

Board of Selectmen

June 4, 2020

Remote meeting via telephone conference call

Present:

- Board of Selectmen: Ms. Karen Johnson, Ms. Mary Power and Mr. Joseph Fisher
- Mr. Tom Mayo, Town Administrator
- Ms. Michelle Monsegur, Assistant Town Administrator
- John Coughlin, Town Counsel

Call to order: 7:05pm

Ms. Johnson read the following statement:

“This meeting is being held remotely as an alternate means of public access pursuant to an Order issued by the Governor of Massachusetts dated March 12, 2020 Suspending Certain Provisions of the Open Meeting Law. You are hereby advised that this meeting and all communications during this meeting may be recorded by the Town of Hingham in accordance with the Open Meeting Law. If any participant wishes to record this meeting, please notify the chair at the start of the meeting in accordance with M.G.L. c. 30A, § 20(f) so that the chair may inform all other participants of said recording.”

Proclamation for LGBTQ Pride Month

Ms. Johnson stated that the Board of Selectmen has been approached to fly the Pride flag at Town Hall as part of the Hingham Pride Project, which has been a very successful effort to promote awareness and support for the LGBTQ+ population, particularly LGBTQ+ youth in Hingham. She added that the Board of Selectmen receive many requests for many things and have to carefully consider each request, steps to take and the risks that might be involved. She said that, on first thought, it seemed to be an easy decision since the Pride flag represents a protected group of individuals under Massachusetts State Law. She added that, while she displays a Pride flag at her home, the decision to fly one at Town Hall is different because there could be Constitutional ramifications when the State decides to speak on things. She cited the Constitutional Law Equal Protection Clause as an example of one ramification of endorsing a specific group. She explained that, if the State decides to speak on behalf of one group, then they may have to speak for each other group who asks for a similar endorsement. She explained that the concern is, absent of a policy or a long-established practice of flying flags other than the Constitutionally mandated and statutorily mandated flag of the United States and of the Commonwealth and absent of a practice or a policy relating to other visual displays, that the Town has risk associated with flying this particular flag at this particular time. She went on to say that, in order to move forward and to make sure everyone understands how the Town feels with respect to this issue, the Board of Selectmen, through Tom Mayo, Town Administrator, and Michelle Monsegur, Assistant Town Administrator, has crafted a proclamation of very strong and unambiguous language that wholly supports the recognition of, the support for and the importance of making a statement in respect of LGBTQ+ citizens.

John Coughlin, Town Counsel, explained that the Town’s current policy is that the flagpoles in front of Town Hall are used for official flags and military flags only. He said that the Town is under no legal obligation to expand the use of those flagpoles to any outside private group. If the Town decided to open up use of the flagpoles to outside groups, he recommended that the Town have a written policy

with which to process those requests and how to make a determination as to which flags would be approved and which flags would be denied. In those cases, he said, the Town would have to be prepared to defend a legal challenge from any group who requests to put up a flag at Town Hall. The most recent example of such a legal defense is currently taking place in Boston. The City of Boston allowed certain flags to be flown and then denied a religious flag. The City was subsequently sued in U.S. District Court in Boston and has spent three years defending that suit and that suit is current under appeal in the First Circuit Court of Appeals. We do not know what the outcome of that suit will be, but it is an example of legal ramifications that could arise if the Town should open the flagpoles to other group. He explained that, at the moment, the Town is not at risk for litigation, but if the Town opens the flagpoles to other groups, the Town could be put at risk for litigation and the expense of defending such litigation.

Mr. Fisher felt that Pride Month was an important time to talk about struggles to achieve equality in all aspects of our lives. He felt that it was important to move forward with the proclamation to recognize Pride Month.

Ms. Power thanked the citizens who had joined the meeting and who had reached out to the Board in different ways to lend their voice to this conversation. She said that the Board saves proclamations for significant events and the Board believes that this is a significant event. She felt that, this proclamation represents a personal commitment of the Board in carrying out their obligations to the Town and that they are going to live up to the principals that are contained in that proclamation. She added that, on top of the cost of potential litigation, there is also a time issue. If Town employees are working on gathering information and other duties related to litigation, the employees could be taken away from other important Town work. She felt this was a challenging decision due to the fact that the Town does not have a policy in place. She wanted to make clear that the Town's decision not to fly the Pride Flag in no way demonstrates a lack of support for the Pride initiative. She expressed her support for the words in and the spirit of the proclamation and committed to upholding it.

