport, Maine. The Premises shall include a right of reasonable access thereto.

### **ARTICLE II**

#### Term

The term of this Lease shall begin on December 1, 2022, and end on November 30, 2027. Landlord may offer Tenant the option to extend the lease for an additional five year period at mutually agreeable terms. Tenant shall have no right to extend the term of this Lease unilaterally.

### **ARTICLE III**

#### Rent

Section 3.01. Base Rent. During each Lease Year during the term of this Lease, Tenant shall promptly pay Landlord, without any offset, abatement, deductions or setoff whatsoever and without previous demand therefor, at the address set forth in this Lease in regard to notices or at such other place as Landlord may direct by notice in writing to Tenant from time to time, the annual Base Rent for the each Lease Year at the rates set forth hereinafter, which Base Rent shall be payable, in advance, in five (5) equal installments on April 1st, May 1<sup>st</sup>, June 1st, July 1st, and August 1st of each and every Lease Year during said term. "Lease Year" means the successive periods during the term set forth below, even if such period is not a full 12 months, with the first such period to begin on April 1, 2023.

The Lease Year Base Rent shall be as follows:

1. For the Lease Year December 1, 2022 through November 30, 2023 \$ 40 000.00
2. For the Lease Year December 1, 2023 through November 30, 2024, \$ 40 000.00
3. For the Lease Year December 1, 2024 through November 30, 2025, \$ 40 000.00
4. For the Lease Year December 1, 2025 through November 30, 2026, \$ 40 000.00
5. For the Lease Year December 1, 2026 through November 30, 2027, \$ 40 000.00

## **ARTICLE IV**

### Landlord's Obligations

Section 4.01. Quiet Enjoyment. Landlord warrants that, so long as Tenant faithfully performs all agreements and obligations of this Lease, Tenant shall, subject to applicable provisions of law and governmental authorities and to Landlord's rights hereunder, including the right to alter, improve, maintain, repair, or replace any portions of the Premises or any fixtures, appurtenances and equipment thereof, peaceably and quietly have, hold, and enjoy the Premises for the term set forth herein without molestation or disturbance by and from Landlord and free from any and all encumbrances except as otherwise specified in this Lease.

Section 4.02. Improvements. Tenant agrees and accepts the Premises "As Is" "Where Is" in their current condition.

Section 4.03. Maintenance and Repairs. Throughout the term of this lease, Landlord shall be responsible for maintaining the proper condition and functioning, and to maintain in good order and repair, the pier supports on which the Premises are located; provided, however, that if these supports prove inadequate to enable Tenant to use the Leased Premises or otherwise create an unsafe condition, then Landlord may, at its option, either (i) repair the supports to the Tenant's reasonable satisfaction, or (ii) terminate this Lease without further liability to Landlord. Tenant shall be entitled to an abatement of rent during any period of repair or maintenance performed by Landlord which renders the Leased Premises unusable by Tenant.

## **ARTICLE V**

### Tenant's Obligation

Section 5.01. Payment of Rent. Tenant shall pay each and every installment of Base Rent and other amounts due hereunder promptly when due, and without demand by Landlord and without any withholding or offset whatsoever.

Section 5.02. Utility Charges. Tenant shall pay when due all utility charges for sewer, water, gas, telephone and electrical service, and any other utilities used or consumed on the Premises.

Section 5.03. Personal Property Taxes. Tenant shall pay all personal property taxes levied or assessed in respect of all personal property and trade fixtures situated on such Premises, excluding any personal property owned by Landlord.

Section 5.04. Use and Occupancy. Tenant shall use and occupy the Premises solely for a restaurant, including "take-out" food, in accordance with the provisions of Appendix B hereto, and in all cases for purposes which are lawfully permitted under applicable laws and for which the Premises are reasonably suited and for no other purposes whatsoever. Notwithstanding the terms of the Lease, the Premises shall be used and operated for their permitted purposes only between the dates of April 1st and November 30th of each Lease Year. Tenant shall obtain any and all licenses or permits necessary for the conduct of its permitted use of the Premises and shall comply, at its expense,

with all governmental laws, rules, regulations and ordinances, and with all of Landlord's insurance policies applicable to the Leased Premises and with all reasonable rules and regulations established by Landlord from time to time; and, without limiting the forgoing, Tenant shall comply with the Rules and Regulations as set forth in Exhibit B and the Cape Porpoise Pier Ordinance set forth in Appendix C both of which exhibits are attached hereto and are hereby incorporated as part of this Lease. To the extent the provisions of the body of this Lease and Appendices B and/or C may conflict, the most restrictive of the three shall control.

Section 5.05. Maintenance and Repairs. Tenant shall maintain the Premises, including a restroom facility that will be open to the public during operating hours, in as good order, repair, and condition as the Premises existed at the commencement of this Lease, reasonable wear and tear excepted. Except as provided in Section 4.03 above, Tenant shall be solely responsible for all repairs and replacements to the entire Premises belonging to Landlord, whether or not then being used or occupied by Tenant, during the entire lease term. Without limiting the forgoing, Tenant shall be responsible for and shall pay, either to Landlord or to parties doing such work, the following: all maintenance to the roof of the Premises, the exterior walls and structural portions of the Premises, and the utility lines and services, water, sewer and sprinkler charges, painting, decorating, door and window repair and replacement, paving, insurance costs, service contracts on HVAC units, and all other usual and customary expenses of owning, operating, and preserving the Premises.

Section 5.06 Alterations. Tenant shall not make any alterations, installations repairs, improvements, replacements or additions in, to or about any part of the Premises, or remodel all or any part of the Premises, without the prior written consent of Landlord, including the prior written approval by Landlord of the plans and specifications therefor, which consent or approval 'Will not be unreasonably withheld nor delayed. Tenant shall remove at its own expense any alterations, additions, and the like installed in violation of this provision. In the event of failure of Tenant to so remove, Landlord shall have the right to enter and remove such alterations, additions, and the like, and charge the reasonable cost thereof to Tenant. All additions, repairs, replacements, alterations and improvements to the premises made by Tenant, including all materials used and incorporated therein, shall become the property of Landlord upon the expiration or termination of this Lease.

