

**TOWN OF NEWMARKET, NEW HAMPSHIRE  
TOWN COUNCIL REGULAR MEETING**

**AUGUST 5, 2020 7:00 PM**

**NEWMARKET AUDITORIUM**

**Approved September 2, 2020**

PRESENT: Council Chairman Toni Weinstein, Council Vice Chairman Amy Burns, Councilor Zachary Dumont, Councilor Jon Kiper, Councilor Helen Sanders; New Member Megan Brabec

VIA ZOOM: Councilor Christian Matthews

ALSO PRESENT: Town Manager Steve Fournier, Police Chief Kyle True, Public Works Director Rick Malasky

**AGENDA**

Chairman Toni Weinstein welcomed everyone to the August 5, 2020 Town Council Regular Meeting and called the meeting to order at 7:00 pm, followed by the Pledge of Allegiance.

**PUBLIC FORUM**

**Join Zoom Meeting: <https://zoom.us/j/9117025727>; Meeting ID: 9117025727**

Chairman Weinstein said there were people who wished to speak via Zoom and in the audience. She asked that comments be kept to 3 minutes.

(Name inaudible) of Main Street said he was a 4-year resident of Newmarket and wished to speak to the Ordinance regarding mask wearing in the Town. He requested the Council consider providing residents with guidance and not an ordinance. He said the State of New Hampshire has done a commendable job managing this epidemic, and New Hampshire does a good job of thinking intelligently and listening to the Governor's recommendations.

Rick Miller said he is a life-long resident of Newmarket and echoes the previous comments. He said he believes it is important to wear masks but it should be a guidance and not a hard law, and it could also be used against others by some people.

Phil Nazzaro of Raymond Lane said he spent 6 years on this Council and always tried to keep an open mind when he had a particular leaning on a subject. He said he has many reasons in opposition to this Ordinance: (1) Where is the emergency necessitating an Emergency Ordinance? With only 13 cases in Newmarket since the start of the pandemic, that's 0.1% testing positive; (2) What gives the Town the authority to do this? A municipality cannot do anything without enabling legislation, and I can find no subsection in Title 3, Chapter 47 that grants this power to the Town Council; (3) How far are you willing

to go to enforce this? No Law should be passed if you are not willing to use all means of enforcement necessary to ensure it is followed; essentially deputizing local business owners to enforce and encouraging people to call police. He asked if the Town is willing to put Police Officers in the middle of this contentious situation over masks, and begged the Council not to approve this Emergency Ordinance

Mr. Nazzaro said lastly, when situations are scary people look to their leaders, and tonight they can choose to reinforce the fear or take a more measured response and relieve some of the growing tension in our country and our community.

Chairman Weinstein closed the Public Forum at 7:13 pm.

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

### **Approval of the Non-Public Meeting Minutes of June 17, 2020**

Vice-Chair Burns made a motion to approve the Non-Public Meeting Minutes of June 17, 2020 which was seconded by Councilor Dumont.

Town Manager Fournier polled the Council and the Non-Public Meeting Minutes of June 17 were approved by a vote of 6-0.

### **Approval of the Regular Meeting Minutes of July 15, 2020**

Vice-Chair Burns made a motion to approve the Regular Meeting Minutes of July 15, 2020 which was seconded by Councilor Dumont.

Town Manager Fournier polled the Council and the Regular Meeting Minutes of July 15, 2020 were approved by a vote of 6-0.

## **REPORT OF THE TOWN MANAGER**

Town Manager Steve Fournier gave a **Tropical Storm Update**, and said 2 streets closed and are not yet reopened. He said Eversource is having difficulties as they are assisting with outages in Connecticut. As far as a **COVID Update**, Newmarket cases as of July 29<sup>th</sup>, 1-4 in Town; numbers not reported if below 4; 13 reported cases as of March 1, 2020. Dover has the highest number of cases in the Greater Seacoast area, followed by Portsmouth and Rochester; Newmarket has lowest with 13 individuals in a population of 9,460. He said the Town is continuing to be vigilant and preparing for any potential surges.

