

POSTED MARCH 27, 2024
REGULAR MEETING APRIL 1, 2024

TOWN COUNCIL OF THE TOWN OF MIDDLETOWN, RHODE ISLAND

The following items of business, having been filed with the Town Clerk under the Rules of the Council, will come before the Council at a regular meeting to be held on **Monday, April 1, 2024, 5:30 P.M. Executive Session and at 6:30 P.M. Regular Meeting** at the **Middletown Town Hall, 350 East Main Road, Middletown, Rhode Island**. Said meeting will be conducted in person, by telephone conference call/ webinar, members of the public may access and listen to the meeting in real-time by calling 1-877-853-5257 (Toll Free) or 1-888-475-4499 (Toll Free) and entering Meeting ID: 844 4661 0566 or on the web at <https://us02web.zoom.us/j/84446610566>

If you choose to join the meeting by zoom or telephone, Council Rules allow for the Public to speak only during the Public Forum and Public Hearings. If calling in by telephone, pressing *9 raises your hand and pressing *6 will unmute.

The items listed on the Consent portion of the agenda are to be considered routine by the Town Council and will ordinarily be enacted by one motion. There will be no separate discussion of these items unless a member of the Council, or a member of the public so requests and the Town Council President permits, in which event the item will be removed from Consent Agenda consideration and considered in its normal sequence on the agenda. All items on this agenda, with the exception of the Public Forum Session, may be considered, discussed, and voted upon in executive session and/or open session.

Pursuant to RIGL §42-46-6(b). Notice – “Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.”

Any person not a member of the Council, desiring to address the Council concerning a matter on the docket of the Council, not the subject of a Public Hearing, shall submit a written request to the Town Clerk stating the matter upon which he desires to speak. Persons are permitted to address the Council for a period not to exceed five (5) minutes.

PLEDGE OF ALLEGIANCE TO THE FLAG

RECONSIDERATION

The Middletown Town Council follows the codification of present-day general parliamentary law as articulated in Robert's Rules of Order Newly Revised 10th edition (2000), together with whatever rules of order the Council has adopted for its own governance. The motion to reconsider is one of the motions that can bring a question again before an assembly, and is designed to bring back for further consideration a motion which has already been voted on: If, in the same session that a motion has been voted on, but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it

appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to **Reconsider** [RONR (10th ed.), p. 304-321] the vote, propose that the question shall come before the assembly again as if it had not previously been considered. (From Robert's Rules of Order Newly Revised In Brief, Robert, Evans et al., De Capo Press, 2004)

5:30 P.M. – EXECUTIVE SESSION

1. Executive Session - Pursuant to provisions of RIGL, Sections 42-46-2, 42-46-4 and 42-46-5 (a), (5) Land Acquisition, (5) Land Acquisition (West Main Road) and (2) Collective Bargaining (FOP) - review, discussion and/or potential action and/or vote in executive session and/or open session.

6:30 P.M. - REGULAR MEETING

PUBLIC FORUM

2. Pursuant to Rule 25 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting. All items discussed during this session will not be voted upon.

TOWN UPDATE

3. The Town Administrator will provide an update on Town Projects. (Continued to April 15, 2024)
4. The Town Administrator will provide an update on the School Building Project.

CONSENT

5. Approval of Minutes, re: Regular Meeting, March 18, 2024.
6. Resolution of the Council, re: Proclaiming April 28 through May 4, 2024, As National Small Business Week in the Town.
7. Communication of Tracey Pontes, Looking Upwards, Fundraising Committee, re: Request for support by sponsoring a tee sign for the 26th Annual Golf Tournament fundraiser. (Annual request)
8. Application of Coastal Cones, Inc. dba Ben & Jerry's Ice Cream, 40 Valley Road for RENEWAL of a Victaulling House License for the 2023-2024 licensing year.

9. Applications from the following named persons, firms and corporations for RENEWAL of Holiday Sales Licenses, for the 2024-2025 licensing year:

HOLIDAY LICENSE RENEWALS Expires: April 2, 2025

Advance Stores Company, Inc./Advance Auto Parts #7361- 957 West Main Road
Cellular Sales of RI- 11 East Main Road
Dollar Tree Stores, Inc/Dollar Tree #03156 - 880 West Main Road
Michael's Stores, Inc./Michaels #3711- 1305 West Main Road
Stop & Shop Supermarket Company – 1360 West Main Road
Ulta Salon, Cosmetics & Fragrance, Inc/Ulta Beauty- 1307 West Main Road
West Marine Products, Inc./West Marine- 379 West Main Road

10. Application from the following named persons, firms and corporations for RENEWAL of Sunday Selling Licenses, for the 2024-2025 licensing year:

