

Minutes
Bar Harbor Town Council
September 4, 2018

- I. CALL TO ORDER** – 7:00 P.M. - In attendance were Councilors Gary Friedmann, Matthew Hochman, Stephen Coston, Paul Paradis, Joe Minutolo, Erin Cough and Town Manager Cornell Knight.

Chair Friedmann made opening remarks.

- A. Excused Absence(s)** – *Councilor Noonan requested to be excused.* Mr. Paradis, with second by Mr. Hochman, moved to excuse Councilor Noonan as provided by Town Charter section C-12.B(1)(d). Motion passed 6-0.

- II. PUBLIC COMMENT PERIOD** - *The Town Council allows at this time up to fifteen minutes of public comment on any subject not on the agenda and not in litigation with a maximum of three minutes per person.* – None.

- III. APPROVAL OF MINUTES – August 7, 2018 Regular Meeting**

Mr. Paradis, with second by Mr. Hochman, moved to approve the minutes of the August 7, 2018 Regular Meeting as presented. Motion passed 6-0.

- IV. ADOPTION OF AGENDA** – Mr. Paradis, with second by Mr. Hochman, moved to adopt the agenda as presented. Motion passed 6-0.

- V. CONSENT AGENDA** - *A single vote has been scheduled to approve the following routine items of business without discussion, unless individual agenda item action is requested by a Councilor:*

- A. Certification of Property Owners and Abutters Mailing Lists** – *Possible motion to sign the certification of the mailing list used for the notice of the Planning Board’s August 15, 2018 public hearing on Land Use Ordinance Amendment, LU-2018-02, Museum Use in Downtown Village II.*
- B. General Assistance Ordinance** – *Possible motion to schedule a public hearing for October 2, 2018 to consider adoption of the annual revision of maximum benefit level in Town Code, Chapter 102, General Assistance, Appendixes A, B, C, D & E pursuant to 22 MRSA §4305(4).*

Mr. Paradis, with second by Mr. Hochman, moved to adopt all items on the consent agenda as published. Motion passed 6-0.

- VI. PUBLIC HEARINGS**

- A. Marijuana Moratorium** – *public comments and possible adoption of proposed 180 day marijuana moratorium on medical marijuana retail stores and medical marijuana testing facilities and medical marijuana manufacturing facilities.* Planning Director Janna Richards summarized the moratorium ordinance and stated it would take effect on October 4, 2018 and last 180 days.

There being no public comment, Mr. Paradis, with second by Mr. Hochman, moved to approve the Moratorium Ordinance Regarding medical marijuana retail stores and medical marijuana testing facilities and medical marijuana manufacturing facilities as presented and advertised. Motion passed 6-0.

**MUNICIPALITY OF BAR HARBOR
MORATORIUM ORDINANCE REGARDING
MEDICAL MARIJUANA RETAIL STORES AND MEDICAL MARIJUANA TESTING
FACILITIES AND MEDICAL MARIJUANA MANUFACTURING FACILITIES**

The Bar Harbor Town Council makes the following findings:

