

TOWN OF WALLINGFORD, CONNECTICUT

TOWN COUNCIL MEETING

ORDINANCE COMMITTEE

Thursday, September 3, 2020

6:30 P.M.

RECORD OF VOTES AND MINUTES

The meeting was called to order at 6:30 P.M. The Pledge of Allegiance was said. The following Councilors were in attendance: Vincent Cervoni, Craig Fishbein, Thomas Laffin, Joseph Marrone, Christina Tatta, Jason Zandri, and Chairman Christopher Shortell. Councilors Gina Morgenstein, and Vincent F. Testa, Jr. were absent. Others in attendance were: Corporation Counsel Janis Small and Comptroller, James Bowes.

1. Pledge of Allegiance
2. Roll Call

Chairman Shortell took a moment to congratulate all the teachers, administrators, and students on successfully returning to school today.

3. Approval of Minutes of June 16, 2020, Ordinance Committee meeting.
Chairman Shortell pointed out the misplacement of the word 'and' in the list of attendees.
MOTION WAS MADE TO APPROVE THE JUNE 16, 2020 MINUTES AS CORRECTED.

MADE BY: SHORTELL
SECONDED BY: CERVONI

ROLL CALL VOTE:		MORGANSTEIN:	ABSENT
CERVONI:	YES	SHORTELL:	YES
FISHBEIN:	ABSTAIN	TESTA:	ABSENT
LAFFIN:	YES	TATTA:	YES
MARRONE:	YES	ZANDRI:	YES

6 - AYE
2 - ABSENT
1 - ABSTAIN
MOTION: PASSED

4. Discussion and possible action on amending Chapter 46, Reserve Accounts (§46-4 -§46-8).

Chairman Shortell summarized the issue and welcomed Mr. Bowes. He explained that during the budget process we looked at the money in the Cap and Non-recurring Account. This account gets an annual payment in lieu of taxes from the Electric Division and that money is earmarked for large projects like townwide paving. Council gets a monthly report from Mr. Bowes and the administration. The concern raised by the council was that when a project is closed out under budget, that money would become unassigned in Cap and Non. That money over the last few decades has accumulated and there's no line item in the report that shows the money that has been accumulating. He stated that he understood that Mr. Bowes does a sweep of the Cap and Non Account precisely for that purpose twice a year. The amendment intends to have a report out of that dollar amount before our budget cycle on April 1st.

MOTION TO AMEND §46-9 TO READ ON OR PRIOR TO APRIL 1ST OF EACH YEAR, THE COMPTROLLER SHALL PROVIDE THE TOWN COUNCIL WITH A REPORT OR ALL CAPITAL AND NONRECURRING FUND PROJECTS COMPLETED AND/OR CLOSED OUT DURING THE PREVIOUS FISCAL YEAR ENDED JUNE 30TH, INCLUDING THE DOLLAR AMOUNT UNSPENT AND CLOSED-OUT FOR EACH PROJECT.

**MADE BY: SHORTELL
SECONDED BY TATTA**

Councilor Fishbein stated that this is a good start but that he is looking for a lot more information. He stated that he understood that the date of April 1st is in conjunction with the budget and the other component is the end of year audit, which may adjust the numbers. He proposed that twice a year may be appropriate to receive the information. He noted that this just tells when projects are completed or done but not what projects are uncompleted. He noted from the Charter, page 28, section XIX, subsection 4 states that "such appropriation shall aim to have been abandoned if no expenditure from or encumbrance of the appropriation has been made within 3 years of its approval" except as it's provided in the next paragraph. As this language is drafted, we would not have that information and wouldn't know what projects are abandoned and what is left. So, the proposed amendment is a good start, but it doesn't get to where we need to be. He also noted that 46-7, which is a portion of this same chapter needs to be amended to comport to the Charter XIX, not VII.

