

**FRANKLIN TOWN COUNCIL
MINUTES OF MEETING
September 7, 2016**

A meeting of the Town Council was held on Wednesday, September 7, 2016 at the Franklin Municipal Building, 355 East Central Street, Franklin, Massachusetts. Councilors present: Andrew Bissanti, Robert Dellorco, Glenn Jones, Matthew Kelly, Thomas Mercer, Peter Padula, Deborah Pellegrini, Judith Pond Pfeffer, Robert Vallee. Councilors absent: None. Administrative personnel in attendance: Jeffrey Nutting, Town Administrator; Jamie Hellen, Deputy Town Administrator; Mark Cerel, Town Attorney.

CALL TO ORDER: ► Chairman Kelly called the meeting to order at 7:00 PM with a moment of silence. Ryan from Troop 126 led the Pledge of Allegiance.

APPROVAL OF MINUTES: *August 10, 2016.* **MOTION to Approve** the August 10, 2016 meeting minutes by **Jones**. **SECOND** by **Mercer**. **No Discussion**. ► **VOTE: Yes-8, No-0, Absent-1.** (*Ms. Pellegrini had not yet entered the meeting*).

ANNOUNCEMENTS: ► Chairman Kelly announced the meeting is being recorded by *Franklin TV* and available for viewing on Comcast Channel 11 and Verizon Channel 29. This meeting may also be recorded by others.

PROCLAMATIONS/RECOGNITIONS: *None, as the swearing in of Fire Lieutenant was removed from agenda.*

CITIZEN COMMENTS: *None.*

APPOINTMENTS: ► **Conservation Commission.** Ms. Pfeffer read the appointment. **MOTION to Ratify** the appointment by the Town Administrator of Nicholas Shuler to serve as a member of the Conservation Commission with an expiration date of June 30, 2017 by **Pfeffer**. **SECOND** by **Jones**. **Discussion:** ► Mr. Shuler introduced himself to the Town Council. ► **VOTE: Yes-9, No-0, Absent-0.**

► **Franklin Advisory Committee.** Ms. Pfeffer read the appointment. **MOTION to Appoint** Diane D. Jardine to serve as a member of the Franklin Advisory Committee with term to expire June 30, 2017 by **Pfeffer**. **SECOND** by **Jones**. **Discussion:** ► Mr. Nutting stated it was at the request of the chair of the committee to add a member due to a vacancy. ► **VOTE: Yes-9, No-0, Absent-0.**

SUBCOMMITTEE REPORTS: *None.*

LEGISLATION FOR ACTION:

1. **Resolution 16-52: Appropriation: Plain Street Legal Settlement.** Ms. Pfeffer read the resolution. **MOTION to Move** Resolution 16-52: Appropriation: Plain Street Legal Settlement in the amount of \$18,000 by **Jones**. **SECOND** by **Mercer**. **Discussion:** ► Mr. Cerel recalled that in June the Town Council voted an amount to pay as compensation in this claim. It is complicated in terms of procedure as it is a tax-taking and therefore it must be adjusted for outstanding taxes. This money needs to be available to transfer from one municipal hand to the other. It is not going to the claimant; it is going to the town itself to offset taxes owed. ► Mr. Nutting stated the town is just paying itself from one account to another. **VOTE: Yes-9, No-0, Absent-0.**
2. **Resolution 16-53: Settlement of Claim Relating to Town-Owned Tax Title Land on Plain Street – Exhibit 1.** Ms. Pfeffer read the resolution. **MOTION to Move** Resolution 16-53: Settlement of Claim Relating to Town-Owned Tax Title Land on Plain Street – Exhibit 1 by **Mercer**. **SECOND** by

Padula. Discussion: ► Mr. Cerel stated this contemplates the process whereby the Land Court will rescind part of its judgment for the parcel that the town retains ownership of, keeping ownership of the parcel conveyed to the Housing Authority in the Housing Authority, then cross documents to ensure that everyone's claims are resolved, the Housing Authority has good title, and the town gets assurances that no one else is going to bring another claim against the town. ► Mr. Padula stated good work was done and he thanked Mr. Cerel and Mr. Nutting for taking care of the interests of the town.
VOTE: Yes-9, No-0, Absent-0.

