

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
April 3, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, April 3, 2024.

COUNCIL MEMBERS PRESENT: Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; Councilor Brenda Chasen; and Councilor Kevin Lingard.

COUNCIL MEMBERS ABSENT: Mayor Don Kingston.

OTHERS PRESENT: Town Manager Drew Havens; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Attorney Johny Hallow; Finance and Human Resources Administrator Jessica Barnes; Public Information and Events Director Kristiana Nickens; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Town Attorney Robert Hobbs.

Mayor Pro Tempore Thibodeau called the meeting to order at 1:00 p.m. She noted that Mayor Kingston was excused from the meeting.

Mayor Pro Tempore Thibodeau asked Fire Chief Donna Black to lead the Pledge of Allegiance. Mayor Pro Tempore Thibodeau led the moment of silence.

PUBLIC COMMENTS

Mayor Pro Tempore Thibodeau opened the floor for public comments. She noted that comments will be limited to three minutes as there was a timer for the time limit.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated that she had spoken at the March 6, 2024 Council meeting related to the idea of an ordinance banning the release of balloons. She stated that she was excited that Council was considering a draft ordinance and resolution on the issue. She showed a photograph of a beached whale from November 2023 on Emerald Isle that had died from ingesting a balloon.

Miriam Rollin thought the idea of an ordinance versus a resolution in front of Council would be fine but if Council adopted the resolution only, it would be insufficient, while adopting both would be great. She explained that there would be a public education aspect to address the issue which was important. She noted that enforcement will never solve the problem. She added that there needed to be something in place to wake people up and to make sure they understand that it was a serious issue. She felt that the ordinance was needed and the resolution was not a substitute for an ordinance.

Miriam Rollin stated that she appreciated Council's consideration of the ordinance and resolution, and hoped both would be adopted. She urged Council not to consider the resolution alone as an alternative to the ordinance. She pointed out that the Town has a lot of unenforceable ordinances, including the Town's litter ordinance, so the argument that this would be unenforceable was not really a valid argument. She thought Council may want to consider eliminating the litter ordinance if unenforceability was a concern. She stated that the real issue was that there should be something in place that would tell people not to do the balloon releases due to the harm to the environment, the beaches and marine mammals that was too great.

Debbie Swick of 59 Deer Path Lane, Southern Shores, was recognized to speak. Ms. Swick stated that she was the creator of Ban Balloon Releases in North Carolina. She stated that she was thrilled when the Outer Banks Voice contacted her to let her know that Duck was considering a resolution, which moved her to tears. She encouraged Council to vote in a positive manner. She stated that it was necessary and appreciated by so many people who cannot stand balloon litter, which was different from regular litter. She encouraged staff to use her information on the flyers that have gone out for education purposes. She added that it was a great opportunity for all municipalities to educate the public. She pointed out that by adopting the ordinance, Council was sending a great message out to the people that love the area. She thanked Council for their support and time.

Tamara Warren of the Outer Banks Surfrider Foundation was recognized to speak. Ms. Warren stated that her foundation does many beach cleanups from Kitty Hawk to South Nags Head, which are adopted by families that complete the cleanups. She pointed out that one of the biggest things found on the beach were balloons and balloon strings. She stated that she was present to support Council adopting an ordinance.

Aida Havel of 26499 Galleon Drive, Salvo, was recognized to speak. Ms. Havel stated that she was in support of the proposed balloon ordinance. She stated that her purpose in speaking was to let Council and the audience know that she was running for Dare County Commissioner, District 4, which was Hatteras Island. Ms. Havel went on to give a short background on herself to Council and audience, adding that she would appreciate being voted for in the election.

Aida Havel stated that she wanted to remind Council and the audience of the unfolding environmental disaster on the Buxton beach. She stated that there were oil and Petro carbons on the beach and in the ocean, along with hazardous infrastructure that has been exposed after two storms last fall resulting in 3/10 of a mile of beach being closed with Dare County Health and Human Services issuing a precautionary public health advisory. She noted that this was a beach that was named as one of the top five beaches in the country last year by Dr. Beach. She added that the Army Corps of Engineers has been dragging their feet in cleaning up the hazardous condition, noting that last week three Dare County Commissioners traveled to Washington to speak with the staff, two senators, and a representative. She stated that she was hopeful that there will be some

movement behind the scenes but did not see anything yet. She asked Council and the audience to keep this matter in the front of their consciousness as the problem will not be solved by one visit or one conversation. She suggested that Council and the audience reach out to the media, government, or a national public organization for help.

Judy Lotas of the Dare County League of Women Voters was recognized to speak. Ms. Lotas handed out the 2024 Citizens Guide to Council and thanked the Town for their support of the guide each year.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to read the written public comments that had been received. She noted that 35 written public comments had been received regarding Agenda Item 7C related to helium balloons and that all were in favor of either banning them, passing a resolution or passing an ordinance. She added that she would just be reading the names and addresses of those that submitted written comments, but that their full comments would be recorded into the minutes of the meeting.

Kim Warde of 109 Sprigtail Drive was recognized. Ms. Warde wrote the following: "As a resident of Duck I would strongly urge the Town Council members to move forward on banning the release of balloons. Please help protect our wildlife on land and in our waters."

Matthew and Alla Morrison of 111 Plover Drive were recognized. Mr. & Mrs. Morrison wrote the following: "Hello, We understand that the Council is considering a resolution to ban releases of balloons in the Town of Duck. As homeowners in Duck and who care deeply about the environment, we strongly support this proposal. Not only do remnants of balloons and the ribbons they are attached to end up littering the beach, even more concerning is the fact that stuff like this ends up getting wrapped around marine life and in the guts of birds and turtles. There are other more environmentally friendly ways to celebrate a special occasion than releasing balloons and thus endangering sea life and adding to all the plastic in our oceans. We strongly urge the Town of Duck Council to adopt this measure outlawing balloon release in Duck."

Tom and Cathie Johnson of 1114 Tides Drive were recognized. Mr. & Mrs. Johnson wrote the following: "Please enact an ordinance banning balloon releases in Duck."

