

## **Town Council Meeting Minutes May 27, 2020**

Chair Kuhn called the meeting to order at 7:00 pm.

### **Roll Call**

All councilors were present and answering roll call.

### **Pledge of Allegiance**

Chair Kuhn led those present in the Pledge of Allegiance.

### **Item 1           Public Comment Period.**

John Winslow of Gray Road asked why the Council had not filled the Planning Board vacancies. He asked if the Council was working on short-term rental regulation. He also asked why the state and local governments had not issued face coverings for residents.

Marcia Feller, owner of Couleur Collection, said she was interested in the discussion on outside retail and dining.

Amanda Farrington, representing JP's Bistro, was also interested in the outdoor dining and retail discussion.

Chair Kuhn said that the Council subcommittees have not been meeting during the pandemic.

### **Item 2           (Consent Agenda)**

- **Order to approve the minutes of the March 9, 2020 Town Council Special Meeting.**
- **Order to approve the minutes of the March 23, 2020 Town Council Meeting.**
- **Order to approve the minutes of the March 27, 2020 Special Town Council Meeting.**

Councilor Hemphill moved the order; Councilor Johnson seconded.

Chair Kuhn opened the public comment period; there was not public comment.

The motioned carried unanimously.

### **Item 3           Report from staff, Council committees, and Council liaisons regarding updates on assignments and projects.**

Chair Kuhn said all committees have been on hold during the quarantine period. She said the Town is hoping to get those back up and running in June. The Council subcommittees will meet once in person if possible, during the month of June. The goal for those meetings is to assess where the committees are with their work. She said the Council appointed committees have already begun scheduling zoom meetings.

Nathan Poore, Town Manager, said that the Clerk's Department opened that day by appointment only. He said that other towns that have opened for walk-ins have experienced long lines. He encouraged people to use online services if able.

Chair Kuhn said the Memorial Day parade was cancelled this year. She thanked everyone who worked to create the virtual Memorial Day commemoration. She also announced that the annual Municipal Banquet had been cancelled.

**Item 4 Update on Solar Photovoltaic (PV) Landfill Project.**

Nathan Poore, Town Manager, delivered the presentation. He said the Council met earlier this winter to authorize the selection of the company that staff thought would be the best fit for the project and authorized the staff team to negotiate a power purchase agreement. They have concluded those negotiations. He felt that this meeting was a momentous event that deserved celebration. He described the present status of the project and reviewed the preliminary site plan. Most of the landfill will be covered with solar panels. He reviewed the project schedule's major milestones and next steps for moving forward. Staff are recommending that the Council authorize the Town Manager to sign the Power Purchase Agreement and supporting documents.

Councilor Johnson asked for clarification on why the option to purchase after six years may not be advantageous. Mr. Poore said that the Town has the option to purchase after six years but he cannot see the Town purchasing that soon as it is not in the business of maintaining a solar farm. He said at the end of the 20-year agreement the cost to purchase is not a significant amount of money. He said whether to purchase cannot be determined until that time. Councilor Johnson asked if after the 20-year period lapses if there would be an opportunity to re-sign a long-term contract. Adam Cote, Drummond Woodsum Attorney, said it made the most sense to structure the agreement this way because investors can capitalize on investment tax credits to make it a financially attractive deal for both parties. He said the Town can take advantage of net energy billing which makes this attractive. He said at the end of the contract the Town could negotiate an extension or to purchase it. He said a contract extension would likely include the replacement of a lot of the solar arrays due to deterioration and new technology.

Councilor De Lima said this is a wonderful sense of accomplishment. She asked who would be responsible for taking down the solar array and the cleanup at the end of the 20 year contract. Mr. Cote said that the developer would be responsible for removing all the panels and restoring the site to its previous condition.

Councilor Cahan moved the order; Councilor Johnson seconded.

Chair Kuhn opened the public comment period; there was no public comment.

Councilor Cahan thanked staff and REAC for working so hard on this and not giving up.

Councilor Hemphill agreed with Councilor Cahan's comments. He was looking forward to seeing the completed project.

The motion carried unanimously.

**Item 5 Discussion regarding an emergency ordinance to temporarily suspend certain provisions of the Falmouth Code of Ordinances relating to outdoor eating areas and outdoor retail display to assist businesses suffering economic loss due to COVID-19 in a manner consistent with the Governor's re-opening plan.**

Chair Kuhn said this is an emergency order because the normal ordinance adoption process can take months and the Council desires to act quickly and efficiently to provide relief to businesses. She said the measure is to support businesses that are trying to open but are facing challenges with instituting the social distancing

requirements. She said Governor Mills extended the date for indoor dining to resume in Cumberland County. The Governor said in the press conference that she hopes municipalities will try to make accommodations to permit restaurants to have outdoor dining.