Town Manager Fournier said they are also looking at the economic impact; unemployment rose from 2.3% in April to 18.1% in March and is now 11.2%. He said Town Emergency Management met with the Superintendent of Schools on Monday July 27, 2020 to hear the **School Reopening Plan** proposed by a Reopening Committee. The **FY2020 Expense and Revenue Report** shows 95% of the General Budget expended with an unaudited amount of \$362,484 remaining; there will be a correction for Workers Comp of approximately \$120,000. Slight increases in General Fund Revenue with Motor Vehicle Registrations up \$45,000 over last year and \$151,225 over budgeted amount; Building Permits did not meet Budget being \$1,300 under, a \$5,500 decrease over last year. Solid Waste Costs are \$12,000 over Budget, and recommended they phase in an increase in bag fees over the next year.

Town Manager Fournier said the **Facilities Director Position** was discussed with School Board and Chairs, and they are now ready to move forward. The Superintendent requested the position be a School employee instead of Town and submitted a proposed revised MOU; would almost serve on a consulting basis for the Town assisting staff with long-term planning and projects; waiting for Superintendent comments.

Councilor Matthews asked about the bag-pricing issue, and said as Solid Waste costs go up the Town needs to effectively price bags, and hopefully incentivize people to use the composting facilities at the Transfer Station. He also asked the reason for switching the Facilities Director Position from a Town employee to a School employee. Town Manager Fournier said he understood that the Superintendent felt there was not enough supervision of the employee. Chairman Weinstein said the School was also contributing a higher percentage of the salary. Town Manager Fournier said they originally had 2 shared positions and split them; also came up that DPW would help the Facilities Director with projects. He said he recommended the Town pay a flat fee just to use the services on a contracted basis.

### **COMMITTEE REPORTS**

Councilor Dumont said the *Budget Committee* met last night after 2 postponed meetings. Joe Lamattina is taking charge to schedule some presentations as an educational piece for the Budget Committee to better understand taxation at the State and local level, and review the differences between Town and School governments.

Councilor Matthews said the *Planning Board* does not meet until August 11, 2020, but the *Impact Fee Sub-Committee* got a cost study estimate to update Impact Fees at an estimated cost of \$17,000 to \$20,000. A copy of the Study was emailed to the Council.

Helen Sanders said the *Ad hoc Arts & Tourism Committee* met via Zoom and picked their first project to contact owners of empty storefronts and try to set up an art or craftsmen's display in those empty storefronts.

### **ORDINANCES AND RESOLUTIONS IN THE 2<sup>ND</sup> READING**

#### **Resolution #2020/2021-02 – Paving Improvements 2020**

Vice-Chair Burns made a recommendation to approve Resolution #2020/2021-02 – Paving Improvements 2020, which was seconded by Councilor Dumont.

Public Works Director Rick Malasky said they are extending the paving contract with a decrease of \$1.00/ton. He said they will be starting next week and the roads are listed in the Resolution. He said they are following the plan with the exception of Bay Road because of the Water Main problem, which will be a project for next summer, and they are only a few roads behind.

Discussion: Councilor Matthews said this is \$500,000 for road paving because of the way the Town has developed by building homes farther away and having smaller subdivisions, which increases the cost of our maintenance. Chairman Weinstein said if they maintain all the roads according to the plan, we will be saving money in the end. She said she has seen in the past what happens when they defer those

improvements. Public Works Director Malasky said out of all the roads, only 2 are being reclaimed and all the others are overlays.

**ORDINANCES AND RESOLUTIONS IN THE 3<sup>RD</sup> READING – None**

**Items Laid on the Table – None**

**NEW BUSINESS /CORRESPONDENCE**

**TOWN COUNCIL TO CONSIDER NOMINATIONS, AP POINTMENTS AND ELECTIONS**

**Town Councilor Candidates**

Chairman Weinstein said there are four (4) candidates to fill the vacancy on the Town Council but one has dropped out. The Candidates remaining are: *Scott C. Blackstone, Dale S. Pike, and Megan Brabec*. Town Manager Fournier said Mr. Pike is unable to join the meeting tonight but still wishes to be considered.

*Scott Blackstone* of Spring Street said he has lived in Newmarket for 6 or 7 years and has many contacts in the Town. He said he really likes the Town, enjoys going down to Main Street which he hopes to do again soon. He said he has no particular agenda but likes the way the Town is and would like to keep it going. He said he was part of the interview team for hiring the new School Business Administrator, is a current Trustee of the Trust Funds with his term ending shortly, and is looking for something more involved.