Section 5.07. Signage. Tenant shall not install advertisements of any kind including, but not limited to, signs, awnings, and signals, to any part of the leased Premises including the inside or outside of the windows or doors unless and until the style, size, color, construction, and location of such advertisements have been approved in writing by Landlord. Tenant agrees that upon expiration or termination of this Lease Agreement, Tenant will remove such advertisements and restore the affected portion of the leased premises to its original condition prior to the installation of such advertisements.

Section 5.08. Security and Safety Regulations. Tenant shall conform to all reasonable rules and procedures now or hereafter established by Landlord for the safe, secure, and orderly use of the Premises.

Section 5.09. Landlord Entry for Repairs. Notwithstanding the respective obligations of the parties, and without creating or implying any obligation on the part of the Landlord, Tenant shall permit Landlord at any time to enter the Premises to install, maintain, repair, and replace any pipes, ducts, meters, wires and other machinery, equipment, apparatus, and fixtures if, in the

judgment of the Landlord, such improvements are necessary and consistent with sound real estate management of similar buildings. Such work shall be carried out in a manner to cause the Tenant minimum inconvenience.

Section 5.10. Waste and Nuisances. Tenant shall not injure or deface the Premises. Tenant shall not permit the use of the Premises for any purposes other than those provided herein and shall not permit any use of the Premises which is improper, offensive, or contrary to law or ordinance. Tenant shall not permit on the Premises any hazardous or inflammable substances, fluids, or chemicals and shall permit no objectionable noise, odors, or other nuisance. Tenant shall not permit or maintain any conditions which might cause an adverse effect on any insurance coverage affecting the Premises.

Section 5.11. Risk of Loss. Tenant shall hold the property owned by Tenant, or in the Tenant's custody situated on the Premises, at Tenant's own risk.

Section 5.12. Liability and Casualty Insurance. Tenant shall insure Tenant and Landlord, as their interests may appear, with comprehensive general liability and all-risk property and casualty insurance coverage on the Premises in such amount and with such companies as Landlord shall reasonably require, but in no event for less than One Million Dollars for injury or death in any single accident, which coverage shall provide for thirty (30) days prior notice of cancellation, nonrenewal or expiration. Tenant shall provide evidence of such insurance coverage on request. In no event shall the limits of such policies be considered to limit Tenant's liability under this Lease.

By way of amplification of, and not in limitation of, the provisions of this Section 5.12, at all times after the execution of this Lease, Tenant will take out and keep in force, at its expense:

- a. Comprehensive general liability insurance, naming Landlord and its officers, agents and employees as additional insureds, including insurance against assumed or contractual liability, with respect to the Premises, insuring against damage to property and bodily injury, including death caused by any act or omission, including the furnishing or consumption of alcohol by Tenant, its employees, contractors or licensees, patrons, and invitees. Such insurance shall afford protection to the limits of not less than Three Million Dollars (\$3,000,000.00) per occurrence/aggregate with respect to bodily injury or death. Said insurance shall provide for coverage of other occupants or users of Landlord's Premises who might be harmed or injured, or suffer property damage, as a result of any activities caused by or occurring on the Premises.
- b. All-risk casualty insurance, written at replacement cost value and with replacement cost endorsement, covering all of the Premises and all of Tenant's personal property in the Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Lease), and all leasehold improvements installed in the Premises by Tenant.
- c. Prior to execution of this Lease, upon request at each annual anniversary of this Lease, and at any other time reasonably requested by Landlord, Tenant shall provide certificates of insurance evidencing Tenant's compliance with the above provisions and naming Landlord as an additional insured. The company or companies writing any insurance which Tenant is required to take out and



maintain or cause to be taken out or maintained pursuant hereto, as well as the form of the insurance coverage, shall at all time be subject to Landlord's approval, and any such company or companies shall be licensed to do business in the State of Maine.

- d. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Premises shall cause the rate of fire or other insurance on the Premises or on other property of Landlord to be increased beyond the minimum rate from time to time applicable to the Premises or to any such property for the use or uses made thereof, Tenant will pay as additional rental, the amount of any such increase upon Landlord's demand.

Section 5.13. Indemnity. Tenant shall hold harmless, defend and indemnify Landlord from any injury, death, loss, claim, or damage to any person or property while on or about the Premises and from any injury, loss, claim, or damage to any persons or property anywhere occasioned by any act, neglect, omission, or default of Tenant or its employees, agents, visitors, invitees, or contractors.

Section 5.14. Waiver of Subrogation. Landlord and Tenant each hereby release the other from any and all liability or responsibility to the other, or to anyone claiming through or under them by way of subrogation or otherwise, for any loss or damage caused by fire or any of the extended coverage or supplementary contract casualties, provided, however, that this release shall be applicable and in effect only with respect to loss or damage occurring during any time as any applicable party's insurance policies shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair said policies or prejudice the rights of the insured thereunder and provided further that this release shall apply only to the extent that insurance proceeds are actually received or collected under the insurance policy of the party sustaining the loss. Each party agrees that its policies will include such a clause or endorsement if obtainable without extra cost or if extra cost is charged, then as long as the other party pays such extra costs after notice thereof.

Section 5.15. Liens and Encumbrances. Tenant shall not suffer or permit any lien or encumbrance of any nature or description to be placed against the Premises or any portion thereof. Tenant shall have no authority to permit any lien or encumbrance to attach to or be placed upon Landlord's title or interest to the premises, building, or any portion thereof

Section 5.16. Landlord Entry for Inspection and Show. Tenant shall permit Landlord or its agents to enter upon the Premises at reasonable times to inspect the premises. Tenant shall permit Landlord to show the Premises throughout the term of this Lease.

Section 5.17. Surrender. At the expiration or termination of this Lease, Tenant shall peaceably surrender the Premises and all additions, alterations, and improvements to Landlord, broom clean and in good order, repair, and condition. At the expiration or termination of this Lease, Tenant shall further remove all goods and effects not attached to the Premises, repair all damage caused by such removal, and leave the Premises in clean and tenantable condition.

