

TOWN OF WALLINGFORD, CONNECTICUT

SPECIAL TOWN COUNCIL MEETING

ORDINANCE COMMITTEE

Tuesday, December 1, 2020

6:30 P.M.

HELD REMOTELY VIA GOTOMEETINGS

RECORD OF VOTES AND MINUTES

The meeting was called to order at 6:35 P.M. The Pledge of Allegiance was said. The following Councilors were in attendance: Vincent Cervoni, Craig Fishbein, Thomas Laffin, Joseph Marrone, Gina Morgenstein, Christina Tatta, Vincent F. Testa, Jr., Jason Zandri, and Chairman Christopher Shortell. Also in attendance was: Corporation Counsel Janis Small.

1. Pledge of Allegiance & Roll Call
2. Approval of Minutes of September 3, 2020, Ordinance Committee meeting.
MOTION WAS MADE TO APPROVE THE SEPTEMBER 3, 2020 MINUTES AS PRESENTED.

MADE BY: SHORTELL
SECONDED BY: CERVONI
VOTE: UNANIMOUS
MOTION: PASSED

3. Discussion and possible action on Cap and Non Amendment to Chapter 46, Reserve Accounts, Article II.

Chairman Shortell recapped the discussion at the Public Hearing at the November Town Council meeting. He acknowledged and agreed with Councilor Fishbein's comments that the language should be more specific. He stated that the intent is to get a standing report on the disposition of the Cap and Non-occurring account. We received information in April just before the budget workshops and it was helpful. He stated that the information is out there but not always easy to define. He referred to the email on page 11 of the backup which he sent to the Town Clerk on November 24th with revised language. Chairman Shortell reported that he reviewed the proposal with James Bowes who had no issues with it.

Councilor Fishbein suggested adding "shall provide at a minimum the Town Council with", to provide a floor instead of a ceiling.

MOTION WAS MADE TO APPROVE THE PROPOSED LANGUAGE.

MADE BY: FISHBEIN
SECONDED BY: SHORTELL

DISCUSSION:

Chairman Shortell suggested removing the second to the last bullet, starting with “All Incomplete Capital and Nonrecurring projects...” as they are already receiving this information every month. Mr. Bowes agreed that that bullet is not necessary. He noted that he shared a copy of the Monthly Financial Report that is public that the Council gets every month showing that listing of Cap and Non Projects, the date initiated, the amount that was spent, the amount encumbered, and the amount available. He noted that Mr. Bowes is unable to attend this meeting.

Councilor Fishbein stated that he is comfortable with the proposed language, with or without that bullet. He would like all data in one place and that we get it at a certain time of year.

Councilor Marrone agreed that it’s nice to have it all in one place. It should be easy enough for Mr. Bowes to add the page from our monthly report to the report in February. He’s fine with it if it’s all in one document.

Chairman Shortell noted that this can’t be posted until January and asked for clarification of the next step. Chairman Cervoni indicated that it would be referred to Council. Chairman Shortell asked Atty. Small if she had any changes. Atty. Small stated that she had none, but that she’d put it in a format that fits in the ordinance. She clarified that she can take the “note” out of that last bullet. Chairman Shortell confirmed. Chairman Shortell stated that we can leave that bullet.

Chairman Shortell verified with Chairman Cervoni that this can’t be posted for another public hearing until January because of the 5-day rule. He asked if it has to come back to the Ordinance. Chairman Cervoni stated that if the language is set, then it can be referred to the Council for approval. He stated that it can be set for a public hearing for the first January meeting. Chairman Shortell asked Atty. Small if any changes were necessary to the proposed language. Atty. Small stated that she will put it in a format for an ordinance but otherwise no changes are needed, other than taking the note out of the second to the last bullet.

He called for public comment. Hearing none he called for a vote.