HEARINGS: *Alcoholic Beverages Licensees – Failure to Pass Compliance Check.*

► **Acapulco's. MOTION to Open** the hearing for Acapulco's by **Jones. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.** ► Chief of Police Thomas Lynch addressed the Town Council. He stated that periodically compliance checks are run throughout the town to make sure under-21-year-olds are not served alcoholic beverages. Compliance checks were run on August 3 & 4, 2016. There were two failures, one being Acapulco's. He read the incident report summary from Officer Hamilton on August 3, 2016 regarding conducting said compliance check. The under-age decoy entered the establishment at 7:10 PM. The decoy left the establishment at 7:16 PM and reported that the bartender served him one Bud Light bottle. Officer Mucciarone and Officer Hamilton spoke to the bartender, Eliaquin Ilfaro Lupez, and the manager, Jesus Ruelas, and told them an alcoholic beverage was just served to a minor and this was in violation of the compliance check. The operative did not have any identification on him, only the \$20.00 bill given to him to pay for the beverage. He was not asked his age or for his identification by the bartender. ► Mr. Scott Nathan, attorney on behalf of Acapulco's, and Mr. Jesus Ruelas, owner, addressed the Town Council. Mr. Nathan stated that from his investigation there were two bartenders on duty at the time of said violation and one thought the other asked for identification. But, due to the flow of business at the time, no one actually checked. He does not deny that a bottle of beer was put before the operative. He stated that Acapulco's has not had a violation in 14 years and they want to be a good community member and continue to serve the residents of Franklin. He stated that the bylaws are just a guidance as they have had 14 years of unblemished service, and asked that be taken into account. ► Chief Lynch stated this is a first-time offense and his recommendation would be a three-day suspension with two days held in abeyance and one day to serve on a Wednesday. In response to a question by a council member, he stated he has not heard that Acapulco's is a problem place. ► Mr. Jones stated the Town Council takes these compliance checks very seriously when it comes to serving a minor. This offense seems very negligent. ► Mr. Cerel asked what if any procedures have been put in place to make sure this does not happen again. ► Attorney Nathan stated the young man that served the beer will be re-trained. ► Mr. Mercer mentioned the new policy that takes affect September 1, 2016. He asked if all their bartenders have been TIPS trained. ► Attorney Nathan stated yes. ► **MOTION to Approve** the recommendation by Chief Lynch of a one-day suspension on Wednesday, September 14, 2016 and two days held in abeyance for two years by **Mercer. SECOND** by **Pfeffer. Discussion:** ► Council members asked questions regarding the violation. ► Attorney Nathan stated that an ID scan will be installed at Acapulco's tomorrow. ► Mr. Ruelas demonstrated how the machine worked to validate a license. He stated he suspended the bartender for two-weeks and the bartender will be re-trained when he returns. He confirmed that they do accept out-of-state licenses. He reiterated that for 14 years they have not had any offenses. ► **VOTE: Yes-9, No-0, Absent-0.** ► **MOTION to Close** the hearing for Acapulco's by **Jones. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.**

► **Joe's American Bar & Grill. MOTION to Open** the hearing for Joe's American Bar & Grill by **Jones. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.** ► Chief of Police Thomas Lynch addressed the Town Council. He read the incident report summary from Sargent Spillane on August 4, 2016 regarding conducting said compliance check. The under-age decoy stated he was served a Bud Light bottle by the bartender. The bartender was identified as Victoria Beinars; the manager

was identified as David Petersen. The instructions to the operative were a no-ID protocol. The operative had no identification on him and had only a \$20 bill given to him to purchase the beverage. He was not asked for identification or for his age. ► Ms. Lesley St. Germain of McDermott, Quilty & Miller, representing the licensee, and Mr. Michael Botelho, manager at the premises, addressed the Town Council. Ms. St. Germain stated they understand the seriousness of holding a liquor license and it is an important responsibility. They have re-trained the entire staff; all employees are TIPS certified. She provided an overview of the mitigating steps taken since this incident which include but are not limited to changing their policy regarding carding and not accepting out-of-state IDs. She said they will better police internally so incidents like this do not happen again. The bartender was suspended for one-week and subsequently re-trained. The new policy is for immediate termination for a failed compliance check. ► Mr. Padula asked why do they not card everyone. ► Ms. St. Germain stated it is not required under the statute to card everyone. They believe carding those 40 or younger will be sufficient. ► Mr. Jones recalled when Joe's American Bar & Grill was before the Town Council in 2011 for the same issue. ► Ms. St. Germain summarized the 2011 incident. ► Mr. Bissanti asked why they do not use the ID scan technology. ► Ms. St. Germain stated their company believes humans looking at an ID do a better job than the current technology. ► Chief Lynch recommended this be considered a first offense and as such his recommendation would be a three-day suspension with two days held in abeyance and one day to serve on a Thursday. ► **MOTION to Approve** the recommendation by Chief Lynch of a one-day suspension on Wednesday, September 14, 2016 and two days held in abeyance for two years by **Mercer. SECOND by Pfeffer. Discussion:** ► Mr. Padula suggested that if they come back before the Town Council again, based on their history, another offense may be treated more like a third offense. ► **VOTE: Yes-9, No-0, Absent-0.** ► **MOTION to Close** the hearing for Acapulco's by **Jones. SECOND by Mercer. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.**

