



# Apex Town Council Special Meeting

Tuesday, April 07, 2020

Jacques K. Gilbert, Mayor  
Nicole L. Dozier, Mayor Pro Tempore  
Brett D. Gantt, Audra M. Killingsworth, Cheryl F. Stallings,  
and Terry Mahaffey, Council Members  
Drew Havens, Town Manager  
Shawn Purvis, Assistant Town Manager  
Marty Stone, Assistant Town Manager  
Donna B. Hosch, MMC, NCCMC, Town Clerk  
Laurie L. Hohe, Town Attorney

The Special Meeting of the Apex Town Council  
scheduled for Tuesday, April 7, 2020, at 9:00  
a.m. was held in the Council Chamber of Apex  
Town Hall, 73 Hunter Street

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

## COMMENCEMENT

Mayor Gilbert called the meeting to order, read a statement of diversity and inclusion as it related to religion, gave the Invocation, and led the Pledge of Allegiance. All members of Council offered their words of thanks, encouragement, and appreciation to staff and the citizens of Apex.

## PRESENTATIONS

There were no presentations to be made.

## CONSENT AGENDA

- CN1 Mary Beth Manville, Human Resources Director  
Water Resources Program Support Specialist position (Grade 15) to a Senior Program Support Specialist position (Grade 17)
- CN2 Mary Beth Manville, Human Resources Director

FMLA Leave Expansion and Emergency Paid Sick Leave Policy in accordance with the Families First Coronavirus Act (FFCRA)

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council Member Dozier made the motion; Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

## REGULAR MEETING AGENDA

Council Member Mahaffey requested the New Business items be heard prior to the Unfinished Business item. Town Attorney Hohe noted that Public Forum would not be heard as this was a Special Meeting.

Mayor Gilbert called for a motion to adopt the Regular Agenda. Council Member Mahaffey made the motion with the requested changes; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

## PUBLIC FORUM

Public Forum was not held as this was a Special Meeting.

## PUBLIC HEARINGS

There were no Public Hearings for consideration.

## OLD BUSINESS

There were no Old Business items for consideration.

## NEW BUSINESS

NB1 Shawn Purvis, Assistant Town Manager

Discussion to give staff direction regarding the creation of an Emergency Loan Program for small businesses

Staff stated this related to small businesses that needed to cut back or shut down due to COVID-19. The draft was presented for discussion. Staff stated there were details to work through with direction from Council.

Council stated the maximum loan amount was a question mark for him. Depending upon the number of applications, he was not sure we would have the budget for this. Staff stated the \$25,000 loan amount figure was a place holder and that Council was correct in that there was no way we could allot enough money for everyone. Everyone was struggling, and a cut off would need to be decided. Staff explained how this is being handled in other areas. Businesses needed to know that everyone may not be eligible; and that even if they were, funds may not be received because of late applications or funds running out. Staff suggested a loan amount of \$10,000, not to exceed three months of operational expenses.

Council stated it was hard to come up with an amount and that she was in agreement that we would not know how this would impact the budget. She valued the small businesses in Apex. She would like to see the \$25,000 amount if it could be worked out. There will most likely be another stimulus coming from the government. Council was unsure as to where to start with a number. Staff stated other communities just picked a number because this was hard to quantify. The number would be whatever Council was comfortable with and would stop there. Staff stated she only looked at like communities in North Carolina and was seeing a lot of these loans in the \$10-15,000 range. Some were issuing monies in the form of small grants. Grants were not what Apex was proposing.

Council stated he has been speaking with the Town Manager. This was an important tool as small businesses are trying to survive. Several other programs are coming that we don't even know about right now. But businesses are struggling today and are in danger of closing. We have \$8 million in Fund Balance. He was comfortable with the \$25,000 loan amount up to \$1 million. We could revisit this to see how it was going.

Council asked if this would include owners with only two full time employees, to which staff responded it would. Staff also stated that it was mentioned to use a third-party administrator. Council asked if we could use the Rural Center, staff responding 'yes' but that they were busy and not returning her calls. Staff agreed that a local administrator would work hard for us. Council stated she would reach out to the Rural Center if staff reminded her to do so. Staff stated she had several other contacts, but they had been missing connecting with each other.

Staff stated she had a record of the total small businesses in town that could qualify for this loan. Depending upon how small business was defined, she could go through the list and provide a good figure of those with 25 employees or less. Staff was asked if we were looking at businesses which were industry specific or if we planned to proceed on a first come, first served basis. Staff explained that some programs identify businesses that are not eligible. Our Council could deem these eligible.

