

Submitted by:

Approved by Selectmen:

12/9/20
JMS
Ch

amr

Adele M. Suggs
Admin Asst

**TOWN OF PHIPPSBURG
SELECTMEN'S MEETING MINUTES
December 2, 2020**

The Selectmen convened at 5:01 p.m. at the Town Hall with Selectman Young, Selectman House, Selectman Mixon and Administrator Jones present.

- Reference (1): Email from Leslie Belz
- Reference (2): Email from Dana McLean, Jr.
- Reference (3): Email from MMA Legal
- Reference (4): Job Ad for On-Call Attendant at the Transfer Station

I. Adjustments

Vote: Selectman Young motioned to:

- a) accept under New Business the Goodwill donation from Paul & Claudette Gamache
- b) under Unfinished Business, Covid, an email from Dana McLean, Jr.
- c) Review & Sign the amended Winter Road Contract for Ted Gerow

Motions were seconded by Selectman House and passed by a vote of 3-0.

II. New Business

1. Consider accepting a donation of \$100.00 from Paul & Claudette Gamache for the Goodwill Fund.

Vote: Selectman House motioned to accept the above donation which was seconded by Selectman Mixon and passed by a vote of 3-0.

III. Unfinished Business

1. Reconsider strategies to maintain a safe and healthy work environment and public services in response to the pandemic Covid-19: letter from resident, Leslie Belz.

Selectman Young read an email from Leslie Belz, an email from Dana McLean, Jr. and MMA's Legal response to questions from Selectman Young and Mixon on the Covid Governor's Orders (attached as References 1-3).

Selectman Young is still in favor of following the Governor's policy and feels that they have no choice but to follow the Governor's order.

Selectman Mixon maintained his position that he feels it's an overreach of government power and that it is in violation of civil liberties. He added that he is not against masks and people have the right to wear masks if that's what they choose to do.

Selectman House stated she's not against wearing masks but a lot of people cannot wear them. Just because some people are not wearing a mask they shouldn't be looked down upon, told to put a mask on or asked why they don't have a mask on – those questions cannot be asked. She further added that she

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does not want to "require" it as it makes those people feel that they're not allowed to go into a business or building as well as uncomfortable and not welcome.

Administrator Jones asked where the protection for employees is if someone is uncomfortable serving a customer without a mask – where are their rights/what are they allowed to do. Selectman Mixon responded by saying everyone has to do their own risk analysis. Selectman House stated that the Town cannot refuse service, however, Administrator Jones added that we cannot force an employee to wait on a customer who is not wearing a mask. Selectman Mixon feels that protection procedures have been put in place for the employees and asked what percentage of people coming into Town Hall are not wearing masks; Administrator Jones responded approximately 1/4 are not wearing them. Selectman Young said his opinion is that if someone is working at the front desk and is uncomfortable with serving that individual, then that individual can do it remotely. The first priority should be protecting the employees and patrons. Selectman Mixon disagreed and stated first priority should be maintain civil liberties and being respectful to the Constitution; that is what the Board took an oath to do. Selectman Young added the Board took an oath to obey the laws of the State of Maine. Selectman Mixon pointed out that the mask mandate is an Executive Order, not a law. It has been determined by MMA legal that the Governor does have the authority to issue the Orders. Selectman House also feels that measures have been taken to protect the employees.

Selectman Young would like to receive an answer from Marcus on the insurance, where the Town stands and what are options are, if they are any. Administrator Jones will contact him.

Dan Dowd, called in via Zoom, and lives on Cox's Head Road. He is a big fan of all the employees at the Town Hall and Transfer Station. For him it's about following the State Mandate. He works at a place where he is required to wear a mask; he doesn't have a choice which is a good thing. He has continued to go into Town Hall or the Transfer Station with a mask on. He feels it's unfortunate that the employees are not wearing masks; it's made him concerned for himself as well as others coming in. It's not just about the employees; it's about everyone they come into contact with. It sets an example – if the town were to strongly recommend or enforce mask wearing in Town Hall and at the Transfer Station, a lot of people in town who respect these positions would follow through and do the right thing for their neighbors. Mr. Dowd believes it's the right thing to do to require masks for town employees.

Phoebe Adams also called in via Zoom. She agrees with Selectman Young and what Mr. Dowd stated about town employees. She feels that collectively to put our opinions aside and look at the science – it's not controversial; masks do protect people. As a Town she stated that we do send a message to our neighbors and this is all about public safety.

