

**AGENDA & PROPOSED ORDERS  
GORHAM TOWN COUNCIL REGULAR MEETING**

April 7, 2009 – 7:00 p.m.  
Gorham Municipal Center – Council Chambers

**PLEASE NOTE: The proposed orders on this agenda are suggested orders only and may change without notice prior to the meeting.**

Pledge of Allegiance to the Flag

Roll Call

Acceptance of the minutes of the March 3, 2009 Regular Town Council Meeting

Open Public Communications

Councilor Communications

Chairman's Report

Town Manager's Report

School Committee Report

Department Report – Public Works Department

**Old Business**

**Item #7670** Action to consider a proposal to amend the Land Use and Development Code, Chapter II, General Standards of Performance and Chapter IV, Site Plan Review relative to noise. (Adm. Spon.)

**Proposed Order #7670** **WHEREAS**, the Town has a Land Use and Development Code to provide for appropriate development; and,

**WHEREAS**, the Land Use and Development Code has standards that regulate noise in some circumstances that are outdated and inadequate; and,

**WHEREAS**, the Town Council has determined that the noise regulations are consistent with the Town Comprehensive Plan; and,

**WHEREAS**, the Town Council, at their February 3, 2009 meeting referred this item to their Ordinance Committee for further review; and,

**WHEREAS**, the Ordinance Committee reviewed the proposal at their meeting on March 18, 2009 and made several minor adjustments then recommended that the Town Council approve the proposal,

**NOW, THEREFORE, BE IT ORDAINED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled amend the Land Use and Development Code as follows: **SEE ATTACHMENT A**

**New Business**

**Public Hearing #1** Public Hearing to consider an amendment to the General Assistance Ordinance to adopt new food maximums.

**Item #7695** Action to consider an amendment to the General Assistance Ordinance to adopt new food maximums. (Adm. Spon.)

**Proposed Order #7695** **WHEREAS**, the Town of Gorham has adopted a General Assistance Ordinance to establish appropriate regulations for the proper administration of General Assistance, and

**WHEREAS**, from time to time, the ordinance needs to be adjusted to reflect changes in state and federal laws on the cost of living,

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of Gorham, Maine in Town Council assembled that the General Assistance Ordinance be amended by adopting the new food maximums for Appendix B.

**General Assistance Ordinance, Revised Appendix B, Food Maximums**

Please Note: The maximum amounts allowed for food are established in accordance with the U.S.D.A. Thrifty Food Plan. Through October 1, 2009, those amounts are:

Number in Household	Weekly Monthly	
	Maximum	Maximum
1	\$ 46.51	\$ 200
2	\$ 85.35	\$ 367
3	\$122.33	\$ 526
4	\$155.35	\$ 668
5	\$184.42	\$ 793
6	\$221.40	\$ 952
7	\$244.65	\$1,052
8	\$279.53	\$1,202

Note: For each additional person add \$150 per month.

**Public Hearing #2** Public Hearing to consider issuance of a new Victualer's License for O'Donal's Nursery, LLC .

**Item #7696** Action to consider issuance of a new Victualer's License for O'Donal's Nursery, LLC. (Adm. Spon.)

**Proposed Order #7696** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled approve the issuance of a new Victualer's License for O'Donal's Nursery, LLC to expire May 31, 2010.

**Public Hearing #3** Public Hearing to consider issuance of a Special Amusement Permit for PineCrest Bed & Breakfast Inn.

**Item #7697** Action to consider issuance of a Special Amusement Permit for PineCrest Bed & Breakfast Inn.

**Proposed Order #7697** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled approve the issuance of a Special Amusement Permit for PineCrest Bed & Breakfast Inn.

**Public Hearing #4** Public Hearing on a proposed Animal Control Ordinance.

**Item #7698** Action to consider adopting an Animal Control Ordinance. (Adm. Spon.)

**Proposed Order #7698** **WHEREAS**, the Town of Gorham has a limited Animal Control Ordinance that prohibits dogs in cemeteries, but otherwise does not regulate animals; and,

**WHEREAS**, the Town Council has determined that it is necessary to provide an ordinance that addresses additional standards to adequately protect the health, welfare and public safety of the community,

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of Gorham, Maine in Town Council assembled to adopt the new Animal Control Ordinance, as proposed; and,

**BE IT FURTHER ORDAINED** that the existing Animal Control Ordinance shall become null and void upon the effective date of this new ordinance.

#### **TOWN OF GORHAM ANIMAL CONTROL ORDINANCE**

##### Section 1. Purpose

1.1 The purpose of this ordinance is to require that all animals in the Town of Gorham be kept under the control of their owner or keeper at all times so that they will not injure persons or other animals, damage property or create a public health threat.

1.2 The provisions of this ordinance that apply to the owner of an animal apply equally to any person keeping, or having control, custody, or possession of that animal.

##### Section 2. Authority.

2.1 This ordinance is enacted pursuant to Title 30-A, M.R.S.A., Section 3001.

##### Section 3. Severability Clause.

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

##### Section 4. Definitions

###### 4.1. ABANDONED ANIMAL:

An animal that has been deserted by its owner or keeper.

###### 4.2. ANIMAL:

Every living, sentient creature not a human being.

###### 4.3. ANIMAL CONTROL:

Control of dogs, cats and other domesticated animals.

###### 4.4. ANIMAL CONTROL OFFICER:

Any person appointed by the Town of Gorham to enforce animal control laws.

