



## AGENDA | REGULAR TOWN COUNCIL MEETING

May 25, 2021 at 6:00 PM

Council Chambers - Apex Town Hall, 73 Hunter Street

The meeting will adjourn when all business is concluded or 10:00 PM, whichever comes first

### Town 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

Interim Town Manager: Ralph Clark | 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 Audra M. Killingsworth, Brett D. Gantt, Terry Mahaffey, and Cheryl F. Stallings. Also in attendance were Interim Town Manager Ralph Clark, Assistant Town Managers Shawn Purvis and Marty Stone, Town Clerk Donna B. Hosch, and Town Attorney Laurie L. Hohe.

### COMMENCEMENT

Mayor Gilbert called the meeting to order, read a statement related to diversity and union related to religion. Laura Katherine Stern, Lead Pastor of Apex United Methodist Church gave the Invocation. Mayor Gilbert then led the Pledge of Allegiance.

### PRESENTATIONS

PR1 Jacques K. Gilbert, Mayor

Presentation of Asian American and Pacific Islander Heritage Month Proclamation

Council shared in the reading of the Proclamation, with the Mayor asking all to learn about and celebrate about heritage of these peoples who continue to enrich our nation.

PR2 Jacques K. Gilbert, Mayor

Presentation of the National Gun Violence Awareness Wear Orange Day Proclamation

Council shared in the reading of the Proclamation. Tony Cope, Moms Demand Action co-lead, spoke about his love for Apex and his appreciation for all the focus, efforts, energy, and compassion of Council for this initiative. Megan Delaney, volunteer for Moms Demand Action, thanked Council for proclaiming this awareness day. Gun violence is a non-partisan issue. Their organization is diverse

and supports the Second Amendment and the responsible use of firearms. The Wear Orange tradition was born on June 2, 2015 by teenagers who wanted to honor their friend who was shot and killed at the age of 15. Ms. Delaney detailed the wearing of Orange and provided history of the initiative.

The Mayor presented the Proclamation to Mr. Cope and his group of volunteers.

#### CONSENT AGENDA

- CN1 Donna B. Hosch, Town Clerk  
Minutes of the April 22, 2021 Budget Workshop and the May 11, 2021 Regular Meeting
- CN2 Donna Hosch, Town Clerk  
Apex Tax Report dated 04/04/2021
- CN3 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 June 8, 2021 on the Question of Annexation – Apex Town Council’s intent to annex HARP-BARR, LLC, Memphis & Maddox, LLC, Sweet Willie, LLC, William Douglas and Jean S. Poe, and Lennar Carolinas, LLC properties containing 157.234 acres located at 6401 Apex Barbecue Road and 1216 and 1330 South Salem Street, Annexation #706, into the Town’s corporate limits.
- CN4 Jacques K. Gilbert, Mayor  
Reappointment of Michael Wilson as Chair and Lisa Carley as Vice Chair of the Board of Adjustment; appointment of Bryan Johnson as a Regular Member; moving up Tracy Taylor and Umesh Pai as Alternate Members; and appointment of William S. Lusk as Alternate Member
- CN5 Colleen Merays, Downtown & Small Business Development Coordinator  
Amend the approved location of Apex Farmers’ Market & Apex Night to:  
Roads & Parking Closed Date & Time: Portion of Saunders Street Public Parking Lot (Map Designated Area)  
Apex Night Market: Portion of Saunders Parking Lot (8 AM - 10 PM)  
Apex Farmers' Market (9-12pm): Portion of Saunders Parking Lot (7:30 AM - 1 PM)
- CN6 Vance Holloman, Finance Director

Capital Project Ordinance Amendment No. 2021-9 to appropriate the proceeds from the issuance of the \$5 Million Street and Sidewalk Improvement General Obligation Bonds Series 2021 to fund capital improvements and pay issuance cost

CN7 Marty Stone, Assistant Town Manager

Encroachment agreement between the Town and property owner Tri Pointe Homes Holdings, Inc. to install 12 SF of private sidewalk and 6 SF of private driveway that will encroach onto portions of the Town's 20' Public Storm Drainage Easement and authorization for the Interim Town Manager to execute the same

CN8 Jenna Shouse, Long Range Planner II

Set the Public Hearing for the June 8, 2021 Town Council meeting regarding amendments to the Unified Development Ordinance to establish electric vehicle parking requirements

CN9 Shelly Mayo, Planner II

Findings of Fact, Conclusions of Law and Decision denying a Major Site Plan for Felton Grove High School located at 8550 Stephenson Road

CN10 Mary Beth Manville, Human Resources Director

Revisions to the Town's Drug & Alcohol Testing Policy

*[Moved to New Business for discussion as requested by Council]*

CN11 Mary Beth Manville, Human Resources Director

Revisions of the Town's Shared Leave policy

CN12 Mary Beth Manville, Human Resources Director

Adoption of the NC 457 Public Employees Deferred Compensation Plan for Town employees, effective July 1, 2021