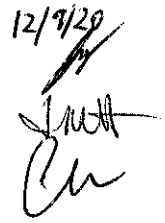
Dot Kelly, via Zoom, lives on Pleasant Cove Road. She stated that Phippsburg has the best Select Board she has ever seen and they have her tremendous admiration and support. Ms. Kelly agrees with Mr. Dowd and Ms. Adams. There is an Executive Order and science that says we protect if we wear a mask when we're close to people. Ms. Kelly wants the entire Board to support the Town, by wearing a mask, if you possibly can, when you're near people.

Vote: Selectman Young motioned to follow the Governor's Executive Order.

There was no second, therefore motion did not carry.

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IV. Correspondence

1. Thank you card, from the family of Ed Hunt.

Selectman Young read the thank you card out loud which thanked the Town for the generous donation to the Phippsburg Sportsman's Club in memory of Ed Hunt.

V. Selectmen/Administrator Comments and Announcements:

Selectman Mixon stated that with another weekend storm coming, to make sure to fuel your generators. He also confirmed that Santa will be watching the Selectmen's Meeting every Wednesday at 5 p.m., starting tonight, to hear the letters written to him from the children in town. Santa may also make an appearance with an assist from the Fire Department but no dates have been determined yet.

Selectman House sent condolences to Max Dawson's family who unexpectedly passed away last week. He was a nice man and will be missed.

Selectman Young stated that weather dependent, the Legion will be decorating the outside of Town Hall on Saturday morning beginning at 8 a.m. He also asked Administrator Jones to get in touch with Mr. Rogers to set up a date for another site visit, tentatively for Friday, December 11th at 1:00 p.m.

VI. Review and/or Sign:

1. Payroll and Accounts Payable Warrants

Vote: Selectman House motioned to sign Payroll Warrant 54 and Accounts Payable Warrant 55, which was seconded by Selectman Mixon and passed by a vote of 3-0.

2. Selectmen's Meeting Minutes for November 18th 2020

Vote: Selectman House motioned to sign the November 18th Meeting Minutes which was seconded by Selectman Mixon and passed by a vote of 3-0.

3. Job Ad for On-Call Attendants at the Transfer Station

Selectman House and Selectman Young had two minor corrections to the ad. (Reference 4)

Selectman Young also added that he would like to see this posted around town, put on the website and on the Cable TV channel to see if there is any interest before putting it in the newspaper.

Vote: Selectman Young motioned to approve the above job ad with the two corrections discussed which was seconded by Selectman House and passed by a vote of 3-0.

4. Ted Gerow's amended Winter Roads Contract

Vote: Selectman Young motioned to sign the above amended contract with the administrative correction which was seconded by Selectman House and passed by a vote of 3-0.

Adjournment

Vote: At 5:44 p.m. Selectman House motioned to adjourn into a scheduling workshop for salary reviews which was seconded by Selectman Mixon and passed by a vote of 3-0.

- Scheduling workshop for Salary Reviews

Reference (1) - 12-02-20

From: Leslie Belz [mailto:lbbelz62@gmail.com]

Sent: Tuesday, November 24, 2020 8:56 AM

To: Amber Jones

Subject: For selectmen

Dear Selectmen,

I am writing regarding the decision about mask wearing in the last meeting. I was very saddened to hear Ms. House and Mr. Mixon failure to support mask wearing in places like Town Hall and the Transfer Station. I think it goes without saying that these are two locations where the majority of town residents overlap, especially the transfer station.

As Town officials, it is your responsibility to look beyond your personal opinion and to act in the best interest of town residents and their overall health. Ms. House stated that despite the Governor's mandate, the level of Covid cases was still on the rise. Perhaps it has something to do with elected Town officials choosing to ignore the recommendations and science thus emboldening people who choose not to comply with the mandate? Mr. Mixon stated that it was a violation of civil liberties. What about the civil liberties of the people that are being exposed to a potentially life-threatening disease by non-mask wearers? Does the right to life mean less than the inconvenience of you wearing a mask? The threat of asymptomatic carriers spreading this disease through the community are too great to ignore.

What about protecting town employees?? What about protecting the town from

possible
lawsuits?

The vast number of people in this community who do not have health insurance cannot afford to gamble with their health. Should any of them require hospitalization the resulting bills would be staggering and potentially put their homes, family and lives in jeopardy. Are you willing to be responsible for your friends/neighbors to lose everything because you objected to wearing a mask?! It is up to you to set a good example and so far you are failing.

