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POSTED – APRIL 28, 2021 REGULAR MEETING – MAY 3, 2021

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 special meeting to be held on **Monday**, **May 3**, **2021 6;00 P.M. Executive Session**; **Budget Immediately following**; **Regular Meeting at 7:00 P.M.** - Said meeting will be conducted by telephone conference call/ webinar, in accordance with Executive Order 20-46 issued by Governor Raimondo on April 15, 2020, extended to **April 29, 2021**, which modifies certain provisions of the Open Meetings Act ("OMA") and the Access to Public Records Act ("APRA") as part of the State's emergency response to COVID-19. 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: 864 5416 1786; or on the web at https://us02web.zoom.us/j/86454161786

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, 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, 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, <u>not the subject of a Public Hearing</u>, 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 three (3) minutes. Citizens that wish to speak must submit a written request either dropped off at Town Hall or emailed to both wmarshall@middletownri.com and kclancey@middletownri.com. Request must include your information, item number you wish to address and how you will be identified/named on zoom. The request must be filed at least 30 minutes prior to the meeting. If a request is not filed, you will not be able to address the matter.

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 <u>Robert's Rules of Order Newly Revised In Brief</u>, Robert, Evans et al., De Capo Press, 2004)

6:00 P.M. – EXECUTIVE SESSION

1. Executive Session - Pursuant to provisions of RIGL, Sections 42-46-2, 42-46-4 and 42-46-5 (a), (4) (Investigative Proceedings) - review, discussion and/or potential action and/or vote in executive session and/or open session.

Immediately following Executive Session - Budget

2. Review of Fiscal Year 2022 Operating Budget.

3. Adoption of Fiscal Year 2022 Budget Meetings.

Saturday, May 8, 2021 – 8:00 am

Monday, May 17, 2021 – 6:00 pm- 7:00 pm

Wednesday, May 19, 2021 – 6:00 pm – First Public Hearing

Wednesday, May 26, 2021 – 6:00 pm – Second Public Hearing

and Adoption

PUBLIC FORUM

4. 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 either dropped off a public participation request at Town Hall or emailed to both wmarshall@middletownri.com and kclancey@middletownri.com at least 30 minutes prior to the start of the meeting. All items discussed during this session will not be voted upon. (No longer than 15 Minutes total for the Public Forum)

CONSENT

- 5. Approval of Minutes, re: Special Meeting, March 9, 2021.
- 6. Approval of Minutes, re: Special Meeting, March 11, 2021.
- 7. Approval of Minutes, re: Regular Meeting, March 15, 2021.
- 8. Approval of Minutes, re: Special Meeting, March 18, 2021.
- 9. Approval of Minutes, re: Regular Meeting, April 5, 2021.
- 10. Approval of Minutes, re: Special Meeting, April 13, 2021.
- 11. Application of A&M Acquisitions, LLC dba A&M Tactical, 10 Coddington Highway for RENEWAL of a Firearms Dealers License for the 2021-2022 licensing year.

12. Applications for the following named persons, firms or corporations for renewal of an Amusement License for the 2021-2022 licensing year:

Amusement License 2021-2022 Expires: April 14, 2022

Diegos Middletown, LLC d/b/a Diego's Barro Cantina- 116 Aquidneck Ave First Beach, LLC d/b/a Newport Beach Hotel & Suites- 1 Wave Avenue Island Management, Inc. d/b/a Flo's Clam Shack- 4 Aquidneck Avenue Kempenaar Catering, LLC d/b/a Kempenaar's Clambake Club-Newport Vineyards and Winery, LLC d/b/a Newport Vineyards-Road

323 Valley Rd 909 East Main

The Pub at Two Mile Corner, Inc. d/b/a The Pub at Two Mile Corner-10 Maple Avenue

Seaview Inn, LLC/ The Atlantic Resort- 240 Aquidneck Avenue Sweet Berry Farm, Inc.d/b/a Sweet Berry Farm- 915 Mitchell's Lane

ACTING AS A BOARD OF LICENSE COMMISSION

- 13. (Advertised for Public Hearing and abutters notified)
 Application of Foodlove Market Middletown, LLC dba Foodlove Market, 1037 Aquidneck Avenue for a Class BV Liquor license for use at the same premises; including use of outdoor patio service. (New)
- 14. (Advertised for Public Hearing and abutters notified)
 Application of KVG, LLC dba Rock Lobster, 59 Aquidneck Avenue for a Class BV Liquor license for use at the same premises.
 (NEW)

PUBLIC HEARINGS

15. 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 Land Use, Chapter 152 Zoning Code, is amended by amending subsection "(E)" to Section 704, entitled "Height and Yard Modifications". (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 Land Use, Chapter 152 Zoning Code, is amended amending section §306 – Uses Subject to and Exempt from Development Plan Review (DPR). (Planning Board recommendation on file)

17. 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 Land Use, Chapter 152 Zoning Code, is amended by adding Article 27B – Outdoor Lighting.