CN13 Mary Beth Manville, Human Resources Director

Reclassification of the Police IT & Records Manager position, Grade 26, to Police Records Supervisor, Grade 19

CN14 Marty Stone, Assistant Town Manager

Encroachment agreement between the Town and property owner Western Wake Development, LLC to install a retaining wall that will encroach 25 LF onto the 20' Town of Apex Drainage Easement and a rip rap pad that will encroach 77 SF onto the 20' Town of Apex Sanitary Sewer Easement and authorization for the Interim Town Manager to execute the same

CN15 Michael Deaton, Water Resources Director

Set the Public Hearing concerning the proposed Stormwater Utility Fee for Tuesday, June 8, 2021 at 6:00 p.m. at the Apex Town Hall

CN16 Shawn Purvis, Assistant Town Manager

Capital Project Ordinance Amendment 2021-10 and Budget Amendment 21 for the construction of a portion of Burma Drive extension

CN17 Craig Setzer, Interim Parks, Recreation, and Cultural Resources Director

Ordinance amendment changing closing hours at Clairmont Park (March – October) to 9 pm

Mayor Gilbert stated Town Clerk Hosch requested an add-on item, Minutes of the April 27, 2021 Regular Council Meeting. Council Member Killingsworth requested pulling CN10, Revisions to the Town's Drug & Alcohol Testing Policy, and moving it to New Business for brief discussion.

Mayor Gilbert called for a motion to adopt the Consent Agenda. Council

Member Mahaffey made the motion with the requested changes;

Council Member Dozier seconded the motion.

The motion carried by a 5-0 vote.

#### REGULAR MEETING AGENDA

Mayor Gilbert called for a motion to adopt the Regular Meeting Agenda. Council Member

Mahaffey made the motion; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

#### PUBLIC FORUM

No one wished to speak during Public Forum.

#### PUBLIC HEARINGS

PH1 Lauren Staudenmaier, Planner I

Rezoning Application #21CZ05 Friendship Storage. The applicant, Terco Properties, sought to rezone approximately 9.09 acres located at 0 Friendship Road and 2109 Old US 1 Highway

(PINs 0730193547 and 0730197850) from Rural Residential (RR) to Tech/Flex-Conditional Zoning (TF-CZ).

Staff oriented Council to the site. A neighborhood meeting was held. The Environmental Advisory board also held a meeting on this request. The Planning Board recommended approval with conditions as offered by the applicant as did the Planning staff. Responding to Council, staff explained the one objection to the request from the Planning Board and addressed water and sewer questions and natural resource preservation.

Bill Daniel, William G. Daniel and Associates, representing the applicant, stated there was only one objection at the neighborhood meeting, which was the perception of self storage. He spoke about the conditions they have proposed and further clarified tree preservation and water and sewer. The latter will not require a pump station. Mr. Daniel spoke about the specifics of the self storage building and what they're doing with buffers to help block the building from view. Responding to Council, Mr. Daniel spoke to self storage bringing less jobs than an office building. He added self storage has low traffic volumes from clients, and it's a convenience factor for the neighborhood. There would be an absence of lighting so as to not disturb neighbors. Council questioned the need for another self storage building, Mr. Daniel stating there is a demand for such.

Mayor Gilbert declared the Public Hearing open.

Elizabeth Stitt went through the packet which was distributed to Council by the Clerk before the meeting. She spoke about why the neighbors are not in favor of a self storage facility. There had been a lack of trust in the entire process and she further elaborated. Ms. Stitt spoke about one of the Planning Board members who abstained from voting as he has an interest in the project, and the neighbors wanting to know his involvement in the project which was not stated in the literature. Ms. Stitt questioned the application not being updated, and she didn't think the matter could be voted on because of this.

Mr. Daniel spoke to ownership of the property and how they would proceed forward. Council called for a point of order and asked the Town Attorney to weigh in on this. Staff explained their practice in cases such as this. The Town Attorney agreed with staff's explanation and stated Council may want to continue this to a future date in order to get the ownership interest paperwork resolved.

Council Member Mahaffey made a motion to continue this matter to the June 8, 2021 meeting, and for a new application and new agent authorization form to be submitted.

Staff stated they will mail out new notifications and suggested to continue the Hearing to the June 8<sup>th</sup> Regular Meeting.

Council Member Killingsworth seconded the motion.

Council stated this matter seemed messy to her and that she was not in favor of the project at this time. She was not sure about the ownership piece.

Council Member Mahaffey, Killingsworth, Gantt, and Stallings voted in the affirmative; Council Member Dozier voted in the negative.

The motion carried by a 4-1 vote.

