Holly C. Lasagna, Ward One Robert P. Hayes, Ward Two Andrew D. Titus, Ward Three Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five Belinda A. Gerry, At Large David C. Young, At Large

Jason J. Levesque, Mayor

IN CITY COUNCIL

ORDINANCE 16-11182019

Be it Ordained, that the Auburn City Council hereby adopts the second and final reading of the proposed amendment to Chapter 60 Section 60-2 Definitions as attached.

Sec.60-2. - Definitions

For the purposes of this chapter, the following words and terms as used herein shall have the meanings or limitations of meaning hereby defined, explained or assigned:

Farm means any parcel of land which is used in the raising of agricultural products, livestock or poultry, or for dairying.

Passage of first reading on 12-2-2019, 5-2 (Councilors Gerry and Lasagna opposed).

Passage of second reading on 12-9-2019, 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained).

Sec.60-2. - Definitions

For the purposes of this chapter, the following words and terms as used herein shall have the meanings or limitations of meaning hereby defined, explained or assigned:

Farm means any parcel of land containing more than ten acres which is used in the raising of agricultural products, livestock or poultry, or for dairying. The term "farm," under the Agricultural and Resource Protection District, shall be further defined as meeting the following criteria:

At least 50 percent of the total annual income of the farm occupant and his spouse living in the farm residence will be derived from such uses; and

At least ten acres of the farm will be devoted to the production by the occupant of field crops or to the grazing of the occupant's livestock. For purposes of this definition, the term "poultry" means no fewer than 100 foul and the term "livestock" means no fewer than 20 cattle or other animals being raised for commercial purposes.

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 article XII of this chapter, on parcels containing no less than ten acres, provided that the dwelling is accessory to farming operations and subject to the following restrictions:
 - a. At least 30 percent of the totalgross annual household income of the farm occupants living in the farm residence will be derived from farm uses or the gross farm income of the farm occupants living in the farm residence is equal to or greater than 30% of Auburn's Median Household Income, according the most recent Census data.
 - 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 75% completed.
 - cb. 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.
 - de. Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the planning 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.
 - (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.
 - (14) Adult use and medical marijuana cultivation, but not retail sales of any kind.
 - (15) Marijuana manufacturing accessory to a licensed cultivation site.
- (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 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 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) Processing and storage of compost and bulking agents from the municipal wastewater sewerage sludge facilities provided that:
 - All compost and amendments are to be stored undercover or screened from the public way and abutting property as determined by the planning board.
 - All federal, state and local ordinances and laws relating to the processing and storage of waste are complied with.
 - An end-use plan must be filed as part of the planning board process.
- (13) Licensed hospice care facility provided that it shall be licensed by the state as a Medicare certificate hospice.
- (14) 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.
 - The number of employees shall be limited to not more than 15.
 - 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.
- (15) 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.
 - 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.

- (16) Adaptive reuse of structures of community significance.
- (17) 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.
 - (18) 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 article XII of this chapter, on parcels containing greater than 6.1, but less than ten acres, provided that the dwelling is accessory to farming operations and subject to the following restrictions:
 - a. At least 30 percent of the totalgross annual household income of the farm occupants living in the farm residence will be derived from farm uses or the gross farm income of the farm occupants living in the farm residence is equal to or greater than 30% of Auburn's Median Household Income, according to the most recent Census data: and,
 - b. 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 75% completed: and,
 - c. The applicant shall demonstrate compliance with the following requirements, said compliance to be first reviewed by the Agricultural Advisory Committee for recommendation:
 - 1. The applicant shall provide a farm business plan that appears feasible and, if implemented, will meet the definition of a farm.
 - 2. The parcel can reasonably accommodate the proposed farm.
 - 3. The applicant shall demonstrate a commitment to the proposed farm use through compliance with the following requirements:
 - 4. The parcel must contribute to a gross income per year of at least the amount required to meet the definition of Farmland in Title 36 M.R.S.A, section 1102, subsection 4 ,per year from the sales value of agricultural products as defined in Title 7 M.R.S.A., section 152, subsection 2 in the two calendar years preceding the date of application for special exception use approval. Gross income includes the value of commodities produced for consumption by the farm household.