Barney Skladany of 1475 Duck Road was recognized. Mr. Skladany wrote the following: "I am president of the four Salthouses located at 1475 Duck Road. My wife and I own two of the four. Ed and Pat Giles and Larry and Ramona Atkins own the other two. On behalf of we three owners, we request that the Council vote to adopt the draft balloon release ordinance. Thank you for your consideration."

Larry McLaughlin of 117 Sea Colony Drive, Unit D-127 was recognized. Mr. McLaughlin wrote the following: "Dear Council Members, Just wanted to know that I am in full support in banning balloon releases wherever possible. The Outer Banks does not need to have more trash for something with so little value."

Irene McKenna of 108 Chip Court was recognized. Ms. McKenna wrote the following: "Town Council: I am in total support of the proposal to ban balloon releases in the Town of Duck. We do not need any more trash entering our beautiful ocean and sound. I am a full-time resident of the Town and have picked up many deflated balloons mixed in with the seaweed on the shoreline. Unnecessary debris! Thank you for your consideration of this matter."

Lynn Rae Wentworth of 117 Sea Colony Drive, Unit B-108 was recognized. Ms. Wentworth wrote the following: "Hi, I own a condo in the Town of Duck at Colony by the Sea and I support the ban on balloon release in the Town of Duck. Thanks."

Michael and Donna Andreasen of 114 Spyglass Court were recognized. Mr. & Mrs. Andreasen wrote the following: "Hello Town Council Members, We are permanent residents here in Duck and support all ordinances banning the release of balloons in our community. It's hard to believe any community, much less a beach community, would allow balloon release."

Carolyn Griffin of 117 Sea Colony Drive, Unit D-126 was recognized. Ms. Griffin wrote the following: "I own D-126, 117 Sea Colony Drive in Duck. I support the banning of balloon releases in Duck due to the devastation they cause for wildlife and marine life and because of the unsightly littering that occurs when they eventually come back down. Thank you."

Jim and Eileen Hickey of 122 Bayberry Drive were recognized. Mr. & Mrs. Hickey wrote the following: "To the Duck Town Council: We heartily support the banning of balloon releases in Duck. They contribute to ocean and beach pollution and harm marine life. Please vote to ban this practice in Duck!"

Ray and Michelle Georges of 117 Sea Colony Drive, Unit A-302 were recognized. Mr. & Mrs. Georges wrote the following: "It is sickening that people are so ignorant – we fully support a ban and a hefty fine to fund cleanup!"

Jeanne Wolfson of 117 Sea Colony Drive, Unit D-224 was recognized. Ms. Wolfson wrote the following: "Hello, I support the draft ordinance to ban the release of balloons in the Town of Duck. My husband and I are non-resident owners at the Colony by the Sea condominiums on Sea Colony Drive (117 Sea Colony Drive #D224). Thank you."

TJ Fanning of 100 Sea Hawk Drive West was recognized. Mr. Fanning wrote the following: "Just wanted to make sure you are aware that we are supportive of a ban on releasing balloons. Thanks."

Alice Roberts of 125 Seabreeze Drive was recognized. Ms. Roberts wrote the following: "We wholeheartedly urge the Town Council to ban balloon releases in Duck with strong enforcement. This is an environmental issue that is easily managed."

Clifford Firstenberg of 157 Victoria Court was recognized. Mr. Firstenberg wrote the following: "I am a homeowner and part-time resident in Duck (157 Victoria Court) and am adamantly opposed to the release of balloons (and any garbage, for that matter) into the environment. I am an oceanographer and environmental scientist and have seen first-hand the senseless impact of balloons released "for fun" or as a memorial heading skyward. Please establish a meaningful ordinance against these harmful actions."

Tom Kinsling of 165 Teresa Court was recognized. Mr. Kinsling wrote the following: "I support a ban on releasing balloons in Duck. Thanks."

Richard and Sara Noerr of 153 Victoria Court were recognized. Mr. & Mrs. Noerr wrote the following: "Mayor Kingston and Duck Town Council, We are writing in support of banning balloon releases in Duck. The release of balloons for events and ceremonies will not only harm our beloved Town but the ocean, beaches, and wildlife that make it even more special. Many balloon releases are likely released by visitors and tourists who do not even have a stake in the Duck community. By allowing the release of balloons in a town which is heavily visited and with many rental homes, we are subjecting our town to an extraordinary amount of waste in the sky the will inevitably land on our properties and community areas as well as the ocean and beaches. Thank you for taking this matter into consideration at the meeting today."

Maureen Eye of 131 South Snow Geese Drive was recognized. Ms. Eye wrote the following: "As a homeowner living at 131 South Snow Geese in Duck, I fully support an ordinance to stop the release of balloons into the air. This behavior is glorifying pollution with detrimental impact. It is a simple thing we can do as a community to impact the global community."

Steven Williams and Kelly Brass of 100 Christopher Drive were recognized. Mr. Williams & Ms. Brass wrote the following: "Good morning. We are the owners of 100 Christopher Drive in Duck. As homeowners we would like to register our strong agreement with a ban on balloon releases. Environmentally they are terrible for the wildlife. Thank you for considering this issue."

Dennis and Dorothy Donat of 1402A Duck Road were recognized. Mr. & Mrs. Donat wrote the following: "Dear Council members, While we think balloons are pretty, we do NOT feel they should be allowed for release in Duck. This is based on our belief that they will eventually fall and present a hazard to wildlife in the ocean and on land. We encourage you to ban the release of balloons in Duck. Thank you for your consideration of our viewpoint."

Vivian Huizenga of 117 Sea Colony Drive, Unit D-327 was recognized. Ms. Huizenga wrote the following: "Dear Duck Council, I strongly urge the Duck Council to ban balloon releases in Duck, North Carolina. Thank you."

John and Jacqueline Klamut of 133 Olde Duck Road were recognized. Mr. & Mrs. Klamut wrote the following: "To Duck Town Council. This is to express our support for

an ordinance that would make the release of balloons illegal in Duck. We would support an ordinance with a substantial fine that might be waived if the offenders volunteered to spend a few hours cleaning up the beach or other public property. We believe that balloons used for decorations or to celebrate special occasions should be destroyed after they are used.”

