

# **TOWN COUNCIL SPECIAL MEETING**

## **March 29, 2023**

### **I. ROLL CALL**

A special meeting of the Jamestown Town Council was held on March 29, 2023. Town Council Members present were as follows: Nancy A. Beye, Mary Meagher, Michael G. White, Randy White, and Erik Brine (virtually via Zoom).

Also, in attendance: Interim Town Administrator Edward A. Mello, Solicitor Peter Ruggiero, Harbormaster Steven Bois, Finance Director Christina Collins, Public Works Director Michael Gray, and Town Clerk Roberta Fagan

### **II. CALL TO ORDER, PLEDGE OF ALLEGIANCE**

Town Council President Beye called the meeting of the Jamestown Town Council to order at 5:01 p.m. in the Jamestown Town Hall Rosamond A. Tefft Council Chambers at 93 Narragansett Avenue and led the Pledge of Allegiance.

Vice President Meagher made remarks regarding the National Vietnam War Veteran's Day Ceremony that took place earlier in the day at Cedar Cemetery, in honor of the 50<sup>th</sup> anniversary, March 29, 1973, marking the end of a 60 deadline for all United States soldiers and support personnel to leave Vietnam. She gave thanks to Dennis Webster and the American Legion/VFW for organizing the ceremony held near the grave of Cpl. Joseph T. Vandevender, the only known Jamestown resident who died during that war. Vice President Meagher gave a heartfelt thanks to fellow council member and Vietnam War Veteran Michael Gray for his service and inspiration.

Vice President Meagher acknowledged the emails and petitions received in support of the CMS/Jamestown Newport Ferry (CMS). The conversations between the Town and CMS involved complex issues about ownership and tenancy, federal grants, public access, commercial viability, and public liability. As a private business, CMS had every right to request that conversations be confidential, due to specific and likely proprietary information involved. In her opinion, negotiations require privacy and are not easily conducted in a crowd. Since March 1, confidentiality was no longer the issue, but rather the threat of litigation. Vice President Meagher answered as many phone calls and emails as she could. She has taken the time to research the history of the project and gave a summary of the timeline as she understood it. Two main concerns remain: 1) the disappearance of public access, and 2) the liability involved. In summary, financial viability and public liability in operating the ferries are at issue; and Vice President Meagher believes these issues can be resolved.

Councilor Brine thanked Vice President Meagher for recognizing National Vietnam War Veteran's Day. He is the son of a Vietnam War Veteran and gave thanks to all that served, especially fellow Councilor M. White. Councilor Brine continued by agreeing with Vice President Meagher's statements regarding the CMS issue. He would like to see more affordable ferry passenger rates in the future. The dichotomy of ferry use versus commercial use at the public ferry terminal remains a challenge. Councilor Brine looks forward to seeing how else that space is utilized to balance public and ferry use.

### III. UNFINISHED BUSINESS

- A) Review, Discussion, and/or Action and/or Vote: Regarding the Project to Remove and Replace the Town-owned Inner Touch and Go Dock at East Ferry with a Shared Use Public Ferry Boat Terminal and Public Touch and Go Dock Including the Use of East Ferry for ferry boat and other boating operation.

Interim Town Administrator Mello gave an overview of the Town staff's recommendation for a temporary policy for the management of the concrete float (ferry dock) located at East Ferry. Memorandum and Policy Recommendations are attached.

A lengthy discussion ensued.

Councilor R. White asked if the Interlocal Trust was consulted on the minimum insurance coverage. Finance Director Tina Collins stated the Town has a \$5 minimum liability policy, and the Trust recommended CMS provide a minimum of \$2 million liability.

Councilor M. White added the Town Council is working on enabling the CMS/Jamestown Newport Ferry to operate for the 2023 boating season. The unresolved issues will be further remedied in the coming months. The Town staff are tasked with policy development and the Town Council is charged with implementing those policy recommendations.