Chairman Johnson read the following proclamation:

**Hingham Board of Selectmen
Lesbian Gay Bi Trans Queer or Questioning Plus (LGBTQ+) Pride Month Proclamation**

Whereas, Hingham is a community that values diversity and inclusion, and is committed to equal rights and opportunities for all its residents; and

Whereas, Hingham recognizes the important contributions of its LGBTQ+ residents to the Town's history, culture, economy, and civic life; and

Whereas, June 28, 2020 marks the 51st anniversary of the Stonewall Riots, an event that gave rise to the beginning of the Gay Rights Movement in the United States; and

Whereas, June is now designated across the country and in the Commonwealth as Pride Month; and

Whereas, we celebrate the accomplishments of the LGBTQ+ community towards securing important rights and freedoms, often through struggle and adversity; and

Whereas, we remain vigilant against continued oppression and discrimination against the LGBTQ+ community, and against any new political efforts to overturn these accomplishments; and

Whereas, we affirm our support for our LGBTQ+ residents, including our students and our employees, vendors and visitors and stand with them to protect their civil rights and ability to live openly without fear; and

Whereas, we congratulate the members of the Hingham Pride Project for their efforts to increase LGBTQ+ visibility and to support LGBTQ+ citizens, particularly our LGBTQ+ youth, through the distribution of over 1,000 Pride flags that are flying across Hingham; and

Whereas, we acknowledge the important efforts of the Hingham School Committee, the School Department leadership, teachers and staff to support our LGBTQ+ students and to help all students meet core educational competencies that prioritize social-emotional learning, health and safety and respect for others;

Now, therefore, we the Board of Selectmen of the Town of Hingham, do hereby proclaim June 2020 as LGBTQ+ Pride Month.

Public Comment or Questions

Alyssa Porter asked for clarification with regard to the time employees spend on legal issues at Town Hall. She asked if the situation would be any different if the Town had a cadre of pro-bono lawyers ready to fight any legal action against the Town in support of the Pride Flag being flown. She further asked if this could be put forth in an Article to Town Meeting. Ms. Johnson advised that such a policy would be something the Board of Selectmen would enact, rather than Town Meeting, and they would do so after careful research and it would be part of a public process. She reiterated that the current practice is to only fly Constitutional flags and flags related to our veterans and Police. She felt that the decision would fall under the jurisdiction of the Board of Selectmen. She agreed with Ms. Porter that Hingham has a long-standing practice of enlisting the help of volunteers and could do so if the Town decided to craft a policy in the future.

Christina O'Connor ask what flags fly at Town Hall and what the process was that the Town went through in order to get them flown at Town Hall. Ms. Johnson replied that the Town flies the flag of the United States of America, the flag of the Commonwealth, the POW MIA flag, sometimes flies a flag in memory of veterans of World War I, as well as the Peace Officers Memorial Day flag which memorializes Police and Public Safety officials who have been killed or disabled in the line of duty. She explained that the process has been that those flags are related to services that the Town provides. To her knowledge, there have not been any other flags flown at Town Hall outside of the Hingham municipal government service group.

Veterans Services Officer, Keith Jermyn added that, constitutionally, municipal buildings must fly the flag of the United States, the POW MIA flag, the flag of the Commonwealth and the Town of Hingham flag. He also said that, in addition to the Peace Officers Flag, Hingham Town Hall also flies a Gold Star flag during Memorial Day. The Gold Star flag is flown to remember all those families who have lost loved ones in the line of duty from the Revolution to today.

Ms. O'Connor also asked if the Board of Selectmen could choose to fly a particular flag different from those already being flown at Town Hall without a request from an outside group. Ms. Johnson replied

that the Board of Selectmen have the custody and control of the buildings and the attributes of those buildings in the Town. Ms. Power felt that, in a matter of great public interest such as this, it would not be appropriate or responsible for the Board of Selectmen to make a unilateral decision like that without public process. She added that, if the Board wanted to do that, it would have to take place during a public meeting where the public had the opportunity to make comments and ask questions. Ms. Johnson agreed.

Alyssa Porter asked some additional questions regarding the Peace Officer Flag and the Gold Star Flag. Ms. Johnson clarified that those are governmental flags.

