



# TOWN OF MIDDLEBURY

## *Office of the Selectmen*

### MINUTES

#### MEETING OF THE BOARD OF SELECTMEN

**Monday, February 7, 2022 – 4:00 p.m.**

HELD CONCURRENTLY WITH ZOOM

<https://us04web.zoom.us/j/914937011?pwd=QVp5anRtQVRIS0c1aWRrekp2eUJkdz09>

Meeting ID: 914937011 - Passcode: 567991

One tap mobile (+1-646-558-8656), 0#, 567991# US (New York)

**Present:** Edward B. St. John, First Selectman      **Also** Attorney Robert Smith  
Elaine M. Strobel, Selectman\*      **Present:** Barbara J. Whitaker, Recording Clerk  
Ralph J Barra, Selectman      Marj Needham\*, Reporter – Bee Intelligencer

#### **Call to Order with Pledge of Allegiance**

The meeting was called to order at 4:05 p.m. by the First Selectman with the Pledge of Allegiance.

#### **Approval of January 18, 2022 Meeting Minutes**

First Selectman St. John MOTIONED to approve the minutes of the January 18, 2022 meeting; SECONDED by Selectman Barra. Unanimous approval.

#### **Tax Rebates**

Noreen & Nicola Corsi, Middlebury, CT	\$287.53
Michael J. Dowling, Middlebury, CT	\$243.81
Theresa F. Ravalese, Middlebury, CT	\$358.75

First Selectman St. John MOTIONED to approve the above-mentioned tax rebates, SECONDED by Selectman Strobel. Unanimous approval.

#### **Recommendation**

##### **Economic Development Commission Member**

This discussion is TABLED pending another recommendation.

#### **Discussion and Consideration**

Union Contract – Town of Middlebury and CSEA Local 2001, SEIU (July 1, 2021 to June 30, 2024)  
After mediation, Attorney Smith explained that both sides gave a little. The Union now has the Medicare supplement and a cost share increase on medical premiums. They will receive no increase the first year of the contract; a 2.5% increase in year 2 and a 2.5% increase in year 3.

First Selectman St. John MOTIONED to accept the above-mentioned contract; SECONDED by Selectman Strobel. Unanimous approval.

First Selectman St. John MOTIONED to AMEND THE AGENDA to appoint the sub-registrars; SECONDED by Selectman Strobel. Unanimous approval.

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First Selectman St. John MOTIONED to make the following appointments for Sub-Registrar in the Town of Middlebury at the request of Brigitte M. Bessette, Town Clerk; SECONDED by Selectman Strobel.

<b>Name</b>	<b>Term</b>
John W. Ford – Alderson Funeral Home	December 6, 2021 to December 1, 2025
Daniel J. Ford – Alderson Funeral Home	December 6, 2021 to December 1, 2025
Raymond A. Albini – Chase Parkway Memorial	December 6, 2021 to December 1, 2025

First Selectman St. John MOTIONED to accept and approve the attached Unlawful Operation of Motorized Recreational Vehicles & Sales and Fueling Regulation Ordinance; SECONDED by Selectman Strobel. Unanimous approval.

**Public Comments**

None.

**Adjournment**

First Selectman St. John MOTIONED to ADJOURN the meeting at 4:14 p.m., SECONDED by Selectman Strobel. Unanimous approval.

These minutes are subject to approval this 9<sup>th</sup> day of February 2022.

Respectfully submitted,

*Barbara J. Whitaker*

Barbara J. Whitaker  
Recording Clerk

## **Unlawful Operation of Motorized Recreational Vehicles & Sales and Fueling Regulation**

The following words, terms, and phrases, when used in this article, shall have the meanings as described to them in this section:

*All-terrain vehicle* means a self-propelled vehicle designed to travel over unimproved terrain as defined in Conn. Gen. Stat. § 14-379 and which has been determined by the commissioner of motor vehicles to be unsuitable for operation on the public highways.

*Dirt bike* means a two-wheeled motorized recreational vehicle designed to travel over unimproved terrain and not designed for travel on a highway, as defined in Conn. Gen. Stat. § 14-1. "Dirt bike" does not include an all-terrain vehicle, as defined in Conn. Gen. Stat. § 14-379, or a motor-driven cycle, as defined in Conn. Gen. Stat. § 14-1.

*EPAMD* shall mean any electric personal assistive mobility device (hereinafter "EPAMD") that is self-balancing, has two (2) non-tandem wheels, is designed to transport one (1) person, and has an electric propulsion system that produces an average power output of no more than 750 watts.

