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Debby Willis, Chairperson
Angelia Christopher, Administrative Assistant

ORDINANCE REVIEW COMMITTEE

Monday December 16, 2019 @ 5:00 PM

Regular Meeting

City Hall Council Chambers

1.) Call the meeting to Order-Chair Willis called the meeting to order at 5:00 pm

2.) Roll Call- Chair Debby Willis- Rusty Greenleaf, Louis Sigel, Lester Young-

Absent- Mayor Patricia Hart, Clare Marron.

Also present- Kris McNeill- CEO, Tracey Desjardins- EDD, Kristen Collins- Attorney

Preti Flaherty, Angelia Christopher- Planning and Development Assistant

3.) Review of October 28, 2019 meeting notes- will review at next meeting due to some committee members not receiving complete meeting notes.

4.) Review and finalize the draft marijuana amendments to the Land Use Code

City Council gave the green light for this draft to come back to ORC for final edits and then to go to Planning board- Mark Eyerman states that the Direction from council was to go forth – with formal adoption process-

There was a letter that has been sent to the City of Gardiner from PretiFlaherty- Attorneys at Law, outlining concerns with the draft ordinance. The letter from PretiFlaherty really emerged from a conversation in the hall with a lawyer/lobbyist representing the Wellness connection. Chair Willis and Mark Eyerman both agreed that this topic was not something that should be discussed in hallway, if the attorney had concerns about the Marijuana Drafts, they should come to an ORC meeting to review their concerns.

The question is whether the ORC wants to consider the two areas identified in the letter from Preti Flaherty before this goes to planning board. Chair Willis intervenes and states that Kristen Collins is here in the back of the room.

ORC approved minutes 12-16-2019 AMC

Kristen Collins introduces herself and states that she will just explain her firm's concerns.

-There is an issue with the proximity of Wellness Connection. The proximity limitation is written is measured from 'existing facilities' where 'existing' is defined as a facility that has an approved license. This allows for the possibility that a new licensee, if licensed before Wellness Connection, could force Wellness to have to vacate its established location. Another business who obtains their license before Wellness, could come in front of Wellness connection and then become the existing pre-licensed operator, and could then force Wellness connection out. "If we were operating a vacuum where they were the only business, it would make no difference at all, but that is not the case. This would open up the opportunity for someone else to come in and undercut the existing competition." Kristen Collins states on behalf of her client.

Mark asks if the current operation is a Medical marijuana operation? She confirms yes. Is the concern is about establishing an adult use operation being too close? Kristen Collins states that the proximity limit would apply whether they were applying as a dispensary or as a medical caregiver and also adult use retailer so regardless of what they do, it could still potentially cause a problem. It could be any type of business that could come in and under cut them. She retorts that it could be any type of business. Kris states that is kind of an oversight, in the ordinance, we already have a handful of existing facilities right now that are legal caregivers, but they aren't licensed yet. If someone did come in now, and apply for a license, technically they could be the only one allowed in the neighborhood or in the proximity. We do need to address existing facilities, not necessarily licensed facilities.

There is a question as to where the facility definition came from? After checking, it's not in our ordinances definitions section. Kristen states that it is found in a sentence, not a formal definition. 'Proximity limitation- the proximity limitation is written is measured from "existing facilities where existing' is defines as a facility that has an approved license.' No matter what the license is issued for, adult or medical, you are protected from someone coming in too close. Mark states that he will edit this part of the ordinance so that it is more clear to show this better.

Mark Eyerman will make edits to the drafts to clarify this.

The second concern identified is that the Ordinance does not permit manufacturing in the IT zone. Wellness currently conducts some manufacturing using non-hazardous substances out of its location within the IT zone. We therefore ask that the Committee consider a change that would allow for manufacturing not using hazardous substances in the IT zone or other change that would allow for manufacturing to be grandfathered at the current location. The Land Use Ordinance does not permit manufacturing in the IT zone- Wellness is asking for some consideration if they switch to adult use, for being in good standing with the community. The process and impacts are the same when it comes to manufacturing, the uses however are different. She says that most towns are allowing both uses to exist, for manufacturing. Rules of product manufacturing co-location do not allow – it is whatever the state license is, the state defines it. The ordinance does not permit manufacturing in the IT zone. Wellness currently conducts some manufacturing using non-hazardous substances out of its location within the IT zone. The Wellness Connection is asking the committee to consider a change that would allow for manufacturing not using hazardous substances in the IT zone or other changes that would allow for manufacturing to be grandfathering at the current location.

