

# Town of Windham

Town Offices  
8 School Road  
Windham, Maine

## Meeting Minutes - Draft

### Town Council

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Tuesday, August 7, 2018

7:00 PM

Council Chambers

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#### I. Roll Call of Members.

**Present:** 7 - Dennis Welch, Tim Nangle, Bob Muir, Jarrod Maxfield, Donna Chapman, Clayton Haskell and Rebecca Cummings

#### II. Pledge of Allegiance.

Council Chair Chapman led the assembly in the Pledge of Allegiance.

#### III. Minutes to be Approved:

CD 18-239 To approve the minutes of the July 24, 2018 Council meeting.

Attachments: Minutes-Town Council-07-24-2018

A motion was made by Vice Chair Muir, seconded by Councilor Maxfield, that the Minutes be approved. The motion carried by the following vote:

**In Favor:** 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

#### IV. Public Participation.

*No public participation.*

#### V. Councilors' Comments.

*Councilor Chapman said some of the Councilors have been receiving some pretty nasty emails and some have criminal threatening involved and they had to send the Chief to someone's residence to be served with a warning. She said it is sad that it has got to this point and they ask that even if you agree or disagree, you can send them emails, but don't put the criminal threatening portion in the email, and do not show up at someone's house. She said the same person who sent the email showed up at her house.*

*Councilor Cummings said she agrees with what Councilor Chapman said; it is one thing we can disagree on what we have to say but lets not bring family into it, you don't have the right to show up to someone's house and do that. It is not acceptable, and she does not want it happening to her family. When you do that you are putting yourself in a situation where you are putting yourself in harm's way. She said "lets take it down, we can disagree passionately, have heated debates, but when you walk out, you need to walk out as friends."*

#### VI. Council Correspondence.

*Councilor Cummings has had many complaints in writing and phone calls with regard to*

smells within town. It has been asked if and when we look at our ordinances, whether we want to look at second hand smoke and the smells within neighborhoods.

Councilor Chapman said in regard to the calls and concerns they are all getting with water quality, and concerns with the new committees they are setting up, she said they will be looking at some of these concerns and continuing with that on committee work. They are receiving the correspondence, and they will be acknowledging that they have received them. She said anyone is welcomed to come to show up at the committee meetings.

CD 18-240      Windham Public Library Newsletter

Attachments: Check It Out Newsletter August 2018

## VII. Town Manager's Report.

CD 18-234      Town Manager's Report.

Attachments: Town Manager's Report 20180803

Projects & Issues List 20180803

Projects & Issues Sheets 20180803

Tony Plante: They have Plan Review amendments that he and staff have been working on with Dennis Brown and John MacKinnon from the Highland Lake Association and the Highland Lake Leadership Team who have been focused on water quality issues. The Plan Review provisions in the ordinance were one of the areas that Mr. Brown mentioned on a number of occasions. They have come up with some amendments to address how plan reviews will be done when they are in direct watersheds of lakes identified as most at risk or urban impaired streams; which fortunately at this point, Windham does not have. They will be sending out a revised copy of those and should have those to the Council later this month.

The sprinkler amendments are at the Planning Board for discussion on August 13 and a public hearing on August 27.

They have continued to look at and work on some road and traffic related issues. Last week he met with our Legislative delegation talking about the intersection of Route 302 and Colonial Park Drive. The Planner and Engineer were in on that meeting as well, and they made an initial contact with DOT to let him know they have a problem that they need to work on and get into their planning process.

They are continuing to look at the intersection of Route 302 and Franklin Drive. He said the most likely scenario right now is that this would go back before the Planning Board when the property goes for a site-plan amendment for expansion of parking. It will give them an opportunity to deal with some of the left turn concerns, traffic concerns and congestion that has gotten a great deal worse since a new business has opened up in there.

They have plans for improvements to Brand Road that are 90 to 95% complete. They are planning to have a neighborhood meeting sometime in September. In a revised preliminary opinion of costs they are now looking in the vicinity of \$900,000 for the work; so it is likely it will have to be spread out over a couple of years.

