



## MEMORANDUM

TO: Evan Cyr, Planning Board Chair

CC: Eric Cousens, Director of Planning and Permitting

FROM: Sally J. Daggett, Esq.

RE: Planning Board Public Hearing Process re Zoning Ordinance Amendments

DATE: September 8, 2022

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I am writing in response to your inquiry regarding the Planning Board public hearing process related to Zoning Ordinance amendments. Specifically, you have inquired whether it is legally permissible for the City Council to conduct its first reading on proposed Zoning Ordinance amendments in advance of the required Planning Board public hearing. The short answer is yes.

State statute requires that the Planning Board conduct a public hearing on the adoption or amendment of the Zoning Ordinance, with certain notices provided in advance of the public hearing, including a public hearing notice posted at City Hall at least 13 days before the public hearing and publication of notice of the public hearing in a newspaper of general circulation at least 12 days and again at least 7 days in advance of the public hearing. 30-A M.R.S. § 4351(9). Section 60-1474 of the City's Zoning Ordinance contains similar notice provisions (and adds a local requirement of notice to abutters in Sec. 60-1475). Under Sec. 60-1496 of the Zoning Ordinance, the Planning Board must "within 30 days of the conclusion of the [Planning Board] public hearing, report in writing the results of the hearing and recommendations of the board on the amendment to the city council."

There is nothing in State statute, the City Charter or the Zoning Ordinance that dictates the timing of the Planning Board public hearing in relationship to the City Council's first reading of proposed Zoning Ordinance amendments. Some municipalities with the Council-Manager form of government prefer to conduct Council first reading before the Planning Board public hearing to enable Council input on the version of the amendments that will be considered and reported on by the Planning Board. Other municipalities with the Council-Manager form of government prefer to have the Planning Board conduct its public hearing before Council first reading. In some municipalities, the timing of the Planning Board public hearing in relationship to the City Council's first reading of proposed Zoning Ordinance amendments varies from time

to time (*i.e.*, sometimes before first reading and sometimes after first reading) depending on the complexity of the subject matter of the amendments.

As relates to the proposed amendments to the Zoning Ordinance text and map to create a new Traditional Neighborhood Form Based Code T-4.2B District, it is my understanding that the Planning Board specially requested at its June 21, 2022 meeting that its recommendation on the T-4.2B amendments be delayed until after the City Council determined what version of the amendments the Council wanted to bring forward for final action. Such an approach whereby the City Council conducts its first reading in advance of the Planning Board public hearing is legally permissible under State and local law.