ROLL CALL VOTE:

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

MORGANSTEIN: YES
SHORTELL: YES
TESTA: YES
TATTA: YES
ZANDRI: YES

9 - AYE

0 - ABSENT

0 - ABSTAIN

MOTION: PASSED

4. Discussion and possible action on Chapter 139 Littering

Chairman Shortell reminded the committee that this is an item brought up by Councilor Zandri in the fall. He stated that Atty. Small was going to sync up the proposed language to what we want to do locally and what the State already has. He stated that we also need to look at the fines. Atty. Small reported that she has been working on language but doesn't have a draft to share yet. She explored avoiding a warning. She acknowledged that the Council wants to have a lot of teeth in the fine. She proposed \$500 for the first offense, \$750 for the second, and \$1000 for each after that. Each one cubic foot of solid waste would be a separate offense. She asked if the Council wants something tougher than that. She noted that up to \$1000 is allowable. The ordinance won't reference the infraction statute. It doesn't have to. The infraction is a much much smaller fine that you have to share with the State of Connecticut. She asked for feedback on how to structure the fine before she finalizes.

Councilor Fishbein stated that he is concerned with creating an ordinance that can't be effectuated. He gave an example of someone receiving a warning for one incident, how it would work if they were caught again at a different location. Atty. Small replied that the ordinance will say any receptacle on town property or waste generated in a park. Her draft includes a description. If the same person does it at a different location, it's the next offense where they can be fined. Councilor Fishbein asked if we've caught repeat offenders. Atty. Small replied that she talked to the Chief of Police, who had a recent complaint of personal waste in a business dumpster and they were able to track down the offender. She stated that the Chief felt it could be done, though it won't be a perfect system.

Atty. Small asked if we want to put the warning in. The ordinance would be under the specific statute as opposed to 7-148. Which says if you create a general ordinance and the basis of the power is listed in 7-148 you have to have the warning. This statute is very specific. She hasn't found anything yet to support not doing a warning. At this point, she thinks it has to include a warning.

Councilor Fishbein asked if we can re-characterize the activity as a public nuisance. Atty. Small replied that we can't do a \$1000 fine for a public nuisance. It would fall under 7-148 which is \$100. Councilor Fishbein asked if the first instance is a \$100 penalty, it's more of a deterrent than having to catch someone twice. Atty. Small stated that if cite them as an infraction, then you get into the State schedule of fines and at least half of it goes to State. She stated that she doesn't disagree with the warning. She suggested signage on the receptacles that state there is a \$1,000 fine and don't mention the warning. She stated that she believes we could catch people doing it and leaving identifying information in their trash.

Councilor Fishbein asked who is empowered to go through the trash to identify the person. Atty. Small replied that once it's deposited it is ours. She stated that Public Works would call the police unless someone else is designated as enforcement. She stated that the Chief of Policy thought that was something they could do. Whoever is in charge of enforcement has the authority to issue a citation. Councilor Fishbein stated that another option is to put up trail cameras where it is a frequent problem. He noted that ultimately the purpose is to stop it not raise money.

Councilor Zandri noted that he was looking for an initial warning because it may be an innocent scenario. Signage will make them think about it. He stated the intent is to look for the obvious and blatant dumping. Public Works sees people use receptacles for household trash. This costs us money for frequent trips by Public Works to empty receptacles and then to dispose of the trash. It's worse when it's dumped on the side of the road. He agreed we are not looking at this as a money maker but as a deterrent. He stated that he is okay going without the warning first but he doesn't want an ordinance that can't enforce.

Councilor Morgenstein asked how a cubic foot is measured. Atty. Small stated that the Ordinance will say you're not supposed to be putting household waste in the receptacles. The cubic foot is the starting point where you get fined by statute. Councilor Morgenstein asked what the sign will say. Atty. Small stated that we won't put the ordinance on the sign. She stated it's more of a deterrent to put that it's subject to a \$1000 fine. Councilor Morgenstein stated that she liked the warning. She noted that regarding community policing, she was impressed by the letter from the South Main resident. She noted that she sees blight and bigger issues for community policing but agreed that public usage of public garbage cans is a significant issue.

Councilor Testa stated that he thought dumping a bag of garbage anywhere gets a \$50 fine. He asked if there is still a fine if the bag is on the ground and not in a receptacle. Atty. Small replied that she is looking at the whole ordinance to make sure everything is in line. She noted that the \$1000 fine is specific to the statute. Councilor Testa asked if we specify a bag of trash versus something thrown out the window. Atty. Small replied that littering and dumping has a \$90 fine for some of that. She will show what can be done with the other provisions when she shows the language.