As of the deadline last week they had received 79 applications for the Property Tax

*Assistance Program. They have developed a tool to determine eligibility and what the refund is that people will get, who do qualify, and will have those for the Council at the meeting of August 28.*

## VIII. Committee Reports.

### A. Council Subcommittees.

#### 1. Appointments Committee.

*Councilor Maxfield said they had not met since the last meeting, and they have a nomination to make tonight.*

#### 2. Finance Committee.

*No report.*

### B. Other Committees.

#### 1. Long Range Planning Committee.

*Councilor Haskell said they are still moving ahead with what they are working on.*

#### 2. Parks & Recreation Advisory Committee.

#### CD 18-236 Parks and Recreation Committee July 2018 Minutes

##### Attachments: Parks and Recreation Committee Meeting Minutes - July 23 2018

*Councilor Cummings said she went to the meeting for the skate park, and the skaters gave their input as far as park design and what they were looking for. She said she was really impressed with their enthusiasm and the fact that a lot of them grew up here, and they want to teach the next generation how to use the park. She thinks it is really nice what they have selected, thus far, and it would be able to handle all age groups.*

#### 3. Highland Lake Leadership Team.

#### CD 18-241 Highland Lake Leadership Team - June 19, 2018 Draft Minutes.

##### Attachments: Draft Highland Lake Leadership Team 6-19 Minutes-rev1

*Tony Plante reported that they have a team meeting coming up on August 23, and they are working on setting up an Ordinance Committee meeting.*

*Councilor Chapman said they had set the separate watershed fund aside, and people are asking about that. She is sure there will be funds needed for both Forest Lake and Highland Lake. Tony said he has some questions as well. When they put the money aside in the budget it was for work that the town was doing and it was not the watershed protection fund, but it is up to the Council to*

*determine how best to apply those funds, and they could potentially be used for specific projects in various watersheds.*

#### 4. Shared Maintenance Facility Joint Project Team.

*Tony Plante said they did get confirmation that the increase, due to steel prices, for the town is \$15,000, the total cost is \$20,000 to \$22,000, and Great Falls has agreed to eat the difference. They have a few other minor change orders that are in the works but the work, otherwise, is proceeding smoothly.*

#### 5. Windham Economic Development Corporation

*Tony Plante said when he spoke with Tom Bartell he said they were working on setting up a Board meeting in September.*

#### 6. Mineral Extraction Committee.

##### CD 18-243 Mineral Extraction Committee Materials.

Attachments: MEC Agenda 2018-06-28 packet

MEC Agenda 2018-07-05 1

MEC Agenda 2018-07-12 packet

MEC Agenda 2018-07-19 1

MEC Agenda 2018-07-26

*Councilor Chapman said they took last Thursday off and she is not sure, but they might be off again this Thursday as well. They are waiting for some people from the DEP and some experts to come in and answer some questions. After that they hope to have a public hearing for some public input.*

#### 7. Private Roads ad hoc Committee.

##### CD 18-238 Private Roads ad hoc Committee Meeting Minutes

Attachments: PRC Ad Hoc 7-12-2018 Agenda

PRC Ad Hoc 7-25-2018 Agenda packet

*Councilor Nangle said he was not able to make the last meeting but they discussed some engineering for grading and slopes and why certain roads have to have basis for slope standards. They also discussed some of the new private road standards. They are taking this week off.*

## IX. PUBLIC HEARINGS.

## X. Discussion Items.

CD 18-237 Marijuana Update: Adult-Use, Retail Establishments, Medical Marijuana Storefronts, Enforcement Challenges, etc.

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**Attachments:** Cover Sheet CD 18-237MMA - New Laws on Medical Marijuana Retail StoresMMA - Sample Medical Marijuana Retail Store Moratorium OrdinancePL 2017, Chapter 447PL 2017, Chapter 45222 MRSA Chapter 558-C2018 DHHS Medical Marijuana Program RulesMaine Dispensaries 20180801Caregiver Retail Store Proposed Amendment

*Senator Bill Diamond and Representatives Mark Bryant and Patrick Corey came to give updates and answer questions.*

*Bill Diamond said they are very fortunate in Windham that they have Representative Corey who has served for 18 months on the Marijuana Special Legislative Committee and is well versed on the matter. Mark Bryant is on the Transportation Committee, and Bill said we are lucky to have someone from Windham on both of those committees.*

*Councilor Chapman said the Council had some questions on things coming up and concerns with when things are going to happen and changes and loop holes that maybe the three of them could help them with up at the state.*