Brewtus, Inc./Sandy's Liquors – 717 Aquidneck Avenue

LICENSES AND PERMITS

11. Application of Louela Glander, Wakefield, for a Tattoo License for the 2024-2025 licensing year to be used at Rose Nails and Spa, 1360 West Main Road. (NEW)
12. Application for Special Event Permit from The Saltwater Edge – Striper Kickoff- Custom Saltwater Fishing Lure Show, Saturday, April 6, 2024 from 9:00 am to 2:00 pm to be held at 1315 West Main Road.
13. Application for Special Event Permit from Aquidneck Community Table for the Aquidneck Community Table Saturday Farmer's Market to be held at Embrace Home Loans, 25 Enterprise Drive, beginning Saturday, May 4, 2024, through Saturday, October 26, 2024 from 9:00 am to 12:00 pm, includes a request to waive permit fee.
14. Application for Special Event permit from Richard Braun and Jen Reynolds for the Braun Block Party Wedding Friday, June 20, 2025 from 4:00 pm to 10:00 pm at 40 Ellery Avenue.

PUBLIC HEARINGS

15. Public Hearing (Advertised)
Public Hearing Remains Open.
An Ordinance of the Town of Middletown (Second Reading)
An Ordinance in Amendment to the Town Code of the Town of Middletown, Title XV, Chapter 152, Zoning Code, Article 17 Low and Moderate Income Housing – Comprehensive Permit. (Planning Board recommendation on file.)

16. Public Hearing (Advertised)
An Ordinance of the Town of Middletown (First Reading)
An Ordinance in Amendment to the Town Code of the Town of Middletown, Title XV, Chapter 152, Zoning Code, Article 4 Definitions – Lot Line. (Planning Board recommendation on file.)

ORDINANCE

17. An Ordinance of the Town of Middletown (First Reading)
An Ordinance in Amendment to the Town Code of the Town of Middletown, XI, Business Regulations, Chapter 113, Food Services, 113.04 Restrictions on Permits.

OTHER COMMUNICATION

18. Memorandum of Superintendent of Schools, re: FY25 ARP Funds – Beyond the Bell.

TOWN ADMINISTRATOR

19. Memorandum of Town Administrator, re: Letter from RIDOT regarding East Main Road Project.

BOARDS AND COMMITTEES

20. Confirmation of appointment of one (1) member from the Bicycle and Pedestrian Advisory Committee to the Comprehensive Community Plan Committee.
21. Appointment of one (1) member to the Bicycle and Pedestrian Advisory Committee for a term expiring March 2027.
22. Appointment of one (1) Alternate Member to the Board of Canvassers, Democrat of Republican Representative, term expiring March 2029.
23. Appointment of three (5) members to the Juvenile Hearing Board, three (3) regular members, terms expiring April 2027 and two (2) vacancies, auxiliary members, terms expiring April 2027.
24. Appointment of two (2) public members to the Middletown Local 250th Commission- Commission will be responsible to work with the RI 250th Commission and other local communities to recognize and organize “Semiquincentennial” 250th activities and events, terms to be determined.
25. Appointment of one (1) member to the Open Space and Fields Committee for a term expiring November 2026.
26. Appointment of two (2) members to the Outreach Committee, indefinite terms.

27. Appointment of three (3) members to the Planning Board, two (2) members, terms expiring February 2027 and one (1) member to complete a term expiring February 2025.
28. Appointment of four (4) members to the Zoning Board of Review, one (1) regular member, term expiring April 2029 and three (3) alternate members, terms expiring April 2025.
29. Communication of Christine Nolan, CEO/Trinity Healthy Living, Behavioral Healthcare Clinic, re: Resignation from the Middletown Prevention Coalition.

Wendy J.W. Marshall, MMC
Town Clerk

This meeting location is accessible to the handicapped. Individuals requiring interpreter services for the hearing-impaired should notify the Town Clerk's Office at 847-0009 not less than 48 hours before this meeting.

Posted on March 27, 2024, at Middletown Town Hall, Middletown Public Library, Middletown Web Site and Secretary of State Web Site.

Item # 15

ORDINANCE OF THE
TOWN OF MIDDLETOWN, RHODE ISLAND

AN ORDINANCE AMENDING THE TOWN CODE OF THE
TOWN OF MIDDLETOWN

TITLE XV: LAND USAGE
Chapter 152, Zoning Code

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

FIRST: That Town Code Title XV, Chapter 152, Entitled "Zoning Code" is amended as follows (language to be deleted is **[struck]** out within brackets; language to be added is **underlined**):

ARTICLE 17 LOW AND MODERATE INCOME HOUSING - COMPREHENSIVE PERMIT
§ 1700 PURPOSE.

This subchapter is intended to provide for the establishment of housing opportunities for low and moderate income individuals and families in order to meet the need for affordable, accessible, safe, and sanitary housing for citizens of low and moderate income in accordance with Middletown's Affordable Housing Plan.

§ 1701 AUTHORITY.

