



CITY COUNCIL Agenda Item #19-137

Date: April 24, 2019

Consent__ Discussion X

SUBJECT: Ordinance Amendments, Chapter 1, 1st public reading

SUBMITTING DEPARTMENT: City Manager's Office

RECOMMENDED ACTION: Conduct 1st Public Reading of the proposed amendments to Chapter 1 of the Code of Ordinances. Provide an opportunity for comments from neighbors and interested citizens. Approve proposed amendments.

STRATEGIC OUTCOME/PRIOR ACTION: Responsive and Responsible Government; Inclusive, Equitable and Engaged Community

EXPENDITURE REQUIRED: N/A

SOURCE OF FUNDS: N/A

LEGAL REQUIREMENTS: N/A

BACKGROUND INFORMATION: A complete review of the City's Code of Ordinances was noted as a priority initiative of the City Council at their last Strategic Planning retreat. The purpose of this review is to amend or repeal outdated ordinances and those with lack of resources to enforce; add gender inclusive language (staff researched and reached out to Outright Vermont for assistance); where possible, add restorative processes option in the event of violation; undergo a legal review; and a general clean-up.

SUPPORTING DOCUMENTS: Chapter 1 of the Code of Ordinances with proposed amendments

INTERESTED PARTIES: City Council, residents, staff

CITY MANAGER'S APPROVAL:

A handwritten signature in black ink, appearing to read "W. Hoffman", written over the City Manager's Approval line.

CHAPTER 1
GENERAL PROVISIONS

Sec. 1-1. DESIGNATION, CITATION OF CODE, SHORT TITLE.

The ordinances embraced in this and in the following chapters shall be designated and cited as the "Code of Ordinances of the City of Montpelier," herein referred to as the "Code."

Sec. 1-2. RULES OF CONSTRUCTION.

In the construction of this Code and of all ordinances hereafter enacted, the following interpretations shall be placed on the words and phrases hereinafter mentioned, unless such construction or interpretation shall be manifestly inconsistent with the evident intent of the City Council or the qualified voters, or repugnant to the context or to the evident purport of an ordinance:

The present tense includes the past and future tenses and the future, the present.

~~The masculine gender includes the feminine and neuter.~~

The singular number includes the plural and the plural, the singular.

"Shall" is mandatory and "may" is permissive.

The time within which an act is to be done shall be computed by excluding the first and including the last day and if the last day be a Sunday or a legal holiday, that day shall be excluded.

"Writing" and "written" shall include printing, typewriting and any other mode of communication using paper or similar material, including an electronic record, which is in general use, as well as legible handwriting.

Delegation of authority. Whenever a provision appears requiring the head of a department or other officer of the City to do some act or to make certain inspections, it is to be construed to authorize the head of the department or other officer of the City, as the case may be, to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designates otherwise.

Interpretation. In the interpretation and application of any provision of this Code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any specific provision of the Code imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Name of officer. Whenever the name of an officer is given, it shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Week. The word "week" shall be construed to mean seven (7) days.

Year. The word "year" shall mean a calendar year.

Other words. The rules of construction given in ~~T.1, Chapter 3, of~~ V.S.A., Chapter 3, shall govern, so far as applicable, to the construction of all other words not defined in this section.

Sec. 1-3. DEFINITIONS.

In the construction of this Code, and of all ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Council:

Charter. The word "charter" shall mean the legislative enactment establishing the City, and all amendments thereto.

City. The words "the City" shall mean the City of Montpelier, County of Washington, State of Vermont.

City limits. Whenever the words "corporate limits" or "city limits" are used, they shall mean the legal boundary of the City of Montpelier.

Council. Wherever the word "Council" is used, it shall be construed to mean the Council of the City of Montpelier.

Councilman Member. The word "councilman member" shall mean any person elected to that office.

County. The words "the county" or ~~"this county"~~ shall mean the County of Washington in the State of Vermont.

Dwelling. The word "dwelling" shall mean a place of human habitation.

Keeper, proprietor.

The words "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and partnerships, whether acting by themselves or through a servant, agent or employee.

Mayor. Whenever the word "mayor" is used, it shall mean the Mayor of the City of Montpelier.

Month. The word "month" shall mean a calendar month.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Or, and. "Or" may be read "and," and "and" may be read "or," if the sense requires it.

Owner. The word "owner," applied to a building or land, shall include any part owner,

joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of such building or land, or an agent thereof.