Councilor Fishbein asked about the one cubic foot. He noted that in the State statutes he can't tell how they ascertain that amount. How do we judge the size and who does it, Public works or police. Atty. Small will discuss this with the experts but a standard kitchen bag is larger than 1 cubic foot. She stated that it won't be a perfect solution. Councilor Fishbein asked if other towns have similar ordinances. Atty. Small replied that they just repeat the statute. No one has defined it any differently. She noted that a lot of the ordinances say up to a \$1,000 fine. Councilor Fishbein stated that the number not as much a concern as enforceability. Atty. Small stated that she understood that the fine needs to be significant enough.

Councilor Zandri stated that we are trying to strike a balance and get the ordinance to a point where can't be lawyered away. It also has to be broad enough so that they can't leave trash on the ground beside the receptacle. He stated that the same is true if someone is going into someone else's dumpster. What is the recourse of the owner? There's a lot of this going on. There has to be a fear of the fine. We need to strike a balance between catching someone just cleaning out a car to someone taking kitchen garbage to a public receptacle across the street. They do it because nothing happens to them. This affects the town, the taxpayers, and businesses. Atty. Small stated that for private property, someone can be charged with an infraction under State law. There are Town Ordinances that do include dumping on private property.

Chairman Cervoni stated that he is generally supportive. There are plenty of laws that don't need signs before they can be enforced. We are presumed to know the law. The point of the cubic foot is not to create an enforceable threshold, but to create the next level. The first fine is up to a cubic foot. When you

exceed the cubic foot your fine is doubling. As to measurement, police officers are trained to measure lots of other things. He stated that he thinks this is a good direction, something important, and a quality of life issue.

Chairman Shortell asked Atty. Small if she was getting what she needs to draft the ordinance. She replied that she may give more than one alternative in how to structure the fines and will look at the entire ordinance.

Councilor Fishbein commented on the possible loophole. He suggested the threshold be described as dumping that takes up at least one cubic foot of space. Otherwise, there is an argument that it could be compacted. When you say 'takes up one cubic foot of space' it eliminates the argument. He noted that a 33-gallon trash bag full of paper could be compacted into 1 cubic foot. But if it's put by the roadside and takes up more than one cubic foot, you can get a fine.

Chairman Shortell noted that there will be no action on this tonight and asked for public comment. Hearing none, he closed the discussion and noted that the draft language will be reviewed at the January 5th meeting.

5. Discussion and possible action on a Cap on the amount of money in the General Fund.

Councilor Zandri referred to his email and explained that we have discussed something like this before but thought we couldn't legislate something like this. He noted a recent article in the CT Mirror where the State has a law with a cap on reserves at 15% of the general fund spending. In our case, it's the positive side of building up savings. If we looked at where we are with a \$174 million budget, 15% of that is \$26 million. This doesn't hamstring anything that we've already got in there. It doesn't mean we have to discharge the extra. The way the State handles it is when you go over, the requirement is to transfer cash to the pension program. Our pension is paid at 72% or 73%, so it wouldn't be a waste if we put it in the pension fund. This benefits the next budget cycle because we can budget less next year for pension and put that money into other line items. The idea of a ceiling is it makes it so we have to actively think about what to do with excess dollars. He stated that he's still waiting on the numbers for last year. We closed the budget in June and he doesn't understand why he still can't get numbers. He's pretty sure there is a surplus because several departments were way under budget despite COVID expenses in other budgets. He stated that we have a scenario where we are basically when saving too much which means we are technically taxing taxpayers too much. This is the positive outcome of budgeting well. It is a problem when we don't do anything with it. The negative outcome is that people are not getting the services that they are paying for. The other negative is when they mean to test the town, when a crisis happens, Wallingford has savings. We shouldn't be penalized for being conservative with how we budget and spend. We treat it as a negative because everyone else does it differently. To put some parameters around what we do he suggested this approach since it's something already done at the State. If we were to adopt it at 15%, it doesn't affect us because that's where we are today.

