

MINUTES

ORDINANCE COMMITTEE MEETING

Meeting of August 18, 2020 – 8:00 a.m.

Zoom Webinar

Present: Committee Chair, Councilor Shepard; Councilors Hartwell and Wilder Cross.

Also present: Town Manager, Ephrem Paraschak; Director of Community Development, Thomas Poirier; Town Planner; Town Planner, Carol Eyerman; Executive Assistant, Jessica Hughes.

1. **Consideration of the minutes of the July 21, 2020 meeting.**

A motion was MADE by Councilor Hartwell, SECONDED by Councilor Wilder Cross and VOTED to accept the amended minutes of the July 21, 2020 meeting as distributed. Unanimous vote.

2. **Current Business**

- A. Review adding requirements to the Land Use & Development Code requiring that taxes be paid before the issuance of permits and bring back recommendations to the Town Council (referred by the Town Council on July 7, 2020).

Director of Community Development Tom Poirier advised that the item was previously sent back to the Town Council to get clarification from Councilor Pratt as to what taxes he was considering needed to be paid and how that would affect projects moving forward. The Town attorney has already provided draft language.

Mr. Poirier advised that the additional step of requiring payment of outstanding taxes due before the issuance of permits will add an extra layer of work for the Code and Finance Offices that may slow the permitting process. Mr. Poirier asked if the Committee sees the requirement as a Land Use and Development Code change, or that all permits need to have taxes paid before issuance, to which Councilor Shepard said that his understanding of Councilor's Pratt's intent of this requirement would be applicable to individual lots that a person would be putting a building on – the lot would need to have the taxes paid prior to the Town issuing a permit. Councilor Shepard asked how the new change would slow the permitting process for staff, to which Mr. Poirier said that if the Code Office receives 20 permit applications a week, staff would need to verify with Finance if taxes are paid, which is an extra step that needs to be tracked. Councilor Shepard initially saw this requirement being applicable to only issuing building permits as opposed to upgrades. Councilor Wilder Cross thought that the requirement would only pertain to buildings and developments.

Mr. Poirier explained that if the Committee wanted the requirement to apply to the issuance of any permits, an electrical permit that is normally issued same-day to the applicant may take additional business days depending on when Code receives confirmation from Finance. There is a normal delay before building permits are issued that is expected as part of the review process as staff has to research setbacks and other requirements; however, with some of the other

permits where applicants receive approval same-day, the extra requirement of checking with Finance on the status of taxes paid for that property/lot would slow the process down. Councilor Hartwell envisioned the requirement for building/developing a lot, not all other permits. Councilor Hartwell inquired how difficult it would be for Finance to create a Google doc or spreadsheet of people that are not current on their taxes and share the working document in real-time so the Code Office could look up the information and not make a separate request to Finance. Mr. Poirier will check with Finance and Code and report back to the Committee at the next meeting.

Councilor Shepard advised that he does not want to make the requirement of taxes being paid before the issuance of all ancillary permits – he only wants the requirement applicable to building permits. Councilor Wilder Cross agrees with Councilor Shepard. Town Manager Ephrem Paraschak wants the Town's attorney to make sure that we are not overstepping any legalities, but he agrees that having the Finance Office share a working document of properties with delinquent taxes would help the Code Office streamline the process. Mr. Paraschak further said that the Committee and staff need to keep in mind that the owner of a large subdivision needs to be clearly defined.

Councilor Shepard asked if he were selling a lot of land, would the taxes have to be paid to the Town automatically, to which Mr. Paraschak confirmed 'yes', theoretically before a transfer can take place the Town has to be paid for the taxes. Mr. Paraschak also said that another consideration that will be challenging is that the owner of record for tax purposes will be the person that was on file after April 1st in any given year, so logistically tracking it might present a little bit more of a hurdle, but staff should be able to overcome that. He does not feel that the extra step is insurmountable and it is something that other municipalities do.

Councilor Hartwell asked to clarify what the Committee is defining as due or behind – if the second payment is due in May and it's the hypothetically the month of April, then an applicant will not be held up or taxes will not be shown as past due; it is when taxes are past due that a permit will be held up. Mr. Paraschak agreed and said that as long as an applicant is current with the current dates, then they will be issued a permit.

3. **Items Referred by Town Council to Committee for Future Meetings/Action**

- A. Review general updates provided by Town staff to the Employee Personnel Policy and make a recommendation (referred by the Town Council on January 7, 2020).

Mr. Paraschak advised that additional time was needed so that he and legal could review all proposed amendments. He also did not want to rush the review since it has an effect on a couple hundred full and part time employees. The draft will be sent to the committee to review in advance of the next meeting.

- B. Recommend regulating performance standards for Medical Marijuana Caregivers (referred by the Town Council on August 4, 2020).

Mr. Poirier prefaced the discussion by stating what the state law used to say, which was that initially municipalities could not regulate medical marijuana caregivers, and that they could grow for up to five patients. At that time that the new legislature was passed, the Town took the

position that required that caregivers had to live on the premises; if a caregiver did not live on the premises, they had to go to the Industrial district. Mr. Poirier further said that the Town currently has a number of medical marijuana growers in the Residential district, because the Town was not given the ability to regulate them at the start of the legislation. Per the new rules that the State has issued, Towns can now regulate medical marijuana growers as referenced in the attachment (3-B) provided by the Town attorney. The rules say that the Town cannot restrict medical marijuana growers from the Town and you cannot limit the numbers; however, the Town can add performance standards and licensing, and the Town can restrict where growing is allowed. For example, the Town can now say that all medical marijuana growers are required to be located in the Industrial district. Mr. Poirier, wanted to point out that the State no longer limits the growing for up to five patients, but to a square-foot canopy area that they can grow. Portland, Windham and Topsham have moved forward with regulating medical marijuana caregivers to varying degrees on what they allow. Mr. Poirier recommended that the Committee look at restricting the retail sales on the lot that they are growing on, as it will then function as a retail store without restrictions.

Councilor Wilder Cross asked how any new regulations that the Town may impose would affect the people that are already doing this, to which Mr. Poirier said that he would check with the Town attorney; they would be grandfathered in from a land use requirement, but he was not certain from a licensing standpoint how they would be affected.

Councilor Wilder Cross asked Mr. Poirier to please explain Sections C and D on page 5 of 5 of the provided attachment as it appears that the language is referring to two different caregiver definitions. Specifically, Councilor Wilder Cross asked if Section C is about those who haven't registered and D about those that have registered. Mr. Poirier said that he would need to get clarification from Windham since that was extracted from their ordinance.

Councilor Hartwell said that he would be curious if we could put a note on a property file or with the registry of deeds that a property or home was previously utilized for medical marijuana growing, as one of his concerns would be with potential structural or cosmetic damage from humidity and a prospective buyer may not be aware. Another concern would be any potential water damage that may occurred as a result of growing processes; he would be interested in learning if there are any creative ways to put prospective buyers on notice of the property's prior occupancy or use.

Councilor Shepard is concerned with allowing unrestricted growth as there could be potential issues and complaints with regard to odor in tighter subdivisions.

Mr. Poirier suggested that the Town could include a license provision for medical marijuana growers similar to commercial growing, which would require growers to have to reapply for license renewal each year to ensure they are complying with the ordinance. Additionally, the ordinance could include language that limits the size of crops based on a lot size.

Councilor Wilder Cross recommended including language that did not allow medical marijuana growing in close proximity to schools and daycares.

Mr. Poirier said that he will prepare a draft ordinance including two licenses, one for commercial-use and include language for a home occupation so the Committee can review and advise which direction they would like to proceed.

Town Planner Carol Eyerman asked the Committee if they want to allow medical marijuana caregivers to operate in the same districts as professional offices with medical doctors and similar professions, to which Councilor Hartwell said that he does not want to allow the growing in the same districts. He further referred to MMA's article regarding medical marijuana and said that leases can be treated as a subdivision. For that reason, he requested guidance on keeping medical marijuana growing out of the Planning Board's subdivision review process. Mr. Poirier advised that he would talk to the Town attorney and get his input.

Councilor Shepard recommended including language similar to the City of Portland that limits growth to square-foot canopies. If a grower wants to lease space out, the sub-lessor's growth area is subtracted from the lessor's canopy area. Councilor Wilder Cross commented that this provision could discourage people from entering into those types of arrangements, which she supports.

4. **Other Business**

No items were discussed under 'Other Business.'

5. **Schedule next meeting and discuss agenda items for next meeting.**

The next meeting of the Committee is scheduled for Tuesday, September 15, 2020 at 8:00 a.m. The following items will be discussed at the next meeting:

- A. Review general updates provided by Town staff to the Employee Personnel Policy and make a recommendation (referred by the Town Council on January 7, 2020).
- B. Review adding requirements to the Land Use & Development Code requiring that taxes be paid before the issuance of permits and bring back recommendations to the Town Council (referred by the Town Council on July 7, 2020).
- C. Recommend regulating performance standards for Medical Marijuana Caregivers (referred by the Town Council on August 4, 2020).

6. **Recent Items Sent to Town Council with Committee Recommendations**

7. **Adjournment**

There being no further business, a motion was MADE by Councilor Hartwell and SECONDED by Councilor Wilder Cross and VOTED to adjourn. Time of adjournment: 8:45 a.m.

Respectfully submitted,

Jessica R. Hughes, Executive Assistant