Chairman Shortell agreed that we can follow up on that change. He also replied that we do know projects not completed in the monthly report and that they were discussed during the budget meetings. Councilor Fishbein replied that the information is taken from multiple documents and would be more user efficient to put it in one document. He stated that he'd like to see it all on one page.

Chairman Shortell asked James Bowes, Comptroller, for his thoughts on reporting twice a year. Mr. Bowes replied that currently, they do a sweep when they close the books for audit and then around March for discussions with Public Works. He noted that this year they are running behind schedule but will probably sweep at around the end of October. He stated that there won't be much change between fall and spring, though the more updated one will be the one in March. That's why he suggested using 'on or before April 1' to coincide with the Charter requirement of the Mayor's budget being due then. He stated that if the Council wants it twice a year, he can do that, but doesn't expect it to be helpful. Chairman

Shortell stated that it would be most helpful before April 1st. Getting the information in October is great and transparent but he understands that the Council can't do much with it. He asked Mr. Bowes about projects reported in the Monthly report. Mr. Bowes stated that the status of all projects that are authorized to spend any expenditures and incur encumbrances and the available authorized balance for each month are already reported. You can see if no activity from the original date of the authorization. For example, paving was delayed while they were waiting for Yankee Gas to do more work in the area. Sometimes they are waiting for state or federal funding to close. He gave an example of a situation where the state over-reimbursed us and then came several years later after the project was completed and closed out. On that occasion, they put that amount in the Cap and Non-recurring budget. He did say that the information is in the Monthly report and wasn't sure how getting something different would help.

Chairman Shortell asked if there was a way to get the information into the existing monthly report, maybe add a line item. Mr. Bowes replied that the report has the information, but he agreed that it's difficult to discern. It shows the original authorized amount of say \$500,000 and the next column shows the authorized amount of \$400,000 to match expenditures and the available amount to spend is zero when the project is closed out. The authorized budget is reduced when closed out while the original budget amount still stays intact. That's because we go back to the budget authorization or a supplemental move by the Council to approve a project or transfer funds within the Cap and Non-Recurring fund. If you saw that change between the two columns means reduction because of the closed project. He understands that the requested is to make that clearer as to what we closed out and the amounts.

Chairman Shortell stated that the Charter says if a project has no money spent after 3 years it has lapsed. How does that work, does it lapse automatically, or is action needed? Mr. Bowes replied that language in the section involved with the budget-making process. It is interpreted to mean that when the council authorizes a project in the Cap and Non-recurring Fund, we've got three years to start spending money on the project or it will be considered abandoned. He could only recall one time when the project didn't start in time and that was many years ago. Chairman Shortell mentioned Brothers parking lot that was authorized in 2014 and the Wallace Ave parking lot that was authorized in 2010. He noted that this is something they need to look at in the future. Janis Small, Corporate Counsel, commented that she thinks it's not just if you started. She apologized that she had not looked at that section. Chairman Shortell noted that it is not germane to the amendment tonight but needs to be discussed at a future meeting. Councilor Fishbein asked that the topic be put on the next meeting agenda. Chairman Shortell replied that it will be on the November agenda.

Councilor Marrone stated that he agreed with Councilor Fishbein. We authorize money in the budget and then the money gets spent or it doesn't and at the end of the year, we essentially do a new budget from scratch. The Cap & Non is different. This fund goes on forever. Maybe it shouldn't be discussed with the budget. He suggested we look at it at a different time. We found some money this year that we didn't know was out there. This isn't a huge deal, other than we lost track of some funds. He suggested taking a different approach and maybe talk about the Cap and Non more frequently or have separate time to discuss it. Chairman Shortell noted that it is not that the money was lost, it just wasn't clear in the report how much unassigned money was there. He stated that it is tied to budget because the only time we can act on it as a Council is with the budget. Councilor Marrone stated that he understood the link to the budget. He didn't mean that the funds went missing, just that it was just sitting idle and not accruing

interest. He suggests tightening up the process. Mr. Bowes stated that the amount of funds accumulated over the years has been discussed publicly at budget meetings. There have been discussions about available funds in the Cap and Non-recurring budget. He agreed it is not clear to see but the town is not sequestering money that no one knows about. He gave an example of when a referendum overturned a project authorization. He stated that the town is not piggy-banking money and not telling anyone. He restated that is has been discussed.

Councilor Fishbein agreed that the monthly statements are helpful. He noted that they are trying to comply with Connecticut General Statute 363 which says ‘that the treasurer shall annually make available information and data on the condition of such fund to the budget-making authority and the public and such information and data may be made part of the annual report of the municipality.’ He stated that the question is whether or not the amendment proposed will meet that statute. He stated that it’s a good start.

Councilor Marrone stated that his intent was not to put Mr. Bowes on the defensive. He said it’s more of the administration not keeping an eye on what money was in the account. He noted that an extra \$1.2 million was found that we didn’t know what out there. Mr. Bowes replied that he doesn’t want people to think that we are doing something we shouldn’t be doing.

Chairman Shortell suggested amending the motion to include twice a year and proposed: ‘on or prior to December 31st and prior to April 1st each year’. Atty. Small asked when the audit is expected and what is expected to be different between December 31st and April 1st. Mr. Bowes replied that the audit is usually December 31st, but an extension can be requested from OPM. He stated that they sit down with Public Works and Engineering in the fall and probably in March. Atty. Small suggested using November 30 in the amendment. Mr. Bowes replied that having something to the Council by November 30 and April 1st is acceptable.

MOTION AMENDED TO READ: AMEND §46-9 TO READ ON OR PRIOR TO NOVEMBER 30 AND APRIL 1ST OF EACH YEAR, THE COMPTROLLER SHALL PROVIDE THE TOWN COUNCIL WITH A REPORT OR ALL CAPITAL AND NONRECURRING FUND PROJECTS COMPLETED AND/OR CLOSED OUT DURING THE PREVIOUS FISCAL YEAR ENDED JUNE 30TH, INCLUDING THE DOLLAR AMOUNT UNSPENT AND CLOSED-OUT FOR EACHP PROJECT.

**MADE BY: SHORTELL
SECONDED BY TATTA**

ROLL CALL VOTE:

**CERVONI: YES
FISHBEIN: YES
LAFFIN: YES
MARRONE: YES**

**MORGANSTEIN: ABSENT
SHORTELL: YES
TESTA: ABSENT
TATTA: YES
ZANDRI: YES**

**7 - AYE
2 - ABSENT**

MOTION: PASSED

Chairman Shortell stated that the amendment will go to Full Council for a public hearing.

5. Discussion and possible action on amending Chapter 62, Seasonal Outdoor Dining Regulations, §62-14.

Chairman Shortell stated that this is part of a larger discussion with the Planning and Zoning Commission regarding the ordinance on sidewalk dining in the town center. We need to look at all zoning regulations and ordinances and start a public process of brainstorming and look at what we've learned from the COVID pandemic to see if we can change any long-standing regulations or codes. He reported that there will be a joint meeting in the fall. In the meantime, he proposed allowing outdoor dining to be extended for one month. The ordinance reads April 1st to October 31st and he proposed permanently extending it through November 30th.

Councilor Fishbein stated that he is in favor of outdoor dining, but has heard complaints about the loss of parking at Simpson Court and concerns about tables on Center and North Main Streets. He asked if there are liability issues or if we have to have insurance to protect taxpayers from lawsuits. Assuming taxpayers are protected, he stated that he has no problem letting restaurants use sidewalks. He proposed extending it to include shopkeepers. He stated that he is open to more economic opportunities.