In accordance with R.I. Gen. Laws Title 45, Chapter 53, the "Low and Moderate Income Housing Act", the Middletown Planning Board shall have the power to issue a comprehensive permit for a qualifying low-and moderate-income housing project. The comprehensive permit shall include all permits or approvals from any local board or official who would otherwise act with respect to such application including, but not limited to, the power to attach to the permit or approval conditions and requirements with respect to setbacks, height, site plan, size, shape, building materials, landscaping, and parking consistent with the terms of the Act.

§ 1702 ELIGIBILITY.

~~[Any applicant proposing a development or redevelopment project in which at least 25% of the housing is low or moderate income housing as defined in this subchapter may submit to the local review board a single application for a comprehensive permit.]~~

Any applicant proposing to build low- or moderate-income housing may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least twenty five percent (25%) of the housing is low- or moderate-income housing.

§ 1703 DEFINITIONS.

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADJUSTMENT(S). Requests by the application to seek relief from the literal use and dimensional requirements of the zoning ordinance and/or the design standards or requirements of the land development and subdivision regulations. The standard for the local view board's consideration of adjustments is set forth in RIGL §45-53-4(d)(2)(iii)(E)(II).

ADMINISTRATIVE OFFICER. For purposes of this subchapter, the Town Planner is designated as the Administrative Officer.

AFFORDABLE HOUSING PLAN. The town's Five Year Affordable Housing Action Plan.

APPLICANT. An applicant for comprehensive permit approval by the Planning Board, which also includes his/her authorized agents or representatives.

COMPREHENSIVE PLAN. Town of Middletown Comprehensive Community Plan (1992); and any amendments thereto as adopted by the Town Council.

CONSISTENT WITH LOCAL NEEDS. Reasonable in view of the state need for low- and moderate-income housing, considered with the number of low-income persons in the Town affected and the need to protect the health and safety of the occupants of the proposed housing or of the residents of the Town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if the zoning ordinance, requirements, and regulations are applied as equally as possible to both subsidized and unsubsidized housing.

~~[INFEASIBLE. Any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the zoning approval, to the extent that it makes it impossible for a public agency, nonprofit organization, or limited equity housing cooperative to proceed in building or operating low or moderate income housing without financial loss, within the limitations set by the subsidizing agency of government, on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the public agency, nonprofit organization, or limited equity housing cooperative.]~~

INFEASIBLE. Any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the approval of the comprehensive permit, to the extent that it makes it financially or logistically impracticable for any applicant to proceed in building or operating low- or moderate-income housing, within the limitations set by the subsidizing agency of government or local review [planning board], on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the applicant.

~~[LOCAL BOARD. Any town official, zoning board of review, planning board, board of appeal or zoning enforcement officer, local conservation commission, historic district commission, or other municipal board having supervision of the construction of buildings or the power of enforcing land use regulations, such as subdivision, or zoning laws.]~~

LOCAL REVIEW BOARD. Middletown Planning Board.

~~[**LOW OR MODERATE INCOME HOUSING.** Any housing whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of housing affordable to low or moderate income households, as defined in the applicable federal or state statute, or local ordinance and that will remain affordable through a land lease and/or deed restriction for 99 years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state, or municipal government subsidy program but that is not less than 30 years from initial occupancy.]~~

LOW- OR MODERATE-INCOME HOUSING. Is synonymous with “affordable housing” as defined in R.I. Gen. Laws § 42-128-8.1, and further means any housing whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of affordable housing and that will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state, or municipal government subsidy program but that is not less than thirty (30) years from initial occupancy.

LETTER OF ELIGIBILITY. A letter issued by the Rhode Island Housing and Mortgage Finance Corporation in accordance with R.I. Gen. Laws § 42-55-5.3(a).

~~[**MEETING HOUSING NEEDS.** Adoption of the implementation program of an approved affordable housing plan and the absence of unreasonable denial of applications that are made pursuant to an approved affordable housing plan in order to accomplish the purposes and expectations of the approved affordable housing plan.]~~

MEETING LOCAL HOUSING NEEDS. As a result of the adoption of the implementation program of an approved affordable housing plan, the absence of unreasonable denial of applications that are made pursuant to an approved affordable housing plan in order to accomplish the purposes and expectations of the approved affordable housing plan, and a showing that at least twenty percent (20%) of the total residential units approved by a local review board or any other municipal board in a calendar year are for low- and moderate-income housing as defined in R.I. Gen. Laws § 42-128-8.1.

MONITORING AGENTS. Those monitoring agents appointed by the Rhode Island housing resources commission pursuant to RIGL §45-53-3.2 and to provide the monitoring and oversight set forth in this chapter, including, but not limited to, RIGL §§45-53-3.2 and 45-53-4.

~~[**MUNICIPAL GOVERNMENT SUBSIDY.** Assistance that is made available through a city or town program sufficient to make housing affordable, as affordable housing is defined in R.I. Gen. Laws § 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, and any combination of forms of assistance.]~~

MUNICIPAL GOVERNMENT SUBSIDY. Assistance that is made available through a city or town program sufficient to make housing affordable, as affordable housing is defined in § 42-128-8.1(d)(1); such assistance shall include a combination of, but is not limited to,

direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, zoning incentives, and adjustments as defined in this section and any combination of forms of assistance.