- (1) WHEREAS, the Maine Medical Use of Marijuana Act authorizes registered caregivers to possess, cultivate, and transfer medical marijuana to qualifying patients, as those terms are defined by 22 M.R.S. § 2422; and
- (2) WHEREAS, on July 9, 2018, the Maine Legislature enacted PL 2017, c. 452 (LD 1539), *An Act to Amend Maine's Medical Marijuana Law*, (the "Law") which includes express authorization for registered caregivers to operate retail stores for the sale of harvested medical marijuana to qualifying patients; and
- (3) WHEREAS, the Law includes express authorization for a marijuana testing facility to receive and possess medical marijuana and medical marijuana products samples from qualifying patients, caregivers, dispensaries and manufacturing facilities to provide testing; and
- (4) WHEREAS, the Law includes express authorization for a registered marijuana manufacturing facility to manufacture marijuana products and marijuana concentrates for medical use; and
- (5) WHEREAS, the Law which expressly recognizes municipal home rule authority to regulate registered caregiver operations; and
- (6) WHEREAS, the unregulated location and operation of medical marijuana retail stores, medical marijuana testing facilities, and medical marijuana manufacturing facilities within Bar Harbor raises legitimate and substantial questions about the impact of such activities on the Town, including questions as to compatibility with existing land uses and developments in Bar Harbor; the sufficiency of municipal infrastructure to accommodate such activity; and the possibility of unlawful sale, testing, and manufacturing of medical marijuana and medical marijuana products; and
- (7) WHEREAS, as a result of the foregoing issues, the location and operation of medical marijuana retail stores, medical marijuana testing facilities, and medical marijuana manufacturing facilities within Bar Harbor have potentially serious implications for the health, safety and welfare of the Town and its residents; and
- (8) WHEREAS, Bar Harbor currently has no regulations governing medical marijuana retail stores, medical marijuana testing facilities, and medical marijuana manufacturing facilities and its existing ordinances are insufficient to prevent serious public harm that could result from the unregulated development of medical marijuana retail stores, medical marijuana testing facilities, and medical marijuana manufacturing facilities; and
- (9) WHEREAS, overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of the unregulated location and operation of medical marijuana retail stores, medical marijuana testing facilities, and medical marijuana manufacturing facilities in Bar Harbor.

NOW THEREFORE, pursuant to 30-A M.R.S. § 4356, be it ordained by the Town of Bar Harbor as follows:

Section 1. Moratorium. The Town of Bar Harbor hereby declares a moratorium on the location, operation, permitting, approval, or licensing of any and all medical marijuana retail stores, medical marijuana testing facilities, and medical marijuana manufacturing facilities within the Town.

No person or organization shall develop or operate a medical marijuana retail store, marijuana testing facility, or medical marijuana manufacturing facility within Bar Harbor on or after the effective date of this Ordinance. During the time this Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, any other type of land use approval or permit and/or any other permits or licenses related to a medical marijuana retail store, medical marijuana testing facility, or medical marijuana manufacturing facility.

Section 2. Definitions. For purposes of this ordinance, the term “medical marijuana retail store” means an establishment having the attributes of a typical retail establishment, such as, but not limited to, signage, regular business hours, accessibility to the public, and sales directly to the consumer of the product, including, but not limited to a “retail establishment”, “gift shop”, “grocery store”, “commercial structure”, “commercial garden, greenhouse or nursery”, “wholesale business establishment”, “roadside stand”, “farmers market”, and “retail business establishment not otherwise listed”, that is used by a registered caregiver to offer harvested medical marijuana for sale to qualifying patients.

For purposes of this ordinance, the term “medical marijuana testing facility” means an establishment having the attributes of a typical research and testing facility, such as, but not limited to, propagation, maintenance and distribution of biological materials and the storage and use of laboratory and other scientific research equipment, including, but not limited to a “research facility”, “research production facility”, “professional office building”, “nonresidential facility for education and scientific purposes”, “services”, and “eleemosynary institution”, that is used to receive and possess medical marijuana and medical marijuana products samples from qualifying patients, caregivers, dispensaries and manufacturing facilities to provide testing.

For purposes of this ordinance, the term “medical marijuana manufacturing facility” means an establishment having the attributes of a typical manufacturing facility, such as, but not limited to, the storage and use of fabrication and processing materials and equipment, including, but not limited to a “food processing establishment”, “food processing facility”, “light manufacturing/assembly plant”, and “other processing and manufacturing facility”, that is used to manufacture marijuana products and marijuana concentrates for medical use.

Section 3. Pending Proceedings. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, this Ordinance shall govern any proposed medical marijuana retail store, any proposed medical marijuana testing facility, and any proposed medical marijuana manufacturing facility for which an application for a building permit, certificate of occupancy, site plan or any other required approval has been submitted to the Town of Bar Harbor, whether or not a pending proceeding, prior to the enactment of this Ordinance.