Having family and friends who have contracted/died of Covid it's not a "hoax or just the flu". We are very lucky so far here in Maine and Phippsburg in the number of covid-19 cases. Let's keep it that way! Please, reconsider your decision and support the mask wearing in public mandate.

The sooner we all comply, the sooner this pandemic will be behind us. We all want to get "back to normal", wearing a piece of fabric over your nose and mouth for a little while seems like a pretty easy way to get there.

Sincerely,
Leslie Belz
Phippsburg ME

Reference (2) - 12/02/20

From: Dana McLean [mailto:dpmjr2010@live.com]

Sent: Monday, November 30, 2020 12:54 PM

To: Mike Young; Chris Mixon; jtotman@myfairpoint.net; Amber Jones

Subject: Masks and Town Facilities

Good afternoon,

I would like to commend the selectman in honoring the citizens of Phippsburg's rights by

recommending the use of masks and not requiring them at Town owned facilities.

I do believe

that in certain circumstances masks may help. As adults we are responsible for our safety,

government mandates are not needed for this. If someone feels unsafe and thinks a mask will

help, they have the right to wear a mask.

Stay safe, wash your hands and be kind.

Thanks,

Dana McLean Jr

16 Hope Lane

Phippsburg, Maine 04562

Reference (3) - 12/02/20

From: Legal Services Department [mailto:legal@memun.org]
Sent: Wednesday, December 02, 2020 10:38 AM
To: Mike Young; 'chrispbos@outlook.com'
Subject: Phippsburg - Legal Questions on COVID Governor's Orders

Mike and Chris,

My answers to both your questions are below:

1. Do we as Selectmen have the authority to disregard the Governor's orders – specifically, to not require the wearing of masks on Municipal public property (unless a person meets one of the exemptions) but only to recommend it?

The town could have a stricter masking policy than the Governor's policy, but not a more lenient policy. A local policy that conflicts with the Governor's Executive Order would be preempted. Even if the town stated that its policy was to "recommend" masks, the Governor's stricter mask requirement still applies statewide, including in Phippsburg.

There are several mask-related executive orders. To see specific requirements of the orders:

FAQ on the mask requirements:

<https://www.maine.gov/covid19/sites/maine.gov.covid19/files/inline-files/Mask-FAQs-110620.pdf>

EO 16:

<https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline>

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[files/An%20Order%20to%20Revise%20Indoor%20Gathering%20Limits%2C%20Strengthen%20Face%20Covering%20Requirements%20and%20Delegate%20Certain%20Authority.pdf](https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/An%20Order%20to%20Revise%20Indoor%20Gathering%20Limits%2C%20Strengthen%20Face%20Covering%20Requirements%20and%20Delegate%20Certain%20Authority.pdf)

EO 14:

<https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline>

-
files/An%20Order%20to%20Implement%20Phase%20Four%20of%20the%20Re
starting%20Maines%
20Economy%20Plan.pdf

EO 49:

<https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline>

-
files/An%20Order%20to%20Stay%20Safer%20at%20Home.pdf

If you have specific questions about what is required, please let us know.

2. Does the requirement to wear a mask constitute an infringement on a person's constitutional rights?

I have not researched this issue in depth, and would not be able to do so within your time constraints. However, there have been numerous sources that have looked into the issue and have opined that a mask mandate is likely constitutional. See below. I would also point out that regardless of anyone's opinion, unless and until a court rules that the Governor's orders are in fact unconstitutional, they remain in force and enforceable by law enforcement.

See a publication of the University of Maine School of Law (masks addressed page 38:

<https://mainelaw.maine.edu/wp-content/uploads/sites/1/2020-responding-covid-19.pdf>).

The Maine Attorney General has recently issued guidance supporting the mask mandate. See:

https://memun.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=14320&language=en-US&PortalId=0&TabId=204

There has been litigation in several states. I am aware of a few court decisions upholding mask

mandates. See a case from Kentucky:

<https://www.nbcphiladelphia.com/news/business/money->

report/kentucky-supreme-court-upholds-gov-beshears-mask-mandate-emergency
-
restrictions/2593572/ , and Wisconsin:
<https://www.nbcchicago.com/news/local/wisconsin-judge-upholds-mask-order-for-enclosed-spaces/2352634/>

3. Does the Municipality have any liability if someone gets COVID because we are not following the Governor's orders? Would the Municipality still be covered by our MMA Liability Insurance and protected by the Maine Torts Claims Act if someone gets COVID and we are knowingly not in compliance with the Governor's orders?
4. Do we as individuals have any personal liability if we do not follow the Governor's orders and someone gets COVID at a public facility?