*Mini cycle* means pocket bikes, miniature (hereafter "mini") bikes, mini cycles, mini sport bikes, mini motorcycles, chopper scooters, and any other similar wheeled vehicle designed to transport one (1) or more persons that is powered by any type of motor.

*Motor-driven cycle* means any motorcycle, motor scooter, or bicycle with an attached motor, with a seat height of not less than twenty-six (26) inches, and a motor having a capacity of less than fifty (50) cubic centimeters of piston displacement.

*Motorized recreational vehicle* shall mean a wheeled vehicle, with a motor, intended to be rode by one (1) or more persons and shall include "all-terrain vehicle," "minibike," "dirt bike," "motor-driven cycle," "snow mobile," and "mini-cycle," all as defined herein.

Motorized recreational vehicle shall not be deemed to include any of the following:

1. Any registered "motorcycle" as defined in the Conn. Gen. Stat. § 14-1(59);
2. Any registered "motor vehicle" as defined in Conn. Gen. Stat. § 14-1(58);
3. Any moped that meets Federal Department of Transportation guidelines for use on streets and is approved by the State of Connecticut Department of Motor Vehicles for use on streets, provided, however, the moped is operated pursuant to all applicable state laws, rules, and regulations and all Town of Middlebury ordinance
4. Any wheelchair or similar mobility assisting device utilized by a person with a physical disability or whose ambulatory mobility has been impaired due to age or physical ailment;
5. Any self-propelled snowplow, snow blower, or lawn mower when used for the purpose for which it was designed and operated at a speed not to exceed

- four (4) miles per hour;
6. Any vehicle owned or leased by the Town of Middlebury;
  7. Any EPAMD as defined herein;
  8. Any "Electric bicycle" as defined in Conn. Gen. Stat. Sec. 14-1
  9. Any bicycle or trail bike without a motor;
  10. Any golf cart;
  11. Any agricultural equipment-such as tractors and farm implements;
  12. Any construction machinery; and
  13. Any vehicle that is used solely for amusement, or as a novelty display item, and is operated during a parade or any other special event that is properly permitted and approved by the Town of Middlebury.

*Motorized recreational vehicle dealer* means any person engaged in the business of manufacturing or selling any motorized recreational vehicles, having an established place of business for the manufacture, sale, trade, and display of such vehicles.

*Snowmobile* means a vehicle with a motor, with runners in the front and caterpillar tracks in the rear, intended to be used by one (1) or more persons for travelling over ice and snow.

## Section 2. - Operations prohibited.

- (a) It shall be unlawful for any person to operate a motorized recreational vehicle or for any owner of a motorized recreational vehicle to knowingly permit the operation of such vehicle on any street or sidewalk in the Town of Middlebury or on any public property, including but not limited to school property, playgrounds, and parks within the Town of Middlebury.
- (b) It shall be unlawful for any person to ride as a passenger on a motorized recreational vehicle or for any owner of a motorized recreational vehicle to knowingly permit any person to ride as a passenger on such vehicle operated in violation of subsection (a) above
- (c) It shall be unlawful for any person to operate a motorized recreational vehicle, ride as a passenger on a motorized recreational vehicle, or for any owner of a motorized recreational vehicle to knowingly permit its operation on any private property within the Town of Middlebury without first obtaining the written permission of the property owner, if the property is not owned by the operator, passenger, or owner of such vehicle.
- (d) It shall be unlawful for any person to operate an EPAMD or for any owner of

an EPAMD to knowingly permit the operation of an EPAMD on any street in the Town of Middlebury, except as provided herein. An EPAMD may be operated on any designated bike line or sidewalk and/or crosswalk. Such operator must adhere to the regulations of such travel lane as defined by the Traffic Commission and in no instance shall the speed of operations exceed five (5) miles per hour on any sidewalk. Where no such bike lane or sidewalk exists, an EPAMD may be legally operated on the far-right side of the street. An operator of an EPAMD shall yield to pedestrians and any wheelchair or similar mobility assisting device as defined in subsection 2 above and shall comply with any applicable State of Connecticut laws or regulations.