Section 4. Conflicts/Savings Clause. Any provisions of the Town’s existing ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Ordinance is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Section 5. Violations. If any medical marijuana retail store, any medical marijuana testing facility, or any medical marijuana manufacturing facility is established in violation of this Ordinance, each

day of any continuing violation shall constitute a separate violation of this Ordinance and the Municipality shall be entitled to all rights and remedies available to it pursuant to 30-A M.R.S. § 4452, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

Section 6. Effective Date. This Ordinance shall become effective at the expiration of 30 days after adoption, and shall remain in full force and effect for a period of 180 days thereafter, unless extended pursuant to law or until a new and revised set of regulations is adopted by the Town of Bar Harbor, whichever shall first occur.

VII. REGULAR BUSINESS:

- A. YMCA Annual Report** – *Presentation of the 2017/2018 Annual Report for Recreational Services.* YMCA Executive Director Tommy Parham and Board President Sara O'Connell highlighted items from the report and spoke to their strategic plan, the MOU with the town and their operating budget. After Council questions, Mr. Paradis, with second by Mr. Hochman, moved to accept and file the YMCA annual report. Motion passed 6-0.
- B. Athletic Field** – *Proposal by Acadian Little League for a snack shack and storage building upgrade as recommended by the Parks & Recreation Committee.* Public Works Director Chip Reeves and Andrew Shea from Acadian Little League presented the plans for a new location for the snack shack and a separate storage area. Following Council comments and questions, Mr. Paradis, with second by Mr. Hochman, moved that the Town Council accept the Acadian Little League's concept for the snack shack and storage building and to amend the MOU with the League regarding the design, build and funding of the project and thank them for the continued support for our athletic fields. Motion passed 6-0.
- C. Transfer Station Sticker Program** – *possible motion to adopt a \$5 fee for vacation rental properties.* PW Director Chip Reeves and Finance Director Stan Harmon, while working on the implementation of the program, identified an issue with vacation rentals and the additional cost of needing a sleeve for those permits that multiple renters could use. One solution to offset the cost was to charge a nominal fee of \$5 to vacation rental owners. During the discussion, a \$20 fee was suggested instead, which could help with the frequency of them being misplaced. Mr. Paradis, with second by Mr. Hochman, moved to set a \$20 fee for a Transfer Station sticker for a qualifying vacation rental property. Motion passed 5-1 (Nay: Ms. Cough).
- D. Land Use Ordinance Amendment: Museum Use Downtown Village II** – *Review recommendation by Planning Board and possible motion to schedule public hearing on October 2 for June 2019 Warrant.* Planning Director Janna Richards presented the proposed Land Use Ordinance Amendment requested by the Historical Society that purchased the property at 56 Cottage Street in Downtown Village II. Mr. Paradis, with second by Mr. Hochman, moved to schedule a public hearing on October 2, 2018 for the Land Use Ordinance Amendment to allow Museum use in the Downtown Village II District as presented and for placement on the June 11, 2019 town meeting warrant. Motion passed 6-0.

E. Code Enforcement Violations – *Consideration for possible action to unresolved code violations:*

1. *Robert & Kathleen Jordan located at 81 Ledgelawn Ave, Tax Map 107, Lot 078-000.* – Code Enforcement Officer Angela Chamberlain summarized the violation history. Following discussion, Mr. Paradis, with second by Mr. Hochman, moved to authorize the Town's attorneys to file an enforcement action in the Maine District Court of Maine Superior Court pursuant to 30-A MRSA section 4452. Motion passed 6-0.
2. *Black Friar Inn located at 10 Summer St, Tax Map 104, Lot 052-000.* - Code Enforcement Officer Angela Chamberlain identified two separate unresolved violations. Deborah Vickers was present representing the Black Friar Inn and spoke to the violations. After discussion of the process, Mr. Paradis, with second by Mr. Coston, moved to authorize the Town's attorneys to file an enforcement action in the Maine District Court of Maine Superior Court pursuant to 30-A MRSA section 4452. Motion passed 6-0.