(Planning Board recommendation on file)

18. 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 Land Use, Chapter 152 Zoning Code, is amended by adding new Article 30 – Atlantic Beach Overlay District; adding a new column and other revisions to Section 602 regarding uses allowed in the Atlantic Beach Overlay District; adding new lines to section 603 regarding dimensional requirements for the Atlantic Beach Overlay District; and adding definitions regarding signs to Article 12, Section 1202. (Planning Board recommendation on file)

LICENSES/PERMITS

- 19. Application of Foodlove Market Middletown, LLC dba Foodlove Market, 1037 Aquidneck Avenue for a Victualling House License for the 2020-2021 licensing year. (NEW)
- 20. Application of KVG, LLC dba Rock Lobster, 59 Aquidneck Avenue for a Victualling House License for the 2020-2021 licensing year. (NEW)
- 21. Application of KVG, LLC dba Rock Lobster, 59 Aquidneck Avenue for a Mechanical Amusement Device License for the 2021-2022 licensing year. (NEW; 3 GAMES; 1 POOL TABLE AND 1 JUKE BOX)
- 22. Application for Special Event Permit from Newport Film for Newport Film Outdoor Documentary Film Screening of "Playing With Sharks" to be held on Thursday, June 17, 2021, 6:00 p.m. 10:00 p.m. at the Second Beach Parking Lot.
- 23. Application for Special Event Permit from Sweet Berry Farm, 915 Mitchell's Lane, for the Rozanski/Mello Wedding to be held on Saturday, June 26, 2021 from 5 pm to 10:00 pm.

OTHER COMMUNICATIONS

- 24. (Continued from the April 19, 2021, Regular Meeting)
 Memorandum of Superintendent, re: Gaudet School Track.
- 25. Communication of John Ceglarski, President, Middletown Athletic Boosters, re: Request for support Middletown Athletic Boosters Senior Sports Banquet.
- 26. Email Communication of Michael Falcone, Director of Baseball Operations, Newport Gulls Baseball Club, re: Middletown Appreciation Night Newport Gulls.

TOWN COUNCIL

27. Memorandum of Councillor VonVillas and Vice President Welch, re: West Main Road Development.

TOWN ADMINISTRATOR

- 28. (Continued from the April 19, 2021, Regular Meeting)

 Memorandum of Town Administrator, re: Beach Operations Plan Update.
- 29. Memorandum of Finance Director, thru Town Administrator, re: Concession Bid-MIDD-021-004.
- 30. Resolution of the Council, re: Concession Bid-MIDD-021-004 Awarded to Fire & Water Concession, Inc.
- 31. (Continued from the April 19, 2021, Regular Meeting)

 Memorandum of Town Engineer thru Town Administrator, re: Availability of funding to support Maidford River flood mitigation.
- 32. (Continued from the April 19, 2021, Regular Meeting)
 Resolution of the Council, re: Authorizing the Town Engineer to work with the Planning Department to prepare and submit grant application National Fish and Wildlife Foundation National Coastal Resilient Fund.
- 33. (Continued from the April 19, 2021, Regular Meeting)
 Resolution of the Council, re: Authorizing the Town Engineer to work with the Planning Department to prepare and submit grant application –Southeast New England Program (SNEP).
- 34. (Continued from the April 19, 2021, Regular Meeting)
 Memorandum of Town Administrator, re: Zoning Enforcement Officer.
- 35. Communication of Tax Assessor, re: Cancellation of Taxes for certain Middletown residents.
- 36. Resolution of the Council, re: Cancellation of Taxes for certain Middletown residents.
- 37. Memorandum of Finance Director, re: Financial Report Nine Months Ended March 31, 2021.

BOARDS AND COMMITTEES

- 38. Email communication of Councillor Logan, resignation from the Open Space and Fields Committee.
- 39. Appointment of one (1) member to the Affordable Housing Committee- Newly Established Committee.
- 40. Appointment of one (1) member to the Conservation Commission for a term expiring July 2023.
- 41. Appointment of five (5) members to the Juvenile Hearing Board, three (3) Regular members, terms expiring April 2024 and two (2) members as auxiliary members, terms expiring April 2024.
- 42. Appointment of one (1) member to Middletown Economic Development Advisory Committee for a term expiring January 2024.
- 43. Appointment of one (1) member to the Open Space and Fields Committee; one (1) vacancy, term expiring November 2023 and two (2) vacancies, to complete terms expiring November 2021.
- 44. Appointment of one (1) member to the Pension Trust Fund Committee for a term expiring February 2024.
- 45. Appointment of one (1) member to the Personnel Review Board- Bi-Partisan Board, Democrat or Republican Representative, two (2) vacancies, terms expiring June 2024.
- 46. Appointment of one (1) member to the Senior Affordable Housing Committee- Newly Established Committee.
- 47. Appointment of one (1) member to the Senior Citizens Board of Directors; one (1) vacancy, term expiring January 2024 and one (1) vacancy, to complete a term expiring January 2022.

