

TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL REGULAR MEETING
FEBRUARY 6, 2019 7:00 PM
TOWN COUNCIL CHAMBERS
Approved February 20, 2019

PRESENT: Council Chairman Dale Pike, Council Vice Chairman Toni Weinstein, Councilor Zachary Dumont, Councilor Gretchen Kast, Councilor Kyle Bowden, Councilor Amy Burns, Councilor Casey Finch

ALSO PRESENT: Town Administrator Steve Fournier

AGENDA

Chairman Dale Pike welcomed everyone to the Newmarket Town Council Meeting of February 6, 2019 and called the meeting to order at 7:00 pm, followed by the Pledge of Allegiance.

PUBLIC FORUM

Chairman Pike opened the Public Forum at 7:02 pm.

Helen Sanders of 14 Hilton Drive stated that she was mounting a write-in campaign to run for one of the open positions on the Town Council. She said she had worked over 35 years as a Certified Public Accountant and she understood their needs of small businesses and their importance to a small community. She said she served on the Finance Committee of St. Mary's Church and was the local coordinator of Seacoast Family Promise which provides shelter for homeless families. She said she was aware of issues surrounding the Newmarket Schools, and was also aware of increasing taxes and the need to maintain Town infrastructure as well as fiscal responsibility. She said she felt that she would make a positive contribution to the Town Council and asked for their support on Election Day.

Larry Doyle of 116 Main Street and member of ANCER, said the Council had received the recommendation from their Water Rights Sub-Committee on the resident-proposed Freedom from Chemical Trespass Rights-Based Ordinance which sought to protect Newmarket and its Lamprey River and Great Bay estuary.

He reiterated his comments from the last meeting, and said though some change had been effected through regulations, this ordinance was about people getting sick and the environment being despoiled and he would like to see progress made and not stopped and degraded.

Kenny Najum of 288 Wadleigh Falls repeated his comments made at the last meeting, saying that New Hampshire has the highest rates of pediatric cancers as well as State and federally recognized cancers in the Seacoast areas through water contamination by PFOAs.

Jerry Martin of 212 South Main Street stated that last year the *NH Community Rights Amendment* received 1/3 support from New Hampshire's House, and Representative Ellen Read would be re-introducing the amendment this year. He said as Newmarket's Town Charter does not allow residents to vote on non-budgetary matters, they were dependent on Town Council members to uphold their inherent inalienable authority to adopt RBOs based on the NH Bill of Rights.

Andrew Demeo of 147 Main Street reiterated his comments that systematic change always required moving outside government processes. He said he worked professionally for Second Nature, a non-profit organization, and it was his fulltime job to create social change outside of government process.

Jess Waters of 147 Main Street said the RBO would empower the people of Newmarket with local governmental authority to address harmful activities in their community. She felt that the issue of carcinogenic exposure caused by chemical contamination in the water supply was urgent, and asked council members to adopt an RBO and give them back their health.

Monica Christofili of 6 Central Street read in full the testimony she submitted to the House Municipal & City Government Committee in support of NH Community Rights Amendment CRC8 to support the right of the people to self-determine within their own community. She said it should be up to the people to determine the level of protections for themselves and their water system and exercise their right to instate an RBO. She asked that the Town Council adopt a resolution in support of the amendment.

Joan DeYoreo of 191 Bay Road said she wanted to speak about the Town's use of Roundup as a weed killer and to also support the RBO. She cited a successful lawsuit brought against Monsanto by a groundskeeper who contracted cancer from exposure to glyphosate in Roundup, which she said was the most-used pesticide in the world. She asked that governments reconsider their policies about the safety of glyphosate residues in foods, and said Newmarket should consider a different method of weed control.

John Brackett of 19 Central Street said there were organic alternatives to Roundup that could be used. He said horticultural grade vinegar mixed with a surfactant like dish soap could be used in place of glyphosate products. He said he would like to see the Town stop using the glyphosate family of products, at least on pedestrian walkways, and explore transitioning to organic solutions.

Ellen Read of 283 Lita Lane said she was a Representative for Newmarket and Newfields and was the prime sponsor of NH CACR8, which was a proposed constitutional amendment for NH to enshrine the already existing right of people to protect their health, safety, and welfare in their natural environment. She said this would constitutionally protect the right of the Town Council in Newmarket to pass an RBO in the future to protect environmental issues, which she hoped they would support in a resolution.

Chairman Pike closed the Public Forum at 7:32 pm.

