

AGENDA AND PROPOSED ORDERS
GORHAM TOWN COUNCIL
REGULAR MEETING
December 5, 2017
6:30pm
Burleigh H Loveitt Council Chambers

Pledge of Allegiance to the Flag

Roll Call

Acceptance of the minutes of the November 14, 2017 Regular Town Council Meeting.

Open Public Communications

Councilor Communications

Town Manager Report

School Committee Report

Public

Hearing #1

On Item # 9292

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

Proposed

Order # 9292

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.

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| Item # 9293 | Action to consider adopting Council Rules for 2017-2018 year. (Admin Spon.) |
| Proposed
Order # 9293 | Ordered, that the Town Council adopt the same rules for 2017-2018 year as for 2016-2017 year. |
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| Item # 9294 | Action to consider accepting Woodspell Road, as a Public Road. (Admin. Spon.) |
| Proposed
Order # 9294 | Ordered, that the Town Council accept Woodspell Road, as a public road, and Be It Further Ordered, that Woodspell Road be locally classified as a Rural Access Road. |
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| Item # 9295 | Action to consider selling a small parcel of land located off Huston Road. (Admin. Spon.) |
| Proposed
Order # 9295 | Ordered, that the Town Council authorize the Town to solicit sealed bids on a parcel of land (Tax Map 111, Lot 27) located off Huston Road, and

Be It Further Ordered, that a minimum bid of \$500 be set, with the Town to issue a quit claim deed, if a bid is accepted. |
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| Item # 9296 | Action to consider adopting a Property Tax Assistance Ordinance for the Town of Gorham. (Admin. Spon.) |
| Proposed
Order # 9296 | Ordered, that the Town Council refer the following proposed ordinance entitled "Town of Gorham Property Tax Assistance Ordinance" to the Ordinance Committee for their recommendations: |

TOWN OF GORHAM

PROPERTY TAX ASSISTANCE ORDINANCE

DRAFT

ARTICLE I

Property Tax Assistance

Purpose

The purpose of this article is to establish a program to provide property tax assistance to persons 70 years of age and over who reside in the Town of Gorham. Under this program, the Town of Gorham will provide refund payments to those individuals who maintain a homestead in the Town of Gorham and meet the criteria established by this article.

ARTICLE II

Definitions.

As used in this article, the following terms shall have the meanings indicated:

- A. BENEFIT BASE** — Property taxes paid by a qualifying applicant during the tax year on the qualifying applicant's homestead or rent constituting property taxes paid by the resident individual during the tax year on a homestead.
- B. HOMESTEAD** — For purposes of this article, "homestead" shall have the same meaning as defined in 36 M.R.S.A. § 5219-KK(1)(C). Generally, a homestead is a dwelling owned or rented by the person seeking tax assistance under this article or held in a revocable living trust for the benefit of that person. The dwelling must be occupied by that person and that person's dependents as a home and have been occupied by the same persons for at least ten years.
- C. INCOME** — Total household income as determined by the total (gross) income reported on the applicant's most recent federal income tax return (line 22 of Form 1040; line 15 of Form 1040A; line four of Form 1040EZ), plus the total (gross) income reported on the most recent federal income tax return of each additional member of the household if filing separately. If the applicant and/or any member of the household do not file a federal income tax return, income shall be the cumulative amount of all income received by the applicant and each additional member of the household from whatever source derived, including, but not limited to, the following items:
 - i. Compensation for services, including wages, salaries, tips, fees, commissions, fringe benefits and similar items;
 - ii. Gross income derived from business;
 - iii. Gains derived from dealings in property (capital or other);
 - iv. Interest;
 - v. Rents from real estate;

- vi. Royalties;
- vii. Dividends;
- viii. Alimony and separate maintenance payments received;
- ix. Annuities;
- x. Pensions;
- xi. Income from discharge of indebtedness;
- xii. Distributive share of partnership gross income;
- xiii. Income from an interest in an estate or trust;
- xiv. IRA distributions;
- xv. Unemployment compensation; and
- xvi. Social security benefits.

D. QUALIFYING APPLICANT — A person who is determined by the Town Manager or his designee, after review of a complete application under § 261-4 of this article, to be eligible for a refund payment under the terms of this article.

E. RENT CONSTITUTING PROPERTY TAX — Fifteen percent of the gross rent actually paid in cash or its equivalent during the tax year solely for the right of occupancy of a homestead. For the purposes of this article, "gross rent" means rent paid at arm's length solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement.