###### 4.5. ANIMAL SHELTER:

A facility that includes a physical structure, or part of a physical structure, that provides temporary or permanent shelter to stray, abandoned, abused or owner-surrendered animals.

###### 4.6. AT LARGE:

Off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.

###### 4.7. DOG:

Any of large and varied groups of domesticated animals in the canine family.

###### 4.8 DOMESTICATED ANIMAL:

Any animal that is normally dependent on humans for food or shelter, including horses, swine, fowl, sheep, cattle, goats, dogs, deer, buffalo, ~~eats~~, wildlife hybrids, ~~ferrets~~, and other similar animals.

###### 4.9. LEASH:

Hand held device, 30 feet or less in length, which can be used to restrain a dog if the dog fails to respond to voice commands or if the owner or responsible party is ordered by a law enforcement officer to leash the dog and at all times when this Ordinance requires dogs to be leashed.

###### 4.10. OWNER:

Any person or persons, firm, association or corporation owning, keeping or harboring an animal or any person having custody, possession, or control of an animal.

###### 4.11. RESPONSIBLE PARTY:

As used in this ordinance, the term "responsible party" means any person who has possession or custody of a domestic animal.

###### 4.12. VOICE CONTROL:

As used in this ordinance, the term "voice control" means that the dog returns immediately to and remains by the side of the responsible party in response to the responsible party's verbal command. If a dog approaches or remains within 10 feet of any person other than the responsible party, that dog is not under voice control and a violation of this Ordinance occurs unless such person (or in the case of a minor child, an adult present with the child) has communicated to the responsible party by spoken word or gesture that such person consents to the presence of the dog.

#### Section 5. Animal Control Officer

5.1 A qualified person may be employed by the police department who shall be known as and perform the duties of Animal Control Officer. The Animal Control Officer shall be principally responsible for the enforcement of all laws related to dogs, cats, and other domesticated animals. ~~and also to undomesticated animals.~~ However, all qualified law enforcement officers may enforce this ordinance.

#### ~~Section 6. Impoundment or Return of Dogs~~

~~6.1 All domestic animals found at large in violation to Title 7, M.R.S.A., Section 3911, or in violation of this ordinance, may be impounded at the animal shelter or other appropriate facilities, or returned to the owner, at the discretion of the Animal Control Officer. If the Animal Control Officer returns the dog to its owner, the owner shall pay a \$15.00 (fifteen dollars) return fee to the Town of Gorham before the dog is returned. The payment must be made at the Municipal Center, which shall issue a receipt therefore.~~

#### Section 6. Disposition of Impounded Animal

6.1 An owner is entitled to resume possession of any impounded animal provided that all provisions of this ordinance have been met, and that all impoundment fees due under the provisions of this ordinance have been paid. Any animal not claimed after the owner has been notified may be classified as an abandoned animal, and the animal's owner may be subjected to all civil penalties authorized by this ordinance.

#### Section 7. Impoundment Fee

7.1 An owner may reclaim an impounded animal by first paying ~~to the Town of Gorham at the Town Clerk's Office~~ a fee of \$30.00 (thirty dollars) for each animal impounded. ~~at the Animal Shelter. Fees must be paid and a receipt from the Town must be presented to the animal shelter before the release of an animal.~~ All fees will be deposited in the separate account required by Title 7, M.R.S.A. 3945.

#### Section 8. Animal Noise

8.1 Except as provided in subparagraph (8.2) and (8.3) below, no owner shall permit or allow any animal to bark, howl or make other sounds common to its species if such sounds recur in steady, rapid succession for 10 minutes or more or recur intermittently for one hour or more.

8.2 Section 8 shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.

8.3 Section 8 shall not apply to farm animals kept on a property located in the Rural or Rural-Manufactured Housing Districts under the Gorham Land Use and Development Code. In all other zoning districts, Section 8 shall not apply to farm animals kept on a property, a use of which is, the commercial production of farm products and is either a conforming use or a lawful nonconforming use under the Gorham Land Use and Development Code. For purposes of this exception, dogs are not "farm animals" and kennels are not "farms."

#### Section 9. Control of Animal Waste

9.1 An owner must remove and dispose of any feces left by their animal on any sidewalk, street, beach, public property or private property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property) and deposit such feces into appropriate litter receptacle. An owner whose animal is present on any property from which the animal's feces is required to be removed pursuant to this section must have in his or her possession a plastic bag or similar utensil not part of the human body for collecting and removing the feces. This regulation shall not apply to any person who, by reason of physical handicap, is unable to comply with the requirement.

## Section 10. Dangerous Dogs

10.1 Any person who is assaulted by a dog or any person witnessing an assault against a person or domesticated animal or a person with knowledge of an assault against a minor, within thirty days of the assault, may make a written complaint to the Animal Control Officer that the dog is a dangerous dog. The Animal Control Officer may issue a civil violation citation for keeping a dangerous dog pursuant to 7 M.R.S.A. §3952. After issuing the citation and before hearing in court, if the dog poses an immediate or continuing threat to the public, the Animal Control Officer shall order the owner of the dog to muzzle, restrain or confine the dog to the owner's premises or to have the dog at the owner's expense at a place determined by the Animal Control Officer. If the owner fails to comply with such order, the Animal Control Officer may apply to the District Court, Superior Court or a Justice of the Peace pursuant to 7 M.R.S.A. §3952 for an ex parte order for authorization to take possession of the dog that poses an immediate or continuing threat to the public.

