

# **BANNER ELK TOWN COUNCIL**

**February 8, 2021**

## **MINUTES**

The Banner Elk Town Council met Monday, February 8, 2021 at 6:08 p.m. by remote meeting via an electronic conference due to the COVID-19 pandemic.

Council Members present: Mayor Brenda Lyerly, Allen Bolick, David Lecka, Robert Tufts, Charlie VonCanon and Mike Dunn.

Staff present: Town Manager Rick Owen, Chief Kevin Hodges, Cheryl Buchanan, Justin Hodges and Attorney Four Eggers.

### **Call Meeting to Order**

At 6:00 p.m. Mayor Lyerly called the regular monthly meeting of February 2021 to order.

### **Pledge of Allegiance**

Mayor Lyerly led those in attendance with the Pledge of Allegiance.

### **Invocation**

Council Member Bolick opened the meeting with prayer.

### **Approval of the Regular Meeting Minutes**

Mayor Lyerly asked for a motion to approve or amend the January 11, 2020 Regular Meeting Minutes. Council Member Tufts motioned to approve the minutes as written. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Approval of Stated Agenda**

Mayor Lyerly noted that Mr. Owen forwarded to Council the COVID-19 Victims and Survivors Memorial Day Resolution which needs to be added to the agenda. Mayor Lyerly called for a motion to amend the stated agenda adding this resolution as Agenda Item #6. Council Member VonCanon motioned to approve the amended agenda. Council Member Lecka seconded the motion. All were in favor. No one opposed.

### **Public Comments**

Mr. Ted Silver thanked Public Works for all the work they are doing during these winter months throughout the Town. He wanted to share with Council that Lees-McRae has decided to make March bike awareness month. Mr. Silver noted that Lees-McRae has formed an advocacy bike group for the campus known as C.R.A.N.K. (community, riding, advocacy, nature, knowledge). This group wants to enhance recreation transportation around the community and on campus. Mr. Silver thanked Council for their support.

### **Approve Title VI Policy**

Mr. Owen reported on the action required by the NCDOT's office related to the Civil Rights Act. He noted that in Council's packet is what is recommended by the NCDOT; a resolution to adopt a Title VI Policy and a Policy Statement. He asked Council to approve the Title VI Policy to continue to be eligible for funding from the NCDOT. Mayor Lyerly stated that it is a very concise resolution and called for a motion. Council Member Lecka motioned to approve the Resolution to adopt the Title VI Policy. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Discussion, Art on the Greene**

Council Member Tufts reported that because of COVID all shows were cancelled last year. This year things are still up in the air, but it is a timely issue if in fact we want to proceed with having the shows this summer (Memorial Day, July 4<sup>th</sup>, 1<sup>st</sup> weekend in August and Labor Day). He noted that there are still concerns about social gatherings, there are vendor concerns about people coming, restrictions involved with the shows, etc. Council Member Tufts stated that if we have Art on the Greene, we need to get the applications out to the vendors. He noted that our concern is that if we proceed forward, do we have Council's 100% support. Mayor Lyerly stated that if planned properly, people will come. People are hungry for outdoor activity. Council Members agreed that we should proceed with planning on having the shows, knowing that there will be hurdles, more planning involved, more volunteers needed, etc. There was further discussion regarding masks. Attorney Eggers noted that the Town can require folks to wear a mask as a private property owner and can ask folks to leave if they refuse to comply. He also stated that if they refuse to leave and comply, then it becomes a trespass situation at which time Chief Hodges could enforce it. Attorney Eggers noted that as far as writing up a citation for not wearing a mask, he agrees with the Chief that it would be problematic to write someone a citation or charge specifically for not wearing a mask. The Town does own the property, so has the right to set rules and regulations. There was discussion about the Health Department's involvement. Mr. Owen stated that the Health Department would encourage to follow all guidelines. He noted that at this point in time, people must take responsibility for their own actions. If Robert and Kimberly, the vendors and all the people involved with these events are comfortable with what they are doing, this is the key and all those attending must take responsibility for their level of comfort. Council Members were all supportive with Art on the Greene this summer.

### **Authorize Signatories for Town Accounts**

Mr. Owen reported that currently Mayor Lyerly, Council Member VonCanon and Council Member Bolick are co-signers on the Town's bank accounts. The Town typically has three people as signatories and with Council Member Bolick's pending resignation in March, he asked Council to appoint a replacement. Council Member Dunn stated that he would be happy to do it since he already is a signatory for the TDA. Council Member VonCanon motioned to approve Council Member Dunn a signatory for Town accounts. Council Member Tufts seconded the motion. All were in favor. No one opposed.

