

Town Council Virtual Meeting

Minutes

March 27, 2020

Chair Kuhn began the meeting at 3:00 pm.

Roll Call

All Councilors were present and answering roll call.

Item 1 Discussion about the Council Chairperson's authority to issue a proclamation that declares a local civil emergency, per Art. II-2-5 Sec.2-507 of the Falmouth Code of Ordinances.

Chair Kuhn said that under the code of ordinances the council chair has the authority to issue a proclamation declaring a civil emergency which enables action to be taken without Council approval. It does still require Council review within five days of any action. It is to anticipate a situation where time is of the essence and there might be difficulty getting quorum. She said the proclamation attached to the agenda largely mirrors those of other communities. She said typically the decision-making authority is vested in the Town Manager during that emergency period. A modifier was added that the Town Manager is to act in consultation with the Council Chair. She said that issuing the proclamation today does not require the Town to do anything at all. It is just in effect should conditions arise where it would be needed. She said it was her understanding that most of the surrounding communities have put proclamations in place.

Councilor Cahan asked about the line of succession for the Town Manager. Mr. Poore said that there is a provision in the ordinance that states a line of succession. It designates the EMA Director as the next in line. He said the ordinance was written before the Town had the position of Assistant Town Manager. Every year during the Council organizational meeting, the Council votes that Amy Lamontagne, Assistant Town Manager, will serve as acting Town Manager should something happen to Mr. Poore so he believes that the line of succession would be Mr. Poore, and then Ms. Lamontagne. He recommended that if something happened to both him and Ms. Lamontagne that the Council should appoint another Department head other than the Fire and Police Chiefs so that the public safety staff were not pulled away from their duties.

Councilor Kuhn said that the Council line of succession would be her and then Vice Chair Asherman and then the most senior member of the Council. Councilor Cahan said her reading of the proclamation was that if both Councilors Kuhn and Asherman go down then authority would go to Mr. Poore. Councilor Cahan said it should be the most senior member of the Council. Amy Tchao, Town Attorney, said that a change could be made to the proclamation language.

Councilor Trickett did not think that the proclamation was necessary at this time. He felt that there was no emergency at present or eminent that would prohibit the Council from being able to convene. He felt that there was no emergency that fit the ordinance. He did not feel that the Council had the local information necessary to make decisions. He felt that the proclamation should only be issued if the Council was not able to convene.

Chair Kuhn asked Mr. Poore to review the meeting notice requirements. Mr. Poore said that this meeting was able to be noticed 24 hours in advance. If a meeting was called within 24 hours, the press would have to be notified. Councilor Trickett suggested having a press email template prepared in the event the Council needed to call an emergency meeting.

Town Council Minutes

March 27, 2020

Page 2 of 5

Councilor Cahan supported having the emergency proclamation in place. She provided the examples of if a large portion of the Town lost power or councilors had medical emergencies. Councilor Asherman added the example of broadband challenges. He did not see a downside to having the proclamation in place.

Councilor Trickett said we have a proclamation drafted that Chair Kuhn could use at any point. He reiterated that he did not feel that the proclamation should be called right now while the Council could still meet.

Councilor Hemphill said that there was no question about whether the Council would want to have the ability to declare such a proclamation. He said that right now there is no dire emergency but who knows what could happen. He felt it was ok that the Council consider the ability to declare this at the Council Chair's will.

Councilor Johnson asked if the proclamation was declared today if it would it supersede the Council's authority or if the Council would still be able to meet. He also asked how quickly a proclamation could be issued if it became necessary. Chair Kuhn said that a meeting would not need to be called to issue the proclamation. She has the authority to issue the proclamation on her own. She said that the Council could continue to meet. Any emergency action would have to be reviewed by the Council within 5 days. Councilor Johnson agreed with Councilor Cahan's comments.

Councilor De Lima said that she was leaning towards supporting the proclamation. She envisioned a point where there might be confusion at the local level due to conflicting information from different levels of government. In such a situation she would prefer that decision-making authority lie with the Council Chair and Town Manager.

Councilor Trickett clarified that the Council was not being asked to vote. He said nothing precludes the Chair from acting on her own authority. He did not think that a declaration should be standing just because an emergency might occur. He did not think that it fit with the Town's style of government to have a declaration of emergency made when there is none just in case.

