

A public hearing was held by the Town Board of the Town of Moreau on December 14, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of accepting public comment on proposed Local Law No. 4 of 2010, which if adopted would enact Chapter 93 of the Moreau Town Code entitled "Littering".

Supervisor Jenkins opened the public hearing at 6:30 p.m.

The Town Clerk called the roll.

**Town Board Members Present**

Tom Cumm	Councilman
Bob Prendergast	Councilman
Todd Kusnierz	Councilman
Preston Jenkins	Supervisor

**Town Board Members Absent**

Gina LeClair	Councilwoman
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**Also present:** Jeanne Fleury, Town Clerk; Joe Patricke, Building Inspector/Code Enforcement Officer; Lydia Wheeler, Post Star Reporter; Martin D. Auffredou, Esq., Attorney for the Town (arrived at 6:38 p.m.)

The following Notice of Public Hearing appeared in the legal ad section of the Glens Falls Post Star Newspaper on December 6, 2010:

TOWN OF MOREAU  
NOTICE OF PUBLIC HEARING  
TO CONSIDER ADOPTION OF  
LOCAL LAW NO. 4 OF 2010

NOTICE IS HEREBY GIVEN pursuant to Section 20 of the Municipal Home Rule Law of the State of New York, that a public hearing will be held by the Town Board of the Town of Moreau on Tuesday, December 14, 2010 at 6:30 p.m. at the Town Hall, located at 61 Hudson Street, South Glens Falls, New York for the purpose of considering the adoption of Local Law No. 4 of 2010. If adopted, Local Law No. 4 of 2010 would enact Chapter 93 "Littering" of the Moreau Town Code. The Local Law prohibits the throwing or depositing of rubbish and waste as defined in streets and public places. Penalties for a violation of Local Law are established as well. A copy of proposed Local Law No. 4 of 2010 can be obtained at the Moreau Town Hall.

Jeanne M. Fleury Town Clerk

Supervisor Jenkins explained how the Town Board held a workshop on December 7<sup>th</sup> to discuss this proposed law and as the result of that workshop there were a couple changes made to the draft law.

Councilman Kusnierz stated that at that workshop he raised concerns over how the language in the draft law would allow farmers to be cited under the law for littering onto the streets from a vehicle if there was incidental spillage of agricultural materials onto the highways, such as, manure, clay, etc. He had suggested that they change the language to coincide with the vehicle and traffic law, which allows for incidental spillage from agricultural vehicles of agricultural materials. While changes were made to the draft law after the workshop it is his opinion that changes still need to be made to it. He referred to section 93-2 and 93-4 of the proposed law. He noted that in section 93-2 there is language remaining from the workshop that reads "materials and/or matter of any type on any street". He also noted in

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section 93-4 there remains the words "other vehicle", which in his opinion, agricultural equipment could be deemed to be the "other vehicle" and the wording "waste materials" that he said constitutes littering from such vehicle.

What he would like to see is a new section that spells out that vehicles shall not be deemed to be agricultural equipment or define waste material to not be agricultural waste.

Councilman Cumm said he would rather see what Councilman Kusnierz suggested at the last meeting and that is an exemption for farm vehicles and that is not what we are getting with this draft law.

Councilman Kusnierz said he knew that Joe Patricke talked to Attorney Auffredou about this and for whatever reason Attorney Auffredou didn't feel he wanted to go that route.

Joe Patricke said no he wanted it worded the way it is.

Councilman Kusnierz stated if they added an exclusion that specifies that waste shall not constitute incidental agricultural waste spilled on the highway then we would be covered.

Supervisor Jenkins asked if they could add that wording after "waste" in each of those paragraphs.

Joe Patricke suggested they define waste by saying that it doesn't apply to incidental agricultural materials that spill onto the highway.

Councilman Kusnierz stated they didn't need to modify the definitions they could just add a new section that reads "waste shall not be deemed to be agricultural waste".

[Attorney Auffredou entered the meeting at 6:38 p.m.]

Joe Patricke explained to Attorney Auffredou what they had been talking about.

Councilman Kusnierz explained to Attorney Auffredou that he thought the board was in agreement that they didn't want to, in effect, establish a local law that has language in it that will set up the potential for someone in an agricultural district to be cited under the littering law.

Councilman Kusnierz explained his concern over the wording in sections 93-2 and 93-4. He thought to take care of the issue they could deem agricultural waste not to be waste under this law. He said in the first line of section 93-4 that reads in part "automobile or other vehicle shall deposit" we could include that agricultural vehicles shall not be deemed a vehicle under this law.

Attorney Auffredou suggested that in the definition of rubbish they could include "shall not include agricultural waste such as" and Councilman Kusnierz could give him some examples of what agricultural waste would be and he could include it.

Councilman Kusnierz said two things come to mind as examples of agricultural waste and they are; "animal waste" and "dirt and clay".

Supervisor Jenkins asked about corn, hair and grain products and Councilman Kusnierz said "agricultural products".

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Attorney Auffredou suggested adding to the definition of rubbish "waste or waste materials shall not include agricultural waste such as, but not limited to animal manure". He said they could also add an exemption for agricultural vehicles.

Councilman Cumm said the last draft read "dirt, gravel, sand, clay, stone or building rubbish". This was removed. We shouldn't exclude clay, dirt and stone that is dropped by a contractor on the road. He thought that wording needed to be put back in and that wording be added to exempt farm vehicles.

Attorney Auffredou said he could put that language back in and add an exemption that reads "vehicles engaged in agricultural activities are exempt from this provision".

Councilman Prendergast asked if shouldn't we be more specific about the material that is dropped on the road. We don't want agricultural vehicles to drop the wrong stuff.

Attorney Auffredou said what he wrote was "vehicles engaged in agricultural activities". If they are engaged in agricultural activities and they drop something that is related to the agricultural activity then they are exempt from the provision.

Joe Patricke said the point made by Councilman Prendergast was valid and asked why they don't leave in the statement about agricultural droppings.

Attorney Auffredou said he planned to include that in the definition of rubbish and rubbish includes waste materials and waste materials are unlawful in section 93-4. You can't spill or deposit rubbish or waste materials from a vehicle and vehicles engaged in agricultural activities are exempt from that provision and waste materials and rubbish are now defined as "agricultural waste or waste materials shall include, but not be limited to animal manure". The intent is that agriculture is going to be exempt.

Attorney Auffredou noted that this is a quasi substantive change, but when he revised it from the workshop it was his intent to address agricultural activity and here you are getting more specific so if the board chooses to act on it tonight as revised then it should be okay.

Attorney Auffredou stated that he would put the language back in about stone, etc.

Councilman Kusnierz asked if the board would see a final draft.

Attorney Auffredou stated that in order to keep things moving he suggested that the board adopt it as revised and before he files the law with the Secretary of State he will e-mail the board a copy of the law and he will give the board a couple of days to look at it. If he doesn't hear anything by Monday next week he will file it with the Secretary of State.

Councilman Kusnierz asked if they weren't comfortable with the way it was written what would happen.

Attorney Auffredou said they would bring it back up on the 28<sup>th</sup> of December.

Supervisor Jenkins asked if it would require another public hearing and Attorney Auffredou said not necessarily and said let's wait until we see what the level of discomfort is.

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A motion was made by Councilman Prendergast and seconded by Councilman Cumm to adjourn the public hearing at 6:49 p.m.

Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	Yes
Councilwoman LeClair	Absent
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

Respectfully submitted,

Jeanne Fleury  
Town Clerk