Section 5.18. Environmental. Tenant represents, warrants and agrees that its use, maintenance and operation of the Premises and the conduct of the business related thereto, shall at all times be in compliance with all applicable federal, state, county or local laws, regulations

and ordinances of any governmental authorities relating to Hazardous Materials, as hereinafter defined, and that Tenant, its agents, employees, customers, suppliers, and invitees will not cause any Hazardous Materials to be deposited, discharged, placed or disposed of at the Premises, and that the premises will remain free from hazardous Materials.

Tenant shall, to the extent arising from breach of the foregoing warranty, (a) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up, and remove all Hazardous Materials from the Premises, in accordance with all applicable federal, state and local laws, regulations, rules, ordinances and policies and in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless Landlord, its employees, agents, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any relation to (i) the discovery, presence, disposal, release, or threatened release, of any Hazardous Materials hereafter placed within, under, upon, from or into the Premises, (ii) any personal injury (including wrongful death) or property damage (real or personal), any lawsuit brought or threatened, settlement reached, or government order and/or any violations of laws, orders, regulations, requirements, or demands of government authorities, now in effect or at any time in the future, which are based upon or in any way related to any Hazardous Materials hereafter placed on the Premises.

As used herein, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances or matter, oil or other petroleum products, underground petroleum storage tanks, asbestos, chemical pollutants or related materials, including as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § §9601, et seq.) the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§6901, et seq.), applicable Maine Statutes (including 38 M.R.S.A. §561, et seq.; 39 M.R.S.A. §§1361, et seq.; 38 M.R.S.A. §§1301, et seq.; and 38 M.R.S.A. §§1317, et seq.) or any similar federal, state, or local law in effect from time to time, or in the regulations adopted and publications promulgated pursuant thereto or any other substances or materials constituting a hazard, peril, or threat to the health of persons, animals or plant life.

Section 5.19. Security Deposit. Tenant has previously paid Landlord a security deposit in the amount of One Thousand Five Hundred Dollars (\$1,500), and paid by response to a request for proposals issued by Landlord the amount of One Thousand Dollars (\$1,000) as security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease. If Tenant defaults in respect to any of the terms, provisions, covenants, and conditions of this Lease, including but not limited to payment of rent, Landlord may, but shall not be required to, use, apply, or retain the whole or any part of the security for the payment of any rent in default or for any other sum which Landlord may expend or be required to expend by reason of Tenant's default, including any damages or deficiency accruing before or after forcible detainer action or other reentry by Landlord. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the security, or any balance thereof, shall be returned to Tenant within thirty (30) days after the expiration or termination of this Lease. Whenever and as often as the amount of the security held by Landlord shall be diminished by Landlord's application thereof, Tenant shall, within (ten) 10 days after Landlord's request therefor, deposit additional money

with Landlord sufficient to restore the security to its original amount unless Landlord agrees in writing to any diminished security deposit. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the security, or the remaining balance thereof, Landlord may return the security to the original Tenant, regardless of one or more assignments of the Lease itself.

## **ARTICLE VI**

### **Landlord Default**

Section 6.01. Notice and Opportunity to Cure. Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

## **ARTICLE VII**

### **Tenant Default and Landlord's Remedies**

Section 7.01. Events of Default. Tenant shall be in default hereunder in any of the following events.

A. If Tenant shall fail to pay any Base Rent, Additional Rent, or other charge required to be paid by Tenant under this Lease within five (5) days of the date the same is due and payable; or

B. If Tenant shall default in the performance of any of the other obligations and agreements of this Lease, and such default shall not have been remedied within thirty (30) days after written notice of Landlord to Tenant specifying such default and requiring it to be remedied; or

C. If Tenant shall abandon the premises or fail to operate the Premises for the use permitted hereunder or leave them vacant for more than thirty (30) consecutive days during this Lease term; or

D. If an execution, attachment, lien, or other encumbrance shall be issued against Tenant and its property and such shall not be vacated or removed within thirty (30) days after the issuance thereof.

Section 7.02. Landlord's Option to Terminate. If Tenant becomes in default as defined in Section 7.01, Landlord may terminate this Lease upon written notice to Tenant, in which event all rights of Tenant hereunder shall expire and terminate and Tenant shall surrender the Premises on the date of such termination, and Tenant shall remain liable as herein provided.

Section 7.03. Tenant Not Released. In the event of termination of this Lease as provided herein, Tenant shall not be released or discharged but shall remain and continue liable to Landlord in a sum equal to all Base Rent, Additional Rent, and other charges then due and shall be liable for all damages provided for hereunder and all costs, and reasonable attorney's fees incurred by Landlord as a result of Tenant's default.

Section 7.04. Landlord's Remedies.

A. Reentry: In the event of termination, Landlord may reenter the Premises using such force as may reasonably be required without being liable for prosecution or damages on account of such reentry, and may possess and repossess the Premises by summary proceedings, ejectment, or otherwise. Tenant hereby waives any right to a jury trial in any eviction or forcible entry and detainer proceedings.

B. Repair and Alteration: Landlord may repair or alter the Premises as reasonably necessary to render them in tenantable condition.

C. Lease and Release: Landlord may lease or release the Premises or any portion thereof for the whole or the remainder of the original Lease term or for a longer period in Landlord's name or as agent for Tenant.

D. Damages: If this Lease is terminated under the provisions of this Article or in the event of the termination of this Lease, or of reentry, by or under any summary dispossession or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall pay to Landlord as damages, at the election of Landlord, in addition to all Base Rent, Additional Rent, and other charges then due and payable under this Lease, either:

(i) a sum which at the time of such termination of this Lease or at the time of any such reentry by Landlord, if any, equals the excess of (1) the aggregate of the Base Rent and the Additional Rent payable hereunder which would have been payable by Tenant (conclusively presuming the Additional Rent to be the same as was payable either for the Lease Year preceding or during, or the Lease Year immediately following such termination) for the period commencing with such earlier termination of this Lease or the date of any such reentry, as the case may be, and ending with the expiration date, had this Lease not so terminated or had Landlord not so reentered the Premises, over (2) the aggregate rental value of the Premises for the same period after considering and deducting reasonable projections of vacancy rates and costs of leasing and making the Premises acceptable to new tenant; or

(ii) sums equal to the Base Rent and the Additional Rent (as above presumed) payable hereunder which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so reentered the Premises payable upon the due date therefor specified herein following such termination or such reentry and until the expiration date; provided, however, that if Landlord shall relet the Leased Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting, the expenses incurred or paid by Landlord in terminating this Lease or in reentering the Premises and in securing possession thereof, including reasonable attorney's fees, as well as the expenses of reletting.

