



# Town of Vienna

## Meeting Minutes

### Town Council Meeting

Charles A. Robinson Jr.  
Town Hall  
127 Center Street South  
Vienna VA, 22180

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Monday, June 1, 2020

8:00 PM

Charles A. Robinson, Jr. Town Hall, 127  
Center Street, South

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#### Regular Meeting

#### 1. Roll Call

**Present:** 7 - Council Member Linda Colbert, Council Member Pasha Majdi, Council Member Douglas Noble, Council Member Nisha Patel, Council Member Steve Potter, Council Member Howard J. Springsteen and Mayor Laurie DiRocco

#### 2. Resolution for Continuity of Government

A. [20-1733](#) Resolution for Continuity of Government

**A. 20-1733 Resolution for Continuity of Government**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

#### 3. Acceptance of the Minutes:

A. [20-1732](#) Acceptance of the Regular Council Meeting Minutes of May 11, 2020 and the Work Session Minutes of May 18, 2020.

**A motion was made that the Minutes be accepted. The motion carried by a unanimous vote.**

#### 4. Receipt of petitions and communications from the Public that are not on the Agenda. (Limited to 5 minutes per issue and no formal action can be taken this evening)

*There were no Petitions and/or Communications from the Public.*

#### 5. Closed Session

*It was moved that the members of the Vienna Town Council be polled to affirm that a Closed Session was held, Monday, June 1, 2020 virtually via ZOOM in accordance with the Virginia Code Section 2.23711.A.(1), for discussion or consideration of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or re-appointment to Town Boards and Commissions.*

*It was further moved that the Certification Resolution be adopted in accordance with State Statutes, and that the Town Clerk is authorized to execute the Certification Resolution.*

*And it was further moved that the Closed Session be continued to Monday, June 15, 2020 at 7:30 PM in accordance with Virginia Code Section 2.23711.A.(1), for discussion or consideration of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or re-appointment to Town Boards*

and Commissions.

*Motion: Councilmember Colbert  
Second CouncilMember Springsteen.  
Motion carried unanimously.*

*It was moved that Myles Temple be appointed to the Conservation Sustainability Commission for a two-year term. Said term shall be effective from June 2, 2020 through June 2, 2022.*

*It was further moved that Simeon Moats be appointed to HVI, Historic Vienna Inc., for a two-year term. Said term shall be effective from June 2, 2020 through June 30, 2020.*

*Motion: Councilmember Colbert  
Second: CouncilMember Noble.  
Motion carried unanimously.*

**This item was approved as shown above**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

## 6. Public Hearings

### A. [20-1704](#)

Public hearing to repeal or extend the temporary suspension of the Maple Avenue Commercial (MAC) Zone to June 30, 2022

*Mayor DiRocco called the Public Hearing to order at 8:30 PM. Town Clerk Melanie Clark called the roll; all members of Council were present.  
After reading aloud guidelines for conduct Mayor DiRocco called on Cindy Petkac, Director of Planning and Zoning, to provide a summary to repeal or to extend the temporary suspension of the Maple Avenue Commercial (MAC) Zone to June 30, 2022. At its August 19, 2019 meeting, Town Council directed staff to draft amendments to MAC Zone regulations as its top priority and simultaneously to consider amendments to the regular commercial code (C-1, C-1A, C-1B, and C-2 in chapter 18 of the Town Code) that affect the MAC. At its November 4, 2019 meeting, Town Council voted to extend temporary suspension of MAC Zone regulations to June 30, 2020.*

*At its December 9, 2019 meeting, Town Council voted to direct planning and zoning staff to expand the scope of the MAC Zone and other proposed commercial zone amendments, as directed by Council to date.*

*Council Member Potter, referencing the document provided by Stephen Kenney, Chairman of Planning and Zoning Commission, noted a lack of clarity on the implications of either decision and requested input from Director Petkac. Director Petkac explained that a vote for extension would retain the MAC as part of Chapter 18. A consultant would use this as a starting point for revision. A vote for repeal would clear the slate. The MAC could be used as a reference, but the goal would then be to determine the best process to put in place to achieve the Maple Avenue the Town desires.*

*Town Attorney Briglia agreed with Director Petkac reiterating that a repeal indicated that the MAC is essentially "off the books".*