48. Appointment of four (4) members to the Zoning Board of Review; one (1) vacancy, Regular Member, term expiring April 2026, one (1) vacancy, First Alternate, term expiring April 2022, one (1) vacancy, Second Alternate, term expiring April 2022, and one (1) vacancy, Third Alternate, term expiring April 2022.

(Council may waive the requirement for reappointments; all new applicants shall be interviewed prior to appointment.)

Wendy J.W. Marshall, CMC 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 the meeting.

Posted on April 28, 2021 at Middletown Town Hall, Middletown Public Library, Middletown Web Site and Secretary of State Web Site.

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 by amending subsection (E) of Section 704, entitled "Height and Yard Modifications", as follows (language to be deleted is stricken out within brackets; language to be added is underlined):

§ 704 HEIGHT AND YARD MODIFICATIONS.

(E) For any property or structure located in a special flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps, or depicted on the Rhode Island coastal resources management council (CRMC) suggested design elevation three foot (3') sea level rise (CRMC SDE 3 SLR) map as being inundated during a one hundred (100) year storm, the maximum building height for a principal building set forth in Sections 603 and 604 of this Chapter, as applicable, shall be reduced by eight (8.0) feet.

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

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 by amending section §306 – Uses Subject to and Exempt from Development Plan Review (DPR) as follows (language to be deleted is [struck] out within brackets; language to be added is underlined):

§306 USES SUBJECT TO AND EXEMPT FROM DEVELOPMENT PLAN REVIEW.

When a building permit or zoning relief is requested, the <u>Building/Zoning Officerial</u> shall <u>confer with the Town Planner</u>, <u>who shall</u> determine whether or not development plan review is required based on the criteria below. Whether or not development plan review is required, all development, except single-family and two-family residential development, must meet the design standards of Article 5 of the Regulations, unless a waiver is granted by the Planning Board. For development where the <u>Zoning Officer Town Planner</u> determines that development plan review is not required, compliance with the design standards of the Regulations, Article 5 shall be determined by the <u>Zoning Officer Town Planner</u> in consultation with the <u>Administrative Officer Building/Zoning Official</u>. In cases where it is determined that development plan review is not required, but one or more waivers from the design standards of the regulations is requested, the waiver request(s) shall be forwarded by the <u>Zoning OfficerTown Planner</u> to the Planning Board for consideration.

- (A) (A) Development subject to development plan review. Any use where this chapter specifically requires development plan review, and any development which proposes one or more of the following is subject to development plan review, except that applications involving only single-family or two-family residential development are not subject to development plan review:
 - aA new principal building;
 - <u>\$\text{T}\$</u> he addition of new floor area greater than 1,000 square feet to an existing building;
 - or aA new parking area or addition to an existing parking area which in either case results in greater than 5,000 square feet of new parking surface, except that applications involving only single-family or two-family residential development are not subject to development plan review.
 - Any alteration of a building façade visible from a public street, except for alterations that include only painting, repair or
 replacement of exterior siding or trim, or replacement of existing windows. Except for minor repair of existing materials, use of
 exterior building materials or windows not in compliance with the design standards of the Regulations requires the granting of a
 waiver from the Regulations by the Planning Board.
- (B) Residential use. Development plan review shall not be required for one- and two-family residences located in any zoning district. DPR shall be required for any other residential development, including the expansion of existing structures and the demolition of existing structures in coordination with or anticipation of new construction, in any zoning district.
- (B)(C) Screening of rooftop equipment. When a building permit is requested for exterior renovation or other alteration to an existing building, except for minor repair of existing materials, the Building/Zoning Official shall confer with the Town Planner to confirm that any existing or proposed rooftop equipment, such as HVAC equipment, is screened from view from the public street. If necessary, installation of such screening shall be completed in conjunction with the work for which the building permit was initially requested.

 The style and appearance of new screening shall be consistent with the overall building design, and shall be approved by the Town Planner prior to issuance of the building permit.

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

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 by adding Article 27B – Outdoor Lighting as follows (language to be deleted is **[stricken]** out within brackets; language to be added is **underlined**):

<u>Article 27B – Outdoor Lighting</u>

27B00 PURPOSE

Regulation of outdoor lighting is required to:

- A. Protect drivers and pedestrians from the glare of non-vehicular light sources,
- B. Protect neighbors, the environment, and the night sky from glare and light trespass,
- C. Promote energy efficiency,
- D. Protect the visual character of the town.