## Section 11. Trespass

11.1 An owner of an animal may not allow that animal to enter onto the property of another after the owner has been warned by the Animal Control Officer or a law enforcement officer that the animal was found on the property of another.

11.2 The owner of an animal is responsible, at the owner's expense, for removing such animal found trespassing. The Animal Control Officer, may, at the owner's expense, remove and control the animal if: the owner fails to remove the animal after having been notified by the Animal Control Officer that the animal was trespassing; or the animal is an immediate danger to itself, to persons or to another's property.

A. Any animal so removed shall be subject to the provisions of Sections 6 and 7, ~~7, 8 and 9~~ in the same manner as an at large dog.

## Section 12. Dogs at Large, Prohibited in Cemeteries

12.1 It is unlawful for any dog, licensed or unlicensed, to be at large, except when used for hunting. The owner of any dog found at large shall be subject to the civil penalties provided in this ordinance.

12.2 It shall be unlawful for any owner to allow or permit any dog, whether on a leash or roaming at large or unrestricted, to enter any cemetery in the Town of Gorham, except that a service animal providing assistance to a person with disabilities may enter a cemetery.

## Section 13. Tags and Stickers

13.1 No dog shall be kept within the limits of the Town of Gorham unless such dog is licensed by its owner in accordance with Maine Law. The Town Clerk shall provide with each new license issued for a dog a tag indicating the year the license is issued and such other information as may be required under 7 M.R.S.A. §3922-B. The tag remains with the dog for as long as the dog is kept in the Town of Gorham. At each license renewal, the Town Clerk shall provide a sticker indicating the year for which the license is valid. The sticker must be attached to the back of the tag. The owner shall make sure that the tag is securely attached to the back of the tag. The owner shall make sure that the tag is securely attached to a collar of leather, metal or material of comparable strength and that the collar is worn at all times by the dog for which the license was issued except when hunting, in training or in an exhibition. When the dog is hunting, in training or in an exhibition, its owner shall produce proof of licensure within twenty-four hours upon request by the Animal Control Officer. If a sticker and tag are lost, the owner shall obtain a new license, tag and sticker. The Town Clerk shall issue another license tag and sticker upon presentation of the original license and payment of one dollar.

## Section 14. Rabies Tags

14.1 Rabies tags obtained from a veterinarian for immunization against rabies must be securely attached to a collar of leather, metal or material of comparable strength that must be worn by the dog for which the tag was issued except when the dog is hunting, in training or in an exhibition or on the premises of the owner. When the dog is hunting, in training or in an exhibition, its owner shall produce proof of licensure and proof of rabies immunization within twenty-four hours upon request for the Animal Control Officer.

## Section 15. Public Health Threat

15.1 The owner or keeper of an animal that may have been exposed to a contagious or viral disease may be served with a quarantine notice. The owner or keeper shall confine and control the animal in accordance with the instructions in the notice. Failure to comply with the notice will be considered a violation of this ordinance and may result in a court ordered seizure of the quarantined animal. The owner or keeper may also be subject to the penalties found in Section 16.

Section 16. Violation and Penalties

16.1 Except as otherwise provided by State law, anyone found guilty of violating any provisions of this Ordinance shall be subjected to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) to be recovered for the use of the Town of Gorham and shall be subjected to such other legal and equitable remedies as may be available to the Town. Each day such a violation continues shall be deemed to be a new offense.

**Public Hearing #5**

Public Hearing on a proposal to amend the Town's Victualer's Ordinance.

**Item #7699**

Action to consider amending the Victualer's Ordinance. (Adm. Spon.)

**Proposed Order #7699**

**WHEREAS**, the Town has a Victualer's Ordinance that requires the Town Council to approve all new and renewal applications; and,

**WHEREAS**, the Town Council has concluded that many of these applications are routine and can be processed more efficiently by staff,

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Gorham, Maine, in Town Council assembled that the Town's Victualer's Ordinance be amended as proposed.

VICTUALER'S ORDINANCE

SECTION 1 PURPOSE

A. The purpose of this Ordinance is to regulate the sale of prepared food in the Town of Gorham. The regulations are those which the Town Council in a public meeting have clearly found to be necessary in order to protect the general welfare, public safety and health of the Town of Gorham and its citizens.

SECTION 2 LICENSE

A. Any place where food or drink is prepared or served to the public for consumption on or off the premises shall be licensed annually as a Victualer, in order to operate within the Town of Gorham.

B. Establishments must be in compliance with all local ordinances and property taxes and local fees must be paid in full prior to the issuance or renewal of a Victualer's License.

SECTION 3 EXCEPTIONS

A. A public or private school, any non-profit organization selling food or drink, or any booster group raising money for a charitable cause; grocery stores, except those selling food items prepared on the premises; educational activities or public agency programs and food and drink sold only through vending machines shall be exempt from the provisions of this ordinance.

SECTION 4 APPLICATION PROCESS

A. New Application: New applicants may apply at any time during the year. Applications for a license shall be procured from the Town Clerk, completed and signed by the applicant and filed with the Town Clerk, and when submitted to the Town Council shall bear the recommendation for approval or disapproval with reasons noted by the Code Enforcement Officer, the Police Chief, the Fire Chief and the Tax Collector.

