



**City Council Workshop
September 23, 2019
Agenda**

5:00 P.M. City Council Workshop

- A.** Proposed Amendment to the Agriculture and Resource Protection Zone
- B.** Executive Session – Personnel Matter, pursuant to 1 M.R.S.A. §405(6)(A)



**City of Auburn
City Council Information Sheet**

Council Workshop or Meeting Date: September 23, 2019

Author: Peter Crichton, City Manager

Subject: Proposed Amendment to the Agriculture and Resource Protection Zone

Information:

This is a continuation of the Workshop held on September 16, 2019 regarding the Agriculture and Resource Protection (AG) Zone. Now is the appropriate time for staff to contribute to the discussion with information that is pertinent to Councilors' questions and the eventual decision by the Council regarding the proposed amendment. Following the staff's presentation there will be continued discussion by the Council on how best to proceed.

City Budgetary Impacts: N/A

Staff Recommended Action: Council Discussion

Previous Meetings and History:

September 16th, 2019 Workshop

City Manager Comments:

I concur with the recommendation. Signature:

A handwritten signature in blue ink that reads "Peter J. Crichton".

Attachment(s):

Draft- Agriculture and Resource Protection Ordinance Amendment

Draft- Farm Definition Amendment

Letter from the Assessor

Legal Opinion- Bernstein Shur

September 16th Workshop PP Presentation

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

DIVISION 2. - AGRICULTURE AND RESOURCE PROTECTION DISTRICT

Sec. 60-144. - Purpose.

The purposes of this district are to allow for conservation of natural resources and open space land, and to encourage agricultural, forestry, and certain types of recreational uses. It is declared to be in the public interest that these areas should be protected and conserved because of their natural, aesthetic and scenic value, the need to retain and preserve open space lands, their economic contribution to the city, and primarily because these areas are so remote from existing centers of development that any added uncontrolled growth could result in an economic burden on the city and its inhabitants. This section shall be construed so as to effectuate the purposes outlined here and to prevent any attempt to establish uses which are inconsistent with these purposes or any attempt to evade the provisions of this division.

(Ord. of 9-21-2009, § 3.31A)

Sec. 60-145. - Use regulations.

(a) *Permitted uses.* The following uses are permitted:

- (1) One-family detached dwellings, including manufactured housing subject to all the design standards, ~~except the siting requirements of section 60-173, as set forth in a~~Article XII of this chapter, ~~that is~~ accessory to farming operations ~~as defined in Sec. 60-2, Farm.~~ subject to the following restrictions:
 - a. ~~For a period of five years after the effective date of this amendment no person shall divide a parcel of land for the purposes of constructing a dwelling. During the five years following the adoption of this amendment only a single dwelling, accessory to farming operations, under this section may be permitted per parcel existing on January 1, 2018.~~
 - b. ~~No person shall create by conveyance made after the effective date of this amendment any subdivision as the term "subdivision" is defined in Title 30-A, section 4401 of the Maine Revised Statutes; and No certificate of occupancy shall be issued for any such farm residence until the barns, livestock pens, silos, or other such buildings or structures which are to be erected in connection with the proposed agricultural use as shown on the plans and specifications presented to the municipal officer charged with enforcement are substantially completed.~~
 - ~~bc.~~ The Planning Board shall not grant subdivision approval to any proposed subdivision as defined under the aforesaid statute for the purposes of constructing a dwelling; In no case shall any farm residence constructed under the provisions of this section after the effective date of the amended ordinance from which this section is derived continue to be occupied as a residence if the principal agricultural use has been abandoned or reduced in scope below the minimum requirements as shown on the plans and specifications presented to the municipal officer charged with enforcement.
 - d. Nothing herein shall prohibit the approval of a subdivision in the Agriculture and Resource Protection Zoning District for one or more permitted uses other than residential use.
 - ~~e.e.~~ Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the Planning Board following a recommendation by the

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

Agricultural Advisory Board based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this article.

f. Siting of residential structures shall avoid prime farmland soils and soils of statewide significance when alternatives exist on the parcel.