*She would also like to hear about some of the road issues we have in town, and she hopes they can help the town with those issues.*

*Patrick Corey said he wanted to be clear and said that his experience with the cannabis legislation mostly has to do with the recreational law that was passed. They did very little to touch medical. He said most of the other decisions were made in the Joint Standing Committee for Health and Human Services, that is where they look at the medical side of marijuana, so they were a committee with a limited scope on the recreational side but he can talk a little about that.*

*Councilors took turns asking different questions about recreational, retail and medical marijuana and Patrick did his best to explain what he knew about the subject.*

*Bill Diamond reminded them that this is a moving target, even for them at the State level because it is major rules and regulations that have not even been written yet. He said whatever they decide to do, just remember that you don't have a final target here and it is moving.*

*Councilor Nangle asked Mark Bryant about some serious road issues we have in town.*

*Councilor Haskell brought up the issue with Route 302 and River Road and the lack of signage up there.*

*Bill Diamond said that is the beginning spot for road rage and that could be another discussion with DOT to see if they can make a difference.*

*Mark Bryant said anything is possible but he thinks it is all about dollars, and if the town wants to contribute to some of that costs, it comes quicker. He suggested the town send a plan to help make it happen.*

send a plan to help make it happen.

Councilor Maxfield brought up the issues with the water quality issues with Highland and Forest lakes, and the fact that some of the problems come from the fact that the state departments are understaffed.

Tony Plante said where they have a proposed amendment with regard to caregiver retail stores he asked Kevin Haskins from Preti Flaherty, Chief Schofield and Chris Hanson Code Enforcement Director to be here to address a few of these issues, because the amendment that is on the agenda tonight would have the effect, as the other retail amendments the Council added a year and a half ago, which would be to add the definition for caregiver retail store, but then not permit them as a permitted use anywhere in town unless the town had gone through whatever process it was going to, to figure out when, where and under what conditions you wanted to permit them.

Tony said there are still opportunities to regulate caregivers and they would need to think about what kind of impact that those uses would have on a community. They can establish a business licensing program that helps deal with some of the criteria they would expect a business to meet, such as security and other issues that have been identified.

Kevin Haskins, Chris Hanson and Chief Schofield came to the table and answered questions from the Council

Kevin Haskins said his understanding of what is before the Council is to adopt a definition of a caregiver retail store and then consistent with definitions related to adult retail use, you would have a definition of caregiver retail statute but that would not be identified in any of the permitted uses in the zoning ordinance, thereby prohibiting caregiver retail stores effective August 7th.

Some of the questions the Council had were if the amendment were to pass, can someone open a retail medical marijuana store between now and the time it comes back to the Council; answer yes. If the town got 15- 20 more of those businesses in town, could they sustain volume to survive and be successful. Who is responsible for enforcing these businesses to make sure they follow the law; answer was DHHS Licensing Authority. Calls had been received about some of the stores having people outside smoking in a chair, who would enforce that?

Chris Hanson said there has been discussion about registering and licensing the retail marijuana retail stores and they would have to be renewed annually, just like a liquor license. So, if you had the complaints that have been talked about, those things could be addressed at the time of the annual renewal.

Discussion ended at 8:40 p.m.

## **XI. CONSENT AGENDA.**

18-149

To approve an application submitted by Northern New England Telephone Operations, LLC and Central Maine Power Company to locate (13) utility poles and cables and wires beginning at Pole 508 [75] there on Windham Center Road, approximately 900 feet northwesterly of the intersection of center line US Route 202/4; thence extending approximately 1670 feet northwesterly to Pole 522 [88].

**Attachments:** Cover Sheet 18-149

Pole Location-Windham Ctr Rd.

- 18-145 To find that the requirements of 28-A M.R.S.A. § 653 have been met and to approve an application submitted by Apple New England LLC d/b/a Applebee's Neighborhood Grill & Bar for a renewal liquor license.

**Attachments:** Cover Sheet 18-145

Applebees Lig Lic Renewal

- 18-146 To approve a Victualer's permit application submitted by Robert Finley d/b/a Poppie's Kettle Corn, located at 4 White's Bridge Road.

