

Submitted by:

Approved by Selectmen:

1/6/21  
Ch

AME

Adele M. Suggs  
Admin Asst

**TOWN OF PHIPPSBURG  
SELECTMEN'S MEETING MINUTES  
December 16, 2020**

*The Selectmen convened at 5:00 p.m. at the Town Hall with Selectman Young, Selectman House via Zoom, Selectman Mixon and Administrator Jones present.*

- Reference (1) - Letter from Attorney General
- Reference (2) - Email from Town Attorney
- Reference (3) - Times Record Article
- Reference (4) - Email from Alan & Sue Douglass

**I. Adjustments - Santa Letters**

**Vote: Selectman Young motioned to add an anonymous \$300.00 donation to the Goodwill Fund under New Business which was seconded by Selectman Mixon and passed by a vote of 3-0.**

*Selectman Mixon read three letters to Santa from children of various ages asking for water-growing dinosaurs from Lucy; mind craft Legos and a Nintendo switch with mind craft games from XM; and the last one was a picture drawn by Sammy.*

**II. New Business**

1. Consider accepting a donation of \$100.00 to the Goodwill Fund from Maggie's Bygones (David Cooke).

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

2. Consider accepting a donation of \$300.00 to the Goodwill Fund from an anonymous donor.

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

3. Meet with Dot Kelly for an update on her experimental LPA's (Limited-Purpose Aquaculture) projects.

*Ms. Kelly updated the Board on the Basin Oyster Restoration Project. This effort with the Nature Conservancy was done during 2017-2019. The Basin is part of the 2,000 acres that the Nature Conservancy owns and there are many miles of shorefront on the Basin. As part of the restoration they thought it would be good to try and have oysters be a natural reef if possible because oysters filter 40 gallons of water every day. The Phippsburg Shellfish Commission and the Phippsburg Conservation Commission are overseeing this project. The New Meadows Oyster Farm Cooperative was very successful in adopting 11 farmers on the New Meadows River including Don Herrigel down in West Point. The Yarmouth Shellfish Hatchery does a lot of educational stuff so as this continues next*

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*year we can utilize the work they do and have curriculum for a number of age groups K-12. The Muscongus Bay Aquaculture and Mooksie Farm take the oysters and when they spawn, they gather up the sperm and the eggs in the water add laboratory controls, then get the baby oysters to the size where they can go to people who will continue to raise the oysters. The Nature Conservancy had 300,000-500,000 larvae this year for the third year. There are four buoys at Denny Read Point in the New Meadows and until this year the oysters have been on the bottom without any gear. That has not been successful because of the green crabs. Now they are putting them in plastic bags with different sized mesh. The Conservation Commission is willing to house the basin oyster restoration project. They have the current LPA site, however, it is going to be modified this year; it's a one year permit renewable every year. It will be moved 10' closer to the shore so it will be easily accessible. The permit will be to use the plastic bags as well as over winter them in bags at the end of the season; that was done today. Dean Doyle is letting the Grayson Oyster Project use his LPA which is behind the damn on the Basin. They are going to try and make an oyster reef behind the damn where it's warmer. They saw where there is some natural spawn. There are no small oysters there naturally, but there are some big oysters both European and American. Ms. Kelly read a document entitled Oysters in Maine from the 1600's to the 1970's. The conclusion from that article was that the water in Maine has been too cold. The area needs to be behind a dam or somewhere it can get up to 70° for the spawn to naturally happen if you are going to have a completely self-sufficient natural oyster reef. There will always be some management that goes along with this to protect the babies. They have learned a lot and Ms. Kelly believes this will be a three-year effort. They hope to involve the community, both from an educational viewpoint and getting interested volunteers. They will be very open to any information they find. The inner circle group working this project is Ms. Kelly, Dean Doyle, John Herrigel, Kaitlyn Cleaver, Parker Gazzette, Amanda Mosier, Mattie Cox who works at Muscongus Bay Hatchery, Morgan Cuthbert who is going to make an impact on aquaculture public education, and the Brightwater Association. There will be a second lease this year at Enox Nose so there will be two locations this spring. Ms. Kelly is finalizing the permit application and will get it submitted.*

### III. Unfinished Business

1. Reconsider strategies to maintain a safe and healthy work environment and public services in response to the pandemic Covid-19: Letters: Town Attorney, Attorney General, and Town residents.

