



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Final

Town Council

Tuesday, November 9, 2021

6:30 PM

Council Chambers

To join the meeting remotely, use this link: <https://us02web.zoom.us/j/88547243045>. You may also call 1-646-558-8656 and enter meeting ID: 885 4724 3045

Swearing in of Councilors-Elect.

Town Clerk Linda Morrell administered the Oath to the three Councilor's elect - David Nadeau to the 3-year Town Council At Large seat, Edward Ohmott to the 1-year Town Council At Large seat, and William Reiner to the 3-year Town Council West District.

Present: 7 - David Nadeau, Nicholas Kalogerakis, Jarrod Maxfield, Mark Morrison, Brett Jones, Ed Ohmott and William Reiner

I. Roll Call of Members.

Present: 7 - David Nadeau, Nicholas Kalogerakis, Jarrod Maxfield, Mark Morrison, Brett Jones, Ed Ohmott and William Reiner

II. Pledge of Allegiance.

Councilor Nadeau led the Pledge of Allegiance.

III. Minutes to be Approved:

[CD 21-157](#) To approve the Minutes of October 26, 2021 Special Council meeting.

Attachments: [Minutes-Special Council-10-26-21.pdf](#)

A motion was made by Councilor Kalogerakis, seconded by Councilor Jones, that the Minutes be approved. The motion carried by the following vote:

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[CD 21-158](#) To approve the Minutes of the October 26, 2021 Council meeting.

Attachments: [Minutes-Council-10-26-2021.pdf](#)

A motion was made by Councilor Kalogerakis, seconded by Councilor Ohmott, that the Minutes be approved. The motion carried by the following vote:

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

IV. Adjustments to the Agenda.

V. Public Participation.

None.

VI. Councilors' Comments.

Councilor Kalogerakis congratulated newly elected Bill Reiner, and Ed Ohmott and Dave Nadeau on their re-election. He also congratulated the Girls Soccer Team who just won the State Championship, and the Boys Varsity Football Team who are getting pretty close.

He would like to tackle the trash issue in town. The Town of Gorham has gone to the pull tabs and you can use any trash bag you want. You buy the sticker pull tabs and put it around the top. It would solve the issues that the residents are having, and that you read about on the Facebook page. Councilor Maxfield agreed.

Councilor Maxfield welcomed and congratulated the newly elected Councilors.

VII. PUBLIC HEARINGS.

21-227

To receive public comment and act on the adoption of a replacement General Assistance Ordinance, Chapter 111, of the Code of the Town of Windham.

Attachments: [21-227 Cover Sheet.pdf](#)
[2021 1019 Council Memo.pdf](#)
[2021-GA-Ordinance-Adoption-Form.pdf](#)
[ATTACHMENT A Legislation re Recovery.pdf](#)
[ATTACHMENT B](#)
[GA ORD FINAL-9-3-21-REDLINED-updated-App-A-C.pdf](#)
[ATTACHMENT C GA ORDINANCE \(Revised 9.2021\).pdf](#)

Manager Tibbetts said this is just a formality on the language for the General Assistance Ordinance. This is developed by the Maine Municipal Association, which about 99% of the municipalities use this ordinance. It is cleaning up the language and simplifying and clarifying definitions. He recommends the Council adopt this new language for the General Assistance.

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

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

VIII. CONSENT AGENDA.

IX. UNFINISHED BUSINESS & GENERAL ORDERS.

21-214

To accept nominations for and elect a Chairman of the Town Council.

Attachments: [21-214 Cover Sheet.pdf](#)

Councilor Kalogerakis nominated Jarrod Maxfield as Chairman.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-215](#) To accept nominations for and elect a Vice-Chairman of the Town Council.

Attachments: [21-215 Cover Sheet.pdf](#)

Councilor Kalogerakis nominated Mark Morrison for Vice-Chairman.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-216](#) To accept nominations for and elect a Parliamentarian of the Town Council.

Attachments: [21-216 Cover Sheet.pdf](#)

Councilor Jones nominated Ed Ohmott as Parliamentarian.

In Favor: 6 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones and Councilor Reiner

Abstain: 1 - Councilor Ohmott

[21-217](#) To accept nominations for and appoint a Finance Committee.

Attachments: [21-217 Cover Sheet.pdf](#)

Councilor Nadeau said the Finance Committee can be the Council as a Whole or it can be a three-person committee, as they have done in the past. Council were all in agreement to have a three-person committee.

**Councilor Maxfield nominated David Nadeau
Councilor Maxfield nominated Mark Morrison
Councilor Nadeau nominated Nick Kalogerakis**

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-218](#) To accept nominations for and appoint an Appointments Committee.

Attachments: [21-218 Cover Sheet.pdf](#)

**Councilor Kalogerakis nominated Bill Reiner.
Councilor Maxfield nominated Nick Kalogerakis.
Councilor Maxfield nominated Ed Ohmott.**

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-219](#) To accept nominations for and appoint two representatives to the Windham Economic Development Corporation board of directors.