PROJECT.

(1) Major project. A comprehensive permit application involving a major subdivision or land development project.

(2) Minor project. A comprehensive permit application involving one or more of the following that is not a MAJOR PROJECT:

- (a) Minor subdivision or land development project;
- (b) Request for zoning variance;
- (c) Request for special use permit;
- (d) Request for relief from other local regulations or ordinances not outlined above.

§ 1704 MUNICIPAL SUBSIDIES.

In order to offset the differential cost of the low- or moderate-income housing units in the section, the following municipal subsidies shall be provided:

- (A) Adjustments, meaning a request, or requests by the application to seek relief from the literal use and dimensional requirements of the zoning ordinance and/or the design standards or requirements of the [land development and subdivision regulations]. The standard for the [planning board's] consideration of adjustments is set forth in [INSERT LOCAL SECTION REFERENCE] and RIGL §45-53-4(d)(2)(iii)(E)(II).**
- (B) Density bonus. The Town shall provide the following density bonuses for projects submitted under this section provided that the total land utilized under in the density calculation shall exclude wetlands, wetland buffers, area devoted to infrastructure necessary for development, and easements or rights of way of record.**
 - 1) For projects connected to public water and sewer, or eligible to be connected to public water and sewer, demonstrated through written confirmation from each respective service provider the following density bonuses are provided:**
 - i. For projects providing at least twenty-five (25%) low- and moderate-income housing the density bonus shall be five (5) units per acre.**
 - ii. For projects providing at least fifty percent (50%) low- and moderate-income housing the density bonus shall be nine (9) units per acre.**

- iii. For projects providing at least 100 percent (100%) low- and moderate-income housing the density bonus shall be twelve (12) units per acre.
- 2) For properties not connected to either public water or sewer or both, but which provide competent evidence as to the availability of water to service the development and/or a permit for on-site wastewater treatment system to service the dwelling units from the applicable state agency the following density bonuses are provided:
 - i. For projects providing at least twenty-five (25%) low- and moderate-income housing the density bonus shall be three (3) units per acre.
 - ii. For projects providing at least fifty percent (50%) low- and moderate-income housing the density bonus shall be five (5) units per acre.
 - iii. For projects providing at least 100 percent (100%) low- and moderate-income housing the density bonus shall be eight (8) units per acre.

§ 1705 REQUIREMENTS

- (A) Parking. For comprehensive permit applications one (1) off-street parking space per dwelling unit is required for units up to and including two (2) bedrooms.
- (B) Bedrooms. The bedroom count of units for a comprehensive permit are not limited to any count less than three (3) bedrooms for single family dwelling units, Floor area. There are no floor area limitations for comprehensive permit applications other than those provided by §45-24.3-11.

§ [1704] 1706 PROCEDURE.

Any applicant proposing to build low or moderate income housing may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least 25% of the housing is low or moderate income housing. The application and review process for a comprehensive permit shall be as follows.

[§1704.1 Application.]

- (A) Pre-application conference.

~~[(1) Prior to submission of the comprehensive permit application, the applicant shall first schedule a pre-application conference with the administrative officer. Members of the Planning Board, the Technical Review Committee, the Administrative Officer and other local officials as appropriate may participate in the pre-application conference.~~

~~— (2) To request a pre-application conference, the applicant shall submit to the Administrative Officer a short description of the project in writing including the number of units, type of housing, as well as a location map. The purpose of the pre-application conference shall be to review the concept plan of the proposed development, and to allow town officials and staff to provide guidance to the applicant.~~

~~— (3) The Administrative Officer shall schedule the pre-application conference to be held within 30 days of receipt of the applicant's request, if 30 days has elapsed from the filing of the request for pre-application conference and no pre-application conference has taken place, nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application for a comprehensive permit.]~~

A pre-application conference may be required by the [administrative officer or planning board] or requested by the applicant. The preapplication conference may be with the [planning board], technical review committee, or administrative officer as determined appropriate by the administrative officer.

1. In advance of the pre-application conference, the applicant shall submit a short written description of the project including the number of units, type of housing, density analysis, preliminary list of adjustments requested, a location map, and a conceptual site plan.
2. Upon request of the applicant for a pre-application conference, such conference will be scheduled and held within thirty (30) days of the request, unless a different timeframe is agreed to by the applicant in writing.
3. If thirty (30) days has elapsed from the filing of the pre-application submission, and no pre-application submission has taken place, nothing shall be deemed to preclude the applicant from thereafter filing and proceeding with an application for preliminary plan review.

(B) Preliminary plan.

