

AGENDA AND PROPOSED ORDERS  
GORHAM TOWN COUNCIL  
REGULAR MEETING  
August 7, 2012 7:00 pm  
Gorham Municipal Center – Burleigh H Loveitt Council Chambers

Pledge of Allegiance to the Flag

Roll Call of the Town Council

Acceptance of the minutes of the July 3, 2012 Regular Meeting, and the July 10, 2012 Special Meeting as printed and distributed.

Open Public Communications

Councilor Communications

Town Manager’s Report

School Committee Report

Brief report from TRIAD (Postponed from July 3, 2012)

Old Business

Item #8174      Postponed from the May 1, 2012 meeting; action to consider authorizing a November referendum vote to approve the purchase of a second replacement fire engine, utilizing substantially the same language that was developed and approved at the April 10, 2012 Special Council Meeting, including the further order of sending the existing truck to committee to consider options for reuse and/or disposal. (Councilor Pressey Spon.)

Proposed

Order #8174      Ordered that the Town Council authorize a referendum vote to be held on November 6, 2012 to acquire a second replacement fire engine; and,

Be It Further Ordered that the Public Hearing on this referendum question be held on October 2, 2012; and,

Be It Further Ordered, that the questions to appear on the ballot shall be as follows:

**REFERENDUM QUESTION NO. 1**

Shall a capital expenditure of a sum of money not to exceed \$450,000 be approved to pay for costs of acquisition of 1 fire engine and related equipment, such \$450,000 amount to be paid from existing funds of the Town and/or raised by the issuance of general obligations bonds and/or notes of the Town, hereby authorized, with the amount to be paid from existing funds of the Town and the amount to be bonded to be determined by the Municipal Officers, with the bonds to have such dates, maturities, denominations, interest rate(s) and other details (including provisions that the bonds may be subject to call for redemption with or without premium) as said Municipal Officers shall determine? (Total estimated debt service of \$558,000 of which the maximum principal amount is \$450,000 and estimated interest thereon at 3% over 15 years is \$108,000.00)

Note: The Town Council recommends a “Yes” vote.

Be It Further Ordered that the Town Council allow the Capital Improvements Committee to review and recommend to the Council an appropriate action for the two disabled fire trucks.

NEW BUSINESS

Public

Hearing #1 Public Hearing on a proposed Ordinance to regulate the use of Fireworks.

Item #8203 Action to consider an Ordinance to regulate the use of Fireworks. (Ordinance Comm. Spon 3-0)

Proposed

Order #8203 Whereas, the State of Maine recently approved law that allows the sale and use of Fireworks in Maine, and

Whereas, the law allows municipalities to regulate the use of Fireworks, and

Whereas, the Town of Gorham would like to allow the reasonable use of Fireworks in Gorham, while also protecting property owners from unreasonable noise and disturbance of the peace,

Now Therefore Be It Ordained by the Town Council of the Town of Gorham, Maine in Town Council assembled that the following *Town of Gorham Consumer Fireworks Ordinance* be and hereby is adopted:

**Town of Gorham Consumer Fireworks Ordinance**

**SECTION 1: Purpose**

**1.1** This Ordinance regulates the use of consumer fireworks to ensure the safety of the residents and property owners of the Town of Gorham and of the general public.

**SECTION 2: Title and Authority**

**2.1** This Ordinance shall be known as the "Town of Gorham Consumer Fireworks Ordinance." It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S.A. § 3001, and the provisions 8 M.R.S.A. § 223-A.

**SECTION 3: Definitions**

**3.1** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**3.2** Consumer Fireworks – "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products which are illegal to sell, use, or possess in Gorham or the State of Maine:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
- C. Sky rockets and bottle rockets. For purposes of this definition, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

**3.3** Display or Commercial Grade Fireworks – Fireworks that only trained and licensed pyro-technicians may handle and are regulated by the State of Maine and Federal Law.

**SECTION 4: Permit Required**

**4.1** No person shall use, display, fire, or cause to be exploded, consumer fireworks within the Town of Gorham without a permit. This Section shall not apply to a person in possession of a fireworks display permit by the State of Maine pursuant to Title 8, MRSA Section 227-A.

**4.2** No permit shall be issued on any day with a Fire Danger Class of 3, 4, or 5.

**4.3** A person may use consumer fireworks only on that persons property or on the property of a person who has consented, in writing, to the use of consumer fireworks on that property.