*Selectman Young read aloud the letters from the Attorney General and our Town Attorney (References 1 and 2). The Town has received a lot of media attention; several articles in The Times Record, 2-3 editorials, and Channel 8 News interviewed both Selectman Young and Selectman Mixon. Selectman Young then read a portion of an article that appeared in The Times Record where Governor Mills addressed the Board (Reference 3). The Board has received 7 e-mails since last Wednesday from residents and 3 others from non-residents all in favor of the mask mandate. Selectman Young read and answered the questions in an e-mail from Alan and Sue Douglass as it pretty much summed up all the other e-mails received (Reference 4). The remainders of the emails basically have all the same tone.*

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Public Comments:

*Sue Libby - asked if Selectmen House & Mixon were still in favor of not enforcing the mask mandate from the Governor. Selectmen Mixon responded by stating he has a problem with the constitutionality, however, he would like to discuss and possibly make a motion to delete the Selectmen's Policy on mask wearing which is in direct conflict with the State. The State mandate would then fill the void. Selectman House added that the Governor's Mandate needs to be posted and move on.*

**Vote: Selectman Mixon motioned to amend the re-opening plan to remove any mask requirements and then the State Mandate will stand.**

*The Governor's Order says all public buildings which include the Library, Town Hall, the Swap Trailer and the little office at the Transfer Station. Masks are required to be worn. If someone does not wish to wear a mask and comes in, they will be asked to leave and conduct their transactions remotely.*

**Motion was seconded by House.**

*Selectman House does not want the Transfer Station Supervisor to have to police the swap trailer. If it becomes an issue, the Board can give him the right to close it. The Board will check with their legal department to get clarification on "public accessible areas."*

**Motion passed by a vote of 3-0.**

**IV. Selectmen/Administrator Comments and Announcements:**

**Holiday Hours for Town Hall and Transfer Station around Christmas Holiday**

*Administrator Jones reminded that Town Hall will be closing at 1:00 p.m. on Christmas Eve and closed on Christmas Day. There will be a Selectmen's Meeting on December 23<sup>rd</sup> but not on December 30<sup>th</sup>. Town Hall will also be closing at 1:00 p.m. on New Year's Eve and closed New Year's Day. Transfer Station schedule will remain the same.*

**Santa's visit to town**

*Selectman Mixon had an update on Santa's visit with the Fire Department. Santa will appear in the parking lot when school ends. They are working with the school to assure that it doesn't cause them any undo chaos. This will probably occur early next week.*

**V. Review and/or Sign:**

**1. Payroll and Accounts Payable Warrants**

**Vote: Selectman House motioned to sign Payroll Warrant #59 which was seconded by Selectman Young and passed by a vote of 3-0.**


**Vote: Selectman Young motioned to sign Accounts Payable Warrant 60, which was seconded by Selectman Mixon and passed by a vote of 3-0.**

**VI. Public Forum**

*Gary Morong, via Zoom, thanked the Selectmen for the stressful situation they have been under. He understands personal opinions and views and it's important to stick to those. He appreciates everything they have done and glad everyone has reached an agreement.*

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**VII. Executive Session**

1. Meet in Executive session per Title 30 M.R.S.A. 405 § 6A to discuss potential expenses from the Goodwill Fund.

**Vote: At 5:44 p.m. Selectman Mixon motioned to go into Executive Session which was seconded by Selectman House and passed by a vote of 3-0.**

*At 6:00 p.m. the Board came out of Executive Session.*

**Adjournment**

**Vote: At 6:02 p.m. Selectman Young motioned to adjourn which was seconded by Selectman Mixon and passed by a vote of 3-0.**

AARON M. FREY  
ATTORNEY GENERAL



STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL  
6 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES  
84 HARLOW ST. 2ND FLOOR  
BANGOR, MAINE 04401  
TEL: (207) 941-3070  
FAX: (207) 941-3075

125 PRESUMPSHOT ST., SUITE 26  
PORTLAND, MAINE 04103  
TEL: (207) 822-0260  
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1  
CARIBOU, MAINE 04736  
TEL: (207) 496-3792  
FAX: (207) 496-3291

TEL: (207) 626-8800  
TTY USERS CALL MAINE RELAY 711

December 14, 2020

*Via First Class Mail and Email to [phipps@phippsburg.com](mailto:phipps@phippsburg.com)*

J. Michael Young, Chair  
Julia M. House, Selectperson  
Christopher L. Mixon, Selectperson  
Town of Phippsburg  
1042 Main Road  
Phippsburg, ME 04562

Re: *Enforcement of Face Covering Requirement*

Dear Chair Young and Selectpersons House and Mixon:

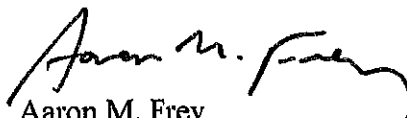
It is my understanding that the Town of Phippsburg's Board of Selectpersons recently voted against requiring persons to wear face coverings while in municipal buildings. I am writing to advise you that pursuant to the Governor's most recent Executive Order, the Selectpersons are legally obligated to require the use of face coverings in all municipal buildings in order to protect the public health and deter further spread of the deadly COVID-19 virus.