1. Submission requirements. Applications for preliminary plan under this section shall include:
 - i. A letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed for a municipal government subsidy; and
 - ii. A letter signed by the authorized representative of the applicant, setting forth the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking adjustments; and
 - iii. A proposed timetable for the commencement of construction and completion of the project; and

- iv. Those items included in the checklist for preliminary plan review with the exception of evidence of state or federal permits.
 - v. Notwithstanding the submission requirements set forth above, the [planning board or commission] may request additional, reasonable documentation throughout the public hearing, including, but not limited to, opinions of experts, credible evidence of application for necessary federal and or state permits, and advice from other local boards and officials.
2. Certification of completeness. The preliminary plan must be certified complete or incomplete by the administrative officer within twenty-five (25) days of submission of an application. The running of the time period set forth herein will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a correct application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.
 3. Public hearing. A public hearing shall be noticed and held as soon as practicable after the issuance of a certificate of completeness.
 4. Notice. Public notice for the public hearing will be the same notice required under local regulations for a public hearing for a master plan. The cost of notice shall be paid by the applicant.
 5. Timeframe for review. The planning board shall render a decision on the preliminary plan application within ninety (90) days of the date the application is certified complete, or within a further amount of time that may be consented to by the applicant through the submission of written consent.
 6. Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant. Further, if the public hearing is not convened or a decision is not rendered within the time allowed, the application is deemed to have been allowed and the preliminary plan approval shall be issued immediately.
 7. Vesting. The approved preliminary plan is vested for a period of two (2) years with the right to extend for two (2), one-year extension upon written request by the applicant, who must appear before the [planning board] for each annual review and provide proof of valid state or federal permits as applicable.

Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the [planning board]. The vesting for the preliminary plan approval includes all ordinances and provisions and regulations at the time of the approval, general and specific conditions shown on the approved preliminary plan drawings and support material.

(c) Final plan. The second and final stage of review for the comprehensive permit project shall be done administratively, unless an applicant has requested and been granted any waivers from the submission of checklist items for preliminary plan review, and then, at the [planning board's] discretion, it may vote to require the applicant to return for final plan review and approval.

1. The following items shall be submitted as part of the final plan submission:

- i. All required state and federal permits must be obtained prior to the final plan approval.
- ii. A draft monitoring agreement which identifies an approved entity that will monitor the long-term affordability of the low- and moderate-income units pursuant to RIGL §45-53-3.2.
- iii. A sample land lease or deed restriction with affordability liens that will restrict use as low- and moderate-income housing in conformance with the guidelines of the agency providing the subsidy for the low- and moderate-income housing, but for a period of not less than thirty (30) years.
- iv. Those items included in the checklist for final plan review.
- v. Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.
- vi. Certification by the tax collector that all property taxes are current.
- vii. For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.

2. Certificate of completeness. The final plan application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided however, that, the certificate shall be granted within twenty-five (25) days of submission of the application. The running of the time period set forth herein will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as

complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

3. Timeframe for review. The reviewing authority shall render a decision on the final plan application within forty-five (45) days of the date the application is certified complete.
4. Decision on final plan. An application filed in accordance with this article shall be approved by the administrative officer unless such application does not satisfy conditions set forth in the preliminary plan approval decision or such application does not have the requisite state and/or federal approval or other required submissions, does not post the required improvement bonds, or such application is a major modification of the plans approved at preliminary plan.
5. Failure to act. Failure of the reviewing authority to act within the prescribed period constitutes approval of the final plan and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval shall be issued on request of the applicant.

(D) Vesting. The approved final plan is vested for a period of two (2) years with the right to extend for one one-year extension upon written request by the applicant, who must appear before the planning board for the extension request. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the local review board.

[~~(B) Submission requirements. All applications for comprehensive permits shall include:~~

- ~~— (1) A completed "Application for Comprehensive Permit" form;~~
- ~~— (2) A letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in the form of a letter, or such other form as may be prescribed, for a municipal government subsidy;~~
- ~~— (3) A written request to the local review board to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the applicable local boards. The written request shall identify the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking relief;~~
- ~~— (4) A proposed timetable for the commencement of construction and completion of the project;~~
- ~~— (5) A sample land lease or deed restriction with affordability liens that will restrict use as low and moderate income housing in conformance with the guidelines of the agency~~

providing the subsidy for the low and moderate income housing, but for a period of not less than 30 years;

~~— (6) Identification of an approved entity that will monitor the long term affordability of the low and moderate income units;~~

~~— (7) A financial pro-forma for the proposed development;~~

~~— (8) Application fee, as established in this subchapter.~~

~~— (C) Additional requirements.~~

~~— (1) In addition to the requirements of division (B) above:]~~

Low and Moderate Income Housing Application Requirements	
If a project requires:	The application shall include materials required by:
Zoning variance	<i>Zoning Board's Variance, Special Use and Appeals Information and Instructions</i>
Special use permit	<i>Zoning Board's Variance, Special Use and Appeals Information and Instructions</i> Zoning Ordinance development plan review (DPR)
Development impact review	Zoning Ordinance development impact review
Administrative subdivision	<i>Administrative Subdivision Checklist – Plat Checklist</i> (Appendix A – Rules and Regulations Regarding the Subdivision of Land)
Minor subdivision or land development project	<i>Minor Subdivision Checklist – Preliminary Plat Checklist</i> (Appendix A – Rules and Regulations Regarding the Subdivision of Land)
Major subdivision or land development project	<i>Major Subdivision Checklist – Master Plat Checklist</i> (Appendix A – Rules and Regulations Regarding the Subdivision of Land), except evidence of state and federal permits.

