

MINUTES

ORDINANCE COMMITTEE MEETING

Meeting of September 15, 2020 – 8:00 a.m.

Zoom Webinar

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

Also present: Council Chairperson, Suzie Phillips; Town Manager, Ephrem Paraschak; Director of Community Development, Thomas Poirier; Town Planner; Town Planner, Carol Eyerman; Human Resources Director, Christie Young; Executive Assistant, Jessica Hughes.

1. **Consideration of the minutes of the August 18, 2020 meeting.**

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell and VOTED to accept the amended minutes of the August 18, 2020 meeting as distributed. Unanimous vote.

2. **Current Business**

- 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).

Town Manager Ephrem Paraschak advised the committee that Human Resources Director Christie Young was not able to attend this meeting due to the surgery of an immediate family member; however, Mr. Paraschak forwarded a list provided by Ms. Young to the committee this summarizing and explaining the reasons for proposed amendments.

Councilor Shepard asked to review the major changes and Councilor Wilder Cross seconded Councilor Shepard's request. Mr. Paraschak commented that the vacation leave policy as currently written in the existing policy caps out at 15 years. The proposed amendment would add a fifth week of vacation under Section 4.2; eventually there would be an upfront cost to the Town, but the intent is to create an incentive for long-time employees to stay with the Town, which would also help make Town benefits more competitive with current police union benefits. When police union employees transfer to a non-union position, they lose accrued vacation as the Town's vacation leave benefits are not in alignment. There is also a proposed amendment to provide longer tenure employees with a floating bonus vacation day.

Mr. Paraschak further commented that many revision changes were made with regard to healthcare to bring the policy into better alignment with existing benefit offerings. An additional option for employees to invest in an IRA plan was also added in the proposed amendments, which would be offered at no cost to the Town. The IRA option was approved by the Town Council years ago, but was never added as an option to the available benefits. An additional benefit that was added was a 3-week paid maternity/paternity leave. An additional substantial proposed change was with regard to a teleworking/telecommuting policy. The COVID-19 pandemic has proven that some positions can effectively work remotely, so the formal policy as proposed provides more guidance for this arrangement; the flexibility of the policy also will help act as a retaining tool for employees.

Mr. Paraschak noted that all proposed amendments have been reviewed by attorney Alyssa Tibbetts of Jensen Baird Gardner & Henry. He further said that the goal of the proposed changes is to be in line with other municipalities similar in size or larger than Gorham, which is where the Town tends to lose employees as they take a promotion with those towns.

Councilor Shepard asked how the proposed sick leave policy works for retiring employees. Mr. Paraschak explained that when longer tenure employees retire, in many cases they have met the cap of vacation and sick leave and are no longer accruing additional leave time. Under the current policy, retiring employees that have met the cap on sick leave lose additional accrued time beyond the percent that is allowed to be paid out at the time of retirement/separation. At the suggestion of several department managers, a proposed policy is to allow employees to transfer unused sick leave that cannot be paid out as wages upon retirement to a retirement savings account. This proposed change and additional benefit to employees would come at a cost to the Town, although not significant. Councilor Shepard commented that when he was appointed as Chief of Police, he met the sick leave cap and stopped accruing sick leave for 19 years and essentially donated one sick day per month to the Town, so this policy would have been a benefit to him. Mr. Paraschak said that the amount of employees that this proposed amendment would apply to is fairly small since it takes a while for employees to build up tenure.

Mr. Paraschak also said that employees will be more strongly encouraged to utilize sick time post-COVID-19 as many people tend to avoid using it when not feeling well and still reporting to work, but then pose a greater risk to spreading illness in the workplace.

Mr. Paraschak advised that staff and the committee should be looking at the personnel policy every two to three years and implementing consistent updates, which would make the review less labor intensive.

Councilor Shepard recommended postponing further discussion and any action until the committee has more time to review by the next scheduled Ordinance Committee meeting. In the meantime, he recommended that staff prepare ball park figures on any proposed amendments that would be tied to any fiscal notes for review at the next meeting.

Mr. Paraschak had hoped to incorporate a policy that would allow employees to opt for a provision that would help pay down student loans in lieu of employer contributions to the employee's retirement plan; however, this concept is still under legal review. Councilor Shepard suggested that the Town could give a bonus for an employee to pay down student loans in lieu of receiving an employer match of their retirement contributions.

Councilor Hartwell asked if the proposed policy on random drug testing includes 25% of the entire workforce, not just CDL/safety-sensitive positions, to which Mr. Paraschak commented that he believed that was the case. Councilor Hartwell referenced a recent example of how a law enforcement officer that had recently died of a drug overdose could have been prevented if random drug testing was performed on 25% of a municipality's workforce, not just CDL/safety-sensitive positions. He would like to see this policy not just put in print, but put to use. Mr. Paraschak commented that staff can look into whether a policy could be put in place for random drug testing of the entire municipality.

Councilor Hartwell commented that the Town Council had been approached to approve or allow the use of smokeless tobacco products and asked if the Town is enforcing whether smokeless

are being used. If they are not being enforced, he feels we need to enforce it or look at implementing changes. Mr. Paraschak commented that he will inquire with the Department Managers.

Councilor Hartwell suggested that the Town advertise or include a policy that the Town gives some type of veteran preference, which may be a way to help attract younger applicants, to which Mr. Paraschak said would be a good idea.

Regarding Section 4.8 – Military Leave, Councilor Hartwell said that he understands that the Town pays a two-week maximum pay differential for military leave, which is an optional and positive benefit that the Town is not required to provide; however, the policy reads as though the employee can only take two-weeks leave. He suggested increasing the maximum pay differentials from two to four weeks. Mr. Paraschak said that staff can look at other municipality's policies.

Additionally, Councilor Hartwell suggested refining the language under Section 4.8 to further explain that the Town will reinstate non-union employees that are activated for military leave for an extended amount of time to their previous position and pay scale step that they would have been at had they not left on military leave, to which Mr. Paraschak said that staff could look at adding clarification on this to this section.

Councilor Wider Cross asked if the Town offers any kind of health incentives, such as weight watchers and other health programs. She suggested making an arrangement with USM for employees to use their gym, or offer periodic neck massages by a licensed massage therapist to employees while they are at work.

Mr. Paraschak commented that a provision has been included that allows for a \$1,000 health buy-out or credit to an employee per year if they have alternative health coverage outside of the Town.

Councilor Hartwell suggested implementing a similar fitness test for any employee, not just PD, that if the employees passes the test, they get either a cash bonus or a deduction off their health premium as it would incentivize employees to prioritize their health.

Councilor Wilder Cross asked if Human Resources Director Christie Young had any suggestions on what the committee should focus on when reviewing, to which Ms. Young said that the committee can reach out if they have any questions or need clarification. She said that the summary of changes that she provided to the committee was intended to give some insight into the changes that were being proposed. In most cases, the recommended changes that have some monetary element to it were included to help the Town attract and retain employees and be more competitive with other municipalities and the private sector, as well as to respond to some of the suggestions that employees have shared over the last couple of years. Many of the proposed language changes were a result of trying to administer existing policies over the last two years and identifying where there was some confusion regarding procedures and misinterpretations.

Ms. Young also said that the Town's Attorney also recommended a dress code policy, which has been left with Department Managers to monitor and to employees' discretion. Ms. Young does see that it would be worth considering as an additional policy that provides the basics.

Councilors Shepard and Wilder Cross thanked Ms. Young for her time and efforts with drafting the revised policy.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell to table this item to allow the committee additional time to review and discuss further at the next meeting. Unanimous vote.

- 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).

Community Development Director Tom Poirier said that after discussing this item at the last meeting, he researched how other municipalities are addressing payment of taxes regarding this and also spoke with the Town's attorney. Most municipalities handle this as a stand-alone ordinance that is implemented by the Town Council, that way if they want to add any permits that are required to pay taxes – it is usually done and does not have to go through a public hearing process with the Planning Board. Using that as the background, Mr. Poirier drafted a municipal license ordinance similar to what is used by other communities. Many other municipalities look at an applicant as the person that has to have his payment of taxes; however, after further review there was some concern as a lot of times the builder is the applicant and not the person that owns the lot. With that in mind, the draft ordinance defines an applicant as the person who is responsible for the lot where the permit is required, or a leasee who is leasing a space for the part of the building where the permit is required. Section 1.1 talks about a prerequisite for taxes to be paid before the issuance of permits. Section 1.2 identifies that a person cannot get a permit if they have a violation or your violation is not cleared up. Section 2.2 lists all the permits that require taxes to be paid before issuance. There are also sections for exceptions that can be granted by the Town Council or the Town Manager. If taxes not paid are under \$250, there a waiver provision for the Town Manager. Under Section 1, the Town Council can also waive the requirements upon good cause shown by the applicant that allows some flexibility if deemed necessary.

Councilor Wilder Cross liked the ordinance as written and thanked Tom for his time.

Mr. Paraschak asked Mr. Poirier if Legal had any concerns with a notice of violation being issued and not having gone through court and posed the example of someone applying for a permit that has received a notice of violation and it is not resolved – he wanted to be sure that this scenario was vetted by Legal since it could be an area of conflict with some developers or property owners, to which Mr. Poirier said that ordinance was drafted with Attorney Mark Bower's recommendation. Mr. Poirier further said that violation has to be on the lot that the permit is going to be issued. If a builder or developer has a violation somewhere else, it would not pertain to or impact the issuance of a permit on the lot in question.

Councilor Hartwell questioned the need for the requirement of taxes to be paid before the issuance of permits, since it is a lien process; the Town has the ability to put a lien on a property,

which has a high priority level with property sales. His understanding is that the intent of this ordinance and requirement is geared toward developers. A developer will try to sell in a relatively short amount of time, at which point the Town would recover any past due taxes, which would all take place within the system that is already in place. Regarding Section 1.2, it flies in the face of a discussion that the committee had several months ago, but it was regarding an issue of a walk-in freezer that was not in compliance at Orchard Ridge farm that was being held up with permits.

Town Planner Carol Eyerman said that when reading Section 1.1 - B and C, the reference of an outstanding final judgement tells her that this isn't just about taxes and could have something to do with a Land Use violation. In subsection D, the reference to an account is very broad. Mrs. Eyerman would suggest incorporating more clarity in this section.

To further Councilor Hartwell's point, Mr. Paraschak said that the normal lien process does recover the majority of outstanding payments owed by property owners.

Mr. Paraschak asked how Mr. Poirier could foresee the new proposed ordinance coming into play for a property owner, to which Mr. Poirier said that the Town had to take a property owner to court for a Land Use violation and the Town won the case and the defendant was required to pay the Town's legal expenses and it has been very challenging to recover the amount owed by the defendant since they stopped paying and there is no mechanism for recovering the outstanding amount due. The requirement of having taxes paid before the issuance of permits or to come current on a final judgement would help streamline the process. Mr. Paraschak suggested omitting Section 1.2 as Councilor Hartwell suggested.

Council Chairperson Phillips said that she spoke with Councilor Pratt and received clarification that the intent was for the lot owner to be current with taxes as he saw scenarios where developers were selling lots and not staying current with taxes. With that in mind, Mr. Poirier said that he may need to a provision, because a number of developers may not own a lot and have a purchase and sale agreement instead.

Mr. Paraschak pointed out that the Town has a pretty good compliance with payment of taxes and generally collects taxes on time. This is a problem that only affects a small percentage of properties or developers in Town.

Councilor Hartwell said that under the current existing lien process ensures that the Town will receive payment for taxes when lots are sold for a subdivision. Mr. Paraschak said that requiring payment before the issuance of permits may delay the development of houses on lots and slow the process down.

Mr. Poirier asked if the committee approves of staff striking provision 1.2, to which Councilors Shepard and Wilder Cross said yes. Mr. Poirier advised that he will need to consult with the Town Attorney Mark Bower regarding adding a provision or language that applicants with a purchase and sale agreement need to be current on taxes. The committee also commented that they would prefer to wait to review the revised draft ordinance once the recommended changes were made.

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

Mr. Poirier shared that staff is still working on a draft, and that he reached out to the office of Marijuana Policy with the State and confirmed that the Town has 43 licensed medical marijuana caregivers, from which staff are assuming at least half or one third are located in residential areas. The Town has a number of commercial growers/medical caregivers that are located in the industrial zone. Mr. Poirier received clarification from the Town Attorney on what the Town can and cannot do; if someone has already received a permit from the State or approved through the Town, they would be grandfathered from any new ordinance moving forward based on location. The Town can require performance standards of caregivers, but not for location. Additionally, staff received clarification from legal regarding caregivers having protection as some of their information is confidential.

Mr. Poirier also received clarification from the Town of Windham regarding questions that Councilor Wilder Cross had with the language in their ordinance – any lot in Windham can grow 1,000 square feet of floor area of medical marijuana in a residential area. If a caregiver was in an industrial area, there are provisions to grow more. If a person is growing as a home occupation, Windham has a 20% clause that reduces the size of floor area based on house size. Windham does not allow retail sales on the premise of a medical marijuana caregiver unless that specific zone allows it.

Mr. Poirier hopes to have the draft performance standards for the committee's review at the next meeting.

Councilor Shepard asked how the City of South Portland's regulations work, to which Mr. Poirier said that he wasn't sure – he would need to follow up with the Town Attorney regarding how to keep medical marijuana caregivers' information confidential.

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

- A. Review the Narragansett Mixed-Use District to allow for personal services and to address side and rear setbacks and recommend amendments (referred by the Town Council on September 1, 2020).

Mr. Poirier commented that setbacks are cut and dry. The committee may need to adjust building height or set a minimum building height with setback, and the committee will need to consider adding personal services to that district and what kind of parameters should be put on it so that these businesses do not compete with the Village Center district. Staff will have a draft for the committee to react to at the next meeting.

4. **Other Business**

- A. Councilor Hartwell advised that he will be sponsoring an item at the next Regular Town Council meeting regarding the sprinkler ordinance that may be referred to the Ordinance Committee. It is to specifically look at a part of the sprinkler ordinance where the requirement to sprinkle is triggered by renovations or a building that is a certain percentage of a property. Because the

Town's evaluation is so low and building prices are so high, it is being triggered when it should not be triggered based on the intent of the Council.

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

The next meeting of the Committee is scheduled for Tuesday, October 20, 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. Review the Narragansett Mixed-Use District to allow for personal services and to address side and rear setbacks and recommend amendments (referred by the Town Council on September 1, 2020).

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

7. **Adjournment**

There being no further business, a motion was MADE by Councilor Wilder Cross and SECONDED by Councilor Hartwell and VOTED to adjourn. Time of adjournment: 9:24 a.m.

Respectfully submitted,

Jessica R. Hughes, Executive Assistant