

## M I N U T E S

### ORDINANCE COMMITTEE MEETING

**Meeting of May 18, 2021 – 8:00 a.m.**

#### Zoom Webinar

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

Also present: Town Manager Ephrem Paraschak; Public Works Director, Robert Burns; Police Chief, Christopher Sanborn; Director of Community Development, Tom Poirier; Town Planner Carol Eyerman; Executive Assistant, Jessica Hughes.

**1. Consideration of the minutes of the April 20, 2021 meeting.**

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell and VOTED to accept the minutes of the April 20, 2021 meeting. Unanimous vote.

**2. Current Business**

The committee asked to review the third item on the agenda out of order in respect of the attending staff's time.

- A. Perform a full overview of the Firearms Ordinance and provide recommendations to the Town Council (referred by the Town Council on February 2, 2021).

Councilor Shepard noted that the term "rifle" was missing from the definitions section. Additionally he noted that language appeared to be missing from section seven regarding violations and fines to which Town Manager Ephrem Paraschak said that staff would make the correction.

Councilor Hartwell asked if staff could abbreviate, or create an acronym for Ordinance Committee meeting attachments and document titles, so the document name displays on a tablet.

Councilor Shepard reiterated that the definition section should include rifles to which Mr. Paraschak recommended that it not include rifles.

Councilor Hartwell questioned if section 1.1 needed to include, "including, but not limited to a handgun, muzzleloader, or shotgun," and he noted that he would prefer that the definition of a firearm remain broad.

A discussion ensued in which Councilor Hartwell and Wilder Cross noted that oxford commas were missing throughout the ordinance and formatting and punctuation should be consistent.

Regarding section four, Councilor Hartwell asked to clarify if the prohibition of discharging a firearm was within 300 feet within a dwelling or structure, to which Police Chief Sanborn said – yes, and it was in relation to structures.

Councilor Shepard said that all amendments to the firearms ordinance map were accurate.

Councilor Hartwell asked if item B under section 9.1 regarding the exemption of a discharge of a firearm by a homeowner for the lawful defense of life and property was necessary if there was a similar exemption referenced in section 2.2. Mr. Paraschak responded and said that staff could strike out item B.

A brief discussion ensued regarding shooting and gun ranges.

Public Works Director Bob Burns commented that staff can add “handgun” to the “shotgun, muzzleloader restricted zone” listing on the firearms ordinance map legend.

Councilor Hartwell recommended refining the definition of a handgun. He further said that if the Town is going to define and allow handguns, we will need to allow only certain calibers due to the way that some laws are written that allow rifle calibers to be classified as a pistol if they do not have a stock on them. He further said that someone could have an AR-15 pistol with a short barrel and no stock, or brace; the rounds shot from that weapon can travel 3,250 feet per second and go a long distance, which reinforces the importance of this ordinance. If the Town is going to allow handguns, he does not want to allow handguns that can fire rifle rounds.

A discussion ensued in which Councilor Shepard referenced a variety of rifle and pistol calibers, including 9 mm, .22 caliber rifles and pistols, and 357 rifles and pistols. Councilor Hartwell noted that ammunition boxes also reference the maximum feet per second that bullets can travel, to which Councilor Shepard said that if the ordinance goes into that depth of descriptions, it will be unenforceable. Councilor Hartwell said that if we can’t enforce handguns, then we cannot have any limitations on the type of high velocity rounds being fired. He would then prefer not to allow handguns entirely.

Councilor Hartwell said that the intent of the ordinance is to enforce firearms and rounds that will travel a lesser distance in proximity to structures. He noted that many rifle rounds are now in a pistol package, and he doesn’t want to allow those types of rounds to be used for hunting in the restricted area.