**Attachments:** Cover Sheet 18-146

Poppie's Kettle Corn - Victualer's

- 18-147 To approve one (1) application submitted by Robert James Finley Sr., d/b/a Poppie's Kettle Corn for a mobile food service unit license.

**Attachments:** Cover Sheet 18-147

Poppies Kettle Corn Mobile Food

A motion was made by Vice Chair Muir, seconded by Councilor Welch, that the Order be approved. The motion carried by the following vote:

In Favor: 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

## **XII. UNFINISHED BUSINESS & GENERAL ORDERS.**

- 18-140 To set the tax rate for 2018-2019 at \$15.18 per thousand dollars of assessed value.

**Attachments:** Cover Sheet 18-140

2018-19 Mil Rate Recommendation

Tax Rate History 2004-2018

*Councilor Haskell said he would like to lower it to \$15.14.*

*Tony Plante said this year because of the revaluation, the tax rate is proposed to go down from \$16.43 to \$15.18. There is a range that is permitted by the state, and it is based on the amount of money that is raised by the School District Meeting, Town Meeting and the County Commissioners. Elisa Trepanier has done a lot of work and put a great deal of analysis into the tax rate discussion but the value goes up, the tax rate goes down.*

*Elisa Trepanier explained the reasoning between the \$15.18 rate versus the \$15.14 rate. She said they would have enough with the lower amount, and then she explained that there are two moving parts when you change mill rates. She referred them to the attachments where she had several examples using different mill rates and what that does to change the overlay. As an example: If you set it at \$15.14 and Walmart were to*

*challenge the town again with an abatement, that would wipe that out completely. Then there would not be any money available for additional abatements.*

*Councilor Haskell moved to set the tax rate at \$15.14, failed for lack of a second.*

*Councilor Cummings moved to set the tax rate at \$15.14, seconded by Councilor Haskell.*

*Vote on amendment of \$15.14 - 2 to 5 (RC, DC, RM, TN & JM) Fails*

**A motion was made by Councilor Welch, seconded by Vice Chair Muir, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 5 - Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman and Councilor Cummings

**Opposed:** 2 - Councilor Welch and Councilor Haskell

18-141 To set the dates on which 2018-2019 taxes will be due as October 1, 2018 and April 1, 2019.

**Attachments:** Cover Sheet 18-141

**A motion was made by Vice Chair Muir, seconded by Councilor Nangle, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

18-142 To set the rate of interest that will be charged on overdue taxes for 2018-2019 at eight percent (8.00%).

**Attachments:** Cover Sheet 18-142

*Councilor Welch asked if it was the same rate as last year? Tony said it was 7% last year. He said every year the state Treasurer sets what the maximum percentage can be and the town customarily follows that.*

**A motion was made by Vice Chair Muir, seconded by Councilor Welch, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

18-143 To appoint Christopher McDonald to a three-year term on the Natural Resources Advisory Committee, to expire August 15, 2021.

**Attachments:** Cover Sheet 18-143

**A motion was made by Councilor Maxfield, seconded by Councilor Welch, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

18-144 To appoint Christopher McDonald to a three-year term as an alternate member on the Zoning Board of Appeals, to expire February 15, 2020.



**Attachments:** Cover Sheet 18-144

Councilor Nangle thanked Mr. McDonald for applying, as a result of a lot of conflicts he came down at least three times to interview. He thanked him for his patience and his service.

**18-144 To appoint Christopher McDonald to a three-year term as an alternate member on the Zoning Board of Appeals, to expire February 15, 2020.**

**In Favor:** 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

**18-150**

To refer proposed amendments to the Land Use Ordinance, Chapter 140 of the Code of the Town of Windham, retroactive to August 7, 2018 with regard to medical marijuana caregiver retail stores to the planning board for review and recommendation.

**Attachments:** Cover Sheet 18-150Caregiver Retail Store Proposed Amendment

*Charles Hawkins:* He asked what their definition would be for retail stores? Councilor Nangle said the retail store definition is: "A Retail Sales establishment operated by a registered medical marijuana caregiver for the sale of marijuana and marijuana products to qualifying patients, which establishment may also include facilities for the conduct of any other activities authorized to be performed by a medical marijuana caregiver pursuant to 22 M.R.S.A. Sec. 2423-A(2), as may be amended from time to time."

