



## MEMORANDUM

TO: Eric Cousens, Director of Planning and Permitting

CC: City of Auburn Planning Board

FROM: Sally J. Daggett, Esq.

RE: Zoning Ordinance Text/Map Amendment Procedures

DATE: March 6, 2024

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I am writing in response to your inquiry regarding the timing of Planning Board recommendations on proposed Zoning Ordinance text and map amendments referred to it by the City Council. As I understand the facts, the Planning Board conducted a public hearing on proposed Zoning Ordinance text amendments at its February 13, 2024 meeting and at the conclusion of the public hearing, it acted to postpone further proceedings on the amendments until April 9, 2024.

Both State law, 30-A M.R.S. § 4352(9), and the Auburn Code, Sec. 60-1475 of the Zoning Ordinance, require that the Planning Board conduct a public hearing on any proposed Zoning Ordinance amendments. State law does not require anything more than the conduct of a public hearing by the Planning Board on proposed land use ordinance amendments, but the Zoning Ordinance requires that the Planning Board provide the City Council with a written report with its recommendations within 30 days of the conclusion of the public hearing:

**Sec. 60-1496. Report in writing.**

The planning board shall, within 30 days of the conclusion of the public hearing, report in writing the results of the hearing and recommendations of the board on the amendment to the city council.

Given the procedural requirements of the Zoning Ordinance, the Planning Board should prepare and complete its report to the City Council within the 30 day time frame. The term “shall” renders a provision mandatory. *See Portland Sand & Gravel v. Town of Gray*, 663 A.2d 41, 43 (Me. 1995) (“shall” should be construed as meaning “must”; even in the absence of the mandatory provisions of the ordinance, an administrative agency does not have the authority indefinitely to postpone action on a properly filed matter). If the Planning Board has questions or concerns about proposed amendments referred to it by the City Council, it ought to complete the required process (*i.e.*, conduct of public hearing followed by written report with its

recommendation on the amendments referred to it) and provide an unfavorable recommendation on the amendments to the City Council so that the process is completed in accordance with the Zoning Ordinance.

It is important to keep in mind that the City Council is the legislative body and as such, it is the ultimate decision maker on land use policy for the City. The Planning Board has an important role to play in the process of developing that land use policy, but it is not the ultimate decision maker on what that policy is and there will likely be disagreements along the way. When there are disagreements about proposed amendments referred to the Planning Board from the City Council, the Planning Board can express its disagreement via an unfavorable recommendation on the proposed amendments to the City Council, but the Zoning Ordinance amendment process must still be followed.

Please let me know if you have any questions. Thank you.