Vice President Meagher asked what the anticipated start date was for the 2023 ferry service season. CMS representatives confirmed May 17, 2023. The proposed policy is similar to the Newport/Perrotti Park ferry landing arrangement and requirements for Public Utilities Commission (PUC) certified vessels.

President Beye read a letter dated March 22, 2023, from CMS Atty. Michael Resnick to the Town Council for the record. For clarification, she asked if the Town Council would be considering the public ferry service and permissible use of the public ferry landing, the Coastal Queen, and/or charter boats.

Atty. Michael Resnick stated that all of the above should be discussed. The Federal Highway Administration (FHWA) should determine the permissible use of the ferry dock. The sub-recipient agreement is not the only document to refer to. The proposed policy recommendations is a great start. There is a United States Department of Transportation (USDOT) and FHWA jurisdiction that the Town and CMS need to understand. Atty. Michael Resnick stated this is about use, not ownership.

Councilor Brine asked for clarification on the use associated with the public ferry landing. If FHWA takes too long to advise on permissible use, would CMS file a lawsuit? Atty. Resnick answered CMS would stay any type of filing in federal court as long as the parties could agree to mediation. Councilor Brine questioned why the proposed policy was not viewed as commercially viable.

Councilor R. White and Atty. Resnick continued the dialogue. The claim of ownership was discussed at length. An exclusive lease to CMS could jeopardize the Town's position with the grant.

Atty. Christian Infantolino explained CMS needs to have an agreement in place with the Town of Jamestown to provide insurance, per an insurance underwriting requirement. CMS needs an agreement in addition to a permit. As far as the ownership issues, the guidance documents state the ferry terminal assets are owned by the Town as long as it is being utilized as a ferry terminal.

If used for any other purpose, the ownership reverts to the PUC license holder/controlling authority, CMS. The controlling authority is also responsible for the maintenance and upkeep of the assets. The proposed policy does not cover CMS business operations sufficiently. The prohibition of overnight dockage remains a major issue. CMS owns 10 moorings. It is most appropriate for general maintenance to take place dockside.

Interim Town Administrator Mello suggested rephrasing the policy as an agreement. Charter and private event operations are two distinct business operations in addition to ferry operations.

Atty. Resnick suggested the Town could benefit financially when the vessels are used outside of the PUC posted schedule. He acknowledged there are some gray areas regarding the permissible use of the public ferry landing that the FWHA would need to address.

CMS stated the Coastal Queen provides relief when there is increased ferry ridership. When the vessels are not dockside they are on the moorings. The safest place for the vessels during stormy weather is on a mooring. According to the annual report, two-thirds of the CMS business operations are cruise, tours, and private charters; and one-third are ferry operations.

Newport Harbormaster Steve Land provided information to the Town Council. The Perrotti Park ferry landing is available to PUC-registered ferries that have a posted route in Newport Harbor. Newport charges \$250 a foot for the season for overnight dockage, calculated on the largest PUC ferry. He also described permissible types of general daily marine vessel maintenance. Proper signage and staff enforcement help ensure smooth operations.

A motion was made by Vice President Meagher with a second by Councilor M. White to approve the 2023 seasonal solution for the Town of Jamestown and CMS: Use of the Ferry Dock (concrete float) located at East Ferry

- Seasonal Permit at no cost: Passenger ferries are allowed by seasonal permit/agreement issued by the Harbor Office through December 31, 2023. The passenger ferry(s) are only allowed to remain at the dock to safely load and unload passengers according to the posted and approved PUC ferry schedule.
- Private dockage: outside of posted and approved PUC ferry schedule one (1) passenger ferry is to be permitted on the south face of the concrete pier at the commercial rate of \$250 per linear foot per season. (Katherine and/or Jamestown)
- Tours and Cruises: Coastal Queen is permitted to utilize the south side of the wood pile pier one (1) night per week at a rate of \$45 per linear foot:
  - April 2023-June 24, 2023 on Saturday evening/overnight
  - After June 24, 2023, on Tuesday evening/overnight
  - The Coastal Queen will be permitted to restock and conduct light maintenance the following morning
  - Additional days for special events: CMS must submit to the Harbormaster a schedule of dates for additional access and approval (ie Newport Folk Festival, Jazz Festival, and Newport Boat Show)
- Requirements:
  - \$2 million insurance coverage, listing the Town of Jamestown as coinsured
  - Proof of PUC certificate for each vessel
  - PUC posted schedule and any requisite USCG inspection reports