Proposed language to accomplish changes recommended by the Planning Board

- 5. The proposed residence shall be accessory to farming.
- 6. The proposed residence shall not be located in the Lake Auburn Watershed Overlay District.
- d. The parcel was existing as of October 1, 2017, contains more than five acres of land area, and otherwise meets the requirements of Chapter 60 Zoning.
- e. 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.
- f. Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the planning 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 requirement of this article.

(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; Ord. No. 04-05202019, 6-3-2019)



City of Auburn, Maine

Economic & Community Development Michael Chammings, Director

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Planning Board Report to the City Council

To: Mayor Levesque and Members of the Auburn City Council

From: Auburn Planning Board

Re: Proposed text amendments to the Agriculture and Resource Protection zoning District

and the Lake Auburn Overlay District

Date: December 3, 2019

The Auburn Planning Board met on December 3, 2019 and held properly noticed Public Hearings on each of the below ordinance amendments; Four members of the public spoke at the hearings. After deliberation the Board provides the following comments and recommendation to the City Council.

Through workshops and review of the Comprehensive Plan in May and June of this year, the Board established five objectives that any amendment to the Agriculture and Resource Protection Zoning District should meet. The Board reaffirmed those objectives for use in reviewing the current proposed amendments at the December 3rd meeting. The Planning Board Objectives for this review are as follows:

- 1. A Reduction in the 50% income rule should be addressed it is not appropriate in this era.
- 2. It does not promote residential use must remain accessory to agriculture.
- 3. It must not spur sprawl or growth in rural areas of the City.
- 4. It must not favor either small-scale or large-scale agriculture neither should be negatively impacted by a change in the code.
- 5. Forestry and other conservation use may need to be considered differently, as the unintended consequences have resulted in 75% forested land that is now home to wildlife populations. Large "tree farming" and/or development will push wildlife into farming operations and/or urban areas, resulting in dramatic loss of wildlife populations and hunting grounds.

Sec. 60-2 Definitions

Motion by Brian Carrier, 2nd by John Engler Vote: 6/0

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Agreement with the proposed definition that is simpler and more easily integrated into overall farm use.

Sec. 60-145 Use Regulations (a)1. Permitted Uses Motion by Katherine Boss, 2nd by Mathieu Duval Vote: 6/0

The Board finds that proposed language and reduction to 30% meets objectives 1 and 2 but 30% number is not tied to a specific metric or data and is somewhat arbitrary. More information (Farm income data) is needed to determine if objectives 3, 4 and 5 are affected by the changes. The Board recommends that there be consistency in language to define both household and farm income as either gross or net and that information about Auburn specific farms be used in decision making.

Sec. 60-145 Use Regulations (b)18. Special Exception Uses

Motion by John Engler, 2nd
by Brian Carrier Vote: 6/0.

The 30% income comments above also apply to this section. With the changes noted below, the Board supports the proposed amendment. The Planning Board finds that the proposed language meets objective 1 and would better meet 2 if amended and should be amended as shown below:

60-145(b)(18)C.3 should be amended to require compliance with the proposed State income standard for Farmland in the two calendar years preceding the date of application for a residence.

60-145(b)(18)C.3 should further be amended to reference the sales amount found "within the definition of Farmland in Title 36 M.R.S.A, section 1102, subsection 4" instead of specifically stating \$2000 so that the \$2000 sales amount remains consistent with the State program if the State changes the dollar amount in the future.

60-145(b)(18)d should be amended to change the January 1, 2018 date to the date of the Mayoral Proclamation for Appointments to form the Ad-Hoc Committee for Auburns Agriculture and Natural Resource Economy. (Staff reviewed the file and that occurred in October of 2017)

Further information would be needed to determine if objectives 3,4 and 5 are affected by the changes. There is a need to look at available income data, specifically considering net vs. gross measurement of income, to inform decision makers.

Sec. 60-146. Dimensional Regulations Motion by Brian Carrier, 2nd by John Engler Vote: 6/0

The Planning Board objectives do not really apply to this section. The Board recommends that the Council accept this section as written with an amendment that changes section (1)c such that the January 1, 2018 date to the date of Mayor LaBonte's Appointments to form the Ad-

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Hoc Committee for Auburns Agriculture and Natural Resource Economy. (Staff reviewed the file and that occurred in October of 2017)

Sec. 60-952. - Use and environmental regulations. Motion by Brian Carrier, 2nd by Mathieu Duval Vote: 6/0

The Board recommends the adoption of this section with an amendment that clarifies that "Residential dwellings" in this section means "Residential Dwellings in the Agriculture and Resource Protection Zoning District" and finds that it protects the drinking water supply as intended.