Theresa Rose of 122 Mallard Drive was recognized. Ms. Rose wrote the following: “I just want to add my support for the proposed ordinance that bans balloons and their release in the Town of Duck. I am a full-time resident.”

Sherrie Lizza of 121 Dunes Crest was recognized. Ms. Lizza wrote the following: “Very much against the purposeful release of balloons in Duck. Bad for wildlife and creates a trash problem. The pieces of broken balloons and strings can be ingested by wildlife or left behind to litter our beautiful town.

Judith Flagge of 122 South Snow Geese Drive was recognized. Ms. Flagge wrote the following: “Please don’t allow intentional release of balloons in Duck. The impact on the native species populations birds and aquatic is too much. It’s also a problem for clean up. There is no good reason to allow this. There are many other ways to celebrate and commemorate events. This is unnecessary risk for our avian/animal populations. Are we not called to be stewards?”

LuAnn Masterson of 154 Ocean Way was recognized. Ms. Masterson wrote the following: “Mayor Kingston and the Town of Duck Council: Ever since my now grown children were small, I have been aware of the disastrous effects of balloon releases and NEVER allowed them in our house. Now 35 years later this is becoming a much talked about subject and in my humble opinion, common sense. Need I mention the ever dwindling supply of helium – when it’s gone it is gone! It takes hundreds of years for a balloon to biodegrade and in that time it becomes smaller and smaller inevitably becoming a microplastic, ingested by our struggling wildlife – they are THE deadliest form of marine debris for our seabirds, dolphins, whales, turtles and many other terrestrial animals. The balloon blocks the digestive tract causing them to starve! I urge you today to ban this practice in our beautiful Town of Duck and hopefully the rest of North Carolina will follow.”

Keith Exton of 46151 Cape Point Way in Buxton and Duck Donuts was recognized. Mr. Exton wrote the following: “Hi, just wanted to share we are in full support of the ban on balloon releases in Duck. Thank you.”

Mike and Patti Klimkiewicz of 109 Sea Tern Drive East were recognized. Mr. & Mrs. Klimkiewicz wrote the following: “Please ban the releasing of balloons in Duck. Thank you.”

Sara Zimmerman of 1400 Duck Road was recognized. Ms. Zimmerman wrote the following: “Please ban these balloons. They cause problems for the environment and animals and can cause fires. Thank you.”

Dixon Duffett of 171 Teresa Court was recognized. Mr. Duffett wrote the following: "Town of Duck City Council, for your consideration wrt [sic] release of balloons in Duck, My family and I have enjoyed beaches all over the country. None have been immune to the ubiquitous presence of balloon waste. The US East coast where we spend the predominance of our beach time is particularly bad, presumably at least in part, due to the higher population density over its entire length. Barrier islands seem to catch their share and more of balloon releases inland. From NOAA, 'Balloon debris is a national issue and unfortunately, the mid-Atlantic is not immune. Over a period of five years (2010-2014), 4,916 pieces of balloon litter were found in Virginia by volunteers participating in the International Coastal Cleanup, with over 3,000 of those pieces found on ocean beaches. In 2014, 236 volunteers found over 900 balloons in the Chincoteague National Wildlife Refuge in Virginia in a three-hour period. Recent surveys of remote islands on Virginia's Eastern Shore documented up to 40 balloons per mile of beach.' Over the past 20 years I have been able to sail the east coast from Charleston, SC to Nova Scotia and east to Bermuda, logging thousands of miles. Nothing is as disturbing as sailing by acres of Sargassum seaweed clogged with trash. Some of this trash will decompose, others will sink. But the plastic bottles, mylar balloons, lost fishing line just keep bobbing along posing a danger to marine life, humans included. Again, from NOAA, 'Balloon debris can be ingested by animals, many of which easily mistake it for real food, and can entangle wildlife, especially balloons with attached ribbons. Balloon debris can even have an economic impact on communities, contributing to dirty beaches which drive away tourists, or causing power outages from mylar balloons covered in metallic paint and their ribbons tangling power lines.' Managing waste is a local, national, and international civic responsibility. Balloons are a small part of the problem, but one that is imminently correctable. Other locales have stepped up, as have states and nations. We need to do our part and disallow balloons to be released, if not sold in Duck. Thanks!"

Laura Stevens of 117 Sea Colony Drive, Unit B-216 was recognized. Ms. Stevens wrote the following: "Please approve the ban on balloons in Duck!"

Bill Augustyn of 117 Sea Colony Drive, Unit A-303 was recognized. Mr. Augustyn wrote the following: "Town Council: Please adopt the draft ordinance to ban balloon releases. Thank you."

Peter Rankin and Julie Anne Cronin of 112 Flight Drive were recognized. Mr. Rankin & Ms. Cronin wrote the following: "We support banning balloon release."

Colleen Kennedy of 132 Flight Drive was recognized. Ms. Kennedy wrote the following: "Please ban balloons which are harmful to wildlife."

Jessica Fanning of 100 Sea Hawk Drive West was recognized. Ms. Fanning wrote the following: "Hello, Please read my comment at your upcoming meeting. I strongly approve the BAN on balloon releasing in the Town of Duck for many reasons. The first and most obvious reason – to protect our marine life and wildlife. Second, to prevent power outages as the balloons can float and land on power lines. Finally, this unsightly

pollution is an eyesore and takes years to break down. I have picked up several balloons and string on my beach walks over the years and am appalled at the amount landing on our beaches. It's a no brainer that our coastal town prohibit balloon releasing to protect our community! Thank you."

Larry and Rita Muncy of 127 Old Duck Road were recognized. Mr. & Mrs. Muncy wrote the following: "Rita and I are opposed to balloons in Duck for two reasons. 1) they are an environmental hazard to turtles and birds and they create a lot of litter on the beach. The other reason is that some people celebrate with little hot air balloons heated by a candle. They are a fire hazard in a town that is built almost entirely out of wood. Please do what you can to ban balloons."

There being no one else wishing to speak, Mayor Pro Tempore Thibodeau closed the time for public comments.

CONSENT AGENDA

Minutes from the February 21-22, 2024, Annual Retreat; Minutes from the March 6, 2024, Regular Meeting; Resolution 24-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month; NCLM Voting Delegate; Budget Amendment

Councilor Chasen moved to approve the consent agenda as presented. She added that she wanted to discuss two items on the Consent Agenda.