William Buckley stated that he has begun a petition to have the Pride Flag flown at Town Hall and added that it now nearing 5,600 signatures. Ms. Johnson applauded his efforts and was grateful that people are stepping up for the cause. She felt that the work of the Pride Project is an important signal to our neighbors and our friends and our co-workers of the values of the Town. She also felt that the proclamation is undeniably direct in terms of where the values of the government stand with respect to this issue.

Katie McBrine, 157 Central Street, wondered if the Cultural Council could request to fly the Pride Flag since it was a government body. Ms. Johnson said that there were two components to what the Town has done in the past. There was a government body asking to fly a flag and that flag directly relates to a service provided by the Town. Ms. Johnson felt that, in the absence of a policy, the Town is not in a position to fly the Pride Flag at the moment.

Ms. Power added that Town Counsel has advised the Board that, in keeping the flags flown at Town Hall to governmental flags, the Town is minimizing its legal risks. She felt that the Board of Selectmen are charged with protecting the citizens of the Town and have to make sure that the decisions the Board makes do just that.

Libby Lewiecki, 370 Gardner Street, asked how the Town would go ahead with getting a more comprehensive policy so that the Town would be prepared to fly the flag next year. Ms. Johnson said that the Board could decide to take up the issue with the help of legal counsel. Ms. Power added that this question is most appropriately considered during the discussion of the Board's annual goals and objectives, a public discussion that typically takes place at the start of the new fiscal year.

Ms. Johnson asked if there were any questions from the public with respect to the Proclamation and there were none.

Mr. Fisher commented that an unanswered question for him was the impact of the First Amendment on the flag issue. He hoped that there was a resolution where the Town could choose to fly one flag without the negative consequence of then having to fly every flag requested, including those that the Board would deem inappropriate. He fully endorsed the proclamation.

Michelle Ayer, on behalf of the School Committee, appreciated that the Board of Selectmen acknowledged the work the Hingham Public Schools and their faculty are doing to support the LGBTQ+ students.

Vote: Mr. Fisher made a motion to adopt the Lesbian Gay Bi Trans Queer or Questioning Plus (LGBTQ+) Pride Month Proclamation as follows:

Whereas, Hingham is a community that values diversity and inclusion, and is committed to equal rights and opportunities for all its residents; and

Whereas, Hingham recognizes the important contributions of its LGBTQ+ residents to the Town's history, culture, economy, and civic life; and

Whereas, June 28, 2020 marks the 51st anniversary of the Stonewall Riots, an event that gave rise to the beginning of the Gay Rights Movement in the United States; and

Whereas, June is now designated across the country and in the Commonwealth as Pride Month; and

Whereas, we celebrate the accomplishments of the LGBTQ+ community towards securing important rights and freedoms, often through struggle and adversity; and

Whereas, we remain vigilant against continued oppression and discrimination against the LGBTQ+ community, and against any new political efforts to overturn these accomplishments; and

Whereas, we affirm our support for our LGBTQ+ residents, including our students and our employees, vendors and visitors and stand with them to protect their civil rights and ability to live openly without fear; and

Whereas, we congratulate the members of the Hingham Pride Project for their efforts to increase LGBTQ+ visibility and to support LGBTQ+ citizens, particularly our LGBTQ+ youth, through the distribution of over 1,000 Pride flags that are flying across Hingham; and

Whereas, we acknowledge the important efforts of the Hingham School Committee, the School Department leadership, teachers and staff to support our LGBTQ+ students and to help all students meet core educational competencies that prioritize social-emotional learning, health and safety and respect for others;

Now, therefore, we the Board of Selectmen of the Town of Hingham, do hereby proclaim June 2020 as LGBTQ+ Pride Month.

Voted this 4th day of June 2020 by Karen A. Johnson, Mary M. Power, Joseph M. Fisher

Executive Session

The Chair States: The Board will enter into Executive Session to discuss strategy with respect to potential litigation because discussion of this matter in Open Session may have a detrimental effect on the litigating position of the Town. The Board will not reconvene in Open Session.

Roll Call Vote:

Mr. Fisher: yes

Ms. Power: yes

Ms. Johnson: yes

Public Meeting adjourned at 2:53 pm

Documents: A complete meeting packet of supporting documentation is on file and available for public review in the Board of Selectmen's office.