*Council Member Potter further expressed concern that should the MAC be repealed the positive components of the MAC would be lost. He echoed concerns of Chairman Kenney that assurances must be in place that these be clearly identified and retained for any re-write. Director Petkac remarked that the first step in the process is to garner feedback from all stakeholders. The consultant's role is to assist moving through the process. Town Attorney Briglia reiterated that the Planning Commission is required by both Town and State code to provide their recommendation on any amendment to a zoning ordinance.*

*In response to Council Member Patel's question, Director Petkac stated that, with an extension, the MAC will continue to be a part of Chapter 18. This would then serve as a foundation on which the consultant would build. If it were repealed the consultant would start from scratch. Council Member Patel pointed out that the Council has learned a great deal, over the past ten years, in relation to the MAC. Bringing in a consultant, in addition to choosing to repeal would potentially result in a repetition of effort. She questioned whether a consultant couldn't simply modify what is already in the MAC. Director Petkac responded that, while this could be done, it may be more effort than simply starting with a clean slate, reiterating that a repeal would be the most efficient means to move forward. Council Member Patel asked what guarantees could be put in place to assure that the new version of the MAC would not be worse than what is already in place. Further, should the MAC be repealed, what special exceptions would be in place for developer submissions? Director Petkac noted that the consultant contract award process would provide further opportunities for Council, Planning and the Public to weigh in on code content. If the MAC is repealed, any developer submissions would be subject to current zoning.*

*Council Member Colbert pointed out that an extension would allow a consultant to look at the current MAC and provide their assessment of existing content; voting for a repeal at this point may result in discarding all that is effective. She was assured by Director Petkac that a two-year extension could be terminated at any point, and the MAC repealed.*

*Council Member Springsteen pointed out that the MAC failed in practice due to the fact its complexity, its over ambitious view and its divisiveness. An extension may send an unintended message that Council is failing to act. Further it could serve to impede the consultant and stall the overall process. Given the uncertainty of the economy, he urged Council to take this time to clean up the code so as to position the Town to move forward without conflict.*

*Mayor DiRocco called for Public comment, first from those in attendance at Town Hall.*

*Ray Baldwin, 121 Moore Ave., SE. urged Council to consider the effort expended in drafting the original MAC document. He reports having spoken with several original committee members who expressed dismay that Council would discard all that has been done. A repeal would send the wrong message to Town residents who invested time and effort into the process. Drawing on his experience as a member of BAR, he asserted that much of the divisiveness stems from a few specific developments, 444 Maple Avenue, the Vienna Market, and the Flagship Carwash. Residents judge the effectiveness of the MAC by these developments; Flagship Carwash - too tall, too close to the curb and too massive, and the future Vienna Market - a giant hole in the ground. However, as the Vienna Market takes shape,*

he believes residents will understand the positive that can evolve from the MAC and choose to rewrite rather than repeal. He urges Council to avoid the expense of an outside consultant and to rely on the hundreds of resident consultants who will "Work for free and tell you exactly what they want". He concluded his comments noting that "if you are responsive to your Town, you will listen to them".

Ray Brill, 501 John Marshall Dr., NE. pointed out that despite the hard work put into the original MAC writing, that is not reason enough to extend it. Often, what is put on paper is different when put into practice. Developers and residents have stated that the MAC, as it is written, is cumbersome, complex and difficult to interpret. After speaking with a couple hundred residents over the last several months, Mr. Brill noted that the vast majority do not support the current MAC. The choice is to continue with an extension or incorporate the good content into a new document that meets the approval of the majority, (our bosses). There is no reason to be fearful of a repeal. For something to work it must be simple as possible and understood throughout the community. "It is incumbent on us to work with residents across the community to assure that they full understand what we are trying to do".

Mayor DiRocco requested comments via ZOOM.

John Potts, 134 Wade Hampton Dr., (via ZOOM), opened his remarks stating that the MAC has failed the Town in three fundamental ways:

1) By-Right Imperative

Three developers have amply demonstrated, and the Town Attorney has agreed, that the building design meeting the ordinance stipulated dimensions is the developers by-right. The amount of time, money and effort fruitlessly wasted in an effort to prove otherwise has been shown to be a misguided and naïve illusion.