**SECTION 5: Use of Consumer Fireworks Restricted**

**5.1** No person shall use, display, fire, or cause to be exploded, consumer fireworks within 100 feet of any buildings or structures.

**5.2** A person shall not use, display, fire, or cause to be exploded consumer fireworks within the Town of Gorham or in or from any watercraft within waters of the Town except on the following days and during the following times:

- A) July 3<sup>rd</sup>, beginning at 12pm (noon) and ending at 10pm;
- B) July 4th, beginning at 12pm (noon) and ending at 11 p.m.;
- C) December 31st, beginning at 12pm (noon) and ending at 12:30 a.m. the following day; and
- D) January 1st, beginning at 12pm (noon) and ending at 10:00 p.m.
- E) Every Saturday beginning at 12pm (noon) and ending at 10pm.

**SECTION 6: Violation and Enforcement**

**6.1** PENALTY FOR VIOLATION: Any person who violates the provisions of this Ordinance shall commit a civil violation punishable by a penalty of not less than two hundred dollars (**\$200.00**) and not more than five hundred dollars (\$500.00) plus attorney's fees and costs to be recovered by the Town of Gorham for its use. Each incident shall constitute a separate violation.

**6.2** ENFORCEMENT: This Ordinance shall be enforced by the Town of Gorham Police Department.

**6.3** INJUNCTION: In addition to any other remedies available at law or equity, the Town of Gorham, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.

**6.4** SEIZURE & DISPOSAL OF CONSUMER FIREWORKS: The Town may seize consumer fireworks that the Town has probable cause to believe are used or sold in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal.

**SECTION 7: Exceptions**

**7.1** This Ordinance does not apply to a person or group of persons issued a fireworks permit by the Town of Gorham pursuant to the State of Maine in accordance with 8 M.R.S.A. §§ 227-A to 237.

**7.2** The Town of Gorham is exempt from the provisions of this Ordinance.

**SECTION 8: Severability**

**8.1** 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.

Public

Hearing #2 Public Hearing on a proposal to amend Chapter II (E) Acceptance of Streets and Ways of the Land Use and Development Code, to require roads that are intended to become public roads be offered to the Town with a reasonable time.

Item#8204 Action to consider a proposal to amend Chapter II, (E) of the Land Use and Development Code to require roads that are intended to become public roads be offered to the Town within a reasonable time. (Adm. Spon.)

Proposed

Order #8204 Whereas, during the course of development, new roads often get constructed that are intended to become public roads, and

Whereas, performance bonds are required when new roads are constructed to ensure that the roads are well constructed and protect tax payers from having to fix new roads if they have problems, and

Whereas, performance bond amounts are based on current conditions at the time the bond amount is established, and

Whereas, some of these roads may be offered to the Town many years after they were constructed and therefore have defects because of the passage of time with bond amounts that were originally sufficient, but have become inadequate over time because of inflation, and

Whereas, the Town wants to protect its citizens from unexpected costs but still provide a fair opportunity for developers, who have constructed roads to Town standards as part of an approved Site Plan, to offer them to the Town for the purpose of becoming public roads,

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:

**CHAPTER II, SECTION V, Minimum Standards for the Design and Construction of Streets and Ways, E. Acceptance of Streets and Ways**

4) Streets Offered for Acceptance

g) Notwithstanding paragraph c) above, a street may be accepted by the Town Council prior to final paving, provided that 150% of the cost of completion, as estimated by the Public Works Director or the Director's designee is deposited in a road improvement account with the Town. Any funds not used shall be returned to the developer upon completion.

h) Prior to street acceptance the Town has the right to annually evaluate the condition of the road and the costs associated with completing the project, and to recalculate the bonding requirements for the project. This evaluation shall be estimated by the Public Works Director or the Director's designee. The recalculated bonding requirements for the project shall be 125% for the total cost of the outstanding construction improvements. The Town shall stop issuing permits for the project until the new bonding requirement is established. All items contained within the performance guarantee, or each phase of the project, must be completed within 36 months of the performance guarantee establishment. This 36 month deadline may be extended a maximum of 24 months with Town Council review and approval. The Town further has the right to require the developer to bring the road in for

acceptance within five (5) years of the placement of base pavement for the project or the Town may pull the bonding and complete the project as approved.

Public

Hearing #3

Public Hearing on a proposal to amend the Land Use and Development Code to bring the performance bonds associated with subdivision approval consistent with current practice.

