



TOWN OF
AMHERST
MASSACHUSETTS

Memorandum

**To: Town of Amherst Planning Board
Community Resources Committee of the Amherst Town Council, and
Governance Organization and Legislation Committee of the Amherst
Town Council**

From: Lynn Griesemer, Town Council President 
Lynn Griesemer (Mar 23, 2021 15:23 EDT)

Date: March 23, 2021

**Re: Petition from Residents regarding Proposed Temporary Moratorium
Building Bylaw**

With this Memo I am officially referring the Petitions for a **ZONING BYLAW CHANGE PETITION FORM** Filed March 19, at 1:23 o'clock p.m. by more than 10 Residents requesting that the Town Council pass the following measure, **ARTICLE 16: TEMPORARY MORATORIUM FOR 180 DAYS ON BUILDING PERMITS FOR CONSTRUCTION OF RESIDENTIAL BUILDINGS WITH THREE OR MORE DWELLING UNITS**. The Petitions were included in the packet and discussed during the Town Council Meeting on Monday, March 22, 2021. At that time the following statement was entered into the minutes.

“Regarding the petition by the residents, the Town Attorney has advised that this is a non-discretionary action; it is just strictly an administrative function. Therefore, I am noting in the minutes receipt of the petition and am administratively referring it to the Planning Board, CRC, and GOL.”

In addition, the Town Council was provided with the following information:

In consultation with the Town Attorney we have determined the following:

- In general, it is legal to propose a Zoning Bylaw amendment proposing a moratorium. Please note:
 - The proposed Zoning Bylaw has not been reviewed for legal substance by the Town Attorney nor by Town staff.
- Mass. General Laws c.40A § 5 (See Attachment to this memo.) states that “*Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council [Town Council] ..., by ten registered voters in a city, ...*”

- *The ... city council [Town Council] shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.*

Please note:

- The Town Council cannot stop referral of the petition. The Town Council's role is strictly ministerial at this stage, i.e. to receive the petition and forward it to the Planning Board for its review.
 - The Town Council must vote to refer the proposed Zoning Bylaw as submitted. This vote requires a simple "majority."
 - The Amherst Home Rule Charter, Section 1.7 DEFINITIONS states that a "majority vote when used in connection with a meeting of the Town Council shall mean greater than one-half of those present and voting..."
 - Individual Councilors may vote "Aye/yes", "Nay/No", or "Abstain." If the final vote is 3 "Aye/yes", 3 "Nay/No", and 7 "Abstain", the item will still be referred to the Planning Board.
 - The Town Council may NOT change the wording of the Petition prior to referral.
- *"No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board ... and the city council or a committee designated or appointed for the purpose by said council [CRC] has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard.*
Please note:
 - Each body conducting a hearing, either individually or jointly, must submit a written recommendation to the Town Council. Those recommendations may include proposed amendments to the language of the original petition. [See the attached Zoning Bylaw Process Flow Chart.]
 - There are other requirements and deadlines that must be met: publication in the newspaper, notice sent to PVPC, DHCD, abutting Towns, etc. Again, see the Zoning Bylaw process flow chart with requirements which is attached.
 - Once the notice of the Planning Board's public hearing has been published, all applications for building permits or special permits in process are subject to the conditions of the proposed bylaw until such time as the Council completes the voting process. While proposals may continue to be submitted and reviewed, any special permits or building permits issued must be in accordance with the proposed zoning bylaw.
 - Once the hearing(s) have been held, the bylaw is referred to GOL during which time, a legal review is conducted, if necessary.
 - It is then returned to the Town Council. Once a motion is on the table regarding the Petition, the Town Council may move to amend the language of the Petition at that time.
 - *"If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing ... no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided."*

- *“...no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council...”*

Please Note:

- The bylaw must appear on the Town Council’s agenda at two meetings.
- The bylaw requires a 2/3rds vote.

Per the Town Charter, the proposed bylaw must be posted on the bulletin board for 14 days *before* the Town Council votes, and then it does not go into effect until 14 days after final passage or a specified later date.

- *“No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council ... shall be considered by the city council ... within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.”*

Attachments:

- Mass. General Laws c.40A § 5, Adoption or change of zoning ordinances or by-laws; procedure; Updates Amended by St.2020, c.359, § 19, effective January 14, 2021
- Resident Petitions

Cc: Amherst Town Council
Town Manager
Assistant Town Manager
Planning Director
Clerk of the Town Council

Mass. General Laws c.40A § 5

Adoption or change of zoning ordinances or by-laws; procedure

Updates

Amended by St.2020, c.359, § 19, effective January 14, 2021

Section 5

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such

nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one.

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily housing or mixed-use development in an eligible location; (b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or (c) open-space residential development;

(2) an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9; (c) accessory dwelling units in a detached structure on the same lot; or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9;

(3) zoning ordinances or by-laws or amendments thereto that: (a) provide for TDR zoning or natural resource protection zoning in instances where the adoption of such zoning promotes

concentration of development in areas that the municipality deems most appropriate for such development, but will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or (b) modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law; and

(4) the adoption of a smart growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R. Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote. If, in a city or town with a council of fewer than 25 members, there is filed with the clerk prior to final action by the council a written protest against a zoning change under this section, stating the reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the

time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.






Memo of Referral re Temporary Moratorium 03-23-2021

Final Audit Report

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