Mr. Poore said that Town staff put this together last week. He said the ordinance had been vetted with the Town attorney. He said for the most part it would be a staff review process with a lot of subjective criteria. He said the ordinance has a sunset and the Council can repeal the ordinance at any point if there are issues. He did not anticipate concerns and felt that staff could work out the permits very quickly. He said the primary criteria would be safety.

Councilor De Lima asked if the ordinance was limited to just retail and restaurants. She asked if other types of businesses could move their waiting areas outside. Ethan Croce, Community Development Director, said that the current draft does not speak directly to that issue. He said that moving a waiting area outside would not be establishing a land use that would require permitting. He said outdoor dining and retail are specific uses under the Town's ordinances that are not allowed to be established without going before the Planning Board or BZA.

Councilor Johnson asked if Mr. Croce had a rough idea of how many businesses would be able to take advantage of this. Mr. Croce said he did not know the number. Councilor Johnson asked about the amount of staff time that might be necessary to review these applications. Mr. Croce said it would not be a heavy lift because the nature of the regulations as they are drafted do not have a lot of prescriptive requirements.

Councilor Trickett asked about the rationale for the two-month sunset period. Mr. Croce said that the Town feels like it can be nimble in multiple ways with this. He said if the Town finds out that 60 days is too long the Council could schedule a special meeting at anytime and repeal or amend this ordinance in any fashion that it sees fit. The Council can amend the ordinance at any time to incorporate any means that it deems appropriate. He said if anyone is not in compliance with the permits staff can unilaterally suspend the permit approval and the Council can revoke the approval all together. Councilor Trickett expressed concern that staff's only option with a license is to suspend or revoke it rather than to modify. Mr. Croce said like with any kind of enforcement matter, staff ultimately have prosecutorial discretion as to whether to bring forward a notice of violation, to suspend an operation or to move forward with a revocation so staff do have discretion in that regard. He said staff would try to bring the property into compliance and work with the business owner to modify their operations before suspending or revoking the license. Councilor Trickett asked if there was a reason why the Town would not want to write in giving staff the ability to suspend, revoke or modify a permit or license in response to not just violations but needing further work. Mr. Croce said he believed that staff currently have the flexibility to be able to work cooperatively and in a flexible way with the business owners without needing to specifically place that language in. He said it could be added if it would make the Council more comfortable. He said the difficulty with modification is that typically staff cannot unilaterally modify permits because applicants ultimately must consent to the modification of the permit. Councilor Trickett expressed concern with the way Section 6 is written in that it seemed to limit flexibility. He felt that the licenses should be revocable at the Town's discretion. He felt that there should be one-month sunset that the Council has to review this every month.

Councilor Cahan asked if coffee shops and bakeries were considered restaurants under this ordinance. Mr. Croce said this is written broadly to allow any food service establishment to take advantage of this provision.

Councilor Asherman expressed concern about sunsetting the ordinance every 30 days as some businesses will need to make sizeable investments to do this.

Chair Kuhn asked for a motion to waive the Council rules and take public comment on the order tonight.

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Councilor De Lima motioned to waive the Council rules; Councilor Johnson seconded.

The motion carried unanimously.

John Gagnon, owner of JP's Bistro, said that he appreciated the Council taking the time to address this issue. He agreed with having the flexibility to modify and work with businesses. He thought that the thirty-day sunset was good because the Town could give business advice on how to do things better. He asked about the process and the speed with which businesses could open for outdoor retail and dining.

Marcia Feller, owner of Couleur Collection, was excited that the Council was open to some of these ideas. She said her customer base is primarily women over 50 and these women are already timid about coming out to shop. She said the Staples staff told her that enforcing masks has been extremely stressful. She expressed concern about people with disparate opinions about wearing masks becoming disruptive.

John Winslow of 253 Gray Road expressed concern about applying a one size fits all approach to very different spaces.

Lance Meader, owner of Rivalries, expressed frustration with the Governor's changing of the date to resume indoor dining. He said that he appreciated the Council considering this but that it is not fast enough and is putting business owners in a tough spot.

Chair Kuhn closed the public comment period.

Chair Kuhn asked if she was correct that that application allows flexibility for each operator to design and seek approval for what will work best for their particular property. Mr. Croce said that is correct. Mr. Poore said that action could not be taken on this item at this meeting because the Planning Board must hold its MRA hearing process on June 2. He said if the Council were ready to move forward with this, he would recommend that the Council hold a meeting on Wednesday to vote on the ordinance. He said if the Council is inclined to move forward staff could begin accepting applications in advance of the ordinance adoption.

