

**TOWN OF WALLINGFORD, CONNECTICUT**

**SPECIAL TOWN COUNCIL MEETING**

**ORDINANCE COMMITTEE**

**Tuesday, February 2, 2021**

**6:30 P.M.**

**HELD REMOTELY VIA GOTOMEETINGS**

**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, Thomas Laffin, Joseph Marrone, Gina Morgenstein, Christina Tatta, Jason Zandri, and Chairman Christopher Shortell. Also in attendance was: Corporation Counsel Janis Small.

1. Call to Order, Pledge of Allegiance & Roll Call
4. Approval of Minutes of December 1, 2020, Ordinance Committee meeting.

**MOTION WAS MADE TO APPROVE THE DECEMBER 1, 2020 MINUTES AS PRESENTED.**

**MADE BY: SHORTELL**

**SECONDED BY: CERVONI**

**VOTE: UNANIMOUS**

**MOTION: PASSED**

5. Discussion and possible action on Advertising in Town parks.

Chairman Shortell noted that something like this was discussed several years ago. The question is whether the Council would support allowing some sort of local business ads in town athletic fields. It would be controlled by the Town and the Town would get the revenue. He noted that it might be a Planning and Zoning issue.

Kenny Michaels, Director of Parks and Recreation, explained that due to the uncertainty of the budget, they were looking at other possible sources of revenue. So they want to explore allowing sponsorships and advertising to put money back into the fields, facilities, and pavilions. He stated that their purpose tonight is to get the support of the Council to explore the options and create a plan. Jason Michael, Parks and Recreation Commissioner explained the research he has conducted with other towns that do this. He believes this is something that can be done well that will benefit the Town, parks, and small businesses. He stated that their goal is to get permission to do this before they create a detailed plan.

Chairman Shortell asked if a company sponsoring the Community Pool for a season is an example of a possible scenario. Jason Michael confirmed that is a good example. He agreed the details need to be worked out but he expects small businesses would be interested. He mentioned that the Board of Education has a system that is cumbersome but is a good starting place. He noted that ideally the revenue would be used for the parks. Chairman Shortell clarified that they want the money to go into a Parks and Rec account that wouldn't lapse, so it stays in the budget and accrues. Kenny Michaels confirmed. He stated that Parks & Rec already has an endowment fund for donations. Sponsorship and advertising money could go there allowing for projects and improvements of the parks.

Chairman Shortell asked, on behalf of the Conservation Commission, if this would affect parks, athletic fields, and/or open space. Kenny Michaels replied the intent is for parks and ball fields, not to put billboards on the linear trail. He noted that we should explore a company offering a donation to extend the linear trail or sponsor a concert series.

Atty. Small stated that if the plan is for the Town to have control, there could be a legal path under the 1<sup>st</sup> amendment if this meets the definition of government speech. It would need to be controlled by the Town with strict policies. She explained the legal precedent and stated that she needs to make sure it is okay to call it government speech. She also mentioned that this would be against zoning regulations, so it would have to go to Zoning.

Chairman Shortell asked if the Council would have to amend or create an ordinance. Atty. Small stated that she didn't know yet. At the least, she thought we'd need a policy, but may need an ordinance once we get past the zoning hurdle. Chairman Shortell stated that the Council could pass a resolution supporting the concept.

After hearing no reservations from Council members and no comments from the public, Chairman Shortell stated that the Council supports the proposal. Kenny Michaels stated that this opens the door to possibilities and thanked the Council.

#### 6. Discussion and possible action on Chapter 139 Littering.

Chairman Shortell recapped the last discussion and noted the memo from Atty. Small dated January 9<sup>th</sup>. The Memo states: "The ordinance is lacking a section on dumping as opposed to littering." The memo states that Atty. Small is creating a section for dumping and as a result rewriting the entire ordinance.

Atty. Small stated that she does not have a draft for review yet. She noted that dumping includes things like furniture and automobiles. She stated that there is also a Solid Waste ordinance which she intends to keep separate from littering. She noted that the statutes are difficult and seem to contradict each other. Dumping personal or business trash in Town receptacles is an infraction with a \$75 fine and should be kept as such instead of creating something different. We would need a sign, and the fees are split with the State but that would keep it simple.

Councilor Zandri stated that people don't think it's wrong to put household trash in or overstuff Town receptacles. He would like the ordinance to have teeth, but it's not about the fees. Chairman Shortell

stated that a scale for fines and enforceability was discussed at the last meeting. He recalled that the intent was to jack up the fine and put up a sign. Councilor Zandri agreed that dumping is another side of the issue. He noted that he has seen signs in town stating fines for littering but they seem to have different fines. He asked if they all could have similar language. Atty. Small stated that there are different fines under the State's infraction codes for simple littering vs. littering on public land. She suggested finding out what's out there and why they are different.

Councilor Morgenstein supported asking Atty. Small to take the Council's feedback and draft the ordinance. Atty. Small said that she can work out the language and the options, including dumping. She recommended leaving the infraction for public receptacles with signage. She noted that dumping has a whole procedure in the statutes and stated that we should be prepared for serious dumping instances.

Councilor Shortell asked if we could raise the infraction fine of \$75. Atty. Small replied that if it is not an infraction we can charge up to \$199. She stated that the State issues a schedule of fines for infractions that are issued by the Police. Infractions can be challenged in court. She added that we could do an ordinance instead. The fine for simple littering would be \$199. Atty. Small added that she found out that 1 cubic square foot is the size of half a kitchen garbage bag. She agreed to have a draft ordinance for review at the next meeting.

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

Atty. Small explained the memo she sent to Council. It could be done by Charter revision but she thought it would be difficult to do by ordinance because it steps on the Council's power and possibly the Mayor's. In terms of controlling how much is available in surplus, Council can deal with it now.