A license shall be granted by the Town Clerk if the property in question complies with all Federal, State and local laws and the applicant demonstrates that the premises will be conducted in a healthful and sanitary manner in accordance with the Food Code so as not to jeopardize the public health, safety and welfare and that the applicant is not

delinquent in the payment of any taxes or fees owed to the Town of Gorham. A new license, when granted, shall be valid until June 30<sup>th</sup>, immediately following said granting of license.

B. **Renewal License:** An existing license may be renewed by the Town Clerk, provided that the holder of the existing license makes application for renewal on or before June 30<sup>th</sup>. If the holder applies for renewal on or before June 30<sup>th</sup>, the existing license shall remain in effect until final action of the renewal application. Otherwise, the existing license shall expire on June 30<sup>th</sup> and an application for a new license must be filed. ~~For renewal applications filed on or before June 30<sup>th</sup>, the Clerk shall process and issue renewal licenses in the same manner as the Town Council processes and issues licenses, except that no public hearing is required for renewal.~~ The Clerk may renew a license only if the Clerk is satisfied that the application meets all the requirements of this ordinance. If the Clerk is not satisfied that the application meets all the requirements of this ordinance, the Clerk shall refer the application to the Town Council, which after public hearing, shall process the application in the same manner as an application for a new license.

#### SECTION 5 ADVERTISEMENT AND PUBLIC HEARING

The Town Council shall hold a public hearing prior to ~~the hearing of all~~ considering any application for a Victualers' License applications, ~~both new and renewal.~~ Prior to the public hearing applications shall be advertised by posting notice in two (2) or more public places and advertising in a local newspaper, at least seven (7) days prior to the meeting.

#### SECTION 6 SECURING, SUBMITTING OF APPLICATION FOR LICENSE

Applications for a license required by this Ordinance shall be procured from the Town Clerk, completed and signed by the applicant and filed with the Town Clerk, and ~~when submitted~~ if referred to the municipal officers shall bear the recommendation for approval or disapproval with reasons noted of the Code Enforcement Officer, the Police Chief and the Fire Chief, and such other departments as may be required by the Municipal Officers or other Town ordinances.

A Victualer's License shall be granted if the property in question complies with all federal, State and local laws and the applicant demonstrates that the Victualer's premises will be conducted in a healthful and sanitary manner so as not to jeopardize the public health, safety and welfare, provided that the applicant is not delinquent in the payment of any taxes or fees owed to the Town of Gorham.

#### SECTION 7 CLASSES OF LICENSE/FEEES

The Town Council shall establish a Schedule of Application and License Fees.

#### SECTION 8 SUSPENSION, REVOCATION OF LICENSE

A Victualer's license may, after notice and public hearing, be suspended or revoked by the municipal officers for non-compliance with the ordinances, statutes, and regulations of the Town of Gorham and the State of Maine.

#### SECTION 9 REINSTATEMENT OF LICENSE

A licensed Victualer may, at any time after the suspension of the license, make an application in writing for the reinstatement of the license to the Town Clerk and such application shall be submitted to the municipal officers. ~~as per Section 4 above.~~

#### SECTION 10 PENALTY

Any violation of this ordinance shall be punishable by a fine of not less than three hundred (\$300) dollars for the first offense and not less than five hundred (\$500) dollars for the second and subsequent violation which shall be recovered for the use of the Town of Gorham. Each day that such unlawful act or violation continues shall be considered 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 11 SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

**Item #7700**  
  
**Proposed  
Order #7700**

Action to consider amending the Town's Massage Establishment / Therapist Regulatory Ordinance. (Adm. Spon.)

**WHEREAS**, the Town has a Massage Establishment / Therapist Regulatory Ordinance that requires the Town Council to approve all new and renewal applications; and,

**WHEREAS**, the Town Council has concluded that many of these applications are routine and can be processed more efficiently by staff,

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Gorham, Maine, in Town Council assembled that the Town's Massage Establishment / Therapist Regulatory Ordinance be amended as proposed.

#### TOWN OF GORHAM MASSAGE ESTABLISHMENT ORDINANCE

##### Section 1. General Provisions.

###### 1.1 Purpose.

The purpose of this Ordinance is to regulate the operation of massage establishments in order to promote the public health, safety, and general welfare.

###### 1.2 Severability.

In the event that any section or portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such declaration shall be deemed to affect the validity of any other section, subsection or portion of this Ordinance.

##### Section 2. Definitions.

###### 2.1 Disqualifying Criminal Conviction.

Any conviction for any criminal offense punishable by imprisonment for any period of time, whether or not the sentence was imposed or served, but not including any conviction which is shown to have been set aside on appeal or for which a pardon, certificate of rehabilitation, or the equivalent under the laws of sentencing jurisdiction has been granted, or which is not rationally related to the purpose of licensing massage establishments.

###### 2.2 Massage.

Massage therapy as defined in Section 14301(3) of Chapter 125 of Title 32 of the Maine Revised Statutes.

###### 2.3 Massage Establishment.

Any business, including but not limited to sole proprietorship, in which the business operation consists of providing or making available massage in the Town of Gorham for consideration or with the expectation of receiving consideration or any gratuity whether or not the business has a fixed place of business within the limits of the Town.

###### 2.4 Massage Therapist.

Any person who performs massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

###### 2.5 Patron.

Any person who receives a massage.

###### 2.6 Person.

Any individual, partnership, corporation, or other entity.

###### 2.7 Recognized School.

Any school or institution of learning which has for its purpose the teaching of the theory, method, profession and work of massage and is recognized or certified by the State of Maine or any other state. Schools offering a correspondence course not requiring actual attendance of class shall not be deemed a Recognized School.