PUBLIC HEARING

ORDINANCE 01-2018-2019 Amending Chapter 20 of the Code of the Town of Newmarket: Prohibiting the Purchase, Use and Possession and of Tobacco Products to Anyone under the Age of 21

Chairman Pike opened the Public Hearing on *Ordinance 01-2018-2019 Amending Chapter 20 of the Code of the Town of Newmarket: Prohibiting the Purchase, Use and Possession and of Tobacco Products to Anyone under the Age of 21* at 7:32 pm.

Representatives of Youth to Youth of Newmarket, Caitlin Temple, Grace Lunney, and Lydia Zungy, all students at the Newmarket Junior-Senior High School, gave a presentation in support of the Ordinance. They stated that Youth to Youth was a youth empowerment organization for grades 6-12 working towards drug and alcohol prevention in the community, and that a Tobacco 21 Bill would again be coming up for discussion in the NH State Senate. They said other Youth to Youth groups across NH had already passed the initiative and they hoped to raise the same support in Newmarket.

Ms. Zungy said she felt tobacco should require customers to be 21 years-of-age for its potential addictive qualities and its impact on public health. Ms. Temple said tobacco use among teens in NH was in decline, and Ms. Zungy said the issue now was e-cigarettes and other nicotine delivery systems. Ms. Lunney stated that e-cigarettes were initially marketed as smoking cessation devices, but instead were being directly marketed to teens. Ms. Temple said in 2015 only 9% of high school students used traditional tobacco products, but in 2017 24% of students reported using e-cigarettes, and they hoped with this ordinance to decrease teen usage of these products.

Ms. Lunney said the Campaign for Tobacco-Free Kids predicted that more than 22,000 kids under the age of 18 would suffer life-threatening consequences due to smoking, said 95% of adult smokers started before the age of 21, and 75% of youth now smoking now would continue as adults. Ms. Zungy said changing the age to 21 would contribute to the health and safety of youth in Newmarket, and the age to purchase tobacco products should be raised to prevent them being brought to school and provided to younger students. Ms. Temple said most teens 15-17 got their products from someone under 21, and they hoped with this change teens would have less access to these products and keep them out of schools.

Ms. Temple said these issues pertained particularly to the e-cigarette issue at the middle and high school level, and said the number of cases involving these products in schools had risen dramatically. Ms. Lunney said the products were bringing disruptions to the school environment, and students were using the products in un-monitored areas. She said the products were made to look like ordinary devices and their use was largely unnoticed by teachers. Ms. Temple said they urged the Council to vote in favor of this Tobacco 21 Ordinance and help Newmarket lead New Hampshire to a healthy and smoke-free future.

Sean Murphy of 1 Forest Street asked if the Newmarket Police Department had been consulted about this ordinance and how to enforce it. Town Administrator Fournier said if they saw a violation of the law they would have to enforce it. Mr. Murphy said people going to another town to purchase products would be taking money away from businesses in Town, and he felt an ordinance for the sake of an ordinance was

not particularly a step in the right direction. He also said that young adults already 18-21 would have the right they have today taken away when the law goes into effect. He felt this was not about tobacco but about setting a precedent that they could just decide they did not like a product and make a Town rule against it, and asked where it would stop. He said he would be less concerned if the townspeople had a vote, but he did not think it was fair for eight people to decide, and felt that was not the way the Town should be doing business.

Michael Cahill of Ash Swamp Road said he was a State Representative and the co-sponsor of SB248 which the Senate would hear tomorrow making this a state-wide rule. He said the rule would be enforced by send someone near the age of 18 into a store to see if they were asked for an ID, and said habit had a lasting effect and they would not be free from tobacco. He urged the Town Council to pass the ordinance and said he would vote for the bill in the Senate.

Chloe Reynolds of 12 Lamprey Street, a freshman at Newmarket Junior-Senior High School, said Youth to Youth had presented the problems tobacco products were bringing to their schools. She said most people speaking to the issue would not really be affected by its passage, only people who were under 21. She said the products were causing huge problems in their schools which students were witnessing every day, and with friends and families. She said the people who will be affected by it were calling on the Town Council to make this change to protect their peers and safeguard their futures.

Town Administrator Fournier said he received a letter that had to be read into the record in full. He said the letter, from former Town Councilor Phil Nazzaro, stated that he was in strong opposition to *Ordinance 01-2018/2019* on both practical and philosophical levels. He felt this was a solution in search of a problem, and said the Anti-Tobacco Truth Initiative said student smoking in New Hampshire was 12% lower than the national average, a 60% decline over 6 years, and he was not sure how that constituted an emergency requiring amendment of the Town Charter. He said prohibitions like these do little to curb abuse, and said the ordinance proposed a link between age restrictions and behaviors but data proved otherwise.