### Sec. 3. - Penalty.

- (a) Any person who operates any motorized recreational vehicle in violation of subsection 2(a) or 2(c) above, or any owner of any motorized recreational vehicle who knowingly permits its operation in violation of subsection 2(a) or 2(c) above, shall be fined one thousand dollars (\$1,000.00) for a first violation, fined one thousand five hundred dollars (\$1,500.00) for a second violation, and shall be fined two thousand (\$2,000.00) for a third or subsequent violation.
- (b) Any person age sixteen (16) or older who rides as a passenger on any motorized recreational vehicle in violation of subsection 2(c) above, or any owner of a motorized recreational vehicle who knowingly permits a passenger to ride on his/her motorized recreational vehicle in violation of Subsection 2(b), shall be fined two hundred fifty dollars (\$250.00).
- (c) Any person in violation of this ordinance may be detained by a police officer for purposes of enforcing the provisions of this ordinance. Any motorized recreational vehicle used in violation of this ordinance, seized by any police officer, shall be forfeited to the Town of Middlebury, subject to any bona fide lien, lease, or security interest in the motorized recreational vehicle, including, but not limited to, a lien under Conn. Gen. Stat. § 14-66c
- (d) Any person who operates an EPAMD in violation of subsection 2(d) above or is the owner of an EPAMD who knowingly permits its operation in violation of subsection 2(d) above that has been previously issued one (1) warning as the result of a previous violation of subsection 2(e) above, shall be fined two hundred fifty dollars (\$250.00).

### Sec. 4. - Seizure of motorized recreational vehicles; disposal.

- (a) Any person who operates a motorized recreational vehicle in violation of subsection 2(a) above or is the owner of any such vehicle who knowingly permits its operation in violation of subsection 2(a) above will be subject to seizure of said vehicle(s) pursuant to Conn. Gen. Stat. Sec. 54-33g which allows for seizure of property. A police officer who observes any motorized recreational vehicle being operated in violation of subsection 2(a), (b), (c),

or (d) above may detain such person for purposes of enforcing the provisions of this article and may remove or tow such motorized recreational vehicle to a secure location for impoundment. Before the owner of any such impounded property may remove the vehicle from a vehicle pound, he/she shall furnish to the operator of such pound or such other person as the chief of police shall designate evidence of registration and ownership, shall sign a receipt for such property, and shall pay the cost of towing, plus the cost of storage for each day or portion of a day that such property is stored in excess of the first twenty-four (24) hours after seizure. The operator of such pound shall refuse the release of any such property lawfully seized that the chief of police has authorized to hold as evidence in a criminal investigation or proceeding. Such operator shall obtain written permission from the chief of police on any form or document prescribed by the chief of police prior to the release of such property held for evidence.

- (b) Any such motorized recreational vehicle that is not claimed by its owner under the terms of this section for a period of forty-five (45) days after seizure or in the case of a vehicle being held as evidence not claimed by its owner within forty-five (45) days of the cessation of such investigation or disposition of such criminal proceeding, whichever is later, may be disposed of at the direction of the chief of police after serving notice in the same manner as that required for the disposal of abandoned vehicles under Conn. Gen. Stat. § 14-150(e), except in the case that a vehicle that is not registered, such notice shall not require mailing to persons whose names are registered with the state department of motor vehicles.

**Sec. 5. - Hearing prior to forfeiture of motorized recreational vehicle.**

- (a) A hearing officer shall be appointed by the First Selectmen, subject to the approval of the Board of Selectmen, to conduct hearings authorized by this section. Such hearing officer shall work with the chief of police in the scheduling of hearings held pursuant to this chapter. The chief of police or his or her designee shall represent the police department at such hearing. A sworn police incident report shall be considered prima facie proof of the violation. The owner or lienholder may cross examine any witness and present evidence and argument in opposition to the Town's claim. After the hearing as provided by this section, the hearing officer may order the forfeiture of any motorized recreational vehicle that has been seized upon proof of conduct amounting to probable cause for a violation of section 2 or any other Town ordinance or state law pursuant to the process provided herein. Written notice advising the recipient of the right of the owner or lienholder of the motorized recreational vehicle to a hearing prior to the disposal of the motorized recreational vehicle will be delivered on a form approved by corporation counsel and board of alders to any lienholder and to the owner of the motorized recreational vehicle, or if no owner can be identified, to the rider, within thirty (30) days of

the seizure. A written request for a hearing before a hearing officer, must be received, by hand delivery or certified mail, return receipt requested, to Hearing Officer, in care of the Chief of Police, Middlebury Police Department, 200 Southford Road, Middlebury, Connecticut 06762 within thirty (30) days of receipt of the notice. Said request for a hearing by an owner must be submitted with proof of ownership or by a lienholder with proof of lien or other security interest in the motorized recreational vehicle.