Chairman Shortell stated his proposal to expand the timing of the existing ordinance for sidewalk dining for these specific restaurants. He agrees with expanding the ordinance. He asked about the concern of liability. Councilor Fishbein replied that when the ordinance was set up it stated that there had to be a fence or barrier. He knows of one place without a fence or barrier and he knows that tables have encroached on areas not part of the restaurant. His concern is that the restaurant is not covered adequately by insurance. He asked if we should require insurance if they move past their boundaries. Chairman Shortell noted that before COVID, restaurants in the center of town, a specific area governed by Town Code, could do sidewalk dining from April 1 to October 31. The rest of the Town can apply to Planning and Zoning for a permit. Not talking about the statute, just talking about permanently extending the date in the ordinance to November 30.

Councilor Fishbein stated that Ordinance 62-10 deals with more than the uptown area for outdoor dining. He asked if we are addressing a particular portion of the ordinance. For example, Ordinance 62-10E which talks about the northerly sidewalk of Quinpiac Street, from South Colony Road westerly to Washington Street and Southerly sidewalk from South Colony Road Westerly to Washington Street. Expansion and concerns that have been raised are not for this body to consider, because that would be enforcement and we don't enforce. Councilor Fishbein asked where we are expanding the time for the entire ordinance or just the uptown area. Chairman Shortell stated that his intention is for the entire ordinance. He apologized if he misspoke earlier, that he wants to extend the timing for everyone.

Chairman Cervoni stated that a lot of the downtown dining now is reflective of one of the governor's executive orders intended to encourage the reopening of restaurants and allow for the expanded outdoor dining. It expanded the location they can take up and encouraged municipalities to allow outside dining. This is happening without any ordinance action. Chairman Shortell clarified that he is thinking after

COVID, when things are back the way they were, to still allow outdoor dining longer than we do today as it's governed by this ordinance.

Councilor Laffin proposed we extend it to March as we often get mild weather. He has been approached by restaurant owners about this. He noted that the balance that has to be created with parking is a Planning and Zoning issue. He is in favor of doing it all year and to allow heaters in the right conditions. He noted that we've been forced to stretch outside our normal boundaries and it's not that bad. He would support the proposed amendment and even for adding March.

Councilor Marrone stated that he agrees with Councilor Laffin. He stated that COVID has taught us that there is no harm in allowing businesses to put people out on the sidewalk. He stated that the Ordinance is overly restrictive. He believes outdoor dining is attractive and draws people to town. He is happy with the proposal, with adding March or going year-round.

MOTION TO AMEND §62-14G TO ALLOW US TO CHANGE IT AS FOLLOWS: SEASONAL OUTDOOR DINING SHALL BE PERMITTED FROM MARCH 1ST THROUGH NOVEMBER 30TH.

**MADE BY: SHORTELL
SECONDED BY LAFFIN**

Chairman Shortell asked Fire Chief Richard Heidgerd if he had any comments regarding safety. Chief Heidgerd replied that he has no concerns. He is working with the other departments, Planning and Zoning, and the Building Department. He noted a slight concern with the tents and enclosures because when side curtains are added it reduces egress and becomes considered a building. The Fire Marshall's office would work with the other departments on those concerns. He stated that he agreed with the earlier comments that this is good for business, good for the public, and good for the Town of Wallingford.

ROLL CALL VOTE:		MORGANSTEIN:	ABSENT
CERVONI:	YES	SHORTELL:	YES
FISHBEIN:	YES	TESTA:	ABSENT
LAFFIN:	YES	TATTA:	YES
MARRONE:	YES	ZANDRI:	YES

**7 - AYE
2 - ABSENT
MOTION: PASSED**

Chairman Shortell stated that this will go to a public hearing in September and that there will be a joint meeting with Planning and Zoning probably in October.