Chairman Shortell asked what other towns do and how would it be administered. He suggested that might be too granular and that we look at the concept first. Councilor Zandri replied that he only did a quick look at other towns and hasn't found one yet. He stated it's not a problem. What do we do when

hitting a threshold. He suggests the Pension, which is correctly funded according to general accounting practices. He proposes to make it simple, we can't just leave extra money in the general fund. We may have to designate where to move it to. He noted that if we wanted to game the system, we can put it in a line item for something and not use it so it rolls back. The purpose is so that it doesn't keep growing. This just feeds into continual taxation to what end.

Chairman Shortell stated that if he were Mayor, he'd want the flexibility to build up the general fund. A cap would tie his hands. Each mayor would have different ideas on how to use it. There are a lot of projects out there. He stated that he is concerned with tying the hands of the mayor. Councilor Zandri replied that we would bond the projects and can use the extra general fund balance to pay down the bonds. This saves interest costs.

Councilor Fishbein noted that the process went into place with the 2017 budget. Recently, as a result, \$60 million was paid down on the pension liability and it probably wouldn't have happened if the statute was not passed. He agreed that perhaps handcuffing the mayor may be inappropriate. He asked for some numbers from Mr. Bowes. Say if this was in place for the last five years, what would have happened. He noted that there's talk of getting away from the pension and moving to a 401K. So pension liability would decrease. We don't want to end up with an overfunded pension. Where else would we mandate use for an overage? He stated that he likes discussion but wants some numbers from Mr. Bowes.

Councilor Marrone agreed with most of Councilor Zandri's comments. He sees the same problem with the way we stockpile money. We are taking taxpayer money and putting it in the bank. He stated that one issue is if we already take money from this year's budget and put it in next year's budget. That's money we are just kicking down the road. To increase money saved, you have to do more budget tricks like where you increase the budget without actually spending more money. You put the administration in a situation where if they want to save more, they have to look on paper like spending more. He also noted that there is a certain stylism to how we budget. The Mayor gets to call the shots on things like what we maintain and how we save. He doesn't want to hamstring the Mayor in the case of a crisis or economic issues or windfall. He thanked Councilor Zandri for a great idea and stated he'd like to explore it more.

Chairman Shortell asked Atty. Small if this was legal. Atty. Small replied that the state is the sovereign and tells us what we can do. She stated that she needs to know what you want to do. She noted that you are also binding future Councils as well as the Mayor. The Council has shared power with Cap & Non-recurring. Atty. Small asked what the parameters of what you want to do and if you have the authority which could be questionable under state law. She also asked whether it is an ordinance or a charter because it would bind future administrations and Town Councils in budget making. She is skeptical that you can do that. She noted that if you have such a power it might be a charter power as opposed to an ordinance one. Atty. Small stated that the Council should gather more info and as you refine what you want she can take a closer look at it. In general, the Council can't bind by ordinances the future budget-making authorities on how they make a budget and raise money.

Chairman Shortell noted that they are talking about the general fund, not the Cap and Non. Atty. Small asked for clarification that the proposal is for a spending cap on the general fund. She asked how they are

going to do that. She added that the 15% cap in the state budget is has a formula with a list of exemptions. She asked whether the proposal is for the general fund or the reserve fund.

Councilor Zandri replied it is the general fund balance. It's the savings account. The reserve amount that the State can do is 15% of the general fund. Atty. Small stated that the state law says when it goes over 15% the comptroller/treasurer is authorized to pay down debt starting with the teacher's pension. She apologized for thinking they were talking about the Cap and Non-recurring having too much money. Councilor Zandri added that according to the article in the CT Mirror when the state goes over that amount the extra must be transferred. Atty. Small stated that some would go to unfunded liability in the State retirement fund, up to a certain percentage, and then they are authorized to pay down other debts. She stated that she will look at it further. Councilor Zandri stated that this is a nice problem to have. We need to be proactive to think about what we could do. The idea is to commit it to something and remove a future burden. Atty. Small stated that you are talking about essentially controlling or dictating how a portion of the budget is spent. Assuming you have the authority it's a charter change, not an ordinance. The State can do it because they are king, they are sovereign. Councilor Zandri emphasized that he is not looking to dictate to the administration. He suggested putting a framework in place so when it hits a ceiling we can discuss what can we do. Atty. Small stated that Council, with the administration, has the authority to govern those funds. She stated that establishing something by Ordinance or by Charter locks future Councils and Mayors into doing something. She continued that we have to figure out if you can do it and can it be done by ordinance or is it a Charter revision. Councilor Zandri notes that we could do it but presently it doesn't happen. If we tried to move money out of the general fund it would face a mayoral veto. Even if it passed, the Administration doesn't have to spend it. They could let it sit there and it rolls back to the general fund. Something like this makes it go and do something.

