

AGENDA AND PROPOSED ORDERS  
GORHAM TOWN COUNCIL  
REGULAR MEETING  
August 8, 2017  
6:30pm  
Burleigh H Loveitt Council Chambers

Pledge of Allegiance to the Flag

Roll Call

Acceptance of the minutes of the July 11, 2017 Regular Town Council Meeting.

Open Public Communications

Councilor Communications

Town Manager Report

School Committee Report

Old Business

Item # 9144                      Action to consider a proposed moratorium of Retail Marijuana Establishments and Retail Marijuana Social Clubs. (Admin. Spon.)

Proposed  
Order # 9144                      WHEREAS, a ballot initiative to legalize, regulate and tax marijuana for non-medicinal purposes known as the "Marijuana Legalization Act," to be codified in the Maine Revised Statutes in Title 7, chapter 417 was voted on by a State-wide referendum election on November 8, 2016; and

WHEREAS, the Act authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the Act, as well as providing the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities, within their jurisdiction; and

WHEREAS, the Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§2421-2430-B) to qualifying patients, primary Caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications;

WHEREAS, the Town's ordinance do not include any regulations related to retail marijuana establishments or retail marijuana social clubs allowed under the new Act; and,

WHEREAS, the unregulated location and operation of retail marijuana establishments and retail marijuana social clubs within the Town of Gorham raises legitimate and substantial questions about the impact of such establishments and social clubs on the community, including questions about the compatibility of retail marijuana establishments and social clubs with existing uses and development in residential, commercial and industrial zoning districts; the potential adverse health and safety effects of retail marijuana establishments and social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for the non-medical purposes and the potential increased burden on the Town's Police Department and Fire Rescue Department; and the adequacy of the Town's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs; and establishments and/or retail marijuana social clubs within the Town has potentially serious implications for the health, safety and welfare of the Town and its residents; and

WHEREAS, the Town needs time to review the Act and to review its own Ordinances to determine the implications of future proposed retail marijuana establishments and/or social clubs to develop reasonable ordinances governing the location and operations of such establishments and social clubs to address the concerns cited above; and

WHEREAS, the Town Council, the Administration and the Planning Board, with the professional advice and assistance of the Town Staff, shall study the Town's Ordinances to determine the land use and other regulatory implications of retail marijuana establishments and social clubs and consider what locations, if any, and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result as the result of retail marijuana establishments and social clubs and other uses authorized by the proposed changes in law, if passed, was voted on November 8, 2016 referendum election, being located in the Town; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town enacts this Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs;

NOW THEREFORE, be it ordered by the Town Council of the Town of Gorham, that the following Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs be, and hereby is, enacted, and, in furtherance thereof, the Town Council does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, within the Town.

This Moratorium Ordinance shall take effect, once enacted by the Town Council, in accordance with the provisions of the City charter, but shall be applicable as of November 8, 2016, as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended, repealed, or modified by the Town Council, for the express purpose of drafting an amendment or amendments to the Town Ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments and social clubs with existing and permitted uses in residential, commercial and industrial zoning districts; the correlation of retail marijuana establishments and social clubs with medical marijuana cultivation facilities and dispensaries, all as defined in the "Marijuana Legalization Act;" the potential adverse health and safety effects of retail marijuana establishments and social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town's infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs in the Town.

BE IT FURTHER ORDERED, that this Ordinance shall apply to retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined by the "Marijuana Legalization Act" to be codified, if passed, at 7 M.R.S.A. §§2442 (36),(38),(39),(40) (41), that may be proposed to be located within the Town on or after November 8, 2016 applicability date of the Ordinance; and

BE IT FURTHER ORDERED, that notwithstanding the provisions of 1 M.R.S.A. § 302 proposed retail marijuana establishments or social clubs for which an application for a building permit, Certificate of Occupancy, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other Town official or board prior to November 8, 2016, the applicability date of this Ordinance: and

BE IT FURTHER ORDERED, that no person or organization shall develop or operate a retail marijuana establishment or social club within the Town on or after November 8, 2016

applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the Town Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDERED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny or in any other way act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related to a retail marijuana establishment or retail marijuana social club; and

BE IT FURTHER ORDERED, that those provisions of the Town's Ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDERED, that if retail marijuana establishments or retail marijuana social clubs are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDERED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Item # 9237                      Action to consider an easement for a turn around on Phinney Street. (Admin. Spon.)

Proposed  
Order # 9237                      Ordered, that the Town Council accept an easement for a turn around on Phinney Street.

New Business

Public Hearing #1  
on Order #9246

Public hearing on a proposed ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs. (Admin. Spon.)