I will answer questions 3 and 4 together.
I cannot comment on the town's insurance coverage. You will have to contact the insurance programs directly to discuss your coverage with them.

From a legal standpoint, liability would be analyzed under general Maine Tort Claims Act (MTCA) principles. The problem is that COVID-19 presents a new situation and we do not have any Maine court decisions that analyze similar situations under the MTCA. The most likely basis for a claim might be the negligent "maintenance" of a public building under 14 MRS § 8104-A , or the individual negligence of a municipal employee/official/volunteer that is not covered by an immunity in the law under 14 MRS § 8111. However, any person making a claim would have to prove to a court that (a) he/she caught COVID at a town facility, (b) that the town facility was negligently maintained, or that town staff were negligent in conducting their responsibilities, and (c) that this negligence actually

caused the person to contract COVID. This seems extremely difficult to prove. However, this does not mean that someone might not sue the town or a town official, particularly if the town or its staff were consciously disregarding safety standards. Even if the town might ultimately prevail on a claim, it would have to defend itself against the claim. I would point out that lawsuits are already being contemplated on similar theories. For example, there is a potential lawsuit against the owners of the wedding venue in Millinocket that was alleged to be involved in a COVID outbreak.

If the town is purposely not following state mandates, I cannot say how that might impact the town's workers compensation coverage or rates if staff contract COVID. You will have to contact your insurer to discuss those issues. I can say that there might be interruption in services if the town office needed to close or if staff were unable to come to work due to exposures.

Finally, failure to comply with the Governor's orders carries potential criminal sanctions. The town or individual officials could certainly be contacted by state authorities in such a situation. I do not know what types of enforcement actions they might take against the town in this situation.

5. What law permits elected official to make Health care decisions for its healthy constituents?

If you are asking about the authority behind the Governor's executive orders, many of her

emergency powers are set out in Title 37-B of the Maine statutes, chapter 13 (<http://legislature.maine.gov/statutes/37-B/title37-Bch13sec0.html>). Specifically, 37-B MRS §§ 741-

742 list a number of emergency powers the state legislature has given to the Governor. As we do

not advise the Governor, we have not researched the extent of the powers she

has been granted. You may want to address this question directly to the Governor's office or to the Attorney General's Office. I am sure that they have considered the scope of the Governor's powers in depth.

If I were to venture a guess, I assume the Governor might argue that a mask requirement is not a health care decision as it does not propose or impose any medical treatment for anyone. Rather, I believe the Governor would argue that a mask requirement is a public safety measure analogous to seat belt and helmet requirements that protect the general public's health, safety and welfare.

6. Does the Municipality have any liability if someone decides to take legal action for Civil Liberty violations associated with the Governor's orders?

Obviously, anyone can sue the town for any reason, and could include the town in a suit challenging the state's order as implemented in Phippsburg. However, I think it more realistic that someone challenging the Governor's orders would direct his/her challenge against the state itself.

I hope this is helpful. Please let me know if you have any questions.

Susanne F. Pilgrim, Esq., Director
Legal Services Department
Maine Municipal Association
60 Community Drive, Augusta, ME 04330
Phone: 207-623-8428
1-800-452-8786 (in state)
FAX: 207-624-0187
legal@memun.org

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Reference (4) - 12-02-20

**Town of Phippsburg
On-call Transfer Station Attendant**

The Town of Phippsburg Transfer Station is looking to fill two or more On-call Transfer Station Attendant positions. This position is responsible for assisting the Transfer Station Supervisor and Regular Attendant in the day-to-day operation of the Transfer Station facility; coordinating the disposal and transfer of solid waste; assisting residents with recycling; assisting the public and maintaining records. Work is performed under the general direction of the Transfer Station Supervisor/Regular Attendant in accordance with established procedures and routines. This is an "On Call" position where the worker will be contacted only when needed to supplement or fill in for the regular attendants. Work is reviewed through discussion and observation of results obtained.

An Employee Application and the job description can be downloaded on line at www.phippsburg.com or be picked up in person at the Phippsburg Town Hall during business hours (Monday - Friday, 9-1 and 2-5).

Please submit an application to the Town of Phippsburg by Tuesday December 22, 2020 at 5:00 p.m.

Questions should be directed to Amber Jones at (207) 389-2653 during business hours.

The Town of Phippsburg is an Equal Opportunity Employer.