Additional Recommendations:

- 1. That the Council direct the City Manager to implement an evaluation process to track development and land use in the Agriculture and Resource Protection Zoning district moving forward, with the Agricultural Committee. Motion by Katherine Boss, 2nd by Mathieu Duval Vote: 6/0
- 2. That the Council direct the City Manager to have staff review growth and land use changes in the Agriculture and Resource Protection Zoning district with the Agricultural Committee and report to the Council on an annual basis. Motion by Brian Carrier, 2nd by Katherine Boss Vote: 6/0
- 3. That the City Council review all references to "income" in the ordinance and that income be defined in a way that is both clear and consistent. By consistent, this means that if "gross farm" income is used, it should be measured against "gross household" income; If "net household" income is used, it should be measured against "net farm" income.

Evan Cyr Chairperson, Auburn Planning Board

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Mayor Levesque called the meeting to order at 5:30 P.M. in the Council Chambers of Auburn Hall and led the assembly in the salute to the flag. All City Councilors were present.

Pledge of Allegiance

I. Communications – Review of Planning Board Agricultural Zone Recommendations presented by Eric Cousens and Evan Cyr.

II. Unfinished Business

1. Ordinance 19-12022019

Amending Chapter 60, Article XII. Division 4, Lake Auburn Watershed Overlay District, Sec.60-952 & Sec.60-953. **Public hearing and second reading.**

Motion was made by Councilor Fournier and seconded by Councilor Titus for passage.

Public hearing – James Pross, Hershey Hill Road spoke on behalf of the Lake Auburn Watershed Protection Commission in support of this ordinance amendment with the proposed clarifying language as recommended by the Planning Board.

Motion was made by Councilor Fournier and seconded by Councilor Hayes to amend Section 60-952 (b) by accepting the modification recommended by the Planning Board by changing "Residential dwellings" to "Residential dwellings in the Agriculture and Resource Protection Zoning District" and by adding that "at least 50 percent of the total annual household income of the farm occupants living in the farm residence will be derived from farm uses".

Passage 5-0-2 (Councilors Walker and Gerry abstained).

Passage as amended 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained). A roll call vote was taken.

2. Ordinance 16-11182019

Amending Chapter 60, Sec. 60-2 Definitions in the Agriculture and Resource Protection District (AGRP). **Public hearing and second reading**.

Motion was made by Councilor Fournier and seconded by Councilor Titus for passage.

Public hearing - no one from the public spoke.

Passage 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained). A roll call vote was taken.

3. Ordinance 17-11182019

Amending Chapter 60, Sec. 60-145 Use Regulations in the Agriculture and Resource Protection District (AGRP). **Public hearing and second reading.**

Motion was made by Councilor Fournier and seconded by Councilor Titus for passage.

Public hearing - no one from the public spoke.

Motion was made by Councilor Titus and seconded by Councilor Hayes to accept the changes recommended by the Planning board providing clarity by replacing "total" (in regards to income verification) to "gross".

Passage 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained).

Motion was made by Councilor Young and seconded by Councilor Hayes to amend Section 18 by changing "containing greater than five, but less than ten acres" to "greater than 6.1 acres, but less than ten acres".

Passage 4-2-1 (Councilors Lasagna and Gerry opposed, Councilor Walker abstained).

Motion was made by Councilor Hayes and seconded by Councilor Lasagna to amend Section 18 (d) by changing the effective date from "January 1, 2018" to "October 1, 2017".

Passage 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained).

Motion was made by Councilor Hayes and seconded by Councilor Lasagna to amend Section 18 (C) (3) from:

"The parcel must contribute to a gross income per year of at least \$2,000 per year from the sales value of agricultural products as defined in Title 7 M.R.S.A, section 152, subsection 2, in two of the five calendar years preceding the date of application for Special Exception use approval. Gross income can include the value of commodities produced for consumption by the farm household" to:

"The parcel must contribute to a gross income per year of at least the amount required to meet the definition of Farmland in Title 36 M.R.S.A, section 152, subsection 2, in the two calendar years preceeding the date of application for special exception us approval. Gross income includes the value of commodities produced for consumption by the farm household".

