

# **TOWN OF NEWMARKET, NEW HAMPSHIRE**

## **TOWN COUNCIL REGULAR MEETING**

May 5, 2021 7:00 PM

Town Hall Auditorium and Zoom

The meeting will be conducted in the Town Hall Auditorium and is available via Zoom. You may join Zoom Meeting <https://zoom.us/j/9117025727> Meeting ID: 911 702 5727, +1 646 558 8656. If you have difficulty connecting, please call 603-659-3617 Ext, 1321.

### **6:30PM NON-PUBLIC PURSUANT MEETING TO RSA 91A:3,II(a) - PERSONNEL**

Councilor Dumont made a motion to Approve *Sealing the May 5, 2021 Non-public Meeting Minutes*, which was seconded by Councilor Sanders.

The Council adjourned the non-public meeting at 6:45 PM.

Present: Council Chair Toni Weinstein, Vice-chair Zachary Dumont, Councilor Helen Sanders, Councilor Jonathan Kiper, Councilor Megan Brabec, Councilor Scott Blackstone, and Councilor Katanna Conley.

Staff Present: Town Manager Stephen Fournier, Environmental Services Director Sean Greig, Public Works Director Rick Malasky, and Wendy Chase Recording Secretary.

Chair Weinstein convened the meeting at 7:00 PM.

Chair Weinstein led the Pledge of Allegiance.

Chair Weinstein reminded the Councilors and members of the public to please speak up when addressing the Council and reminded the public that there is a 3-minute time limit for public comments.

Motion was Passed by a vote of 7-0-0.

## **AGENDA**

***APPROVED MAY 19, 2021***

### **PUBLIC FORUM**

Chair Weinstein opened the Public Forum at 7:02 PM

Mark Gahan, 19 New Road suggested and encouraged the Council to rescind the mask ordinance. He said that people should be able to make their own choice about wearing masks.

Rachel Willerer, 26 Mastin Drive said she is not in favor of the mask ordinance and said it is time to let people make their own choice on whether or not to wear masks.

Chair Weinstein closed the Public Forum at 7:04 PM

## **TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES**

### **April 21, 2021 Non-Public Meeting Minutes**

Councilor Dumont made a motion to Approve *the April 21, 2021 Non-public Meeting Minutes*, which was seconded by Councilor Sanders.

Motion was Passed by a vote of 7-0-0.

### **April 21, 2021 Regular Meeting Minutes**

Councilor Dumont made a motion to Approve *the April 21, 2021 Meeting Minutes*, which was seconded by Councilor Sanders.

Motion was Passed by a vote of 7-0-0.

## **REPORT OF THE TOWN MANAGER**

### **May 5, 2021**

Town Manager Fournier reported on the following:

- **COVID-19 Update:** As of April 29, there are 28 active cases and 541 cumulative cases. The numbers are stabilizing but are still higher than in February.
- **Vaccination:** As of April 27, 762,346 people in New Hampshire have received their first dose of the vaccination, and 348,758 are fully vaccinated. We are currently organizing a vaccination clinic for students; it will be opened to students 12 and above.
- **Universal Best Practices:** On May 7, the Safer at Home guidelines will expire and be replaced by the Universal Best Practices. Businesses and private entities may now operate how they feel are safest for their customers. There will be no more enforcement of those regulations. People will have to call the Attorney General's Office to report violations. They will no longer offer 1st vaccine shots at the vaccination stations at Dover and the Mall; just 2nd shots. The goal is to move from the Government's vaccine involvement toward Primary Care Providers administering the vaccines.
- **Summer Schedule:** Town Manager Fournier suggests that the Council cancel the first meetings in July and August and meet only on July 21st and August 18th. If something were to come up they could schedule an additional meeting.
- **MRI Planning Study Proposal:** The Town Manager received the Study from MRI and will be asking them to look into the potential of a staff engineer incorporated into the Planning & Building Department. MRI will be interviewing the Planning & Building Department's

employees and the Town Manager.