### **Consider Ordinance Amendments**

Mr. Owen reported that the water and sewer portion of these ordinance amendments does not have to be adopted by Council tonight. He wanted to show the proposed additions to current sections of the ordinance that need to be included in the new code book update. Mr. Owen noted that once the code book is complete, he will come before Council and ask for its adoption as an entire package. Regarding the water and sewer ordinance items, these are things we feel are needed to be able to operate more efficiently and better manage our customers. He stated that there are several pages to this ordinance. Mr. Owen reported that the *Grease Trap Regulations* ordinance is a large section that has not been updated for several years. The Town needs to have more control over the fats, oils and greases that go into the system. This is more detailed as you can see. Mr. Owen reported that there are two items for consideration, solicitation and events. He noted that these will be new ordinances which will be part of the code book and which have been topics of discussion over the past year. Mr. Owen reported that the Events Ordinance will give the Town more knowledge of what is happening within the Town and would make the Town more in control of people gathering within the Town. He stated that Attorney Eggers put together the Solicitation Ordinance well over 12 months ago, but never brought forth before Council realizing the Town had a permitting process which took care of what the Town was dealing with at the time. With the new code book forthcoming, he felt the Council would like these two ordinances to be included. Mr. Owen noted that regarding the event permit fees, this would constitute any gathering of over 100 people or any event that potentially disrupted traffic, pedestrian sidewalks, some type of activity that would have an impact on the Town (i.e., bicycle race, Lees-McRae the Forum, etc.) which the Town would need to be involved in. The Town is not trying to hinder events from happening, but just helps the Town plan with the Police Department for gatherings. There were discussions regarding event permit fees, sporting events, bike racing events, etc. Mr. Owen noted that if Council is comfortable with the Events Ordinance and the Solicitation Ordinance and did not need any more time to review it, certainly Council could approve them this evening. If Council wants to wait until it is added to the Code Book which will then come up for adoption, that too is okay. Council Member Tufts asked when the Code Book might come before Council for adoption. Mr. Owen stated that he is hoping to send the draft to American Legal by the end of the week and then it could take up to 3 months to get the final version back to the Town. Council Members agreed that they are comfortable with both ordinances as written. Mayor Lyerly called for two motions. Council Member VonCanon motioned to adopt the Resolution regarding the Events Ordinance. Council Member Dunn seconded the motion. All were in favor. No one opposed. Council Member Tufts motioned to adopt the Resolution regarding the Solicitation Ordinance. Council Member Lecka seconded the motion. All were in favor. No one opposed. Mr. Owen asked the Mayor to call for a motion regarding the event fee schedule. Council Member VonCanon motioned to accept the fee schedule for events. Council Member Dunn seconded the motion. All were in favor. No one opposed.

### **Reporting of Unpaid Taxes**

Cheryl Buchanan reported that this is a Town formality in which the NC State Statute requires the Tax Collector to present a report to Council listing delinquent taxes on real property for advertisement in the local paper in March 2021. She noted that delinquent taxpayers are given a

30-day notice to pay their taxes or risk having their name appear in the newspaper. She stated that no action is needed from Council.

### **COVID-19 Victims and Survivors Memorial Day Resolution**

Mayor Lyerly introduced the COVID-19 Victims and Survivors Memorial Day Resolution which will be observed the first Monday in March 2021. She noted that this is a nation-wide resolution in which we remember those who have lost their lives to this deadly virus and we recognize those who are forever marked by COVID and continue to suffer from its impacts. Mayor Lyerly asked for a motion to adopt this resolution. Council Member Tufts asked if it was for just 2021 or every year. After discussion it was decided to assign the first Monday in March 2021 to the Resolution. Council Member Tufts motion to adopt the resolution. Council Member Lecka seconded the motion. All were in favor. No one opposed.

### **Manager's Update**

Mr. Owen reported that included in Council's packets are the Financial Summary Reports for six months ending 12/31/2020 and 7 months ending 1/31/2021, the police report, planning, zoning and tax collection reports. He stated that if there were any questions regarding these reports to let him or staff know.

Mr. Owen reported that Avery County is giving first dose vaccinations this week at the Agricultural Center in Newland. There was a limited number provided by the State. Reservations are needed and spots are filling up quickly. He noted that the second dose vaccines have begun and they gave over 700 shots this week. Mr. Owen stated that he has a phone conversation with the County a couple of times a week discussing their processes and the handling of testing, vaccines and the number of people needed to help with this process. They are always looking for volunteers.

Mr. Owen noted that as discussed earlier he is working diligently in getting the Code Book updated along with Chief Hodges, who is updating his department's policy.

Mr. Owen reported that the TDA had a meeting this week. He asked the TDA for money for Town related tourism expenditures that they covered in the past that are in need of repair or replacement (i.e., seasonal banner, snowflakes). The TDA approved the expenditure for these items. Mr. Owen noted that the TDA will also be working with the Town with the redesign of the Town's web site. It has been over 10 years and needs an overhaul. The Town's web site is one of the top reference points for the TDA's web site, so the TDA will help with the expenditure to update the Town's web site.