*Notwithstanding 1 M.R.S.A. § 302, this Amendment shall apply to all Caregiver Retail Stores not in operation on or before August 7, 2018 or authorized by a permit granted by the Town of Windham prior to August 7, 2018.*

*Charles Hawkes:* He asked under what definitions is he currently supposed to operate under? Tony said there are none. Charles said the town put restrictions on his certificate of occupancy that none of the other caregivers in town have. The new definition would completely change what you put on my certificate of occupancy.

*Chris Hanson* said the language he is referring to said no consumption, no social club, no cooking. Charles said the main one being no consumption, because the new law and the current one says what he is able to do as a caregiver is administer medication or assist a medical marijuana patient with their use of medical marijuana. Yet, he is the only caregiver in town who has restrictions on that. Chris said because he was the only one in town who asked about those specific uses when he applied.

*Charles Hawkins* said that if this proposed amendment was passed, he would like those restrictions be taken off his license. Councilor Chapman said they do not know what his issue is currently, and the Council does not get involved in day to day. Charles wants to know if it passes, will he fall under the new definitions or will he be left with the same restrictions that he currently has?

*Kevin Haskins Attorney* said what the proposed amendment does is add a definition for caregiver retail statute. For retail stores that are permitted already, it does not affect those. It is the provision of the retro activity provision of August 7 and going forward it would be for new caregiver retail stores.

Chris Hanson said Mr. Hawkins was operating a retail store, not a social club, and that is what no consumption meant. It meant he was not authorized to have a social club.

Charles Hawkins said that an adult social club has nothing to do with Medical Marijuana. He said he is not proposing any kind of social club, he is proposing a medical marijuana treatment center, which he is state licensed to administer medical marijuana to patients and the new law says that he can, but evidently when you passed the new set of regulations he doesn't fall under that. He is looking for a clear path to run his business, to not lose his CO, to not end up in jail or lose his investments.

Councilor Chapman said you have heard what Patrick Corey said "no social clubs", so she would not look for a way to try and skirt around it. She would say if that was his intent, in a round about way, maybe come up with a better plan.

Maggie Terry voiced her support for recreational and medical cannabis market. Ms. Terry gave a brief history of Maine's laws and changes to marijuana and what is allowed. She said she is here to ask the town to fulfill the voter's will and allow for such sales in our town. She wants to be a recreational cannabis seller and nursery in her store front, legally an LLC located at 4 White's Bridge Road.

Joel Peppin thanked everyone for all the work and thought they have put into this, it is a very complex issue and has a lot of working parts. The definition that is being considered tonight, he does not have a problem with, but the moratorium that is being talked about on future medical stores is not a huge issue, except for one important part. He said Chris Hanson mentioned that there are three stores in town, maybe four, and the one that he mentioned that is on his desk, would be his. His permit was pulled before today's date of August 7, but he has not got his occupancy permit yet, and believes he will be okay with the retroactive date because it was pulled before today. In talking about adopting this definition, there will be a grace period of 90 days and someone tomorrow could pull a permit in the mean time, but the town might come and pull your license after the grace period is up. He thinks adopting this definition and putting it into the ordinance, just to not put it in a zone, he feels should not be done.

Dave Whitten owner of Sticky Bud Farms said he is one of the three present locations for medical marijuana in the town, and he wanted to thank them for being tolerant of what they do. They see a lot of people on a daily basis with many ailments. They do medical certificates, they have a medical doctor and a nurse who comes in. He thinks it is important to look at Windham's populous, and since he opened 8 months ago he would probably be in the thousands with people that come in from out of state who are renting places around the lakes and they are frustrated that they can't come in and purchase medical cannabis, because what they hear is that recreational is legal so not everyone is educated on where Maine stands. He asked the Council to consider the adult use market because he thinks it does play a roll.

Larry Eliason said he thinks they know how he feels about moratoriums and what they mean to him is they are not prepared and pushing the panic button and we don't have confidence in our staff who are well educated and well paid. As far as restrictions, there is unintended consequences every time you take action on this stuff to try and police and control something that is already here, just like construction services in the C3 zone. He said you will put restrictions on other properties in North Windham in commercial real estate, and you are limiting their ability to lease space because you will limit the number of stores. You should really think through the unintended consequences when putting more restrictions on the free market enterprise system.