- **Community Power Coalition:** The Energy & Environment Committee sent the Town Manager information on the Coalition. It is a group of municipalities that join together and buy electricity or utilities enabling them to sell it to consumers at a lower rate. The E&E Committee will be asking for a Resolution to support this.
- **Side Walks:** Budgetary issues are always there but we are looking into sidewalks on Bay Road and Grant Road. It is on the radar. New locations for crosswalks are on a case by case basis. If on a state road the Town would have to follow state guidelines.

## COMMITTEE REPORTS

Vice-chair Dumont said the Ordinance Oversight Committee met to rework Ordinance No. 7 2020/2021 as directed by the Council. Public comments, as well as comments submitted by Councilors Kiper and Sanders, were considered.

Chair Weinstein said the Energy & Environment Committee met last night. The Committee is working on a solarized program and reviewing RFPs they solicited to Solar Companies. They will be presenting something to the Council next month. The Committee is working on the Community Power Coalition and will send the Town Council a Resolution recommending the Town opt-in to the program. They are also working on a Resolution to present to the Town Council next month regarding their goal to have electricity provided by renewable sources by 2030 and all fuel by 2050.

## OLD BUSINESS

### RESOLUTIONS/ORDINANCES IN THE 2ND READING

#### **Ordinance No. 6 - 2020/2021- Reaffirming Wearing Face Covering in Town**

Councilor Dumont made a motion to Deny *Rescinding Ordinance No. 6 Reaffirming Requiring The Wearing Of Face Coverings Under Certain Conditions Within The Town Of Newmarket*, which was seconded by Chair Weinstein.

Town Manager explained that if the Council does not vote to rescind the Ordinance tonight it will sunset on June 7, 2021. If they do vote to rescind, then the Town goes back to highly encouraging people to wear masks if they are going to be less than 6-feet apart from one another. He has met with the Emergency Management Team and with the State's Safer at Home guidelines expiring on May 7th to be replaced by the Universal Best Practices it may make it difficult to enforce the Town's Ordinance. Businesses and private entities may now operate how they feel are safest for their customers; they may not require face coverings or social distancing and the Town cannot override the State's rules. Town Manager Fournier reached out to surrounding communities that have mask ordinances in place. Durham intends to keep their Ordinance; Exeter's Ordinance sunsets in a couple of weeks and Portsmouth's Ordinance sunsets on June 30th.

Vice-chair Dumont said that he has consistently voted against the mask ordinance because he didn't feel it was appropriate for Newmarket. He does wear a mask at work and enforces the rule at his store for people to wear them. He thinks mask-wearing is a personal choice and with the State's fallback to Universal Best Practices, he doesn't want backlash on the Town, Town

Councilors, and Businesses if our Ordinance is not rescinded.

Councilor Brabec said she read the Universal Best Practices and it's clear that the layered approach with masks and social distancing is the safest. Businesses would have the mask ordinance as their only safety measure in place. She is in favor of letting the Ordinance sunset on June 7, 2021.

Councilor Blackstone said the mandate supports the businesses in that they wouldn't be on the "front line"; the ordinance gives strength to the local businesses.

Councilor Kiper said he is doubtful anything will change if the Council rescinds it or not. It sunsets on June 7th. UNH Graduation is coming up and the students will be gone, further the risk of spreading Covid to our community. He is in favor of letting the ordinance sunset on June 7, 2021.

Chair Weinstein said she has always been in favor of the mandate, but things are different from what they were in August when it was initially passed. There were a lot of unknowns and there was no vaccine. She said at this point cases have stabilized and over 50% have been vaccinated. In August we had to be responsible for the public's safety, but now people have to start making their own personal choices. She said she will continue to wear a mask and encourage others to wear one. She said that she is in favor of rescinding Ordinance No. 6.

Councilor Conley said it makes sense to let it sunset on June 7th to give businesses time to make additional preparations when the ordinance sunsets.

Councilor Sanders agreed that it made sense to give businesses time to prepare and to wait for the UNH students to leave. She is in favor of letting the ordinance sunset.