All damages payable under this paragraph (D) shall be in addition to all Base Rent and Additional Rent accrued and payable at the time of such termination or reentry and shall also be in addition to all expenses, damages and costs thereafter becoming due under this Article.

E. Other Damages. Tenant agrees to pay on demand, in addition to all charges hereunder, or in the event of termination of this Lease, then in addition to damages under Section 7.04(D): (a) all of Landlord's expenses including reasonable attorney's fees incurred in enforcing any of the obligations of Tenant under this Lease, or in evicting Tenant or in collecting any amount due hereunder or in exercising any rights or remedies under this Lease or in Landlord consenting to any action of Tenant for which the Lease requires Landlord's consent; and (b) late charges incurred from the nonpayment of such Base Rent, Additional Rent, damages, charges, and expenses at the rate of 18% per annum of such amounts; and (c) all expenses arising out of any termination of this Lease, all costs incurred in collecting charges, expenses and damages due from Tenant under this Lease, including all attorney's fees of Landlord, and all expenses of Landlord in attempting to re-lease the premises or parts thereof including advertising, attorney and brokerage fees, and cleaning and remodeling expenses.

F. Suits to Recover Deficiency. Suits for recovery of any deficiency or for damages or for a sum equal to any installment or installments of any rent, expense or charges may be brought by Landlord from time to time after Tenant is in default at Landlord's option. Landlord shall not be required to await the date whereon the term of this Lease 'would have expired in the event of Tenant's default or termination pursuant to paragraph 7.02.

G. Remedies Cumulative. The rights and remedies given to Landlord in this Lease are distinct, separate, and cumulative remedies. The existence of these remedies shall not be deemed to be in exclusion of any other remedies provided at law or in equity. Exercise of any one such remedy shall not be deemed a waiver or such other remedies as may be available.

H. Receipt of Monies Not Waiver. The receipt of rent or other monies by Landlord from Tenant with knowledge of any breach or default on the party of Tenant shall not be deemed a waiver of such default. The receipt of rent or other monies by Landlord from Tenant after termination of this Lease shall not be deemed to reinstate, continue, or extend the term of this Lease or to affect any notice previously provided Tenant or to operate as a waiver of Landlord's right to recover any damages or other amounts due hereunder or possession of the Premises.

## **ARTICLE VIII**

### **Landlord's Right to Cure Tenant's Default**

Section 8.01. Right to Cure. If Tenant defaults in the performance of any agreement or obligation under this Lease and fails to cure such default after notice as provided herein, Landlord may, at its option, either before or after any termination of this Lease, and without waiving its claim for damages for such breach, cure such breach on behalf of Tenant. Any amount paid or any liability incurred by Landlord in curing a default of Tenant under this Article shall be deemed paid or incurred on account of Tenant and Tenant shall reimburse Landlord therefor or save Landlord harmless therefrom together with interest thereon at the rate of 18% per annum, and in addition, Tenant shall reimburse Landlord for all costs and reasonable attorney's fees incurred in curing a default.

## ARTICLE IX

### Casualty Damage and Eminent Domain

Section 9.01. Damage or Destruction. In case the Premises shall be damaged by fire or other casualty so as to render the same untenantable in whole or in part for any period, a just abatement of rent shall be made until the same shall be repaired by the Landlord, provided, however, that if, in the Landlord's sole discretion, the Premises shall be so badly damaged by fire or any other casualty that the Landlord shall not desire to rebuild, this Lease shall terminate at the Landlord's option and rent shall be apportioned to the time of such termination. Further, in case the Premises shall be damaged by fire or other casualty so as to render the same untenantable in whole or in part for any period, Landlord shall not be liable for interruption to Tenant's business or for damage to or replacement or repair of Tenant's personal property (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Lease) or any leasehold improvements installed in the Premises by Tenant resulting therefrom, all of which damage shall be repaired and replaced by Tenant promptly, unless this Lease is terminated at Landlord's election. Notwithstanding the foregoing, if the Premises are not restored completely by Landlord within one hundred eighty (180) days of such fire or other casualty, this Lease shall thereupon be deemed to have terminated.

Section 9.02. Eminent Domain. If all or a substantial portion of the Premises are taken or condemned by a duly constituted public authority, both Landlord and Tenant shall have the right to terminate this Lease upon giving written notice of termination to the other within thirty (30) days of the terminating party's receipt of notice of taking from the public authority. If the Lease is so terminated, the rent shall be apportioned and paid to the effective date of termination. In the event this Lease shall not be terminated as provided herein, rent shall abate proportionately as to the portion so taken based on the value of the portion so taken in relation to the value of the Premises immediately prior to the taking and the relative impact of the taking on the Tenant's business.

The Landlord shall be entitled to receive the entire award or awards in any condemnation proceeding without deduction therefrom for any estate vested in the Tenant and the Tenant shall receive no part of any award or awards from the Landlord or in the proceedings and the Tenant hereby assigns to the Landlord any and all of its right, title, and interest in or to such award or awards or any part thereof.

Section 9.03. Duty to Restore. Notwithstanding anything to the contrary, in event of any such casualty, Tenant shall be obligated to use diligent and proper efforts to put the premises or the building in proper condition for use and occupation and to restore the Premises to substantially the same condition as existed prior to such casualty, all such restoration to be completed within 180 days of any such casualty.