##### Section 3. Exemptions.

3.1 The following shall be exempt from this Ordinance, if duly licensed by and while practicing in accordance with the laws of this State: Physicians and surgeons (medical doctors and doctors of osteopathy) Physicians' Assistants, Nurses, Chiropractors, Physical Therapists, Barbers, Cosmetologists, Beauticians, and other health and hygiene

professionals.

Section 4. Message Tables.

4.1 All massages shall be administered on a massage table or chair, treatment table, or treatment mat.

Section 5. Maintenance and Cleaning.

5.1 Every person who conducts or operates a massage establishment shall keep the same at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind, or parts thereof, that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

Section 6. Prohibited Activities.

6.1 No massage therapist shall administer a massage to a patron whose genitals are exposed.

6.2 No massage therapist shall administer or agree to administer a massage to the genitals or anus of a patron.

6.3 No massage therapist shall administer a massage unless he or she is fully clothed with non-transparent clothing of the type customarily worn by massage therapists while administering a massage.

Section 7. Closing Hours.

7.1 No massage establishments shall be kept open for massage purposes between the hours of 10 p.m. and 6 a.m., provided that any massage begun before 10 p.m. may be completed.

Section 8. Supervision.

8.1 At all times when open for business, a massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and assure that no violations of this Ordinance occur.

Section 9. List of employees.

9.1 A massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the Chief of Police, the Chief's authorized deputy, the Town Clerk, or the Clerk's representative, upon request.

Section 10. License Required.

10.1 Message Establishment License.

No person shall operate a massage establishment without a valid massage establishment license. A separate license shall be required for each such establishment.

10.2 Message Therapist License.

No person shall work as a massage therapist without a valid massage therapist license or a combined massage establishment/massage therapist license.

10.3 Combined Message Establishment/Massage Therapist License.

A sole practitioner who employs no massage therapist other than himself/herself may apply for a combined massage establishment/massage therapist license in lieu of both a massage establishment license and a massage therapist license.

10.4 Conditional Massage Therapist License.

For the purpose of allowing an applicant for a license pursuant to Section 10.2 or Section 10.3 who is otherwise qualified to obtain such a license, except for compliance with Section 15, to comply with Section 15, a conditional massage therapist license may be issued under the following conditions:

A. All provisions of Section 10 shall apply to a licensee under this section, except Section 15.

B. Licensee under this section shall designate one massage therapist or combined massage establishment/massage therapist licensed by the Town of Gorham as the supervisor for licensee.

C. Licensee under this section may designate no more than one licensed supervisor pursuant to Section 10.4 unless said licensed supervisor shall voluntarily surrender his/her license.

D. The designated licensed supervisor may supervise two (2) or fewer conditional massage therapists per license year.

E. Licenses issued pursuant to Section 10.4 may not be renewed.

Section 11. Licenses Displayed.

11.1 A valid massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued. A valid conditional massage therapist license, massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

Section 12. Standards for Denial.

12.1 A license application under this Ordinance shall be denied to any of the following persons:

A. Massage Establishment License

1. a corporation not registered to do business in this states;
2. a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction within the immediately preceding five (5) years; or
3. an applicant other than a corporation if such applicant or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction, within the immediately preceding five (5) years.

B. Massage Therapist, Combined Massage Establishment/Massage Therapist, or conditional Massage Therapist.

1. to an applicant who has a disqualifying criminal conviction at any time during the five (5) years immediately preceding application;
- or
2. to an applicant who is not at least eighteen (18) years of age.

12.2 The Clerk shall make and keep a written record of every decision to deny an Application for any license hereunder.

Section 13. Grounds for Suspension or Revocation.

13.1 Any license may be suspended or revoked upon a determination that the licensee:

- A. failed to notify the clerk of any change in material facts set forth in the application for such license; or
- B. violated any provision of this Ordinance.

13.2 In addition to the provisions of subsection 13.1, either a massage establishment license or combined massage establishment/massage therapist license may be suspended or revoked upon a determination that the licensee:

A. permitted any person to perform massage without a valid license to do so;

B. permitted or allowed an employee, massage therapist or conditional massage therapist to violate any provision of this Ordinance on the premises of the establishment or in the course of conduct of the business of the establishment; or

C. knowingly permitted any violation of Title 17-A M.R.S.A. sections 851 through 855. Such knowledge shall be presumed if there have been two (2) or more convictions for any such offense within any one-year period. The applicant or licensee may rebut said presumption by showing that (i) due diligence was exercised to prevent the recurrence of any such offense and (ii) despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

Section 14. Application for Massage Establishment, Combined Massage Establishment/Massage Therapist and Massage Therapist Licenses.

14.1 Any person desiring a license pursuant to this ordinance shall file a written, signed application with the Town Clerk on a form to be furnished by the Town Clerk. An application for a combined massage establishment/massage therapist license, a massage therapist license or a conditional massage therapist license shall be accompanied by a signed photograph of the applicant taken within thirty (30) days of the application, of such sizes as the Clerk may specify.

Section 15. Basic Proficiency.

15.1 Each applicant for a massage therapist license or combined massage establishment/massage therapist license shall show proof of basic proficiency in the field

of massage therapy which may be satisfied by:

A. evidence of completion of a formal training course in massage therapy given by a recognized school;

B. evidence of one hundred (100) hours of on-the-job training in massage performed in the presence of a person holding a valid massage therapist license or a combined massage establishment/massage therapist license issued by the Town of Gorham.