Proposed  
Order # 9246

Whereas, the Marijuana Legalization Act allows retail marijuana establishments, including retail marijuana stores, cultivation, manufacturing and testing facilities and retail marijuana social clubs, and

Whereas, under the Marijuana Legalization Act and under Municipal Home Rule Authority, municipalities may prohibit retail marijuana establishments, and

Whereas, the production, processing and sale of marijuana is illegal under federal law and anyone producing, processing or selling marijuana, even in a state where it is legal for medical or recreational purposes, would be committing a federal crime, and

Whereas, marijuana is a Schedule 1 substance under the US Controlled Substance Act, and

Whereas, the new law is inconsistent and the consequences are uncertain, and

Whereas, State regulations intended to implement the Marijuana Legalization Act won't go into effect until at least 2018.

Now Therefore Be It Ordered, that the Town Council adopt the following Ordinance:

## **TOWN OF GORHAM**

### **Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs**

#### **Section 1. Authority.**

1.1 This ordinance is enacted pursuant to the Marijuana Legalization Act; Title 7 MRSA c. 417; and Municipal Home Rule Authority, Me. Const., art. VII, pt. 2; and Title 30-MRSA Section 3001.

#### **Section 2. Definitions**

2.1 For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, and retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in Title 7 MRSA Section 2442.

#### **Section 3. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.**

3.1 Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in Gorham.

3.2 No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by Title 7 MRSA Section 2442.

3.3 Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, Title 22 MRSA c. 558-C.

#### **Section 4. Penalties**

4.1 This ordinance shall be enforced by the municipal officers or their designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions. Of 30-A MRSA §4452.

#### **Section 5. Severability**

5.1 In the event that any section, subsection or portion of this Ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this Ordinance.

#### **Section 6. Effective Date.**

6.1 This ordinance shall take effect on August 8, 2017.

Public Hearing #2  
on Order #9247

Public hearing on a proposed Fire Protection, Prevention and Local Building Plan Review ordinance, to provide for review of building plans by the local Fire Department as an option to review by the State Fire Marshal. (Admin. Spon.)

Proposed  
Order #9247

Whereas, many building plans must currently be reviewed by the State Fire Marshal's office for compliance with various codes, like NFPA 1 Uniform Fire Code and NFPA 101 Life Safety Code, and

Whereas, the State Fire Marshal has a lot of work and often takes a long time to complete their review, and

Whereas, the State Fire Marshal will allow this review to be conducted locally as long as the local municipality is able to meet appropriate criteria and other Maine communities are providing this service, and

Whereas, the review can often be done more quickly by the local community, and

Whereas, the developers will have the option of applying to the State Fire Marshal or having the review done locally,

Now therefore, the Town Council adopts the following ordinance:

## **Town of Gorham**

### **ORDINANCE FOR OPTIONAL PROGRAM FOR LOCAL BUILDING PLAN REVIEW.**

#### **Section 1: Purpose:**

1.1 This Ordinance is intended to provide a program for local building plan review other than one and two family dwelling units. This program shall be optional for the applicant who may choose to apply for local review of building plans or chose to apply for review of building plans through the State Fire Marshal.

#### **Section 2: Adoption of NFPA 1.**

2.1 The Town hereby adopts the 2006 edition of NFPA 1, Uniform *Fire Code*, as amended by the State of Maine, except that NFPA 1, Section 1 and Section 10 are hereby deleted and Appeals shall be made in accordance to Section 7 of this Ordinance.

#### **Section 3: Optional Local Building Plan Review.**

3.1 The Town, through its Fire Department, may provide review of building plans, other than one and two family dwelling units, as an option to the review provided by the State Fire Marshal.

3.2 This review does not include Barrier-Free construction review/permits which are done separately through the State Fire Marshal.

#### **Section 4: Fees.**

4.1 For projects reviewed by the Town of Gorham, the fee schedule for local review shall be 5 cents per square foot for occupied and unoccupied spaces and one cent per square foot shall be remitted to the State.

#### **Section 5: Enforcement of Fire Prevention Codes.**

5.1 The Fire Inspector shall be primarily responsible for enforcement of the Fire Prevention Code and review of Commercial and Industrial building plans under the general supervision of the Fire Chief. The Fire Chief may detail such members of the Fire Department, as inspectors, as shall from time to time be necessary for the review of the building plans and subsequent enforcement, if necessary.

#### **Section 6: Penalty for violating codes.**

6.1 Any person, being the owner or tenant or having control of any property or structure or part thereof which violates any of the provisions of the said Fire Prevention Codes and/or another section of this article or who fails to conform to any of the provisions thereof, after having received a ten-day notice of such violation, shall be subject to the penalty provisions pursuant to Title 30-A M.R.S.A. Section 4452. The Fire Inspector, Fire Chief, or a person designated by the Fire Chief may cause a notice of violation or order to be served on the person responsible for the violation or non-compliance condition, in violation of the provisions hereof or in violation of a plan or of a detail statement made with a permit application. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation. If the notice is complied with promptly, the Fire Inspector or Fire Chief, or a person designated by the Fire Chief, may issue a civil summons, or after consulting with the Town Manager, may request the Town Attorney to initiate the appropriate enforcement, to restrain, correct or abate such violation.