Chair Kuhn said she was hearing that should an acute emergency occur, the Council is in support of the Chair invoking this declaration in order to take emergency action. She was hearing that the Councilors trust she and Mr. Poore to take that action with as much outreach and collaboration as they can in making the decision. She was hearing Councilors say that they are leaning towards it but that we are not in a state of emergency right now where it should be invoked. She said one option was to have everything at the ready in case it is needed. She asked Councilors Cahan, De Lima, and Johnson if that aligned with their position if or they were feeling like they wanted to go ahead and declare the proclamation.

Councilor Cahan said that she wanted to make sure that Chair Kuhn had everything she needed in place in the event of an emergency. She said that if Chair Kuhn had everything ready to quickly act then she was supportive of that. Councilor Johnson and Councilor De Lima agreed with Councilor Cahan's comments. Mr. Poore added that the Town is prepared when and if Chair Kuhn needs to make that decision.

Chair Kuhn asked Ms. Tchao to make sure that the final proclamation is ready to go. She asked to change the word Chairwoman to Chairperson. Councilor Cahan asked about the council leadership line of succession change. She and other Councilors desired to change it to Chairperson, Vice Chairperson, and then the most senior councilor. Chair Kuhn asked about adding the Assistant Town Manager to the Town Manager line of succession. Mr. Poore said he did not think that the Assistant Town Manager needed to be added as the Assistant Town Manager automatically becomes acting Town Manager if something happens to the Town Manager.

Item 2 Order to extend an emergency, proclaimed by the Town Council Chair from five to thirty days, in accordance with Art. II-2-5 Sec. 2-508 of the Falmouth Code of Ordinances.

This item was skipped due to Chair Kuhn's decision not to enact the proclamation.

Item 3 Discussion about directives, orders, and other actions that could help stop the spread of the COVID-19 virus which may be in addition to the orders of the Governor.

Chair Kuhn said that, had the emergency proclamation been enacted, she wanted to get feedback from the Council on some of the measures that other towns are putting into place to help reduce spread of the virus. She said that since the proclamation could still be enacted at any point it was still appropriate to have that conversation. She said the Town has been striving to follow State and CDC recommendations. She said that there has been concern that stricter action is necessary in Cumberland County and York County because these counties have the most cases and community spread. She said several towns have issued stay at home orders which has resulted in a patchwork of regulation. She said this differing legislation is likely becoming confusing for residents. She said that the Council could enact a similar stay at home order or could seek to participate in a regional effort. She said members of the Metro Coalition met with the Governor today to ask her to consider implementing stricter rules for Cumberland County and the Greater Portland area. She asked for the councilors' thoughts about a stay at home order.

Councilor Trickett said that he generally still supports wanting to follow CDC guidance and best practices in acting but felt that Falmouth is different from Portland and other towns. He felt that the situation is already hard on people and he did not want to make things harder for people out of fear and not having good information. He felt that Town officials did not have good local information. He felt it was hard to know if there was community spread in Falmouth and if the Town's efforts were having an impact. He expressed concern about other towns' essential business designations and exemptions. He said that most of the businesses in Falmouth would count as essential businesses and that community spread is likely happening at essential businesses. He also expressed concern about enforcement. He suggested a resolution providing information on spread in Falmouth and guidelines. Chair Kuhn said that enforcement of this was up in the air it was more about communicating the message. She said that Mackworth Island was one of the locations in Falmouth where there was concern about overcrowding and the State closed it. She asked John Kilbride, Police Chief what he was seeing in terms of people being out and about. Chief Kilbride said the Police Department was seeing around 95% compliance. The streets are quiet after the essential businesses shut down. He said that crime, calls for service, and accidents have decreased. He said that what the Department is seeing is trending well. The Department is trying to ease fears. The Department is getting good compliance on speed. He is pleased with how things are progressing. The Department has established lines of communications with all the stores and have not been called to be present.

Councilor Cahan supported following suit with surrounding communities in ordering a shelter in place. She said that social distancing helps keep the virus from spreading. She stressed that the shelter in place orders still allowed people to go outside for exercise and to visit the grocery store. She felt that a shelter in place would provide protections for workers. She felt that as far as enforcement, the police could not monitor everyone out and about but the same could be said for speeding. She felt it was important that Falmouth participated with neighboring cities and that the Town should try to create something like neighboring cities so that there is consistency. She felt that would provide more assurance for Falmouth residents as well as neighboring cities.