Attachments: [21-219 Cover Sheet.pdf](#)

[Windham Economic Development Corporation](#)

Councilor Maxfield nominated Nick Kalogerakis.

Councilor Jones nominated Jarrod Maxfield.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-220](#)

To appoint a Council representative to the Public Easement Advisory Committee.

Attachments: [21-220 Cover Sheet.pdf](#)

[Public Easement Advisory Committee](#)

Councilor Maxfield nominated Brett Jones.

In Favor: 6 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Ohmott and Councilor Reiner

Abstain: 1 - Councilor Jones

[21-221](#)

To appoint a Council representative to the Parks and Recreation Advisory Committee.

Attachments: [21-221 Cover Sheet.pdf](#)

[Parks and Recreation Advisory Committee CURRENT](#)

Councilor Nadeau nominated Bill Reiner.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-222](#)

To appoint a Council representative to the Highland Lake Leadership Team.

Attachments: [21-222 Cover Sheet.pdf](#)

[Highland Lake Leadership Team](#)

Councilor Kalogerakis nominated Jarrod Maxfield.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-223](#)

To appoint a Council representative to the Long Range Planning Committee.

Attachments: [21-223 Cover Sheet.pdf](#)

[Long Range Planning Committee](#)

Councilor Maxfield nominated David Nadeau.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-224](#) To appoint a Council representative to the Natural Resources Advisory Committee.

Attachments: [21-224 Cover Sheet.pdf](#)
[Natural Resources Advisory Committee AMENDED20210615.pdf](#)

Councilor Kalogerakis nominated Brett Jones.

In Favor: 6 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Ohmott and Councilor Reiner

Abstain: 1 - Councilor Jones

[21-225](#) To appoint two Councilors to the Marijuana License Fee Committee.

Attachments: [21-225 Cover Sheet.pdf](#)
[Marijuana Business License Committee Charge Adopted 09082020](#)

Councilor Maxfield nominated Ed Ohmott.

Councilor Kalogerakis nominated Mark Morrison.

In Favor: 5 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Jones and Councilor Reiner

Abstain: 2 - Councilor Morrison and Councilor Ohmott

[21-228](#) To appoint a Council representative to the Energy Advisory Committee.

Attachments: [21-228 Cover Sheet.pdf](#)
[Energy Advisory Committee.pdf](#)

Councilor Kalogerakis nominated Mark Morrison.

In Favor: 6 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Jones, Councilor Ohmott and Councilor Reiner

Abstain: 1 - Councilor Morrison

[21-226](#) To adopt the Council's Rules of Procedure.

Attachments: [21-226 Cover Sheet.pdf](#)
[Council Rules Amended 2020 0428 with Appendix A](#)

A motion was made by Council Chair Nadeau, seconded by Councilor Ohmott, that the Order be approved. The motion carried by the following vote:

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-229](#) To authorize the Town Manager to amend the contract with the Portland Water District engineering, design, and cost analysis expenditures, and increase the total project budget by \$257,000, establishing a new budget of \$1,218,000, and take necessary action to finalize the agreement.

Attachments: [21-229 Cover Sheet.pdf](#)[North Windham - Engineering Services and Budget admendment.pdf](#)[2020NorthWindhamWWTF bat](#)[4.1 OPS COM Selection of Professional Engineering Services](#)[Memo B Tibbetts PWD Engineering Solution](#)[MOU Town of Windham 200609 PWD](#)

Manager Tibbetts said this was discussed at the Portland Water District meeting last evening, and they have also agreed to amend this contract. (see attachments)

A motion was made by Council Chair Nadeau, seconded by Councilor Kalogerakis, that the Order be approved. The motion carried by the following vote:

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-230](#) To set the Council's meeting schedule for November and December.

Attachments: [21-230 Cover Sheet.pdf](#)[Memo to Council - Council Meeting Schedule Nov Dec.pdf](#)

Manager Tibbetts explained why he came up with this schedule.

Councilor Kalogerakis suggested they start at 5:30 for the December 14th meeting so they have enough time to get through everything.

A motion was made by Council Chair Nadeau, seconded by Councilor Ohmott, that the Order be approved. The motion carried by the following vote:

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

[21-231](#) To confirm the extension of awarded Adult-Use Marijuana Store applications in accordance with the Town's Marijuana Business Licensing Ordinance, Chapter 160 of the Code of the Town of Windham.

Attachments: [21-231 Cover Sheet.pdf](#)[Extension of JAR Adult-Use Implementation.pdf](#)[Extension of Pauls Boutique Adult-Use Implementation.pdf](#)[Amended Order 21-231 and Supporting Materials.pdf](#)

Malina Dumas a resident of Windham and works at the Law Firm Drummond Woodsum, and they represent Andrew Keeley who is the owner of the Caregiver Retail Store Alternative Essence.

She apologized for trying to speak earlier she was worried she might miss her chance to speak. She saw there was a new agenda posted that includes a memo from Attorney Collins that frames this as an extension of a suspension of use of the Adult Use Marijuana Store License. The Licensees actually needed to submit a written request under the ordinance within the first 6 months of licensure. Then the Town Council could have voted within that time frame to include an extension of that suspension of use for up

to one year. She said it does not seem, from the agenda packet or any of the materials provided, that such a written request was made within that time frame. Renovation is a grounds that is enumerated in the ordinance for a written request to be made to the Town Council to approve a suspension of use. You can't approve that extension after the one year period has elapsed.

She said the memo provided tonight also indicates that you should seek construction as an active use of the licensed premise but you cannot have it both ways. Either you are asking for a suspension of use of the license because you are renovating and undergoing construction or you're saying that this is an active use of the license to engage in construction on site. Ms. Dumas said the problem with the later is that there is another provision under Section 167 K 2 that says you forfeit your license if you make an active use of the licensed premise. That's not under the license itself, so if these stores currently are operating as Caregiver Retail Stores, which she believes they are, that would be the active use of the licensed premise. The licensed premise as defined in the ordinance is the premise that they've outlined in their application. So under subsection 2 if you are saying that construction is an active use of the premise then you would also concede that operating a different licensed entity, are Caregiver Retail Store selling Medical Marijuana is a different business than an Adult Use Marijuana Store selling Adult Use Marijuana, and therefore the licenses would have been forfeited under that other provision. Her interpretation of the ordinance is that these licenses have already been forfeited in one of two ways, and possibly both.

Their client would request, that instead of granting these extensions under the terms of the ordinance, the Town Council open up the application period again. There have been a number of businesses who have been on the wait list for a year. She said she thinks they made a policy decision to include these forfeiture provisions including for licenses that were part of a competitive licensing process. She hopes the Council will consider the fairness to those that waited for a year on that wait list, because it appears now that the intent may be to allow extensions indefinitely, and if they are not open by April 2022 they will come before the Council again and get another extension.

She wants them to think about the provisions of the ordinance that are impacted by a decision tonight and that would instruct your decision on this matter. She thanked the Council.

Councilor Nadeau moved to amend the motion to say: Motion to find that (1) Adult Use Marijuana Retail Store licenses issued to Jar Co. and Paul's Boutique in 2020 were properly and timely renewed for the 2021-2022 year; (2) each license holder has made active use of its respective licensed premises by actively pursuing construction needed to open the Adult Use Marijuana Retail Store Use; (3) that each license holder has experienced unforeseen delays due to labor and materials shortages related to the COVID-19 pandemic; (4) as such, the licenses for Jar Co. and Paul's Boutique are not deemed to have been forfeited pursuant to Section 160-7 (K) of the Marijuana Business Licensing Ordinance; and (5) to the extent required under Section 160-7 (K) the two license holders shall be given until April 1, 2022 to open their respective Adult Use Marijuana Retail Stores and, if opening shall not occur by that date, shall appear before the Council for further consideration pursuant to Section 160-7(K), second by Council Maxfield.

Vote on amendment:

In Favor: 7-0

A motion was made by Council Chair Nadeau, seconded by Councilor Kalogerakis, that the Order be approved as amended. The motion carried by the

following vote:

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

X. Council Correspondence.

None.

XI. Town Manager's Report.

No report.

XII. Committee Reports.

Nothing to report since the last meeting.

A. Council Subcommittees.

1. Appointments Committee.
2. Finance Committee.

B. Other Committees.

1. Long Range Planning Committee.
2. Parks & Recreation Advisory Committee.
3. Windham Economic Development Corporation
4. Highland Lake Leadership Team.
5. Natural Resources Advisory Committee.
6. Public Easement Advisory Committee.

XIII. Discussion Items.

Minutes are not taken for Discussion Items.

[CD 21-152](#)

Codification of Windham Ordinances - Legal Analysis.

Staff has worked through this document that General Code provided as part of the process to codify our ordinances. Currently our legal counsel is reviewing staff responses and providing guidance. Next steps include our changes being incorporated into a Draft of the Code for final review and then Council will need to act to formally to adopt prior to final publication of

the new Code.

Attachments: [Editorial and Legal Analysis - pages 1-60 \(14MB\)](#)
[Editorial and Legal Analysis - pages 61-120 \(14MB\)](#)
[Editorial and Legal Analysis - pages 121-180 \(16MB\)](#)
[Editorial and Legal Analysis - pages 181-240 \(14MB\)](#)

XIV. Agendas & Scheduling.

XV. ADJOURN.

A motion was made by Councilor Reiner, seconded by Councilor Kalogerakis, that they be approved. The motion carried by the following vote at 7:10 p.m.

In Favor: 7 - Council Chair Nadeau, Councilor Kalogerakis, Vice Chair Maxfield, Councilor Morrison, Councilor Jones, Councilor Ohmott and Councilor Reiner

Respectfully submitted,

Linda S. Morrell
Town Clerk, CCM