*Megan Brabec*, also of Spring Street, said she and her partner moved here and purchased their first home. She said Newmarket has an active Downtown and a reputation as a tightly-knit community. She said she served on multiple boards of directors for non-profits, has worked as the Coordinator of Civic & Community Engagement at UNH for 5 years, and has a Master of Public Education to be able to take coursework in town budgets. She said she is excited by any opportunity to give back to this Town, and excited to be part of this community, and felt this seemed really relevant to her skills and her interests.

Town Manager Fournier read the letter submitted by Dale S. Pike in full. He has lived in Newmarket since 1999, served for as a Town Councilor and from 2013-2019 and served as Chairman the last 2 years. During his tenure he served as Town Council liaison to the Budget Committee, Planning Board, Conservation Commission, and the Dam Committee, and is currently a member of the Coastal Adaptation Work Group, the Municipal Discussion Group, and the Newmarket Riverfront Advisory Committee.

Chairman Weinstein said the process is for the Council to deliberate, make comments, then vote by stating the name of the person you would like to see fill the position. Vice-Chair Burns said she appreciates all of the applicants and felt it would be a really difficult decision with 3 very qualified people. She asked that those who do not get appointed tonight run for Town Council in March, with sign-up at the end of January.

Chairman Weinstein said she completely agrees with Councilor Burns, and is happy to have 3 qualified candidates. For full disclosure, she stated that she reached out to former Councilor Pike because she served with him for 3 years on the Council. She said the position will last for about 6 months, she has spent a lot of time learning about town government and knows the learning curve can be steep, and with everything that is going on Dale Pike could hit the ground running.

Councilor Kiper said he emailed the other candidates and they both plan on running in March. Councilor Matthews said he agrees, and said he was able to speak to all 3 candidates and Megan and Scott will run in March but Dale is unsure. He said he understands the argument for having someone experienced, but said he hit the ground running in March during a pandemic and has been fine.

Town Manager Fournier asked that each councilor state the last name of their preferred candidate; if no candidate gets 4 votes we will repeat the process until we have consensus.

Councilor Sanders - Megan Brabec, Councilor Matthews – Brabec, Councilor Dumont – Brabec, Councilor Kiper – Blackstone, Councilor Burns – Brabec, Councilor Weinstein- Pike.

Town Manager Fournier said the vote is 4-1-1, and *Ms. Brabec* is elected *Town Councilor*. He said she can take the Oath right now and participate in tonight's meeting. Chairman Weinstein asked Ms. Brabec if she would feel comfortable tonight, and Ms. Brabec said she has done her research on the issue.

Town Manager Fournier administered the Town Council Oath of Office to Ms. Brabec and she was congratulated as a new Town Council member and joined the other councilors at the table.

### **Energy & Environment Advisory Committee**

Candidate: *Roberta Branca – Term to Expire April 2023*

Vice-Chair Burns made a motion to approve the nomination of *Roberta Branca* as a member of the *Energy & Environment Advisory Committee – Term to Expire April 2023*, which was seconded by Councilor Dumont.

Town Manager Fournier polled the Council and the nomination of *Roberta Branca* as a member of the *Energy & Environment Advisory Committee* was approved by a vote of 7-0.

### **ORDINANCES AND RESOLUTIONS IN THE 1<sup>ST</sup> READING**

#### **Emergency Ordinance 01-2020/2021 – Requiring the Wearing of Face Covering in Town**

Town Manager Fournier said procedurally this is an emergency Ordinance and not a regular Ordinance. Chairman Weinstein read *Emergency Ordinance 01-2020/2021 – Requiring the Wearing of Face Covering in Town* in full. Town Manager Fournier said there would be an amendment under Penalties to change "Exeter District Court" to *10<sup>th</sup> Circuit Brentwood Division*.

Town Manager Fournier said several weeks ago the City of Nashua adopted a mandatory mask ordinance, and the Court ruled that the ordinance can stay in place until the final hearing. He said at the last meeting the Council requested he work with the Police Chief and Legal Counsel to write an ordinance to address this for our municipality. He said he worked closely with the Town Administrator of Durham who developed a stricter policy, and said the ordinance was reviewed by Legal Counsel.

Town Manager Fournier said the Council has authority under *RSA 47:17-XV Miscellaneous Bylaws* to “make any other bylaws and regulations which may seem for the well-being of the city; but no bylaw or ordinance shall be repugnant to the constitution or laws of the state”. He reiterated that there has not been a final ruling on whether or not mask ordinances are proper.

**Motion:** Vice-Chair Burns made a motion to approve *Emergency Ordinance 01-2020/2021 – Requiring the Wearing of Face Covering in Town*, which was seconded by Councilor Dumont.