Council asked if there could be another meeting if we found the demand high for the loans. He realized it would depend on how good the other programs are going to be. He asked that we revisit this and change the terms based on how well our program is received. Council asked how we arrived at the 625 credit score, staff stating it was a placeholder based on the average of what she'd seen. Some programs, however, don't require a credit score. We could make this number as difficult or as easy as Council preferred. Staff felt it would be prudent for the number to fall somewhere in the middle. The credit score could be changed or taken out altogether.

The Town Attorney stated businesses needed to be reminded that this would not be a gift and that we would need to be good stewards of the Town's money. We would need to figure out what to do on the back end if the loan couldn't be paid back. Looking at a business' credit score or profitability would help to determine if the loan could be paid back. We also needed to look at collateral. Some businesses may not make it through, and we would need to be able to collect. Some criteria on the front end would be necessary in order to determine a business' ability to repay.

Council suggested two changes to the proposed program – first, moving the credit score of 625 down a bit; he felt 625 was aggressive. 575 or 600 would allow more breathing space for a business doing okay. Second, Council did not want to see people going into bankruptcy and was concerned about a personal guarantee. He wanted to see a person's interest limited to the business itself.

The Town Attorney asked staff if personal guarantee comes into play when personal assets do not. She was comfortable that most individuals are secured by some asset of the business. The Town Attorney asked staff if she'd seed statistics on personal guarantee vs. secured assets. Staff responded that not all programs require personal guarantee. Staff noted that even with this loan, some business still may not make it. What would we do at that point even if we help them. How comfortable would we be in recouping our resources. The Town Attorney stated the lower the credit score, the higher the risk of collecting on the back end. If we lowered the credit score, the administrator would be looking at this and possibly suggesting a higher interest rate on the loan. Staff stated we would look toward the

administrator to provide guidance on this. The Town Attorney stated that if Council was comfortable lowering the credit score, that direction be given to staff to work with the administrator on this.

Council stated he would want to increase the cap instead of lowering the credit score. He felt the Town will lose money on this.

Council stated we are not in this to make money.

Council Member Dozier made the motion to adopt the program as proposed by staff and working with an administrator.

Council stated working with an administrator may result in changes to Council's two points [identified earlier in conversation]. She did not want to see this held up any longer. We will be able to revisit if necessary. We need to take the advice of the administrator. We are not financial experts.

Council Member Killingsworth seconded the motion with an amendment to allow flexibility for the credit score and personal guarantee based on administrator recommendations.

Council asked if changes from the administrator could be approved via email, the Town Attorney stating 'no', but that the matter could come back to Council at a meeting for ratification of what had been worked out with the administrator. Council wanted checks written as soon as possible. Details could be changed mid-stream.

The Town Attorney asked if the Fund Balance cap would be \$1 million. Council asked what would happen if there were many more applications after hitting cap. The Town Attorney asked for clarification of application deadlines and who would be eligible. Responding to Council, staff stated this loan was to fill the gap until other assistance becomes available.

Council Member Dozier amended her motion: to adopt the Small Business Loan program policy as drafted, directing staff to engage with the third party administrator on the two key items related to credit scores and the personal guarantee, adding a cap of \$1 million, and a \$25,000 loan amount for businesses; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

Council stated he wished to give direction to staff on COVID relief. As part of budget, he wished to see grants to non-profits as they are struggling because of this situation. He felt it appropriate to revisit grant amounts for the 21 non-profits to help them reach their level of service. Council wished staff to review the original requests and come back with a budget amendment after reaching out to the non-profits. This would only involve those approved in the budget.

NB2 Drew Havens, Town Manager and Laurie Hohe, Town Attorney

Discussion and possible motion to approve a policy to permit remote public participation in Town meetings

Council stated the latest draft included minor differences. We still need to conduct some of the Town business and hold Council meetings, and the Town needs to be able to communicate. The policy would allow the public to provide comments online, via emails, or to call and leave voice messages at a designated number. This process would be publicized. Responding to Council, staff stated comments would be read at Council meetings and into the record. The current rules regarding time would remain in place.

Council worried that people may not see the policy on the website or via social media. Discussion ensured as to the various means of getting the information to the public, i.e., utility bills, press release, social media.