Mr. Nazzaro said the ordinance makes it clear that the Town government can parent better than a parent in Newmarket, and said he found that offensive as a parent, and parents were perfectly capable of making their children aware of the impact of making a decision. He said the age of 18 was considered adulthood in this country but the ordinance suggests that the Newmarket Town Council does not trust an 18-year-old with the decision to smoke or not. He said his letter was not meant as a defense of smoking but was a plea not to support what he considered a well-intentioned but ultimately unfounded idea, and he respectfully and strongly recommended that the Town Council not support this ordinance.

Chairman Pike closed the Public Hearing on *Ordinance 01-2018-2019 Amending Chapter 20 of the Code of the Town of Newmarket: Prohibiting the Purchase, Use and Possession and of Tobacco Products to Anyone under the Age of 21* at 7:55 pm.

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Acceptance of the Minutes of the Town Council Regular Meeting of January 23, 2019

Vice-Chair Weinstein made a motion to approve the minutes of the Town Council Regular Meeting of January 23, 2019, which was seconded by Councilor Kast.

Chairman Pike corrected the address for Mr. Allen to Smith Garrison; response to a question on page 4, about long-term maintenance of the Macallen Dam was incorrectly attributed to the Town Administrator and was corrected to be made by Chairman Pike.

Town Administrator Fournier polled the Council the minutes of the Town Council Regular Meeting of January 23, 2019 were approved as amended by a vote of 7-0.

REPORT OF THE TOWN ADMINISTRATOR

Town Administrator Fournier said **Election Day** would be held on March 12, 2019 from 7:00 am to 7:00 pm in Town Hall, and said he and the Town Clerk had spoken with the Secretary of State's office as there were a number of positions with no candidates. He explained that a plurality was the only thing needed to win the election and an offer would be made to the person with the highest number of votes. If they declined, they would move down until someone accepted the position, and they would serve the entire 3-year term as duly elected.

Town Administrator Fournier said they had done their **Emergency Management Plan** and were continuing on plan upgrades. He said today they had their first meeting of the **Continuation of Operations Plan** for after the emergency and would be working on it until July. He specified that it was a non-public document. He stated that on the agenda tonight it looked like they were voting again for 2 resolutions already approved at the last meeting, but the difference was that withdrawal from Capital Reserve Funds to purchase the equipment needed to be added to the resolutions.

Town Administrator Fournier said he also wanted to clarify some things about town government, and said Newmarket was not a traditional town but a representative form of government with 7 individuals elected to be the Board of Directors of the Town who hired a Chief Administrative Officer. He said the Town Charter form of government was voted in by the people in 1991 and they continued to operate under that. He clarified that people did not have the "right to speak" at Council Meetings but were invited to speak at the beginning of the meeting during Public Forum. He said this was a business meeting of a governing body without disruptions for the Council to conduct business. He said municipalities were a creation of the State and they only have the authority that the State of New Hampshire provides them.

Discussion: Chairman Pike asked if some kind of consideration had been made with MUNIS in regard to their problems with the system. Town Administrator Fournier said they had negotiated a free upgrade, had been compensated for a number of issues they were having, and additional training would be provided as well.

COMMITTEE REPORTS

Water Rights Sub-Committee Final Recommendation

Councilor Dumont presented the report of the *Water Rights Sub-Committee*, and said following the initial RBO presentation, a Sub-Committee was formed which held 4 meetings with 2 Public Hearings to hear from both sides of the debate and they drafted their recommendation. He said the recommendation stated that the Newmarket Water Rights Sub-Committee recommended: that the Town Council not adopt the RBO due to issues highlighted in Attorney Ratigan's letter; that in future, whether brought to the Council through an RBO or other form of legal framework, this body practiced, considered, and discussed

legitimate pieces of legislature; that the items the Sub-Committee discussed over the past few months, including all documentation in support of such movements, be sent to the State Representative and Senator, as the legality of the adoption of such legal vehicles lies within the State House.

Discussion: Chairman Pike said he understood that they were sending documentation but not sending a recommendation. Councilor Dumont said they were sending their discussions and the recommendation that the Town Council take no further action on this issue as it currently stood. He said they should provide these documents, minutes of the meetings, items presented by ANCER, and the letter from Attorney Ratigan to say this discussion was not only happening at the State level. He said he had an electronic document to send out through the Town Administrator.