Chairman Shortell brought up the analogy of the Health Fund Ordinance that states 20% of the claim level has to be in the fund. He stated that Atty. Small's memo says the Town has to fund the Health Fund obligations whether or not there's an ordinance. He asked if it was law or ordinance that makes the Town do that. Atty. Small replied that the Town has to fulfill its legal obligations in the fund. If you don't want to have the 20% you don't have to put it there, this was a recommendation by experts. There is a Health Fund because its town money and employee money and the money would be going in and out of the general fund. She stated that she doesn't know if they always have the 20%. If the Council says don't do it, she would recommend revisiting the ordinance. She stated that it's not the same as the general fund surplus.

Chairman Shortell stated that an ordinance created the Health Fund. The 20% is standard business practice because we are self-insured with stop loss. The intent is not to keep the 20% in the general fund. He asked if the Town has to legally pay health insurance claims, why the Council put the 20% in the ordinance.

Councilor Zandri noted that State law caps the general fund at the State level. He asked why we can't create an ordinance that does the same thing. A cap would force the hand of the Mayor. It means the money has to be put into something and executed. Atty. Small replied that the State is king. They can create the laws. The Town is a political subdivision of the State and can do so in the Charter, which is the

enabling authority. You could put language in the Charter that allows the Council to do that by ordinance. But you can't do something by Ordinance that will trump the Charter. Atty. Small said it would be interfering with powers in the Charter, so we'd need to change the Charter. Councilor Zandri stated that he didn't see anything in the Charter that says we can't do this.

Paul Ciardullo, 2 Bayberry Drive, Wallingford, stated that he supports creating the cap because the general fund surplus continues to grow. He suggested putting the annual surplus into a tax credit ordinance. He believes it's legal to do so. He doesn't see anything in the Charter or the State statutes that prevents it.

Chairman Shortell stated that he is not necessarily supportive of tying the hands of a future Council or Mayor. He asked Atty. Small how the Council could get another legal opinion. Atty. Small stated that Council may appoint outside counsel and would have to pay for it. It has been done in the past. She said she would look into how it was done. Chairman Shortell stated that it may be possible to put money in the budget for a lawyer.

Chairman Shortell asked if Council should repeal that aspect of the Health Fund ordinance that stipulates 20%. Atty. Small clarified that she did not say it's irrelevant. She suggests talking to the experts on the necessity before doing anything. The point of creating the fund is so the money doesn't run through the general fund. She said that Council can revisit the 20% stipulation. Chairman Shortell noted that no one objected to the 20% when it was set up and disagrees that this is different from the current proposal.

Mr. Ciardullo suggested creating a rainy day fund with the uncommitted portion of the general fund. He stated that it would provide clarity. Then decide how much money to put in it and review it regularly.

Chairman Shortell sees the following options for the path forward: 1) Councilor Zandri would come back with a draft of an ordinance to be voted on or 2) during the budget cycle make a motion to get an outside attorney for a second opinion.

Councilor Zandri stated that he sees a couple of problems. He doesn't want to earmark funds for legal advice if the Council is not supportive of the proposal. He'd rather find a way to put it to a vote to see if there is support for proceeding.

Chairman Shortell asked the Council, assuming we can get a lawyer to look into whether we can do this, would you support such an ordinance.

Councilor Laffin stated that he is not supportive of the concept. He stated that it is not strong enough to just do an ordinance that can be changed by another council. He stated that there are already mechanisms in place during the annual budget process to manage the funds. He believes it would involve a Charter change.

Councilor Morgenstein stated that she is in favor of supporting inquiring how to do it. She noted that Charters do get opened.

Councilor Marrone stated that he has reservations but doesn't think it's a bad idea. He believes we are reacting to a current situation as opposed to the future. He stated that he is not supportive.

Councilor Tatta stated that even if we get an outside attorney say we could do it, she doesn't see the need. She is not supportive.

Chairman Shortell added that he is not supportive. He counted four opposed but noted that three councilors are absent.

Councilor Zandri noted that anything we pass can be undone. The Charter is harder to undo. He disagrees with the thought that it is not necessary. He stated that the State does it. If we think it's important we should do it. We can move money in any budget cycle and the Mayor can choose not to use it and it goes back into the budget. He suggests creating an ordinance that specifies what needs to happen. If we continue putting money in surplus, people are not getting representation from that tax money. If it's forced that it must be allocated it can be used to fix an additional road or put new windows on the town hall. He stated that he is not going to look to move money to an outside lawyer at this point. He stated that he needs to think about how to go forward.

Councilor Marrone stated that he sees the problem and agrees with 90% of the point. He just doesn't agree with the solution. His goal is to get to a more honest budget with less gimmicky elements. He believes the solution is more in how we budget than what we do with extra money. He agrees that it's a real problem, but he disagrees with the proposed solution.

Councilor Laffin stated for the last few years the surplus has gone down. He agreed that anything can be undone, the difference here is when Council enacts an ordinance, and it's for 48,000 people. This ordinance would limit Council's power. He stated that the only effective way to do this is through the Charter. He stated that he doesn't with the premise.

Mr. Ciardullo stated the general fund process that is being discussed has been that way forever. It affects taxation and would benefit all the community. He agrees there are quirky things in the budget that add up to excess taxation. This is a small step in remedying that. He stated that the Council has demonstrated that it has more power than it thinks it has. He stated that this should go to the Council for a vote.

Chairman Shortell proposed removing the item from the agenda. Councilor Zandri agreed and said he'd think about it some more and put it back on at some point.

Chairman Shortell declared the meeting adjourned at 8:00 pm.

Respectfully submitted,  
Cheryl-Ann Tubby  
Recording Secretary