- (2) Buildings, equipment and machinery accessory to the principal use including, but not limited to: barns silos, storage buildings and farm automobile garages.
 - (3) Forest products raised for harvest.
 - (4) Field crop farms.
 - (5) Row crop farms.
 - (6) Orchard farms.
 - (7) Truck gardens.
 - (8) Plant and tree nurseries.
 - (9) Greenhouses.
 - (10) Handling, storage and sale of agriculture produce and processed agricultural products derived from produce grown on the premises.
 - (11) Livestock operations including poultry farms, cattle farms, dairy farms, stud farms, hog farms, sheep ranches, other animal farms, including farms for raising fur-bearing animals.
 - (12) Wayside stands.
 - (13) Two-family dwellings which are created from the conversion of a one-family dwelling structure which was constructed prior to 1900.
- (b) *Special exception uses.* The following uses are permitted by special exception after approval by the planning board in accordance with the provisions of division 3 of article XVII of this chapter:
- (1) Sawmills and their customary accessory land uses and buildings incidental to the harvesting of forest products, subject to the following conditions:
 - a. Sawmill and accessory activity shall not be detrimental to the neighborhood or the city by reason of special danger of fire or explosion, pollution of rivers or perennial streams or accumulation of refuse.
 - b. Wood processing operation shall be located no closer than 75 feet from any river or perennial stream, 250 feet from any zoning district boundary or residential dwelling and shall be limited to four persons employed.
 - c. Where natural vegetation is removed, it shall be replaced within six months with other vegetation which will be equally effective in retarding erosion and will preserve natural beauty.
 - (2) Veterinary hospitals, where operated by licensed veterinarians, including offices and facilities for temporarily boarding animals.
 - (3) Handling, storage and sale of agricultural services, equipment, and supplies accessory to the farming use.
 - (4) Bona fide residences required for farm labor. Any residence constructed for farm labor shall not be converted to nonfarm residential use except by permission of the Planning Board following a recommendation by the Agricultural Advisory Board, based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this division. The findings and the

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

conditions upon which such altered use may be continued shall be made a part of the permanent records.

- (5) Recreational uses of land intended or designed for public use subject to the following conditions:
 - a. No such recreational use shall be expanded or extended so as to occupy additional land area greater than 20 percent of the original area or one acre, whichever is less; or by the construction of a structure or an addition to an existing structure by more than 900 square feet of additional floor space unless the owner or occupant first obtains approval of the planning board in the manner and upon the same terms as approvals of initial recreational uses.
 - b. Any proposed new or expanded recreational use shall be completed on or before the estimated completion date except that the planning board may grant reasonable extension of time where good cause for the failure to complete is shown.
- (6) Any legally nonconforming summer camp or cottage may be rebuilt if destroyed by fire or other casualty, subject to the following conditions:
 - a. Such reconstruction shall comply with all ordinances applicable to new construction. Such reconstruction need not, however, comply with zoning provisions which would otherwise be applicable except for the provisions of article XII of this chapter.
 - b. In cases where no minimum setback is established by division 5 of article XII of this chapter an open yard space of at least ten feet between the building as reconstructed and each of the property lines shall be maintained.
- ~~(7) Rifle, pistol, skeet or trap shooting ranges, public or private.~~
- (87) Cemeteries, subject to the following conditions:
 - a. At least 20 acres in area.
 - b. Not located in any environmental overlay district or over any known aquifer.
- (98) Municipal sanitary landfills, subject to the following conditions:
 - a. Not located in any environmental overlay district or over any known aquifer.
 - b. Provisions shall be made to avoid surface water and groundwater pollution.
 - c. Provisions shall be made for frequent covering of deposited wastes with earth to counteract vermin, insects, odors, and windblown debris.
- ~~(409)~~ Radio, radar, television and radio telephone transmitting or broadcasting towers, but not studios or offices for such transmitting or broadcasting, provided that:
 - a. Every such tower shall be installed in a location and manner that ensures its safe operation and the safety of the surrounding residents, building occupants, land uses and properties.
 - b. In no case shall such tower be located less than one and one-half times its height from the nearest property line.
- ~~(4110)~~ Wholesale nurseries, subject to the following conditions:
 - a. At least one-half of the area of the lot (up to a maximum of three acres) is in active nursery production in a husband type manner.
 - b. The plants and trees propagated, grown and nurtured in the nursery are used as the primary products by the owner/operator of the landscape service.
- ~~(4211)~~ Processing and storage of compost and bulking agents from the municipal wastewater sewerage sludge facilities provided that:

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

- a. All compost and amendments are to be stored undercover or screened from the public way and abutting property as determined by the planning board.
 - b. All federal, state and local ordinances and laws relating to the processing and storage of waste are complied with.
 - c. An end-use plan must be filed as part of the planning board process.
- (~~43~~12) Licensed hospice care facility provided that it shall be licensed by the state as a Medicare certificate hospice.
- (~~44~~13) Slaughterhouse, stockyard, abattoir, dressing plant in compliance with state and federal regulations subject to the following conditions:
- a. The facility shall not be located within the Lake Auburn Watershed Overlay District, the Watershed of Taylor Pond, the Shoreland Overlay District or the Floodplain Overlay District.
 - b. The proposed use shall not occupy more than 10,000 square feet of building area.
 - c. The number of employees shall be limited to not more than 15.
 - d. Accessory retail sales shall be limited to 10 percent of building area or 1,000 square feet, whichever is smaller.
 - e. Hours of operation shall limited to between 6 a.m. and 8 p.m.
- (~~45~~14) Compost operations, excluding municipal and industrial waste, to process products such as manure, bedding, animal mortalities, waste feed, produce, forestry by-products, leaves and yard trimmings in compliance with state and federal regulations, subject to the following conditions:
- a. All compost sites shall be evaluated for suitability by a properly qualified professional, including benchmark water testing prior to approval.
 - b. Provisions shall be made to avoid surface and groundwater pollution.
 - c. Provisions shall be made to counteract vermin, insects and odors.
 - d. Must comply with all applicable state department of environmental protection and state department of agriculture rules and regulations and best management practices.
 - e. Shall not be located within the Lake Auburn Watershed Overlay District.
- (~~46~~15) Adaptive reuse of structures of community significance.
- (~~47~~16) Assembly, sale, research and development, distribution, instruction, training, demonstration or maintenance of recreational or agricultural equipment, including buildings as accessory structures used in the assembly, sale, distribution, instruction, training, demonstration, or maintenance of recreational or agricultural equipment, subject to the following conditions:
- a. The proposed use is accessory, complementary, or otherwise related to a recreational or agricultural use;
 - b. The recreational or agricultural use has been in existence for at least five years prior to the date of the application for the special exception; and
 - c. The recreational or agricultural use is located on the parcel for which the special exception is requested or is adjacent to the property for which the special exception is requested.

(Ord. of 9-21-2009, § 3.31B; Ord. No. 32-02072011-07, 2-7-2011; Ord. No. 06-08012011-07, 8-1-2011; Ord. No. 05-04032017, § 2, 4-24-2017; Ord. No. 06-06052017, 6-19-2017)

Sec. 60-146. - Dimensional regulations.

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

All structures in this district, except as noted shall be subject to the following dimensional regulations:

- (1) *Minimum lot area, width and depth.* No lot shall be created containing less than 10 acres and measuring less than 250 feet in width at the street frontage, and 200 feet in depth. ~~and/or a~~ No building shall be erected on a lot containing less than ~~ten-three~~ acres, exclusive of any bodies of water having a surface area of one-fourth of an acre or more, and measuring ~~not~~ less than 250 feet in width at the street frontage, and 200 feet in depth. Lots greater than 3 acres in area, but less than 10 acres, in existence as of January 1, 2018 shall not be subject to the minimum width, street frontage, depth and density requirements.
 - a. A building may be erected on a lot containing not less than 50,000 square feet and possessing the required minimum frontage width provided it is contiguous with other lots or parcels of land in the same ownership containing an aggregate of not less than ten acres; notwithstanding the separation of the said other lots or parcels of land by a road, stream, private right-of-way or other natural boundary from the lot on which the building is to be constructed. This section shall not be construed to prevent the construction of nonresidential accessory farm buildings on any such lot.
 - b. On legally nonconforming undersized lots, the keeping of horses, mules, cows, goats, sheep, hogs, and similar sized animals for domestic use of the residents of the lot is permitted provided that the land area required per animal unit conforms to the definition of animal farm contained in section 60-2.
- (2) *Density.* The density of year-round dwelling units shall not exceed an average of one dwelling per ten acres.
- (3) *Yard requirements.*
 - a. *Rear.* There shall be behind every building a rear yard having a minimum depth of 25 feet.
 - b. *Side.* There shall be a minimum distance of 15 feet between any building and the side property line.
 - c. *Front.* There shall be in front of every building a front yard having a minimum depth of 25 feet or 25 percent of the average depth of the lot whichever is less.
- (4) *Height.* The height of all dwelling structures shall be limited to two and one-half stories of 35 feet in height. Accessory buildings and structures may have a maximum height of 65 feet from grade, provided that the front yard, rear yard and each of the side yards shall be increased by one foot for each foot in height in excess of 35 feet.
- (5) *Off-street parking.* Off-street parking spaces shall be provided in accordance with the requirements for specific uses as set forth in articles V through XI of this chapter.