It was a general consensus of the Council not to bring the ordinance forward to reaffirm in June unless something major changes.

Motion was Failed by a vote of 2-5-0. Nays: Blackstone, Brabec, Conley, Kiper, Sanders

#### **Resolution #2020/2021-43 - Water and Sewer Rate Increases**

Councilor Dumont made a motion to Approve *Resolution #2020/2021-43 Water & Sewer Rate Increases*, which was seconded by Councilor Sanders.

Superintendent Greig explained that it will be a \$0.65 increase on the sewer side and a \$0.50 increase on the water side. They have been replacing old water mains and removing arsenic from one of the wells. He said rates may go up again once they reach the end of the model but they will be much smaller increases.

Motion was Passed by a vote of 7-0-0.

#### **Resolution #2020/2021-44 - Water/Sewer System Development Connection Fee**

Councilor Dumont made a motion to Approve *Resolution #2020/2021-44 Water/Sewer System Development Connection Fee*, which was seconded by Councilor Sanders.

Superintendent Greig explained that the Planning Board is discussing eliminating impact fees because they have rigid guidelines on how the money is spent by the Departments. The Water & Sewer Department currently has impact fees and tie-in fees. The Engineering Company will study a system development charge connection fee instead of impact fees. They will be able to determine accurately how much it would cost each household to tie into the water system and into the sewer system.

Motion was Passed by a vote of 7-0-0.

#### **Resolution #2020/2021-45 - Water Treatment Plant Integration Programming Services**

Councilor Dumont made a motion to Approve *Resolution #2020/2021-45 Water Treatment Plant Integration Programming Services*, which was seconded by Councilor Sanders.

Superintendent Greig explained that the Town's Water Department is in the process of constructing a water treatment facility that will remove arsenic from the MacIntosh and Tucker well water to comply with the new State of New Hampshire 5 ug/L arsenic limit. The General Contractor disputed that the scope of integration programming services was not included in the contract and that Kinsmen did not carry any monies for the integration programming services. Upon further review of the bidding documents, it was found that the bid documents were unclear and contractors were unable to include an integration programming services figure in their bid.

This kind of problem does happen from time to time on large construction projects. Normally they are handled by a change order. I do not recommend a change order to solve this problem. I recommend that these integration programming services be performed with an amendment to the Wright-Pierce Construction Administration Contract. This will save the project at least \$8,371. Wright-Pierce at their cost has received pricing to perform the integration programming services from Electrical Installations, Inc. (EII) and Wilson Controls for the sum of \$55,804 and \$58,450 respectively. The integration programming services work will be subcontracted directly through Wright-Pierce with zero mark-ups. Wright-Pierce will handle receipt and processing of subcontractor invoices and oversight of the contractor work at no additional cost to the town. The project does have enough funds in the contingency to cover the integration programming services to be performed by EII for a sum of \$55,804. The additional benefit is that the Town and Wright-Pierce will be able to work directly with EII to have better control of the integration and programming.

Councilor Conley asked if it is legal to pull that piece out of the contract.

Superintendent Greig said it is not illegal and it is common practice.

Motion was Passed by a vote of 7-0-0.

## Items Laid on the Table

### **Ordinance No. 7-2020/2021 - Amending Chapter 18 Establishing Live Shows and Events License**

Councilor Dumont made a motion to Approve *removing Ordinance No. 7-2020/2021 from the table*, which was seconded by Councilor Sanders.

Motion was Passed by a vote of 7-0-0.

Councilor Dumont made a motion to Approve *amending Ordinance No. 7-2020/2021 to reflect the changes made by the Ordinance Oversight Committee at their April 28, 2021 Meeting*, which was seconded by Councilor Brabec.

Motion was Passed by a vote of 7-0-0.

Councilor Kiper made a motion to Approve *an amendment to strike "solicit funds for charitable purposes" from the amendment*, which was seconded by Councilor Sanders.

Councilor Kiper said that he didn't think these types of groups should be made to go through unnecessary hoops.

Councilor Blackstone said that he doesn't think every organization should have to get a permit because there may be one organization that is fraudulent.