Passage 4-2-1 (Councilors Gerry and Titus opposed, Councilor Walker abstained).

Passage as amended 5-1-1 (Councilor Gerry opposed and Councilor Walker abstained). A roll call vote was taken.

4. Ordinance 18-11182019

Amending Sec. 60-146 Dimensional Regulations in the Agriculture and Resource Protection District (AGRP). **Public hearing and second reading.**

Motion was made by Councilor Fournier and seconded by Councilor Hayes for passage.

Public hearing - William Sylvester, South River Road and a licensed Forester with the State commented that we should not forget forestry in this economic equasion.

Motion was made by Councilor Fournier and seconded by Councilor Titus to amend by changing the "total" income to "gross" where referenced in this section.

Passage 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained).

Motion was made by Councilor Young and seconded by Councilor Hayes to amend Section 60-146 (1) (c) by changing from "greater than five, but less than ten acres" to "greater than 6.1 acres, but less than ten acres".

Passage 4-2 (Councilors Gerry and Lasagna opposed, Councilor Walker was out of the room during the vote).

Motion was made by Councilor Titus and seconded by Councilor Fournier to amend by changing the effective date from "January 1, 2018" to "October 1, 2017".

Passage 5-1 (Councilor Gerry opposed, Councilor Walker was out of the room during the vote).

Passage as amended 5-1-1 (Councilor Gerry opposed, Councilor Walker abstained).

5. Ordinance 20-12022019

Adopting the Agricultural Committee Ordinance. Public hearing and second reading.

Motion was made by Councilor Gerry and seconded by Councilor Hayes for passage.

Public hearing -

Steven Beal, owner of a parcel of land in the Lake Auburn Watershed District, pointed out a grammatical error in Section 2-485.2 – Committee established where it states:

"An Agriculture Committee is hereby established to consist of nine members, seven members shall be appointed by the City Council and shall be residents of the city with highest priority given to selecting members who are actively engaged in agriculture or forestry" suggesting that it be worded:

"An Agriculture Committee is hereby established to consist of nine members, of whom seven members shall be appointed by the City Council and shall be residents of the city with highest priority given to selecting members who are actively engaged in agriculture or forestry".

Bill Sylvester, South River Road, commented on membership of the committee and if all members should be Auburn residents.

Motion was made by Councilor Lasagna and seconded by Councilor Fournier to amend by adding "of whom" as suggested by Mr. Beal.

Passage 6-0-1 (Councilor Walker abstained).

Motion was made by Councilor Titus and seconded by Councilor Young to amend Section 2-485.4 – Powers and Duties subsection 12 by changing from:

"Should any project in the City require the submission of a farm plan, the committee shall review the farm plan and provide a recommendation to the Planning Board within 30-60 days of submission" to:

"Should any project in the City require the submission of a farm plan, the committee shall review the farm plan and provide a recommendation to the Planning Board within 60 days of submission".

Passage 6-0-1 (Councilor Walker abstained).

Passage as amended 6-0-1 (Councilor Walker abstained).

III. New Business

1. Order 141-12092019

Approving the liquor license application for Dee Samer LLC, DBA Aan-Chun Asian Fusion, located at 730 Center Street, Auburn, Maine. Public hearing.

Motion was made by Councilor Lasagna and seconded by Councilor Walker for passage.

Public hearing – no one from the public spoke.

Passage 7-0.

2. Order 142-12092019

Extending the term expiration date for the Recycling Ad-hoc Committee to May 1, 2020.

Motion was made by Councilor Walker and seconded by Councilor Fournier for passage.

Public comment – no one from the public spoke.

Passage 7-0.

3. Order 143-12092019

Approving the temporary liquor license for the New Year's Eve Auburn Event to be held on 12/31/2019.

Motion was made by Councilor Walker and seconded by Councilor Fournier for passage.

Public comment – no one from the public spoke.

Passage 7-0.