Section 9.04. Landlord's Entitlement to Damages. Landlord reserves and excepts all rights to damages to said Premises and building and the leasehold hereby created, accrued, or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, Tenant grants to Landlord all Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as

Landlord may from time to time request; provided, however, then Landlord agrees to make such proceeds available to reimburse Tenant for costs incurred by Tenant in restoring the Premises.

## **ARTICLE X**

### Limitations of Liability

Section 10.01. Landlords Liability Limited. Landlord and its agents, employees and contractors shall not be liable for any injury to any person or damage to property due to the building in which Premises are located being in need of repair or due to the happening of any accident in or about the Premises, or due to any act or neglect of Tenant or of any employee, patron, or visitor of Tenant. This provision applies without limitation to injury or damage caused by Tenant's sale, furnishing and/or consumption of alcohol, nature, rain, ice, wind, frost, water, steam, gas, or odors in any form or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures and to damage or injury caused by fixtures, furnishings, equipment and the like situated at the Premises whether owned by Tenant or others.

## **ARTICLE XI**

### Notice and Waiver

Section 11.01. Written Notice Requested. All notices required to be given under this Lease shall be made in writing; oral notice shall be ineffective for all purposes.

Section 11.02. Delivery of Notice. Written notice shall have been delivered duly served if mailed by Certified Mail, Return Postage Requested, postage prepaid to Tenant and to Landlord at the following addresses:

Tenant:       A and W, LLC – D/B/A Cape Pier Chowder  
                  P O Box 7217  
                  Cape Porpoise, Maine 04014

Landlord:     Town of Kennebunkport  
                  6 Elm Street  
                  P.O. Box 566  
                  Kennebunkport, ME 04046-0566

Section 11.03. Waiver. No waiver of any default shall be deemed effective unless in writing signed by the party making the waiver. No waiver of any breach, covenant, condition, obligation or duty shall be construed a waiver of any other breach of the same or any other covenant, condition, obligation or duty.

## **ARTICLE XII**

### Amendment Modification and Renewal

Section 12.01. Writing Required. No amendment, modification, or renewal of this Lease shall be binding unless evidenced by an agreement in writing signed by Landlord and Tenant.

Section 12.02. Holdover Tenant. If Tenant shall hold over as a Tenant after the expiration of the terms of this Lease, such tenancy shall be deemed to continue on a month-to-month basis and Tenant shall remain fully bound under all terms and conditions of this Lease, provided, however, the rent shall be twice the Base Rent in effect during the last month of the term hereof. This Section shall not be construed to give Tenant any right to hold over.

## **ARTICLE XIII**

### **Miscellaneous**

Section 13.01. Interpretation. This Lease shall be construed in accordance with the law of the State of Maine. Whenever the context requires, the singular number includes the plural number and vice versa, the masculine gender includes the feminine gender and vice versa, the neuter gender includes the masculine and feminine gender. If Tenant includes more than one person or party, Tenant's obligations shall be joint and several. Time is of the essence in the performance of the terms and conditions of this Lease.

Section 13.02. Captions. Captions of paragraphs of this Lease are solely for convenience and shall not be deemed part of this Lease for any purpose.

Section 13.03. Exhibits. All exhibits attached to this Lease have been initialed by the parties for purposes of identification.

Section 13.04. Partial Invalidity. If any provision of this Lease shall be held invalid or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permitted by law.

Section 13.05. Successors and Assigns: Landlord Liability. The covenants and agreements of Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successors, and assigns. No covenant or agreement of Landlord shall be binding upon any such heir, executor, administrator, successor, and assign except for defaults occurring during such person's period of ownership nor binding individually upon any fiduciary, shareholder, or beneficiary under any trust. "Landlord" means only the owner or the mortgagee in possession for the time being of the building in which the Premises are located so that in the event of any sale of said building or an assignment of this Lease, Landlord shall be and hereby is entirely released and discharged from any and all further liability and obligations of Landlord hereunder, except any that may have theretofore accrued. Notwithstanding anything to the contrary provided in this Lease, if landlord or any successor in interest of Landlord shall be a mortgagee, or individual, joint venture, tenancy in common, corporation, firm or partnership (general or limited), it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee, corporation of such individual or on the part of the members of such firm, partnership or joint venture, or any stockholder, officer, director or trustee of such corporation with respect to any of the terms, covenants and conditions of this Lease, and that Tenant shall look solely to the equity of Landlord or such successor in interest in the Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of personal liability to be absolute and without any exception whatsoever.



Section 13.06. Recordation. This Lease shall not be recorded. If requested by Tenant, Landlord shall prepare a separate memorandum of lease in conformance with Maine law.

Section 13.07. Duplicate Originals. This Lease has been executed in two (2) or more copies, each of which shall be considered an original for all purposes.

Section 13.08 Entire Agreement. This Lease and the attached Appendices A, B, and C contain the complete and entire agreement of the parties.

Section 13.09. Estoppel Certificate. The Tenant agrees, at any time, and from time to time upon no less than ten (10) days prior request by Landlord, at Landlord's expense, to execute, acknowledge, and deliver to Landlord a statement in writing certifying, if such be the case, that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the Lease as modified is in full force and effect), stating the amounts and dates to which the Base Rent and Additional Rent, and other charges have been paid and stating whether or not to the best knowledge of Tenant there exists any default in the performance of any covenant, agreement, term, provision, or condition contained in this Lease, and if so specifying each such default, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of, or any prospective holder of a mortgage upon the premises by any other property interested party.

IN WITNESS WHEREOF, the parties have executive this Lease Agreement under seal as of the day and year first above-written.