**Discussion:** Councilor Dumont questioned the line at the bottom of the Ordinance which stated there would be a second reading and final action on September 2, 2020. Town Manager Fournier said that is not correct as this is an Emergency Ordinance and the second reading is waived. Councilor Dumont asked if at this time the NH State Government believes there is an active State of Emergency regarding the COVID-19 pandemic, and Town Manager Fournier said they do and it applies to the entire State.

Vice-Chair Burns asked about Golf Courses and whether golfers would have to wear a mask while golfing. Town Manager Fournier said they do not. Councilor Sanders said there were separate guidelines issued by the State for Golf Courses which should be sufficient for our purposes. Town Manager Fournier said the rules have since been altered and are somewhat back to normal. Councilor Matthews suggested that instead of “golf courses” they add “active recreation on private facilities”. Town Manager Fournier said he senses 2 different sets of guidelines, one for Golf Courses and one for Restaurants where the same rules and regulations apply.

Councilor Brabec said masks should be worn by patrons of restaurants and employees of businesses when interacting with the public or within a certain distance of coworkers, and asked the potential effect on kitchen staff who prepare the food. Town Manager Fournier said State Guidelines would rule, and kitchen staff are not interacting with the public. He said the Council’s job is to come up with policy and set policy, and it is the Town Manager’s job to enact policies.

Town Manager Fournier said he met with the Police Chief and the Health Officer and wanted to make it clear that they are not going to go out there and start handing out tickets to people who do not wear masks. He said this is an educational aspect and they have to use the softest gloves they have to enforce it. He said he has already written up Frequently Asked Questions and made a poster of questions they have been getting.

Police Chief Kyle True reiterated that they will not be “Mask Police” but will strongly encourage being good neighbors, with education and accountability for our fellow citizens. He said the Police Department is busy with many calls daily and will not be setting up “stake-outs” in Downtown Newmarket for people not wearing masks. He said they will provide assistance to business owners if there are problems with someone who does not want to follow their internal policy already set in place, and said this is not a revenue-maker but education about a health issue.

Town Manager Fournier stated that we do not want people to call 911 if someone is not wearing a mask, and said he will put the correct number to call on the poster. He said we do not want people to be mask vigilantes trying to enforce this.

Councilor Kiper said we did not think we would ever be here and take no great pleasure in doing this. He said he owns a restaurant in Downtown, and if people come in and say they forgot their mask he will sell them the food anyway. But if people come to the door without masks he can now say "it is a Town Law to wear a mask" and it takes some of the onus off businesses who are not making up these rules. He said in a few short weeks 26,000 out-of-state students will be going to UNH. He said we need that business but also need outsiders to know there is a mask requirement. He said none of us want to wear masks but we are doing this together, and he suggested dropping the first 2 penalty fees to \$50 and \$100.

**Motion to Amend:** Councilor Kiper made a motion to amend Emergency Ordinance-01 under Penalties to lower the fees to \$50 for the first offense, \$100 for the second offense, and leave the third at \$500.

**Seconded:** Councilor Dumont

**Vote:** Councilor Sanders-aye, Councilor Brabec-aye, Councilor Matthews-aye, Councilor Dumont-aye, Councilor Kiper-aye, Councilor Burns-aye, Councilor Weinstein-aye

*Amendment to lower the fees is approved by a vote of 7-0.*

Chairman Weinstein we are here because there is a global pandemic, US cases are increasing, and it has been clearly established that wearing a face covering, along with social distancing and frequent hand washing, will help to slow the spread of the virus. UNH is about to welcome a lot of students who will be coming to Newmarket, and it is important to educate them to maintain the safety of our communities.

Chairman Weinstein said Newmarket Schools will also be reopening, and said she felt some continuity between the School regulations and the Town is important. She said with the School Policy, all students K1 and up will wear face coverings and follow guidelines rule, and she would like to make an amendment to mirror that policy by changing Section VI of the Ordinance from "all children under 10 years of age" to *all children under 5 years of age*.

**Motion to Amend:** Chairman Weinstein made a motion to amend Emergency Ordinance-01, Section VI to not require children under *five (5) years of age* to use face coverings.

**Seconded:** Vice-Chair Burns

Discussion: Councilor Sanders felt said this is appropriate as researchers are finding that the viral load in children this age is even higher than the viral load of older children. Also, parents and grandparents need to be protected, as well as older people in the community.