Councilor Dumont said the Committee discussed this and decided to keep the language because the Police Department vets these organizations and residents can call them to see if the solicitation is legitimate.

Councilor Weinstein said she doesn't think the permitting process will change anything. She said she didn't think anyone would report to the Police on known organizations like the Girl Scouts if they didn't have a permit.

Town Manager Fournier said the permitting process allows the Police to have the "heads up" on the organizations going around to residents soliciting money.

Motion was Passed by a vote of 4-3-0. Nays: Brabec, Dumont, Weinstein

Councilor Brabec made a motion to Approve *amending point 134. Penalty to change the word "shall" to "may" "may be fined".*, which was seconded by Councilor Dumont.

Town Manager Fournier explained that if it states "shall" we have to fine; if it states "may" we have the choice to give a warning. If the word is changed to "may" it would be at the discretion of those who have the authority to issue fines; Police, Fire, or Code Enforcement whether or not to fine or to give a warning.

Motion was Passed by a vote of 7-0-0.

Councilor Sanders made a motion to Approve *an amendment to Section 133 - Applications and Permits to insert "This may be suspended by a quorum of the licensing board" after the sentence A written application for a permit must be submitted seven days prior to the date of the event,* which was seconded by Councilor Brabec.

Motion was Passed by a vote of 7-0-0.

Councilor Kiper made a motion to Approve *an Amendment to Section 130.3 by striking the word Protest,* which was seconded by Councilor Sanders.

Councilor Sanders asked what the difference was between demonstrations and protests.

It was clarified that a demonstration can be a protest.

Councilor Kiper said he thought demonstration meant something else and asked to amend his amendment. He was advised to withdraw his motion after Councilor Sanders withdraws her second and then make a different motion.

Motion was Withdrawn by a vote of 0-0-0.

Councilor Kiper made a motion to Deny *removing the words "demonstration" and "protest" from Section 130.3,* which was seconded by Councilor Sanders.

Vice-chair Dumont said that the Committee agreed not to remove that language because the Committee has a vested interest in making sure if there is a protest or demonstration that the Police Department or Fire Department is made aware for safety reasons.

Chair Weinstein referred back to an event she was involved in where a large gathering of people walked from the Library to the Carpenter Property supporting the purchase of the Carpenter property and they informed the Police of the event because they had a lot of children walking too. She said it is important to have that.

Councilor Kiper said he is a big fan of allowing people to protest and demonstrate and thought that if we shut them down the town is setting itself up for a lawsuit.

Councilor Conley agrees with allowing people to protest but said that it seems to the extent that large protests may encumber public services for safety reasons it is reasonable to require a permit.

Town Manager Fournier said the more specific you make an ordinance the more loopholes you give it. He said that if something isn't working out with the ordinance, the Council can always change it.

Councilor Kiper said that if demonstrations and protests become a problem the Council can always go back and amend the ordinance.

Motion was Failed by a vote of 3-4-0. Nays: Conley, Dumont, Sanders, Weinstein

Councilor Dumont made a motion to Approve *Ordinance No. 7-2020/2021 Amending Chapter 18 of the Code of the Town of Newmarket NH; Establishing Licenses and Permits for Live Shows and Events as Amended*, which was seconded by Councilor Sanders.

Vice-chair Dumont warned the Council of the hour. If meeting after 9:00 PM they would have to suspend the rules.

It was determined that conditions set by the licensing board for an outdoor music event will be determined on a case-by-case basis.

Chair Weinstein said that the Council received letters in opposition of the ordinance as well as quite a few letters in support of the Stone Church. Although this ordinance stemmed from outdoor shows, this ordinance addresses so much more. She encouraged people to continue to support our local businesses.

Motion was Passed by a vote of 7-0-0.

## **NEW BUSINESS/CORRESPONDENCE**

### **TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS**

#### **Valerie Toukatly - Ad hoc Arts & Tourism Commission - Term Expiration December 2023**

Councilor Dumont made a motion to Approve *the Appointment of Valerie Toukatly to the Ad hoc Arts and Tourism Commission with a Term Expiration of December 2023*, which was seconded by Councilor Sanders.