WITNESS:

INHABITANTS OF TOWN OF  
KENNEBUNKPORT

\_\_\_\_\_

By: \_\_\_\_\_  
Laurie A. Smith, Town Manager

[TENANT]

\_\_\_\_\_

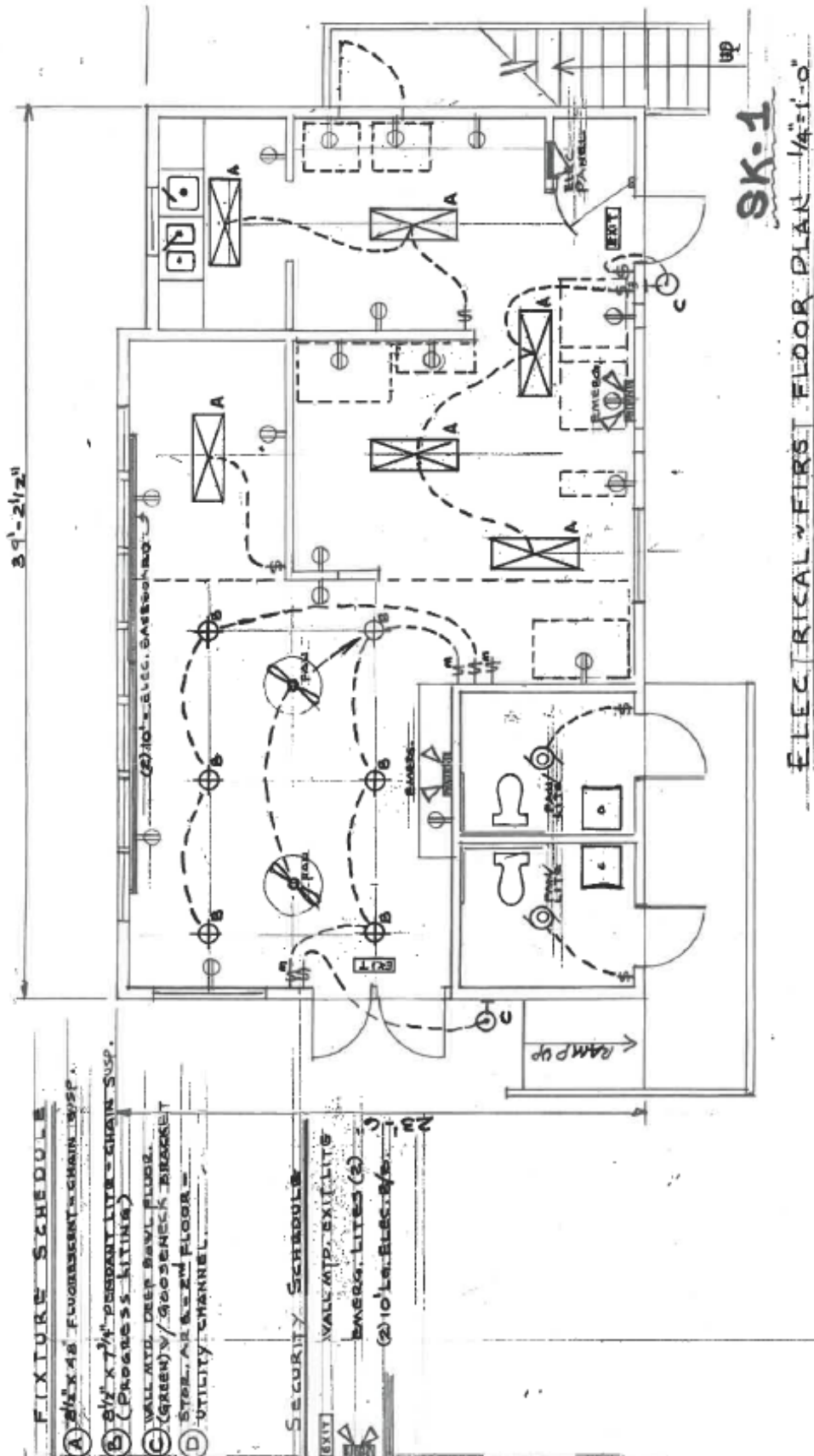
By: \_\_\_\_\_  
Wanda Daggett

[TENANT]

\_\_\_\_\_

By: \_\_\_\_\_  
Allen A. Daggett

# APPENDIX A TO LEASE AGREEMENT



HARDY POND C. INSTRUCTION  
 PROJECT: 100/100  
 ARCHITECT: 100/100  
 TITLE: 100/100  
 DRAWN BY: 100/100  
 CHECKED BY: 100/100  
 REVIEWED BY: 100/100

## **APPENDIX B TO LEASE AGREEMENT**

### **Rules and Regulations Regarding Restaurant Use**

- I. Tenant may use the Premises for the sale of hot dogs, hamburgers, lobster rolls, fried foods, ice cream, tonic, coffee, tea, milk, and similar menu items, to be consumed on the Premises or packaged "to go." Tenant may also use the Premises for the sale of beer and wine, to be consumed on the Premises only. Within this limitation, the precise menu items offered for sale shall be at the discretion of the Tenant. The Tenant shall not engage in wholesale sales of any goods or foods. Tenant shall not permit the retail sale of cooked lobsters or clams anywhere on the Premises by anyone except Tenant.
- II. In regard to the use and occupancy of the Premises, Tenant will at its sole expense:
  - A. Keep the inside and outside of all glass in the doors and windows of the Premises clean;
  - B. Replace promptly any cracked or broken glass of the Premises, including exterior windows, with glass of like kind and quality;
  - C. Maintain the Premises in a clean, orderly, and sanitary condition;
  - D. Keep any garbage, trash, rubbish, or other refuse in appropriate containers and be responsible for all removal of such garbage, trash, rubbish, and refuse on a regular basis;
  - E. Maintain in good working order the one lobster tank owned by Landlord and the supply lines that service this tank, and any product losses or food inventory losses or damage as a result of any equipment or any utility failure will be at the sole risk of Tenant;
  - F. Repair or replace any equipment or property belonging to Landlord that is damaged or destroyed through the fault of Tenant, the negligence of Tenant's employees, or the general operation of Tenant's business;
  - G. Conduct its business in all respects in a dignified manner in accordance with highest standards of similar operations.
- III. In regard to the use and occupancy of the Premises, Tenant will not:
  - A. Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, reception of radio or television broadcasts within the Premises in such manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior.