Mr. Owen stated that he had a meeting with the Fire Department and with Jessica Welborn with the High Country Council of Governments. The Town is funding what would be needed for the Fire Department to get help with their fire pre-planning development which would help the Town's fire rating. It is something the Fire Department needs to have done which would benefit the Town. Council approved in this year's budget Jessica's service to help with this process.

Mr. Owen reported that this winter's snow and ice conditions have taken a toll on the Town's roads. We will have to submit a budget amendment to help with the funding for salt purchase and road paving (patching, resurfacing).

Mr. Owen reported that the Town's bank, First Community Bank was previously Highlands Union. He noted that the Town has credit cards through Highlands Union and would like to have them changed over to First Community Bank. Mr. Owen asked Council for a motion to approve the Town asking First Community Bank to reissue the Town's credit cards in their name. Council Member Tufts motioned to approve the credit card application process. Council Member VonCanon seconded the motion. All were in favor. No one opposed.

Mayor Lyerly congratulated Chief Hodges and the entire Police Department for receiving a Notification of Compliance from the NC Law Enforcement Accreditation for all the policies and requirements the department has completed for the Town.

Mayor Lyerly thanked everyone for joining us for this meeting.

At 7:08 p.m. Council Member Dunn motioned for Council to go into closed session. Council Member Tufts seconded the motion. All were in favor. No one opposed.

At 7:16 p.m. Council returned to open session.

### **Other Business**

There was discussion concerning the structure of Town Council following Council Member Bullock's resignation. Mayor Lyerly reported that Frank Wimbush would be happy to fill the position until the next election. Council Members discussed cutting Town Council to four members and the Mayor agreeing that several Town Boards have seats to fill; that positions are very hard to fill based on the Town's population. A question arose regarding the Mayor's position; a standalone election or should Council make that determination. Council agreed that the citizens of Banner Elk should elect their Mayor and that the Mayor's responsibility is to also serve as a voting member of the Council. Attorney Eggers stated that the next step would be to bring before Council for consideration a Resolution of Intent which would specify the makeup of Town Council, followed by calling for a Public Hearing similar to a Zoning Ordinance, advertising the resolution and then having Council adopt it. This doesn't have to be done at next month's meeting. The filing opens on July 2<sup>nd</sup> for the November election. Council Member Bolick stated that this is an important issue for Council and for the Town. March, his last meeting, should not interfere with this decision. Attorney Eggers noted that any changes made would not be effective until December 2021. Mayor Lyerly stated that she has heard from several people regarding Council Bolick's resignation. She noted that he will be missed and stated that this Council is the best Council she has served on; decisions are made together and respectfully. This Council is a good team. Council Member Bolick thanked the Mayor and noted that very few Council's operate under a "what is best for the Town" program. He stated that the Town of Banner Elk is extremely fortunate in the fact that it has a great Town Manager, a great Mayor, a great Town Council and he trusts that they will move forward and keep it that way. Mayor Lyerly thanked Council Member Bolick and noted that Attorney Eggers will move forward with this proposal.

Council Member Tufts brought up Art on the Greene. He asked if the school will be made available for the vendors. (i.e., hospitality room, bathrooms, etc.). Mr. Owen stated that when the time comes, the decision will be based on what we feel comfortable with. At present, the school is not opened to the public. Everyone goes in by appointment only (art gallery) and he does not have a timeline when this will change. There was discussion about the use of porta potties.

Mr. Owen reported that some time ago Town Council discussed trying to get local legislation to regulate the use of golf carts and utility vehicles on Town streets. At the time Lees-McRae was pushing for it to use around campus. He noted that timing had not worked out and we never followed through. Since then, State Statute changed allowing Towns to control golf carts without special legislation. However, we still can't regulate utility vehicles. Mr. Owen stated that the other day he noticed a Lees-McRae utility vehicle on a Town street which triggered his memory on this subject. Lees-McRae is still interested in this subject. Mr. Owen asked Council if they would be interested in seeking local legislation to regulate the use of utility vehicles on Town streets. He noted that if we pursue the legislation, we could craft the ordinance for the use of utility vehicles for specific purposes and for certain roads. There was discussion regarding complaints, problems which could occur with their use on Town streets, the use by private citizens, etc. Mr. Owen stated that this legislation could give the Town the authority to allow Lees-McRae the use of utility vehicles where the Town approves. He noted that if Council is comfortable with Lees-McRae using their utility vehicles around campus, the timing is right to introduce a bill. Council Members agreed to proceed with a local bill.

There being no further business, Mayor Lyerly asked for a motion to adjourn the February meeting.

At 7:44 p.m. Council Member Tufts motioned to adjourn the February 2021 Town Council meeting. Council Member Dunn seconded the motion. All were in favor. No one opposed.

**Adjourn**

The Banner Elk Town Council meeting adjourned at 7:44 p.m.

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Mayor Brenda Lyerly

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Attested

Approved: March 8, 2021