Mr. Paraschak commented that there is a high probability that someone in the rural area will discharge a traditional pistol, and if handguns are removed, it would put PD in a position to enforce things that the Chief has already expressed he is comfortable with allowing. He further asked if these types of weapons will be classified to needing a permit soon. He expressed concern with listing too many things and the ordinance being too restrictive, and then adversely causing someone to challenge the ordinance. He asked the committee if they wanted to table the item, so that staff can try to find a way to catch those types of firearms without making the ordinance overly complicated.

Councilor Hartwell recommended referencing an attachment to the ordinance with a listing of calibers to cover our needs.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell, and VOTED to table this item until the next meeting at which staff will bring back the revised firearms ordinance and map with recommended changes. Unanimous vote.

- B. Review and recommend adding additional allowed uses to home occupations in the Land Use & Development Code (referred by the Town Council on January 5, 2021).

Councilor Shepard noted that the sentence regarding small appliances under the “repair services” definition was worded incorrectly and should be corrected to say “...electric bicycles, and similar items including, but not limited to...”

Councilor Shepard asked what the difference was between a daycare center and a daycare home to which Town Planner Carol Eyerman said that daycare homes are limited in size to an actual home that is someone’s residence, and a daycare center is separate and distinct with more children in attendance. Mr. Poirier noted that daycare homes have 12 or fewer children in attendance, and daycare centers have more than 12 children attending.

Ms. Eyerman noted that staff added a medical marijuana caregiver section, which is not underlined on the attachment as it is covered under a different ordinance.

Councilor Wilder Cross noted that the committee discussed at the last meeting amending the tenth home occupation performance standard, which was listed on the previous version and not listed on the version before the committee now. She recalls the committee discussing that the statement that read that “a home occupation shall not involve” should say “a home occupation shall limit the use of heavy commercial vehicles for delivery from or to the premises.” She does not recall that the committee decided to eliminate the entire statement although she does not see any reason that it could not be eliminated.

Councilor Shepard recalled that Councilor Hartwell commented at the last meeting that it would be hard for consumers to know how products will be delivered at which time he also gave an example from personal experience. Councilor Shepard noted that the committee ultimately decided to eliminate the heavy commercial vehicle limitation from the ordinance at the last meeting,

Councilor Hartwell commented that commas were missing throughout the ordinance, and that the reference to “art and craft” in the last line of the instructional services section should be pluralized.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell, and VOTED to refer the proposed changes to the Home Occupation Standards and definitions section to the Town Council for review and consideration at their next meeting. Unanimous vote.

- C. Review and recommend adding agricultural event centers and agricultural tourism uses to the Land Use & Development Code (referred by the Town Council on January 5, 2021).

Councilor Shepard referred to the attachment provided and commented that the committee had discussed limiting the number of events that could be held and it appeared to be missing from the version before the committee.

Councilor Wilder Cross asked if the word “event” should be added to the 12<sup>th</sup> performance standard, so it reads as “event hours of operation.”

Councilor Shepard noted that the committee had also discussed at the last meeting allowing the setup of events before the start of an event.

Mr. Poirier and Ms. Eyerman commented that it would be best to be very clear with regard to event hours, so the Code Office can interpret the ordinance exactly as it is intended.

Mr. Poirier recommended that staff add a separate sentence in addition to updating the 12<sup>th</sup> performance standard that says that setup and takedown of events are allowed to happen outside of the allotted time.

Regarding the limitation of events, Ms. Eyerman commented that she thought that the committee had discussed eliminating the event limitation, so it was removed from the attachment currently under review.

A discussion ensued in which Councilor Shepard said that it would be hard to tell a farm that they only have six days out of a harvesting season that people could go and pick apples. He sees a need to set a limit on wedding and music events.

Mr. Poirier noted that he does not have a lot of concern with giving farms the flexibility to have events, and he suggested not setting a limit and then monitoring if any issues arise.

Councilor Wilder Cross commented that if she lived next door to a successful farm that was hosting weddings and events every weekend with setup taking place on Fridays, she might feel put out by the noise. She noted there is a big difference between apple picking and recurring wedding events. She said that limiting recurring weddings and similar events may be warranted.

Ms. Eyerman suggested limiting events to one per month or 12 per year. She noted that the intent of the ordinance is to support existing, working farms.

Mr. Poirier said that 12 events per year seems reasonable.

Councilor Hartwell said that part of the ordinance was to support farms without taking that land out of production. He further noted that if a grass-base or hay crop farm is hosting events, they're doing it between cuttings, and that it wasn't intended for the farm to keep an area mowed or cut year-round just for hosting events. For that reason, he does not recommend limiting events to one per month. He wants to allow farms to host multiple events back-to-back when they may have time between production.

Councilor Hartwell noted that he had brought up adding a cross-reference in the ordinance to the contract zones in the Land Use & Development Code (LUDC), so that if someone wanted to host a larger event or have a special-purpose use, they could go through that process.

Ms. Eyerman commented that the large outdoor gathering ordinance would also apply, to which Councilor Hartwell clarified that he wants to add a cross-reference in this ordinance to the contract zones in the LUDC for people that want convert their barn, or pay to have a post-and-beam building constructed. He does not want to prohibit those larger gatherings, but this ordinance is intended to make it easier for people to host smaller events, and if they want to host larger events, they would need to go through a contract zone, which would eliminate the need for the Town to create another separate ordinance.

Councilor Wilder Cross commented that if these events are going to be held on a working farm, they likely cannot happen frequently. She recommends not referencing an event limit, and if issues arise after the proposed ordinance is effective, then the Town could revisit the ordinance.

Councilor Shepard agreed and said that he would like to move forward with no limit before the committee tries adding event centers in any other ordinance, to which Councilor Hartwell said that the committee would not need to do that since there are contract zones.

Other than eliminating the event limitation, Councilor Wilder Cross said that the only other change would be for staff to add the allowance of setting up and taking down events outside of the event hours of operation.

Councilor Hartwell noted that he had previously asked for the broad language of “enjoying the farm environment” to be added in the definition of agritourism at the previous meeting, to which Ms. Eyerman noted that his request was added. He further noted that he marked up the version of the attachment on the shared Town Council Google Drive in which he pasted a New Hampshire statute definition of agritourism with statutory reference to the citation into this section.

Councilor Hartwell also noted that it appeared that the ordinance defines agritourism in two different places; once under section 1.5, and under #24 of the permitted uses, to which Ms. Eyerman said that there are generally not a myriad of uses or examples listed for a definition, and the permitted uses usually specify things more broadly.

Regarding the definition, Mr. Poirier recommended that staff use Councilor Hartwell’s definition, which then allows for more interpretation, so essentially use the New Hampshire definition and add agritourism as a permitted use.

Ms. Eyerman recommended that if we use the New Hampshire definition, the Town Attorney should review the document as it doesn’t appear that it allows for weddings as agritourism.

Councilor Shepard noted that he read “the enjoyment of the farm environment” under permitted uses within the attachment provided, to which Ms. Eyerman commented the current definition on the document does not include that reference.

Councilor Hartwell pointed out that New Hampshire and Maine probably originally came up with their definitions around the same time; someone tried to hold weddings and the New Hampshire Supreme Court said that weddings were not considered agritourism, so the legislature changed the definition to make it more broad. He also noted that we could consult with legal and use our own definition.

Ms. Eyerman wants to be sure that we are not being more liberal than the state is; she knows that we are allowed to be more restrictive, so she would like to double check our language versus the state’s version if the committee approves to which Councilor Hartwell said that is fine, and that it is a preemption issue if the ordinance that we draft comes up against our home rule. He is not certain if the state is trying to control and restrict everything about agritourism. If it was, we will be more limited with what we can do.

Councilor Shepard asked to clarify if Councilor Hartwell would prefer for the 24<sup>th</sup> permitted use to be included in the definition if legal verifies and approves, to which he said – yes.

Ms. Eyerman she will check with legal if including the permitted use in the definition is permissible.

Councilor Hartwell asked if the eighth performance standard regarding the service, sale or consumption of alcoholic beverages is necessary to which Councilor Shepard said some people may still need the guidance.

Councilor Wilder Cross recommended leaving the eighth performance standard in the ordinance.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell, and VOTED to table this item until the next meeting at which staff will bring back the revised ordinance and with recommended changes. Unanimous vote.

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

- A. Review expansion of the remaining village areas, other than the village expansion zone 1/Little Falls area, as called for by the Comprehensive Plan and provide recommendations to the Town Council by or before February 2024 (referred by the Town Council on November 10, 2020).

A brief discussion ensued in which Mr. Poirier explained where the related item was at in the Planning Board review process. Ultimately, the committee agreed to begin the review of this item when that item is ready for the Planning Board's public hearing.

- B. Review the feasibility of adding requirements to the Land Use & Development Code that would require phased build outs of subdivisions and report back to the Town Council with a recommendation (referred by the Town Council on April 6, 2021).

Mr. Poirier said he can talk to the Town attorney regarding phased build outs, to which Councilor Hartwell recommended asking if there was an ordinance that limits building permits and if so, can they be divided, so that one large is not using up all permits. He noted that it seemed that this would be one way to accomplish that goal. He cautioned that staff should be aware that has to be based on 105 percent of the last five years of building permits that were issued, and he believes that if that type of ordinance is in place, 10 percent in addition would have to be for affordable housing.

Mr. Poirier said that the Town of Falmouth have had a similar growth management tool in place for years, and are just now having applicants come up against the building permit cap. He further noted that the building permits can be restricted to growth areas and other areas can be identified, so that they get different allocations of building permits.

Ms. Eyerman asked if the committee would like staff to look at adding in affordable housing provisions under multi-family housing. She said that a county-wide study was presented to staff that provided guidance on how to adjust the Land Use & Development Code to make affordable housing more feasible.

Mr. Paraschak commented that if adding affordable housing provisions is incidental to what staff and the committee would be working on, he recommends that staff proceed. If not, a Councilor would need to sponsor it at a future Council meeting in order for it to be voted and referred to the Ordinance Committee for review.

- C. Create or amend Town Ordinances to classify sidewalks for winter maintenance (referred by the Town Council on April 6, 2021).
- D. Prepare an ordinance that would classify certain sidewalks for winter maintenance within the Town of Gorham as the responsibility of the abutting property owner, as well as classify those which would be the responsibility of the Town of Gorham (referred by the Town Council on April 6, 2021).
- E. Review and provide recommendations for amendments to applicable Town Ordinances to allow for Medical Marijuana Caregiver Retail Stores in the Town of Gorham pursuant to 22 M.R.S. § 2429-D (referred by Town Council on May 4, 2021).

4. **Other Business**

No items were discussed.

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

The next meeting of the committee is scheduled for Tuesday, June 15, 2021 at 8:00 a.m. The following items will be discussed at the next meeting:

- A. Perform a full overview of the Firearms Ordinance and provide recommendations to the Town Council (referred by the Town Council on February 2, 2021).
- B. Review and recommend adding agricultural event centers and agricultural tourism uses to the Land Use & Development Code (referred by the Town Council on January 5, 2021).
- C. Create or amend Town Ordinances to classify sidewalks for winter maintenance (referred by the Town Council on April 6, 2021).
- D. Prepare an ordinance that would classify certain sidewalks for winter maintenance within the Town of Gorham as the responsibility of the abutting property owner, as well as classify those which would be the responsibility of the Town of Gorham (referred by the Town Council on April 6, 2021).
- E. Review the feasibility of adding requirements to the Land Use & Development Code that would require phased build outs of subdivisions and report back to the Town Council with a recommendation (referred by the Town Council on April 6, 2021).

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: 9:23am.

Respectfully submitted,  
Jessica R. Hughes, Executive Assistant