- A small ticket podium may be placed on the wood pile pier
- Signage: a Jamestown Ferry sign shall be permitted. CMS/Jamestown Newport Ferry logo and branding are not permitted.
- Tent: the issue has been deferred to the Harbor Commission/Harbormaster to determine what size and location would be permissible.

Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; Councilor R. White, Aye; and Councilor Brine, Aye.

#### **IV. OPEN FORUM**

- A) Scheduled request to address.
- B) Non-scheduled request to address

Peter Gadoury, 10 Summer Street, stated that in Newport the M/V Seastreak receives government money(subsidy) to reduce ticket pricing, and it would be beneficial if CMS could do the same.

#### **V. ADJOURNMENT**

A motion was made by Vice President Meagher with a second by Councilor M. White to adjourn at 8:04 p.m. Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; Councilor R. White, Aye; and Councilor Brine, Aye.

Attest:

  
Roberta J. Fagan, Town Clerk



**Town of Jamestown**  
Town Administrator  
93 Narragansett Avenue  
Jamestown, Rhode Island 02835-1199  
401-423-9805

Edward A. Mello  
Interim Town Administrator

**MEMORANDUM TO: Honorable Town Council**  
**FROM: Interim Town Administrator, Edward A. Mello**  
**DATE: March 28, 2023**  
**SUBJECT: Operation of Ferry at East Ferry**

On March 14, the Town Council voted to “direct the Town Staff to draft a temporary seasonal solution so as to not interrupt ferry service which would include the use of the Public Ferry Landing by Conanicut Marine Services, Inc./ Jamestown Newport Ferry.”

On that direction, I have worked with Harbor Master Steven Bois to develop a temporary policy for the management of the concrete float (ferry dock) located at East Ferry.

In an effort to offer clarity, you are asked to recognize four distinct operations and/or functions that occurred from the concrete float during the 2022 season.

**Passenger Ferry Service:** This is limited to passenger ferries that operate a Rhode Island Public Utility (PUC) scheduled route including the five stops of Jamestown, Rose Island Light House, Fort Adams, Ann Street Pier and Parrotti Park. This is subject to a tariff and are considered a public convenience and necessity. The Vessels Katherine and Jamestown typically provide this service.

**Tour and Cruise:** These cruises are offered as an entertainment venue of tours around the bay often times coupled with onboard entertainment. This is not subject to tariff and are not considered a public convenience and necessity. The Coastal Queen typically provides this with a capacity of 140 passengers.

**Charters:** Vessels are offered for private cruises with private parties. This is not subject to tariff and are not considered a public convenience and necessity. All three vessels are available for rent for this type of function.

**Overnight dockage:** This included CMS vessels at various times being docked overnight at the ferry dock.



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The adoption of this policy will allow the passenger ferries to operate without interruption.

### Policy Recommendation

The Harbor Division is responsible to manage all use of the public docks located within Jamestown. This includes but is not limited to the issuing of permits, the scheduling of permitted vessels and ensuring that the boating public, fishing activity and commercial activities do not conflict. As such, the Harbor Division shall appropriately staff the public dock areas, as it deems necessary to manage the allowable uses.