PH2 Liz Loftin, Senior Planner

Rezoning Application #21CZ06 Jenks Road Office & Veterinary Hospital. The applicant, Daniel Shultz, Peak 360, LLC, sought to rezone approximately 6.69 acres located at 7825 and 7809 Jenks Road (PINs 0722886419 & 0722888770) from Rural Residential (RR) to Neighborhood Business-Conditional Zoning (B1-CZ).

Staff oriented Council to the site. A neighborhood meeting was held. The Planning Board recommended approval. Since that time, the applicant has added conditions. Staff recommended approval.

Jeff Roach, Peak Engineering and Design, representing the applicants, spoke about the changes that they have instituted. He clarified a fencing issue, lighting and parking lot screens for headlights, a sewer issue, and the 24-7 operation. Responding to Council, Mr. Roach spoke about integrating into the neighborhood, the trees on the site, and the height of the fence.

Mayor Gilbert declared the Public Hearing open.

Jennifer Shults, Veterinarian, stated they have been looking for a space to expand with a lot of green space. She explained the types of dogs she attends. Ms. Shults further clarified the fence issues, the fence actually being a barrier. She continued with information about lighting and hours of operation.

Christopher Reder spoke to the trees and retention pond. He and his neighbors have expressed concern to the Planning Board about the 24/7 operation and the fence. Both sides have come to agreement on common issues.

Staff read emails which had been received:

- Vincent Newman – concerned about barking dogs, fencing.
- The Wolfgangs – concerned about the 24/7 operation, fencing, and a sidewalk.
- Megan Reder – concerned about the 24 hour operation and fencing.
- Mark Meach – concerned about fencing.
- Ryan Curfly – concerned about lighting, fencing, and security.
- Winston Penley – concerned about the sidewalk and brewery use.

Responding to Council, staff clarified that neighbors would like to see the fence extended further. Mr. Roach stated the applicant was agreeable to an 8-foot fence. Responding to Council, Mr. Roach stated they will try to avoid the large trees when installing the fence. Staff clarified lighting according to the UDO.

Mr. Reder spoke more in depth about parking spaces as related to extending the fence. Responding to Council, Mr. Roach spoke further about the fence, stating what they would be willing to do.

Mayor Gilbert declared the Public Hearing closed.

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

Council stated he was a bit disappointed with the use as it was not intensive enough. He would have liked to have seen more activity.

The motion carried by a 5-0 vote.

PH3 Amanda Bunce, Current Planning Manager

2045 Land Use Map amendment and Rezoning Application #21RZ07 Herbert Street. The applicant, Lane Raw Land, LLC, sought to amend the 2045 Land Use Map from Medium Density Residential to Office Employment/Commercial Services and rezone approximately 0.27 acres located at 0 Herbert Street (PIN 0741397109) from Medium Density Residential (MD) to Neighborhood Business (B1).

Staff stated the requestor asked for a continuance, for which she did not have reasons as to why.

Mayor Gilbert called for a motion. Council Member Killingsworth made a motion to approve the continuance to the June 8, 2021 Regular Meeting;

Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

PH4 Amanda Bunce, Current Planning Manager

Various amendments to the Unified Development Ordinance (UDO)

Staff oriented Council to the amendments and answered Council questions related to lighting and what constitutes a substantial change.

Mayor Gilbert declared the Public Hearing open.

Staff read submitted comments:

- Mark Kimilander – opposed the amendment which would allow the school system to submit multiple and successive site plans, allowing them to avoid good and proper planning and which could be overwhelming to the public, opponents, and staff.

Mayor Gilbert declared the Public Hearing closed.

Staff stated that the Planning Board recommended approval.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to



approve the amendments; Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

The Mayor stated he thought it strange that there were no developers in attendance in support of this.

PH5 Shawn Purvis, Assistant Town Manager

Citizen input on the Fiscal Year 2021-2022 Annual Budget including proposed economic development expenditures.

Staff stated this public hearing was in compliance with legal actions. He stated the budget process up to this point, and briefly detailed the budget figures. He spoke about probable adjustments related to yard waste, land use map amendment fees, and electrical box fees for new development.

Mayor Gilbert declared the Public Hearing open.

Jeff Hastings spoke about the Tunstall House and how previous Councils and management have stated they would look at this. He applauded this Council for finally making good on the promise to the Tunstall family. He offered, with his connection to the historical societies, to bring people to the table to address what needs to be done on the property and possible moves forward.

Council spoke about the Best in Show for the art committee and wanting to see this in the budget. Staff stated the show would not be until next March so there would be time to make changes to budget (budget amendments). Council was in agreement there was not a need to meet for the scheduled Budget Workshop next week.

Council was pleased that there were no comments from the public about the budget, stating that this indicated staff knew what it was doing and that the public is appreciative of the services it receives.

Mayor Gilbert declared the Public Hearing closed.

