

REPORT OF THE  
GORHAM TOWN COUNCIL  
REGULAR MEETING  
August 7, 2012 7:00 pm  
Gorham Municipal Center – Burleigh H Loveitt Council Chambers

Chairman Caldwell opened the meeting with the Pledge of Allegiance to the Flag. There were 38 members of the public present at the start of the meeting.

Roll Call: Chairman Caldwell, Councilors; Mattingly, Gagnon, Robinson, Phillips, Phinney and Pressey. Also present were Town Manager, David Cole, and Town Clerk, Connie Loughran.

Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED to accept of the minutes of the July 3, 2012 Regular Meeting, and the July 10, 2012 Special Meeting as printed and distributed. 7 yeas

#### Open Public Communications

Harold McFarland, Libby Avenue, spoke regarding the bamboo growing in the ditch in front of his house. He would like it removed before it becomes too invasive.

Jane Knapp, State Representative, reminded citizens that the “Circuit Breaker” program started August 1<sup>st</sup>. The Red Cross is holding extended blood drive hours in an effort to replenish their stock. She also reported that Maine has improved its ranking in “America’s Top States for Business for 2012.” Representative Knapp reported on the increasing prevalence of loan scams and warned consumers to be aware.

Jim Means of Gorham, raised an objection with the Town’s purchase of 2 buildings in the village and urged the Town not to demolish them.

David Garthe of 30 White Birch Lane spoke of a safety issue stating that the crosswalk on New Portland Road needs signage.

#### Councilor Communications

Councilor Mattingly expressed congratulations to Landmarcs for the wonderful work done around the Founders Monument. He reminded parents not to use the new bus loop at Narragansett School for pick-up and drop-off.

Chairman Caldwell also complimented Landmarcs and anyone else that was involved in the moving of the Founders Monument.

Councilor Robinson thanked the taxpayers for the moving and landscaping of the Founders Monument.

#### Town Manager’s Report

David Cole reported that he has given 5 year pins to Carol White of the Planning Department and Rus Bearor of the Fire Department, thanking them both for their service to the Town of Gorham. Mr. Cole also informed the Council that Chief Shepard was out on medical leave and Lt. Christopher Sanborn has been appointed Acting Police Chief.

#### School Committee Report

James Hager, Chairman of the School Committee reported that start of school is August 29th, for grades K, 6 and 9 and all other grades begin on August 30<sup>th</sup>. The 2012-2013 School Calendar can be found on the School Department website. Also on the website can be found the times of Open House at the various elementary schools on Wednesday, August 29<sup>th</sup>. Mr. Hager reported that there has been a date change in the School Committee

Workshop for the All Day K community discussion due to a scheduling conflict. The workshop will be held on Thursday, September 13, 2012 at 7:00 pm in the Burleigh Loveitt Council Chambers at the Gorham Municipal Center.

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

Officer Ted Hatch of the Gorham Police Department, Dyana Rossignol and David Garthe of Gorham thanked the Town of Gorham for supporting the YELLOW DOT Program which is being rolled out as a pilot program in Cumberland County in October. The yellow dot on a vehicle alerts first responders that there is information in the glove compartment of a vehicle with potential lifesaving information regarding the occupants of the vehicle.

Old Business

Item #8174 The order as previously moved and seconded was Moved by Councilor Robinson, seconded by Councilor Gagnon and VOTED to Amend the proposed order to remove sending to the Capital Improvements Committee for review of the two disabled fire trucks. 6 years 1 nay (Pressey) The order as amended was voted resulting in the following:

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.

7 years

NEW BUSINESS

Chairman Caldwell opened the Public Hearing on a proposed Ordinance to regulate the use of Fireworks. Seven citizens spoke against including Saturdays in the Ordinance. Bill Goff presented a petition signed by 95 people not in favor of allowing the use of fireworks every Saturday. Several individuals spoke regarding increasing the 100 foot distance from any structure. Chairman Caldwell referenced several letters received from citizens speaking to their concerns. Jim Dye, Gorham resident and Secretary of the Maine Fireworks Club spoke in favor of the Ordinance. The Public Hearing closed at 9:00 pm.