~~[(2) Notwithstanding the submission requirements set forth above, the Planning Board may request additional, reasonable documentation throughout the public hearing, including, but not limited to, opinions of experts, credible evidence of application for necessary federal and/or state permits, statements and advice from other local boards and officials.~~

~~— (3) All required state and federal permits must be obtained prior to the final plan approval or the issuance of a building permit.]~~

[~~(D)~~] **(E)** Fees. Fees shall be consistent with fees that would otherwise be assessed for a project of the same scope and type but not proceeding under this subchapter, provided, however, that the imposition of such fees shall not preclude a showing by a non-profit applicant that the fees make the project financially infeasible. Applications shall include fees as follows:

Low and Moderate Income Housing Application Fees	
For applications requiring:	Fees as established by:
Zoning variance or special use permit	Zoning Board - Fee schedule
Subdivision of land	Subdivision and Land Use Regulations - Appendix A
Development impact review	Zoning Ordinance development impact review

(F) Modifications and changes to plans.

- a. Minor changes, as defined in the local regulations, to the plans approved at preliminary plan may be approved administratively, by the administrative officer, whereupon final plan approval may be issued. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting a recommendation from either the technical review committee or the local review board. Denial of the proposed change(s) shall be referred to the local review board for review as a major change.
- b. Major changes, as defined in the local regulations, to the plans approved at preliminary plan may be approved only by the local review board and must follow the same review and public

(G) Required findings.

- a. **Required findings for approval. In approving a preliminary plan application for a comprehensive permit, the local review board shall make positive findings, supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted, on each of the following standard provisions, where applicable:**
- 1. The proposed development is consistent with local needs as identified in the comprehensive plan with particular emphasis on the affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies.**
 - 2. The proposed development is in compliance with the standards and provisions of the zoning ordinance and subdivision regulations, and/or where adjustments are requested by the applicant, that local concerns that have been affected by the relief granted do not outweigh the state and local need for low- and moderate-income housing.**
 - 3. All low- and moderate-income housing units proposed are integrated throughout the development; are compatible in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.**
 - 4. There will be no significant negative impacts on the health and safety of current or future residents of the community, in areas including but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water runoff, and the preservation of natural, historical, or cultural features that contribute to the attractiveness of the community.**
 - 5. All proposed land development and all subdivision lots will have adequate and permanent physical access to a public street.**
 - 6. The proposed development will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.**
- b. **Required findings for denial. In reviewing the comprehensive permit request, the local review board may deny the request for any of the following reasons:**
- 1. The Town has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan; provided that, the local review board also finds that the municipality has made significant progress in implementing the housing plan;**

2. The proposal is not consistent with local needs, including, but not limited to, the needs identified in an approved comprehensive plan, and/or local zoning ordinance and procedures promulgated in conformance with the comprehensive plan;
 3. The proposal is not in conformance with the comprehensive plan;
 4. The community has met or has plans to meet the goal of ten percent (10%) of the year-round units, provided that, the local review board also finds that the community has achieved or has made significant progress towards meeting the goals of the affordable housing plan; or
 5. Concerns for the environment and the health and safety of current residents have not been adequately addressed.
- c. Infeasibility of Conditions of Approval. The burden is on the applicant to show, by competent evidence before the local review board, that proposed conditions of approval are infeasible, as defined in R.I. Gen. Laws § 45-53-3. Upon request, the applicant shall be provided a reasonable opportunity to respond to such proposed conditions prior to a final vote on the application.

[~~§ 1704.2 Certificate of completeness.~~

~~— (A) Applications for comprehensive permits shall be made to the Administrative Officer, who shall review all applications for form and content in conformity with the requirements set forth herein. Complete applications shall then be officially filed for review by the Planning Board, and the Administrative Officer shall stamp all such applications with the date of official submission to the town. The application shall be certified complete or incomplete by the administrative officer as follows:~~

~~— (1) Minor project: Within 25 days;~~

~~— (2) Major project: Within 30 days for a master plan and within 45 days for a preliminary plan.~~

~~— (B) The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the Administrative Officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the Administrative Officer be required to certify a corrected submission as complete or incomplete less than 14 days after its resubmission. If the Administrative Officer certifies the application as incomplete, the Officer shall set forth in writing with specificity the missing or incomplete items.~~