In order to participate in the property tax assistance program, an applicant shall demonstrate all of the following:

- i. The applicant shall be 70 years of age or more at the time of application.
- ii. The applicant shall have a homestead in the Town of Gorham at the time of the application and for the entire year prior to the date of application.
- iii. The applicant has been a resident of the Town of Gorham for at least 10 years immediately preceding the date of application for participation in the Program.
- iv. The applicant shall meet the application and eligibility criteria set forth in §§ 261-4 and 261-5 of this article.

ARTICLE III

Application and payment procedures.

Persons seeking to participate in the property tax assistance program shall submit an application to the Town Clerk no later than August 1 of the year for which the refund is requested. Applications are required for every year the applicant seeks to participate in this program. The application form for the program shall be made available upon request in the Town Clerk's office and shall include, at a minimum, the applicant's name, homestead address and contact information. Attached to all applications shall be proof of household income.

Applicants shall also submit proof of property taxes paid or rent constituting property taxes paid during the tax year on the individual's homestead in the Town of Gorham. The Town Clerk or her designee shall review and determine if the application is complete and accurate and if the applicant is otherwise eligible to participate in the program. The Town Clerk

or her designee shall notify an applicant if an application is determined to be incomplete. The Town Clerk's decision on eligibility to participate in the program shall be final.

Determination of eligibility and amount.

- A. Eligibility under this article is designed to provide greater benefits proportionally to applicants with lower income in relation to their benefit base. Applicants with income greater than an amount equal to 90% of the current United States Department of Housing and Urban Development metropolitan area median family income shall not be eligible for benefits under this article. Eligible applicants will receive a benefit totaling the amounts set forth in Subsection A(1) and (2) as follows, provided that the cumulative maximum benefit allowed shall be \$500:

The total amount of any increase to the applicant's benefit base from the most recent tax year to the current tax year; and

Benefits based on a calculation of the applicant's benefit base as a percentage of their income [(Benefit/Income) x 100 = Benefit base as percent of income.]

If the benefit base as a percent of income is greater than 10%, the applicant will receive \$300;

If the benefit base as a percent of income is 8% to 10% of income, the applicant will receive \$200;

If the benefit base as a percent of income is 6% to 7% of income, the applicant will receive \$100;

If the benefit base as a percent of income is 5% or less, the applicant will receive \$50.

ARTICLE IV

Limitations on payments.

The Town Manager shall report to the Town Council for its approval at its second meeting in August each year the projected payments and number of eligible applicants requesting assistance from the program fund.

Payments under this article shall be conditioned upon the existence of sufficient monies in the program fund for the year in which participation is sought. If there are not sufficient monies in the program fund to pay all qualifying applicants under this article per the calculations set forth in § 261-5, payments shall be limited to the amounts available in the fund and may be prorated accordingly. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request and/or unpaid balance will not carry over to the next year.

ARTICLE V

Creation of program fund.

The program fund from which payments shall be made under the terms of this article shall be created as follows:

As funds are available, the Town Council shall annually appropriate monies from the general fund or other sources to support this program.

Any surplus monies available after all payments have been made shall be carried forward within the fund to the next fiscal year.

ARTICLE VI

Timing of payments.

A person who qualifies for payment under this program shall be mailed a check for the benefit amount for which he/she is eligible under § 261-5 no later than 14 days from the date of Council approval of the applications for the year in which participation is sought.

ARTICLE VII

One applicant per household.

Only one qualifying applicant per household shall be entitled to payment under this program each year. Eligibility shall be determined based on total household income. The right to file an application under this article is personal to the applicant and does not survive the applicant's death, but the right may be exercised on behalf of an applicant by the applicant's legal guardian or attorney in fact. If an applicant dies after having filed a timely complete application that results in a determination of qualification, the amount determined by the Assessor shall be disbursed to another member of the household as determined by the Assessor. If the applicant was the only member of a household, then no payment shall be made under this article.

Item # 9297	Action to consider accepting a resignation from the Conservation Commission. (Admin. Spon.)
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Proposed Order # 9297	Ordered, that the Town Council accept the resignation of Janet MacLeod from the Conservation Commission, to be effective immediately, and Be It Further Ordered, that the Town Council expresses its appreciation for her service on the Conservation Commission and to the Gorham Community.
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Adjourn