LICENSE TRANSACTIONS: *License Hearings.*

► ***Rare Hospitality d/b/a LongHorn Steakhouse – Change of Manager.*** Ms. Pfeffer read the license transaction. **MOTION to Approve** the request by RARE Hospitality International, Inc. d/b/a LongHorn Steakhouse for a change of Manager to Christian Roberto by **Pfeffer. SECOND by Mercer. Discussion:** ► Mr. Roberto introduced himself and provided his background in serving alcohol. ► Council members asked Mr. Roberto questions and his management plans regarding the liquor license. ► **VOTE: Yes-9, No-0, Absent-0.**

► ***99 Restaurant – Change of Manager.*** Ms. Pfeffer read the license transaction. **MOTION to Approve** the request by 99 Restaurants of Boston for a change of Manager to Pamela Abrantes by **Pfeffer. SECOND by Mercer. Discussion:** ► Mr. Cerel asked what is Ms. Abrantes experience with service and supervision of alcohol. ► Ms. Abrantes introduced herself and provided her background in serving alcohol. ► Mr. Jones mentioned the restaurant's last failure of compliance check was in 2014 and asked what steps she would take to secure that this does not happen again. ► Council members asked Ms. Abrantes questions and her management plans regarding the liquor license. ► Ms. Abrantes stated that under her management she has never had a violation and her servers must take the online courses which she can view and monitor. She stated they will take an out-of-state ID, but additional approvals are required. ► **VOTE: Yes-9, No-0, Absent-0.**

PRESENTATIONS/DISCUSSIONS: ► ***Preventive Maintenance.*** ■ Marco Brancato, Deputy Director of Public Facilities, and Joshua Peach from SchoolDude addressed the Town Council. Mr. Brancato stated Josh will speak about the preventive maintenance (PM) program, talk about other programs that may fit the town of Franklin, and answer Council member's questions. ■ Mr. Peach provided an overview of the SchoolDude company which provides many different solutions and services for preventive maintenance support. He discussed the executive summary report that he provided. He noted it can be time consuming and a challenge to put in all the schedules and many of his clients have requested this

service. He discussed some of their current clients and the services they provide to them. They have now done two buildings in Franklin. He responded to Council member's questions. ■Mr. Nutting stated that if the PM program is fully implemented, the amount of money needed to replace things in the future can be predicted and can then be put in the capital budget. ■Chairman Kelly stated a report such as the one Mr. Peach provided has been requested for a long time. ■Ms. Pfeffer confirmed that the report provided the trends in Franklin for the past four years. ■Mr. Nutting stated they are capturing an inventory of what makes the guts of every building work and what the PM schedule is for each piece of equipment. Right now there is not an inventory of every building, that is what this program will do and put in the system. Then, Mr. Brancato can manage that on a day-to-day basis. This is a huge information tool that will help in the long-run to provide data to make decisions. ■Mr. Brancato stated that recently the Kennedy and Davis Thayer schools were done; EMG came out and took an inventory of every piece of equipment. They are going to populate that into the SchoolDude program. Then every time something is done, it will be put into the PM system and there will be a record of it. ■Mr. Nutting stated that at the last meeting it was suggested that the town start with two buildings to try it and then come back in several months to get an update. If the Town Council wants to fund the remaining buildings, there would be some history behind it. The total cost to do every building was about \$50,000. ■Mr. Brancato stated he was comfortable with this program. ■Mr. Nutting stated the town has 1.2 million sq. ft. with an approximate replacement cost of \$400 per sq. ft. ■Mr. Dellorco stated it looks great. He asked about the maintenance specs. ■Mr. Peach stated EMG has information from the manufacturer and best practices from experience. ■Mr. Jones complimented Mr. Brancato on his work. He stated the biggest issue with this is educating the people to get things entered into the SchoolDude in order to get accurate information. He asked how are they educating teachers and administrators on the proper use of SchoolDude. ■Mr. Brancato stated he has spoken with the principals of both schools and explained what they are doing and how it will work. He noted he was already overseeing work order requests. ■Mr. Mercer stated this is a great product. ■Mr. Padula stated he likes the product, but wants to make sure the town gets a competitive cost. ■Mr. Peach explained the value of this system and the available data and solutions they provide. They try to be fair with pricing. ■Chairman Kelly thanked Mr. Brancato and Mr. Peach for attending the meeting.