Charles Hawkins said you have only heard from businesses and now he want to speak as a patient. Caregiver store fronts aren't dispensaries they are much more smaller. From a patient's side he can go to Maine's Alternative Care and have viable medicines in the forms that exists that people use medical marijuana for. He said he cannot go to any of the shops in Windham and be guaranteed that he can get what he needs. When you are restricting caregiver store fronts, you are not restricting businesses, you are restricting patients in their communities and the access to the medicine they need. He asked if the town has a limit as to how many pharmacies can be in the town?

Councilor Cummings said she wants to make it abundantly clear that she is putting her personal opinions aside, and the reason they are having the discussion is because stores have popped up and they are confused, as well as some of the experts they've called up have been confused, as far as who is enforcing the law, who has jurisdiction over it, and they have a lot of questions. She said her main concern is for the patients who are going into those stores; that they understand whether you are registered or not registered and whether the products they are purchasing are licensed and quality assurance is made or not made.

Councilor Maxfield said they have a memo from MMA and it doesn't say moratorium, but they are effectively voting to stop it today. His issue is with the particular way it is worded, and sometime in October when these new rules kick in, this, effectively, would be moot, because we would then be at a point where we would actually have to opt in to allow future businesses. So if they did not put a retro date in tonight, but still added a definition, then this wouldn't be an issue?

Kevin Haskins said that the opt in language would not be effective until October, maybe November, and yes, at that point, in order for a retail store to be allowed it has to be expressly authorized by the municipality by way of an ordinance. He further explained the difference of doing this as an ordinance change rather than a moratorium. So the ordinance language that is proposed is something the Town Council can adopt, if it is quite sure that the caregiver retail stores is a use they do not want to permit right now, and that again doesn't preclude the town from revisiting that subsequently and considering whether there might be certain zoning areas in the future where that might be a permitted use.

Council Chair Chapman asked the attorney if they could just remove the last paragraph on the proposed amendment?

Kevin Haskins said that language, with the retro activity provision, is addressing an issue of timing between the effective date of the amended marijuana statute, which is not going to be until October/November, so yes, there is a period of time that is a gap and the retro language addresses that. Whether or not the retro activity language is there, the town is going to be able to go through a deliberate process to come up with and do exactly as you suggested to identify whether or not there are areas the town wants it to be a permitted use or if it wants it to be a permitted use at all.

Councilor Maxfield made a motion to Order 18-150 to strike the last paragraph, Notwithstanding 1 M.R.S.A. § 302, this Amendment shall apply to all Caregiver Retail Stores not in operation on or before August 7, 2018 or authorized by a permit granted by the Town of Windham prior to August 7, 2018 seconded by Councilor Welch.

Joel Peppin said LD 1539, the amendment to the medical marijuana statute at the state level, just as a clarification to when that does become law 90 days from now, any caregiver store that is operating in any municipality that didn't have authorization from the

town prior to the law being enacted could cease and desist. The only stores that are operating at that time that could be grandfathered, even if the town chooses not to opt in are the ones that come before the town and are explicitly honest in what they want to do.

Joanne Mattiace said, for the record, she is one of the owners of Legal Leaf at 4 White's Bridge Road. She said the entire discussion tonight really doesn't bring much credit to the Town Council. She said it was a very disingenuous argument that they are making, that this is simply a definitional change, it's not. This is an attempt, she believes, as the town's attorney has stated clearly, to dampen the business community. Unless she is mistaken, Chris, in his office as CEO, has not had any problems what so ever in processing one application. She asks the Council, as a fellow resident of the town and certainly as a property owner and somebody concerned with things, and she stated that she is a member of the Zoning Board of Appeals, to ask yourself if you truly believe that you are acting without much credence to your own personal belief? She said if they did nothing tonight, that Chris, in his office, can still continue to act. Let the business community act as it should, let's go under simple capitalistic terms, supply and demand. She asked them to be responsive to the will of the people.