Councilor Johnson felt that it was more about the communication piece than enforcement. He said that the Town is in the most densely packed part of the state. He felt that the Town should join neighboring towns

because it sends a message. He said he was seeing people break social distancing guidelines everyday including people coming from surrounding towns to exercise in Falmouth. He did not see the harm in issuing a shelter in place order. It would convey the message that Falmouth is taking this seriously. He felt that even if it is not enforceable, it is communicated in a way that conveys that the Town means business.

Chair Kuhn clarified that they were discussing a “stay at home” order not a “shelter in place order.”

Councilor Hemphill felt that most people were taking things seriously. He expressed concern about consistency between the surrounding communities. He felt that a Cumberland County order from the State might be more appropriate solution. He was not sure that a stay at home order was required at this time. He said that a resolution could be an appropriate Council action.

Councilor Asherman agreed with Councilor Hemphill’s comments. He added that he was confused by how other towns’ orders dovetailed with the Governor’s executive order regarding business closures. His sense was that most all the non-essential businesses in Falmouth had already closed. He said other than having a statement that supports having people stay in place, he was not sure what would be accomplished. He supported a county-wide order. He felt that the municipal level stay at home orders were confusing. He was not sure what it would accomplish other than underscoring the urgency of it.

Councilor Cahan said she would be supportive of a county-wide stay at home order, but it has not happened yet. She felt that if the Council felt that it should happen then then it should show the message through a Falmouth stay at home order. She felt that if it protects one person then it is worth it.

Councilor De Lima agreed with Councilor Asherman’s comments. She expressed concern about doing things piecemeal. She was in favor of advocating to the Governor to declare stay at home orders for Cumberland and York Counties. She said it did not seem like there were making people making excursions. She felt that with the state park closures there would be less people out and about. She was not sure that a proclamation added to the current situation.

Chair Kuhn said it was possible that a statewide stay at home order or a Cumberland County order could be possible in the coming days or weeks. She said that there is an effort underway to come up with a more consistent set of rules for the Greater Portland Region. She had not heard any Councilors say that Council should not do anything. She was hearing everyone say this is important and there is a role to play. She suggested developing a resolution like Yarmouth’s that encourages staying at home and following best practices. She said that the Town could do that and see what develops over the weekend or the Council could ask staff to develop a stay at home order.

Councilor Johnson asked if a decision was made at a regional level how impacted constituents would vote. He felt it would be easier for the Council to make a decision about Falmouth then to try to make a regional decision. Chair Kuhn said if the Metro Coalition developed a regional order each member town council would have to adopt it individually.

Councilor Cahan said that she would at least want a stay at home order to be drafted that the Council could have on hand. Chair Kuhn said that staff could also get to work on a resolution so that if a county-wide or regional solution is proposed the Town could accompany that with a local resolution.

Councilor Trickett said that the orders he has seen impose penalties. He was not in favor of communicating through fines. If the Town was going to do an order with enforcement clauses, he wanted more information on best practices. He did not think that the Town was equipped to develop an order without outside resources and expertise. He felt that a resolution should reflect medical advice. He was open to a resolution.

Town Council Minutes

March 27, 2020

Page 5 of 5

He said that the Town could designate someone to help people apply for relief. He thought that there were other ways of communicating than fines. Chair Kuhn said she did not support an order with enforcement through fines.

Councilor Cahan said that there is good reporting from other countries and other states that stay at home orders have led to positive results. She felt that there were a lot of people who were taking this seriously but also a lot of people who were not. She was concerned about not having a stay at home order.

Chair Kuhn asked if it was possible for staff to prepare a draft stay at home order and a draft resolution within the next few days. Mr. Poore said that he and Amy Tchao, Town Attorney, have started looking at other communities' stay at home orders. He said that South Portland's order closely follows the Governor and CDC's guidance and their ordinance seems similar to Falmouth's.

Chair Kuhn suggested proceeding on that basis and planning to meet again early next week.

Councilor Johnson urged people who have an opinion on this to please let the Councilors know.

The Council began discussing the status of the property tax payment deadline.

Adjourn

The meeting ended abruptly due to the inappropriate and lewd behavior of one individual whose actions were viewed by several of the meeting participants.

Respectfully submitted,

Marguerite Fleming
Recording Secretary