27B01 APPLICABILITY

- A. <u>All outdoor lighting shall meet the requirements of this ordinance.</u> This includes, but is not limited to, residential, commercial, industrial, and public lighting.
- B. The Town may require or restrict lighting when public health, safety, and welfare are concerns.
- C. <u>In the event of conflict between a provision of this subchapter and any other provision of this chapter, the provisions of this subchapter shall prevail.</u>
- D. The following lighting uses are exempt from the requirements of this ordinance:
 - 1. Temporary decorative lighting is exempt from all but glare-control requirements,
 - 2. Lighting used under emergency conditions,
 - 3. Lighting used at Newport State Airport or required by federal, state, or local law.
 - 4. Lighting used at construction sites,
 - 5. Lighting associated with Town permitted events,
 - 6. <u>Lighting solely for signs (see Sign Ordinance for sign lighting regulations).</u>

27B02 CRITERIA

A. Illumination Levels

1. <u>Illumination levels shall be appropriate to the application. Illumination levels shall not be greater than is reasonably necessary for its purpose.</u>

B. Fixture Design

- 1. Fixtures shall be of a type and design appropriate to the lighting application.
- 2. <u>For the lighting of predominantly horizontal surfaces, such as roadways, sidewalks, parking lots, and building entrances, fixtures shall be fully-shielded and aimed straight down.</u>
- 3. For the lighting of predominantly non-horizontal surfaces where downward, fully-shielded fixtures are impractical (e.g. facades, landscaping, monuments), fixtures shall be located, aimed, and shielded to avoid lighting nuisances and hazards and limit impacts on the night sky.
- 4. Fixtures with the International Dark-Sky Association's (IDA) seal of approval are preferred and strongly encouraged.
- C. <u>Lamp correlated color temperature (CCT)</u>
 - 1. <u>Light sources shall have a "warm" CCT at or below 3000K. Higher CCTs include more blue light which has a negative impact on glare, human health, and the night sky.</u>
- D. Lighting Control

- 1. All lighting shall be located, aimed, designed, shielded, and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely travel and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property.
- 2. The illumination projected from any use onto a residential use shall not exceed 0.1 footcandle, measured line-of-sight and from any point on the receiving residential property.
- 3. The illumination projected from any property onto a non-residential use shall not exceed 1.0 footcandle, measured line-of-sight from any point on the receiving property.
- 4. <u>Vegetation screens shall not serve as the primary means for controlling glare. Glare control shall be achieved primarily using such means as fixture location, aiming, design, shielding, and illumination level.</u>
- 5. <u>Lighting Control for single-family and two-family residential property owners</u>
 - a. Directional fixtures such as floodlights, wall packs, and spotlights shall be permitted for use by individual property owners, but shall conform to the following requirements: (1) They shall be directed, shielded, and installed so they do not project onto neighboring properties or public rights-of-way, create unacceptable glare from an adjacent residential property, or have a significant impact on the night sky. (2) They shall be aimed no more than 45 degrees from straight down. (3) The maximum allowed lumens per fixture shall be 1800 lumens (i.e. one 120-watt incandescent bulb or two 60-watt incandescent bulbs), though lesser brightness is preferred.
- 6. <u>Lighting Control for common space in multi-family residential and mixed-use developments that include residential use</u>
 - a. While outdoor lighting might not be required to be installed in multi-family and mixed-use residential developments (i.e. apartment and condominium complexes), should a developer or property owner choose to include lighting it shall comply with this ordinance.
 - b. Directional fixtures such as floodlights, wall packs, and spotlights shall require approval from the Planning Board when going through the land development plan process or the building official when a new fixture is to be added to an existing use. Such fixtures shall conform to the following requirements: (1) They shall be directed, shielded, and installed so they do not project onto neighboring properties or public rights-of-way, create unacceptable glare from an adjacent residential unit or property, or have a significant impact on the night sky. (2) They shall be aimed no more than 45 degrees from straight down.
 - c. <u>For multi-family residential developments outdoor lighting shall be extinguished nightly by 11 p.m. Exceptions include lighting of pedestrian pathways and sidewalks that grant access to dwellings and parking areas.</u>
 - d. <u>For mixed-use developments outdoor lighting shall be extinguished nightly by 11 p.m. or within one-half hour of the close of commercial uses on the property, whichever is later. Exceptions include lighting of pedestrian</u>

pathways and sidewalks that grant access to dwellings, and parking areas used by residents of the development.

7. Non-Residential lighting control

- a. <u>Directional fixtures such as floodlights, wall packs, and spotlights shall require approval from the Planning Board when going through Development Plan Review process, or the Building Official when a new fixture is to be added to an existing use. Such fixtures shall conform to the following requirements: (1) They shall be directed, shielded, and installed so they do not project onto neighboring properties or public rights-of-way, create unacceptable glare from an adjacent residential property, or have a significant impact on the night sky. (2) They shall be aimed no more than 45 degrees from straight down.</u>
- b. With the exception of security lighting, all outdoor lighting for commercial, office, industrial, and institutional uses, including lighting for parking areas and vehicular and pedestrian ways shall be extinguished nightly within one-half hour of the close of the facility. When after-hours site security lighting is required, the use of motion-sensor controlled lighting is encouraged.
- c. <u>Canopy lighting used at gas stations, drive throughs, hotel marquees, etc. shall be accomplished using flat-lens, fully-shielded fixtures aimed straight down.</u>

8. Streetlight Control

- a. This ordinance shall apply to streetlights.
- b. Ornamental streetlights, as may be installed in a village center or residential neighborhood, shall have a minimal impact on the night sky due to uplight. Fixtures with the International Dark-Sky Association's (IDA) seal of approval are preferred.
- c. <u>Streetlight illumination level shall be appropriate for its context, with streetlights in residential neighborhoods</u> being dimmer than streetlights on highly trafficked streets or in commercial areas.
- d. In appropriate locations and circumstances, the town may extinguish or dim streetlights after 11 p.m.