Vote on amendment: 3-4 (CH, RC, DW & RM) Fails

**A motion was made by Vice Chair Muir, seconded by Councilor Nangle, that the Order be failed. The motion carried by the following vote:**

**In Favor:** 3 - Councilor Welch, Vice Chair Muir and Councilor Cummings

**Opposed:** 4 - Councilor Nangle, Councilor Maxfield, Council Chair Chapman and Councilor Haskell

18-152

To adopt amendments to the Fire Prevention and Life Safety Code, Chapter 95 of the Town of Windham:

Whereas, certain provisions of the Fire Prevention and Life Safety Code ("Fire Code") are inconsistent with State law, and

Whereas, the Town Council wishes to eliminate a particular inconsistency which is impacting the ongoing development of property

NOW THEREFORE it is hereby ordained as follows:

§95.4.1 of the Fire Code is amended as follows:

All new buildings, structures, or dwellings containing at least 7,500 10,000 gross square feet of enclosed area serviced by public water or within 1,000 linear feet of a hydrant serviced by the Portland Water District, or 4,000 gross square feet of enclosed area not serviced by public water or greater than 1,000 linear feet from a hydrant serviced by the Portland Water District, with the exception of single- and two-family dwellings, shall be required to have an approved automatic fire sprinkler system in all areas of the buildings and must comply with this article.

**Emergency Declaration**

The Town Council declares the existence of an emergency because the Code of Ordinances is insufficient to prevent public harm to property caused by inconsistent legal requirements.

In accordance with Article II, Section 11(D) of the Town Charter, this ordinance shall be enacted as an emergency ordinance. It shall stand repealed as of the sixty-first (61st) day following enactment, unless the Town Council shall have acted to reenact it.

**Attachments:** Cover Sheet 18-152

ORDINANCE AMENDING THE FIRE PREVENTION AND LIFE  
SAFETY CODE FOR THE TOWN OF WINDHAM

*Tony Plante: Tony noted that the only thing that doesn't show up in the agenda is the formatting, which would strike the 7,500 and replace it with 10,000. The current threshold for requiring a sprinkler system is 7,500 sq. ft. and this would raise it to 10,000 sq. ft.*

*Councilor Chapman said the reason for the change is there is a building being built currently, needs this change in order to continue its construction.*

*Councilor Maxfield asked what the inconsistency is with the state law.*

*Councilor Chapman said agriculture is exempt, and they will probably be looking at fire codes after this emergency declaration is taken care of. Our ordinance does not differentiate between agriculture and a regular commercial building.*

*Brent Libby Fire Chief said they received the plans in the fire department in July 2019. When they reviewed those plans the total building size in question was a little over 14,000 sq. ft. There is a 2 hour fire wall that has been engineered, which separates the building into two parts, the business section that is a little over 4,000 sq. ft. and a storage section that is a little over 9,000 sq. ft. Those plans had gone to the Fire Marshall's Office based on their use, they do not require a sprinkler system, so they received a Fire Marshall's Office permit. Based on our current ordinance they are within a hydrated district so it is 7,500 sq. ft, even with that 2 hour fire wall in there, the storage section, which would be the riding stable area, is still over that 7,500 sq. ft. mark.*

*The discussion he had with the engineer of the firm on July 25 was that it was an error on his part, and he did not look at our ordinances and did not see that. The building has not been classified as agricultural, according to the Fire Marshall's Office; it was submitted as a business and storage occupancy. The state's threshold varies based on use, and the town's ordinance is more strict and based on the square footage, it does require it. Councilor Chapman said if they approve this, they can move on with their construction.*

**A motion was made by Councilor Nangle, seconded by Councilor Welch, that the Order be approved. The motion carried by the following vote:**

**In Favor:** 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

### **XIII. Agendas & Scheduling.**

CD 18-235      Agenda Items Reports.

Attachments: Agenda Items to be Scheduled 20180803

Projects & Issues List 20180803

Projects & Issues Sheets 20180803

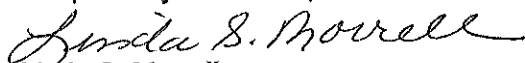
*There was no discussion on agendas and scheduling.*

#### **XIV. ADJOURN.**

A motion was made by Councilor Nangle, seconded by Councilor Maxfield, that they be adjourned. The motion carried by the following vote at 10:06 p.m.

In Favor: 7 - Councilor Welch, Councilor Nangle, Vice Chair Muir, Councilor Maxfield, Council Chair Chapman, Councilor Haskell and Councilor Cummings

Respectfully submitted,



Linda S. Morrell

Town Clerk, CCM