Pursuant to a series of Executive Orders issued by the Governor, and with limited exceptions, persons are required to wear face coverings when in public settings. Executive Order 16 FY 20/21 expressly requires persons to wear face coverings in portions of municipal buildings that are typically accessible to the public, including parking lots, walkways, lobbies, waiting areas, elevators, service desks, and related hallways. On December 11, 2020, the Governor issued Executive Order 19 FY 20/21. This Order states: "Owners and operators of indoor public settings must require all persons to wear face coverings in publicly accessible areas." The Order "is subject to all available means of enforcement, including civil injunctive relief pursuant to Rule 65 of the Maine Rules of Civil Procedure [and] criminal prosecution pursuant to 37-B M.R.S. § 786(1) and the Maine Criminal Code . . ."

The Order permits "reasonable accommodations" for persons with disabilities pursuant to the Americans with Disabilities Act and the Maine Human Rights Act. The Order makes clear, though, that "due to the direct threat to public health and safety, no such accommodation may make it permissible for any person to enter or remain in any indoor public setting without a face covering."

The United States Centers for Disease Control and Prevention ("CDC") has recognized that cloth face coverings help stop the spread of the COVID-19 virus and are "one of the most powerful weapons" available to combat the current pandemic. In order to protect the safety of your residents, employees, and visitors, and because it is now legally required, you must immediately require that all persons entering municipal buildings wear face coverings as required by the Governor's executive orders.

Sincerely,

A handwritten signature in black ink that reads "Aaron M. Frey". The signature is written in a cursive style with a long, sweeping underline.

Aaron M. Frey  
Attorney General

Reference (2)

From: Jessica Maher [mailto:jmaher@troubhheisler.com]  
Sent: Monday, December 14, 2020 5:17 PM  
To: Amber Jones  
Subject: Governor's Order requiring face coverings.

Amber-

Over the past several months I have been asked by several clients about the Governor's mask mandate. I have advised clients, including Towns and other public entities, that they have a legal obligation to require the use of face coverings. Executive Order 16 F/Y 20/21 expressly requires the wearing of face coverings in portions of municipal buildings that are typically accessible to the public. And just last Friday the Governor issued Executive Order 19 F/Y 20/21 states again that "owners and operators of indoor public settings must require all person to wear face coverings in publicly accessible areas". This most recent Order also states that this Order is subject to all means of enforcement, including civil injunctive relief and criminal prosecution.

Any local policy that conflicts with the Governor's Executive Order would be pre-empted by the Governor's Order. The Town could have a stricter policy than the Governor's policy, but not more lenient. So regardless of what the Town's stated policy is, the Governor's stricter requirement would still apply statewide. And with this latest Order it appears there will be stronger teeth for enforcement of the Order.

I have heard many arguments that the mask mandate is unconstitutional, but until a court makes that

Reference (3)

TIMES RECORD

Posted December 13

## Mills addresses Phippsburg board bucking mask mandate, announces stronger mask requirements

Gov. Janet Mills said she wasn't aware Phippsburg selectmen have been bucking the mask mandate and warned: "If I were running any kind of facility, whether it's a town office or a private business, I would not want to take the risk."

BY KATHLEEN O'BRIEN/TIMES RECORD

PHIPPSBURG — Gov. Janet Mills addressed Phippsburg Selectmen's decision to "strongly encourage" rather than require face masks in municipal buildings to reduce the risk of spreading COVID-19.

In her Friday briefing alongside Maine Center for Disease Control and Prevention Director Dr. Nirav Shah, Mills said she wasn't aware Phippsburg selectmen have been bucking her mask mandate. However, Mills said she's "happy to reach out to those people and talk to them about what the rules are, why they're there and how they should enforce them."

"If I were running any kind of facility, whether it's a town office or a private business, I would not want to take the risk," Mills said of Phippsburg's decision. "My insurance company wouldn't want me taking that risk either. There's extensive liability involved potentially if someone is exposed in your facility and you're deliberately ignoring health and safety precautions."

In the same briefing, Mills announced a new executive order, effective immediately, which strengthens her previous mask mandate that was enacted on Nov. 5.