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that if the discussion was very brief, it could be discussed; otherwise, it would need to be removed from the Consent Agenda and put under New Business. He asked if it was a quick question or clarification. Councilor Chasen stated that the questions would be quick.

Councilor Chasen asked if Council had to assign a person for the NCLM voting delegate, further asking if it would be Mayor Kingston. Mayor Pro Tempore Thibodeau explained that, historically, the voting delegate has been the Mayor. Councilor Chasen asked if Mayor Kingston needed to be picked. Town Manager Havens explained that the agenda control sheet stated that it would be Councilor Lingard since he would be attending the NCLM conference.

Councilor Chasen pointed out that the budget amendment showed an increase in the Legal budget. She asked for more details since there was recently another increase in the Legal line item. Town Manager Havens explained that both were to account for unexpected legal fees regarding the lawsuit of *Pinto vs Hardwick and the Town of Duck*. He added that the legal fees just for that case were \$39,899.75, which were unanticipated legal fees for the lawsuit. He noted that Attorney Hallow would be discussing the case in Closed Session later in the meeting.

Motion carried 4-0.

SPECIAL PRESENTATIONS

There were no Special Presentations at this time.

QUASI-JUDICIAL PUBLIC HEARING

There were no Quasi-Judicial public hearings at this time.

LEGISLATIVE PUBLIC HEARINGS

There were no Legislative public hearings at this time.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of an Amendment to the Facility Use Policy

Town Manager Havens stated that the item was put back on the agenda after he received a telephone call from Mayor Pro Tempore Thibodeau, specific to the requirement for providing a Certificate of Insurance, which staff found out costs the applicant for the use of the facility, money to obtain that certificate.

Mayor Pro Tempore Thibodeau reminded Council that they recently changed the Town's Facility Use Policy as it had not been looked at in many years. She stated that there was some cleanup to do and some clarifications and, in that process, all of Council voted for the change. She stated that she went through the new process recently and was surprised to see in addition to the regular use of the building and fees, there was a requirement for a certificate of liability or indemnification for the Town. She explained that when she contacted her insurance agent for her homeowners association, she found that they had to pay \$30 for the certificate. She noted that it was a little different from a proof of insurance because they were specifically indemnifying the Town, which was a difference from other certificates that show proof of insurance. She stated that it got granular and when it happened, she was upset because it seemed like a lot of money for a small group to get together for a meeting. She noted that that was why she asked to have it back on the agenda. She stated that the entire policy was brought back and she thought in looking at it again in totality, that it seemed that Council could remove that requirement for the indemnification that showed that the Town was an additional insured. She knew that a lot of people have not gone through the new process, adding that she was interested in everyone's viewpoint.

Councilor Chasen thought there was a miscommunication of terms. She explained that there was a certificate of insurance which states that a contractor has insurance in effect with limits of liability and the Town could be a holder. She stated there was another piece of paper which was an additional insured, which was naming the Town as an additional insured with the same protections as the policy holder. She noted that there was a fee for

it which was usually under \$100. She thought that was what the \$30 was for. Mayor Pro Tempore Thibodeau stated she was correct. Councilor Chasen explained that the certificate of insurance just states who has insurance and the insurance company was willing to let them do their business. She thought the Town's policy references it as a certificate of insurance which she believed did not include a charge, but there was also no liability coverage for it on the Town's behalf.

Town Manager Havens explained that there was in the indemnity agreement as part of the policy the following language: "...Commercial Liability Insurance in amount not less than \$1,000,000 per occurrence, which policy or policies of insurance shall list the Town of Duck as an additional insured..." He stated that it could be stricken and just request a certificate of insurance. He thought Attorney Hallow may give Council some other guidance.

Councilor Lingard thought the Town Attorney should be consulted on the issue.

Attorney Johny Hallow was recognized to speak. Attorney Hallow thought the way it references a release and indemnity agreement; it was required as a condition to use any of the rooms and facilities in the Town Hall. He stated that unless someone was going to enter into that release and indemnity agreement, which he has not seen what it looks like or what the terms of it were, they cannot get into any of the facilities without signing it. He thought it was a good thing to have in the contract, but without knowing exactly what the release and indemnity agreement looks like, it was hard to give Council any further advice.

Mayor Pro Tempore Thibodeau stated that she wanted to open a discussion on the issue. She understood that Attorney Hallow had not had a chance to review it, adding that Council has not had an opportunity to discuss it. She stated that she wasn't suggesting that Council change it at this meeting, but she wanted to get it on Council's radar and explain it in a public venue so that everyone could be aware of what has happened with the extra layer of requirements because it was something new for homeowners. She added that the process to rent the Meeting Hall did not change a whole lot other than a few adjustments and clarifications. She pointed out that this was added to it and on the surface, it seemed reasonable but when one has to obtain a certificate to indemnify and name the Town, for a small organization that she's part of, the price was a little high. She knew it wasn't a lot of money, but her homeowner association was a small group. She reiterated that it seemed a little heavy of a reach for the meetings. She wondered if there was some background and if there was a time that there should have been some extra liability coverage. She reiterated that she felt it was a little of a reach and maybe what Council wanted was to prove that a homeowner association is insured as an organization. She pointed out that it was something that all of Council agreed to and thought it seemed reasonable and in putting it into practice, she found it a little heavy handed. She didn't think Council would reach any conclusions at this meeting as Attorney Hallow has not had a chance to review it, adding that Town Attorney Hobbs was involved in developing the language.

Town Manager Havens stated that this was the only piece of the policy that was the cause to bring it back before Council. He stated that, at the direction of Council, staff could ask the Attorney to be prepared to give the pros and cons of having or not having the additional insured.

Mayor Pro Tempore Thibodeau stated that she liked the suggestion. She thought if Council agreed, the next steps would be to ask the Attorney to review the policy and bring it back at Council's May 1, 2024 meeting for a further discussion. She wasn't sure if the cost was always \$30, adding that she thought insurance companies may be different in what they charge.