E. Installation & Maintenance

- 1. Electrical feeds for fixtures mounted on poles for the illumination of parking areas shall be run underground, not overhead.
- 2. Poles supporting lighting fixtures for the illumination of parking areas and located directly behind parking spaces, shall be placed a minimum of five feet outside paved area, curbing, or tire stops, or on concrete pedestals at least thirty inches above the pavement, or suitably protected by other approved means.
- 3. <u>Fixtures shall not be mounted more than twenty feet above finished grade of the surface being illuminated, except that fixtures that are not fully shielded, if approved, shall not be mounted more than sixteen feet above finished grade.</u>
- 4. <u>Fixtures and ancillary equipment shall be maintained to always meet the requirements of this ordinance.</u>

27B03 ADMINISTRATION

- A. <u>Single-family and two-family residential property owners shall be exempt from this subchapter and may install outdoor lighting</u> without prior approval from the town. Such lighting shall be in conformance with the Criteria section of this subchapter.
- B. Wherever outdoor lighting is proposed, lighting plans shall be required and approved during the subdivision, land development plan, development plan review, or building/electrical permit application process. Submission requirements shall include:
 - A site plan with structures, parking areas, building entrances, roads and sidewalks, and abutting uses. The plan shall include the location of all proposed lighting fixtures and existing lighting fixtures proposed to remain. The following information should be provided about each fixture: location, mounting height, orientation, aiming direction, fixture type, lamp type, photometry, correlated color temperature (if LED), fixture catalog cuts, glare reduction devices, on/off control devices, pole foundation details (if applicable), and mounting methods.
 - 2. For projects where a landscaping plan is required to be submitted, that plan shall contain lighting fixture locations and shall demonstrate that the site lighting and landscaping have been coordinated to minimize conflict between vegetation and intended light distribution, both initially and at vegetation maturity.
 - 3. <u>Calculations demonstrating that the proposed lighting plan will not exceed the allowable number of footcandles at any point along the lot lines.</u>
- C. When requested by the Planning Board or Building Official, the applicant shall submit a visual-impact plan that demonstrates appropriate steps have been taken to mitigate lighting impacts.
- D. The following plan notes shall appear on the lighting plan
 - 1. <u>"Post-approval alterations, including equipment substitutions, to approved lighting plans shall be submitted to and approved by the Town prior to installation."</u>
 - 2. <u>"The Town reserves the right to conduct post-installation inspections to verify compliance with requirements and approved Lighting Plan commitments, and, if necessary, to require remedial action at no expense to the Town."</u>

27B04 COMPLIANCE MONITORING

A. Safety Hazards

1. <u>If the Town judges a lighting installation creates a safety hazard, the person(s) responsible for the lighting shall be notified and required to take remedial action without undue delay.</u>

- 2. <u>If appropriate corrective action has not been taken within thirty days of notification, the Town may initiate appropriate legal</u> action.
- B. Nuisance Glare and Inadequate Illumination Levels
 - a. When the Town judges an installation produces unacceptable levels of nuisance glare, skyward light, excessive or insufficient illumination levels or otherwise varies from this Ordinance, the Town may notify the person(s) responsible for the lighting and require appropriate remedial action.
 - b. <u>If appropriate corrective action has not been taken within thirty days of notification, and the Town determines the infraction so warrants, the Town may initiate appropriate legal action.</u>

27B05 NONCONFORMING LIGHTING

- A. <u>Any fixture or lighting installation existing on the effective date of this subchapter that does not conform with the requirements of this subchapter, shall be considered as a lawful nonconformance.</u>
 - 1. A nonconforming fixture or lighting installation shall be made to conform with the requirements of this subchapter when:
 - a. Minor corrective action, such as re-aiming or shielding the light source can achieve conformity
 - b. It is deemed by the Town to create a safety hazard
 - c. It is replaced by another fixture or is relocated
 - d. There is a change in use of the property

27B06 DEFINITIONS

- A. <u>Fixture</u>. The complete lighting unit, consisting of the lamp(s), and parts designed to distribute the light (reflector, lens, diffuser), position and protect the lamp(s), and connect the lamp(s) to the power supply. Also called a Luminaire.
- B. Footcandle. The unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one-foot square from a distance of one foot.
- C. <u>Fully-shielded fixture</u>. A fixture constructed and installed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the fixture, is projected below the horizontal plane through the fixtures lowest light-emitting part.

- D. Glare. Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility
- E. Lamp. A generic term for a source of light, often called a "bulb" or "tube".
- F. Light trespass. Light that falls beyond the property it is intended to illuminate.
- G. <u>Lumen. The unit of measure used to quantify the amount of light produced by a lamp or emitted from a fixture. This is different from a watt which is a measure of power consumption; a 12-watt LED bulb and a 60-watt incandescent bulb each produce about 900 lumens.</u>
- H. Photometry. The measurement of light in terms of its perceived brightness to the human eye.

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

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 by adding new Article 30 – Atlantic Beach Overlay District; adding a new column and other revisions to Section 602 regarding uses allowed in the Atlantic Beach Overlay District; adding new lines to section 603 regarding dimensional requirements for the Atlantic Beach Overlay District; and adding definitions regarding signs to Article 12, Section 1202, as follows (language to be added is underlined):

ARTICLE 30 - Atlantic Beach Overlay District

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Section 3000 - General

Purpose

The Town of Middletown establishes the following vision for the Atlantic Beach District: to become a more pedestrian-oriented, attractive and vibrant mixed-use village to serve the influx of seasonal visitors, the surrounding residential neighborhoods, and the Town in accordance with the 2007 Atlantic Beach District Master Plan and Comprehensive Plan.

The Atlantic Beach District is located in the southern end of Middletown abutting the City of Newport, with its boundaries depicted on the official Zoning Map. The Town is seeking to enhance the area both as a tourist destination and to better serve local residents. The 2007 *Atlantic Beach District Master Plan* serves as the primary document guiding the transformation of the area into a vibrant, walkable mixed-use area, capitalizing on its relatively dense development pattern and proximity to local beaches, historic Newport and other attractions. The following goals from that plan will be implemented, in part, through the adoption of the Atlantic Beach Overlay District:

- Develop and implement safety and aesthetic improvements to promote pedestrian activity that will support local small businesses, including streetscape improvements and pedestrian circulation throughout the district;
- <u>Identify opportunities to capitalize on the proximity of the district to beaches, hotels and other attractions for the benefit of local residents and the town business tax base</u>
- Identify options to promote private development that will be consistent with the vision for the district, including opportunities to promote an appropriate mix of uses and building and site design.

The district will promote development that preserves and enhances scenic views, includes a mix of uses that serve the needs of the local community, and incorporates high quality building and landscape design consistent with a traditional New England seaside village. The district will promote serving the needs of a small mixed-use commercial area; to provide goods and services in a more compact environment; to encourage redevelopment; and, to create a vibrant, walkable, pedestrian and bicycle friendly environment. These regulations shall be construed in a manner to further implement the goals, policies and applicable elements of the Middletown Comprehensive Community Plan and the Atlantic Beach District Master Plan.

Authority

This article is adopted in accordance with Title 45, Chapter 24 of the Rhode Island General Laws.

Applicability

All subdivisions, land development projects, mixed-use development, and any other development within the Atlantic Beach Overlay District as delineated on the official Middletown zoning map shall be subject to the provisions of this article and all other applicable requirements of this chapter. Where provisions of this article conflict with requirements elsewhere in this chapter or with provisions of the Commercial Development Design Standards contained in Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land, the requirements of this article shall prevail.

Section 3001 – Uses

Within the Atlantic Beach Overlay District, permitted uses, prohibited uses, and uses allowed by Special Use Permit issued by the Zoning Board of Review within the Atlantic Beach Overlay District are defined in Section 602 of this chapter subject to the following additional requirements:

- A. Buildings containing a motel or hotel use or other residential use, except single-family and two-family residential, must include commercial use(s) (e.g. retail, office, restaurant, etc.) on the first floor. Such commercial use must have a separate exterior entrance and operate separately and apart from the motel, hotel, or residential use. The floor area devoted to such first-floor commercial use shall equal at least 75% of the total first-floor area. In those locations where elevating of the ground floor greater than six (6) feet above post-development grade is necessary to comply with state or federally regulated floodplain building requirements, this requirement is waived.
- B. The number of transient lodging rooms (e.g. hotel, motel, timeshare, short-term rental, etc.) within the district shall be limited to the number existing plus the number in the development approval or permitting processes at the time of the adoption of this section, which is 257.

Section 3002 - Design Requirements

The purpose of design requirements is to establish and maintain a uniform set of standards that promote the use of high-quality design in the Atlantic Beach Overlay District, consistent with the traditional architectural styles of Aquidneck Island and traditional New England seaside villages.

Development shall comply with the following requirements in addition to applicable standards contained elsewhere in this chapter and in Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land (Regulations). Where there is a conflict, the requirements of this section shall prevail. Additionally, visual compatibility standards intended to guide the design, construction, and maintenance of sites are outlined in appendix X, Atlantic Beach District Design Manual, to which development in the district shall conform.