~~— § 1704.3 Notification. Upon issuance of a certificate of completeness for a comprehensive permit, the Planning Board shall immediately notify each local board, as applicable, of the filing of the application, by sending a copy to the local boards and to other parties entitled~~

~~to notice of hearings on applications under the zoning ordinance and/or land development and subdivision regulations as applicable, and as further provided below.~~

~~—§ 1704.4 Public hearing.~~

~~—(A) Requirement. A public hearing, held in accordance with the applicable state and local regulations, shall be held for all comprehensive permit applications requiring one or more of the following:~~

~~—(1) A special use permit;~~

~~—(2) A zoning variance;~~

~~—(3) Major or minor subdivision or land development project approval.~~

~~—(B) Procedure. Public notice of the hearing shall be given at least 14 days prior to the date of the hearing in a newspaper of general circulation within the town following the town's usual and customary practices for such advertising. Notice shall be sent to the applicant and to each abutter, by certified mail, return receipt requested, of the time and place of the hearing not less than ten days prior to the date of the hearing. Said notice shall also include the street address of the subject property, or if no street address is available, the distance from the nearest existing intersection in tenths of a mile. In addition, notice of public hearing shall be sent:~~

~~—(1) By first class mail to the city or town planning board of any municipality where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, located within 2,000 feet of the town's boundaries.~~

~~—(2) To the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source located within either the town or 2,000 feet of the town's boundaries, provided, that a map survey has been filed with the building inspector as specified in R.I. Gen. Laws § 45-24-53(E)~~

~~—(3) To an adjacent municipality if:~~

~~—a. The adjacent municipality is an abutter; or~~

~~—b. The development site extends into the adjacent municipality; or~~

~~—c. There is a potential for significant negative impact to the adjacent municipality.~~

~~—(4) The cost of all notices for public hearings shall be borne by the applicant.~~

~~—§ 1704.5 Review. In taking final action on an application, the local review board shall make positive findings, supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted, on each of the following standard provisions, where applicable:~~

~~—(1) The proposed development is consistent with local needs as identified in the local comprehensive community plan with particular emphasis on the community's affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies.~~

~~—(2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance and subdivision regulations, and/or where expressly varied or waived local concerns that have been affected by the relief granted do not outweigh the state and local need for low and moderate income housing.~~

~~—(3) All low and moderate income housing units proposed are integrated throughout the development; are similar in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.~~

~~—(4) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.~~

~~—(5) There will be no significant negative impacts on the health and safety of current or future residents of the community, in areas including, but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water run-off, and the preservation of natural, historical or cultural features that contribute to the attractiveness of the community.~~

~~—(6) All proposed land developments and all subdivisions lots will have adequate and permanent physical access to a public street in accordance with the requirements of R.I. Gen. Laws § 45-23-60(5).~~

~~—(7) The proposed development will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved recorded plans.~~

~~—§ 1704.6 Decision:~~

~~—(A) All local review board decisions on comprehensive permits shall be by majority vote of the membership of the board and may be appealed by the applicant to the state housing appeals board as provided in this subchapter. Unless agreed to by both the applicant and the local review board, the local review board shall render a decision as follows:~~

~~—(1) For minor projects: Within 95 days after the issuance of the certificate of completeness.~~

~~—(2) For major projects: Within 120 days of issuance of the certification of completeness.~~

~~—(B) If the public hearing is not convened or a decision is not rendered within the time allowed, the application is deemed to have been allowed and the relevant approvals shall issue immediately.~~

~~—(C) In reviewing the comprehensive permit request, the local review board may deny the request for any of the following reasons:~~

~~—(1) The town has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan;~~

~~— (2) The proposal is not consistent with local needs, including, but not limited to, the needs~~

~~identified in an approved comprehensive plan, and/or local zoning ordinances and procedures promulgated in conformance with the comprehensive plan;~~

~~— (3) The proposal is not in conformance with the comprehensive plan;~~

~~— (4) The community has met or has plans to meet the goal of 10% of the year-round units as defined in R.I. Gen. Laws § 45-53-3(2)(i) being low and moderate income housing;~~

~~— (5) Concerns for the environment and the health and safety of current residents have not been adequately addressed.~~

~~— § 1704.7 Expiration. A comprehensive permit shall expire unless construction is started within 12 months and completed within 60 months of final plan approval unless a longer and/or phased period for development is agreed to by the local review board and applicant. Low and moderate income housing units shall be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units that are part of the project.]~~

(H) Recording of written decisions. All written decisions on applications under this chapter shall be recorded in the land evidence records within twenty (20) days after the local review board's vote or the administrative officer's decision, as applicable. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant and to any objector who has filed a written request for notice with the administrative officer.