(Ord. of 9-21-2009, § 3.31C)

Draft Agriculture and Resource Protection Ordinance Amendments
proposed at the 11/29/18 MAGARP Committee Meeting

Secs. 60-147—60-199. - Reserved.

Sec. 60-2. - Definitions.

~~The term "farm," under the Agricultural and Resource Protection District, shall be further defined as meeting the following criteria:~~

~~Accessory structure or building means an uninhabited building, at least five feet in distance from the principal building, used for a purpose which is customarily subordinate and incidental to that of the principal building or to the principal use of the land and which is located on the same lot as the principal building use. The term "accessory buildings," in residential districts, includes tool sheds, wood sheds, detached garages and swimming pools. No accessory building shall house a home occupation or professional office or be used as a sales outlet in a residential district. **Except that in the Aq Zone an accessory structure is permitted for farm use and may be constructed without the precondition of any Primary or Principal structure existing on the Farm if the land is in productive use or preserved open space.**~~

~~Agricultural Advisory Board means a member board appointed for a term by whose primary functions are to review, monitor or document agricultural, conservation and residential activity in the Agriculture and Resource Protection zoning district of the City of Auburn.~~

~~Farm means ~~A farm is~~ means an area of land that is devoted primarily to agricultural products as those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products, manure and compost and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.. ~~processes with the primary objective of producing food and other crops; it is the basic facility in food production.~~^[1] ~~The name is used for specialisedspecialized units such as arable farms, vegetable farms, fruit farms, dairy, pig and poultry farms, and land used for the production of natural fibresfibers, biofuel and other commodities. It includes ranches, feedlots, orchards, plantations and estates, smallholdings and hobby farms, and includes the farmhouse and agricultural buildings as well as the land. In modern times the term has been extended so as to include such industrial operations as wind farms and fish farms, both of which can operate on land or sea. any parcel of land containing more than ten acres which is used in the raising of agricultural products, livestock or poultry, or for dairying.~~~~

~~A farmer^[1] (also called an agriculturer) is a person engaged in agriculture, raising living organisms for food or raw materials. The term usually applies to people who do some combination of raising field~~

crops, orchards, vineyards, poultry, or other livestock. A farmer might own the farmed land or might work as a laborer on land owned by others, but in advanced economies, a farmer is usually a farm owner, while employees of the farm are known as farm workers, or farmhands. However, in the not so distant past, a farmer was a person who promotes or improves the growth of (a plant, crop, etc.) by labor and attention, land or crops or raises animals (as livestock or fish).

The term "farm," under ~~t~~The Agricultural and Resource Protection District ~~further, shall be further~~ defines agriculture and resource conservation land use ~~as meeting at least two of the~~ ~~the~~ following criteria:

- (1) At least the minimum required farm income for the filing of an IRS Form-F, as adjusted by the IRS, of the farmer occupant living in the farm residence will be derived from such uses; or,
- (2) At least minimum required income from forestry products equivalent to that required of a farm for the filing of an IRS Form-F, as adjusted by the IRS, of the occupant living in the farm residence will be derived from such uses; or
- (3) At least two and one half acres (2.5 acres) devoted to the production of crops, grazing of livestock, or to the long-term resource conservation such as forestry, wildlife habitat or other specific protected natural resource; or,
- 3) At least 50% of land area enrolled in the state Farm, Open Space or Forest Management preservation and State Farmland, Open Space or Treegrowth tax assessment programs (~~SS.36-1102-1120~~); or
- 4) A minimum investment of \$1000 or more in crops, livestock, reforestation, or other farm or resource conservation effort as defined herein or by the Agricultural Advisory Board.

Verification of the above may be completed by a mutually agreeable third party if not available as a public record or if confidential information is needed to make the determination. If a dwelling is proposed prior to meeting the above a farm plan demonstrating the intent to meet the requirements must be provided with the building permit application. Compliance with the farm plan must be achieved within 24 months of the issuance of a certificate of occupancy and ~~continued for XXX~~ ~~years~~verified annually. Relief from the requirement to comply after the 24 month period must be obtained from the Agricultural Advisory Board pursuant to Section 60-145(1)æ.

For purposes of this definition, the term "poultry" means no fewer than 100 fowl and the term "livestock" means no fewer than 20 cattle or other animals being raised for commercial purposes.

