



REGULAR TOWN COUNCIL MEETING

Tuesday, August 18, 2020 at 6:00 PM

Council Chamber at Apex Town Hall, 73 Hunter Street

Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tem: Nicole L. Dozier

Council Members: Brett D. Gantt; Audra M. Killingsworth; Cheryl F. Stallings; Terry Mahaffey

Town Manager: Drew Havens | Assistant Town Managers: Shawn Purvis and Marty Stone

Town Clerk: Donna B. Hosch, MMC | Town Attorney: Laurie L. Hohe

In attendance were Mayor Jacques K. Gilbert, Mayor Pro Tem Nicole L. Dozier, and Council Members Brett D. Gantt, Audra M. Killingsworth, and Cheryl F. Stallings. Also in attendance were Town Manager Drew Havens, Assistant Town Manager Marty Stone, Town Attorney Laurie L. Hohe, and Council Member Terry Mahaffey and Town Clerk Donna B. Hosch (both remotely).

COMMENCEMENT

Mayor Gilbert called the meeting to order and read a statement of diversity and inclusion related to religion. Imam Muaz from the Apex Mosque gave the Invocation, after which Mayor Gilbert led the Pledge of Allegiance.

PRESENTATIONS

PR1 Mayor Jacques Gilbert

Proclamation recognizing the League of Women Voters of Wake County

The entire Council present shared in the reading of this important Proclamation. Dianna Wynn, President of the League of Women Voters of Wake County, stated Women's Equality Day next week was to certify the 19th Amendment into law. It is important to put this into a larger historical context. Men and women of color fought for years for full voting rights. Ms. Wynn encouraged voting in spite of the challenges before us. She thanked Council for the Proclamation, which Mayor Gilbert then presented to her.

PR2 John Bosio, Principal – MERJE with Jenna Shouse, Long Range Planner – Town of Apex
Updates on the Town of Apex Wayfinding Signage Program, including a summary of the Wayfinding Analysis Report and a proposed sign design concept
Staff stated the purpose of the Program. The resulting products will give us wayfinding and messaging plans. The Town has partnered with MERJE to lead the project.

Mr. Bosio stated the intent of a wayfinding program which would market Apex and cut down on signage clutter. The branding has been brought into the project. There are many gateways into Apex, and this is complicated to work with. They have been looking a lot at downtown for its natural and perceived boundaries, which will have more pedestrian-oriented elements. People need to get to parking, and Mr. Bosio wanted to help with this.

Mr. Bosio presented examples of what types of signs might be included. Signs for parks will remain and not change because they are well identified. However, improved will be directions to the parks. Mr. Bosio identified four options: 1-architecture, 2-brand heavy, 3-classic, and 4-elegant charm – which was not particularly liked. With input from various individuals and DOT, they would continue working on an alternate to option four. Mr. Bosio outlined the preferred designs and elements of the signage. They would make sure Apex is different from other municipalities. A new map for downtown would be designed which would be a simplified orientation of where things are.

In looking at the \$75,000 budget, Mr. Bosio broke down the plan into phases. He felt monies should be spent mostly downtown. They would then move further out and to the gateways.

Council was mainly in agreement with the appearance of the signage. Responding to Council, Mr. Bosio explained the accessibility factor of the signage for braille and contrast requirements. He stated there would also be accessibility around the signs.

Responding to Council, staff stated we received 15 survey responses out of the 39 people invited to the initial meetings. Council asked if the general public was invited to the meetings. Staff stated most comments came from staff and businesses. Council stated she felt this was a missed opportunity. Council asked if there could be input from the general public, and that this was something she wanted to see. Mr. Bosio stated the project was at a point where this could, in fact, be done.

CONSENT AGENDA

- CN1 Donna Hosch, Town Clerk
Minutes of the July 21, 2020 Work Session, the July 21, 2020 Regular Council Meeting, and the August 4, 2020 Regular Council Meeting
- CN2 Dianne Khin, Director of Planning and Community Development
Resolution Directing the Town Clerk to Investigate Petition Received, Certificate of Sufficiency by the Town Clerk, and Resolution Setting Date of Public Hearing for September 1, 2020 on the Question of Annexation – Apex Town Council's intent to