Motion was Passed by a vote of 7-0-0.

### **Resolutions/Ordinances in the 1st Reading**

#### **Resolution #2020/2021-49 - Paving Improvements**

Councilor Dumont made a motion to Approve *The suspension of Rules and Approve Resolution #2020/2021-49 Paving Improvements*, which was seconded by Councilor Sanders.

Public Works Director Malasky explained that they are paving 500 feet of Bay Road and Cushing Road and also reclaiming for \$32,000 where typically it would cost \$107,000. By extending the Bell & Flynn contract for 1 year we will be able to use them to pave rather than using the Contractor working on the Bay Road drainage project saving the Town a lot of money.

Town Manager Fournier gave the Council a 10-minute warning at 8:50 PM. To continue past 9:00 PM the Council would have to vote to suspend the rules.

Motion was Passed by a vote of 7-0-0.

#### **Resolution #2020/2021-46 - PBX and Telephones Equipment Lease**



Chair Weinstein read Resolution #2020/2021-46 into the record.

**Resolution #2020/2021-47 - Street Name Approval**

Chair Weinstein read Resolution #2020/2021-47 into the record.

**Resolution #2020/2021- 48 - Fencing for Splash Pad Park and Preschool Playground**

Town Manager Fournier read Resolution #2020/2021-48 into the record.

**CORRESPONDENCE TO THE TOWN COUNCIL**

Councilor Dumont made a motion to Approve *Suspending the Rules and Approve the Committee Updates*, which was seconded by Councilor Sanders.

Motion was Passed by a vote of 7-0-0.

**Correspondence Regarding The Stone Church Music Club, LLC**

**CLOSING COMMENTS BY TOWN COUNCILORS**

Councilor Dumont made a motion to Approve *the Suspension of the rules to continue the meeting no later than 9:30 PM*, which was seconded by Councilor Sanders.

Chair Weinstein thanked all the volunteers who participated in the recent roadside clean-up events hosted by both herself and the Conservation Commission. She also thanked the Police Department, Public Works Department, and Town Administration for their contributions.

Chair Weinstein asked the Town Manager to discuss the rules of the Council Meetings so everyone has a better understanding on how to operate more effectively.

Town Manager Fournier said that he will review the rules with the Council and also forward to everyone Utube videos of meetings to follow by and meetings to not follow by.

Chair Weinstein asked to discuss Committee Assignments.

Motion was Passed by a vote of 7-0-0.

Councilor Dumont made a motion to Approve *Committee Assignments as proposed by the Chair*, which was seconded by Councilor Sanders.

The Chair explained to the Council that the Capital Improvement Plan Committee is the only Committee that requires an Alternate Council Member. She proposed the following Committee Assignments to the Council for their approval. She removed the Planning Board and Budget Committee Alternate Member positions and proposed that in the future the Highway Safety Committee Council Representative shall always be assigned to the Chair.

Chair Weinstein:      Chair  
                                 Ordinance Oversight Committee  
                                 Energy & Environment Committee

Vice-chair Dumont: Vice-chair  
Budget Committee  
Ordinance Oversight Committee

Councilor Kiper: Highway Safety Committee  
Parking Commission  
CIP (Alternate)

Councilor Sanders: Arts & Tourism Commission  
Economic Development/Business Association Liaison

Councilor Brabec: Riverfront Advisory Committee  
Conservation Commission

Councilor Blackstone: Planning Board

Councilor Conley: CIP  
Ordinance Oversight Committee

Chair Weinstein encouraged the Councilors to attend committee meetings as a member of the public to keep informed.

Motion was Passed by a vote of 7-0-0.

## **NEXT COUNCIL MEETING**

**May 19, 2021**

## **ADJOURNMENT**

Chair Weinstein Adjourned the Meeting at 9:05 PM without objection.

Respectfully submitted,  
Wendy Chase, Recording Secretary