Item #8203 Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED to waived the rules and dispense with reading of the full order. 7 yeas The Order as presented was Moved by Councilor Phinney, seconded by Councilor Gagnon, Moved by Councilor Phinney, seconded by Councilor Phillips to Amend Section 5.1 from 100 to 150 feet. 6 yeas 1 nay (Robinson) The AMENDED Order was VOTED resulting in the following:

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 150 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 4<sup>th</sup>, beginning at 12pm (noon) and ending at 11 p.m.;
- C) December 31<sup>st</sup>, beginning at 12pm (noon) and ending at 12:30 a.m. the following day; and
- D) January 1<sup>st</sup>, 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.  
6 yeas 1 nay (Mattingly)

Prior to the above vote a motion to amend the order by removing Section 5.2 (E) FAILED OF PASSAGE 2 yeas 5 nays (Mattingly, Robinson, Phillips, Phinney, Pressey) Also a motion to remove Section 6.3 in its entirety Failed of Passage. 1 yeas 6 nays (Gagnon, Robinson, Caldwell, Phillips, Phinney, Pressey)

Chairman Caldwell opened a 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. There were no public comments and the public hearing closed at 10:00 pm.

Item #8204 Moved by Councilor Phinney, seconded by Councilor Gagnon and VOTED to WAIVED reading the proposed order. 7 yeas Moved by Councilor Phinney, seconded by Councilor Robinson and VOTED to incorporate the Planning Board recommendations. 7 yeas The motion as Amended was VOTED resulting in the following:

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, at its sole discretion, has the right to annually evaluate the condition of the road street and the costs associated with completing the street. 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 Public Works Director or the Director's designee will estimate said completion costs following the evaluation and recalculate the bonding requirements for the project. The recalculated bonding requirements for the project shall will be 125% for of the total cost of the outstanding construction. improvements The Town shall will stop issuing permits for the project until the new bonding requirement is established and met. All items contained within the performance guarantee, or each phase of the project, must be completed within 36 months of from when the performance guarantee establishment was established. 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 may require the developer to bring submit the road street in for Town Council acceptance within five (5) years of the placement of the street base pavement; for the project or the Town may pull the bonding and complete the project street as approved.~~

7 years

Chairman Caldwell opened a 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. There were no public comments and the public hearing closed at 10:05 pm.

Item #8205 Moved by Councilor Phinney, seconded by Councilor Phillips and VOTED to WAIVE the reading of the proposed order. 7 years. The order as presented was Moved by Councilor Phillips, seconded by Councilor Robinson. Moved by Councilor Phinney, seconded by Councilor Pressey and Voted to AMEND the proposed order to refer it back to the Ordinance Committee. 7 years The Amended Order was Voted resulting in the following:

Ordered, that the Town Council refer to the Ordinance Committee the proposed amendment to the Land Use and Development Code CHAPTER III, SECTION III, Preliminary Plan.

7 years

Without objection prior to discussion and voting on the following Order as requested Councilor Phillips was excused to avoid the appearance of a conflict of interest.

Item #8206 The Order as presented was Moved by Councilor Gagnon, seconded by Councilor Phinney; Moved by Councilor Mattingly, seconded by Councilor Phinney and Voted to ask PDT Architects to design a combined space at the current building at 270 Main Street and a combined space at Acorn Street, Little Falls. 6 years 1 abstention (Phillips)

Prior to the above action a motion by Councilor Mattingly to table Items #8206, #8207, #8208 and #8209 to a Council Workshop FAILED FOR LACK OF A SECOND, and a motion by Councilor Phinney, seconded by Councilor Robinson and Voted to combine and postpone action to the March, 2013 Council meeting Items #8206, #8207, #8208 and #8209 FAILED OF PASSAGE. 2 years 5 nays (Mattingly, Gagnon, Caldwell, Phillips, Pressey)

Moved by Councilor Phinney, seconded by Councilor Gagnon and Voted to POSTPONE action on Items #8207, #8208, and #8209 to the next regular meeting of the Town Council. 5 y 2 nays (Gagnon, Phillips)

Item #8207 POSTPONED  
Item #8208 POSTPONED  
Item #8209 POSTPONED

Item #8210 Moved by Councilor Gagnon, seconded by Councilor Phinney and 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 make adjustments as necessary.  
6 yeas 1 nay (Robinson)

Item #8211 Moved by Councilor Phinney, seconded by Councilor Phillips and 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.  
6 yeas 1 nay (Phinney)

Item #8212 Moved by Councilor Phinney, seconded by Councilor Mattingly and ORDERED, that the Town Council vote for Vice-President and for three (3) Directors of the Main Municipal Association as read by Chairman Caldwell.  
7 yeas

Moved by Councilor Phillips, seconded by Councilor Phinney and Voted to Adjourn. 7 yeas Time of Adjournment 12:10 am.

A True Record of Meeting

ATTEST

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Cornelia C Loughran, Town Clerk