## APPENDIX C TO LEASE AGREEMENT

### CAPE PORPOISE PIER ORDINANCE

1. **Preamble:** The Inhabitants of Kennebunkport having determined that the operation of a fish pier and public landing is a public purpose and having determined that such a facility is needed in Cape Porpoise Harbor for the convenience and economic well-being of the Inhabitants of the Town of Kennebunkport, enact this ordinance to be known as the “Cape Porpoise Fish Pier Ordinance”.
2. **Definitions:**
  - a. **Cape Porpoise Pier:** “Cape Porpoise Pier” means the existing pier on Bickford’s Island in Cape Porpoise and the related real estate, fixtures, personal property, easements and other rights belonging to the Town of Kennebunkport and any replacement, improvement, extension or modification of said premises and facilities made hereafter.
  - b. **Town:** “Town” means the Town of Kennebunkport organized and existing as a municipal corporation under the laws of the State of Maine.
3. **Purposes:** The Cape Porpoise Pier shall be managed by the municipal officers of the Town, or their designee, primarily as a public fish pier for the berthing, servicing, loading, offloading, repair and other needs of commercial fishing vessels. To the extent compatible with its primary use as a public fish pier, and to the extent permitted by agreements between the Town and the State of Maine, the pier shall also be available for use by other vessels, by residents of the Town, and by members of the general public.
4. **Fee structure:** After notice and public hearing, the municipal officers shall establish a reasonable schedule of fees for the use of the Cape Porpoise Pier, its related facilities, and for services provided at the pier. In establishing the schedule of fees, the municipal officers shall consider the value of the services provided, the costs to the Town for administration, maintenance, salaries, equipment, debt service and repairs to the pier, the expenses incurred by the Town for piers, docks and harbors and the amounts collected by the Town in personal property taxes on boats. Copies of the schedule of fees as established by the municipal officers shall be available at the municipal office during normal business hours and shall be posted in the vicinity of the Cape Porpoise Pier.
5. **Regulations:** After notice and public hearing the municipal officers are authorized to adopt regulations governing the rules of operation of the Cape Porpoise Pier which rules shall be designed to ensure its primary use as a fish pier, to prevent obstruction, overcrowding and unnecessary delays, to prevent personal injury or damage to vessels or property, to maintain safe and healthful conditions, to prevent vandalism and theft of property, to establish reasonable limits on the hours of operation, to prevent disturbance of the peace, to ensure that fees established are collected, and to govern such other matters as may be necessary or useful to the management and operation of the pier.

6. **Authority to contract:** The municipal officers are authorized to contract on such terms and conditions as are in the best interest of the Town with private persons or corporation for the provision of services to fishermen, vessels, residents of the Town and members of the public using the Cape Porpoise Pier and to contract for the operation of food take-out, ship store, retail and wholesale, lobster pounds and other incidental businesses on the Cape Porpoise Pier facilities. Prior to entering into any such contract, the municipal officers shall give notice of their intention to enter into such a contract and shall afford interested persons a reasonable opportunity to submit proposals for consideration.
7. **Cape Porpoise Pier Account:** All fees, rents leasehold payments of other sums collected by the Town in connection with the operation of the Cape Porpoise Pier shall be kept in a separate account to be known as the Cape Porpoise Pier Account. The funds in said account shall be used by the municipal officers to supplement any other sums appropriated by the Town for the costs associated with the Cape Porpoise Pier, including without limitation, expenses for administration, salaries, debt service, maintenance, equipment and repairs. Funds remaining in the Cape Porpoise Pier Account at the end of the fiscal year shall not lapse and such funds shall not be transferred to other accounts unless by vote of the Town at a regular or special town meeting.
8. **Authority to Retain Pier Manager:** The municipal officers are authorized to contract with or employ a Pier Manager and such other personnel as may be necessary to the operation of the Cape Porpoise Pier on such terms and conditions as are in the best interest of the Town. The municipal officers may delegate to the Pier Manager responsibility for the management and operation of the Cape Porpoise Pier under the general direction and supervision of the municipal officers, provided that the municipal officers shall not delegate the authority to establish fees under S4, to adopt regulations under S5 or to enter into contracts under S6 of this ordinance.
9. **Penalties:** Whoever violates the provisions of this ordinance or any regulation or rule established under this ordinance shall be punished by a fine of not more than \$100 for each such occurrence. If any violation continues for a period longer than 24 hours, each day that it continues shall be deemed a separate violation subject to the penalty herein provided. The right of any person to sue the Cape Porpoise Fish Pier may be suspended by the municipal officers, after reasonable notice and hearing, for failure to pay any fees due or for violation of regulations adopted pursuant to this ordinance.
10. **Notice:** The notice requirements under §4, 5, and 6 of this ordinance shall be met by posting in three public places within the Town and by publication in a newspaper of general circulation at least seven days prior to the hearing.

Adopted – April 14, 1982 at a Special Town Meeting

---

# **AGENDA ITEM DIVIDER**

---



## Maine Municipal Association

60 COMMUNITY DRIVE  
AUGUSTA, MAINE 04330-9486  
(207) 623-8428  
[www.memun.org](http://www.memun.org)

**Item 13**

### Memorandum

**To:** Key Municipal Officials of MMA's Member Municipalities  
**From:** James Bennett, President, Maine Municipal Association  
**Date:** June 23, 2022  
**Re:** Ballot for Election to MMA's Legislative Policy Committee



---

MMA's member municipalities have made their nominations for the 2022-2024 Legislative Policy Committee (LPC). It is now time to elect your representatives to serve on the Committee. The election ballot is enclosed. The ballot must be completed by the Board of Selectmen or Town/City Council of your municipality.

#### Number of votes

A majority of municipalities are being asked to vote for two candidates, because there are two elected LPC members for most districts. Some municipalities only vote for one candidate, because the other LPC member in that district is appointed. ***You are instructed on the ballot (above the list of candidates) whether to vote for two candidates or just one.***

#### Candidate profiles

If you are not familiar with any of the candidates, please review the Candidate Profiles on the back of the ballot. Feel free, also, to contact the candidates directly.

