



STATE OF CONNECTICUT
TOWN OF GREENWICH

At the Representative Town Meeting of the Town of Greenwich to be held in the Moderator's Hall of Central Middle School on Monday, September 16, 2013 at 8:00 P.M.(E.D.T.) for the following purposes:

1. To consider and act up the following resolution, requested by

RESOLVED, that the Representative Town Meeting, in exercising its authority pursuant to Connecticut General Statutes, Section 7-474(b), hereby approves the funds necessary to implement the terms of the Town-Local 1042 IAFF collective bargaining agreement covering FY 12/13 in the mount of \$44,061 and FY 13/14 in the amount of \$93,408. In addition thereto the Representative Town Meeting approves the funds necessary to implement the terms of the Town-Local 1042 IAFF collective bargaining agreement covering the period FY 14/15 subject to the budgetary process as prescribed in the Town Charter.

BE IT FURTHER RESOLVED that the Representative Town Meeting approves any terms of such agreement which may be in conflict with the Town Charter, special act, ordinance, rule or regulation adopted by the municipal employer or its agents of the Town.

**Referred to Finance Committee
Referred to Labor Contracts Committee
Referred to Town Services Committee**

2. To consider and act upon the following resolution:

RESOLVED, that the following named person, nominated by the Board of Selectmen, be appointed a member of the Inland Wetlands Watercourse Agency for a term expiring 3/31/17.

SCOTT A. SALISBURY

**Referred to Appointments Committee
Referred to Land Use Committee**

3. To consider and act upon the following resolution:

RESOLVED, that the following named person, nominated by the Board of Selectmen, be appointed a member of the Planning and Zoning Commission for a term expiring 3/31/14.

PETER LEVY

**Referred to Appointments Committee
Referred to Land Use Committee**

4. To consider and act upon the following resolution, requested by Legislative and Rules Committee.

RESOLVED, that Appendix D to the Rules of the Representative Town Meeting be amended by adding the following as Appendix D-8:

D-8 LEASING POLICY GUIDELINES, VALUES AND OBJECTIVES

**RTM LEASING POLICY GUIDELINES FOR APPROVING LEASES, LICENSES
AND MANAGEMENT/ OPERATING AGREEMENTS FOR TOWN-
OWNED OR TOWN-LEASED REAL PROPERTY**

- I. **GENERAL PRINCIPLES.** The use of Town real property by individuals and non-governmental entities shall be based on the needs and benefits of such use to the Town and its residents, and shall be compatible with the Plan of Conservation and Development and other legal constraints. The process shall be fair, transparent, clearly defined and consistently administered by the Town.
- II. **AUTHORITY.** Only the RTM has the authority to lease real property under The Charter of the Town of Greenwich (the “Charter”), as confirmed by the Town Attorney. This grant of exclusive authority, including certain limited, specified delegations of authority, is further explained in Part VI below.
- III. **PURPOSE AND INTERPRETATION.**
 - A. **Purpose.** These policy guidelines provide recommendations for RTM members (and other officers and departments of the Town of Greenwich to the extent they deem appropriate) to use in determining whether to approve, modify or disapprove any agreement regarding leases, licenses or management/operating agreements that the Town proposes to enter into or renew with individuals or non-governmental entities for the use of Town-owned or Town-leased real property.
 - B. **Interpretation.** It is recognized that each particular type of real property will have many similarities, and therefore leases, licenses and management/operating agreements affecting a particular type of real property should address those

similarities in a similar manner. It is also recognized that each particular type of real property will have its own unique characteristics, and, as a result, these policy guidelines establish criteria that will apply broadly to categories of real property while allowing the exercise of reasonable discretion in their implementation to accommodate unique differences.

IV. APPLICABILITY OF TERMS.

- A. **Applicability of Terms.** Whenever the term “lease” is used herein, it shall be deemed to include the terms “license” and “management/operating agreement” as appropriate, and whenever the term “to lease” or the like is used herein, it shall be deemed to include the terms “to license” and “to enter into a management/operating agreement” as appropriate.
- B. **Definitions.** Definitions of the terms “lease”, “license” and “management/operating agreement” appear in Part VI below.