#### Use of the Ferry Dock (concrete float) located at East Ferry:

- Passenger ferries are allowed by seasonal permit issued by the Harbor Office. The ferry is only allowed to remain at the dock to safely load and unload passengers according to the posted and approved PUC ferry schedule.
- No private vessels are allowed or permitted.
- No launches are allowed.
- Pilot Boat Vessels are only allowed to remain at the dock to safely load and unload pilots.
- No swimming from or around dock.
- No fishing from dock.
- No dinghies are allowed.

No signage, tents, canopies, kiosk or similar devices are permitted on any Town owned facility.

#### Definitions:

Passenger Ferry: A passenger ferry is any water transportation vessel that transports pedestrians for public transportation purposes on a fixed route and schedule, which is registered with the RI Public Utility Commission, is subject to tariff, and are considered a public convenience and necessity.

- Federal Ferry Boat Program Guidance defines a ferry boat as:
  - "A ferry boat is any water transportation vessel, including ships, barges, and hovercraft, that transports pedestrians and/r automobiles with passengers (roll-on/roll-off) for



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*public transportation purposes on a fixed route where it is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of a ferry."*

- RI General Law 39-3-3 states that:
  - "No common carrier of persons and/or property operating upon water between termini within this state shall hereafter furnish or sell its services unless the common carrier shall first have made application to and obtained a certificate from the division certifying that public convenience and necessity required the services..."

**Tour and Cruise Vessel:** A tour or cruise vessel is any water transportation vessel that transports pedestrians with or without fee for the purposes of entertainment, tours or other purposes that is not on a PUC scheduled route. This is not considered a public convenience and necessity nor subject to tariff.

**Chartered Vessel:** A chartered vessel is any water transportation vessel that transports pedestrians with or without fee for the purposes of entertainment, tours or other purposes that is not on a PUC scheduled route. This is not considered a public convenience and necessity nor subject to tariff.

**Launch Service:** Any water transportation vessel that transports pedestrians from landside to any other vessel as a commercial business with or without fee.

**Permits:**

**Passenger Ferry Permit:** This permit may be issued at no cost for the designated area as listed above. The seasonal permit is available through the Harbor Office. The permittee is required to provide insurance coverage of \$2 million listing the Town as coinsured, PUC certificate for each vessel, the PUC posted schedule and any requisite USCG inspection reports.

The Council should also consider adopting policy on the three other operations and/or functions.

**Tours and Cruises:** It appears that CMS has scheduled these cruises weekly (Saturday) using the Coastal Queen.

**Considerations:**

- This is not considered a public convenience or necessity nor subject to tariff.
- Based out of a privately owned pier located in Newport as part of a business relationship with the owner of that private pier.
- Rhode Island Department of Transportation and Federal Highway Administration have not yet confirmed if this is a permissible use of the ferry dock.



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- Will other tours and cruise vessels be allowed to land on the dock?

**Chartered Cruises:** CMS offers private chartered cruises with all three vessels.

*Considerations:*

- This is not considered a public convenience or necessity nor subject to tariff.
- Rhode Island Department of Transportation and Federal Highway Administration have not yet confirmed if this is a permissible use of the ferry dock.
- Will other chartered cruise vessels be allowed to land on the dock?

**Overnight Dockage:**

*Considerations:*

- CMS is assigned ten (10) commercial moorings by the Jamestown Harbor Commission. The vessels Katherine, Jamestown and Coastal Queen are assigned to three of these moorings.
- CMS was "licensed" to dock either the Katherine or the Jamestown at the Newport City Dock during the 2022 season for a fee of \$9450. This agreement is available for renewal for both the 2023 and 2024 season.
- Rhode Island Department of Transportation and Federal Highway Administration have not yet confirmed if this is a permissible use of the ferry dock.
- The Town has not previously engaged in offering dockage in the middle of the privately operated marina at East Ferry.
- Comparable Rates:
  - City of Newport: \$225/foot \$9450/season
  - Jamestown Woodpile Pier: \$45/foot \$1890/season
  - Private Marina (TPG 2022 rates): \$9775/season