2) The 3-D Impact

Scant attention has been given to fleshing out the MAC dimensions in a 3-D representational model which would have clearly shown the canyon effect these buildings would impose on Maple Avenue, with its otherwise attractive laidback skyline of trees and MAC's 35 ft. high structures; the amount of public assessable space and sky space their outsized mass would swallow up; the way the uncompromising form of the rear space would overwhelm adjacent residential properties; and the cumulative traffic these buildings would generate along an already congested commuter corridor.

3) Where Were the Numbers?

No one calculated the financial benefits to the developer visa vie those of the Town. Developers have been able to flip these rezoned sites with as much as a 50% return (one example illuminated a \$2.8 M return on investment), before they even dig a single trench. It will be over twenty years before the Town can recoup these dollars from the increased taxes on these properties. This one flaw alone should have been an alarm bell for the MAC. These failings have so tarnished the concept of MAC that there is absolutely no option than to repeal it now so it is "off the books". Council should consider working with and adjusting the C Code, in particular reducing the 51% commercial requirement, using management by exception, as apparently operates at this time so well in Falls Church. Do the numbers first and focus on promoting, especially during this pandemic, commerce development around a confined area in the center of Town, as the Planning Commission has proposed. Repeal the MAC.

Mary McCullough, 1120 Ware St., thanked Council for the opportunity to serve on the Planning Commission. She expressed concern regarding the public message sent should the MAC be repealed and supports extending the MAC until a Code rewrite

can be completed. To repeal the MAC suggests that the document in its entirety was a mistake. It sends the message that "we harmed; we did something that wasn't right". While there are many problems with the MAC as it is applied today, she urges Council to rewrite and correct rather than send the message that the drafters did not have good intent.

Mayor DiRocco called for email testimony. Town Clerk Clark read the submissions as follows:

*Comments for Town Council Public Hearing on June 1 2020*

*Dear Members of the Town Council:*

*We urge you to vote to extend the suspension of the MAC rezoning code until June 30, 2022 or until a time necessary to get the MAC regulation right. It is clear to us that no new projects should be approved under the present MAC rezoning code, but we do not believe that it should be repealed. Rather it should be revised with the lessons that we have learned from all that has transpired since the first MAC development project was approved and constructed.*

*In our opinion, the MAC code rezoned projects approved to date do not meet the purpose and intent of the MAC rezoning code. Rather the language of the MAC code's sections have allowed developers to technically meet the regulations, resulting in buildings that detrimentally impact Vienna residents, and particularly, residents of the surrounding neighborhoods. The present MAC rezoning code has failed the residents of Vienna and their concerns were never adequately taken into account, such as the concerns on the impact of the mass and density of these buildings on neighborhood compatibility, on the lack of uninterrupted public open space, on the setbacks on all sides of the buildings, and on the impact on schools and traffic.*

*As a result, Vienna citizens organized and engaged the Vienna Town Council, commissions, boards and departments and provided input through public hearings, meetings, written comments, visual preferences and general contacts with Town of Vienna employees. We are concerned that if the MAC rezoning code is repealed, this input may not be fully considered in context, when a more comprehensive review of the zoning code inevitably occurs in the future. The MAC rezoning code should be reviewed at the time of this comprehensive review, and all of the experiences and information that have been obtained by the Town of Vienna bodies and departments, as well as feedback from Vienna residents, should guide this review.*

*We understand that DPZ has stated that all pertinent work accomplished to date by staff, committees, commissions, boards, and Council, as well as relevant results from public comments, surveys, and workshops shall be retained and shared with appropriate groups for use in comprehensive review and update. But we believe that this review will be easier if the MAC rezoning code is still present in the zoning code, so that there is context when evaluating the different troublesome sections of the present MAC code. We are concerned that specific problems and criticisms of these sections will be lost if these sections are not even in the code. It will be like starting from the beginning, and such a waste of time and effort for everyone. We think that the phrase from DPZ that concerns us the most is that all this information will be "retained and shared." This phrase provides no guarantee that these relevant results will be considered and used in guiding a review of the MAC rezoning code. We believe that leaving the MAC code suspended but still part of the code, will make it easier for DPZ and the outside consultant to evaluate and compare specific proposed revisions against the present MAC code.*