V. STATEMENT OF CONSIDERATIONS.

A. **Needs and Benefits.**

1. When deciding whether and to whom to lease Town property, preference should be given to Town residents and to non-governmental entities serving Town residents’ needs or providing benefits to Town residents, consistent, however, with applicable law, the purpose of the lease and other stated policy guidelines.
2. The needs of Town residents shall be taken into account in deciding whether and to whom to lease Town property, including:
 - a) Need for access to health and safety services;
 - b) Need for accommodations for individuals with special needs;
 - c) Need for low and moderate income housing;
 - d) Utilization of Town real properties by residents whose needs cannot be met by other Town or private properties;
 - e) Providing facilities to serve Town residents in the event of an emergency;
 - f) Need for improvement in cell phone coverage; and
 - g) Other identified needs.

3. The benefits to Town residents and the number of Town residents expected to be benefited shall be taken into account in deciding whether, for what purpose and to whom to lease Town property, including:
 - a) Cultural and educational opportunities;
 - b) Recreational opportunities;
 - c) Providing facilities to serve Town residents in the event of an emergency; and
 - d) Other identified benefits.

B. Fairness.

1. Like situations shall be treated similarly.
2. All Tenants of Town property shall provide benefits or services in a non-discriminatory manner.
3. Subject to policy considerations set forth in section V.A.2 above dealing with resident needs and subject to applicable law, Town residents shall have an equal opportunity to take advantage of benefits and/or services provided by such Tenants.
4. Access to significantly scarce Town resources located on Town-owned or Town-leased real property, shall be administered in a fair, transparent and non-discriminatory manner. Subject to applicable law and these policy guidelines, fair access to significantly scarce Town resources may be allocated in various ways. No allocation to any person of a significantly scarce Town resource shall be automatically renewable indefinitely. For purposes of these policy guidelines, significantly scarce Town resources shall be those resources where the demand for access and/or use greatly exceeds the supply and/or availability, for an extended continuous period of time
5. Capital investment proposed by a Tenant and described in a proposed lease ("Tenant Improvements") may appropriately be considered in setting:
 - a) the length of the initial term and specifically permitted renewals (the "Total Term") in such lease;
 - b) a lower rental payment; and/or
 - c) a termination payment in the event of the early termination of a lease by the Town for a Town purpose and not otherwise triggered by a Tenant's default.

6. All material lease terms shall be included in the formal written lease agreement. A lease shall expire on its established termination date, subject to any duly authorized and executed extension or renewal agreement or any holdover provisions included in the existing lease. There should not be a presumption that the Town will automatically enter into a new lease with a Tenant upon the expiration of the term (including all extension or renewal terms) of such Tenant's lease simply because the Tenant had a prior lease, but the Town should give due consideration to all relevant factors (including the Tenant's performance under the prior lease) in deciding whether to enter into a new lease with such Tenant.
7. The Town Clerk shall deliver a copy of these policy guidelines to every Tenant of Town real property promptly after adoption of these policy guidelines by the RTM and shall take reasonable steps to publicize the terms of these policy guidelines, and any modification or additions thereto.
8. The calculation of benefits to the Town in considering any renewal (or any amendment and restatement, substitution, or modification of any) lease beyond the Total Term of such lease should only include prospective benefits during the term of the proposed renewal (or amendment and restatement, substitution or modification). Prior Tenant Improvements should not be included in such calculation.

C. Transparency.

1. Consistent with the *Selectman's Policy on the Leasing of Town Land*, the process that the RTM follows in considering leases of Town property should be in writing and made available to the public such as via the Town's web site and in requests for lease proposals.
2. Prior to the execution and final approval of any lease by the Town, successful candidates for such leases should be informed of the Town's process for deciding whether, at the end of the term of such Tenant's lease, to renew those Tenants' leases or to take back the property for use by the Town itself or to replace those Tenants with competing applicants.
3. When the Town is approached by a person or non-governmental entity to use Town property for which the Town has determined there is no governmental use or when the Town determines to lease Town property, the Town should use reasonable best efforts to determine whether there is any other public interest in the use of, or access to, such property and should consider advertising the availability of such property.
4. When the Town determines to advertise the availability of property for lease at a market rate, the Town should provide broad advertisement of real

property lease opportunities to assure that, while residents would be preferred Tenants, competition in the market for the use of real properties is stimulated, thereby maximizing the prospect of a favorable impact on reduced Town costs and/or Town income in those cases where other objectives are secondary to favorable financial impacts.

D. Compatibility with Use Restrictions.

1. Leases shall be compatible with deeds, conservation easements or other forms of restrictive easements or covenants that limit the Town's right to lease the property.
2. Decisions by the Town in determining whether, for what purpose and to whom to lease Town property shall be consistent with the POCD.

E. User Friendly Process.

1. Renewal leases presented to the RTM for approval should be marked to show all proposed changes.
2. Leases that contain extension or renewal provisions should state the actual date of expiration of the original term and the actual date of the expiration of all renewal or extension terms.

F. Financial Analysis.

1. When the Town determines to lease Town property, there should be a reasonable analysis of the financial (including capital and operating) implications of that lease.
 - (a) The Town should use reasonable best efforts to quantify subsidies being offered, if any (as in a below-market lease, support for operational costs and/or maintenance services, etc.).
 - (b) The Town should use reasonable best efforts to quantify the financial benefits provided by the Tenant (e.g. maintenance, improvements, relieving the Town of operating responsibilities, etc.).
 - (c) The Town should use reasonable best efforts to quantify any capital costs borne by the Tenant for which the Town would otherwise be responsible.
2. Accounting of value / opportunity cost of leases should reflect any operating costs to be paid by the Tenant that would otherwise be borne by the Town.

- (a) The Town shall identify the non-financial needs and benefits that the lease will provide to the Town.**
- (b) Accounting should include a comparison of revenue lost by leasing Town property to a below market Tenant instead of to a market Tenant, unless (i) no market tenant has expressed interest after the availability of the property has been advertised, or (ii) the Town obtains written opinions of two (2) commercial realtors active in the Greenwich market that the property could not reasonably be rented to a commercial tenant at a market rate.**
- (c) The Town should give consideration to any revenue that a Tenant is permitted by its lease to generate.**

G. Required Provisions.

- 1. When the Town determines to lease Town property, the lease should contain certain standard provisions that, consistent with applicable law, assure that:**
 - (a) the Tenant (i) maintains accurate financial records in connection with the operation and management of the real property which the Town shall have the right to inspect from time to time and (ii) provides to the Town annual financial statements, including an income statement and balance sheet.**
 - (b) the Tenant maintains a current list of its membership in those cases in which the Tenant has members;**
 - (c) the Tenant is accountable for preserving the value of the property through maintenance and/or improvements;**
 - (d) the Tenant is provided a reasonable time period for planning and implementing improvement and maintenance projects;**
 - (e) the right of the Town to cancel the lease with reasonable notice is preserved should the Town determine that such cancellation is in the best interests of the Town;**
 - (f) Town liability is minimized by the Tenant having insurance that meets Town standards, subject to annual confirmation by the Town that such insurance is being maintained and subject to updating of such standards by the Town from time to time to meet then current standards;**
 - (g) operating costs for which the Town would otherwise be accountable are minimized;**

- (h) sublease or license of use of property is prohibited without the express prior written approval of the Town;
 - (i) revenue from any use of subleased/licensed property is appropriately allocated;
 - (j) a Tenant's use, allocation, sublease or license of significantly scarce Town resources shall be subject to Town approval;
 - (k) the Town represents that the lease is in compliance with any legal limitations on the use of the property, including without limitation any deed restrictions, and the Tenant covenants to comply with such limitations;
 - (l) a copy of each Tenant's bylaws in effect on the date of any lease, and all modifications to such bylaws, shall be attached as an addendum to the lease, and the Tenant covenants to comply with such bylaws;
 - (m) the Tenant shall comply with the all applicable provisions of all Federal, State and Town constitutions, charters, laws, statutes, ordinances and regulations; and
 - (n) all Leases shall be expressly subject to change of terms at renewal or for any exigent public purpose.
2. In those cases in which a Town property is leased to a Tenant for commercial purposes at a fair market value rent, the provisions of section V.G.1 may be modified to the extent necessary to conform to prevailing market standards for commercial leases.