The new executive order still requires people to wear a mask while in indoor public spaces, regardless of the size or type. Now, if someone refuses to wear a mask, they must be denied entry. If someone removes their mask once inside a space, they must be removed and charged with criminal trespassing.

Criminal trespassing is a Class E crime punishable by a fine of up to \$1,000 and up to a six-month jail term.

“While we’ll do everything we can to encourage and educate people to voluntarily comply and wear face coverings to protect their health and safety and that of others, we have been communicating with law enforcement agencies as well and they stand ready to assist if there’s any trouble enforcing this face covering requirement,” Mills said.

The Phippsburg board had stood 2-1 in recent weeks on the issue of following Gov. Mills’ mask mandate in municipal buildings. Chairman Mike Young has voiced his continued support for requiring masks while in town buildings, but Chris Mixon and Julia House have held firm on their belief that masks should only be “strongly encouraged.”

Selectman Chris Mixon said last week he believes masks work to mitigate the spread of COVID-19, but argued requiring people to wear one is “an overreach of government power and a violation of civil liberties.”

House said her stance is based on people who can’t wear one for medical reasons because they’re “looked down upon and told to put a mask on or asked ‘why don’t you put a mask on?’ and those questions cannot be asked.”

There were 417 new COVID cases in Maine and seven new deaths, according to the Maine CDC, the Portland Press Herald reported Saturday. In addition, the paper reported 175 people with COVID-19 hospitalized in Maine on Saturday.

As of Saturday, the CDC reported 175 confirmed COVID cases in Sagadahoc County, with seven confirmed and probable cases in Phippsburg as of Nov. 29.

Reference (4)

**From:** Alan & Sue [mailto:adouglass@comcast.net]

**Sent:** Friday, December 11, 2020 7:21 PM

**To:** Amber Jones

**Subject:** Masks

Sent from Mail for Windows 10

I am contacting the Town selectmen in regard to their anti-mask policy. I have a number of questions I would like answered. Prior to their decision did the selectmen: *Selectmen's responses appear in red below*

- Consult with the Town's attorney when Selectman Mixon created his mask civil liberty? *Yes*
- Consult with the Town's attorney to see if the defiance of a State mandate rise to the level of "gross negligence" when it comes to the protection of employees and the public and thereby opening the Town and individual Selectmen to possible lawsuits? *Yes asked the Town Attorney and MMA*
- Consult with MMA in any way in regards to municipal policies, liability, or legal issues raised by this decision? *Yes*
- Consult with Worker's Compensation in regards to the increased liability and possible increase in premiums? *Yes contacted the Town's insurance carriers*
- Consult with the Town's insurer in regards to the increased liability, possibility of increase in premiums, or loss of coverage? *Yes the town could be liable*
- Consult with the State in regards to suspension of State services such as vehicle registration due to defiance of a State mandate? *Did not broche this subject with the State*
- Consult with the State in regards to appropriate accommodations for members of the public unable to tolerate a mask for medical reasons? *Yes. The Town's accommodations are that if someone is unable to come into the building because they cannot wear a mask, they can call the Town Office and make arrangements for assistance by mail, drop box, or or-line accommodations.*
- Consult with any medical expert when Selectperson House claimed that members of the public must be allowed the choice because of their inability to tolerate a mask? *No*
- Is there a plan in place for replacing employees exposed and required to quarantine? *No plan in place however would do the same as Woolwich if someone tested positive here. Town Hall would close down and work would be done remotely.*
- Did the selectmen consider that many of their employees are required to wear masks, many businesses in Town are require to wear and require masks of their customers and that they should lead by example as prominent members of this community? *Did not take into consideration the business that area required to wear masks.*
- And most importantly, did the Selectmen consult with any of the employees that face exposure, possible illness and yes even death for them and their families due to this decision? *This has been discussed over the past couple of weeks by the Town Administrator.*

In the past, decisions by Selectmen were made after consultation with experts. Road decisions called for input from the Road Commissioner and the Road Committee. Fire department issues called for input from the fire chief, Budget formulation went before the Budget Committee. Legal issues went to Maine Municipal Association and/or the Town's attorney. As a selectman I knew there were too many complicated issues involved in Town governance to become expert enough to make decisions without the help of true experts. So I ask, did the Selectman consult with any expert in regards to their anti-mask policy? *Yes, contacted MMA, the Town's insurance carriers and consulted the Town Attorney.*

This appears to be a political decision, so I remind the selectmen they represent all citizens of Phippsburg, all residents of Phippsburg and all Taxpayers of Phippsburg, not just a small group of relatives and "good ol' boys."

I would like this read at the next Selectman's meeting and answered at that time.

Alan Douglass