Chair Willis asks what the committee thinks about this. Four members state no and one member- Louis Sigel, states yes- for having manufacturing in the IT zone

Kristen Collins- PretiFlaherty on behalf of the Wellness Connection will need to go before Planning board to talk to them about manufacturing in IT zone. Kristen will be given the date of the Planning Board meeting to discuss this.

The ORC would like Mark Eyerman to make edits, to clean up the proposal and send to planning board- which will be a public meeting

Chair Willis asks for a motion on this Louis Sigel gave the motion, and Rusty Greenleaf seconds. All are in Favor

Planning board will be held on 1/21 with the Marijuana drafts being heard at a Public hearing.

Motion to move licensing to city council

Chair Willis asks for a motion

Louis Sigel makes a motion, and Rusty Greenleaf makes a second, all in favor.

Is ORC going to make any recommendations? What about fees? There are proposed fees, they are ready to go. The licensing ordinance requires that 4-5 depts. essential prepare reports annually. Is everything in compliance with State Laws? Etc. Fees have to be reasonably related to the effort that the city puts in place, so they range from 500 for someone that is growing medical marijuana to 2500 for a larger scale cultivation facility. The cost for emergency services cannot be included in the fees structure. A member of the ordinance review committee say this is an opportunity to cover costs. If it's not covered here, who pays for it? If this is going to incur administrative cost, for the city, the city should cover those costs.

Mark will make final edits

Public Planning board meeting to be held on January 21 at 6pm.

- Review and finalize Option 2 for a Food Sovereignty Ordinance

ORC presented City Council with three different drafts that would address the Food Sovereignty Law. One version was to do nothing, and just continue to let vendors sell their goods as they have been. The second version was a limited version, in which vendors would only be able to sell at farmer's markets. The third version offers a wider range of venues that sales can take place

Mark Eyerman stated that he will be making final edits to option 2 which will be added into section 11 of the code. For violations, he put in \$100 and \$250 for fees. The instruction from City Council was to finalize it and send it back.

The purpose of a Food Sovereignty Ordinance is if the school has a bake sale, a downtown organization wants to have a bake sale, etc., the ordinance would cover all the products, regardless of where they were made. Mr. Young asks about restrictions on processed foods and canned goods. What happens if they are not following state rules- i.e. not having a commercial kitchen license, and not preparing foods under those standards- what happens to food safety then? The overall consensus is that people what this ordinance in place, want the choice to be able to buy what they want, and this ordinance in place give the public the right to make informed decisions. Sales of this nature happen all over, in all sorts of venues, not just farmer's

ORC approved minutes 12-16-2019 AMC

markets. People want the right to buy and sell at these type of events without regulation measures.

Chair Willis asks for a motion to send it back to City Council after Mark Eyerman makes small changes.

Louis Sigel makes a motion- Rusty Greenleaf seconds the motion. All in favor to send this to City Council except for Lester Young.

- Treatment of solar arrays-

Mark Eyerman has put together a memo and proposed draft for what he is calling 'solar electric production facility'.

There was a lengthy discussion on what makes a solar array the primary use of property. There were conflicting opinions on this topic. What happens if a business owner, who just happens to have a warehouse on his property, which is the primary use of that land, decides to rent some of that land to a company that wants to put a solar array on it? Does that make the primary use of the property change to the solar array, when the owner of the property runs a warehouse? How does the primary use get decided? What happens with a roof array? Does that change the primary use of the property, despite the fact that the building the array is placed upon has been the primary use all along? There are conflicting opinions on this matter. This will have to be discussed further.

A board member brings up the topic of landscaping the array, and using grazing as a measure for landscaping. This appears to be a practice among many solar arrays. This could be considered, as long as livestock ordinances are followed.