Vice-Chair Weinstein said she was a member of the Water Rights Sub-Committee and she thought it was an important process for those citizens and residents of Newmarket to be heard. She said it was also important that the Council had seriously discussed a legitimate piece of legislation, and they supported the recommendation of the committee members. She said the community needed to understand the process, that as residents of New Hampshire they did not have the authority to propose legislation on their own. She said no one applied for the Council positions during the filing period, and she encouraged people in future that if they wanted a vote they needed to be one of the people voting.

Councilor Finch said he felt it was great that a sub-committee had been formed and encouraged more people to get involved and share their ideas. Chairman Pike said he agreed with the recommendations of the Water Rights Sub-Committee and felt it was a good process that citizens and residents had a chance to be heard. He said there was another place for chemical regulation of RBOs to occur and said he agreed that a lot of work needed to be done improving the kind of chemicals going into their environment, but he did not think trying to regulate this on a town-by-town basis was the answer. He said it was hard to ban chemicals entirely, and said the safety of glyphosate was for expert committees to discuss with an expert panel making that decision.

Other Committee Reports

Vice-Chair Weinstein said the *Energy & Environment Advisory Committee* met last night and they were looking to change the composition of their committee to increase membership. She said they had not gotten representatives from the Conservation Commission or the Planning Board, and they wanted to eliminate those and add more at-large members. Town Administrator Fournier said they adopted a resolution to create the committee and they would have to do a new resolution.

Councilor Kast said the *Planning Board* met last Tuesday about drafting and realigning regulations. She said they were now going into peer review and she did not know if any engineers or developers were interested in participating. She said they were moving into forming a committee to do the Master Plan chapter reviews and asked the Council if any of the chapters aligned with their goals. Town Administrator Fournier said traditionally chapters were presented to the Council for input, and that as far as Economic Development he wanted to wait and see what the consultants came up with. Councilor Kast said would provide a list of all the chapters to councilors for the next meeting.

OLD BUSINESS

ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Ordinance 01-2018-2019 Amending Chapter 20 of the Code of the Town of Newmarket: Prohibiting the Purchase, Use and Possession and of Tobacco Products to Anyone under the Age of 21

Vice-Chair Weinstein made a motion to approve *Ordinance 01-2018-2019 Amending Chapter 20 of the Code of the Town of Newmarket: Prohibiting the Purchase, Use and Possession and of Tobacco Products to Anyone under the Age of 21* which was seconded by Councilor Bowden.

Councilor Burns, who introduced the Ordinance, said the Youth to Youth organization at the Junior-Senior High School had reached out to her asking for her help and support in bringing this to the Town Council. She said it was clear to her that this was an important step that needed to be made, and she strongly recommended raising the age to 21 to assist in deterring young people from starting an addiction. She said more young people were engaged in vaping e-cigarette products, and research from the American Lung Association and the CDC provided data that nicotine could harm the developing brain and stressed the need to stem this epidemic among young people. She said steps needed to be taken by parents, educators, and policy-makers to discourage the use of those products, and she fully supported Youth to Youth and this ordinance.

Councilor Finch said he was a high school teacher working with middle and high school students and said e-cigarettes had become a big problem in schools, mainly because they were marketed directly to young and they were virtually unable to be detected. He said he had caught students with nicotine products as well as cannabis products, and said research on brain development found the frontal cortex was not fully developed until the age of 25. He felt that a vape pen could probably not be caught early enough for prevention, and that cutting it off at the sale would be preferred.

Vice-Chair Weinstein said she wanted to thank Sean Murphy and Phil Nazzaro for their comments as it was important to hear that viewpoint as well. She said the vaping issue was in every school, and the statistic that smoking had declined among teens was wonderful, but vaping and use of e-cigarettes had clearly risen and was concerning. She said she agreed that age restrictions did not necessarily limit behavior, but that it did help social perception which did change behavior. She said she started smoking at the age of 16 and it was not until social perceptions changed that she was able to quit, and she fully supported this ordinance.

Councilor Kast said though she thought ordinances could be an important tool in effecting change, fundamentally they were not the key which was social norms. She said a public campaign to change social norms could be highly effective and felt they needed to search for better ways to do this. She said peer pressure from groups like Youth to Youth reaching out to other students would work but it was harder than passing an ordinance as a bandaid. She said they were trying to solve a problem for younger kids under 18 by changing the situation for people who are 18, and entitled now to purchase, possess, and use these materials. She said governments were entitled to license behavior and activities, but one was still considered to be an adult from a legal responsibility perspective, and said she was not convinced that they should be applying a change of what 18-year-olds are licensed to do through an ordinance.