VI. AUTHORITY; TERMINOLOGY AND APPLICABILITY.

- A. **Authority.** Article 13, Section 167 of the Charter gives the RTM the exclusive authority to exercise all of the powers vested in the Town, except as such powers have been delegated by the Charter, the Code of Ordinances (the "Municipal Code") or other applicable state law. The Town Attorney has opined in a Memorandum dated January 5, 2012, that:

"Nowhere in our Charter does one find a specific directive power or authority to lease real estate. The only conclusion one can draw is that such power by virtue of §167 has been reserved to our legislative body, the RTM."

There has been no delegation of the power to lease, but Article 8, Section 76(b) of the Charter has delegated certain authority to manage properties under the control of the Parks and Recreation Department to the Director of Parks and Recreation,

subject to the Board of Selectmen's prior approval, including the "issuance of all permits and licenses, the assignment of facilities, the collection of fees and charges, and the enforcement of ordinances and regulations governing the use of recreational facilities, activities and places" (with more specific regulations in Chapter 7 of the Municipal Code) and Article 8, Section 81a authorizes the Director of Parks and Recreation to enter into an agreement with Bruce Museum, Inc. for the administration, management and operation of the Bruce Museum, which authority is specifically subject to RTM approval.

B. Terminology And Applicability.

1. **Leases.** For the purposes of these policy guidelines, the term "lease" shall be understood to have its accepted legal meaning and shall include an enforceable agreement between the Town as Landlord and an individual or non-governmental entity as Tenant whereby the Town grants to the Tenant the exclusive right to use and occupy specified real property owned or leased by the Town for a specified period of time and subject to such terms and conditions as the Town may require in exchange for the payment of rent and/or other compensation. A lease creates an estate in the real property.
2. **Licenses.** For the purposes of these policy guidelines, the term "license" shall apply to those licenses that function as if they were leases. Licenses subject to these policy guidelines are those enforceable agreements between the Town as licensor and an individual or non-governmental entity as licensee whereby the Town grants to the licensee the exclusive or non-exclusive right to enter upon and use and/or occupy specified real property owned or leased by the Town for a specified purpose or purposes (including to pursue some occupation or to carry on some business) for a significant, specified period of time but revocable at the will of the licensor and subject to such other conditions as the Town may require in exchange for the payment of a fee and/or other compensation. A license does not convey any interest in the real property. The term of the license shall be of significant length such as a year or an entire season encompassing the purpose for which the license has been granted.
3. **Management/Operating Agreements.** For the purposes of these policy guidelines, the term "management/operating agreement" shall mean those agreements (1) for the management and/or operation of Town-owned or Town-leased real property and (2) that function as if they were leases. Management /operating agreements subject to these policy guidelines are those enforceable agreements between the Town and an individual or non-governmental entity as manager or operator whereby the Town grants to the manager or operator the exclusive or non-exclusive right to enter upon and use and/or occupy specified real property owned or leased by the Town for a specified purpose or purposes (including to pursue some occupation or to carry on some business) for a significant, specified period of time and subject to such conditions as the Town may require in exchange for the payment of a fee and/or other compensation. A

management/operating agreement does not convey any interest in the real property. The type of management or operating agreements that shall be subject to these policy guidelines are those that give the manager or operator control of the management or operation of specified Town-owned or Town-leased real property for a significant period of time such as a year or an entire period of time encompassing the purpose for which the management/operating agreement has been created.

4. **Exclusions.** Notwithstanding the foregoing, these policy guidelines should NOT apply to the following:
- (a) Single or multiple use permits issued under the authority delegated to the Director of Parks and Recreation; or
 - (b) Single or multiple use permits issued by the Police or the Board of Education under applicable law; or
 - (c) Permits or licenses described in Chapter 3 (Businesses) of the Municipal Code; or
 - (d) Licenses to operate concessions located on facilities owned by the Town for which public requests for proposals (RFP) and public bids have been solicited in accordance with applicable law, the approval of which has been delegated to the Director of Parks and Recreation, subject to the prior approval of the Board of Selectmen.

Referred to Finance Committee
Referred to Land Use Committee
Referred to Legislative & Rules Committee
Referred to Parks & Recreation Committee

5. To consider and act upon the following resolution:

RESOLVED, that the following named person, nominated by the Board of Selectmen, be appointed a member of the Greenwich High School Music Instructional Space & Auditorium (MISA) Building Committee, following the expiration of her term with the Greenwich Board of Education.