6.2 Such violations shall be punishable by a fine, as set forth in Title 30-A M.R.S.A. Section 4452, together with such injunctive relief or administrative remedies, as may be available. Each and every day such a violation continues after the ten-day notice period shall constitute a separate offense. In addition, the Town may seek recovery of costs and any other legal and equitable remedies as may be available to the Town.

### **Section 7: Appeals**

7.1: Any decision by the Fire Inspector may be appealed to the Fire Chief within thirty (30) days after issuance of a written decision by the Fire Inspector.

7.2: A person aggrieved by a decision by the Fire Chief may appeal to Superior Court as provided by law or may submit a new application to the State Fire Marshal. If a new application is submitted to the State Fire Marshal, such application shall be considered a new application and any fees paid as part of the local application shall be non-refundable.

### **Section 8: Severability Clause**

8.1 If any part of this Ordinance is held to be invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance.

Item # 9248

Action to consider accepting a bid for a tandem axle dump truck to replace a 2003 dump truck (Admin. Spon.)

Proposed



Order #9248                      Ordered that the Town Council accept the bid of \_\_\_\_\_ for \_\_\_\_\_ for a tandem axle dump truck to replace a 2003 dump truck.

Item # 9249                      Action to consider accepting a bid for a 6-wheel dump truck to replace a 2004 dump truck.(Admin. Spon.)

Proposed  
Order # 9249                      Ordered, that the Town Council accept the bid of \_\_\_\_\_ for \_\_\_\_\_ for a 6-wheel dump truck to replace a 2004 dump truck.

Item #9250                      Action to consider authorizing the Town to retain a used Rescue vehicle as a backup. (Admin. Spon.)

Proposed  
Order #9250                      Ordered that the Town retain a used Rescue vehicle as a backup vehicle for use when one of the Town's two front-line Rescue vehicles is unavailable for use.

Item #9251                      Action to consider voting for Officers of the Maine Municipal Association. (Admin. Spon.)

Proposed  
order #9251                      Ordered, that the Town Council vote for the slate of officers for the Maine Municipal Association as presented.

Item #9252                      Action to consider authorizing the Planning Board to review and make recommendations to the Town Council to amend the Town's Land Use and Development Code to make the Code consistent with the Comprehensive Plan.

Proposed  
Order # 9252                      Ordered that the Town Council authorize the Planning Board to review the Town's Land use and Development Code and where appropriate, forward recommendations to amend the Land use and Development Code for the purpose of making the Land use and Development Code consistent with the Town's Comprehensive Plan.

Item #9253                      Action to consider a Senior Property Tax Assistance Rebate Ordinance. (Councilor Stelk, Spon)

Proposed

Order #9253                      Ordered, that the Town Council ask staff to develop a Senior Property Tax Assistance Rebate Ordinance, similar to the ordinances developed in Cumberland and Scarborough, for the Town Council to consider.

Item # 9254                      Action to consider approving the transfer of funds seized in a criminal case. (Admin. Spon.)

Proposed  
Order #9254                      Ordered that the Town Council approve the transfer of \$1,420 to the Town of Gorham pursuant to Title 15 MRSA Section 15824 (3) and 5826 (6) seized in a criminal case (Docket No. CR-16-4344) and  
Be it further ordered that the Town Manager is authorized to sign the approval form on behalf of the Town of Gorham.

Item #9255                      Action to consider asking the Town Attorney to begin the process of removing any restrictions on the use of Robie Park. (Councilor Phinney, Spon.)

Proposed  
Order #9255                      Ordered that the Town Council ask the Town Attorney to begin the process of removing any deed restrictions or any other regulatory legal restrictions that restrict the Town's use of Robie Park.

Item # 9256                      Action to consider a Municipal/State agreement for improvements at the intersection of Libby Avenue and Main Street (Rte. 25). (Admin. Spon.)

Proposed  
Order # 9256                      Ordered, that the Town Council approve a Municipal/State agreement for improvements to the intersection of Libby Avenue and Main Street (Rte. 25) (State WIN # 022873.00, Federal aid Project # 2287300).

Item # 9257                      Action to go into executive session, pursuant to Title 1 MRSA Section 405 (6) (D) To discuss labor negotiations with the Firefighters. (Admin. Spon.)

Proposed  
Order #9257                      Ordered, that the Town Council go into executive session, pursuant to Title 1 MRSA Section 405 (6) (D) to discuss labor negotiations with Firefighters.

Adjourn