► **Charter Review.** ■Mr. Nutting stated he asked Jim Dacey, chair of the 1995 Charter Review, as well as Paul Cheli and Larry Benedetto, co-chairs of the 2010 Charter Review, to provide a brief overview of what the issues were and to answer questions. ■Mr. Dacey provided an overview from 1978 of how this form of government began. He noted the growth of Franklin in the 1990s. The initial thrust of the 1995 Charter Review was to look at the size of the council, term of the council, need for a mayor, conflicts of interest, citizen participation, as well as other items. He discussed some of the ideas that were presented for the size and terms of the council and committees. The new charter reduced the number of council members from 17 to nine and allowed members to serve two years; it passed in April 1995 and took effect in November 1995. ■Mr. Cheli discussed the 2010 Charter Review process and provided an overview of the final report. There was concern at the time about having all Town Council and School Committee members elected at the same time. They looked at staggered terms and increased length of terms, but found that only twice in the town's history was there a dramatic change in the council membership; so, the two-year election period for all members was kept. The town treasurer position became an elected position when it went to the ballot and was approved. He stated they found that there were not a lot of things broken, and some of the things they thought were an issue did not turn out to be an issue. ■Mr. Benedetto stated he thinks the current system works reasonably well. He provided an overview of some of the areas that were looked at during the charter review. A topic that comes up is whether Franklin should have a mayor. He was originally a proponent of this, but after doing the work and looking around, he is not a proponent of it as institutional knowledge is lost and there are the politics of it. They looked at the town administrator position as well as which positions should be appointed/elected, and which positions the Town Council should weigh in on. He stated the review was a lot of work. ■Council members discussed a charter review. ■Ms. Pellegrini, who was on the Charter Review committee, stated it was a very

involved process. The major items were number of councilors, term of office, and appointed/elected positions. She was interested in knowing what her fellow councilors feel should be changed. ■Mr. Dellorco stated that if the town goes to a mayor, the people can vote for who they want for four years. He does not think a mayor is needed. ■Mr. Bissanti stated he does not want to abandon the idea of a mayor. He asked the former charter review members their opinion of the boards being appointed whereas now the boards are elected, such as the Planning Board. There may be a higher level of expertise with an appointed board. Maybe as elected officials, the Town Council members should be making decisions about who to appoint to some of the boards. ■Mr. Cheli stated the elected method sometimes turns into a popularity contest, but on the other hand, the citizens often stated they wanted the ability to elect. He noted that all the charter review meetings were public. ■Mr. Benedetto recalled that at one time the Planning Board was an appointed board. ■Mr. Padula stated that the Town Council does not do any interviewing for positions; the town administrator recommends candidates to the Town Council for approval. This is a frustration for the Town Council and this process should be reviewed. He said the Town Council is a good form of government, with some room for improvement. ■Mr. Jones stated that if it is not broken, don't fix it. He stated some consideration should be given to better communication to get some of these issues resolved without addressing the charter. He would like to make sure that hires are kept within the town. ■Ms. Pfeffer stated the major concern is that the Town Council gets the phone calls about someone that is hired that the Council knew nothing about and the person is now an employee of the town. She asked why there could not be one or two councilors on the hiring committee who can then report the information back to the full council. ■Mr. Benedetto stated that as a legislative body the Town Council should be happy they are not part of the hiring process and should tell the callers to call the town administrator. ■Mr. Cheli stated that for a council member to be part of the interview/hiring committee is not a charter change but a bylaw change. ■Mr. Mercer said he is a proponent of if it is not broken, don't fix it. He supports Mr. Benedetto's comment. He agrees with improving the communication in the hiring process. ■Ms. Pellegrini discussed the terminology of chief elected official versus chief executive officer. The Town Council does not want to get involved in hiring clerical or DPW workers. But, with higher up positions, the Council should have some say. ■Mr. Nutting stated that as the town administrator he is only involved in interviews with the people that the Town Council ratifies. He lets his department heads hire the people they think are the most qualified. ■Mr. Vallee stated he would recommend staggered terms for three years, otherwise the system works very well. ■Mr. Benedetto stated the institutional knowledge comes from the people that work for the town, not really from the town councilors. ■Chairman Kelly stated he was concerned about staggered terms. He stated if the town were considering going with a mayor, the town would need to find about \$175,000 in the budget. ■Mr. Cheli stated that during the charter review process he learned through interviews that many people wanted to have the ability to throw out the entire Town Council at once. ■Mr. Cerel stated there have been several references that the Town Council is primarily a legislative body. That is important to understand. As a purely legislative body, the Town Council is immune to personal liability as long as they are acting as legislatures. When the council starts performing other functions, that insulation from liability is lost. He noted that Boards of Selectman are administrators and have been sued individually for their acts or omissions. ■Mr. Nutting stated the Town Council should give themselves more credit and they are doing a great job for Franklin.