LESLIE B. MORIARTY

Referred to Appointments Committee
Referred to Education Committee

6. To consider and act upon the following resolution, requested by Commissioner of Public Works and approved by the First Selectman and the Board of Selectmen.

RESOLVED, that the Town of Greenwich grant easements at the Old Greenwich Train Station – South Side Parking Lot, located at 0 Sound Beach Avenue/0 Arcadia Road, Old Greenwich to the Connecticut Department of Transportation (CTDOT) and Connecticut Light and Power (CL&P).

Referred to Legislative & Rules Committee

Referred to Public Works Committee

Referred to Transportation Committee

7. To consider and act upon the following resolution, requested by the First Selectman and approved by the Board of Selectmen.

RESOLVED, that the Representative Town Meeting consider enacting an ordinance establishing a Harbor Management Commission for the Town of Greenwich, pursuant to the Connecticut Harbor Management Act, Connecticut General Statutes §§ 22a-113k through 22a-113t.

NOW, THEREFORE, BE IT ORDAINED, that the Representative Town Meeting of the Town of Greenwich hereby approves the ordinance attached hereto and made a part hereof.

HARBOR MANAGEMENT COMMISSION

Sec. - Creation of the Greenwich Harbor Management Commission

Pursuant to the provisions of Connecticut General Statutes §§ 22a-113k through 22a-113t, there is hereby created the Harbor Management Commission for the Town of Greenwich, which Commission, subject to the authority held by the Board of Selectmen of the Town of Greenwich under Town Charter § 307, shall be responsible for preparing, maintaining and implementing a Harbor Management Plan for the Town of Greenwich in accordance with General Statutes § 22a-113m through § 22a-113t. Any Harbor Management Plan prepared by the Harbor Management Commission shall be effective only upon approval and adoption by the Board of Selectmen and the Representative Town Meeting. Any and all decisions of the Harbor Management Commission may be reviewed by or appealed to the Board of Selectmen within thirty (30) days of the decision being appealed.

The Commission shall consist of seven (7) members who are electors and are nominated by the Board of Selectmen and appointed by the Representative Town Meeting, to serve without compensation, for terms of three (3) years each commencing on April 1,

provided, however, that the initial term of each member shall be as follows: three (3) members for four (4) years; two (2) members for three (3) years and two (2) members for two (2) years.

There shall be two (2) alternate members of the Greenwich Harbor Management Commission who are electors and are nominated by the Board of Selectmen and appointed by the Representative Town Meeting, who may be seated and vote in the event of the absence of a regular Harbor Management Commission member. The terms of such alternate Commission members shall be for three (3) years, and their initial terms shall be for three (3) years and two (2) years respectively, as designated by the Representative Town Meeting

In addition, the following will be non-voting, ex officio members of the Greenwich Harbor Management Commission: the Greenwich Harbor Master, one (1) member of the Board of Selectmen, a member each from the Planning and Zoning Commission, Conservation Commission, Board of Parks and Recreation, Shellfish Commission and the Representative Town Meeting, and a representative from the Greenwich Marine Police Division, Greenwich Department of Parks and Recreation and the Greenwich Department of Public Works. A Chairman, Vice Chairman and Secretary of the Greenwich Harbor Management Commission shall be elected annually by the voting membership of the Commission.

Sec. - Required Attendance at Regular Meetings By Harbor Management Commission Members.

A failure of the voting members to attend fifty percent (50%) of the regular meetings of the Greenwich Harbor Management Commission over a twelve (12) month period shall constitute evidence of sufficient cause to consider removal of any voting member of the Commission. Any such removal must be accomplished by a majority vote of the Board of Selectmen. In the event that such removal occurs, any replacement member to be appointed to the Commission shall be so nominated by the Board of Selectmen and appointed by the Representative Town Meeting. The Secretary of the Greenwich Harbor Management Commission shall provide a report to the Board of Selectmen on a quarterly basis, which report shall include minutes of Greenwich Harbor Management Commission meetings and attendance by its voting members.

Sec. - Jurisdiction of the Harbor Management Commission.

The Greenwich Harbor Management Commission shall have jurisdiction within and over all “navigable waters”, as defined in Connecticut General Statutes § 15-3a(1), and inter-tidal areas below the mean high water line of the shoreline of Greenwich and within the territorial limits of the Town of Greenwich.