Farm, Livestock (, at least 2 cattle or other animals being raised for commercial purposes) means any parcel of land that contains at least the following land area used for the keeping of horses, mules, donkeys, cattle, goats, sheep, swine and similar sized animals for the agricultural use of the residents of the lot, provided that there is a minimum of 1 acre of land as required by Chapter 8 Animals, and adequate land area is provided for each animal unit, excluding water bodies of one-quarter acre surface area or larger, **with standards as follows:**

(1) Cattle: One bovine animal unit per acre of cleared hay-pasture land.

(2) Horse: 1.5 animal units per acre of cleared hay/pasture land.

(3) Sheep: Three animal units per acre of cleared hay/pasture land.

(4) Swine: Two animal units per acre of cleared land.

(5) poultry: a minimum of 10 fow

Other livestock farms: ~~The required~~ lot size shall be determined by municipal officer charged with enforcement and shall conform to the lot size for similar sized animals

Forested land. means land that is used in the growth of trees but does not include ledge, marsh, open swamp, bog, water and similar areas that are unsuitable for growing trees

~~**Accessory structure or building means an uninhabited building, at least five feet in distance from the principal building, used for a purpose which is customarily subordinate and incidental to that of the principal building or to the principal use of the land and which is located on the same lot as the principal building use. The term "accessory buildings," in residential districts, includes tool sheds, wood sheds, detached garages and swimming pools. No accessory building shall house a home occupation or professional office or be used as a sales outlet in a residential district. Except that in the Ag Zone an accessory structure is permitted for farm use and may be constructed without the precondition of any Primary or Principal structure existing on the Farm.**~~

Open space land. means any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, the preservation or restriction of the use of which provides a public benefit in any of the following areas: A. Conserving scenic resources; B. Enhancing public recreation opportunities; C. Promoting game management; or D. Preserving wildlife or wildlife habitat

Open Space, Usable. means an otherwise buildable area that can be used for recreation or other passive or active outdoor activity.

~~**Except that in the Ag Zone an accessory structure is permitted for farm use and may be constructed without the precondition of any Primary or Principal structure existing on the Farm.**~~

Accessory use means a subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.



City of Auburn, Maine

Office of the Assessor

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207.333.6601

To: Mayor Jason Levesque

From: Karen Scammon, Assessor

Date: September 11, 2019

Subject: Land valuation

In Maine, real estate is assessed according to Just Value. “All taxes upon real and personal estate, assessed by the authority of this State, shall be apportioned and assessed equally according to the just value thereof.” (Constitution of the State of Maine, Article IX §8) Just value has been interpreted to be synonymous with market value. As agents of the State, Assessors are tasked with maintaining market value by evaluating sales of similar properties over a period of time and developing a mass appraisal model for each group of properties.

The time required for collecting and analyzing market data will vary depending on the number of usable sales for a specific type of property. If there are a sufficient number of sales of similar properties in a similar area over a sufficient time period that support an adjustment to value, changes will be made. The sufficient number and sufficient time both fluctuate depending on the market and the sales themselves.

The Assessing Department receives Declarations of Value from the State monthly that provide information on all sales throughout the City. Staff tracks the sales and compares the sale prices to the current assessed values. Over time staff is able to establish market trends for similar categories of properties. When staff has collected solid market data determining one category of properties is trending outside the parameters of the others it is time to reevaluate those properties and possibly make adjustments either up or down to maintain fair and equitable assessments among all categories of properties.

The land tables currently in place for valuing land throughout the City were originally established as part of the citywide revaluation that began in late 2002 and was completed in 2004. The values established through the revaluation were phased in over a two year period beginning in the 2006-2007 tax year. Market data collected since the revaluation has warranted some downward adjustments to existing land tables to reflect just value and maintain equity.

Currently vacant land in the AG Zone, other than that in a special land use classification or land locked parcels, is assessed at a flat \$800 per acre. The assessment of improved land in the AG Zone is dependent on permitted uses and the location of the property within the Zone. Market data established different base house lot values for different areas within the AG Zone using the same methodology throughout the City. "Excess" land beyond the initial house lot is assessed on a sliding scale and the price per acre diminishes as the lot size increases. In the case of a property being located in a split zone with the house lot located in the LDCR or RR Zone the property is assessed using the same methodology as the improved property in the AG Zone except that the land located in the AG Zone portion is assessed at \$800 per acre. Currently the value of a 1 acre base house lot for improved properties in the AG Zone is between 30,500 and 56,000.