Person. The word "person" shall include a corporation, firm, partnership, association, organization, club, society, body corporate or politic, or any other group acting as a unit, as well as a natural person.

Personal property.

The term "personal property" shall include every species of property except real property, as herein described.

Preceding, following.

The words "preceding" and "following" shall mean next before, and next after, respectively.

Premises. Whenever the word "premises" is used, it shall mean place or places.

Property. The word "property" shall include real and personal property.

Public place. A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public but a place which is in point of fact public rather than private. A place visited by many persons and usually accessible to the neighborhood public. Also a place or any place in which the public has an interest as affecting the safety, health, ~~morals~~ and welfare of the community.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Residence. The term "residence" shall be construed to mean the place adopted by a person as his-their place of habitation, and to which, whenever ~~he is~~they are absent, ~~he~~has~~they have~~ the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed his-their residence.

Seal. Whenever the word "seal" is used, it shall mean the ~~city~~City or corporate seal.

~~Selectman.—See Councilman, this section.~~

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curbline and the adjacent property line, intended for the use of pedestrians, ~~excluding~~
~~parkways.~~

Signature, subscription.

The "signature" or "subscription" of a person shall be a mark made manually or electronically, and shall include a mark when the person cannot write.

State. The words "the state" shall be construed to mean the State of Vermont.

Streets, highways, ways.

The words "streets," "highways" and "ways," when used in an ordinance, shall ~~be construed as including boulevards, avenues, courts, lanes, alleys, squares, places and sidewalks, and each of these words shall include every other of them.~~ have the same meaning as ascribed to them by the general law of the State.

Tenant.

The words "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease of, or who occupies, the whole or a part of such building or land, either alone or with others.

Sec. 1-4. CATCHLINES OF SECTIONS.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section, and unless otherwise expressly so provided, shall not be deemed or taken to be titles of such sections, or as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

Sec. 1-5. EFFECT OF REPEAL OF ORDINANCE.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed or the tenure of a person holding office thereunder.

~~Charter reference—existing ordinances, etc., to continue in effect.~~

Sec. 1-6. SEVERABILITY OF PARTS OF CODE.

The provisions of this Code as presently enacted and as may be subsequently amended are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision of section or portion of this Code, or the invalidation of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Code or the validity of its application to other persons or circumstances.

Sec. 1-7. AMENDMENTS TO CODE.

(a) All ordinances passed subsequent to this Code of Ordinances which amend, repeal or in any way affect this Code of Ordinances, may be numbered in accordance with the numbering system of this Code and printed for inclusion therein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission thereof from reprinted pages affected thereby, and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the City Council.

~~(b) Amendments to any of the provisions of this Code should be made by amending such provisions by specific reference to the section of the Code in substantially the following language:~~

~~"That section _____ of the Code of Ordinances of the City of Montpelier, Vermont, is hereby amended to read as follows: ... (Set our new provision in full)"~~

~~(c) In the event a new section not heretofore existing in the Code is to be added, the following enacting style shall be used: "It is hereby ordained by the City Council of the City of Montpelier that the Code of Ordinances of the City of Montpelier, Vermont, is hereby amended by adding a section (or article, chapter or other designation, as the case may be), to be numbered _____, which reads as follows: ... (Set out new provision in full) ..."~~

(db) All sections, articles, chapters or other provisions of this Code desired to be repealed should be specifically repealed by section number, article number, chapter or other number, as the case may be.

(ec) In each case of the proposed adoption, alteration, amendment, or repeal of an ordinance, the proposal shall be offered in writing at a regular meeting of the City Council by a member thereof, and shall be endorsed by the signature of such member.

(fd) In all proceedings to alter or amend an ordinance, or section thereof, the proposal therefore shall contain the entire ordinance or section to be altered or amended, with the words and figures thereby omitted set forth within parentheses and with the words and figures thereby added set forth italicized or underlined.

(ge) All ordinances enacted by the City Council shall, before the time when they take effect, be engrossed by the City Clerk, without interlineation, and in the order of their enactment, in a book to be kept for that purpose, to be lettered, "Records of Ordinances of the City of Montpelier," which book shall be preserved in the office of the City Clerk and shall be open to inspection. Each ordinance enacted shall bear the date of its enactment, and the original manuscript and the engrossed record thereof shall be signed by the Mayor and by the City Clerk. A copy of an ordinance certified by the City Clerk shall be prima facie evidence of its enactment.