Sec. - Harbor Management Commission Powers, Duties and Responsibilities

Pursuant to the provisions of General Statutes § 22a-113p, the Greenwich Harbor Management Commission shall review and make recommendations, consistent with the Greenwich Harbor Management Plan, on issues coming within the Harbor Management Commission's jurisdiction arising from any proposal affecting the real property on, in or contiguous to the Greenwich Harbor and the shoreline of Greenwich that are received by the Greenwich Planning and Zoning Commission, Zoning Board of Appeals, or the Historic District Commission. Failure of the Greenwich Harbor Management Commission to submit a recommendation shall be deemed to be its approval of the proposal.

In accordance with the provisions of General Statutes § 22a-113m, the Greenwich Harbor Management Commission shall review the Greenwich Harbor Management Plan on an annual basis and shall propose any additions and/or modifications to the Harbor Management Plan that the Harbor Management Commission deems appropriate. Any such proposed modification of the Greenwich Harbor Management Plan by the Greenwich Harbor Management Commission shall be approved in the same manner as the Greenwich Harbor Management Plan was initially approved as required pursuant to the provisions of General Statutes § 22a-113m.

Pursuant to the provisions of General Statutes § 22a-113l, the Greenwich Harbor Management Commission shall be authorized to enter into contracts, employ consultants and other assistants, and to receive and expend funds for equipment, supplies and staff to carry out the purposes of General Statutes §§ 22a-113k to 22a-113t, inclusive. Any contracts to be entered into by the Greenwich

Harbor Management Commission shall be first approved by the Board of Selectmen and be subject to the Town's purchasing policies and procedures. The Town of Greenwich may appropriate funds to the Greenwich Harbor Management Commission, as provided by and subject to the normal budgetary process of the Town.

Sec. - Regulation of Mooring Areas and Anchorage Areas.

Fees and plans for activities to take place in areas within the Greenwich Harbor Management Commission's jurisdiction shall be developed as elements of the Greenwich Harbor Management Plan and made available for review by the general public. The Greenwich Harbor Management Plan shall be submitted to the Board of Selectmen for its approval and then to the Commissioners of the State of Connecticut Department of Energy and Environmental Protection and the Department of Transportation for their approval and to the Army Corps of Engineers for review, comments and recommendations, and shall become effective upon approval and adoption by the Representative Town Meeting.

Sec. - Harbor Management Commission's authority to establish regulations.

In accordance with the Greenwich Harbor Management Plan, the Greenwich Harbor Management Commission shall have the authority to establish regulations relating to the use and maintenance of the area within its jurisdiction as delineated by Section ___ of this Chapter.

Sec. - Harbor Management Commission's authority to establish fees.

In accordance with the provisions of General Statutes § 22a-113s, the Greenwich Harbor Management Commission, pursuant to the Greenwich Harbor Management Plan, shall have the authority to propose a fee schedule for a permit for a mooring or anchorage or any other activity within the scope of the Greenwich Harbor Management Plan. Any such proposed fee schedule must be approved by the Greenwich Board of Selectmen and the Representative Town Meeting. The maximum annual fee for a mooring or anchorage shall not exceed the amount set by State statute.

Any fees collected pursuant to this section shall be deposited into a fund maintained by the Town of Greenwich, which fund shall be known as the Greenwich Harbor Management Fund, and shall be utilized solely for the maintenance and improvement of the areas within the jurisdiction of the Greenwich Harbor Management Commission for the benefit of the public and for expenses for personnel and equipment directly related to the function of the Greenwich Harbor Management Commission and the Greenwich Harbor Master. The Town's Treasurer shall collect any and all fees authorized pursuant to the provisions of this section.

Sec. - Coordination with other municipal agencies, boards and commissions.

The Greenwich Harbor Management Commission shall consult with and coordinate its activities with the other agencies, boards and commissions of the Town of Greenwich in furtherance of the purposes of the Harbor Management Commission as provided in this chapter.

Referred to Land Use Committee
Referred to Legislative & Rules Committee
Referred to Parks & Recreation Committee

Dated at Greenwich,Ct
September 3, 2013

THOMAS J. BYRNE
MODERATOR
CARMELLA C. BUDKINS
TOWN CLERK