F. Ferry Terminal Landscape Plan – *presentation by Sam Coplton.* Mr. Coplton clarified that his mission was to develop an accommodation study looking at how the site can serve dual purposes - public use and ferry service. He was asked to look at five things: public access, accommodating 200+ parking spaces, a bus drop off, a boat ramp and access to a marina. Unable to connect to his slide show, Mr. Coplton presented printed plans. Following council questions and discussion, no action was taken. The full power point presentation will be shown at the September 5 Special Town Council meeting.

G. MDOT-Ferry Terminal Option Agreement – *Possible motion to approve agreement.* Town Manager Cornell Knight presented the agreement and stated it is the last step to complete the purchase by November 30. The Town attorney reviewed the agreement and approved it as presented. After Council discussion, Council honored Anne Marie Quin's request to speak regarding a marina in the Submerged Lands Lease. Council addressed her concerns. Mr. Paradis, with second by Mr. Hochman, moved to authorize the Town Manager to sign the Purchase and Sale Agreement with Maine Department of Transportation to purchase 121 Eden Street, as presented. Motion passed 6-0.

H. Special Town Meeting: November 2018

1. **Notice of Public Hearing** – *Possible motion for staff to prepare final notice for Council's signature and schedule the public hearing for October 16.* – Mr. Paradis, with second by Mr. Hochman, moved to direct staff to prepare the final notice for Council's signature and schedule the public hearing for October 16, 2018. Motion passed 6-0.
2. **Special Town Meeting Warrant** –
 - a. *Council's recommendations on Warrant articles*
 - b. *Possible motion for staff to prepare final Warrant for Council's signature*

Mr. Paradis, with second by Mr. Hochman, moved to recommend passage of Article 2 as written and direct staff to prepare the final warrant for the Council's signature. Motion passed 6-0.

- I. Treasurer's Warrant** - *Request of Treasurer to authorize paid bills.* – Mr. Paradis, with second by Mr. Hochman, moved to sign the Treasurer's Warrants for paid bills. Motion passed 6-0.
- VIII. TOWN MANAGER'S COMMENTS** – Mr. Knight said today was the last day for filing nomination papers for the Charter Commission. Seven names will be on the ballot for six seats: Joseph Cough, Joey Engling, Michael Gurtler, Patricia Samuel, Martha Searchfield, Peter St. Germain and Christopher Strout.
- IX. COUNCIL COMMENTS AND REQUESTS FOR FUTURE AGENDAS**
- Ms. Cough** stated tomorrow night's meeting will be very interesting.
- Mr. Minutolo** agreed with Ms. Cough, with a chance to see the pulse of the town and have some good dialogue.
- Mr. Hochman** thanked emergency services that helped with a difficult rescue this week from a mountain. He also commented that when people are appointed or elected to committees, it is a big responsibility. There were two meetings of a 22-member committee this past week where one failed to reach a quorum and one barely reached a quorum. He understands everyone is busy this time of year but when meetings are called, it is important to attend. He is unable to attend tomorrow's special council meeting due to a prior commitment but will watch it as soon as it becomes available.
- Mr. Friedmann** reminded Councilors to send their comments for the Town Manager's review to him by Friday. This is on the next agenda.
- X. EXECUTIVE SESSION:**
- A. Teamsters Union Contract Negotiations Update** – *(To be held in executive session as permitted by 1 MRSA §405.6.D. for discussion of labor contracts and proposals and meetings between a public agency and its negotiators)* – Mr. Paradis, with second by Mr. Hochman, moved to enter Executive Session at 9:22 p.m. as permitted by 1 MRSA §405.6.D for discussion of the Teamsters Union contract proposal. Motion passed 6-0.
- Council returned to regular session at 9:27 p.m. Mr. Paradis, with second by Mr. Coston, moved to approve a 3-year contract renewal with the Teamsters Local No. 340 with terms as presented – the contract will run from July 1, 2017 through June 30, 2020. Motion passed 6-0.
- XI. ADJOURNMENT** – Mr. Paradis, with second by Mr. Hochman, moved to adjourn at 9:29 p.m. Motion passed 6-0.

Sharon M Linscott, Town Clerk