(fh) Unless otherwise provided therein, an ordinance shall take effect ~~thirty-sixty~~ days from and after the date of its enactment, unless following publication of notice of adoption, such ordinance is disapproved on petition under the general law.

Sec. 1-8. ALTERING CODE.

It shall be unlawful for any person in the city to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of Montpelier to be misrepresented thereby. Any person violating this section shall be punished as provided in Section 1-9 thereof.

Sec. 1-9. GENERAL PENALTY; CONTINUING VIOLATIONS.

(a) Whenever in this Code or in any ordinance ~~or resolution~~ of the ~~city~~ City any act is prohibited or is made or declared to be unlawful or an offense, or whenever in ~~such this~~ Code, ~~or in any such~~ ordinance ~~or resolution~~ the doing of any act is required or the failure to do any act is declared to be unlawful or an offense, where no specific penalty is provided therefore, the violation of any such provision of this Code or any such ordinance ~~or resolution~~ shall be punished by a fine of not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), or by imprisonment of not less than one (1) day nor more than thirty (30) days. Each day any violation of this Code or of any such ordinance ~~or~~

~~resolution~~ shall continue shall constitute a separate offense.

(b) In addition to the penalty hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code or any such ordinance or resolution shall be deemed a public nuisance and may be, by the ~~city~~City, abated as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

(c) The prohibitions, restrictions, requirements and provisions of any ordinance shall be in force and apply to each and all persons affected thereby, whether as principals, officers, agents, servants, or otherwise.

(d) A violation of Sections 11-704, 11-710, 11-712 or 11-713 shall be a civil offense and shall be punishable by a penalty of not less than \$50 and not more than \$500. The amount of a waiver penalty for a first violation of any Section enumerated herein shall be \$50 or, at the election of the violator, ~~six hours of community service completion of a restorative process with the Montpelier Community Justice Center (MCJC) and completion of restorative process is certified by MCJC.~~ The ~~City Attorney, the~~ Chief of Police, and any police officer holding the permanent rank of sergeant or higher, and each of them, are designated enforcement officers under this subsection. Each police officer shall be deemed an issuing municipal official for the purpose of issuing original process for violations of all enactment=~~s~~ designated civil ordinances.

(e) The City Clerk is hereby designated the custodial officer with respect to all papers, records, reports and forms incident to violations of the ~~city~~City ordinances.

~~STATE LAW REFERENCE: Council's power to abate nuisances, V.S.A., T. 24, Sec. 2121.~~

Sec. 1-10. PROSECUTION WHERE DIFFERENT PENALTIES EXIST FOR SAME OFFENSE.

In all cases where the same offense may be made punishable, or shall be created by different clauses or sections of the ordinances of the City, the ~~prosecuting enforcement~~ officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense.

Sec. 1-11. STATUTE OF LIMITATIONS.

All prosecutions for violation of any of the ordinances of the City shall be commenced within one year from the commission of the offense, and not after.

Sec. 1-12. VOTING DISTRICTS.

a) The City of Montpelier is hereby divided into the following Voting Districts:

- 1) District One: Consisting of Bailey Avenue, Baldwin Street, Ballfield Drive, Chapman Road, ~~City Dump Road~~, Clarendon Avenue, Cliff Street, Corry Road, Corse Extension, Corse Street, Court Street, Crestview Drive, Cross Street, Cummings Street, Dairy Lane, Deerfield Drive, Dewey Street, Dunpatrick Circle, Dwinell Street, Elm Street, Essex Way, Finch Road, Franklin Street, Garland Lane, Gaylord Drive, Glen Gannon Way, Glinney Place, Gould Hill Road, Gov. Aiken, Gov. Davis, Graves Street, Greenfield Terrace, Greenwood Terrace, Grout Road, Haggett Road, Hillside Avenue, Holmes Court, Hopkins

Street, Horn of the Moon Road, Hubbard Park Drive, Inglenook Drive, Jordan Street, Lague Drive, Langdon Street (numbers 2-6), Ledgewood Terrace, Log Road, Main Street (even numbers from 2-154), Main Street (even numbers from 158-176), Mather Terrace, Meadowbrook Drive, Mechanic Street (odd numbers), Mill Road, North Street (even numbers from 2-138), North Franklin (numbers 1-17), North Franklin (numbers 2-16), North Park Drive, Overlook Drive, Parkside Drive, Parkway Street, Pearl Street, Peck Place, Pembroke Heights, Perkins Road, Pinewood Road, Poolside Drive, Quesnel Drive, Redstone Avenue, Richardson Street, School Street (numbers 1-5), Scribner Place, Shamrock Lane, Shipman Place, Spring Street, State Street (41-end), State Street (46-end), Summer Street, Sunnyside Terrace, Taylor Street, Terrace Street, Trillium Hill, Upper Terrace Street, Veo Road, Vine Street, Walker Terrace, Waverly Place, Windham Drive, Winter Street, Witt Place.