- annex Hector Cuales (Perry Hills Phase 6) property containing 1.66 acres located at 0 and 1105 Tingen Road, Annexation #695 into the Town's corporate limits
- CN3 Michael Deaton, Water Resources Director
Approval and authorization for the Town Manager to execute the same for an Encroachment Agreement between the Town and Colonial Pipeline Company (CPC) regarding an existing CPC easement located adjacent to the intersection of S. Salem Street and Sugarland Drive in Apex, NC
- CN4 Angela Reincke, Parks and Greenways Planner
Encroachment agreement with NCDOT relative to the Apex West- American Tobacco Trail greenway connection and authorize Town Manager to sign all necessary documents
- CN5 Mary Beth Manville, Human Resources Director
Amendment to the Town's Employee Assistance Program contract with Behavioral Health Services (BHS), extending the contract term to September 18, 2023
- CN6 David Dillon, Deputy Fire Marshall
Ordinance amending Section 20-164 with the addition of subsection (38) to enforce a No Parking restriction along both sides of Sunny Creek Lane and Windy Creek Lane, north and south of Evening Star Drive.
- CN7 Drew Havens, Town Manager
Amendments to the Town's Special Event Policy to put into writing the existing position that use of town property for a special event at no cost is considered co-sponsorship of that event under our policy and to state more clearly that the Town will not co-sponsor political events.
- CN8 Jose Martinez, PW&T Director
Cooperative Purchasing Agreement between the Town and Wake County concerning Disaster Debris Monitoring Services and to approve related Cooperative Purchasing Agreement with HDR Engineering, Inc. of the Carolinas and authorization for the Town Manager to execute both agreements
- CN9 Steve Adams
Contract between the Town and Halle Properties to trade a Town owned property at Old Mill village for a Halle owned property on Hunter Street

Town Manager Havens stated staff requested the removal of CN9 to be heard at a later date. Additionally, there was a corrected page to CN8.

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Stallings made the motion with the requested changes; Council

Member Killingsworth seconded the motion.

The motion carried by a 4-0 vote.

REGULAR MEETING AGENDA

Town Attorney Hohe requested two additional Closed Session items: (1) Pursuant to NCGS 143-318.11(a)(3) to consult with the Town Attorney to preserve attorney client privilege; and (2) Pursuant to NCGS 143-318.11(a)(3) to discuss the handling of the matter of Torres v. Tracy Lynn Carter, et al.

Mayor Gilbert called for a motion to adopt the Regular Agenda. Council Member Gantt made the motion with the requested changes; Council Member Stallings seconded the motion.
The motion carried by a 4-0 vote.

PUBLIC FORUM

Tom Land addressed Council about the parking situation downtown on Salem Street. Foot traffic has been reduced since the installation of the barricades. Mr. Land felt he had begun to recover at phase 2, but things changed when the barricades went up. He hears complaints about parking, and the downtown charm is gone. Mr. Land realized the intent was for all merchants to benefit, but that has not been the case. He thought the plan would be modified to bring folks back downtown. He wanted parking put back in some places. The tables in front of his store are not used, and this is lost parking to the stores.

Mr. Land stated with the current plan set to expire in September, the merchants hoped that on the 19th all parking spaces would be opened back up. He spoke about holiday sales and how the merchants need easy access for customers.

Annie Scott asked Stacy Strong to speak for her in addressing Council. The following individuals spoke in support of continued parking for school students on Ms. Scott's property: Ryan Page, Trish McCabe, Kristi Manning, Lisa Veach, Stacy Strong, Carly Strong, Kate Macdonnell, Micelle Pana, Skip Stam, and recorded comments from Kathy Miles and Kathy Grandshaw. Comments were cited concerning: no adequate parking at the high school, not wanting to quit athletics because of no parking, traffic and safety concerns were unfounded, no accidents or incidents on Ms. Scott's property, accidents at the school occurring but not having to be reported, Ms. Scott's son organizes parking with no issues, and there being no spots for juniors and not all seniors at the high school.

Also offered was appreciation for Ms. Scott providing a place for the kids, congestion is alleviated, Ms. Scott's spaces being a necessity and not a luxury, children being asked to leave if they are not respectful after warning, Ms. Scott watching out while children go to their vehicles, and Ms. Scott being a patriot.

Supporters stated that decisions are being made about Ms. Scott's property [not in Town limits] and she cannot vote for or against issues, parking on the property began before the Ordinance went into effect, no evidence that Ms. Scott's property is affecting home sales, students parking only during the day, and Ms. Scott being extended grace since she was there before the high school was built.