C. evidence of continuous practice as a massage therapist for at least one (1) year, accompanied by the written recommendation of at least five (5) persons holding a valid massage therapy license or a combined massage establishment/massage license issued by the Town of Gorham, which shall state that said person has personally received a massage from the applicant that was administered in a skilled and professional manner; or

D. evidence of successful completion of a certifying exam given by another municipality or state, or the certifying exam given by American Massage Therapy Association.

#### Section 16. Obtaining License by Fraud.

16.1 No person shall make any false, untruthful, or fraudulent statement, either written or oral, or in any way conceal any material fact, or give or use any fictitious name in order to secure or aid in securing a license required by this Ordinance. All names, including but not limited to maiden name, ever used by the applicant must be noted on the application.

16.2 Any license so secured shall be void.

#### Section 17. Use of License.

17.1 No person shall make use of, in any manner, to his or her own or another's benefit, any license which has not been duly issued to him or her in accordance with this Ordinance.

#### Section 18. Compliance of Existing Therapists and Massage Establishments.

18.1 Any person presently operating as a massage therapist and/or operating a massage establishment in Gorham as defined herein on the effective date of this Ordinance shall comply with the terms of this Ordinance upon renewal of their existing license.

#### Section 19. Application Process for New Licenses and Renewals.

19.1 A new license under this ordinance may be issued by the Town Clerk only if the Town Clerk is satisfied that the application meets all of the requirements of this ordinance. If the Town Clerk denies an application, the Clerk shall issue a written decision stating the reason for not granting the license.

19.2 An existing license may be renewed by the Town Clerk, provided that the holder of the existing license makes application for renewal on or before December 31. If the holder applies for renewal on or before December 31, the existing license shall remain in effect until final action on the renewal application. Otherwise, the existing license shall expire on December 31 and an application for a new license must be filed. The Clerk may renew a license only if the Clerk is satisfied that the application meets all the requirements of this ordinance.

19.3 Applicants who are denied a license by the Town Clerk may appeal the Clerk's decision within thirty (30) days to the Town Council. The Town Council, after public hearing, notice of which shall be given at least seven (7) days in advance by publication in a newspaper having a circulation in the Town, shall issue a decision on the appeal.

19.4 The Town Council shall not take final action on an application it has received, pursuant to Section 19.3, for a new license (including an application for a renewal license filed after December 31) until the Town Clerk has received and reviewed a criminal background check from the State Bureau of Investigation on the applicant and any persons having a relationship to the applicant described in Section 3 of this Ordinance.

#### Section 20. Term of License.

20.1 Licenses issued pursuant to this Ordinance shall be for a term of no more than one year and shall expire annually on December 31.

Section 21. Application Fees.

21.1 The fees for licenses issued under this Ordinance shall be established by the Town Council. Applicants should contact the Town Clerk for the current fee.

21.2 The fees are payable at the time of application and are non-refundable.

Section 22. Penalty.

22.1 The violation of any provision of this Ordinance shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this Ordinance by appropriate action.

**Item #7701** Action to consider appointments to Town boards and committees. (Adm. Spon.)

**Proposed Order #7701** **Ordered** that the Town Council of the Town of Gorham, Maine in Town Council assembled make appointments to Town boards and committees as recommended by the Personnel / Appointments Committee.

**Item #7702** Action to consider appropriating funds for striping parking in Gorham Village. (Adm. Spon.)

**Proposed Order #7702** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled appropriate \$1,420.00 from the contingency account to provide funds to stripe parking in Gorham Village.

**Item #7703** Action to consider appropriating funds to conduct a traffic signal timing study in Gorham Village. (Adm. Spon.)

**Proposed Order #7703** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled appropriate \$3,200.00 from the contingency account to conduct a traffic signal timing study in Gorham Village.

**Item #7704** Action to consider developing a policy for using the Town's snack shacks. (Councilor Robinson Spon.)

**Proposed Order #7704** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled refer a request to develop a policy for using the Town's snack shacks to the Ordinance Committee for their recommendation.

**Item #7705** Action to consider a job description for the position of Zoning Administrator. (Adm. Spon.)

**Proposed Order #7705** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled adopt the job description of Zoning Administrator, as recommended by the Personnel / Appointments Committee.

**Item #7706** Action to consider changing the Town's representative to the Ecomaine Board of Directors. (Adm. Spon.)

**Proposed Order #7706** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled accept the resignation of Councilor Burleigh Loveitt as the Town's representative to the Ecomaine Board of Directors; and,

**BE IT FURTHER ORDERED** that the Town Council express its appreciation to Councilor Loveitt for his service at Ecomaine on behalf of the Gorham community; and,

**BE IT FURTHER ORDERED** that the Town Council appoint Noah Miner as the Town's representative on the Ecomaine Board of Directors.

**Item #7707** Action to go into executive session, pursuant to Title 36 M.R.S.A., Section 841 (2) for the purpose of considering an application to abate taxes based on poverty. (Adm. Spon.)

**Proposed Order #7707** **ORDERED** that the Town Council of the Town of Gorham, Maine, in Town Council assembled go into executive session, pursuant to Title 36 M.R.S.A., Section 841 (2) for the purpose of considering an application to abate taxes based on poverty.