Item #8205

Action to consider amending Chapter III, Section III of the Land Use and Development Code to bring the performance bonds associated with Subdivision approval consistent with current practice.

Proposed

Order #8205

Whereas, the Town requires a performance bond for approved subdivision plans, and

Whereas, over time and experience the Town adopted practices that were more efficient for developers and protected the Town, but may not be consistent with ordinance language, and

Whereas, the Town wants to provide ordinance language that clarifies the requirement and reduce ambiguity,

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:

#### CHAPTER III, SECTION III, Preliminary Plan

##### SECTION III – PRELIMINARY PLAN

##### B. REQUIREMENTS

- 7) Proposed construction schedule and phasing of improvements. Plans requiring phasing shall be designed so that each subdivision phase must be recorded in the registry of deeds as a distinct and separate plan. The required Planning Board signature block shall be added to each of the phased subdivision plans.

##### SECTION IV – FINAL PLAN

##### C. IMPROVEMENT GUARANTEE

- 1) ~~Purpose: Improvement guarantees shall be provided to ensure that the applicant has the financial capability to properly install and maintain the required street, utility, and other improvements. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the developer.~~

- 2) ~~Application:~~

- a) ~~Before the recording of final subdivision plats, or as a condition of final subdivision plan approval, the Planning Board shall require and shall accept in accordance with the standards adopted by ordinance, the following guarantees:~~

- (1) ~~The furnishing of a performance guarantee in an amount equal to one hundred twenty-five percent (125%) of the cost of installation for proposed public or quasi-public improvements.~~

- (2) ~~Provision for a maintenance guarantee for a period not to exceed one (1) year after final acceptance of the improvement, in an amount not to exceed fifteen percent (15%) of the cost of the improvement. In the event improvements are covered by a performance or maintenance guarantee to another governmental~~

agency, which guarantee is at least as stringent as that required hereunder, in which case, no performance or maintenance guarantee, as the case may be, shall be required by the Planning Board for such utilities or improvements.

~~(3) The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Planning Board but for no more than two additional years.~~

~~b) Upon substantial completion of all required improvements, the developer may notify the Planning Board of the completion or substantial completion of improvements, and shall send a copy of such notice to the appropriate municipal officials: The Director of Planning and Zoning, the Fire Chief, and/or the Town Engineer. The respective municipal officials shall inspect all improvements of which such notice has been given and shall file a report with the Planning Board indicating either approval, partial approval, or rejection. The cost of the improvements as approved or rejected shall be set forth.~~

~~c) The Planning Board shall approve, partially approve, or reject the improvements on the basis of the report of the municipal officials.~~

~~d) Where partial approval is granted, the developer shall be released from all liability except for that portion of improvements not yet approved.~~

~~3) Performance and maintenance guarantees shall be provided by a variety of means including, but not limited to, the following which must be approved as to form and enforceability by the Town Manager and Town Attorney:~~

~~a) Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.~~

~~b) Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.~~

~~c) Escrow Account. The applicant may deposit cash, or other instruments readily convertible into cash at face value, into a non interest bearing account with the Town. The applicant shall enter into an escrow agreement with the Town, which shall stipulate that the Town can withdraw the money upon forty-eight (48) hour notice to the applicant.~~

#### D. C. FINAL PLAN REVIEW

~~7. Two signed copies of the Final Plan as approved shall be retained by the Planning Department Board (1) and the Town Clerk Assessing Department (1). One (1) original mylar of the signed plan shall be recorded in the Registry of Deeds. A mylar copy of the recorded mylar shall be returned to the Planning Department. If any subdivision of land is proposed in the Final Plan, all material required to be recorded by the Cumberland County Registry of Deeds shall be submitted by the developer within thirty days of the date of written notice of Approval by the Planning Board.~~

~~8. No subdivision plan shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted. If an approved plan is not recorded in the Registry of Deeds within one (1) year of the original approval, it shall become null and void. If a plan has received phased approval, the first phase shall be recorded within one (1) year~~

of the original approval and subsequent phases shall be recorded within five (5) years of the original approval. If a phased plan is not recorded within those time periods, the phases that have not been recorded shall become null and void.

8. 9. Municipal subdivision approval granted prior to August 1, 1972 of any final plan or other subdivision plat shall be deemed withdrawn unless said plan is recorded in the Cumberland County Registry of Deeds by August 1, 1982.