*Therefore, we believe that there are advantages in extending the suspension of the MAC rezoning code so that it can be evaluated section by section utilizing the input from Vienna residents during the upcoming zoning code update.*

*Please EXTEND THE SUSPENSION of the MAC rezoning code and please DO NOT*

*REPEAL it.*

*Thank you for your service.*

*Regards,*

*Jayme & Bill Huleatt*

*413 Roland Street SW Vienna, VA 22180 jayme.huleatt@gmail.com*

*Roy Baldwin*

*Location:*

*Submitted At: 11:43pm 06-01-20*

*I feel that people are dissatisfied with the MAC because all they have seen so far has been the Flagship Carwash and a hole in the ground where Marco Polo used to be. As Vienna Market rises people will see how the MAC can incentivize a property owner to deliver a development that is an asset to the Town.*

*Matthew Di Fiore, 207 Owaissa Crt., SE*

*Location:*

*Submitted At: 11:32pm 06-01-20*

*DO NOT repeal MAC; extend MAC suspension for 2 years. Case to repeal MUST be compelling; I don't believe that is the case now. Extension costs nothing and guards against unforeseen 2nd or 3rd order challenges plus it keeps good aspects of MAC in town code. No need to recreate in future. Zoning consultant review can recommend MAC aspects worth keeping. Planning commission recommendation seems to support extension. Procedurally, this item doesn't support the choices offered, 500 char not enough.*

*Laura Bligh*

*Location:*

*Submitted At: 11:00pm 06-01-20*

*As a resident who has been vocal in opposition to several MAC projects, I am in favor of getting rid of MAC altogether. Please ensure that any vote to "kill" MAC is coordinated with the suspension of MAC so that no new MAC projects can be submitted in the meantime.*

*I remind the Town Council and future Councils to keep in mind what the problems with MAC are. I fear the planned rewrite of the zoning code may result in unwanted MAC elements becoming part of the code. Don't let this happen. From Laura Bligh, 226 Glen Avenue SW.*

*I ask you to put this item on the agenda for the n*

*Mayor DiRocco called for Council input.*

*Council Member Potter reminded everyone that the Planning Commission has identified repeal as the most efficient option. He further noted that as the current financial situation remains unknown, the ability to hire a consultant also remains unknown. The supporters of a repeal have expressed a desire to start with a clean slate and move forward unencumbered by the past, while the supporters of an extension are seeking an opportunity to preserve what is effective in the MAC. He posed the question of whether it would be possible to repeal the current MAC regulations with the caveat that Planning would work with BZA to develop, and present for Council approval, a list of items in the current MAC that should be retained. This list would be shared with any consultant as a guidance document in the development of a comprehensive reorganization and update of the subdivision and zoning ordinance Chapters 17 and 18. Town Attorney Briglia responded that he does not recommend this form of a "qualified repeal" however Council can task the Planning Commission with that scope of recommendation for either a repeal or an extension and rewrite.*

*Council Member Potter noted that if the aforementioned list is provided to a consultant then it would appear that most of the earlier expressed concerns will have been eliminated. It is his opinion that with this approach many of the concerns expressed tonight will have been addressed and the process will become more efficient, as the consultant will begin with a list for guidance in their effort.*

*Council Member Colbert expressed agreement with Council Member Potter but would recommend adding the BAR to the mix. She did express concern that should Council choose to follow this plan of action, it would effectively limit the consultant from reviewing the MAC in its entirety and providing their perception of its effectiveness, as written.*

*Council Member Noble made a motion to close the Public Hearing. Council Member Springsteen seconded the motion. With a unanimous vote, the Public Hearing was closed at 9:10 PM.*

*Council Member Noble set forth a motion to repeal the MAC. The motion was seconded by Council Member Springsteen. Council moved to discussion during which Council Member Colbert offered an amendment to the motion, which was seconded by Council Member Noble. Addition of the amendment passed unanimously. Vote on the full motion with the amendment passed in a 4 to 3 vote.*

*It was moved to repeal Article 13.1 - MAC Maple Avenue Commercial Zone Regulations of Chapter 18 of the Town Code.*  
*and*