## **ADJOURN**

ATTACHMENT A

### PROPOSED AMENDMENT TO GORHAM LAND USE AND DEVELOPMENT CODE

CHAPTER II: GENERAL STANDARDS OF PERFORMANCE, SECTION I - ENVIRONMENTAL, H NOISE ABATEMENT, and C. MINERAL EXPLORATION, EXCAVATION AND GRAVEL PITS, and CHAPTER IV SITE PLAN REVIEW, Section IX- APPROVAL CRITERIA AND STANDARDS of the Gorham Land Use and Development Code be amended as follows:

Current section H. and section C, subsections 3)b)(2) (a); 4) b) (1); and 5) a) (4) (a) under Chapter II are repealed and replaced. Section IX, T. under Chapter IV is added.

#### CHAPTER II: GENERAL STANDARDS OF PERFORMANCE

##### SECTION I - ENVIRONMENTAL

##### H. NOISE ABATEMENT

- 1) Noise is required to be muffled so as not to be objectionable to surrounding land uses. Noise may be equal to but not exceed an hourly A weighted equivalent sound level of 75 decibels (dBA) as defined and measured generally in accordance with ANSI standards. This standard shall apply at any boundary line. This section shall not apply to mineral exploration, excavation or gravel pits that are subject to the provisions of Chapter II, Section I, C(5)(a)(3) of this Code.<sup>1</sup> The 75 decibel (dBA) limit applies at the lot line for all lots in Gorham, except as noted below.

After (date of adoption) developments subject to site plan review are required to meet Chapter IV, Site Plan Review, Section IX, Approval Criteria and Standards, T, - Noise Abatement. Where there is a conflict between those noise requirements and the standards of this section, the more restrictive requirements shall govern.

- 2) A use shall not be subject to the noise limits established by this section at any property line where the property owner and the abutting property owner have agreed in writing that those noise limits will not apply at their shared property line or that the noise limits may exceed the 75 decibel limit by an amount established in writing. Any such agreement concerning the noise limits at the shared property line shall be set forth in reciprocal deeds between the property owners and shall be recorded in the Cumberland County Registry of Deeds.<sup>2</sup>

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<sup>1</sup> Amended September 4, 2007

<sup>2</sup> Amended September 4, 2007

- 3) The following activities are excluded from the sound level limits.
  - a) Construction and demolition work 7 am to 7 pm. With prior approval from the Town of Gorham Code Enforcement Officer, this exemption can be extended beyond daytime hours to accommodate certain activities such as major concrete pours.
  - b) Agricultural activity and daytime timber harvesting.
  - c) Landscaping, lawn mowing and related grounds keeping.
  - d) Snow removal and related winter maintenance such as sanding.
  - e) Operation and daytime (7 a.m. to 7 p.m.) testing of emergency equipment such as fire alarms, backup generators, and pressure relief valves.
  - f) Registered and inspected motorized vehicles traveling on public roads and when entering and departing from a parking or loading area and which are moving, starting or stopping. This excludes operation of vehicles and on-board equipment during loading, unloading, processing, mixing or related operations. Examples of non-exempt vehicle operations include refrigeration units on parked vehicles, cement mixers, and on-board loading pumps.
  - g) Safety and warning signals required by law, rule or regulation.
  - h) Cultural and sporting events with proper approval from the Town of Gorham.
  - i) At lot lines where the abutting property owner has granted a noise easement to the applicant, such an easement shall state the abutting property owner agrees that the sound level limits at the shared property line can be exceeded a specified amount but not by more than 10 dBA above the applicable sound level limits. Any agreement or easement concerning noise levels shall be included in the reciprocal deeds, and shall be only for the specific noise, land use and term covered by the noise easement and shall have no affect on the sound level limits applicable to other properties.
  - j) Maintenance, startups, shutdowns and other routine activities are not exempt from these sound level limits. Exceptions to this restriction can be granted by prior approval of the Code Enforcement Officer.

Criteria:

- 1) Frequency, no more than once every three months
- 2) Permitted sound level, no more than 85 dBA for brief limited, intermittent time periods totaling no more than one hour for the duration of maintenance,
- 3) Maintenance exceeding normal sound limits, as described in item 2 to occur only between the hours of 7AM and 5PM

## CHAPTER II: GENERAL STANDARDS OF PERFORMANCE

### SECTION I - ENVIRONMENTAL

#### C. MINERAL EXPLORATION, EXCAVATION AND GRAVEL PITS

- 3) Existing Pit Registration: Application for Expansion of Existing Pit Operations
  - b) Expansion of Existing Operations

(2) Plan Review

- (a) The Planning Board shall review each application for a permit for Expansion of Existing Pit according to the special exception approval standards of Section IV(E) of Chapter I, site plan approval standards of Section IX (B, C, D, F, J, M, P and T) of Chapter IV, and the other applicable requirements of this Ordinance. The Planning Board shall hold a public hearing on the same. Notice shall be sent to all

abutting property owners and all owners of property within 500 feet no less than fourteen (14) days in advance of the hearing. Failure of any property owner to receive notice shall not invalidate the hearing. It shall be the applicant's burden to prove compliance with each of these approval standards.

4) Application for New Pit Operations  
 b) Plan Review

(1) The Planning Board shall review each application for a new Pit Operations permit according to the special exception approval standards of Section IV(E) of Chapter I, site plan approval standards of Section IX (B, C, D, F, J, M, P and T)<sup>1</sup> of Chapter IV and the other applicable requirements of this ordinance. The Planning Board shall hold a public hearing on the same. Notice of the hearing shall be sent to all abutting property owners and all owners of property within 500 feet no less than fourteen (14) days in advance of the hearing. Failure of any property owner to receive notice shall not invalidate the hearing. It shall be the applicant's burden to prove compliance with each of these approval standards.