TOWN ADMINISTRATOR'S REPORT: ► Mr. Nutting reminded everyone that school is now opened. Lots of kids and buses out there, so slow down. ► Downtown process continues for a few more weeks to finish last odds and ends. Police are continuing to monitor traffic. ► The sign of Lawrence Clark, a WWI veteran who died in the line of duty, was inadvertently painted; it was taken down today to be restored. ► Mr. Hellen stated the Harvest Stroll is on October 6, at 4:00PM with the ribbon cutting for the Downtown. He requested all the Town Council members to attend. All residents are invited.

FUTURE AGENDA ITEMS: ► Mr. Bissanti stated he would like to address that the Conservation Commission Agent is still torturing people with paperwork about infringing on wetlands and buffers and asking for the hiring of soil scientists. He has received reports that the Agent is allegedly enforcing the

man-made catch basins which he thought was put aside for a while. He does not know how this should be addressed. Mr. Hellen, Mr. Dellorco and he have visited sites; the level of invasiveness to the wetlands was ridiculous such as a pile of dried grass clippings or branches. He understands the Agent has a job to do, but a little bedside manner would be helpful. He also mentioned a Zoning bylaw on the books regarding grandfathered lots, which is great. He stated Mr. Cerel stated this only applies to residential. Mr. Bissanti stated he would like to explore if this can be applied to industrial as well. ► Ms. Pfeffer stated that she has received emails regarding people with well-water watering their lawns. The water all comes from the same aquifer. She asked if there is anything that can be done to mitigate that. ► Mr. Nutting stated the Town Council can pass a bylaw placing restrictions on wells. ► Ms. Pfeffer stated with 800 more apartments coming in town, she is concerned if there will be sufficient water. ► Mr. Mercer requested an update from the Fire Chief regarding his conversations with the assisted living facilities in town. He noted recently there were five ambulance calls within 24 hours going to the same facility.

COUNCIL COMMENTS: ► Ms. Pellegrini noted the 9/11 tribute done by the Elks at the Elks Hall at 1077 Pond Street. They put out 2,977 flags; they deserve a big thank you. She stated the Friends of the Museum are putting on an appraisal day to be held a week from Friday at the museum. A licensed appraiser will be there. People can bring in items for appraisal; \$5.00 per item with a limit of three items. More information is available on the museum website. She was at a meeting with Bob Shore, the sculptor, and the statue will be going in the rounded area in front of the new building on Emmons Street. They would like to have a dedication in May 2017 when the statue is ready. She thanked Roger Calarese for all he has done. ► Mr. Padula stated he has seen the flags on Pond Street; it is fantastic. ► Mr. Mercer stated the flags at the Elks are wonderful; it was done by the Elks, the Boy Scouts and their families. He wished Ms. Pellegrini and her husband a happy anniversary. ► Mr. Jones asked everyone to be careful now that school is opened. He noted the water ban is still on. He agreed they should take a look at some legislation regarding private well-water use. He noted that the Franklin Education Foundation has an opportunity for sponsorship of the upcoming second annual Harlem Wizards Basketball Game at Tri-County Vocational High School on November 18, 2016 at 7:00 PM. It is a very popular event. It is all for the kids. ► Mr. Dellorco said happy anniversary to his wife. ► Mr. Bissanti agreed with Mr. Nutting that the town looks great and the Town Council does a good job. He noted there were people against the Emmons Street project and the Town Council members sometimes have to make brave decisions. He thinks it will be a focal point of the town. ► Mr. Pfeffer stated she thinks the planters on the island are too tall. They need to be low in order to see the watering trough. ► Chairman Kelly stated they are waiting for a decision by the Downtown Partnership and others as to what they prefer there. He requested Mr. Nutting get the DOT people to pick up the barrels around Downtown. He thanked all council members for their input tonight.

EXECUTIVE SESSION: *None.*

ADJOURN: MOTION to Adjourn by Mercer. SECOND by Jones. Yes-9, No-0, Absent-0. Meeting adjourned at 9:24 PM.

Respectfully submitted,

Judith Lizardi
Recording Secretary