#### Write-in candidates

In addition to the candidates listed on the ballot, you may vote for a candidate whose name is not on the ballot by writing that person's name in. The write-in candidate need not be from your municipality but must be an elected or appointed official from a municipality in your Senate/LPC District. ***Check to be sure the write-in candidate is willing to serve if elected!*** Write-in candidates should be communicating their interest in serving among the municipal officers within their district.

If you are instructed to vote for two candidates and only one candidate is on the ballot, please use the "write-in" line for your second vote if you know of someone who is willing to serve.

#### Deadline for returning ballot

Return to ballot by 5:00 p.m. on **August 11, 2022** to Laura Ellis either in the enclosed envelope, via email ([lellis@memun.org](mailto:lellis@memun.org)) or FAX: 624-0129


**Your participation is important – Thank You!**

## OFFICIAL BALLOT – District 34

Maine Municipal Association's Legislative Policy Committee

July 1, 2022 – June 30, 2024

### VOTE FOR TWO:

- ☐ William Ward, Jr., Select Board Member, Town of Kennebunk
- ☐ Laurie Smith, Town Manager, Town of Kennebunkport
- ☐ Dwayne Morin, Town Manager, Town of North Berwick
- ☐ \_\_\_\_\_ (name) \_\_\_\_\_ (position) \_\_\_\_\_ (municipality) (  write in)

### Candidate Profiles Are On Reverse Side

MUNICIPALITY: \_\_\_\_\_ DATE: \_\_\_\_\_



BY SELECTMEN/COUNCILORS:

|           |            |
|-----------|------------|
| _____     | _____      |
| signature | print name |
| _____     | _____      |
| signature | print name |
| _____     | _____      |
| signature | print name |
| _____     | _____      |
| signature | print name |
| _____     | _____      |
| signature | print name |

**Return by 5:00 p.m., August 11, 2022 to:**

Laura Ellis, Maine Municipal Association

lellis@memun.org

Fax: 624-0129



## **LPC Senate District 34**

Berwick  
Kennebunk

Kennebunkport  
North Berwick

Wells

### **Candidate Profile:**

William Ward, Jr. has served for the past five years as Select Board member in the Town of Kennebunk, plus a prior term from 2011-2014. Mr. Ward previously served on the Kennebunk Budget Board for 10 years, serving 3 of those years as Chair and also served on the RSU 21 Finance Committee as a non-voting member from 2005-2015. He has served on the LPC since 2018 and would like to serve again because he is interested in any matter that may impact municipal government, including but not limited to, revenue sharing, excise tax, Maine Right to Know laws, environmental regulations affecting beaches, as well as business and marijuana regulations. He is also concerned with school funding and consolidation rules relating to RSU 21.

Laurie Smith has served as Manager in the Town of Kennebunkport for the past eight years. Prior to that she served as Manager in the Towns of Wiscasset, Boothbay, Boothbay Harbor, and Oxford; and as Assistant Manager in the City of Auburn. Ms. Smith has served on MMA's Executive Committee for several terms, including a term as President, and as Chair of the LPC when she served as the Executive Committee's Vice President. She has also served on MMA's Risk Pool and Workers' Compensation Boards. Laurie has served on the LPC in the past, both as Alternate and Member, including the last two terms and would like to continue her service because she is concerned with the erosion of home rule authority, the proliferation of bills and regulation as well as the development of partnerships between municipalities and the state.

Dwayne Morin has served as Manager in the Town of North Berwick for the past 26 years. Prior to that he served as Assistant to the Selectboard and Town Planner for the Town of Waterboro for six years. Mr. Morin served on MMA Ad-hoc Committees, including the Cable TV and Highway Committees. He served on the LPC between 2018-2020 and would like to serve again to work on municipal issues. He would like to be actively involved in issues before the state concerning municipal government because his concern is that legislatures do not necessarily understand municipal concerns and would like to help in this endeavor.

---

# **AGENDA ITEM DIVIDER**

---

## **Kennebunkport Public Health**

June 24, 2022

ATN: Kennebunkport Board of Selectman, Laurie Smith- Kennebunkport Town Manager

Please accept this donation of \$125.00 from Lexi Stockwell her girl scout cookie sales. She requested this gift is dedicated towards the emergency fuel fund.

Thank you!

Alison Kenneway RN, BSN

ELIZABETH LEGRO STOCKWELL  
PH. 207-432-1545  
275 OCEAN AVE  
KENNEBUNKPORT, ME 04046

52-7450/2112

881

DATE

6/23/22

FWP

PAY TO  
THE ORDER OF

Town of Kennebunkport  
One hundred twenty-five dollars &  $\frac{44}{100}$

\$ 125.00

DOLLARS

Heat  
Reactive  
ink

DELIVER TO THE CUSTOMER  
SPECIALLY DESIGNED FOR SECURITY



Kennebunk  
Savings

MEMO

Fuel Assistance

Elgro Stockwell

MP

31

HEAT-REACTIVE INK. DETAILS ON BACK.

---

# **AGENDA ITEM DIVIDER**

---

**Kennebunkport Public Health**

June 28, 2022

ATN: Kennebunkport Board of Selectmen, Laurie Smith-Kennebunkport Town Manager

Please accept this generous gift of \$150.00 from Bree and Scott Clark in memory of Carole Chamberlin to the Nurses account (08-01-39). This money was granted to Kennebunkport Public Health dept to assist us with supplies, equipment, training, or any needs we see fit.

Thank you!

Alison Kenneway RN, BSN

Kennebunkport Public Health

BREE W. CLARK  
SCOTT W. CLARK  
5A PIER RD  
KENNEBUNKPORT, ME 04014

4527

5260/112  
57148

6-22-22

Date

Pay to the  
Order of

Kennebunkport Public Health Nursing <sup>Services</sup> \$ 150 <sup>00</sup>  
One hundred fifty & zero/100's Dollars



KeyBank National Association  
1-888-KEY4BIZ® Key.com®

For (Donation Nursing Services)  
In Memory of Carole Chamberlain



211 4527

Harland Clarke

L

This donation is for nursing services. It is in memory of Carole Chamberlain who was grateful for your services.

Thank you for your continued care of our neighbors (literally & figuratively)

Yours - Bree Clark