5) Operational Requirements for New and Existing Pits

a) (4) (a) Noise generated at the excavation site, including noise generated within the reduced setback area may not exceed the noise requirements set forth in Chapter IV, Section IX, T of this Code.

**CHAPTER IV SITE PLAN REVIEW**  
**Section IX – APPROVAL CRITERIA AND STANDARDS**

T. Noise – The applicant has demonstrated that the development will comply with the following noise regulations:

The maximum permissible hourly A-weighted equivalent sound level produced by any activity regulated by this Ordinance shall be established by the time period and type of land use listed below in Table 1. The term ***A-weighted equivalent sound level*** shall be as defined by applicable American National Standards Institute (ANSI) Acoustical Terminology.

Table 1: Sound Level Limits: A-weighted hourly equivalent sound level

District	Sound Level Limit (dBA)	
	Daytime (7 am – 7 pm)	Nighttime (7 pm – 7 am)
Residential: <i>Urban, Suburban, Rural, Village Center, Office Residential</i>	60	50
Industrial/Commercial: <i>Urban Commercial, Roadside Commercial, Industrial, Commercial/Office,</i>	70	60

<i>Narragansett Development</i>		
The district classification of a lot is determined by that lot's zoning classification. Where two lots of differing district classifications abut, the residential sound level limit will apply.		

Sound level limits shall apply at all lot lines of the facility or development where the sound is produced. Measurements shall be taken in accordance with this Noise Ordinance, which is generally consistent with ANSI standards. Sound levels shall be measured at a height of at least five (5) feet (2.24 meters) above the ground surface using a Type 1 or Type 2 sound level meter (as defined by ANSI S1.4) at all major lot lines. The sound level meter and microphone shall be field calibrated at the site prior to and after conducting the sound level measurements. The sound level meter, microphone and field calibrator shall also have been calibrated by a certified acoustic laboratory within 12 months of field measurements.

Short duration repetitive sounds are a sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the development.

When routine operation of a development produces short duration repetitive sound, the following maximum limits shall apply:

- (i) For short duration repetitive sounds, 5 dBA shall be added to the measured hourly  $L_{Aeq}$  level whenever short duration repetitive sounds result from routine operation of the development for the purposes of determining compliance with the above sound level limits. The resultant adjusted A-weighted hourly equivalent sound shall not exceed the sound level limit (dBA) permitted in the district as established by Table 1.
- (ii) In addition to the hourly average number, the maximum sound level of the short duration repetitive sounds shall not exceed the following limits:
  - (a) At any protected lot line for which the zoning is in a Residential District (see Table 1):
    - 65 dBA between 7:00 a.m. and 7:00 p.m., and
    - 55 dBA between 7:00 p.m. and 7:00 a.m.
  - (b) At any protected lot line for which the zoning is in an Industrial/Commercial District (see Table 1):
    - 75 dBA between 7:00 a.m. and 7:00 p.m., and
    - 65 dBA between 7:00 p.m. and 7:00 a.m.

The noise levels established by this section will not apply at lot lines where the abutting property owner has granted a noise easement to the applicant. Such an easement shall state the abutting property owner agrees that the sound level limits at the shared property line can be exceeded a specified amount but not by more than 10 dBA above the applicable sound level limits. Any agreement or easement concerning noise levels shall be included in the reciprocal deeds, shall be only for the specific noise, land use and term covered by the noise easement and shall have no affect on the sound level limits applicable to other properties.

As part of the project application to the Town of Gorham, sufficient evidence shall be provided to demonstrate that a proposed new development or modification to an existing development will comply with applicable sound level limits of this section. Submissions to the Planning Board shall include the following:

1. Site Area Map – with scale or dimensions, showing the location and arrangement of the proposed development in relation to surrounding land uses, lot lines, and zoning districts.
2. Noise Sources - descriptions, operating hours, and sound levels (octave band when appropriate) for noise sources associated with a proposed development.
3. Noise Controls – descriptions, sketches with scales or dimensions, locations, and expected noise reduction of proposed noise control measures required to meet the applicable sound level limits.
4. Combined Sound Level – calculations showing the combined sound level of all regulated noise sources for a proposed development and comparison to the applicable sound level limits.

Once a proposed development begins routine operation, the Planning Board may require demonstration that a proposed development meets the applicable sound level limits. Such a demonstration shall require that sound level measurements include representative daytime and/or nighttime periods for a duration adequate to quantify the loudest modes of routine operation. Measurements shall be conducted during suitable weather conditions and shall be generally consistent with applicable ANSI standards. Compliance measurements shall be conducted during periods of no measureable precipitation, when the ground is not covered with new, freshly fallen snow and downwind when the wind speed measured at 33 feet (10 meters) above the ground is equal to or greater than 5 miles per hour (2.24 meters per second). A sound testing report shall be provided to the Town that includes a description of measurement procedures, identification of sound level instrumentation and calibration, descriptions of measurement locations, sound level measurements and field observations, and weather conditions (wind speed and direction, temperature, humidity, cloud cover). Justification for measurements during weather conditions that do not adhere to the requirements set forth in this Noise Ordinance, if any, shall also be provided.