Building Design

- a) Roof form shall comply with the section 521.2.D of the Regulations, except that flat-roofed buildings are prohibited. Roof slope, materials, color and design must be compatible with traditional architectural styles.
- b) <u>First-floor facades visible from the public way shall have window area of 50%-75%. Upper floor facades shall have window area of 20%-60% and shall incorporate arcades, display windows, awnings, or other features to add visual interest at the pedestrian scale.</u>
- c) Any roof-top mechanical equipment shall be screened from view using architectural elements consistent with the overall design of the building.
- d) There is no limitation on window type (e.g. fixed, double hung, casement, sliding), however, true or simulated divided-light windows are required.
- e) <u>Buildings must have an entrance door for the public on the front-facing façade and accessible from the public sidewalk. Additional access doors on the side and rear facades are permitted.</u>
- f) All wireless communication facilities in the district must be disguised facilities.
- g) <u>Design of accessory and principal buildings on the same parcel must be compatible in terms of size, scale, and architecture.</u>
- h) Large box-like buildings or buildings with the repetition of box-like structures is prohibited.
- i) <u>Traditional architectural styles of Aquidneck Island and New England seaside villages is required including Colonial, Georgian, Federal, Greek Revival, Shingle Style, and Victorian.</u>

Site Design

- (a) Outdoor patio seating is encouraged for food-consumption related uses provided that the seating is completely within property boundaries.
- (b) Pedestrian areas must be constructed in a way to contrast with vehicular areas to provide safe and inviting access to buildings. If a sidewalk along a street is interrupted or crossed by a proposed vehicular access driveway, the sidewalk material must be maintained or another visually compatible method used to clearly delineate the sidewalk where it crosses the driveway.
- (c) In order to promote and preserve scenic views, buildings shall be located on the site in a manner designed to preserve significant coastal and pond views from the public right-of-way.

- (d) <u>Sites designed to focus pedestrian activity inwardly to the center of the site</u>, and sites lacking pedestrian connections to the public right-of-way are prohibited.
- (e) <u>Sites designed with building setbacks well in excess of the required setbacks and that interrupt the pedestrian flow of the streetscape, except where necessary to preserve views, are prohibited.</u>

Parking Lot Requirements

- (a) All parking shall be located to the side or rear of the building. On-site parking in front of the building is prohibited.
- (b) Parking areas shall include provisions for the parking of bicycles in bicycle racks in locations that are safely segregated from automobile traffic and parking. Bicycle rack space for one bike for each five automobile parking spaces or fraction thereof is required.
- (c) <u>Deciduous parking lot trees shall be provided consistent with the requirements of section 521.3.F. of the Regulations, except that one tree per ten off-street parking spaces is required.</u>
- (d) Existing trees on the site shall be preserved to the extent practicable, but only if they would not impede development and are deemed to be of particular value, subject to review and recommendation by the Middletown Tree Commission.
- (e) The planting of street trees may be required by the Planning Board on a case-by-case basis, determined during the Development Plan Review process.
- (f) Parking areas shall include provisions for the pickup and drop off of passengers outside of the public right-of-way.
- (g) <u>Installation of electric vehicle charging stations is encouraged.</u>
- (h) <u>Parking lots shall be designed such that pedestrian flow is not interrupted and the number of curb cuts is minimized to the greatest extent.</u> Sidewalk materials shall be maintained across driveway and parking lots.

Screening and Fencing

- (a) Vegetation rather than fencing is preferred to accomplish the screening requirements of this section.
- (b) Landscaping along property lines of abutting commercial uses is limited to four feet in height.
- (c) Opaque screening along any property line of commercial uses abutting a residential use or district is required. Screening must be of at least six feet in height at the time of installation, using either dense evergreen vegetation or fencing, or a combination.
- (d) Opaque screening along property lines of abutting commercial uses is prohibited.
- (e) Screening that blocks views or divides the continuity of the streetscape is prohibited.
- (f) Except where installed to provide required screening between commercial and residential uses, all fencing shall meet the following:

Be no more than 4 feet tall

Be of an open design and dark color, such as wrought iron, or split-rail design. Except that light colored fencing, such as white picket fencing is permitted in the front vard of the site only.

Solid, opaque fencing and chain-link and other wire fencing is prohibited.

Landscaping

- (a) <u>Landscape plantings shall not include Rhode Island invasive or non-native species as defined by the University of Rhode Island's Cooperative Extension Native Plant Guide and should consider species that may be recommended by the Middletown Tree Commission on a case-by-case basis.</u>
- (b) <u>Landscaped buffer along side and rear property lines on commercial properties abutting commercial uses shall be at least five feet</u> wide.
- (c) Landscaped buffers where commercial use abuts a residential use or zone shall be at least ten feet wide.
- (d) A landscaped buffer of at least five feet is required between buildings and parking areas or driveways. Landscaping shall be use to screen ground-level equipment, ground-mounted lighting fixtures as appropriate, and soften the automobile-focused areas of the site.
- (e) Landscaping shall be used as the preferred method for environmental controls such as for stormwater management facilities.
- (f) Landscaping may not include tall opaque plantings or trees that block views of the coast or the pond. Wide low plantings are encouraged.