## SECTION V. IMPROVEMENTS POST APPROVAL ACTIVITIES

### A. Performance Guarantee:

1. Purpose: Improvement guarantees shall be provided to ensure that the applicant has the financial capability to properly install and maintain the required street, utility, and other improvements.
2. Types of Guarantees. The applicant shall provide one of the following performance guarantees for an amount adequate to cover 125% of the total construction costs of all required improvements. Performance and maintenance guarantees shall be provided by a variety of means including, but not limited to the following, which must be approved as to form and enforceability by the Town Manager and Town Attorney:
  - a. Escrow Account: Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as sole owner;
  - b. Security Bond: A performance bond payable to the municipality issued by a surety bonding company authorized to do business in the State of Maine;
  - c. Letter of Credit: An irrevocable letter of credit, from a bank or other reputable lending or financial institution.
3. Contents of Guarantee: The performance guarantee shall contain the following:
  - a. Construction schedule;
  - b. Cost estimates for each phase of construction taking into account as-built drawings, survey monumentation, required legal documents, provisions for inspections of each phase of construction, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.
4. Escrow Account. A cash contribution for the establishment of an escrow account shall be made by either a certified check made out to the Town of Gorham, the direct deposit into a savings account, or the purchase of a certificate of deposit.
  - a. For any account opened by the applicant, the Town of Gorham shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal.
  - b. The Town shall be authorized to make withdrawals without the signature of the applicant, pursuant to the performance schedule.
5. Performance Bond. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought and the approved costs estimates.

- a. The applicant shall submit a draft copy of the performance bond to the Town Planner for review and approval prior to issuance of the final performance bond.
6. Letter of Credit. An irrevocable letter of credit from a bank or other reputable lending institution with offices in the region shall indicate that funds have been set aside for the construction of the subdivision.
  - a. The letter of credit shall use the template established by the Town of Gorham, unless waived by the Town Manager in consultation with the Town Attorney.
7. Phasing of Development: The Planning Board may approve plans to develop a subdivision in separate and distinct phases. The phases shall be designed so that they can be recorded at the registry of deeds as separate and distinct plans. No phased plans shall be released for recording in the registry of deeds until the performance guarantee for that phase has been established as required under this section.
8. Release of Guarantee. While partial draws are permitted, the amount of each shall be no less than twenty percent (20%) of the original amount. The developer shall submit to the Town Planner a copy of the approved schedule of values identifying items substantially completed and being requested for release. The Town Planner shall send a copy of such notice to the appropriate municipal officials: The Zoning Administrator, Fire Chief, Town's Inspecting Engineer, and/or the Public Works Director or the Director's designee. The respective municipal officials shall inspect all improvements of which such notice has been given and shall file a report with the Town Planner indicating either approval, partial approval, or rejection. Prior to the release of any part of the performance guarantee, the Town Manager, or his designee, shall determine to his/her satisfaction, in part upon the report of the Town's consulting engineer or other qualified individual retained by the municipality and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.
9. Default: If upon investigation, the Town or the Town's consulting engineer finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall report in writing to the Code Enforcement Officer, the Town Manager, the Town Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.
10. Performance guarantees for subdivision containing streets designed to the Town's public way standards and meant to be offered to the Town for accept are subject to the provisions under Chapter II, Section V: Minimum Standards for the Design and Construction of Streets and Ways, E. Acceptance of Streets and Ways, 4), h).

B. Improvements:

In no event shall building permits be issued for more than 50% of the lots or units within a development until:

1. All required off-site public improvements have been completed, unless otherwise approved by the Planning Board, based upon the Board's determination that extenuating circumstances exist and an adequate performance guarantee is in place to ensure the completion of the uncompleted public improvements. For purposes of this section only, extenuating circumstances may include, but are not limited to, delays in related Town, State or Federal improvement projects that impact the required public improvements of delays caused by weather or unforeseen site conditions. The Planning Board's decision on whether extenuating circumstances exist to excuse



completion of required off-site improvements prior to the issuance of more than 50% of the building permits shall be final.

2. All required streets are either constructed or the guarantee required by Chapter II, Section V.E.4.f has been posted with and accepted by the Town.
3. All required stormwater facilities and erosion control measures have been installed, as required by the approved plan, other than those facilities required as part of the development of an individual lot.
4. Where the Planning Board has approved a phased development, this limitation shall apply to each separate phase. Public improvements both on- and off-site shall be assigned to a phase of development as part of the Planning Board's approval of the subdivision.