Skip Stam stated he'd sent a letter to Council. 706 people signed a supportive petition which was given to Council. Mr. Stam clarified that Ms. Scott has been faced several times with civil penalties. He did not think Council had the full story before it acted. Now that the full story was known, he asked that the UDO be rescinded to make it possible for students to park on Ms. Scott's property.

Juan Ortega, business owner in downtown, stated barriers are tremendously affecting the businesses. This has been a double whammy since COVID started. His customers and friends have given reasons why barriers are ineffective. He wanted the barriers removed now and not later, because their sales for the rest of the year are crucial. The barriers don't look good, and some spaces are not being used for tables.

Jeff Roach spoke about fee waivers and the noise ordinance. He elaborated on the changing times for construction workers.

Recorded comments from Marshall Barnes, downtown business owner, were presented. He agreed with modification to the parking spaces. However, barricades impede pedestrian traffic. As for parking to dining, he thought the town was going to move to Phase 3 when this happened.

PUBLIC HEARINGS

PH1 Liz Loftin, Senior Planner
Rezoning Application #20CZ06 204 & 206 Lynch Street. The applicant, Trinity Henderson, sought to rezone approximately ±0.45 acres for the properties located at 204 & 206 Lynch Street, from High Density Single Family (HDSF) to High Density Single Family-Conditional Zoning (HDSF-CZ).

Staff oriented Council to the request. Two neighborhood meetings were held. The Planning Board and staff recommended approval. Responding to Council, staff and the petitioner stated no one showed up for the neighborhood meetings.

Mayor Gilbert declared the Public Hearing open. With no one wishing to speak, Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a motion. Council Member Dozier made the motion to approve the rezoning; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

PH2 Amanda Bunce, Current Planning Manager

Various amendments to the Unified Development Ordinance as requested by Planning staff

Staff oriented Council to the amendments. The Planning Board and staff recommended approval.

Mayor Gilbert declared the Public Hearing open. With no one wishing to speak, Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the modification; Council Member Stallings seconded the motion.

The motion carried by a 4-0 vote.

OLD BUSINESS

OB1 Colleen Merays, Downtown and Small Business Development Coordinator

Modification of current Parking-to-Dining Program layout adopted by Town Council on June 2, 2020 to new layout presented

Town Manager Havens stood in for Ms. Merays regarding the parking to dining barricades to allow street side shopping and dining. Dining is happening but shopping is not. The Apex Downtown Business Association (ADBA) asked for modification to open eight parking spots on the east side and four spots on the west side. This would be easy enough to do.

Staff stated doing so would change the risk profile slightly, and he explained where vehicles could strike the barricades. However, because the barricades are so heavy and with the way the transition would be structured, staff did not think this a huge safety concern. The concern was someone jumping the barricades, which are not easy to get over, but which has been happening since the beginning.

Police staff stated a vehicle struck the parklet, but the driver was drunk. We are a Vision Zero town, and we don't want to do anything to affect this. He was also concerned about texting while driving. If we open up the spaces, some citizens will cross the street at those points, and this potentially increases risk. Responding to Council, he stated we could

reduce concern about hitting barriers if we were to remove the ones in front of several of the stores, leaving an entire area open for parking on that side.

Staff stated we should do what we can to help the downtown businesses. We will make any adjustments as safe as possible from an engineering standpoint. He thought what was proposed would work fine.

Responding to Council, staff clarified the specifics of the crash. Council asked could we increase awareness to the public. Staff stated we could put signs on the barricades that say, 'do not cross'. He felt the ADBA's request was reasonable, but we could re-evaluate the situation if we needed to. The changes could be done before the end of the week.

Responding to Council, Mr. Reese from the ADBA stated they were appreciative of Council's willingness to implement this. He presented background on why the request was made – in response to requests from restaurants to service its customers. Staff and the ADBA developed this plan through negotiation. He believed customers would use the cross walks, and he spoke about possible signage. Mr. Reese stated they preferred 15 minute parking, but did not know if this could be implemented. The request was initiated by the retail businesses because downtown has been barren since COVID and they needed to get restaurants back up.

Council preferred a modification to the request which would be to remove the barrier in front of Stylish Living as requested earlier by its owner. Staff stated this would reduce the number of tables for restaurants in that area. He did not know if tables at this location were highly used. Staff did not want to start picking winners and losers.

The Mayor recalled Mr. Reese who offered background on why the modification was important. Mr. Land then spoke about the parking spot at Mission Market and what modification would be beneficial for them. After certain hours, the tables are not used. He further explained parking usage.