Councilor Whitman stated that he was fine with the way the policy was written. He pointed out that there was an incident last year in the Meeting Hall with a homeowner that could have come back at the Town if it did not end up the way it did. He reiterated that he liked the policy as it was. He pointed out that Council just approved a budget amendment for \$39,000 for legal fees, adding that it could happen again.

Councilor Chasen thought having the indemnification would cover the Town's legal expenses.

Councilor Lingard thought Council needed advice from the Attorney since he did not have a legal background. He thought there could be better language, but he wasn't sure and reiterated that Council needed advice from the Attorney.

It was *consensus* of Council to table the issue until the May 1, 2024 meeting.

Discussion/Consideration of Ordinance 24-02, an Ordinance to Amend Sections 70.01 through 70.05 of the Code of Ordinances to Clarify and Revise Provisions Regulating the Operation of Golf Carts, Electric Assisted Bicycles, and Other Motorized Vehicles on Public Streets, Sidewalks, and the Multi-Use Path within the Town of Duck, North Carolina

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman stated that, following the feedback Council gave staff at their annual Retreat, he worked on the proposed ordinance amendments for their consideration. He went on to review the purpose of the changes to the ordinance with Council and the audience.

Police Chief Ackerman explained that there were five changes for Council's consideration to the ordinance, which were as follows:

- Safety equipment for golf carts become required versus suggested.
- Establishment of a golf cart registration and permit process.
- Prohibition on the use of electric assisted bicycles on the sidewalks within the Village Commercial Area (the existing crosswalk at Aqua Restaurant to the existing crosswalk at Sunset Grille).

- Establishment of a reckless or at a speed faster than is reasonably proper safety standard for electric assisted bicycle and golf cart operation.
- Prohibition on the use of mopeds on the multi-use pedestrian path or sidewalks within the Village Commercial Area.

Police Chief Ackerman stated that Subsection 70.02 was amended to prohibit the operation of electric assisted bicycles on the Central Village Commercial Area Pedestrian Sidewalks. He stated that Subsection 70.03 added a section that prohibits the operation of electric assisted bicycles recklessly or at a speed faster than is reasonably proper, or in a manner so as to endanger the life, limb, or property of the rider or of any other person. He added that Subsection 70.04 recodifies the chapter from Subsection 70.03 to 70.04.

Police Chief Ackerman stated that Subsection 70.05 pertaining to golf carts was rewritten and reformatted; however, there were no substantive changes from the Town's current regulations as set forth in subsections (A), (B), or (D). He stated that Subsection (C) establishes a golf cart registration and permit process which requires an annual golf cart registration at a fee to be set by the Town Council. He stated that staff was recommending a \$25.00 fee to cover the cost of permit processing and permit decals. He stated that Subsection (C) has an acknowledgment that the golf cart permit applicant has read and understands the provisions of the ordinance, that the golf cart is in working order, that the golf cart's motor has not been modified, and that the golf cart is equipped with the basic safety equipment required under Subsection (C)(3). He noted that headlamps would not be required unless the golf cart was operated between sunset and sunrise.

Police Chief Ackerman stated that Subsection 70.05(E) reaffirms that a golf cart may not be operated on the shoulder of any public street, road, or highway or upon any sidewalk, multi-use pedestrian path, Central Village Commercial Pedestrian Sidewalk, Central Village Commercial Bicycle Lane, or other similar area of the Town. He stated that Subsection 70.05(F)(2) sets a civil penalty of \$50.00 for failing to comply with the golf cart registration and permit provisions. He noted that the penalty for all other violations of the Chapter will remain unchanged at \$25.00. He explained that the thinking behind that was if the Town set the penalty at the same rate as the application fee, someone could decide to pay the penalty and not go through the permit process.

Mayor Pro Tempore Thibodeau thought the changes to the ordinance were needed in order to clean up the language, which is usually done when things evolve and change. She asked, based on Police Chief Ackerman's experience with motorized vehicles and golf carts, if this would be manageable and effective on an education basis. Police Chief Ackerman thought the greatest challenge the police department has is the education piece, which they have strived to get out. He stated that the problem was that the information does not necessarily get to the ultimate operator, adding that there was no onus for the owner to take any effort to make sure that if the golf cart is provided as an amenity, that they take some effort to ensure that the people operating it would actually follow the rules. He thought it would be manageable if the intent behind it was to have the owner have a better understanding for themselves what the rules of the road were, and

to have on the back of the decal the most common violations posted so that when someone operates the golf cart and sees the permit, they would see what they can and cannot do.

Councilor Whitman asked if Subsection 70.04 was currently enforced. Police Chief Ackerman stated that electric personal assistive mobility devices were almost non-existent. He explained that, by State definition, it was referred to as a Segway, adding that Segway was no longer in business. He stated that it has to be a two-wheeled tandem vehicle and the legislature was very clear when they enacted legislation on it in that they gave municipalities very limited authority to regulate them. He stated that that was why it was in the ordinance and has been since Segways first came out and since the Town has had one. He pointed out that he could not remember the last time he had seen a vehicle that would meet the definition in the ordinance. Councilor Whitman thought that mobility devices were scooters that people ride on. Police Chief Ackerman stated that it was very misleading and when he went through the ordinance, he had to re-educate himself on it. He stated that as he was reading it and saw the point about the two-wheeled tandem vehicles that go about 25 mph, he realized it was not a mobility scooter but something else. He explained that the reason he did not strike it from the ordinance was because they were still out there; the state law is still in effect; and there was a limited opportunity to ban them. He added that it stated that the Town could essentially regulate the time and place of their operation but could not enact an outright ban.

Councilor Whitman pointed out that the draft ordinance has that people will need to sign that their golf carts meet the Town's standards. He asked if the Town had any liability after the sticker is given to the person. Police Chief Ackerman stated that there was a liability waiver portion of the ordinance, but he wasn't sure where it was. Mayor Pro Tempore Thibodeau pointed out that it was under Subsection 70.05(A)(3) Assumption of Risk. Town Manager Havens pointed out that Subsection 70.05(A)(2) Disclaimer shifts the liability. Police Chief Ackerman explained that both of those were taken verbatim from the Town's current ordinance.