Mayor Gilbert called for a ten-minute recess.

OLD BUSINESS

There were no Old Business items for consideration.

#### UNFINISHED BUSINESS

There were no Unfinished Business items for consideration.

#### NEW BUSINESS

Added NB01 Mary Beth Manville, Human Resources Director

##### Revisions to the Town's Drug & Alcohol Testing Policy

Council stated she wished to send this back to the Personnel Committee to add things like what possible actions could take place in relation to positive drug testing. She was concerned about marijuana and the zero tolerance language. The Mayor shared this was taken before the Mayor's Substance Abuse Task Force, and they talked about the importance of providing assistance to anyone who came forward with a substance abuse problem. He added that the Task Force spent a lot of time on this.

Staff gave background on the zero tolerance language process. She spoke about comments coming out of the Employee Relations Council, that was in support of this. She spoke about what other surrounding municipalities have in place and the balanced steps the Town is trying to take. The Town is committed to helping employees in this instance. This was not to try to target anyone, but to help employees who may need the help.

Council spoke about how *zero tolerance* means there are no second chances. A *drug free* workplace means we can help. The Mayor talked about high risk jobs and how job performance is affected if an employee fails testing. Conversation ensued as to how can we be fair with this for all employees. Staff explained how this will be addressed, particularly if marijuana becomes legal in NC.

Responding to Council, staff spoke about training and education. Conversation ensued from Council on expectations. There was conversation about possible rehire for those let go, EAP, drug testing, and employees in favor of the stronger language.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the policy; Council Member Dozier seconded the motion. Council Members Gantt, Dozier, and Stallings voted in the affirmative; Council Members Killingsworth and Mahaffey voted in the negative.

The motion carried by a 3-2 vote.

#### UPDATES BY TOWN MANAGER

TM1 Ralph Clark, Interim Town Manager

Updates on Town operations by Interim Town Manager Ralph Clark

Staff stated:

- COVID figures of those vaccinated. 52% were teenagers.
- He and the Interim Police Chief met on this day with CSX. They talked about what was learned from the CSX folks regarding their train whistle blows, Amtrak's whistle blowing, trains idling, train switching, graffiti, and teenagers on the train tracks. CSX asked for PD assistance with the latter.
- June 17<sup>th</sup> was his projected last day in Apex. This would leave at least 10 days prior to a new manager coming in.

Council wanted to ensure residents would be informed about the conversation with CSX, staff stating he would certainly respond to the residents. He would additionally have Communications put out some kind of social media information post. He spoke about how he felt today's meeting would be helpful moving forward with conversations with CSX.

#### WORK SESSION

WS1 Audra Killingsworth, Council Member

Discussion of the Town's Non-Discriminatory Ordinance

Council stated she had received ordinances from other areas with instructions on how to enforce these ordinances. From previous conversations, Council pretty much agreed on the protected classes. One model ordinance received included housing, which we don't regulate.

Discussion ensued about two presented options – A and B – and the pros and cons of each. Council recommended going with option A and requesting possible public comment for option B. The

Deputy Town Attorney spoke about what legal teeth we would have regarding a public business, expounding on these aspects.

Council stated she felt this was the right thing to do. The Town Attorney restated this is a legal grey area. We don't know what this would look like as far as enforcement. Maybe we could delay this until we get some type of system in place.

Conversation surrounded possibly having the County weigh in on this.

Council Member Killingsworth suggested moving forward with option B and using option 2 for enforcement, and she gave her reasons why. After conversation on how long to delay the enforcement piece, consensus as to delay to January 1, 2022.

Consensus as for this item to be presented at the June 8<sup>th</sup> Regular Meeting. Council stated a few tweaks may need to be made.

#### CLOSED SESSION

CS1 Laurie Hohe, Town Attorney

To consult with the Town Attorney pursuant to NCGS 143-318.11(a)(3) to discuss Town of Apex v. Rubin, 15CVS 5836 and Town of Apex V. Rubin, 19CVS6295.

CS2 Mary Beth Manville, Human Resources Director

To discuss a personnel matter pursuant to NCGS 143-318.11(a)(6).

Mayor Gilbert called for a motion to go into Closed Session for the stated purposes. Council Member Stallings made the motion; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

Mayor Gilbert called for a motion to return to Open Session. Council Member Dozier made the motion; Council Member Killingsworth seconded the motion.

The motion carried by a 5-0 vote.

Council Member Dozier made the motion to appoint Catherine H. Crosby as Apex's New Town Manager; Council Member Stallings seconded the motion. The motion carried by a 5-0 vote with applause from Council and staff!

ADJOURNMENT

With no further business, Mayor Gilbert adjourned the meeting.

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Donna B. Hosch, MMC, Town Clerk

ATTEST:

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Jacques K. Gilbert, Mayor

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