Responding to Council, Mr. Dennis, business owner, spoke about parking at his store. He didn't feel the extra parking spots would make that big of a difference. He had spent \$1,400 on the tables.

Council stated this was temporary; we should think long term. The Downtown Plan provides for permanency, and this Plan should not be derailed. Right now, this was a fit, but it was not an apples-to-apples comparison.

Council echoed Council's concern. This situation is not what it will be in the long-term Plan. He did not think it should prejudice the Plan. He supported the request by the ADBA, and he talked about the flexibility for the Plan at this point. He was not sure this is the solution, but he was willing to give it a try.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the modification; Council Member Dozier seconded the motion.

Council stated she wanted to see signage and the option to reevaluate the changes.

Council stated we should maintain the spaces she mentioned earlier. Staff stated we will see if we can pick up one more space so everyone wins, but pedestrian safety is going to be number one.

The Mayor talked about an apparent hardship to almost all business owners. He complimented businesses and staff for working together.

The motion carried by a 4-0 vote.

OB2 Drew Havens, Town Manager

Temporary Ordinance Modifications extending the current suspension of utility disconnections and application of penalties and fees for unpaid utility balances
Staff provided a history of this action, stating that the Governor's order sunsetted in July. Some municipalities had severe hardship, but not Apex. Our action will sunset on August 31st. Staff presented figures on monies owed for services, noting that the number of customers has increased. We sent out letters in June about available payment plans; we have had zero takers. Staff stated the thought that until we get to our sunset, people will not make payment plans. If Council extends the sunset date, we would send out the same letter as previously. We are holding out hope that federal or state funding is coming for those with demonstrated need.

Responding to Council, staff spoke to the impact of our missing revenue. We have no issue with solvency of either electric or water, and staff explained how funds were budgeted. He was not concerned with lack of solvency at this point.

Responding to Council, staff stated we are running a tight ship right now. If suspensions continue, we will continue to find ways to keep the belt tight. We are able to pay our bills, and we are not going broke. If we extend the suspension and our financial situation

changes, we will be back before Council. Staff will find out if there is a predicted date when the red flag may go up.

Council stated she wanted to extend suspensions through September 11. She wanted to hold people harmless as much as possible. People need to not be compromised by not having services. She had engaged US Senators Tillis and Burr and was delightfully surprised at their responses. Council explained the conference call with Senator Burrs' office and the main points that were brought out. It was made clear that Apex needs commitment from the federal level to support local governments. Conversations will be ongoing. Council thanked Council for having the conversation. Her preference was to extend to the end of September and to see where it went from there.

Council stated the Town has been compassionate and a leader. He was concerned about zero takers on the payment plan as this was a red flag. He would not support the extension. This was an unfunded liability, and he had no faith in the State.

Mayor Gilbert called for a motion. Council Member Dozier made the motion to adopt the Ordinance extending through September 30; Council Member Killingsworth seconded the motion.

Council stated that if there was some plan to take care of the liability, then he would be happy to extend.

Council stated we have not lived through this before. Poverty is hidden in Apex, and people are experiencing what they haven't before. We are not in any financial stress.

Council stated he didn't think we have insight as to people's motivation. He thought that people received the first letter and needed to make the tough decision as to what would not be paid if they paid for electricity. People are in need; they don't have the money. The unemployment program just ended, so the situation is now more dangerous. Shutting off services is not going to make the money materialize. Council stated reasons why he felt this was a good idea. We have gone to extended lengths to help businesses. We should go longer to help people.

Council Members Dozier, Killingsworth, and Stallings voted in the affirmative;
Council Member Gantt voted in the negative.
The vote carried by a 3-1 vote.

UNFINISHED BUSINESS

There were no Unfinished Business items for discussion.

NEW BUSINESS

NB1 Drew Havens

Providing financial support for the Kissena Lane Affordable Housing project in the form of waivers of administrative fees and issuance of grants from the Affordable Housing Fund for Water and Sewer Capital Reimbursement Fees and Recreation Fees-in-lieu contingent upon application for annexation of the associated property into the Apex town limits

Staff stated that Council was familiar with the lots which were previously approved. The property owner was asking for a grant for fees as outlined. This would be somewhat of a precedent. We can't waive some of the fees, but they could be paid out of affordable housing which is in the budget this year.

Jeff Roach, Peak Engineering and Design, talked about Habitat working with the requestor. Whatever money is granted or given back will go back to Habitat to keep lot prices as low as possible. Staff has been great to work with. He hoped Council could support this for the nine lots.