- 2) District Two: Consisting of Arsenal Drive, Barre Street (numbers 78 and above), Bingham Street, Bliss Road, Center Street, Charles Street, Chestnut Hill, Cityside Drive, College Street, Connor Road, Coolidge Street, Country Club Road, Dover Road, Dyer Avenue, East State Street (numbers 68 and above), East Montpelier Road, Easy Street, Edwards Street, Emmons Street, Ewing Street, Fairway Drive, First Avenue, Foster Street, Fuller Street, Gallison Hill Road, Gidney Place, Graham Terrace, Grandview Terrace, Granite Shed Lane, Granite Street, Greenock Avenue, Guernsey Avenue, Hackamore Road, Harrison Avenue, Heaton Street, Hillhead Street, Hinckley Street, Hubbard Street (odd numbers), Home Farm Way, Jay Street, Kemp Avenue, Kent Street, Kildrummy Way, Leap Frog Hollow, Liberty Street (numbers 33 to end), Lincoln Avenue, Loomis Street (numbers 21 to the end), Main Street (odd numbers 167 to the end), Main Street (even numbers 178 to the end), Maplewood Road, Marvin Street, McKinley Street, Mechanic Street (even numbers), Merrill Terrace, Munger Drive, Murray Hill Drive, Murray Road, Nelson Street, North Street (odd numbers 1-end), North Street (even numbers 156-end), North College Street, North Franklin (numbers 18 and up), Old Country Club Road, Phillips Road, Pioneer Center, Pioneer Street, Power Plant Road, Putnam Street, Ridge Street, Sabin Street, Sibley Avenue, Spring Hollow Lane, Stone Cutters Way, Summit Street, Sunset Avenue, Towne Street, Towne Hill Road, Tracy Street, Tremont Street, Upper Main Street, West Street, Westwood Drive, Whittier Street, Woodcrest Road, Woodrow Avenue.
- 3) District Three: Consisting of Abbey Road, Allen Row, Bailey Avenue (between Winooski River and Memorial Drive), Baird Street, Barre Street (numbers 77 and down), Barre - Montpelier Road, Berlin Street, Blackwell Street, Blanchard Court, Blodgett Avenue, Brown Street, Cedar Street, Cedar Hill Lane, Cherry Avenue, Colonial Drive, Crescent Lane, Derby Drive, Dog River Road, Downing Street, East Montpelier Road (next to roundabout), East State Street (numbers 67 and below), Forest Drive, Frank Street, Freedom Drive, George Street, Green Mountain Drive, Harry Sheridan Avenue, Hazen Place, Hebert Road, High School Drive, Highland Avenue, Hill Street, Hillcrest Drive, Hubbard Street (even numbers), Independence Green, Isabel Circle, Judson Drive, Langdon Street (numbers 7-end), Liberty Street (odd numbers 1-27), Liberty Street (even numbers 2-32), Longmeadow Drive, Loomis Street (numbers 1-20), Main Street (odd numbers 1-159), Meadow Lane, Memorial Drive, Miles Court, Montpelier Junction Road, Moonlight Terrace, Mountainview Street, Monsignor Crosby Avenue, National Life Drive, Northfield Street, Park Avenue, Phelps Street, Pioneer Center, Pitkin Court, Pleasant Street, Pleasantview Street, Prospect Street, River Street, Roberts Street, Robinhood Circle, Salem Lane, School Avenue, School Street (odd numbers 7-end), School Street (even numbers 28-end), Scribner Street, Shady Lane, Sherwood Drive, St. Paul Street, State Street (odd numbers 1-33), State Street (even numbers 2-44), Stretch's Way, Taplin Street, Valerie Avenue, Valley View Road, Westview Meadows,

Wheelock Street, Wilder Street, Wilson Street.

(b) This ordinance was adopted pursuant to the provisions of Title II of the City's Charter, CITY VOTING DISTRICTS, which references that "such districts shall be described by ordinance." This new Sec. 1-12, VOTING DISTRICTS, shall take effect immediately upon approval at an Annual or Special City Meeting.

~~Enacted July 8, 1970.~~