



ORDINANCE COMMITTEE (Town Council Sub-committee)

Members (FY2016)

Ned Kitchel
Charlie McBrady
Russ Anderson

Staff Meeting Notes Thursday, March 3, 2016 9:00am

The meeting was called to order at 9:00 am.

Councilors Kitchel, McBrady and Anderson were present.

Also in attendance – Don L’Heureux, resident of Brook Road, Chief Edward Tolan, Community Development Director Amanda Stearns, Town Clerk Ellen Planer, Town Manager Nathan Poore, Town Attorney Amy Tchao

1. **Approve past meeting minutes**

The minutes were approved as presented.

2. **Engine brakes – options for restrictions on certain roads**

Nathan offered the committee a historical summary of commercial vehicle regulations in this area including the original regulation passed several decades earlier and an amendment adopted by the Town Council last year.

Nathan also described the Town’s local authority to regulate commercial truck traffic on local road and its inability to impose regulations on state roads.

Don L’Heureux, resident of Brook Road, described his experience with commercial truck traffic on that portion of Brook Road between the Westbrook City line and Leighton Road. Mr. L’Heureux explained that engine braking is only one concern. He is also concerned about the overall safety of the neighborhood including cyclists and pedestrians. He described his disappointment that the Town didn’t replace worn signs that informed commercial vehicles that they could not travel in this area but expressed an understanding about the Town’s authority to regulate these vehicles.

Members of the Ordinance Committee stated that they understood the concerns about commercial vehicles however they also understood that it may be outside their authority in some locations where there are state road classifications. Members also described how they had heard past requests to simply put up signs without enforcement authority but this was not deemed to be an acceptable tactic especially when there is a state road classification.

Nathan informed the Committee that Maine Department of Transportation (MaineDOT) has developed a process to allow towns to submit a request for regulations on state classified roads. Nathan further explained that this process has not been regularly used by towns and that there is relatively little past practice to rely on to help determine an expected outcome from MaineDOT. The Committee agreed to submit a request to MaineDOT

with the understanding that there would be a need to hire a traffic engineer to assist with the request. They requested that the Town Manager work with a traffic engineer to submit an application and report back to the Committee once an application has been developed.

3. Food trucks – review options for outdoor seating

Councilor Anderson opened the discussion on food trucks by reviewing the application this past summer for a food truck on Route 100, which was given a license but restricted from outdoor seating. Councilor Kitchel asked about how other communities were regulating similar food vendors.

Amy offered the committee some context around the issue. The current ordinance addresses three different types of food establishments that are subject to licensing but are not defined under zoning. These are temporary food service establishments (at a temporary event for no more than two weeks), periodic food service establishments (accessory to a permanent land use such as church supper at a church or kitchen at a fire station) and the third mobile food service establishment which has no place or duration but is required to have a base station and is able to be moved. The regulation addressing these types of food service as well as any retail sale of food are required to be licensed as a victualer. The current regulations are only around sanitation and health with no mention of site issues such as parking, signs, seating, etc. These are items typically reviewed as part of the establishment of a land use under zoning and site plan review. Amy wondered if licenses are issues for a year and the food service was operated year round, does that not begin to look like a permanent land use and fall under the definition of restaurant in the zoning ordinance.

Councilor Anderson asked if there needed to be any changes. Amanda answered that the question of outdoor seating had come up and the language in the current ordinance does not allow the Council to grant outdoor seating. That would be regulated under zoning as it is a category of use in the zoning ordinance. Councilor Kitchel noted that his experience growing up in Philadelphia was that food trucks moved around every day. He does not want additional ordinances if the town does not need them but it seems that current ordinance doesn't allow for what this particular food truck is asking for.

Ellen suggested that one question would be whether or not the town wishes to allow food service in this manner at all. Communities around Falmouth either have specific ordinances that address where, when and how long they can be located or prohibit them altogether.

Committee members agreed that Falmouth is not like Freeport or Portland where public places have been designated for this use, and they do not imagine that it will occur in the foreseeable future. They would like to be able to allow them, with some review of the site, so long as they do not conflict with the underlying use of the property.

Amy suggested one option with the fewest changes would be to amend the definition of mobile food unit to require that it be mobile and indicate a period of time it can be located in any one location. Councilor Anderson responded that a six month period would be reasonable. The discussion continued about what difference there was between a truck that is in one place for six months and a seasonal restaurant such as Reds in Wiscasset. They both serve the same purpose. Councilor McBrady commented that the seating makes it different. When seating is added, it starts changing the use of the site, the length of time people stay and starts looking like a restaurant. Amy responded that zoning does not differentiate between uses that are seasonal or year round.

Councilor Kitchel asked about food trucks that cater weddings. Ellen responded that they are licensed as a caterer and fall under the temporary service.

The discussion continued around the issue of seating. Nathan joined the discussion and added that there is a question of equity with permanent restaurants and deciding when a mobile food unit starts looking and feeling like a restaurant. Councilor Anderson commented that it is about locating for a certain period of time.

Amy added that, as this is further reviewed, we need to be careful about the zoning ordinance and that it defines carry out restaurant and does not differentiate between whether or not it is in a permanent structure.

It was concluded that staff would continue working on the issue and come back to the committee in the next couple months with some more detailed suggestions. The direction the committee wants to take at this time is to allow this type of use and be sure that seating, safety and conflict with permanent land use is addressed. Councilor Kitchel added that he does not believe the town should be involved in the issue of competition with other food service establishments. The other members agreed.

4. Review recent case law concerning the regulation of signs

Councilor Anderson opened the discussion by asking why the Town needed to do anything at this time. He asked if other communities were taking a proactive stance and could we continue to administer our ordinance as it is written until we get complaints. Amy reviewed the facts around the US Supreme court case *Reed v. Gilbert*. It involved a temporary sign for a church that was cited for a violation based on duration of the sign. The city regulated temporary signs differently based on content and the Court responded by saying that it is unconstitutional to regulate based on content. Signs can be regulated as structures, size, density, height, width, setbacks, district, and location.

The effect of the election season was discussed with regard to enforcement and it was agreed in general that the town would continue its current approach on administering the provisions of the temporary sign ordinance and that staff would work on a process to assist the committee in outlining a new approach to a temporary sign ordinance that will comply with *Reed*.

5. Adjourn