There has been lots of interest in land in Gardiner from Solar Companies. They are very particular about what they want for land, and what they can use. Right now solar arrays are only allowed in four different zones, with review. There are very tight restrictions in our ordinance as to where they can go, and the likelihood of any land being available in those four zones is small. The arrays do not cause any negative impact, so maybe it's time to consider lightening up the restrictions. A proposed commercial array is at least 3 acres- most often more. Rooftops, while sound appealing because they don't use any land but can be very expensive, because of support structure. Ideal locations are far and few between. We have heard from solar companies, they are very particular about what will and won't work for them. There are only 4 areas that are currently allowed, with review. If the land is feasible, why not look into using it? It appears that Solar Arrays got restricted along with other manufacturing/industrial type business when the ordinance was being rewritten. The Solar Companies will only look at land that is optimal for their needs, and ideal locations can be far and few between. The board decided to include other zones that could be used for this type of development.

The board would rather go more lenient and permit with review. They decided that R, RG, 13-HDR, PR, PIC, PD, MUV, CPD, PHD will all be changed to permitted with review and all need to go to planning board. RP, SL, SLR, TD, IT, ECR, CC, will still be NO Solar Arrays allowed. The board decides to let Mark make his edits and then send to the Planning Board. Chair Willis asks for a motion. Lester Young makes the motion, Louis Sigel makes the second, and all in favor with a unanimous vote.

-Food trucks-

There have been numerous food trucks in town in the past few months. There are no real rules identified in the ordinance for them. The City would like to see it better outlined where they will be allowed, where they can be parked, and how many are we going to allow in the community at one time. The City needs to figure out how we are going to deal with Food Trucks on public property, which can be an issue at times, and how we are going to prevent overcrowding. The state takes care of all the food licensing for the vendors, and inspects them, so that is all set. The fee structure will need to be considered when developing the permits.

The board discussed whether this will be an annual license or will we be issuing them as needed? Right now we are issuing Roving on wheels licenses, for \$100, which is reportedly 4x more in cost than any other city. The City of Gardiner has been issuing this license, which is good for 1 year, and they are allowed to park the truck pretty much anywhere they want on City land and privately as allowed. There are some questions/concerns that will need to be addressed. If a food truck is in town, every night, for an extended period of time, successfully, and not paying taxes, that makes them unfair competition on City businesses that to pay taxes.

If the waterfront has an event, in which the whole area is rented out, a food truck can come, as part of that event, and just roll in without any kind of license. This creates a conflict. Are they using public utilities? How much are they using? What is the cost to the City of Gardiner, all without a license, because they came in under the event?

There was a discussion of where they can be located. Some feel that Food trucks are great for the economy, some feel that they are not good for other business, which are taxpayers. The committee feels that the Common and Waterfront areas are fine, and some agree that Water St is ok, some do not. Hours of business were discussed. Some towns start as early as 6 am and operate until 10pm. So feel this is way too early in the morning. How do we prevent overcrowding? Five food trucks in one congested area, all competing against each other, some feel just creates chaos. The committee agrees that no more than 3 trucks in an area will be allowed without an event permit. And they will have to move out every night- unless there is a multi-night event going on or if they are parked on private property. Kris McNeil CEO feels that food trucks will be good for the economy and should be able to stay in one spot for 30 days, and open the hours they chose.

Lester Young states that if a food truck doesn't move around it becomes a permeant place of business, and should be taxed as such. There will be more food trucks coming in the spring, and we want to make sure that we have a licensing process in place.

Mark Eyerman will start working on a draft. He asks for a copy of the Roving on Wheels license, and wants to know what that licensing entails? Kris reports that we usually ask for their insurance and state license. Mark will report his findings at the next meeting.

- Review Council priorities for ordinance work-

Tiny houses have been labeled to discuss-

This appears to not be an urgent priority at this time. Are we waiting to see what the state is doing with their rules?

Breweries and tasting rooms- The State liquor licensing process have allowed tasting rooms, but do not allow food which makes the process relatively simple. They can serve simple pre-packaged snacks, but that is it. Gardiner currently has 3 tasting rooms and the rules around them are minimal at best. One tasting room has had an influx of food trucks- what should the rules around that entail? The City of Gardiner is just looking for better guidelines and feels this should be discussed at the next ORC meeting.

5.) Other- no other business at this time.

6.) Next meeting – The meetings for January and February had to be adjusted due to

holidays. The January meeting will be held on 1/9 at 5pm. February's meeting will be held 2/10 at 5pm.

7.) Adjourn-Chair Willis asks for a motion to adjourn

Kris McNeill offers a motion to adjourn, Rusty Greenleaf seconds the motion- All are in favor. Adjourn at 6:50pm.