Lighting

(a) All exterior lighting shall be designed to minimize impact on neighboring properties and night light pollution, with use of fixtures approved by the International Dark-sky Association preferred, and subject to Planning Board approval.

Signs

- (a) <u>Underlying Regulations Apply The sign regulations in Article 12 of Chapter 152 shall apply in the Atlantic Beach District (ABD)</u> except where superseded by the regulations set forth below.
- (b) Nonconforming Signs Existing nonconforming signs within the ABD shall be brought into conformance within five years of the adoption of this section.

(c) <u>Sign Design - In addition to the regulations listed in Article 12 of Chapter 152, the following regulations regarding sign design apply in the ABD:</u>

Signs shall be made of permanent and natural materials such as wood or lettering painted on glass, wrought iron, ceramic, stone or synthetic materials meant to mimic natural materials. Exceptions include window signs painted or affixed directly to the window, and awning signs.

Sign design shall be compatible with the architectural style and components of the building façade and its environs

The design and scale of signage shall reflect the pedestrian oriented nature of the district

Where illumination is allowed, illumination shall be with white light only. Lighting used should not exceed 450 lumens (~30 Watts of incandescent light) and should not be fluorescent in style. The source of illumination shall be shielded and directed downward at the sign.

5. Creativity in sign design and sign color appropriate with the district is encouraged.

(d) Prohibited Signs

In addition to those listed in Article 12 of Chapter 152, the following signs are prohibited in the ABD:

- 1. <u>Inflatable objects more than two cubic feet, spinners, and the like, including when used to commemorate a holiday or as components of a grand opening sign</u>
- 2. Internally illuminated signs, such as backlit/halo-lit signs, box/cabinet signs, channel letter signs
- 3. Changeable copy/readerboard signs
- 4. Pole signs
- 5. Window signs advertising brand-name products
- 6. Large signage designed for automobile visibility

(e) Exempt signs

In addition to the regulations listed in section 1209, Article 12 of Chapter 152, the following regulations regarding signs exempt from permitting apply in the ABD:

Section 3003 – Review Procedure

- A. <u>All development in the district is subject to</u> <u>Development Plan Review (DPR) in accordance with the thresholds and procedures set forth in Sections 305-309 of this chapter and Article 10 of the Regulations.</u>
- B. <u>In addition to the DPR application submission requirements of the Regulations, the following additional materials shall be submitted:</u>
 - i. Architectural renderings of the proposed development, depicting building and site improvements in context with existing buildings on abutting properties.

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Regulations for additional Signs exempt from permitting in the ABD						
A-Frame Sign	6 sq. ft per side and 3 feet high	1 per building	An A-frame sign shall not violate standards of accessibility, must be stored indoors outside of business hours, must be properly anchored or shall not be used during high-wind conditions. Must be placed completely within the parcel boundary.			
Home occupation sign	2 sq ft		If free-standing, must be placed completely within the parcel boundary.			
Menu boxes	2sq. ft no more than 2 inches from the building façade		May not be freestanding.			
Building Tenant directory	2sq ft					

§ 603 DISTRICT DIMENSIONAL REGULATIONS.

The following schedule sets forth the minimum and/or maximum dimensional regulations for uses permitted in the various zoning districts.

ZONING DISTRICT DIMENSIONAL REGULATIONS										
Zoning District and Use	Minimum Lot Size		Maximu m Percent age of Lot to be Occupi ed	Maximum Height of Building		Minimum Yard Dimension			Accessory Buildings Minimum Distance in Feet to	
	Area (S.F.)	Width/ Frontag e (Ft.)	Princip al and Access ory Buildin gs	Princi pal (Ft.)	Acce ssor y (Ft.)	Front (Ft.)	Side (Ft.)	Rear (Ft.)	Side Lot Lines	Rear Lot Lines
Atlantic Beach District (ABD)										
Small-scale shopping center	20,000	<u>120</u>	<u>25%</u>	<u>35</u>	<u>20</u>	<u>10</u>	<u>20</u>	<u>20</u>	<u>10</u>	<u>5</u>
Other permitted uses ¹	20,000	<u>120</u>	<u>25%</u>	<u>35</u>	<u>20</u>	<u>10</u>	<u>20</u>	<u>20</u>	<u>10</u>	<u>5</u>

ARTICLE 12 SIGNS § 1202 DEFINITIONS.

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

Menu box sign. A type of sign in a weather-tight box with a transparent front which is used to display restaurant menus.

Building tenant directory sign. A wall-mounted sign next to an entrance door that identifies the tenants the door provides access to.

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