(I) Local review board powers. The local review board has the same power to issue permits or approvals that any local board or official who would otherwise act with respect to the application, 1 including, but not limited to, the power to attach to the permit or approval, conditions, and 2 requirements with respect to height, site plan, size or shape, or building materials, as are consistent 3 with the terms of this section. 4

(J) Majority vote required. All local review board decisions on comprehensive permits shall be by majority vote of the members present at the proceeding; provided that, there is at least a quorum of the local review board present and voting at the proceeding.

(K) Construction timetable. A comprehensive permit shall expire unless construction is started within twelve (12) months and completed within sixty (60) months of the recording of the final plan approval unless a longer and/or phased period for development is agreed to by the local review board and the applicant. Low- and moderate-income housing units shall be built and occupied prior to, or simultaneous with the construction and occupancy of market rate units.

(L) [§ 1704.8]Appeal.

~~[(A) By applicant. Whenever an application filed under the provisions this subchapter is denied, or is granted with conditions and requirements that make the building or operation of the housing infeasible, the applicant has the right to appeal to the state housing appeals board established by R.I. Gen. Laws § 45-53-7, for a review of the~~

~~application. The appeal shall be taken within 20 days after the date of the notice of the decision by the local review board by filing with the state housing appeals board a statement of the prior proceedings and the reasons upon which the appeal is based.~~

~~—(B) By aggrieved person. Any person aggrieved by the issuance of an approval may appeal to the Supreme Court as provided in the applicable local or state regulation.]~~

- a. A decision of a local review board may be appealed by the applicant or an aggrieved party, as defined by § 45-24-31 to the superior court for the county in which the property is situated. The appeal shall be taken within twenty (20) days after the date of the recording and posting of the decision by the local review board by filing with the superior court, a complaint which contains a statement of the prior proceedings and the reasons upon which the appeal is based. The complaint shall name the local review board as the appellee and serve the local review board with the appeal within twenty (20) days of filing of the appeal. If an aggrieved party who is not the applicant files an appeal, the original applicant shall be named as a party and served in the same manner as the local review board.
- b. The local review board shall not be required to answer the complaint, but it shall submit the complete local review board record to superior court within thirty (30) days of receiving service of the complaint. Should the local review board fail to file the record within thirty (30) days, the applicant may move for default.

SECOND: This ordinance shall take effect upon adoption and its provisions shall supersede any inconsistent or contrary provision in any other ordinance.

Item # 16

ORDINANCE OF THE
TOWN OF MIDDLETOWN, RHODE ISLAND

AN ORDINANCE AMENDING THE TOWN CODE OF THE
TOWN OF MIDDLETOWN

TITLE XV: LAND USAGE
Chapter 152, Zoning Code

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

FIRST: That Town Code Title XV, Chapter 152, Entitled “Zoning Code” , Article 4 – Definitions, Section 400 is amended as follows (language to be deleted is **[struck]** out within brackets; language to be added is underlined):

ARTICLE 4 DEFINITIONS

§ 400 DEFINITIONS

LOT LINE. A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public or private space and shall include:

(a) *Front:* The lot line separating a lot from a street right-of-way[$\frac{5}{8}$]. **For a corner lot or through lot, developed or vacant, the front line shall be the lot line that has the required lot width/frontage. If more than one lot line, or no lot line meets the width/frontage requirement, the Zoning Official shall determine the front line based on which street the front door or main entrance of the existing or planned principal structure faces, or if that method is not determinative, based on which of the lot lines separating the lot from a street right of way is longer.**

(b) *Rear:* The lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, an assumed line at least ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line; and

(c) *Side:* Any lot line other than a front or rear lot line. On a corner lot, a side lot line may be a street lot line.

SECOND: This ordinance shall take effect upon adoption and its provisions shall supersede any inconsistent or contrary provision in any other ordinance.

Item # 17

ORDINANCE OF THE TOWN OF MIDDLETOWN, RHODE ISLAND

AN ORDINANCE AMENDING THE TOWN CODE OF THE TOWN OF MIDDLETOWN

TITLE XI: BUSINESS REGULATIONS Chapter 113, Food Services

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

FIRST: That Town Code Title XI, Chapter 113, entitled “Food Services”, Section 113.4 entitled “Restrictions on Permits”, subsection (A) is hereby amended as follows (language to be deleted is stricken out within brackets; language to be added is underlined):

§ 113.04 RESTRICTIONS ON PERMITS.

(A) The Town Council shall limit the number of MFET permits to [~~ten~~] 12 per year, and the number of MFEC permits to seven per year. One MFE shall be allowed per permit. There is no limit on the number of Temporary Mass Gathering Permits or Mobile Food Establishment Event Permits, but applications for Temporary Mass Gathering Permits must be submitted to the Town Council for approval at least six weeks in advance of the proposed gathering, and any MFE attending a temporary mass gathering or special event must be identified by the organizer and must have a valid MFE license from DBR pursuant to R.I. Gen. Laws§ 5-11.1-1.

SECOND: This ordinance shall take effect upon its adoption and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.