Council stated he felt rezonings should be delayed until in person meetings restarted. Alternate methods of communication would not have the same impact as citizens appearing before Council in person. The Town Attorney advised the policy stated this cannot be done for quasi-judicial meetings. Conversation ensured about who would decide what would be heard. Staff stated controversial items can be delayed, Council agreeing with this. Staff stated the applicant would not be happy, but they might have a better outcome if they wait. The Town Attorney stated it would be best to postpone as many hearings as possible because of legal statutes. Council stated delaying could be discussed if it was something the applicant did not want to do.

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

The motion carried by a 5-0 vote.

NB3 Vance Holloman, Finance Director

Resolution authorizing the filing of an application with the Local Government Commission to issue \$3.2 million of General Obligation Refunding Bonds and \$1.8 million of General Obligation Parks and Recreational Facilities Bonds and setting a public hearing for April 21, 2020

Staff stated this was the debt issue discussed during the retreat. He detailed the presented documents.

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to adopt the Resolution and set the public hearing; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

## UNFINISHED BUSINESS

UB1 Marty Stone, Assistant Town Manager

Various mitigation measures to address concerns shared by residents who live near the site of the new Electric Department Facility

Staff thanked Council for their support of staff during this difficult time. He presented background on this issue including actions taken on the part of staff. The screening wall was the main point of litigation. Residents are somewhat okay with the wall, but what some really wanted was for the project to be stopped. Residents subsequently presented additional requests. Staff stated we have received best cost analysis from our consultant, which was outlined in a memo from staff. We are at a critical point in the project, and direction was needed on this day from Council on the measures it wished to implement. Any changes would be in the form of a budget amendment from Fund Balance.

Staff spoke about where the wall would need to be placed, providing dimensions and figures on several options. He talked about relocation of the dumpster and figures to do so. The dumpster will hold the same types of materials as at other Town operations; there will not be a smell. Moving the dumpster from one side of the site to another is not the way to address a possible smell issue. Staff did not recommend doing so as it would not change anything and the dumpster will not be visible where it is slotted to be located. There will be a barrier around the area.

Staff spoke about additional landscaping at the gravel lot. Screenings can be added, and figures to do so were presented. Residents have been appreciative of this consideration. Staff recommended this

option, as it would add opacity to the buffer. Staff explained additional planting on the eastern buffer and gave the cost to do so.

Staff explained the cost associated with replacing the fencing with alternate materials. From a screening standpoint, this would not make a difference as most comments came from residents looking out the second story windows of their homes. One resident was concerned about children being able to get on the drive of the facility. Staff talked about what the resident wanted, stating this was not relevant. If a fence were put up, it would be going up on private property, and this was not recommended.

Staff presented a summary of potential costs. A decision was needed on this day, because anything delaying the contractor would cause extra money. Staff recommended plantings, how this could be done, and by whom.

Council asked about the possibility of fencing around the entire facility. Staff explained the approved plans and that anything done now would be to mitigate three residents. None of these residents attended the meeting that we reached out to them to attend.

Council was concerned that mitigation efforts did not include the whole neighborhood, for example, cross walks. Staff stated no requests had been made for crosswalks, even after neighbors being made aware of where on the site the facility would go.

Council stated there were two sets of people – those impacted and those who felt they were impacted. She was leaning towards what people were asking for because of this. Staff clarified that people were not necessarily asking for a wall. They were more interested in the facility not being there. Staff explained the fence will be inside our buffers. There are plantings that are a part of the plan. We are looking at moving towards trees that will be large and grow fast. This would be an effective way to mitigate. It was explained the fence will be vinyl coated and blend with the environment. The fence is not for screening, but for keeping people out. Several Council members liked the larger, more expansive greenery.

Council wondered about investment in the screening wall, to which staff responded that vegetation would serve the same purpose. Responding to Council, staff explained the proposed fence would not impact any more trees and that several types of walls were considered. He explained that product has already been ordered and any mitigation will cost us money whether or not the product is used. Staff responded to a few Council questions about a sound wall.

Mayor Gilbert called for a motion. Council Member Killingsworth made a motion to continue with the original fencing that has been approved, and landscaping with more mature trees. This would be approval of presented options 4 and 5.

Council stated that later we could look at other options to address traffic concerns, which is what she's mostly heard from neighbors. Staff added that a school bus stop will be addressed later and that there will be high visibility cross walks.

Council Member Dozier seconded the motion.

The motion carried by a 5-0 vote.

Council stated appreciation to staff for the time it took to look into this matter. A lot of time was spent on this specific issue.

#### CLOSED SESSION

There were no Closed Session items for consideration.

#### 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

This page intentionally left blank