Councilor Cahan thought that was a good idea. She agreed with Councilor Trickett that staff should have the flexibility should something come up that is not explicitly described in the ordinance to be able to act appropriately. She did not want tweaking the language to hold up the process. She suggested having a monthly staff report with the flexibility to pull the plug if things are not going well. She did not want to have the businesses be in complete flux during the summer not knowing if the Council would cancel the ordinance one month in.

Councilor De Lima asked if it was possible to have the Planning Board act this week. She also asked about the purpose of the hundred-dollar application fee. Mr. Poore said that the wrong version of the draft ordinance had been posted and the application fee had already been eliminated. He said that the Planning Board could not meet earlier because of the public hearing notice requirements. Councilor De Lima said she liked the idea of accepting applications in advance.

Chair Kuhn said that the Council needed to meet again after the Planning Board meeting and could meet as soon as the next night. Mr. Poore suggested that the Council could meet the morning of June 3. Chair Kuhn asked about councilors' thoughts the 30-day or 60-day sunset. She heard Councilor Asherman's concern about the investment piece. She would rather provide a bit more predictability for businesses.

Councilor Trickett said he was in favor of continuing to extend the ordinance as long as there were restrictions on businesses' abilities to fully occupy their internal spaces and allow customers to enter. He felt

that the Council should check-in every 30 days in the event potential adjustments were needed. He felt it was the Council's responsibility to be more engaged and involved in monitoring implementation and requiring some accountability from staff to make sure that any tweaks that any necessary tweaks were being made. He said that the part of Section 6 that concerned him was the additional penalties for violation of this ordinance. He felt that the staff need the ability to be able to revisit permits without the ordinance being revoked or modified on an ongoing basis to address issues as they arise.

Chair Kuhn asked if there was a way to modify the language of Section 6 that would address that concern. Mr. Croce said under normal circumstances the ability to change ordinance language after it has been introduced is pretty limited because of the limitations of the Town Charter so in this instance there is flexibility to allow the language to be modified even after the Planning Board MRA hearing. He said that the nature of the discussed changes could be accommodated within the law. Chair Kuhn asked if the Council would be supportive of Councilor Trickett working with Mr. Croce to develop a modification to Section 6 that would both provide authority for the Town to discontinue a license when desired for any reason and promote flexibility and collaboration to help businesses find ways to comply. The Council was supportive.

Councilor Johnson thanked the business owners who provided comment. He asked if it was possible to put a later sunset provision than August 3. He felt that business owners would want to provide outdoor dining through the fall. Chair Kuhn said she thought it was a question of the Charter and the Council's ability to make emergency ordinances that they were required to be sunsetted within 60 days. Councilor Johnson asked if the ordinance could be renewed past 60 days. Chair Kuhn said yes. She said she was hearing that the will of the Council was to continue this in place for as long as businesses need it. She said she was not sure if it mattered if it was 30 or 60 days because the Council could revoke it at any time.

Councilor Trickett expressed concern that permits would expire on August 3 and that businesses would have to get new permits if the ordinance was renewed. He wanted to consider writing in that permits do not expire if the ordinance is renewed. Mr. Croce said he was confident that it can be made explicitly clear. Mr. Poore said if it were to remain 60 days, the Council would use its last July meeting to extend it. If the Council passed the next agenda item that meeting would be July 20 so the deadline could be backed to July 21 which would be in the middle.

Chair Kuhn reviewed next steps. She asked about the difficulty of business enforcing face coverings. Mr. Poore said this question came up in recent webinar and the response was that every business can establish their own rules and if their rule is face coverings are required then they can insist that their customers wear them. He said if a business decides to make that decision and they are experiencing a confrontation they can contact the Police Department.

**Item 6            Order to (i) postpone the annual meeting to swear in Councilor-elects from the third Monday in June to the third Monday in July, (ii) establish a regular Town Council meeting for the month of June on June 22 and, (iii) cancel the regular Town Council meeting on July 27.**

Mr. Poore suggested revising (iii) to read "move the regular Town Council meeting on July 27 to July 20." He also suggested changing the notation to, "there will be special Town Council meetings on June 3 and June 15."

Councilor Johnson moved the order as amended; Councilor Cahan seconded.

Chair Kuhn opened the public comment period; there was no public comment.

The motion carried unanimously.

**Adjourn**

Councilor Hemphill motioned to adjourn; Councilor Asherman seconded.

The motion carried unanimously.

The meeting adjourned at 8:44 pm.

Respectfully submitted,

Marguerite Fleming  
Recording Secretary