Item #8206      Action to consider authorizing a referendum on renovating the Little Falls School into a Public Safety Facility and making additional renovations at the Public Safety building on lower Main Street. (Spon. Councilor Caldwell)

Proposed  
Order #8206

Ordered that the Town Council authorize a referendum vote to be held on November 6, 2012 to authorize a capital expenditure and the issuance of bonds in an amount of up to \$5,750,000 to finance renovation, improvement and equipping of (a) the former Little Falls School for use as a central police station and (b) the existing public safety building for police and fire services uses; and,

Be It Further Ordered that the public hearing on this referendum question be held on October 2, 2012, and

Be It Further Ordered that the referendum question to appear on the ballot shall be as follows:

**REFERENDUM QUESTION NO. 1**

Shall a capital expenditure not to exceed \$5,750,000 be approved to pay for costs of renovation, improvement and equipping of (a) the former Little Falls School for use as a central police station and (b) the existing public safety building for police and fire services uses, such amount to be raised by the issuance of general obligations bonds and/or notes of the Town, hereby authorized, with the bonds and notes to have such dates, maturities, denominations, interest rate(s) and other details (including provisions that the bonds may be subject to call for redemption with or without premium) as said Municipal Officers shall determine?

(Total estimated debt service of \$7,561,250 of which the maximum principal amount is \$5,750,000 and estimated interest thereon at 3% over 20 years is \$1,811,250)

Notes: The Town Council recommends a "Yes" vote.

Item #8207      Action to consider appropriating funds for the environmental cleanup and demolition of the White Rock School. (Councilor Gagnon Spon.)

Proposed  
Order #8207

Ordered that the Town Council appropriate \$175,000 for the remaining Capital Part 2 funds for the purpose of conducting any environmental cleanup necessary and the subsequent demolition of the White Rock School.

Item #8208      Action to consider going to referendum for the purpose of seeking approval to issue \$500,000 in bonds to make necessary repairs to the Little Falls School to continue it as a community center. This item is only proposed for consideration, in the event that the Town Council does not wish to convert the Little Falls School into a Public Safety Facility. (Councilor Gagnon Spon.)

- Proposed  
Order #8208
- Ordered that the Town Council authorize a referendum for the November 6, 2012 election to ask voters to approve the issuance of up to \$500,000 in bonds for the purpose of making repairs to the Little Falls School to continue it as a community center.
- Be It Further ordered that any funds remaining from the project go toward preservation/improvement of municipal fields.
- Item #8209
- Action to consider going to referendum for the purpose of seeking voter approval to issue \$750,000 in bonds to renovate the Public Safety Building. This item is only proposed for consideration in the event that the Town Council does not wish to convert the Little Falls School into a Public Safety Facility. (Councilor Gagnon Spon.)
- Proposed  
Order #8209
- Ordered that the Town Council authorize a referendum for the November 6, 2012 election to ask voters to approve the issuance of up to \$750,000 in bonds to renovate the Public Safety Building.
- Be It Further Ordered that any funds remaining from the project go towards preservation/improvement of municipal fields.
- Item #8210
- Action to consider authorizing the Town to proceed with the preparation for installing Holiday lights and with the purchase of those lights. (Councilor Gagnon Spon.)
- Proposed  
Order #8210
- Ordered, that the Town Council authorize the Town to proceed with the preparation for installing Holiday lights and with the purchase of as many lights as possible in accordance with the approved budget, and
- Be It Further Ordered that the Town purchase a variety of Holiday lights provided from Rileighs Outdoor Décor and selected by the Public Works Director, and
- Be It Further Ordered that the lights be installed substantially as recommended by the Public Works Director in his memo of July 27, 2012, subject to agreements with Fairpoint Communication and Central Maine Power Company, with the Public Works Director authorized to adjustments as necessary.
- Item #8211
- Action to consider amending the Contract Zone agreement between Hans Hansen and the Town. (Adm. Spon.)
- Proposed  
Order #8211
- Ordered, that the Town Council refer a request, to amend the contract zone agreement between Hans Hansen and the Town of Gorham, to the Ordinance Committee for their review and recommendation.
- Item #8212
- Action to consider voting for Vice-President and for three (3) Directors of the Maine Municipal Association. (Adm. Spon.)
- Proposed  
Order #8212
- Ordered, that the Town Council vote for Vice-President and for three (3) Directors of the Main Municipal Association as proposed.
- Adjourn