Responding to Council, staff stated other municipalities do this type of grant. He explained the financial structure but didn't know if this was on or under par. The Affordable Housing Plan will help to provide more solid guidance as it is developed. The Plan will be complete by the end of the year.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the request; Council Member Stallings seconded the motion.

The motion carried by a 4-0 vote.

NB2 Drew Havens, Town Manager

One-time grant to the ADBA to cover expenses related to their now-cancelled PeakTique fund raiser

Staff stated this annual fundraiser, moved to September, was cancelled due to COVID. The incurred expenses were made from their planning prior to COVID. The ADBA has provided us receipts.

Mack Thorpe, Rusty Bucket owner, explained that the event insurance had a clause specifically spelling out that the policy would be nullified if the event was cancelled due to COVID.

Staff stated this was an unusual situation, and the ADBA did what they should have done. The expense amount was a little over \$1,200.00

Mayor Gilbert called for a motion. Council Member Dozier made the motion to approve the requested expenses; Council Member Gantt seconded the motion.

The motion carried by a 4-0 vote.

NB3 Terry Mahaffey, Council Member

Amendment of Section 14-33 of the Apex Code of Ordinances related to prohibited noises

Council outlined the various ordinances from municipalities throughout Wake County. Apex has a lot of construction noise which is a quality of life issue, and Council felt 8:30 p.m. too late a shut off time. Council presented Holly Springs and Cary Ordinances. It is more appropriate to have an ordinance which matches our neighbors than to match Raleigh's ordinance, which our ordinance does.

After discussion in committee, Council engaged other stakeholders to get more feedback to try to come to some compromise. The proposal is midway between Apex, Cary, and Holly Springs ordinances. The proposed ordinance would change our times to 7 a.m. to 7 p.m. Council stated the language was clarified for loud and excessive construction noise activity and would apply when two or more people complain about the noise.

Council clarified that this does not cover owners working on their own small projects in their homes, making this proposal more permissive for homeowners. Council stated he explored a seasonal schedule, but there would be legal issues about how noise would be regulated. The effective date would change to January 1, 2021 to accommodate current construction which may be impacted.

Council asked were there a lot of concerns from builders about this modification. Council stated they would have wanted more time for evaluation, but the proposal was a compromise which integrated builder concerns. Council noted that there are no concerns about Cary's and Holly Springs' ordinances.

Council stated he was sensitive to noise, noting that any concerns would go away after a house is built. In committee he suggested a little later time on Saturdays and Sundays. As

a note, Council thought that if we wanted to improve quality of life, we should do train quiet zones. He recognized this was not what was being talked about on this evening.

Council agreed trains are an issue but not what was being talked about this evening. Housing builds could last a year, and we need to improve the quality of life for citizens. He did not see a reason we should not help to improve quality of life.

Council clarified he proposed a two-hour delay in the mornings on Saturday and Sunday to take care of early mornings in the weekend time.

Council asked if working on Sundays was relatively new in Apex, Council responding that contractors normally don't work on these days, but they may use them as rain make up days.

Council stated she was concerned about not having any construction at all on weekends. She was agreeable as long as construction was not loud and excessive.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the amendment; Council Member Dozier seconded the motion.

Council, in reference to quiet zones with the trains, stated Council worked for several years on this issue. Trying to get the quiet zones was an impossibility even with the help of congressional members and our paying a significant amount of money for one zone which is still not a quiet zone. Council stated he thought it was still worth pursuing. He added he did not know the cost consequences of this proposal.

Council Members Dozier, Killingsworth, and Stallings voted in the affirmative;

Council Member Gantt voted in the negative.

The motion carried by a 3-1 vote.

CLOSED SESSION

CS1 Mayor Pro Tem Dozier

Closed Session (1) To discuss a personnel matter; (2) Pursuant to NCGS 143-318.11(a)(3) to consult with the Town Attorney to preserve attorney client privilege; and (3) Pursuant to NCGS 143-318.11(a)(3) to discuss the handling of the matter of Torres v. Tracy Lynn Carter, et al.; and (3) To discuss a personnel matter

Mayor Gilbert called for a motion to go into Closed Session. Council Member Gantt made the motion; Council Member Dozier seconded the motion.
The motion carried by a 4-0 vote.

WORK SESSION

There were no work Session items for consideration.

ADJOURNMENT

With there being no further business and without objection from Council, Mayor Gilbert adjourned the Meeting.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Jacques K. Gilbert, Mayor