Councilor Whitman stated that under Safety Equipment, one of the items was a reflector on the sides. He asked what they were. Police Chief Ackerman stated that it was basically a bicycle reflector so that when a vehicle approaches it at night, it would reflect off of the headlights. Councilor Whitman asked if the reflectors should be required for the rear of the golf cart, pointing out that it only talks of having them on the sides. Police Chief Ackerman stated that it could be added if Council wished. He thought that since operable taillights and brake lights were required, it would be covered, but if the golf cart was not in operation, it may not be seen at night. Town Manager Havens pointed out that the ordinance had the following language in it: "...at least one reflector per side..." He thought that meant front side, left side, rear side, and right side. Police Chief Ackerman stated he was correct. Councilor Lingard thought it could be made clear that the reflectors would be on all sides.

Councilor Whitman pointed out that the fine in the draft ordinance was \$25-\$50 for an unregistered golf cart with the Town, but the draft ordinance regarding balloons lists the

fine at \$250. He didn't think they corresponded with him. Police Chief Ackerman stated that when he reviewed the draft ordinance, he focused on it and not any other ordinance with regard to fines. He stated that it was completely at the purview of Council.

Mayor Pro Tempore Thibodeau thought her original question was about how effective and manageable the change would be. She thought they would empower and define things as well as helping with education. She asked if there would be a lot of penalties envisioned after the ordinance is passed. Police Chief Ackerman stated that he did not think there would be, adding that his officers are aware of transition periods and education has always been at the forefront of everything the Duck Police Department does prior to enforcement. He stated that he did not envision a heavy-handed approach to the ordinance and felt that during the first season, his officers would be more on the lenient side until the word got out. He pointed out that the one difficulty the police department will have was that they could only regulate golf carts on public streets and not on private ones, adding that his officers will educate people about it.

Councilor Lingard asked if it would be possible for homeowner associations to pass a rule amongst themselves requiring a Town of Duck registration. Police Chief Ackerman stated that he could not answer the question, but that there were several homeowner associations within the Town that have established their own rules for numerous things. He wasn't aware of any that have a rule regarding golf carts. He assumed that a homeowner association had the legal authority to do what they have to do and the police department could not take any part in the enforcement of a covenant enacted by a homeowner association.

Attorney Hallow stated that Police Chief Ackerman was correct. He stated that he does a lot of homeowner association representation and deals with a lot of declarations and covenants. He stated that most of the time when there were prohibitions or restrictions on golf carts, it would be in a homeowner association declaration. He explained that it was something that was created when the community is formed and could be changed at any time. He added that the overwhelming majority of time to amend a declaration to include this kind of provision would require the homeowners to make a vote and not the board. He noted that it was common, adding that the Town has no way of imposing any type of requirement for them to amend their declaration as it was entirely within the power of the homeowner association members.

Councilor Lingard stated that the homeowner association could pass a covenant that requires a homeowner to register their golf cart annually with the Town. Town Manager Havens agreed that they could, but pointed out that the Town could not enforce those covenants. Mayor Pro Tempore Thibodeau pointed out that it would point to best practices and any homeowner association could look at what the Town was doing and encourage their membership to get on board. She thought it was for safety as well. Police Chief Ackerman agreed, adding that the overriding theme was safety. He noted that this was not in any way drafted as a revenue source for the Town. He stated that if Council told him not to charge a fee, he would be fine with not charging one.

Councilor Lingard stated that with regard to electric bicycles, by definition they can have up to 750 watts. He asked if someone came in Town with a 1,000-watt electric bicycle what the regulations would be because the regulations in the draft ordinance do not have that. Police Chief Ackerman explained that by adopting the statutory definition it adopts the 750-watt requirement. He added that from an enforcement standpoint, it would not be with the day-to-day operator because there was no way a police officer could determine whether an electric bicycle is 750 watts or 1,000 watts without physically inspecting the bicycle and looking for the manufacturer's information. He stated that it could come into play if there was a substantial crash involving an electric bicycle and speed was determined to be a factor. He explained that the police would be able to go back and look to see if the electric bicycle violated the Town ordinance and the State statute, which would be a factor in the accident resulting in a possible citation.

Councilor Lingard clarified that he would not be allowed to ride his 1,000-watt electric bicycle in Town. Police Chief Ackerman stated that, as written in the proposed ordinance, he would not be allowed as it would be limited to 750 watts or below.

Councilor Whitman asked when the ordinance would go into effect, further asking if it would be immediately. Town Manager Havens stated that it was up to Council. Police Chief Ackerman stated that he envisioned the golf cart registration to be an off-season project to begin in January each year, but it was up to Council. He added that if Council decided to enact it immediately, he would implement it without any major concerns.

Councilor Lingard stated that he would be in favor of enacting everything in the ordinance apart from the registration. He stated that he would like to see a ban on these items on the sidewalk, whether or not Council enforces the registration. He reiterated that he would like to see the rest of it enforced.

Councilor Chasen stated that she was pleased with the language being cleared up to eliminate the ambiguity and to define the terms. She stated that she was in favor of the draft ordinance as it was written based on it being a proactive initiative to encourage safety for the Town's visitors. She added that it was more about education, which was consistent with the way the Town tends to handle things in the community. She stated that she liked the fact that the penalty for abuse was greater than the registration and that the registration cost was minimal to cover the cost of stickers. Police Chief Ackerman stated that it would not be difficult to put in an effective date for Subsection (C) requiring a registration at a different date. He thought it would be added to the ordinance in order to make it clear that that subsection was not effective the same time as the rest of the ordinance.

Councilor Whitman stated that there were a couple of streets in Town that were state roads, but the streets off of them were private. He asked how that would be handled with regard to the ordinance. Police Chief Ackerman stated that it was the same complication his officers deal with when it comes to motor vehicles. He wasn't sure how it would work out, but his officers are used to it and are aware of where the conflicts occur. He

noted if there were state statutes to deal with everything, it would eliminate some of the issues.