Chairman Shortell stated that he understands that they can't bind future councils or future Mayors. He asked how it works with the health insurance ordinance where there is a requirement of 20% of expected claims in the health fund. Atty. Small stated we are talking about making restrictions on the budgetary process. She will look at that ordinance and what statute authority is for it.

Chairman Cervoni noted that the health insurance ordinance is required by the way health insurance is regulated by the State.

Councilor Laffin stated that he is in favor of the concept and philosophy. He noted that they can pass an ordinance but a future Council can change the ordinance so it loses the teeth of the intent. He noted that during the last budget, he commented that we were getting to grey area where there is too much in the general fund. He stated that something in black and white could tie future councils and mayors to a number that maybe doesn't work. He agreed that 15% seems okay. In previous years there have been motions from the Council to spend it down when less than 15%. He agreed that we need to figure out how to spend it. We should be talking about this anyway but it gets dicey when we try to put it in black and white. Atty. Small shared the State statue on the cap to show how complicated it is. They take out specific things like payment of principal and interest on bonds and notes and other indebtedness, expenditures for implementing federal mandates or court orders, etc. So it is not a clear cut 15% before other things happen.

Chairman Shortell asked the Council if we want to explore this further before we ask Atty. Small to do research or Mr. Bowes to present some numbers as examples. Do we want to keep talking?

ROLL CALL VOTE:		MORGANSTEIN:	YES
CERVONI:	YES	SHORTELL:	NO
FISHBEIN:	YES	TESTA:	YES
LAFFIN:	YES	TATTA:	NO
MARRONE:	YES	ZANDRI:	YES

7- AYE

2 - NAY

Councilor Fishbein added that discussion allows us to learn more about process and powers. Chairman Shortell noted that we are not ready to draft language. He asked for clarification of what we are asking Atty. Small to research. Councilor Laffin stated that we are asking Atty. Small if we can do this and would it be an ordinance or Charter. We need more discussion to see how it would work. Chairman Shortell suggested adding a request for a comparison to the health insurance ordinance. He believes the health fund ordinance directly contradicts saying that we can't dictate. He noted that as of the last budget we are not in compliance with it. Councilor Fishbein agreed with Councilor Laffin that if it's a Charter issue it closes the door, but if it's not a charter issue, what can we do. It can be less stringent, maybe a recommendation to generate a discussion. Chairman Shortell asked for examples from Jim Bowes as well.

Councilor Zandri agreed that if we can do something by ordinance then we can explore the next steps. He'd like to see some numbers from Mr. Bowes on what would have happened looking at the past five years. We are at 15% now, what would happen in that scenario in a year like now with the crisis.

Chairman Shortell noted that the January 5th meeting agenda will include the Littering ordinance and further guidance on this item.

Atty. Small stated that she would take a shot at it but asked for clarification of what the Council wants. She will start with something quite broad. Chairman Shortell stated that we want a cap amount in the general fund as a proportion to the overall budget. Atty. Small stated that you can't do that. That's not what the State's law says. The State law says if it goes over that percentage the money is authorized to go to different places. So if you just say it's capped at this number, what happens when it's over that. Chairman Shortell stated that State law was an example. He told her not to get hung up on that. The question is can we do any kind of rule about the amount of money in the general fund and tie it to the budget. Councilor Zandri stated that if the budget is X, the general fund balance can't be higher than 15%. He agreed that they can discuss the consequences of exceeding the percentage. Councilor Zandri stated his intent is just don't let it sit in the general fund. Atty. Small stated that the input is helpful.

Councilor Fishbein restated the question as can we cap the amount in the rainy day fund and dictate the expenditure over that amount. If we have that power, then we can discuss what to do.

6. Adjournment

Chairman Shortell asked for public comment. Hearing none, he adjourned the meeting at 8:00 pm.

Respectfully Submitted

Cheryl-Ann Tubby

Recording Secretary

7. Adjournment