Any proposed changes to the use and/or zoning of land in the Agricultural Zone may warrant adjustments to the land values depending on what changes are made. For instance, if formerly vacant land located in the Agricultural Zone meets the criteria as a buildable house lot and a permit is issued for a dwelling or the parcel is marketed as a house lot, etc., the parcel will be reassessed using the methodology currently in place for other buildable parcels. It should be noted that even if the proposed changes are not made in the Agricultural Zone adjustments to land value may be necessary to maintain fairness and equity. Assessing staff will continue to track sales and if trends are established through market data indicating adjustments are warranted to the land value they will be made regardless of any use or zoning change.

The changes to the Agricultural Zone are at this point speculation. It is impossible from an assessing standpoint to predict what will happen in the market if the Agricultural Zone is opened up to development. Only with market data derived from future sales of property over time will we be able to develop a solid model for land values. Until that time we must depend on the tables in place for similar properties.



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Memorandum

To: City of Auburn, City Manager Peter Crichton
City of Auburn City Council & City of Auburn Planning Board

From: Mary E. Costigan

Date: June 10, 2019

Re: Agricultural Zone Amendments

I have reviewed the draft amendments to the Agricultural and Resource Protection Ordinance provisions and have the following comments and concerns.

Beginning with the amendments to Section 60-145, the attempt to limit the ability to subdivide land is legally problematic. Subdivision is the division of land for any purpose and is governed at both the state and local level. The amendments to this section attempt to limit the division of land if it is for a particular purpose. The reason this is problematic is that the proposed use for the land is not a review criterion in subdivision. Thus, limiting the ability of someone to subdivide their property based on use cannot be accomplished. Prohibiting the construction of a dwelling on a particular parcel can be accomplished through different means other than limiting the ability to subdivide.

Amendments to Section 60-146 attempt to modify the minimum lot area. This proposal presents a couple of challenges. First, the language is inconsistent. It first says the area is ten acres and then it says three acres for buildings. It is unclear what the ten-acre limitation would apply to and why. Most property divisions contemplate the erection of a building at some point in the future. In addition, this change in density could be seen as inconsistent with the Comprehensive Plan which specifically states that the basic residential density standard of ten acres should be maintained.

Regarding the amendments to the definitions, in removing the 50% requirement that was within the definition of farm, the definition section now includes a separate review criteria provision. If this format change is desired, the review criteria should be moved

to the body of the ordinance and removed from the definitions section. The list of individual criteria also presents some challenges. Broadly, any income-based requirements in land use codes are difficult to administer. Here, the first two criteria are income-based, in accordance with IRS reporting. This requirement is tied to whether the dwelling on the property is accessory to the farm and triggers some questions that should also be addressed in the code. Is this the requirement for only the year when the dwelling is built? Do property owners have to report annually? What happens if they have a year when they do not meet the income requirements?

In addition, the current requirement is 50% of the income and the first two provisions change that requirement to 66 2/3 %. The Internal Revenue Code defines an individual as a farmer/fisherman if: “(A) the individual’s gross income from farming or fishing (including oyster farming) for the taxable year is at least 66 2/3 percent of the total gross income from all sources for the taxable year, or (B) such individual’s gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66 2/3 percent of the total gross income from all sources shown on such return.” 26 U.S.C. 6654(i)(2).

The third provision requires 2.5 acres to be devoted to a particular purpose but does not include a mechanism for guaranteeing such land use. The fourth provision includes a mechanism for preserving 50% of the property. Each of the programs mentioned have their own requirements for land that is enrolled in their program. For example, the Farmland program requires five acres and Tree Growth requires ten acres of land. The fifth provision regarding a \$1000 investment is not clear and should be further explained.

The foregoing are my initial, broader observations regarding the proposed amendments. I am happy to assist with a more detailed review of the language, following a review by the Planning Board and a broader discussion of what the proposed amendments are trying to accomplish. I recommend that the Planning Board’s review include an analysis of the Comprehensive Plan, which includes specific analysis of the Agricultural Zone and changes that should be made.



City of Auburn
City Council Information Sheet

Council Workshop or Meeting Date: September 23, 2019

Subject: Executive Session

Information: Personnel matter, pursuant to 1 M.R.S.A. Section 405(6) (A).

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

- (1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
 - (2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
 - (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
 - (4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.
- This paragraph does not apply to discussion of a budget or budget proposal;

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

- (1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire;

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage;

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.