Mayor Pro Tempore Thibodeau asked when the definitions were decided in the draft ordinance and as they change if the State statutes were referenced. Police Chief Ackerman stated that if staff saw any change at the State level, he believed it would be in the wattage requirement for electric bicycles or something similar. He explained that the simple fix for that if the Town needed legislation enacted, would be that there will be enough time before it became effective to amend the definition to meet it. He added that the Town would not necessarily have to do that in that the definition could be kept as is. Mayor Pro Tempore Thibodeau asked if the police ran into trouble with children on scooters that they were worried about. Police Chief Ackerman stated that he was worried about the conflicts with children on scooters and motor vehicles, but he has not seen a major issue with them. Mayor Pro Tempore Thibodeau clarified that the change for electric bicycle users was that they could not be operated on the Town's sidewalks in the Village area. Police Chief Ackerman stated she was correct.

Mayor Pro Tempore Thibodeau thought the ordinance will be great even if the registration could not happen in time for the upcoming season. She stated that getting the other rules into effect would be wise.

Town Manager Havens suggested that if a motion was made with an effective date, it could be added with an exception for Subsection 70.05(C)(1) and (2). He suggested that that subsection could have an effective date of January 1, 2025 for the registration requirements for golf carts.

Councilor Chasen moved to adopt Ordinance 24-02 with an effective date of April 3, 2024 and Subsection 70.05(C)(1) and (2) with an effective date of January 1, 2025.

Motion carried 4-0.

Discussion/Consideration of Ordinance 24-01, an Ordinance adding Chapter 130, Section 05, Creating an Ordinance Banning the Release of Balloons in the Town of Duck and/or Discussion/Consideration of Resolution 24-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing the Release of Balloons

Town Manager Havens explained that Council first discussed the issue at their February 7, 2024 meeting and wanted to have some education regarding the release of balloons and the damage that they cause when they land. He stated that Council had another discussion on the issue at their March 6, 2024 meeting and asked staff to draft both a resolution and an ordinance. He pointed out that the draft ordinance in Council's packets was taken from ordinances currently in effect in Surf City, Swansboro, Wrightsville Beach, Jacksonville, and Topsail Beach, as they all had very similar ordinances. He noted that the penalty of \$250 was the predominant penalty in the ordinances he saw. He

added that Council also had a resolution and could adopt both the ordinance and the resolution, just an ordinance or resolution, or neither.

Mayor Pro Tempore Thibodeau stated that it was great hearing from the public on the issue and that it has raised awareness about an issue that the Town is not directly responsible for but was seeing the effects of.

Councilor Chasen thanked the community members that were involved in the issue, pointing out that a lot of the letters that were sent in were from volunteers from N.E.S.T. and that she felt this was a global issue. She did not think if Council passed an ordinance that it was enforceable but it will send a message to the community as well being an educational opportunity for the visitors of Duck. She pointed out that the balloons were not coming from Duck but from other areas. She thought for that reason, it gives the Town a stance of what the plastics were doing to the environment.

Councilor Chasen moved to adopt Ordinance 24-01 as presented.

Councilor Whitman asked about the sling shot water balloons that are shot into the water. He pointed out that they were not in the draft ordinance and were just as much a factor as helium balloons. He asked how the ordinance will be enforced. Town Manager Havens explained that water balloons were listed in the definition portion of the ordinance. Police Chief Ackerman stated that this could be considered littering under the Town's ordinance or State law because the difference is that a water balloon does not float up into the sky. He stated that it could be tracked back to a person with the water balloons. He noted that the difficulty with enforcement was having an officer witness it happening in order to cite the person. He pointed out that the police will not catch everyone, but they would have to be in the right place at the right time in order to cite them. He added that people needed to continue to lobby the State legislature on the issue of banning balloons because a state-wide ban would be a misdemeanor offense.

Councilor Lingard thought it was a liability on organizers and not just the people that release the balloons. He stated that if the Sanderling Inn organized a wedding where there is a balloon release, they would also be liable. He thought it would be easier to enforce against them. He agreed that it was an education thing, adding that the education aspect needed to have teeth. He thought the wedding organizers and party organizers in the Outer Banks needed to know that balloons should not be released in Duck and that the organizers should be responsible if the balloons are released and issued a fine.

Mayor Pro Tempore Thibodeau thought that since the discussion started, organizations such as the Outer Banks Wedding Association and the Outer Banks Association of Realtors were aware and were raising awareness throughout the community. She hoped that hoteliers and others will catch on that there were other, more environmentally friendly ways to call attention to whatever is being celebrated. She didn't disagree with Councilor Lingard's comments.

Motion carried 4-0.

Mayor Pro Tempore Thibodeau asked Council for their thoughts on passing Resolution 24-03. Councilor Chasen didn't think it was needed. Councilor Lingard didn't think it would hurt to pass the resolution, adding that there was no reason not to pass it. Councilor Whitman stated that he was fine with passing the resolution adding that he agreed with the ordinance but he had a problem with the enforcement aspect of it. Mayor Pro Tempore Thibodeau thought when one sees the plethora of balloons that are found in Duck, they were coming from other states.

Councilor Lingard stated that the balloons he picked up on the beach earlier in the week were released at the same time from somewhere local. He stated that there were six balloons on the beach within a half mile of each other and thought they were released on the Outer Banks or close to the Outer Banks.

Town Manager Havens noted that the resolution explains the reasoning behind the ordinance. He added that the ordinance was a law of a resolution. Mayor Pro Tempore Thibodeau thought it was part of the education and something that could be pointed to.

Councilor Lingard moved to approve Resolution 24-03 as presented.

Motion carried 4-0.

NEW BUSINESS

Discussion/Consideration of Appointing an Individual to Serve on the Planning Board

Mayor Pro Tempore Thibodeau stated that the term of Joe Blakaitis on the Planning Board will expire on May 1, 2024, adding that Mr. Blakaitis had indicated that he would like to serve another three-year term to expire on May 1, 2027. She stated that staff had advertised the position opening and received an application from Miriam Rollin, but she withdrew her application for consideration. She noted that Joe Blakaitis was present and would answer any questions Council may have.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that he has served on the Planning Board since 2006 and was the Chair of the Board for approximately seven to eight years. He noted that Council and Town staff were the greatest people to work with.

Councilor Chasen moved to reappoint Joe Blakaitis to the Planning Board for a three-year term to expire on May 1, 2027.

Motion carried 4-0.