- (b) Said hearing shall be conducted by the hearing officer and shall be held not more than thirty (30) days after the receipt of the written request, except that written requests for an extension of time may be granted for good cause shown. Notice of the date and time of said hearing shall be provided to the owner or lienholder no later than ten (10) days before the date of the hearing by electronic delivery and/or by certified mail, return receipt requested, at the email or residential address provided by the owner or lienholder in the written request for a hearing.
- (c) Any party to the hearing may, at his/her expense, record the hearing. Any party to the hearing may be represented by counsel.
- (d) A motorized recreational vehicle may be ordered forfeited upon a finding of any, but not limited to, of the following:
  - There is probable cause to believe that the motorized recreational vehicle was possessed, controlled, or designed for use, or is or has been or is intended to be used, to violate, or in violation of any Town ordinance or the motor vehicle or criminal laws of this state; or
  - There is probable cause to believe that the motorized recreational vehicle was operated with reckless and wanton disregard for the welfare or property of others.
- (e) Following the hearing, the hearing officer who conducted the hearing, shall issue a written decision ordering the forfeiture of the motorized recreational vehicle or ordering the return of the motorized recreational vehicle to its owner, except that the hearing officer who conducted the hearing, shall not order the release of any motorized motor vehicle that is required to be kept as evidence in any investigation or legal proceeding related to any criminal or motor vehicle offense.
- (f) Any motorized recreational vehicle that is subject to a bona fide mortgage, assignment of lease or rent, lien, or security interest shall not be ordered forfeited in violation of the rights of the holder of such mortgage, assignment of lease or rent, lien, or security interest.
- (g) Any motorized recreational vehicle ordered forfeited shall be disposed of consistent with applicable law.
- (h) If within thirty (30) days of the delivery of the notice of the right to a hearing under this section, no owner or lienholder of the motorized recreational vehicle has requested a hearing, the vehicle will be considered abandoned and disposed of under applicable law.

**Sec. 6. - Posting by motorized recreational vehicle dealer.**

Each motorized recreational vehicle dealer offering for sale, lease, or rental any motorized recreational vehicle shall post this article in a prominent location at the motorized recreational vehicle dealer's place of business.

Any such motorized recreational vehicle dealer who violates any provision of this section shall have committed an infraction. For a first violation, the chief of police or his/her authorized agent shall issue a written warning providing notice of the specific violation and the time period within which it shall be corrected. If the dealer receiving the written warning fails to correct the violation within the time period specified in the warning, the chief of police or his or her authorized agent shall issue a fine of one hundred dollars (\$100.00). Any continuing violation that is discovered during any subsequent reinspection shall result in a fine of one hundred dollars (\$100.00). Each reinspection at which a violation is discovered shall constitute a separate violation.

**Sec. 7. – Sale of Gasoline for Illegal Purposes**

- (a) No owner or employee of any retail dealer of gasoline shall sell, offer for sale, or attempt to sell any article or product represented as gasoline for use in any motorized recreational vehicle as defined in this article, unless that vehicle is conveyed to and from the retailer's premises by a registered motor vehicle, as defined in Conn. Gen. Stat. § 14-1 as may be amended, and no individual shall purchase or attempt to purchase gasoline for use in any motorized recreational vehicle as defined in this article.
- (b) Signs with the words "FUELING OF ALL-TERRAIN VEHICLES, MINI-CYCLES, DIRT BIKES, OR OTHER UNAUTHORIZED VEHICLES PROHIBITED" in English and "PROHIBIDO DESPACHAR GASOLINA A ALL- TERRAIN VEHICLES, MINI-CYCLES O DIRT BIKES O A OTROS VEHICULOS NO AUTORIZADOS" in Spanish at least one (1) inch in height with a contrasting margin shall be posted at all dispensing locations. The location of warning signs shall be based on local conditions but shall be visible and legible from all gas pumps.
- (c) Any owner or employee of any retail dealer of gasoline who violates any provision of subsections (a) or (b) of this section who owns or is employed by a retail dealer that has been previously issued one (1) warning as the result of a previous violation of subsections (a) or (b) of this section shall be fined one hundred dollars (\$100.00) per occurrence. Each motorized recreational vehicle as to which an owner or employee of any retail dealer of gasoline sells, offers for sale, or attempts to sell gasoline shall be considered a separate violation of subsection (a) above.