*It was further moved that all the MAC documents, including reports, studies, surveys, resident comments and public hearings, Planning Commission and BAR comments, Council comments, all be included in the Zoning Code update for the consultant's review and recommendations.*

*and*

*It was further moved to direct the Town Clerk to advertise a Notice of Intent to Adopt.*

**A motion was made by Council Member Noble, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:**

**Aye:** 4 - Council Member Colbert, Council Member Majdi, Council Member Potter and Council Member Springsteen

**Nay:** 3 - Council Member Noble, Council Member Patel and Mayor DiRocco

## 7. Regular Business

### A. [20-1736](#)

**Proposed Emergency Ordinance to Permit Temporary Waivers of Zoning Regulations and Review for Business Operations Adversely Affected by the Ongoing Pandemic Disaster**

*Mayor DiRocco called upon Natalie Monkou, Economic Development Manager and Mike D'Orazio, Deputy Director, Planning and Zoning Commission, to provide a summary of the request.*

*Council Member Springsteen, while expressing support for the Ordinance, proposed that the Ordinance be extended through the Fall of 2020. Town Attorney Briglia noted that, according to Town Charter, an emergency ordinance is effective for 60*

days, unless Council takes further action. If Council should choose to readopt, then on June 15th, the Town Clerk would be directed to advertise for re adoption of the emergency ordinance (just like the existing Continuity of Government Ordinance). Following this action, a date is set (recommends that it be in step with the Continuity of Government Ordinance, September 30, 2020).

Council Member Majdi expressed agreement for this proposal. He further offered that Council consider similar action for site plan modification for new and existing Town businesses as a way to ease restrictions on outdoor seating. Additionally, he recommended Council look at these current modifications on a more permanent basis.

Council Member Noble recommended taking this a step further by actively writing this into the Code, which would eliminate the need for a site plan modification.

Town Attorney reiterated that a State of Virginia Executive Order currently limits outside seating to 50% of the minimum indoor seating capacity.

Town Manager Mercury Payton recognized and thanked all those involved with enacting the emergency ordinance over the weekend.

Council Member Noble made a motion to approve an Emergency Ordinance pursuant to the expanded use of outdoor business operations for outdoor dining and other commercial activities subject to conditions outlined in the emergency ordinance.

He further moved to direct the Town Clerk to advertise for the re-adoption and notice of intent to adopt the emergency ordinance to permit the temporary waiver of zoning regulations.

Motion was seconded by Council Member Springsteen and passed with a unanimous vote of Council.

**A motion was made by Council Member Noble, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

**B. [20-1707](#)**

Request appropriation of federal CARES Act funding

*It was moved to approve the \$2,886,552 CARES Act spending plan as presented.*

**A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

**C. [20-1706](#)**

Request approval for issuing an emergency PO in the amount of \$39,954 to Atlantic Duct Cleaning

*It was moved to approve expenditure of \$39,954 with Atlantic Duct Cleaning for cleaning at Town facilities.*

**A motion was made by Council Member Springsteen, seconded by Council Member Potter, that the Action Item be approved. The motion carried by the following vote:**



**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

**D. [20-1662](#)** Request approval for spending \$40,000 with Arthur Construction for construction of 441 and 443 Orchard Street NW drainage improvements

*It was moved to approve expenditure of \$40,000 with Arthur Construction for construction of 441 and 443 Orchard Street NW drainage improvements.*

**A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

**E. [20-1709](#)** Appointment of Town Officials for Fiscal Year 2020-21

*It was moved to re-appoint the following Town Appointed Officers for Fiscal Year 2020-21:*

*Mercury T. Payton, Town Manager, pursuant to a contractual agreement; and*

*Steven D. Briglia as Town Attorney, pursuant to a contractual agreement between the Town of Vienna and Steven D. Briglia for legal and prosecuting services; and*

*Melanie J. Clark as Town Clerk; and Marion Serfass as Town Treasurer.*

**A motion was made by Council Member Colbert, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

**F. [20-1683](#)** Addendum to Town Manager Employment Agreement

*It was moved to adopt the addendum to the Town Manager employment agreement for the fiscal years beginning July 1, 2020 and July 1, 2021.*

**A motion was made by Council Member Colbert, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:**

**Aye:** 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

## 8. Meeting Adjournment

*THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6304, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.*