Councilor Dumont thanked Councilor Kast for her comments and said he had a hard time looking at this ordinance and taking it seriously with the notion it was going to solve a problem, and did not think this ordinance would do much to prevent the issues. He said he experienced growing up in a smoking home, but he did not feel it was his job to tell someone who was 18 that they could not buy a pack of cigarettes. He felt people had the right to make their own choices and recognize the consequences of those choices, but he did not think they had the responsibility to force their will on other people. He said the ordinance should have never gotten this far, and he could not support the ordinance in any way and would be voting against it.

Chairman Pike said regulation these days were a sort of failure of legislation at the federal level. He said e-cigarettes and products were originally presented by the FDA to help people quit smoking, but not to allow this callous, rampant, clear marketing to young people. He said Jewel became a huge company doing something that was against the health of our youth. He said he was sympathetic that this was a right that would be taken away from 18-year-olds, but said guardrails were set on age restrictions. He said he felt parents needed all the help they could get and making something illegal would help, and he would be voting in support of the ordinance.

Councilor Finch said he agreed with Councilors Kast and Dumont that he did not like regulations and telling people what to do, but felt there were exceptions. He said knowing the dangers of alcohol and driving, and the addictiveness of tobacco and that it causes cancer, this was one of the few things.

Councilor Bowden said he also grew up in a smoking family and said his stepfather, who smoked 4 packs per day, had passed away with lung cancer. He said he had 3 kids and he trusted their judgment, but peer pressure was a major problem. He said when you are 18 you can vote and enlist in the military, but said he was against smoking.

Councilor Burns said she was also a parent of middle-schoolers and she trusted her children, but peer pressure is huge and things happen. She said a lot of different things were restricted to try to curb peoples' behaviors, and though she agreed advocacy was a great way to get information out, putting heavier restrictions would help. She said in addition there was a lot of new information coming out about the brain's development that was not known before and needed to be taken into account to evolve how they think about how rules and regulations were made. She said that was what they were here to look at and she would be voting for the ordinance.

Town Administrator Fournier polled the Council and Ordinance 01-2018-2019 Amending Chapter 20 of the Code of the Town of Newmarket: Prohibiting the Purchase, Use and Possession and of Tobacco Products to Anyone under the Age of 21 was approved by a vote of 5-2.

ORDINANCES AND RESOLUTIONS IN THE 3RD READING – None

ITEMS LAID ON THE TABLE – None

NEW BUSINESS /CORRESPONDENCE

TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS – None

ORDINANCES AND RESOLUTIONS IN THE 1ST READING

Resolution #2018/2019-24 Administrative Order by Consent: Lamprey River Sampling

Town Administrator Fournier read Resolution #2018/2019-24 Administrative Order by Consent: Lamprey River Sampling in full.

Resolution #2018/2019-25 2020 Elgin Pelican Street Sweeper Purchase

Chairman Pike read Resolution #2018/2019-25 2020 Elgin Pelican Street Sweeper Purchase in title only.

Resolution #2018/2019-26 2020 International Dump Truck with Plow Equipment

Chairman Pike read Resolution #2018/2019-26 2020 International Dump Truck with Plow Equipment in title only.

Resolution #2018/2019-27 Relating to Withdrawal of School Impact Fees

Town Administrator Fournier read Resolution #2018/2019-27 Relating to Withdrawal of School Impact Fees in full.

CORRESPONDENCE

Councilor Bowden said he had been contacted by a neighbor about Consolidated Communications Phone Company tossing phonebooks next to people's mailboxes, and said concern was raised about the waste, litter, and how to get them to stop delivering the phonebooks.

CLOSING COMMENTS

Councilor Finch reminded everyone that Town elections would be held on Tuesday, March 12, 2019.

Councilor Bowden said he was trying to plan and coordinate Candidates Night where people had a chance to meet candidates running for Town office. He said he was looking at the Tuesday before March 5th and said the event would be hosted by Newmarket Business Association and he would be scheduling the moderator. Councilor Dumont said there was no Candidates Night last year which made it more difficult to reach out and connect with other individuals in the Town, and said he would be willing to help out as a private citizen.

Town Administrator Fournier stated that the Town does not get involved in Candidates Night.

NEXT MEETING: The next Regular Town Council Meeting is scheduled for February 20, 2019 at 7:00 pm in the Town Council Chambers.

Town Council Regular Meeting
February 6, 2019

ADJOURNMENT

Chairman Pike adjourned the meeting at 8:57 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary