

MINUTES
TOWN OF GORHAM
ORDINANCE COMMITTEE MEETING
Meeting of September 21, 2021 – 8:00 a.m.
Conference Room A

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

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

1. **Consideration of the minutes of the August 17, 2021 meeting.**

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell, and VOTED to accept the minutes of the August 17, 2021 meeting. Unanimous vote.

2. **Current Business**

- A. 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).

Councilor Wilder Cross noted that subsections were not listed correctly on page two of the proposed sidewalk ordinance. She also asked who will enforce winter sidewalk maintenance that is the responsibility of property owners.

Councilor Hartwell commented that the City of South Portland just addresses sidewalk maintenance [that is the responsibility of property owners] when someone calls [to report an issue].

Public Works Director Robert Burns commented that staff still needs to actively monitor, not just on a complaint-basis.

Councilor Shepard noted that according to the [Town] attorney, it is not advisable to asses a lien.

Councilor Hartwell said that residents can challenge a lien, rather than impose.

Town Manager Ephrem Paraschak commented that the Town could enforce non-compliance in district court to get money and enforcement action.

Councilor Hartwell commented that even if the lien couldn't be challenged or enforced, he liked it [the provision] being there as a threat.

Mr. Paraschak said he is concerned with the enforcement component. The issues that are likely to arise will be situations with adjacent neighbors shoveling, but not to the middle of the property.

Councilor Wilder Cross asked if [Gorham] PD should be the enforcement arm to which Mr. Paraschak said that there will probably only be enforcement action when there is a big storm. He further noted that if approved by the Town Council, enforcement will be very lenient in the first year so as to put people on notice.

Councilor Wilder Cross asked how the Town could best get the notice out about the ordinance to which Mr. Paraschak said via an advertisement in the Gorham Times, American Journal, Press Herald, and Gorham Community Access Media (GoCAM).

Mr. Burns shared that he met with School Facilities Director Norm Justice regarding the sidewalk maintenance map; one road sidewalk was removed from the maintenance radius. He said that Mr. Justice asked Mr. Burns to point out situations to the ordinance committee in which students need to walk on sidewalks to get to bus stops as there are still students that have to do that outside of the Town's sidewalk winter maintenance radius area on maps reviewed at previous meetings.

Mr. Paraschak commented that more complaints will likely arise from a random road where a resident takes pride – they will call to complain about other neighbors.

Director of Community Development Tom Poirier asked if compliance enforcement should be done by Mr. Burns.

Councilor Hartwell said that compliance enforcement is normally performed by a road commissioner in other towns, so it could naturally be the Public Works Director.

Councilor Shepard said that he doesn't disagree with Mr. Poirier's and Councilor Hartwell's comments.

Mr. Paraschak said that Public Works may have issues to be enforced, but they can refer to Gorham PD for enforcement.

Councilor Shepard asked how long it takes to purchase sidewalk clearing equipment to which Mr. Burns said five months, and that Public Works' trackless machine is expected by December 2021.

Mr. Burns said that it takes eight man hours to clear all sidewalks after a storm, which will double to clear all sidewalks on the provided list.

Councilor Shepard asked if Mr. Burns could double the time for employees to clear sidewalks and run the machine longer – he noted his main concern is the safety of kids, and he supports extending the cleanup to two days.

Mr. Paraschak recommends that if the Town Council adopts the radius around the school on the map provided at the August 17, 2021 Ordinance Committee meeting, the additional cleanup could be phased in to allow time for Public Works to invest in capital equipment and staff.

Councilor Hartwell agreed with the recommendation of phasing as it would allow time to prepare.

Mr. Paraschak said that it may be helpful to mention the weird liability with regard to sidewalk maintenance to state representatives for things to review at the legislative level.

Mr. Poirier asked if the committee wished to keep the lien provision or take it out to which Councilor Shepard said he supports taking the Town attorney's recommendation and omitting the lien provision.

Mr. Poirier said he will omit the lien language and consult with the Town attorney about adding a provision to refer enforcement issues to the district court.

Mr. Paraschak asked if the committee wished to leave the enforcement language as-is or assign the enforcement action responsibility to Public Works in consultation with PD to which Councilor Shepard said that the committee should consult with PD for their input.

Mr. Burns said there is a timeframe for enforcement.

Councilor Shepard asked what the Town would do about elderly people to which Mr. Paraschak said that staff could draft a hardship provision.

Councilor Hartwell said that a hardship provision were to be included, it could give the option for an abutter to assist their neighbor and receive a property tax discount.

Councilor Wilder Cross commented that the ordinance creates opportunities for community service to which Councilor Hartwell said that the school could increase the number of community service hours required.

Town Planner Carol Eyerman commented that kids in Portland would help out her neighborhood with shoveling.

Councilor Wilder Cross said she would prefer to review this item further at the next Ordinance Committee meeting, and that her concerns are that the lien and 18-hour provision is not reasonable; she added that it would be foolish to have an ordinance that cannot be enforced to which Councilor Shepard agreed.

Councilor Hartwell said that there are a lot of towns that aren't clearing any sidewalks, and other towns that are clearing all sidewalks. He asked what the point was of requiring a sidewalk if you cannot use it.

Councilor Shepard recommended nixing the ordinance and just keeping a list of sidewalks to maintain.

Mr. Paraschak said that the Town is technically required to provide for sidewalk winter maintenance. He added that the Town could just say "no" to clearing certain sidewalks and wait to be sued - municipalities maintain a core network of sidewalks.

Mr. Burns said that it currently eight hours to clear 10 miles of sidewalk, so it will take roughly two days - 16 hours to clear 17.1 miles of sidewalk.

Councilor Wilder Cross asked if the Town could stop maintaining sidewalks on dead end roads to which Mr. Burns said that dead end roads could be removed from the list.

Mr. Paraschak recommended that the committee take no further action if they desired. He added that new sidewalks were installed at Narragansett Elementary on Bouchard and Chick Drive. He said that staff could bring in a more refined list of sidewalks, as well as the cost for adding additional employees for sidewalks.

Councilor Hartwell said that he is okay with shelving the ordinance as it is a good contingency plan and could be enacted as an emergency so we don't have to wait 30 days. He supports clearing sidewalks where there is no bus service. He added that we should be pushing back snow banks with the trackless machine and that it doesn't have to be done right away.

Mr. Burns commented that normally in a substantial winter, Public Works could not get to snow banks, but they can get to it if the Town Council is okay with stretching out the timeline.

Councilor Wilder Cross agrees with putting the ordinance aside and addressing areas where students walk and there is no bus service.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell, and VOTED to table the ordinance and look further at the budget issue. Unanimous vote.

- B. Review and prepare an amendment to the Land Use and Development Code requiring annual inspections of gravel pits to be conducted by a third-party inspector and refer the recommendation back to the Town Council (referred by the Town Council on July 6, 2021).

Mr. Poirier said that the committee should consider inviting gravel pit owners to the next meeting where the proposed amendment is reviewed in further detail.

Mr. Poirier said that staff wrote the amendment as a yearly inspection monitoring requirement, with yearly requirements noted on pages four and five. He added that the costs are transferred to the gravel pit owners to hire an engineer to perform inspections.

Mr. Paraschak said that the costs that gravel pit owners will incur will serve as a deterrent so that engineers provide accurate and valid inspection reports.

Councilor Shepard asked what the added costs will be to gravel pits to which Mr. Paraschak said that most pit owners may have to hire additional staff.

Mr. Paraschak said that the Town probably receives most complaints on dust and blasting, and that in lieu of a yearly inspection, a pit owner could move its crusher.

Mr. Poirier suggested that gravel pit owners could provide a CAD (Computer Assisted Design) plan showing where equipment was moved on a yearly inspection and have an engineered inspection every three years.

Councilor Wilder Cross does not want pit owners to have to submit an engineered report annually.

Councilor Hartwell noted that he disagreed with Ephrem's comments in the minutes from the last meeting in which Ephrem said we need to provide advance notice prior to inspection – Councilor Hartwell said a notice is not [legally] necessary.

Mr. Paraschak said that in lieu of an inspection report being provided annually, details indicating that a pit meets "x criteria" [could be sufficient].

Councilor Wilder Cross commented that regarding gravel pit MS4 requirements, she is okay with inspections being done every two to three years.

Mr. Burns said that stormwater compliance is the base for the MS4 requirements.

Mr. Poirier said that the Town of Windham does not have anything in its ordinance regarding stormwater compliance.

Councilor Shepard recommends the requirement being that gravel pit inspections are performed every three years.

Mr. Poirier said that staff could draft language for "off years" so that pit owners do not have to submit plans, with the Town obtaining drone images as necessary during those years. Staff will provide the language to the committee for review before going out to notify gravel pit owners. Once the amendment language is finalized, a public hearing could be held.

Mr. Paraschak said that originally the Town was looking at increasing fees to do inspections in-house, so this amendment would pass the responsibility to pit owners.

Councilor Shepard asked how many gravel pits are in the Town that will fall under the new requirements if they are voted and approved to which Mr. Poirier said there are four or five pits and quarries. Mr. Poirier noted that gravel pit operators are tied to inspection report requirements.

A motion was MADE by Councilor Hartwell, SECONDED by Councilor Wilder Cross, and VOTED to send the item back to staff to make the discussed adjustments and bring back at the next meeting for review. Unanimous vote.

- C. Review and prepare an amendment to the Land Use and Development Code to streamline the performance guarantee and site plans process as recommended by staff and refer the recommendation back to the Town Council (referred by the Town Council on July 6, 2021).

Town Planner Carol Eyerman explained that the proposed amendment to the Land Use and Development Code (LUDC) reflected on attachment C streamlined the process to trim down the number of staff required on the committee. She added that staff then gets all comments needed this way, but others wouldn't vote.

Ms. Eyerman further said that the definition of meeting requirement was refined as the previous definition was nebulous. She added that a lot of post-approval activities were added to the amendment.

Mr. Poirier said that the performance guarantee and site plans process hasn't been touched in 15 years. Regarding the site plans on commercial lots, previously the process required developers to put performance guarantee for onsite work before developers could start building, which required unnecessary up-front costs for developers. This process was re-written in the proposed amendment so an applicant doesn't have to bond for onsite approval, which does not impact offsite approvals.

Mr. Poirier described onsite work as being at the physical lot, which can include paving, landscaping, stormwater ponds, etc. He also explained how the Town arrived at the minor site plan review committee.

Mr. Paraschak asked if there are reasonable safeguards to protect the Town and public to which Mr. Poirier gave an example of developers having to put up performance guarantees for landscaping and earthwork. Mr. Poirier noted that the proposed changes will facilitate better rapport with developers and business owners.

Mr. Paraschak commented that there is more at stake in residential development or developers to put in work.

Councilor Wilder Cross recommended reviewing typos in Section 4-5 – she noted that the language refers to the Town Planner and “his” designee.

Councilor Shepard asked staff to please number the pages.

Councilor Wilder Cross noted that the sentence with an “a” in Section 4.7, should be listed as “an.”

Councilor Shepard noted that the reference to “admin review” on the top of the third page under application procedures should be “minor site plan review,” and that all references to “admin review” throughout the document should be replaced with “minor site plan review.”

A motion was MADE by Councilor Hartwell, SECONDED by Councilor Wilder Cross, and VOTED to refer the proposed amendment with adjustments discussed to the Town Council for review at their next meeting. Unanimous vote.

- D. Review and prepare an amendment to the Fire Suppression Systems Ordinance to allow for an exemption of residential dwellings under 400 square-feet and refer the recommendation back to the Town Council (referred by the Town Council on July 6, 2021).

As Chief Fickett was unable to attend, a general discussion ensued in which Councilor Hartwell asked if the sprinkler requirement should apply to tiny houses or not.

Councilor Wilder Cross commented that she believed tiny houses have two egresses. She felt it would be overkill to require tiny houses to be sprinkled.

Mr. Poirier said that tiny houses still need to meet density requirements for lot size.

A brief discussion ensued between Councilor Hartwell and Mr. Poirier regarding tiny houses on rural land.

Mr. Paraschak said that if the Town Council wants to ensure the safety for tiny houses, they could leave the fire suppression system ordinance as-is.

Councilor Hartwell said the committee should refer to the statute that defines tiny houses and make them exempt from the fire suppression system ordinance.

Councilor Shepard asked if someone could develop a clustered residential area with tiny houses.

Mr. Poirier said that wedding venues have to apply for a contract zone, so someone could have a bunch of tiny homes on a farm if they applied for a contract zone.

Councilor Hartwell said there could be one compromise if tiny homes are required to be sprinkled as they could use one to two "ball devices."

Mr. Paraschak said if the committee wants to deter tiny homes, you could require them to be sprinkled.

Councilor Hartwell said that he does not want to deter tiny homes, and in the greater picture – more housing options are needed.

Mr. Paraschak said that staff could look at the statute language on tiny homes and make them exempt from the fire sprinkler system ordinance.

A motion was MADE by Councilor Wilder Cross, SECONDED by Councilor Hartwell, and VOTED to ask staff to make the discussed change to the fire suppression system ordinance and bring it back for review at their next meeting. Unanimous vote.

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

No items were discussed from the list below.

- 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).
- B. Review and provide a recommendation for amendments to the Land Use and Development Code to allow for a refund of Zoning Board of Appeals application fees when a determination of a Code Enforcement Officer is overturned by the ZBA (referred by the Town Council on September 7, 2021).
- C. Review and provide a recommendation for amendments to the Land Use and Development Code to adopt the South Gorham Crossroads District as identified by the Town's Comprehensive Plan (referred by the Town Council on September 7, 2021).

- D. Examine performance standards for multi-family housing to promote effective multi-family development in the Town of Gorham and recommend amendments to the Land Use and Development Code (referred by the Town Council on September 7, 2021).

4. **Other Business**

Councilor Hartwell shared that residents Charlie and Linda Pearson want to limit the agritourism ordinance to only active farms, which brings up tax implications.

Mr. Poirier said that it was option for farmers, but not required. Staff could look at adding language “either/or” for farm owners to either enroll or not.

Councilor Hartwell said he couldn’t remember if the ordinance limited the number of events to which Councilor Shepard said that there should be a limit.

Mr. Paraschak said asked if an overlay could be created for farms.

Councilor Hartwell said that all farms could have five events per year.

Mr. Poirier said that the Board of Appeals made a regrettable determination to allow a dirt bike school on a farm and the Pearsons are abutters to that farm.

Councilor Hartwell said that the current Schedule F [IRS 1040] Form could help identify farms.

Mr. Poirier said that contract zones and event centers address nuisance/recurring farm events.

Mr. Paraschak said that there could be an acreage requirement.

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

The next meeting of the committee is scheduled for Tuesday, October 19, 2021 at 8:00 a.m. in Conference Room A. The following items will be discussed at the next meeting:

- A. Review and prepare an amendment to the Land Use and Development Code requiring annual inspections of gravel pits to be conducted by a third-party inspector and refer the recommendation back to the Town Council (referred by the Town Council on July 6, 2021).
- B. Review and prepare an amendment to the Fire Suppression Systems Ordinance to allow for an exemption of residential dwellings under 400 square-feet and refer the recommendation back to the Town Council (referred by the Town Council on July 6, 2021).
- C. Review and provide a recommendation for amendments to the Land Use and Development Code to allow for a refund of Zoning Board of Appeals application fees when a determination of a Code Enforcement Officer is overturned by the ZBA (referred by the Town Council on September 7, 2021).
- D. Examine performance standards for multi-family housing to promote effective multi-family development in the Town of Gorham and recommend amendments to the Land Use and Development Code (referred by the Town Council on September 7, 2021).

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: 10:05am.

Respectfully submitted,
Jessica R. Hughes, Executive Assistant