Discussion/Consideration of Authorizing Staff to Work with the Planning Board to Consider Stormwater Management Requirements on Single-Family Residential Properties

Director of Community Development Joseph Heard was recognized to speak. Director Heard stated that at their March 6, 2024 meeting, Council received a public comment concerning stormwater management relating to a special use permit application. He stated that during Council's subsequent conversation, the concept of requiring stormwater management on single-family residential properties was raised. He noted that since this would be a complicated issue to address, staff was seeking authorization to work with the Planning Board to study the issue of stormwater management on single-family residential properties and develop a recommendation for the Council's consideration.

Director Heard noted that there were three key points that Council needed to consider:

- The Town of Duck (and Dare County in prior decades) has not required stormwater management on single-family residential properties.
- Over 95% of the residential properties in the Town are already developed, placing a disproportionate burden for stormwater management on the relatively few remaining undeveloped properties.
- The Town requires stormwater management for single-family residential properties seeking to increase allowable lot coverage from 30% to 35%.

Mayor Pro Tempore Thibodeau thought the memorandum in Council's packets was really helpful because Council did hear about the worry regarding runoff from other development and the fact that the Town has 30% lot coverage which was, by some standards, fairly low in terms of density so there was a lot of places for the water to go. She added that if one wanted to obtain higher lot coverage to get to 35%, they could get a stormwater management plan to increase the density.

Councilor Lingard thought there was an expectation that the Town would protect current homeowners from someone building a large home next to them and water draining off that property onto theirs. He stated that there would be more and more redevelopment in Town with people tearing down smaller homes to construct larger ones. He did not think it would be of any harm for the Planning Board to look at the issue and studying the practicalities of it. He added that it would be up to Council as to whether anything gets adopted. He thought looking at it would be helpful.

Councilor Whitman stated that one could look into the stormwater management side of the issue. He understood that the State has new codes that one has to have to reserve septic systems on a property or it would be passed. He asked how it would work. He further asked if a stormwater management area would be able to fit on a 15,000 – 20,000 square foot lot. Director Heard explained that currently, people are allowed to raise their property to accommodate the septic system. He stated that the state law states that if a homeowner has to replace their septic system, they would not be allowed to replace the current septic system if it fails, in the same area and would have to use their reserve or

repair area. He explained that the homeowner would be allowed to fill in the repair area to accommodate the septic system. He thought it was probably an unintended consequence but it was something that would be permitted and the Town could not regulate it. He stated that it would be something that could come into play in certain circumstances but would not have much of an impact on anything that the Town would adopt.

Councilor Chasen asked if this was an area where staff would work with the Planning Board to develop best practices for sustainability in the long-term. She stated that it would not necessarily mean ordinances, but similar to what was completed for the sound side – the best practices for the sills. She asked if this would fall into that category. Director Heard stated that it could. He stated that he and Senior Planner Sandy Cross have been working together and she has been reaching out to other communities regarding an educational effort that would be broader. He pointed out that it was similar to the effort related to the beach nourishment project or the effort that the Tourism Board does with regard to respecting the ocean.

Mayor Pro Tempore Thibodeau stated that she liked that idea, adding that all of the work that was completed in the Community Development aspects of the stormwater were good educational pieces. She thought more personal responsibilities for one's stormwater could be an offshoot of that with the idea of septic health.

Councilor Whitman stated that he was fine with the Planning Board discussing it at their next meeting and have them come back to Council with an outline of their discussion points. Director Heard pointed out that it was something that has different layers to the issues so it could take longer for the Planning Board to discuss it. Councilor Whitman stated he was fine with that.

It was *consensus* of Council to have the Planning Board discuss the issue and bring it back to Council at a future meeting.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Attorney Hallow stated he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Director Heard gave a brief overview of the past month's permit activities to Council and the audience.

Public Information and Events Director Kristiana Nickens was recognized to speak. Director Nickens gave a brief overview of activities to Council and the audience.

Police Chief Ackerman gave a brief update on officer staffing and retention to Council and the audience.

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's fire activities to Council and the audience.

February FY 2024 Financial Presentation

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the February Fiscal Year 2024 financials to Council and the audience.

MAYOR'S AGENDA

Mayor Pro Tempore Thibodeau gave a tourism board meeting update to Council and the audience. She congratulated Community Planner Jim Gould and his wife on the birth of their son. She added that she became a grandmother again with a grandson that was born on March 30, 2024.

COUNCIL MEMBER'S AGENDA

Councilor Whitman thanked everyone that worked on the Memory Lane Brick walkway recently. He thanked Senior Planner Cross for getting 117,000 grass sprigs planted on the beach.

Councilor Chasen gave a CurrentTV Government Education and Access Channel meeting update to Council and the audience.

Councilor Lingard stated that with regard to the beach nourishment of the Village section of Town, people were discussing it with him all the time. He knew it would not be happening until 2027, but he was aware that it was a long process to set it up. He added that if the project was going to be done, Council needed to start discussing it sooner than later. Town Manager Havens stated that, absent any further direction from Council, the Town will be staying on the schedule that was discussed with Ken Willson at Council's Retreat where he would complete his work in the spring and early summer and come back to give an update in August. Councilor Lingard stated that he met with Nick Cohen of the Research Pier and talked about him possibly giving a presentation to Council and the audience on June 19, 2024.

OTHER BUSINESS

Additional Public Comments

Mayor Pro Tempore Thibodeau opened the floor for public comments. There being no one wishing to comment, Mayor Pro Tempore Thibodeau closed the time for public comments.

CLOSED SESSION

Councilor Whitman moved to enter closed session pursuant to North Carolina General Statute Section 143-318.11(c), for the purpose of discussing the litigation in the case of *Peter Pinto vs. Keith and Charlie Hardwick and Town of Duck* with the Town Attorney, and to preserve the attorney-client privilege.

Motion carried 4-0.

The time was 3:26 p.m.

Upon return from Closed Session, Attorney Hallow stated that he provided legal advice to Council but had nothing further to report.

Mayor Pro Tempore Thibodeau noted that the next meeting would be the Mid-Month Meeting on Wednesday, April 17, 2024 at 1:00 p.m.

ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 4:13 p.m.


Lori A. Ackerman, Town Clerk

Approved: May 1, 2024

Monica Thibodeau, Mayor Pro Tempore