6. Discussion and possible action on amending Chapter 139, Littering (§139-1– §139-11).

Councilor Zandri explained his concerns with the household garbage in the town trash receptacles. He noted that the new cabinet enclosures are not secure. He is seeing more and more tall kitchen garbage bags in the receptacles. He reported that Public Works is getting calls that the receptacles in the parks are full. They report seeing people place their household garbage in the receptacles. Councilor Zandri stated that he knows there's a full-blown littering ordinance, but the situation is getting to the point where the downtown looks unsightly with bags mounding over the top or beside the receptacles. He suggested ramping up the punishment level maybe after a written warning. We need to get teeth into the ordinance and then enforcement. Chairman Shortell noted that Atty. Small provided references to Connecticut General Statutes defining that "a person who dumps more than one cubic foot in volume of solid waste at one time in a collection container without the owner's permission is guilty of an infraction. The owner of the collection container may post a sign on or near the container indicating the penalties for the unauthorized dumping. Police can issue the summons" and then according to a different statute in the same chapter "an ordinance may provide for a fine of up to \$1,000 for a violation of" the first one he cited. "It can be enforced by the Police Department or a person authorized by the Chief Elected Official." The citation procedure in a different Statute would apply." Chairman Shortell noted that that is some information from Atty. Small.

Councilor Fishbein thanked Councilor Zandri for bringing this to our attention. He reported seeing bags of garbage along the roadway at North Farms Reservoir a few weeks ago. He agreed that something has to be done and is in favor of escalating the penalties but would expect increments. He is in favor of starting with increments of \$250.

Chairman Shortell asked Atty. Small what the current fine is. Atty. Small stated that she doesn't think the language specifically puts us into that category. She thinks revisions to the ordinance are needed to talk specifically about the receptacles. She recommended doing both the ordinance changes and consider putting signs on receptacles stating that's it's an infraction. That would allow a summons to be issued. The Ordinance can have an incremental fine for more than one violation. She indicated that the Council can do both.

Councilor Zandri suggested tiered fines. Maybe a written warning first along with a write up of what the infraction was and build up for additional offenses. The intent is that by keeping people from littering you get a cleaner town. The second piece is not to immediately start penalizing from a monetary standpoint. Some people don't understand that public receptacles are not for household trash. He suggested graduating people's thinking on this. He noted that the owners of commercial businesses and condo complexes have the same problem. He has seen it happen at the train station. So the other piece is to educate people that it's illegal. When you have a record that they've been notified, then you can do the fine. This will protect businesses and individuals because their costs go up. He acknowledged that people are looking to cut corners but we need to set the balance. There's no punishment mechanism now.

Councilor Laffin asked if there is a sign, do we need to give a warning or can we jump to a fine. Everyone knows that it's wrong. He noted that we will have to catch them in the act. Atty. Small stated that the sign will be necessary for the summons. Businesses with dumpsters should have signs. The citation process requires a written warning. That's on the ordinance side. The sign can be a deterrent and

allows the police to issue a summons. She suggested doing both. Councilor Laffin in favor of the signs and suggested starting fines at \$500 or \$750. He thanked Councilor Zandri for bringing it up.

Chairman Cervoni stated that keeping the town clean and free of rubbish is important. He asked Atty. Small if there is a limit on the amount of a fine that can be levied by ordinance. Atty. Small replied not generally but noted that this particular statute goes up to \$1,000. This is a very specific authorization to do that.

Councilor Zandri emphasized the enforcement piece. We already have situations where Public Works or the Owner can identify whose trash it is. The problem is that that only proves whose trash it is, not who dumped it. This makes it more complicated. Ultimately we want to stop illegal dumping. We will need to be able to prove who put it in the dumpster. People may have to do their own enforcement and that enforcement is a piece of this mechanism. This should cut back on our costs for when Public Works has to do the cleanup and we are charged by the reclaim center.

Chairman Shortell asked if Atty. Small has what she needs to draft an amendment. Atty. Small stated that she has enough to start and will be aggressive with the fines. Chairman Shortell stated that the committee will review the draft language that Atty. Small comes up with.

Chairman Shortell announced that the next meeting is Tuesday, October 6th, and declared the meeting adjourned at 8:00 pm.

Respectfully Submitted,
Cheryl-Ann Tubby
Recording Secretary