**Vote:** Councilor Sanders-aye, Councilor Brabec-aye, Councilor Matthews-aye, Councilor Dumont-nay, Councilor Kiper-aye, Councilor Burns-aye, Councilor Weinstein-aye

*Motion to amend Section VI is approved by a vote of 6-1.*

Town Manager Fournier requested 2 other amendments:

**Motion to Amend:** Chairman Weinstein made a motion to amend Section IV of Emergency Ordinance-01 to add *or Golf Courses* after "public recreational lands".

**Seconded:** Vice-Chair Burns

**Vote:** Councilor Sanders-aye, Councilor Brabec-aye, Councilor Matthews-aye, Councilor Dumont-aye, Councilor Kiper-aye, Councilor Burns-aye, Councilor Weinstein-aye  
*Motion to amend Section IV approved by a vote of 7-0.*

**Motion to Amend:** Chairman Weinstein made a motion to amend Emergency Ordinance-01, Section 3, to delete “Exeter District Court” and add 10<sup>th</sup> Circuit Court Brentwood Division.

**Seconded:** Vice-Chair Burns

**Vote:** Councilor Sanders-aye, Councilor Brabec-aye, Councilor Matthews-aye, Councilor Dumont-aye, Councilor Kiper-aye, Councilor Burns-aye, Councilor Weinstein-aye  
*Amendment to Section 3 to change Court jurisdiction approved by a vote of 7-0.*

Discussion: Councilor Matthews thanked everyone who commented, and said most of the comments had been addressed but he wanted to address the comment about why the Council did not do this in March or April. He said this is a narrowly tailored Ordinance focusing on conduct during an unprecedented health crisis. Town Manager Fournier reminded the Council that this Ordinance is automatically repealed in 61 days.

Councilor Dumont asked if this Ordinance would need to be manually removed if the State of Emergency is ended prior to the expiration, and Town Manager Fournier said yes. Councilor Kiper said a lot of shops have signs “no shirt, no shoes, no service” and people don’t call that unconstitutional because it is just a basic health requirement. He said they are asking people to do this one little thing which is not that hard, and hopefully if we all do this it may be over sooner. He said I want my restaurant to be packed with people as soon as possible and that is why I will be voting for this Ordinance.

Councilor Matthews said there is a certain stance that we should not be putting mandates on people, but a mandate during a public health crisis is almost what governments should be doing. He said we need a 2-pronged approach to moving forward: does the CDC still declare a pandemic and is the New Hampshire Governor still declaring a State of Emergency.

Chairman Weinstein said she agrees that there are lots of laws and health codes the Town follows for Public Safety. She said she agrees with Councilor Matthews and other councilors that it is necessary and helps us, and if nationwide or global could significantly slow the progress of the virus and allow us to get back to a sense of normalcy.

Councilor Matthews asked to remove “and/or” in Section 3 under penalties. Town Manager Fournier said they cannot do that. Police Chief True said this is a Town Ordinance and any revenue that would potentially come in could make its way back to the Town of Newmarket, and the process to get the fine would be through the 10<sup>th</sup> Circuit Brentwood Division if someone were to default. Town Manager Fournier said both the Police Chief and the Town Attorney agree we need to leave it in there.

**Ordinance Vote:** Councilor Sanders-aye, Councilor Brabec-aye, Councilor Matthews-aye, Councilor Dumont-nay, Councilor Kiper-aye, Councilor Burns-aye, Councilor Weinstein-aye  
*Emergency Ordinance-01 was approved, as amended above, by a vote of 6-1.*

**Resolution #2020/2021-04 – Technology CRF Withdrawal for New Server**



Town Council Regular Meeting  
August 5, 2020

Chairman Weinstein read Resolution #2020/2021-04 – Technology CRF Withdrawal for New Server in full.

**CORRESPONDENCE** – None

**CLOSING COMMENTS**

Councilor Sanders reminded people that the census is still out there and means money for the Town.

Town Manager Fournier reminded the Council that on September 8, 2020 they will need as many councilors on hand for Election Day as possible, and that there will be two (2) Polling Places with people needed at each. Chairman Weinstein said Absentee Ballots are strongly encouraged and the process should be started now.

**NEXT MEETING:** September 2, 2020

**ADJOURNMENT**

Chairman Weinstein adjourned the meeting at 8:40 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary