



KEENE CITY COUNCIL
Council Chambers, Keene City Hall
October 20, 2022
7:00 PM

ROLL CALL

PLEDGE OF ALLEGIANCE

MINUTES FROM PRECEDING MEETING

- October 6, 2022

A. HEARINGS / PRESENTATIONS / PROCLAMATIONS

1. Presentation of Retirement Resolution - Steve Russo
2. Presentation - Fire Prevention Program

B. ELECTIONS / NOMINATIONS / APPOINTMENTS / CONFIRMATIONS

1. Nomination - Congregate Living and Social Services Licensing Board

C. COMMUNICATIONS

1. Aaron A. Lipsky - Requesting Tree Removal - 64 Hastings Avenue

D. REPORTS - COUNCIL COMMITTEES

1. Keene Kiwanis Club – Request to Use City Property – Tree Lighting Ceremony
2. Ron Robbins/Keene Snoriders - Requesting Permission to Run Snowmobiles in the Right-of-Way along Krif Road from the Ashuelot Rail Trail to Winchester Street
3. Memorandum of Understanding – Retaining Wall – Woodbury and Washington Street – City Manager

E. CITY MANAGER COMMENTS

F. REPORTS - CITY OFFICERS AND DEPARTMENTS

1. FY 2022 Homeland Security Grant Award for the Wide Area Air Monitoring System - Fire Chief
2. 2020 Homeland Security Grant Program to Purchase Critical Infrastructure Water Related Catastrophe Equipment - Fire Chief
3. 2022 Homeland Security Grant Program Award - Hazmat - Fire Chief

G. REPORTS - BOARDS AND COMMISSIONS

1. Resignation of Katie Sutherland from the Building and Housing Boards of Appeal
2. Relating to Amendments to the City of Keene Land Development Code Ordinance O-2022-09-B

H. REPORTS - MORE TIME

1. Communications Relative to Public Health Concerns of Small Cell Wireless Facilities, and Possible Revisions to Ordinance O-2019-18-A

I. ORDINANCES FOR FIRST READING

1. Notice Requirements for Small Cell Wireless Facility Deployments Ordinance O-2022-16

J. ORDINANCES FOR SECOND READING

K. RESOLUTIONS

1. Relating to FY23 Fiscal Policies Resolution R-2022-33

NON PUBLIC SESSION

ADJOURNMENT

10/06/2022

A regular meeting of the Keene City Council was held on Thursday, October 6, 2022. In the absence of the Honorable Mayor George S. Hansel, the City Clerk, Patricia Little, called the meeting to order at 7:00 PM. Roll called: Bryan J. Lake, Michael J. Remy, Gladys Johnsen, Robert C. Williams, Randy L. Filiault, Philip M. Jones, Kris E. Roberts, Raleigh C. Ormerod, Bettina A. Chadbourne, Catherine I. Workman, Kate M. Bosley, Mitchell H. Greenwald, and Thomas F. Powers were present. Michael J. Remy, Michael Giacomo, and Andrew C. Madison were absent. A motion by Councilor Bosley to elect Councilor Powers as temporary Chair was duly seconded by Councilor Greenwald and the motion carried unanimously. Councilor Powers approached the dais and joined the Charter Officers as temporary Chair. Councilor Williams led the Pledge of Allegiance.

ANNOUNCEMENTS

Chair Powers reminded the Councilors that the October 13th Finance, Organization, and Personnel Committee was canceled to allow Councilors to attend the annual Fire Dinner. Councilors were also encouraged to participate in the Fire Prevention Parade on October 9 at 1:00 PM. Due to cancellation of the FOP meeting, representatives of Spectrum would be invited to the October 27 and December 8 FOP meetings to provide an update on the service issues in Keene.

Chair Powers also announced that the dates for the evaluation process for the Council's three Charter employees have been established. The City Manager's evaluation is scheduled first. There will be a special City Council meeting on November 1 at 6:00 PM. The evaluation dates for the City Attorney and City Clerk will occur in 2023.

Councilor Greenwald extended an invitation to all City Council and City Staff to the annual benefit Breakfast for the Keene Housing Kids' Collaborative on October 21.

MINUTES FROM THE PRECEDING MEETING

A motion by Councilor Bosley to approve the minutes of the September 15, 2022 regular meeting was duly seconded by Councilor Greenwald. The motion carried unanimously with 12 Councilors present and voting in favor. Councilors Remy, Giacomo and Madison were absent.

PRESENTATION OF RETIREMENT RESOLUTION – DIANE RICHARDS STAUDER

Chair Powers welcomed Diane Richards Stauder and read a retirement Resolution in honor of her dedicated service to the City of Keene. Ms. Stauder thanked the Council and City Staff. She said it had been a pleasure to work for the City. Ms. Stauder concluded that the City is a wonderful team and a wonderful place to work. Those in attendance demonstrated their appreciation for Diane's service with a standing ovation.

10/06/2022

PROCLAMATION – ENERGY AND CLIMATE

Chair Powers welcomed Peter Hansel of the Energy and Climate Committee and read aloud a Proclamation declaring the week of October 16 as Keene Energy Week. He encouraged everyone to participate in the week. Mr. Hansel encouraged everyone to participate in the week and he congratulated the City of Keene for getting approval of the Community Power Plan, which he called a big step forward for clean energy.

PROCLAMATION – FRIENDS OF THE KEENE PUBLIC LIBRARY

Chair Powers welcomed Jan Manwaring, representing the Friends of the Keene Public Library. The Chair read aloud a Proclamation declaring October 21–23, 2022 as the Friends of Keene Public Library Days and he urged all citizens to visit the Library’s fall book sale in support of continued excellent library programs and facilities. Ms. Manwaring expressed thanks and noted that this year the fall book sale would be in both Heberton Hall and Cohen Hall to allow more space. She invited everyone to attend and show their support.

PROCLAMATION – “CO-OP MONTH”

Chair Powers welcomed Megan Hercher of the Monadnock Food Co-Op, and read aloud a Proclamation declaring the month of October 2022 as Cooperative Month in the City of Keene. He expressed the City’s gratitude to cooperatives and their members for their commitment to our community and the role they play in serving our citizens.

CONFIRMATION

Mayor Hansel nominated Molly Ellis to serve as a regular member of the Heritage Commission, with a term to expire December 31, 2025. A motion by Councilor Bosley to confirm the nomination was duly seconded by Councilor Greenwald. The motion carried on a unanimous roll call vote with 12 Councilors present and voting in favor. Councilor Remy, Giacomo, and Madison were absent.

COMMUNICATION – JULIANA BERGERON – REQUESTING NO PARKING – 191 WASHINGTON STREET

A communication was received from Juliana Bergeron, requesting that the City enact “No Parking” at 191 Washington Street. In making the request, she indicated that the clients and employees exiting the parking lot at this location have a difficult time exiting the lot due to the number of cars parked along Washington Street. Chair Powers referred the communication to the Municipal Services, Facilities, & Infrastructure Committee.

COMMUNICATION – RON ROBBINS/KEENE SNORIDERS – REQUESTING PERMISSION TO RUN SNOWMOBILES IN THE RIGHT-OF-WAY ALONG KRIF ROAD FROM THE ASHUELOT RAIL TRAIL TO WINCHESTER STREET

A communication was received from Ron Robbins of the Keene Snoriders, submitting their annual request for permission to run snowmobiles in the right-of-way along Krif Road from the Ashuelot Rail Trail to Winchester Street, crossing Winchester Street to the property of Perry Kiritsy at 471 Winchester Street. This request is for the timeframe of December 15, 2022, through March 30, 2023—snow permitting. Chair Powers referred the communication to the Planning, Licenses, and Development Committee.

COMMUNICATION – RANDY FILIAULT – SAFETY CONCERNS WITH 5G TOWERS

A communication was received from Councilor Randy Filiault, requesting that the City Council address the issue of 5G cell towers and that any health issues with the 5G technology be answered before any of the recently erected 5G cell towers become operational. Chair Powers referred the communication to the Planning, Licenses, and Development Committee. The PLD Chair clarified that the intent of the Committee would be to consider both the communication from former Councilor Terry Clark, which has been on the “more time” agenda and Councilor Filiault’s recent letter.

MSFI REPORT – CONTINUED DISCUSSION – REQUESTING THE CITY RESUME MAINTENANCE OF BLAIN(E) STREET – PRIVATE WAY

A Municipal Services, Facilities, and Infrastructure Committee report read recommending the the communication regarding the maintenance of Blaine St. be accepted as informational. Chair Powers filed the report as informational.

FOP REPORT – AMENDED FY21 HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANT AWARD – FIRE LIEUTENANT/TRAINING OFFICER

A Finance, Organization, and Personnel Committee report read, recommending that the City Council authorize the City Manager to do all things necessary to apply for, execute, expend and accept the terms of the amended grant agreement for the Hazardous Materials Preparedness Grant application as presented in the amount of \$37,751.25 for the purchase and installation of conferencing equipment and hazmat plan updates. A motion by Councilor Chadbourne to carry out the intent of the Committee report was duly seconded by Councilor Lake. The motion carried unanimously with 12 Councilors present and voting in favor. Councilors Remy, Giacomo and Madison were absent.

FOP REPORT – ACCEPTANCE OF 2021 ASSISTANCE TO FIREFIGHTERS GRANT (AFG)
– FIRE CHIEF

A Finance, Organization, and Personnel Committee report read, recommending that the City Council authorize the City Manager to do all things necessary to accept and expend the FY 2021 Assistance to Firefighters Grant in the amount of \$219,589.09 with a 10% City match. A motion by Councilor Chadbourne to carry out the intent of the Committee report was duly seconded by Councilor Lake. The motion carried unanimously with 12 Councilors present and voting in favor. Councilors Remy, Giacomo and Madison were absent.

FOP REPORT – AUTHORIZATION TO ACCEPT A HOUSING OPPORTUNITY
PLANNING GRANT FOR HOUSING NEEDS ANALYSIS AND PLANNING –
COMMUNITY DEVELOPMENT DIRECTOR

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager do all things necessary to accept and expend the Housing Opportunity Planning Grant for Housing Needs Analysis and Planning in the amount of \$15,500 from the Invest NH Municipal Planning & Zoning Grant Program as funded by the New Hampshire Department of Business and Economic Affairs for the purposes of hiring a consultant to complete a Housing Needs Analysis for the City of Keene. A motion by Councilor Chadbourne to carry out the intent of the Committee report was duly seconded by Councilor Lake. The motion carried unanimously with 12 Councilors present and voting in favor. Councilors Remy, Giacomo and Madison were absent.

CITY MANAGER COMMENTS

The City Manager began by recognizing our newly appointed Police Chief, Steve Stewart, who was in the audience. Chief Stewart was appointed on September 19. The City Manager publicly congratulated the Chief and thanked him for taking on this role.

The City Manager also recognized the new Deputy Fire Chief in the audience, Christopher McCarthy, who came from the State of Colorado. He was recently the Fire Chief in Palmer Lake, CO, and he brings 37 years of experience in Fire and EMS service. The City Manager was excited to welcome Deputy Chief McCarthy.

Regarding Fire and Community Development, the City Manager said she had been working to integrate the fire permitting and inspection processes in the IWORQ software system used currently by the Community Development Department. They have mapped out the process, created the forms, and will be going live in the next month or two. The City Manager had asked the Fire Chief to provide an update to the Council at their meeting regarding our fire prevention program, and at the same time introduce our two new Fire Inspectors. The Chief has made significant progress in this area with the help of his Department, the Fire Marshal's office, the Community Development office, and help and support from both Med Kopczynski & our

Community Development Director, Jesse Rounds. There has been significant progress on inspection backlogs, improvement in the quality of inspections being conducted, increased training opportunities, and this partnership between Fire and Community Development that is evolving. The City Manager looks forward to the Chief sharing some of these updates with the Council at their next meeting.

Next, the City Manager provided a branding updated. She attended a stakeholders' meeting via Zoom the previous week with the Chamber of Commerce regarding their branding campaign. She got a sneak peek at what they will be presenting to the public in the next few weeks. She was very encouraged. The Chamber's branding efforts will dovetail nicely with the City's efforts. The Chamber is planning to focus on implementation during years one and two around messaging to visitors and new residents/potential workforce. During year three, they will focus their messaging on business recruitment.

The City Manager concluded her comments with remarks about the Community Power Program. The City Council adopted the City's Community Power Plan last year in May. Staff submitted that Plan immediately to the Public Utilities Commission. The final rules related to community power were only recently approved (mid-September). Our initial plan submitted last year needed several minor changes to comply with the rules, including a new appendix describing data security. In August, Staff resubmitted what they believed would be the required revisions. On October 3, the City received word that our Community power Plan had been approved. The next step is to bring the Plan changes back to City Council for approval. This is currently scheduled for the October 27 FOP meeting. Assuming it receives Council approval, the plan would be to launch the program in the spring. Given the ever-increasing cost of energy, Staff are anxious to launch to the Plan and not only move the City closer to our energy goals but to also provide competitive pricing for our residents.

PB-PLD REPORT – RELATING TO AMENDMENTS TO THE CITY OF KEENE LAND DEVELOPMENT CODE – ORDINANCE O-2022-11

A Joint Committee of the Planning Board and Planning, Licenses, and Development Committee report read with the following votes: A motion was made by Councilor Michael Remy that the Planning Board find Ordinance O-2022-11 consistent with the Comprehensive Master Plan. The motion was seconded by David Orgaz and was unanimously approved on a 5-0 vote. A motion was made by Councilor Kate Bosley that the PLD Committee recommend that the Mayor set a public hearing on the Ordinance. The motion was seconded by Councilor Gladys Johnsen and carried on a unanimous roll call vote. Chair Powers filed the report. Chair Powers set a public hearing for November 3 at 7:00 PM.

10/06/2022

MORE TIME – MSFI REPORT – CONTINUED DISCUSSION – DESIGNATING CITY PARKS –DRUG-FREE AND SMOKE-FREE ZONES; MSFI REPORT – DISCUSSION – CHAPTER 58 – PARKS, RECREATION, AND PUBLIC FACILITIES

A Municipal Services, Facilities, and Infrastructure Committee report read, recommending placing this item on more time. Chair Powers said that in speaking with the Staff and Councilor Greenwald, who is the petitioner for this request, this item can be reported out as informational. The Chair understood that the discussion at the last MSFI Committee, and the information provided at that meeting, that City Staff would be administratively posting the appropriate signage relative to the prohibited use of illegal drugs in the parks. With this action, there are no further aspects of this discussion that would warrant more time. With no objection, this item was reported out as informational. Councilor Greenwald requested to view the signage before it is posted, and the City Manager agreed.

A Municipal Services, Facilities, and Infrastructure Committee report read, recommending the discussion of Chapter 58 be placed on more time. Chair Powers granted more time.

ORDINANCE FOR SECOND READING – RELATING TO PROBATIONARY FIREFIGHTERS – ORDINANCE O-2022-13

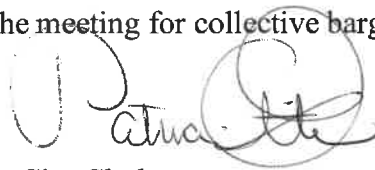
A Finance, Organization, and Personnel Committee report read, recommending the adoption of Ordinance O-2022-13. Chair Powers filed the report.

A motion by Councilor Chadbourne to adopt Ordinance O-2022-13 was duly seconded by Councilor Lake. The motion carried unanimously on a roll call vote with 12 Councilors present and voting in favor. Councilor Remy, Giacomo, and Madison were absent.

ADJOURNMENT

There being no further business, Chair Powers adjourned the meeting for collective bargaining at 6:41 PM.

A true record, attest:



City Clerk



CITY OF KEENE NEW HAMPSHIRE

ITEM #B.1.

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Mayor George S. Hansel
Through:
Subject: **Nomination - Congregate Living and Social Services Licensing Board**

Recommendation:

Attachments:

1. Seher, Jennifer_Redacted

Background:

I hereby nominate the following individual to serve on the designated Board or Commission:

Congregate Care and Social Services Licensing Board
Jennifer Seher Term to expire Dec. 31, 2023
376 Roxbury Street

From: [Patty Little](#)
To: [Heather Fitz-Simon](#)
Subject: Fwd: Interested in serving on a City Board or Commission
Date: Wednesday, October 12, 2022 5:56:53 AM

Sent from my U.S.Cellular© Smartphone
Get [Outlook for Android](#)

From: helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us> on behalf of City of Keene
<helpdesk@ci.keene.nh.us>

Sent: Tuesday, October 11, 2022 10:37:58 PM

To: HMattson@ci.keene.nh.us <HMattson@ci.keene.nh.us>

Cc: PLittle@ci.keene.nh.us <PLittle@ci.keene.nh.us>; THood@ci.keene.nh.us
<THood@ci.keene.nh.us>

Subject: Interested in serving on a City Board or Commission

<p>Submitted on Tue, 10/11/2022 - 22:37</p>

<p>Submitted values are:</p>

First Name:

Jennifer

Last Name:

Seher

Address

376 Roxbury Street

How long have you resided in Keene?

26 years

Email:

[REDACTED]

Cell Phone:

[REDACTED]

Employer:

NH Care Collaborative

Occupation:

Non-profit Administrator/Social Worker

Retired

No

Please list any organizations, groups, or other committees you are involved in

* Statewide ServiceLink Network (previous Assn. Chair)

* Ad Hoc Committee on Housing Stability

Have you ever served on a public body before?

Yes

Please select the Boards or Commissions you would be interested in serving on:

Congregate living and social services licensing board

Please share what your interests are and your background or any skill sets that may apply.

I have been involved in the development of the federally designed NH ServiceLink Aging and Disability Resource Center (ADRC) since its inception twenty years ago. I have also been involved in the development of NH Medicaid Waiver services, in particular the Choices for Independence Home and Community Based Care program which allows people who meet nursing home level of care and the Medicaid eligibility criteria, to choose to live in their own home or in a Medicaid approved assisted living establishment with Medicaid funded services and case management. Through this work I have developed detailed knowledge of CMS rules and regulations that hospitals, nursing facilities and congregate programs, such as Adult Day Care centers, are expected to meet. Additionally, in that last 8 years, I've worked with the Veterans Administration to develop the VA home and community based care program. During this time I have developed expertise in the delivery of long term care services for adults with disabilities and older adults for people in our state, our county, and our city, and have learned a great deal about the perspective of individuals and families who live in or depend on facilities, and have also developed great respect for many challenges staff and administrators face in managing and maintaining these facilities.

Why are you interested in serving on this committee

I am interested in this committee because I am in the unique position of having extensive training related to facility and congregate settings and access to professionals locally, as well as at the state and federal level, without having a job that is specifically related to managing a facility or congregate setting. I am in a position to advocate for the best interests of citizens as well as hospitals, nursing homes, and so on. As such I'd like to understand the city's role in licensing better and understand how we can provide as many opportunities to help people avoid nursing home placement, which probably means enhance support of assisted and congregate living and care options.

Please provide 2 personal references:

Melinda Feola-Mahar

[Redacted contact information]

References #2:

Hillary Switzer

[Redacted contact information]



CITY OF KEENE NEW HAMPSHIRE

ITEM #C.1.

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Aaron A. Lipsky
Through: Patricia Little, City Clerk
Subject: Aaron A. Lipsky - Requesting Tree Removal - 64 Hastings Avenue

Recommendation:

Attachments:

1. Communication_Lipsky_Redacted

Background:

Aaron A. Lipsky is requesting that the City remove a hazardous tree from the City property located at 64 Hastings Avenue.

October 12, 2022

Honorable Mayor George S. Hansel and City Council
3 Washington Street
Keene, NH 03431

Dear Mayor and Councilors,

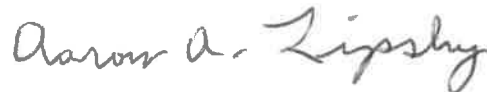
I am writing this letter to request that the City remove a hazardous tree from City property in front of my house at 64 Hastings Avenue.

The tree's three spindly trunks have expanded over the years to where the tree now completely blocks the northern view of traffic on Hastings Avenue from anyone exiting my driveway. This has become an extremely dangerous situation for me and anyone else leaving my driveway as well as the traffic on Hastings Avenue which might become involved with someone leaving my driveway.

I would deeply appreciate that City remove this tree as soon as possible for the safety of all impacted by this hazard.

Thank you for your consideration.

Sincerely yours,



Aaron A. Lipsky
64 Hastings Ave
Keene, NH 03431





CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Planning, Licenses and Development Committee, Standing Committee
Through:
Subject: **Keene Kiwanis Club – Request to Use City Property – Tree Lighting Ceremony**

Recommendation:

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene Kiwanis Club be granted permission to use downtown City rights-of-way on Friday, November 25, 2022 for the Tree Lighting Festival from 5:00 PM to 8:00 PM conditional upon the signing of a revocable license and indemnification agreement, submittal of a certificate of liability insurance in the amount of \$1,000,000 listing the City of Keene and an additional insured, and that the Petitioner complies with any recommendations of City staff. In addition, the Petitioner is granted permission to erect a holiday tree on the Main/Marlborough/Winchester Street roundabout. The Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 23 Community Events Budget. Said payment shall be made within 30-days of the date of invoicing.

Attachments:

None

Background:

Chair Bosley recalled that this is an annual request. While not present this evening, the Director of Public Works communicated to the Chair that the Kiwanis Club had held the required protocol meetings. The City Manager, Elizabeth Dragon, had no concerns related to this event and recommended approving the request. There were no questions from the Committee.

Margaret Bruce, Secretary of the Kiwanis Club was available for questions. She recalled from the protocol meetings that they were waiting on a decision whether they could use PVC piping to cover the electric cords at the event. The City Manager did not have that answer yet but the motion would allow the Staff to work out any of those details beyond this meeting.

Chair Bosley knew this event was usually very well attended and it is special to have it occurring in town, especially with kids involved in the downtown and Fire Department participation.

There were no public comments.

Councilor Jones referred to the tree in the Main/Marlboro/Winchester Streets roundabout that used to have no electricity and asked if that was still the case. Ms. Bruce said they are now lit with battery-

operated mini lights, so no power is needed.

The following motion by Councilor Jones was duly seconded by Councilor Johnsen.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene Kiwanis Club be granted permission to use downtown City rights-of-way on Friday, November 25, 2022 for the Tree Lighting Festival from 5:00 PM to 8:00 PM conditional upon the signing of a revocable license and indemnification agreement, submittal of a certificate of liability insurance in the amount of \$1,000,000 listing the City of Keene and an additional insured, and that the Petitioner complies with any recommendations of City staff. In addition, the Petitioner is granted permission to erect a holiday tree on the Main/Marlborough/Winchester Street roundabout. The Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 23 Community Events Budget. Said payment shall be made within 30-days of the date of invoicing.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022

To: Mayor and Keene City Council

From: Planning, Licenses and Development Committee, Standing Committee

Through:

Subject: **Ron Robbins/Keene Snoriders - Requesting Permission to Run Snowmobiles in the Right-of-Way along Krif Road from the Ashuelot Rail Trail to Winchester Street**

Recommendation:

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene SnoRiders be granted permission to use the following locations on City property for a snowmobile trail: the right-of-way along the north side of Krif Road from Krif Court to Winchester Street; City property identified by tax map numbers 116/040/000/000/000, 214/003/000/000/000 and 118/001/000/000/000; the crossing of Winchester Street at Krif Road; and, The crossing of Production Avenue approximately 200 +/- feet south of NH Route 9. As well as access to the Class VI Portion of the Old Gilsum Road starting approximately one mile from the Gilsum Town Line and going north, (“Premises”) for the following purpose: for a snowmobile trail, and under the following conditions: Said use shall commence on December 15, 2022, and expire on March 30, 2023, and is subject to the following conditions: the signing of a revocable license and indemnification agreement; and the submittal of a certificate of liability insurance in the amount of \$1,000,000, naming the City of Keene as an additional insured.

In addition, the Keene SnoRiders, Inc. will be responsible (including cost) for the installation and maintenance of all signage/markings, which will be in accordance with Snowmobile Trail Standards published by NH Department of Business and Economic Affairs; that all signage/markings installed shall be removed from the City right-of-way and City property when there is no longer any snow cover, no structures, including buildings, shelters, lights, displays, walls, etc. shall be permitted with the City right-of-way or on City property; no parking of motor vehicles or trailers and no catering servicing activities of any kind shall be permitted within the City right-of-way or on City property; grooming shall not extend outside the right-of-way of Krif Road, snow windows shall be groomed to provide adequate sight distances and a gentle sloping approach at all road and driveway intersections; no part of the City Street (paved surfaces) may be used by off-highway recreational vehicles (OHRV) or their operators for any purpose, other than direct crossing; and that Keene SnoRiders, Inc. shall be responsible for the repair of any damage (including costs) and the City right-of-way and property shall only be used when there is snow cover.

Attachments:

None

Background:

Chair Bosley welcomed Jeremy Evans, President of the Keene Snoriders, who recalled this annual request for access to trails around the Keene area when there is snow cover. This year, they were asking for to renew the crossings they had used for several years; there had been no changes. He welcomed questions.

With no Committee questions, Chair Bosley agreed that this was an annual request before this Committee and the applicants communicate well with Staff and no incidents have been reported. The City Manager, Elizabeth Dragon, reported no Staff concerns with this request and while no protocol meetings were required, Staff did review this application and she recommend approval after conversations with the Director of Public Works.

The following motion by Councilor Ormerod was duly seconded by Councilor Johnsen.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene SnoRiders be granted permission to use the following locations on City property for a snowmobile trail: the right-of-way along the north side of Krif Road from Krif Court to Winchester Street; City property identified by tax map numbers 116/040/000/000/000, 214/003/000/000/000 and 118/001/000/000/000; the crossing of Winchester Street at Krif Road; and, The crossing of Production Avenue approximately 200 +/- feet south of NH Route 9. As well as access to the Class VI Portion of the Old Gilsum Road starting approximately one mile from the Gilsum Town Line and going north, (“Premises”) for the following purpose: for a snowmobile trail, and under the following conditions: Said use shall commence on December 15, 2022, and expire on March 30, 2023, and is subject to the following conditions: the signing of a revocable license and indemnification agreement; and the submittal of a certificate of liability insurance in the amount of \$1,000,000, naming the City of Keene as an additional insured.

In addition, the Keene SnoRiders, Inc. will be responsible (including cost) for the installation and maintenance of all signage/markings, which will be in accordance with Snowmobile Trail Standards published by NH Department of Business and Economic Affairs; that all signage/markings installed shall be removed from the City right-of-way and City property when there is no longer any snow cover, no structures, including buildings, shelters, lights, displays, walls, etc. shall be permitted with the City right-of-way or on City property; no parking of motor vehicles or trailers and no catering servicing activities of any kind shall be permitted within the City right-of-way or on City property; grooming shall not extend outside the right-of-way of Krif Road, snow windows shall be groomed to provide adequate sight distances and a gentle sloping approach at all road and driveway intersections; no part of the City Street (paved surfaces) may be used by off-highway recreational vehicles (OHRV) or their operators for any purpose, other than direct crossing; and that Keene SnoRiders, Inc. shall be responsible for the repair of any damage (including costs) and the City right-of-way and property shall only be used when there is snow cover.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Planning, Licenses and Development Committee, Standing Committee
Through:
Subject: **Memorandum of Understanding – Retaining Wall – Woodbury and Washington Street – City Manager**

Recommendation:

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended authorizing the City Manager to do all things necessary to execute a Memorandum of Understanding between the City and the Community College System of New Hampshire with respect to the retaining wall abutting the property owned by the Community College and adjacent to Woodbury Street; and further to authorize the City Manager to do all things necessary to negotiate and to execute permanent cross easements for the construction, and future maintenance of the wall by the Community College, and for improvements to Woodbury Street by the City.

Attachments:

None

Background:

Chair Bosley heard from the City Manager, Elizabeth Dragon, who said that she was looking for authority from the Council to execute both a Memorandum of Understanding with the Community College and to execute some cross easements. River Valley Community College owns the property at 438 Washington Street and the College has been in the process of attempting to sell that property because they moved onto the Keene State College campus some time ago. Questions arose about the ownership and maintenance of a retaining wall that meanders between private property and the City's right-of-way. She believed the wall was constructed to support the Roosevelt School construction some time ago; the ownership had been transferred since then. Staff agreed that both entities have interest in this wall and its stability; if removed, it would require re-sloping and would violate the viability of the existing building. Failure of the retaining wall would also impact access to Woodbury Street. The City Manager provided photos of an engineering evaluation conducted by the school. The City indicated to the school that the City has no interest in ownership of the wall, but they are interested in the associated guardrail and sidewalk located in the City right-of-way. Therefore, they came to an understanding, and she asked the City Council to grant her the authority to execute a Memorandum of Understanding with the Community College system. The college agrees to repair the wall and to ongoing ownership, and the City will repair and do the ongoing maintenance of the guardrail and sidewalk in the City right-of-way adjacent to the property along the top of the wall. As a part of this agreement, the City seeks Council permission to execute a cross easement for

construction and future maintenance by the College in the right-of-way and of the guardrail and other improvements the City will need to go onto their property to address.

No representative of the school was present to speak.

Chair Bosley asked whether the agreement included a time frame for the repairs. The City Manager said no, she was unsure the repairs would occur before the property is sold and she knew the College was looking for this agreement so whoever purchases the property knows they agree to complete the repairs; the City is responsible for the guardrail and the sidewalk. When the engineering report was made, Chair Bosley asked if the City was given any indication of the lifespan of the wall. The City Manager said surprisingly, it is not in terrible condition. The engineering report was by HL Turner, and they classified it in good condition, but it needs some work. She did not think it would be extremely difficult to complete that work but that the harder part would be for the City to build the new guardrail system into the wall.

The Chair asked whether the City should retain the ability to conduct their own engineering report, given the threats to the roadway if the wall failed. The City Manager said the College and City talked about working together when repairing the wall and conducting the City work and the College was very open to sharing an engineering report or the City undertaking its own. Councilor Jones asked whether the Memorandum of Understanding would carry over to the new purchaser and the City Manager said that was the intent.

Hearing no public comments, Chair Bosley entertained a motion by Councilor Johnsen, which was duly seconded by Councilor Jones.

On a roll call vote of 5–0, the Planning, Licenses, and Development Committee recommended authorizing the City Manager to do all things necessary to execute a Memorandum of Understanding between the City and the Community College System of New Hampshire with respect to the retaining wall abutting the property owned by the Community College and adjacent to Woodbury Street; and further to authorize the City Manager to do all things necessary to negotiate and to execute permanent cross easements for the construction, and future maintenance of the wall by the Community College, and for improvements to Woodbury Street by the City.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022

To: Mayor and Keene City Council

From: Jeffrey Chickering, Deputy Fire Chief

Through: Donald Farquhar, Fire Chief
Elizabeth Dragon, City Manager

Subject: **FY 2022 Homeland Security Grant Award for the Wide Area Air Monitoring System - Fire Chief**

Recommendation:

Move that the City Council suspend its Rules of Order to allow action on the request to authorize the City Manager to do all things necessary to accept and expend \$131,571.00 awarded under the FY 2022 Homeland Security Grant for the Wide Area Air Monitoring System.

Attachments:

None

Background:

On September 30, 2022, the City of Keene Fire Department was notified by the New Hampshire Department of Safety that the Keene Fire Department was awarded \$131,571.00 for Wide Area Air Monitoring System. The signature forms are expected to be signed and returned to the Grants Management Bureau within 30 days of the grant award date.

The City of Keene Fire Department Hazmat Team applied for these funds to support and improve our response capabilities following the National Response Priorities that have been established. At the same time, meeting the state objectives on improving firefighter safety and WMD/Hazardous Materials Response and Decontamination. The equipment will also expand our regional capabilities in response to these types of emergencies.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022

To: Mayor and Keene City Council

From: Jeffrey Chickering, Deputy Fire Chief

Through: Donald Farquhar, Fire Chief
Elizabeth Dragon, City Manager

Subject: **2020 Homeland Security Grant Program to Purchase Critical Infrastructure Water Related Catastrophe Equipment - Fire Chief**

Recommendation:

Move that the City Council suspend its Rules of Order to allow action on the request to authorize the City Manager to do all things necessary to accept and expend \$12,500.00 awarded under the 2020 Homeland Security Grant Program to purchase critical infrastructure/water-related catastrophe equipment.

Attachments:

None

Background:

On October 6, 2022, the Keene Fire Department was informed by the Department of Safety that we have been awarded \$12,500.00 for the purchase of approved equipment to assist with protecting critical infrastructures and responding to water-related catastrophes. The signature forms are expected to be signed and returned to the Grants Management Bureau within 30 days of the grant award date.

The City of Keene Fire Department applied for grant funds under the 2020 Homeland Security Grant Program - Critical Infrastructure-Water related catastrophe. The Keene Fire Department has been recognized by the State of New Hampshire for swiftwater and hazardous materials teams for many years. The City has made a significant commitment to funding the teams as well as supporting training, equipment purchases, and maintenance. This support has allowed the teams to continue to operate in a safe, efficient, and effective manner.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022

To: Mayor and Keene City Council

From: Jeffrey Chickering, Deputy Fire Chief

Through: Donald Farquhar, Fire Chief
Elizabeth Dragon, City Manager

Subject: **2022 Homeland Security Grant Program Award - Hazmat - Fire Chief**

Recommendation:

Move that the City Council suspend its Rules of Order to allow action on the request to authorize the City Manager to do all things necessary to accept and expend \$75,000.00 awarded under the State Homeland Security Program portion of the 2022 Homeland Security Grant Program for the purchase of eligible equipment.

Attachments:

None

Background:

On October 6, 2022, the Keene Fire Department Hazmat Team was informed by the Department of Safety that we have been awarded \$75,000.00 for the purchase of approved HazMat equipment. The signature forms are expected to be signed and returned to the Grants Management Bureau within 30 days of the grant award date.

The City of Keene Fire Department HazMat Team applied for grant funds under the State Homeland Security Program portion of the 2022 Homeland Security Grant Program to continue to support and improve our response capabilities following the National Response Priorities that have been established. At the same time, meeting the state objectives on improving firefighter safety and WMD/Hazardous Materials Response and Decontamination. This equipment will also expand our regional capabilities in response to these types of emergencies.

The State of New Hampshire has recognized the Keene Fire Department as one of the State's Hazardous Materials Teams for many years. As a result, the City has committed significantly to funding the team and supporting training, equipment purchases, and maintenance. This support has allowed the teams to continue operating safely, efficiently, and effectively.



CITY OF KEENE NEW HAMPSHIRE

ITEM #G.1.

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Corinne Marcou, Administrative Assistant
Through: Patricia Little, City Clerk
Subject: **Resignation of Katie Sutherland from the Building and Housing Boards of Appeal**

Recommendation:

Attachments:

1. Katie Resignation Letter

Background:

Katie Sutherland has submitted her resignation as a member of the Building and Housing Boards of Appeal as she has moved from Keene.

Corinne Marcou

From: Katie Sutherland <katie@kcs-architects.com>
Sent: Wednesday, October 12, 2022 5:28 PM
To: John Rogers; Corinne Marcou
Cc: Eli Mead; Jon Graves
Subject: Resignation

Dear John,

As I have recently moved my residence to Chesterfield, NH, I will have to resign from Keene's Building Board of Appeals and Housing Standard Board of Appeals.

Both Eli Mead and Jon Graves, who have worked with me for years, are Keene residents and would be interested in learning more about this opportunity, in case you need more members or alternates. They are copied here.

Thank you for your understanding,
Katie

Katie Cassidy Sutherland AIA / LEED AP
kcs ARCHITECTS
310 Marlboro Street
Keene, NH 03431

(603) 988-6853 mobile
(603) 439-6648 office



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Mari Brunner, Senior Planner
Through: Jesse Rounds, Community Development Director
Subject: **Relating to Amendments to the City of Keene Land Development Code Ordinance O-2022-09-B**

Recommendation:

Mayor Hansel made a motion to find that ordinance O-2022-09-B is consistent with the Comprehensive Master Plan. David Orgaz seconded the motion, which passed unanimously.

Chair Bosley made a motion asking the Mayor to set a public hearing date on the ordinance. Councilor Johnsen seconded the motion, which passed with three in favor and one opposed, with Councilor Jones voting in opposition.

Attachments:

1. Ordinance O-2022-09-B
2. O-2022-09-B_Redline version

Background:

Included below is an excerpt from the draft minutes of the October 17, 2022 Joint Planning Board and Planning, Licenses and Development Committee meeting where this item was discussed:

Ordinance O-2022-09-A – Relating to amendments to the City of Keene Land Development Code. Petitioner, City of Keene Community Development Department, proposes to amend sections of Chapter 100 “Land Development Code” (LDC) of the City Code of Ordinances to change the minimum lot size in the Rural District from 5 ac to 2 ac; Display uses that are permitted within the Conservation Residential Development subdivision (CRD) regulations in Table 8-1 and the “Permitted Uses” sections of the Rural, Low Density, and Low Density-1 Districts in Article 3; Modify the density factor and minimum lot size for the Rural District within the CRD regulations to 2 ac per unit and 32,000 sf, respectively; Add density incentive options to the CRD regulations, including an open space density incentive, a solar incentive, and workforce housing incentive; Modify the permitted uses within the CRD regulations for the Rural District and Low Density-1 District to include multifamily dwelling with limitations; and, Remove the requirement to submit a “Yield Analysis Plan” and add additional submittal and filing requirements for CRD applications in Article 25.

Chair Bosley asked staff to present. Jesse Rounds, Community Development Director, addressed

the Committee. He said that this is the second time that staff has come before the Committee to discuss this ordinance at a public workshop, and thanked everyone for coming. Tonight, staff will go over the ordinance as it is written; however, staff are recommending that a segment of the ordinance be split off, specifically, the change to the Rural District minimum lot size, and that the ordinance move forward with just the changes to the Conservation Residential Development Subdivision (CRD) regulations. He said that staff hope the Committee will vote on the ordinance with this change tonight.

Mari Brunner, Senior Planner, addressed the Committee next. She said that, to reiterate what Mr. Rounds said, staff are recommending at this time that the Committee separate out the Rural District portion of the ordinance and put that on a separate track. She referred to a presentation, and said that this presentation will focus on the proposed changes to the CRD regulations. However, if there are any questions about the proposal to reduce the minimum lot size in the Rural District from five to two acres, which again staff are recommending should be separated out from the ordinance at this point, she is able to answer questions and has prepared slides.

Ms. Brunner said she will give an overview of the Rural District and the CRD Regulations, then review the proposed changes to CRD. She started by reviewing the intent statement for the Rural District, which states "*The Rural (R) District is intended to provide for areas of very low density development, predominantly of a residential or agricultural nature. These areas are generally outside of the valley floor, beyond where city water, sewer and other city services can be readily supplied.*" Next, she reviewed the current dimensional standards, none of which are proposed to change if the minimum lot size portion of the ordinance is separated out. She referred to a map of the Rural District, and noted the location of points of interest to help people orient themselves (Central Square, Goose Pond, Keene High School, Keene YMCA, and Langdon Place). The areas shown in green are all zoned "Rural." She said that these areas are generally out of the valley floor, and showed a map that shows the extent of City sewer and water, which illustrates the fact that there is not much overlap between City water and sewer service and the Rural District.

Ms. Brunner continued, saying that there are 1,121 parcels in the Rural District (this increased slightly with the new data for this year). She referred to a pie chart that shows parcel counts by size range and a pie chart that shows the percentage of parcels that are conforming with respect to lot size (42%) and non-conforming with respect to lot size (58%). Chair Bosley asked for clarification on what it means for a parcel to be non-conforming. Ms. Brunner said this chart is showing parcels that are non-conforming specifically with respect to lot size, which means they are less than 5 acres in size. These are the parcels that are non-conforming today. She noted that staff felt this was an important statistic to know because having a non-conforming lot restricts what a property owner can do with it.

Ms. Brunner discussed development constraints within the Rural District, and said that staff attempted to map these constraints to the best of their ability, but she noted there are constraints that they cannot map. The first constraint is parcel size – if a parcel is less than 10 acres in size, it cannot be subdivided today without a variance because the minimum lot size is 5 acres. In addition, a lot must have both frontage and access on a Class V road or better in order to be developed, and conservation easements can also prevent any future development. A major constraint is the presence of surface waters on a property – these include wetlands, rivers, streams, lakes, ponds, vernal pools, etc. and property owners are required to maintain a 75 foot buffer around all of these. Staff does not have all of these surface waters mapped, but the City does have a wetlands map that is shown. And finally, steep slopes greater than a 25% grade cannot be developed, and precautionary slopes (between 15-25% grade) are limited in what can be impacted (up to 20,000 square feet per parcel). The final map shows all of these features overlaid on the Rural District map. Ms. Brunner said that everything shown in green is what is left over and can theoretically be

developed. Chair Bosley asked what the percentage of the map was grayed out. Ms. Brunner said that staff were not able to do an analysis to calculate the area that was grayed out, however it is a significant amount. She noted there are further constraints that are not shown, so the point that she is trying to make is that development in the Rural District is very challenging.

Pamela Russell-Slack asked Ms. Brunner to show the map of land-locked parcels, and asked for confirmation that they are not developable. Ms. Brunner said that is correct; they need frontage to be developed. Councilor Jones said that, to put the steep slope numbers into perspective, Chesterfield Hill is a 9% slope, so the 15-25% slope areas are very steep. This is why they aren't buildable. Ms. Russell-Slack said another comparison is the property on Route 9, as you turn off Winchester Street going toward Concord, that land cannot be built upon due to steep slopes.

Ms. Brunner gave an overview of the CRD Subdivision regulations next. The purpose of these regulations is to create an opportunity for development to occur in the Rural, Low Density, and Low Density 1 districts in a way that will protect environmentally sensitive areas such as wetlands and steep slopes. It does this by allowing for greater flexibility and creativity in the design of the development. She referred to a graphic that illustrates this concept. The image on the top is a piece of land that was subdivided as a conventional subdivision, whereby the entire parcel of land is divided up into individual lots and you are left with the entire parcel being developed into a certain number of dwelling units. The bottom image shows the same parcel of land that is developed as a CRD subdivision. In this case, the dwelling units are clustered closer together and a portion of the land is conserved as green space. Overall, the developer gets the same number of units, but at least 50% of the land is put into conservation. This is the idea behind a CRD subdivision. She reviewed the terminology for CRDs, including tract (starting piece of land), lots (new parcels created as part of the subdivision), open space (land permanently conserved), and primary conservation areas (wetlands & surface waters, slopes greater than a 25% grade, floodways, & springs).

Next, Ms. Brunner showed a table with the dimensional standards for CRD subdivisions. The table is split into two sections – there are dimensional standards for the starting tract of land, and standards for the new lots that are created. She noted that the tract must be at least 10 acres to start in the Rural District, or 5 acres in Low Density or Low Density 1. She also showed a table with the CRD density factors, which are used to calculate the maximum number of allowed units for a CRD subdivision development. She noted that the method for calculating the number of units used to be done using a “yield analysis” method; however, this process is difficult and adds expense to the process. The density factor method is simple and works well – to get the maximum number of units, you divide the tract size by the density factor. Next, Ms. Brunner reviewed the permitted uses within the CRD regulations, which allow for greater flexibility in housing type. She said that in the underlying zoning districts for Rural, Low Density, and Low Density 1, only single family homes are allowed. CRD allows two family, and in Low Density, multi-family with up to 6 units are allowed. The open space uses are restricted to conservation, agriculture, forestry, or passive recreation.

Ms. Brunner said that she is now going to talk about the changes that are proposed within the CRD regulations. She said that staff are proposing to add what they are referring to as a “menu of incentives” to the regulations. The intent of these incentives is to encourage developers to build developments that provide a public benefit in return for an increase in the number of units they can include in a development. There are three options proposed, and the total allowable density bonus is proposed to be capped at 30%. The first density incentive option is for open space. The starting tract must be at least 10 acres, if the developer conserves at least 65% of the area as open space (up from 50%), they get a density bonus of 10% or 1 unit, whichever is greater.

The second density incentive option is the “solar friendly subdivision” option. The developer would need to meet specific criteria, in return they would get a density bonus of 10% or 1 unit, whichever is

greater. The third option is for workforce housing. For this one, due to the challenges with developing workforce housing, the developer would need to meet the workforce housing criteria and in return they would get a density bonus of 20% or 1 unit, whichever is greater. In addition, they could build triplexes (3-unit multifamily buildings).

Ms. Brunner said that the goal of option 2 (solar friendly subdivision) is to encourage the installation of solar photovoltaic (PV) energy systems in new construction. It is based on the premise that the ideal orientation to harvest solar energy is within 30 degrees of true south. The proposed criteria for the solar friendly subdivision include:

- 50% of lots must be “solar oriented,” which is defined as having the longest lot line dimension oriented within 30 degrees of a true east-west line.
- Dwelling units on solar oriented lots must be oriented so the long axis faces within 20 degrees of true south
- For each dwelling unit on a solar-oriented lot, 4 kW of solar PV must be installed. Ms. Brunner noted that the solar PV must be installed within the development, but not necessarily on the same lot at the dwelling unit, and it could be roof-mounted or ground-mounted.
- Where practical, roads shall be oriented within 30 degrees of east-west orientation.

The submittal requirements for this option include a description of how the development meets the criteria she just reviewed as well as a solar access plan. The intent of the solar access plan is to demonstrate that building areas or structures on solar-oriented lots would get enough sunlight for solar PV to be feasible.

The third incentive option is for workforce housing. The goal of this incentive is to encourage new developments that provide workforce housing as part of the mix, and to provide a diverse supply of home ownership and rental opportunities to households that are low or moderate income. Within this ordinance, “Workforce Housing” is proposed to be defined as for-sale housing that is affordable to a household of four earning up to 80% of the HUD Area Median Income (AMI) or rental housing that is affordable to a household of three earning up to 60% AMI. Ms. Brunner said that these numbers for Cheshire County right now are a sale price of \$233,500 for a family with an income of \$71,280, or a rental price of \$1,200 (including rent and utilities) for a family of three with an income of \$48,110. The proposed criteria for owner-occupied units includes the following:

- 20% of dwelling units must be Workforce.
- Units sold with deed restriction & recorded housing agreement that names an Income Verification Agent to verify purchaser meets the income requirements.
- Resale value restricted to the affordable purchase price for a period of 30 years. In addition, the resale value of the unit is not to be more than the original purchase price plus two times the accumulated consumer price index.
- Workforce units must be approximately of the same size, character, quality, etc. and be evenly distributed throughout the project.
- Affordability defined as housing that can be purchased under a conventional mortgage whereby the combined annual expenses for principal, interest, property taxes, homeowner’s insurance and condominium fees (if applicable) will not exceed 30% of household income.

The proposed criterial for rental units includes the following:

- 20% of dwelling units must be Workforce.

- Units sold with deed restriction & recorded housing agreement that names an Income Verification Agent to verify renter meets the income requirements.
- Rental value restricted to affordable rental price for a period of 30 years.
- Workforce units must be ~same size, character, quality, etc. and be evenly distributed throughout the project.
- Affordability shall be defined as housing that can be rented whereby the combined annual rental and utility expenses will not exceed 30% of household income.

Finally, the submittal requirements would include a written request for the density incentive that includes a calculation of the number of units provided under this section and a description of each unit's size, type, number of bedrooms, estimated cost, location within the development, and other relevant data, as well as a written statement describing how the proposed development will meet the criteria described previously. In addition, the Planning Board can request additional information if the Board deems it is necessary. Filing requirements would include written documentation of any legal instruments required to demonstrate compliance with the criteria of any and all optional density incentives granted by the Planning Board. Such documents shall be submitted to the Community Development Department and are subject to the review and approval of the City Attorney prior to signature.

Mayor Hansel asked what would happen in the case where a property owner has a deed restriction on their property, then the City changes the code later on to be either less restrictive or more restrictive. The development would be under the code from when it was built due to the deed restriction, correct? How would the owner deal with that? Could the current owner change the deed restriction? Ms. Brunner said that the owner would be beholden to the deed restriction and the rules that were in place when the property was developed. Evan Clements, Planner, added that all projects are beholden to the zoning under which they were approved, including any workforce housing developments. In addition, the City itself is listed as party on the restrictive covenant and is able to amend it as needed. The owner can work with the City to make changes to the deed restriction. The restrictive covenant is a legal document where the City is a named party that is negotiable down the line. For example, if a property owner moves and needs to rent out their property for a period of time, then that is something they can work out with the City. Ms. Russell-Slack asked who at the City the property owner would work with. Ms. Brunner said the property would reach out to the Community Development Department in the first instance, then work with the City Attorney's Office to amend the covenant. Ms. Russell-Slack clarified it would not go back to City Council or the Planning Board. Ms. Brunner said that is correct; however, any changes would need to be consistent with the regulations on the books at the time.

Chair Bosley thanked staff and said that this Committee has heard this presentation before and has had a lot of their questions answered already. However, she said she hopes members of the public will come speak and ask any questions. Although this is not a formal public hearing, she asked if anyone from the public would like to speak. Councilor Johnsen said that she would like to apologize for her comment at the public hearing, she realizes that sometimes it is difficult for people to follow along and know what is going on.

Chair Bosley said that there are two portions of the ordinance, the first issue is the 5 acres to 2 acre lot size, which will most likely be removed tonight, and the second is the changes to the CRD regulations which staff just reviewed. She asked that people identify which issue they are referring to in their comments.

The first speaker was Tad Lacey, 241 Daniels Hill Road. Mr. Lacey said he is on the fence with

respect to CRDs. Where he sits on the fence is where they are located. He thinks the City could accidentally approve something in some far-flung place that technically meets the requirements, but the City may wish it didn't. He said he didn't know whether a little more investigation of what, exactly, it means to have a CRD in the Rural zone should be done. He owns a piece of property at the end of a town-maintained road, which could potentially be a CRD. He thinks it would be a bad idea to do a CRD here because it would add significant costs to the City to maintain the road, for example. This should be analyzed more. With respect to workforce housing, we are all hearing what a bad situation it is worldwide. He noted that most communities have not solved this problem. He personally thinks that workforce housing and affordable housing should be inside the existing infrastructure for two reasons. First, if people start having failures of their well and septic – it would be better for them to be on City service. Secondly, he is thinking of kids on bikes, they will want access to City parks. Therefore, he doesn't think the uses allowed for CRD make sense. Finally, he is aware the Governor approved quite a bit of money for investigating this issue, and the City received some funding, and suggested that the City should wait until that investigation is done before moving forward with this proposal.

Ms. Russell Slack asked if Mr. Lacey was referring to Invest NH. Mr. Lacey replied he wasn't sure. Ms. Russell Slack said that the Invest NH program is federal funding that the state received that the Governor is using for housing, but it is only for projects that are ready to go. Mr. Rounds added that the City applied for and received funding for a Housing Needs Analysis (\$15,000) and additional funding for regulatory development. This will be an ongoing project, it is part of a larger effort to find solutions, and the discussion tonight is just one small part of this overall solution. Mr. Lacey thanked staff for the information and said that he thinks workforce housing should be inside the infrastructure. He also thinks the other CRD uses should be investigated more because they are going to cost more, especially with respect to road maintenance.

Bobby Williams, Ward II City Councilor and resident at 66 North Lincoln Street, spoke next. He looked at what the Town of Amherst is doing with density multipliers – they have been recommended as one of the best examples in the state of what is already happening. They have quite a list of density multipliers, including for workforce housing, having open space be accessible to the public, etc. The item he would like to see is for disability access which says that, if the development meets ADA, the developer could get a density bonus of 15%. He thinks this would fill a critical need. If someone is in a wheelchair, they are much more limited in where they can live. He reiterated this is a density multiplier he would like to see.

Eloise Clark, 1185 Roxbury Road, spoke next and said she is pleased that the Committee is considering splitting off the 5 acre to 2 acre change. She said it is really important to go slow. These are the types of areas that, if they get developed, you don't know what you lost until it is gone. She wanted to emphasize what others have said about staying within the already built infrastructure. She would like to see the Committee focus on other districts, wait five years to see how this goes, and monitor the situation to see how it plays out.

Derek Scalia, 16 Hillside Avenue, spoke next. He thanked the Committee members for their service to the community, and said he was here as a person of faith and a member of the Monadnock Interfaith Project (MIP). He is speaking in support of the ordinance change, primarily for the acreage change but also the changes presented this evening. For several years he has been studying alongside MIP and others on the causes of housing insecurity and factors contributing to the housing crisis. What he learned is that the issue is very complex – there is no one solution or ordinance that will solve everything, it will take a lot of creativity and many changes to make that impact. He also comes forward as a deep lover of the environment and this region. He recognizes that the rural identity is something special – how could we not celebrate that, especially in this region and at this time of year? He appreciates everyone who advocates for green spaces and our environment. He

said that, for him, this is not a binary issue. One of the benefits of the system that we have is that there are checks and balances inherently in our coding and regulations and ordinances that we have in place to protect our wetlands and other development constraints, to preserve our environment and the integrity of this region. Just because land may qualify due to its acreage, doesn't mean that it will actually go through because of the other ordinances in play. This ordinance, to him, opens up possibilities to address housing needs while maintaining our rural identity and green spaces. It won't be a cure-all, but it is a step forward. As we are debating these issues, our region is suffering and more importantly, people are hurting and we have a requirement, a duty, to serve those. He stands in support of this ordinance.

Janet Furcht, 614 Park Avenue, spoke next. She has been on the MIP housing team for a few years now and they have been studying this issue for a while. They are most concerned about people with less than 60% AMI, and she is happy to see the focus on workforce housing and asked that they not lose sight of that. With respect to CRD, she said that the city is putting in lots of protections for surface waters, steep slopes, etc. so as housing is developed, these environmental areas are protected. With respect to the comments about only adding housing where infrastructure already exists, she questioned whether the existing infrastructure has the capacity to significantly increase the volume housing and the sheer number of units. She said that we know what the problem is with housing insecurity and people not being able to find a place to live – workers can't find a place to rent or a place to buy. We simply do not have enough units. People coming in cannot find a place to live, affordable is another factor, but even just having enough units is a problem – they simply do not exist. We've heard this from employers, major employers, time and time again. A major employer in Peterborough is buying land on 202 and building their own housing. We hear about this happening in Jaffrey. We need to do something to have people come here and work in our companies so they continue to exist and thrive. Lastly, she expressed support for the comments regarding incentives for ADA. She noted that much of the older housing stock in Keene is not accessible and is as far from ADA compliant as you can get, and at the same time, this is the housing that is considered affordable. If you are living in a wheel chair, which she had to do for a few years, you become isolated, you become housebound, you become physically and emotionally not well, so if we can provide more opportunities for our neighbors who are living with these limitations on their lives, that would be a really great thing. She really appreciates this issue being brought up.

Cole Mills, 68 Langley Road, spoke next. He said he is here because he thinks workforce housing should be done in the City center where there is infrastructure and walkability. Outside the city center, it isn't walkable – where he lives they just got high speed internet, and the roads are narrow. He said that he deliberately picked a rural neighborhood in Keene with space between him and his neighbors. With this ordinance, he could be living next to a condominium with a tremendous amount of traffic usage – school buses, car trips, also services that support the neighborhood. This will take a scenic road in Keene that is very special, and burden it with heavy traffic, which will require upgrades. There is also the issue of emergency services. When Horatio Colony has events, it creates congestion and it becomes difficult to navigate the roads.

Mr. Mills also noted that it is very expensive to build right now, so to do workforce housing you have to build multi-family or manufactured housing. Single family homes aren't possible. He said he looked at the homes available in Keene right now, there are 48, and 27 are less than \$300,000. Some of these may not be in great condition, but he remembers his first home and it was a lot of work. They had to re-do bathrooms, kitchens, etc. realizing that a first home requires effort. These homes are available here. He said that a lack of housing is not the issue, the issue is that we are geographically undesirable. He's had people say they didn't move here because the schools aren't as good as in New Jersey, they would have to drive an hour to get a haircut or get their car serviced, there is no place in town to buy a suit. We don't offer services, and that stops people. He said that nurses are paid quite well here and they can afford to buy houses here, but they don't want to because of the

location and the lack of convenience. He said that going from 5 acres to 2 acres won't solve it all. However, it might take beautiful, scenic neighborhoods and destroy them. He also said that Keene has one of the highest tax rates. If the lot size change goes through, that will split his land into two buildable lots, which will add \$50,000 to his tax bill. It doesn't solve the problem. We have more housing in Keene than we have ever had, thinking about all of the buildings that have been converted – Cracker Factory, old Keene Middle School, etc. – and Keene State College's population is down. Our overall population is also down, and we have more housing than ever, so there isn't a housing shortage. He also noted that we are an aging population and the housing crisis is a temporary thing. We will see a big turnover in the next 10-15 years as the baby boomers age out, making this housing available for the next generation.

Mr. Mills said that he is disappointed that Ms. Brunner and other members of staff who worked on this are not large property owners who own property in the Rural District. They don't have any investment in the community, they are renters, and they don't understand what makes the neighborhood or community special. The figures they are using aren't updated, no one can build those unless they are condos. Also, bringing kids into the school system, this places a burden on the rest of the tax payers. He also said that the conversation on deed restrictions was enlightening – it's a contract that can change. The CRDs do protect areas, but they condense housing which changes the feel of the area. These uses should be inside the infrastructure where they fit with the neighborhood feel. He noted that he could probably qualify for workforce housing because there is no asset test, so as a retiree he could exploit that. Other people could exploit this as well, for example for Air BnB and short term rentals. In conclusion, he asked the Committee not to change the acreage from 5 to 2, that they think about workforce housing only in areas of the city that can afford it, and with CRD, they look at putting those in areas where they fit the neighborhood.

Laura Tobin, Center Street in Keene, spoke next. She said she wanted to speak to both issues, and specifically to the workforce housing issue. She said that, right now, it is not possible to accommodate everyone without sacrifice, and right now it is people that are being sacrificed and pretty soon this will become apparent. She said that, yesterday, she went for a walk and overheard someone at CVS saying that she cannot afford her housing and she will have to pick up more shifts, which for her means she'll have to drive to another store. She also ran into two homeless people on this walk. Then, her friend called who had just had a baby. She is a behavioral therapist in the school. Right now, she can afford childcare, but she cannot find it. The reason is that childcare workers are paid \$11-\$15 per hour, which is not enough to afford housing in this area. Next, Ms. Tobin went to visit urgent care, someone walked in to get a Covid test, and they couldn't give him one because they didn't have enough providers available. She ran into two police officers who said they weren't able to respond to a couple calls she had made because they are short-staffed, so they have to divide themselves. Staffing is a problem with childcare. She knows of a person who was told to leave school because there is no childcare for her, her friend won't be able to return to work because of childcare, which comes back to housing. What she's suggesting is that, when you mention the aging population, those are the people that are going to be suffering with no nurses, with teachers who cannot be teachers so the schools will suffer, all these places will be short-staffed. She said she has lived in Keene since she graduated in 2006. She has come to accept that, even with a college degree, she will never be able to afford buying property and part of that comes back to rents being so high. She hears that there are homes available for \$300,000, but those aren't starter homes. When that segue/flow is interrupted – when starter homes aren't available, people are in apartments longer, which means they are available. These things are all connected. In terms of nurses being paid well – that may be true in some cases, but she knows that the County used ARPA funds to raise their minimum wage to \$15, which is low income, and so County employees are not necessarily ever going to be able to buy a home either. She said that we all have different strengths and skills. She loves this community and she does her best to show up when she can. For some people it is a sacrifice, and it is a balancing act. She was at a meeting at the Savings Bank of

Walpole regarding housing a couple weeks ago. A senior lender said he moved to Keene 37 years ago and this was a conversation then. This issue isn't something new, and it's been difficult to find an answer that works. There's a band aid that needs to be ripped off. It's true that communities everywhere are struggling with this, she would like to be a part of a community that decides it is worth it to fix this issue because we need these people.

Matthew Hall, 431 Hurricane Road, spoke next. He said this is a complex subject, and he understands there are many people tugging the Committee this way and that. He'd like to get back to the core of this. What is the purpose of this change? Is the purpose to puff up the tax base? Are we trying to solve a workforce problem? And, is a workforce housing the same thing as an affordable housing problem? He has been there, trying to find an affordable place to rent or own, he understands that. At the same time, we have things that are influencing the problem that we have no control over. One issue is people who own multiple single-family homes, quite a few, it is one of the hottest real estate investments. Don't look at people in the Rural zone as holding us back – we're not – there are other factors. Should we start taxing homes that aren't the primary occupancy? When you go to buy a house, who are you bidding against? Someone in New Jersey or California? Who is buying these houses, and is that driving the cost of these homes? And, what can we do about it? Probably nothing. He is concerned about flipping of workforce housing. He asked what is workforce housing, which will vary based on interest, taxes, insurance, you may be today selling a workforce house and it won't be workforce tomorrow. A lot of people don't make \$75,000, which you need to own a home. If you want to maximize livable space available, take a larger home on water and sewer and add units without changing the external structure. That will be a much better value than building where you need a wetlands permit, septic, wells, etc. Also, it is farther away so you'll need a car. Affordable housing in the Rural District is a challenge. You also need consider elderly people who are just hanging on, some of them live on the hillside, if you raise their taxes it will force them out of their home. If you force people by taxation to sell off property, then what happens if their well or septic is on one of these spaces that you call another lot? Who draws these lot lines? Does the homeowner get to have a say in what portion of the lot lines they keep? We're assuming each lot is a perfect rectangle with no wetlands or steep slopes. Suppose they gerrymander it, they keep all the good land and sell the wetlands and steep slopes? There is a lot of trouble in there. We've had trouble on Hurricane Road with excess water to the point where the school bus couldn't get through, due to new development, there were five driveways that were trouble. It was unpleasant, water's an issue now, and it's getting worse. Ask the city how often they have to fix the ditches that go under the road. He said that variances can be questionable where sometimes promises are made, but they are questionable. There are laws, such as not allowing any runoff from a property but how often does the City check that? There are other issues – is the top correct? Or, do they hit ledge? Did they put in proper water measures, or is it running onto their neighbor's land despite what the engineer says? There are problems. At the end of the day, none of this is going to help a person in a homeless shelter. First home buyers have a big problem bidding against people in California and Russia. He thinks this is hasty, the Committee should consider the Master Plan, staff report 2017-10 where it spells out some of these concerns. Mr. Hall read a statement from the Master Plan regarding infill development and how it should be consistent with existing development patterns, and noted the state has a similar statement. He reiterated that development where city sewer and water is important. He asked the Committee to consider the existing structures within town where we can, for less money, provide an incentive to put in an apartment, maybe lower their taxes a little to add an apartment and create more infill develop.

Gary Warewine, 411 Hurricane Road, was next. He said that we live in a crisis, let us not forget that. The deliberations he has heard tonight are very polite and not very crisis-oriented. We have to do stuff now. There's not enough money in this room, in the City of Keene, to do it by itself. It needs big money that comes from banks and bankers – he hasn't heard anyone talk about that. That is what will make changes. That will help us move into the vision that we as a community want. Otherwise,

we will just repeat the old problems until someone steps up and says we are going to make a change. He encouraged the Committee to start thinking about money – how to get it, where it comes from, and use it. Alternative housing for the elderly costs money, but it works. Where will it come from? He cannot afford that. He said there can be a lot of creativity when it comes to money. But that creativity will not be unleashed unless somebody begins to look at it. He is too old, but he assumes you are not.

Pat Gutierrez, 467 Hurricane Road, spoke next. She lives in the Rural District and she said they have been through a flood, a bear breaking into their garage twice, and speeders. She said they moved there because it is a beautiful rural area. They don't own a lot of land – it was given away as part of a divorce. She said that housing is at a crisis in the United States. Everyone is buying up housing and putting it in short-term rentals. Her question is – what prevents a person from renting out their house? Is there anything that will preclude them from doing a short-term rental on that property, because that is ruining the housing market in Vermont and elsewhere. Mr. Rounds said that there will be a deed restriction that will prevent this for 30 years. She said her other question is in relation to wetlands, the previous presenter said the City doesn't have wetlands maps, and she is curious because when she called the state about a wetland on an adjacent property, she was told the wetland didn't qualify for protections. Mr. Rounds said that the City does protect all wetlands, as long as they can be delineated by a wetlands scientist they are protected. However, if this property was developed before that regulation was in place, that regulation would not apply. Ms. Gutierrez asked when the regulations went into effect. Chair Bosley said that we are not here to debate a specific project. Ms. Gutierrez thanked the Committee for their time.

Chair Bosley asked if anyone else would like to speak. Seeing none, she closed the public comment portion of the workshop and asked for Board deliberation.

Chair Bosley said that she wrote a few notes as people were speaking. There were some comments about none of us having “skin in the game.” She said that she is a landowner in the Rural District, and she is aware of others sitting up here who have similar opportunities, and she noted that we all discuss these topics with the best interest of the City in mind. She also said that this committee, over the past several years, has painstakingly worked on many areas of the code, and the Rural area is not being targeted specifically. They have looked at downtown core, downtown transition, institutional areas, industrial areas, this is a process where they are looking at the entire city. As they create opportunities in one area, you may be shifting folks from one area to another area, but if you don't create opportunities for units to be developed, none of that movement can happen. There are people who want to move here, possibly remote workers, because this is a beautiful and desirable place to live, and this puts a strain on the people who already live here. We are trying to create opportunities for housing stock in our community for police officers, nurses, firefighters, for all sorts of people. These units are not affordable – there is a distinct line between affordable and workforce, workforce is for people who are working regular jobs, they don't have vouchers, they are first time homebuyers, possibly divorcees – this is just one menu item. There are other developments that could occur without any workforce. We are not solely targeting the Rural District – we've increase heights in the downtown, we've allowed apartments above commercial buildings, so we are looking at this holistically.

Chair Bosley said that she appreciated the comments about accessibility. She asked Ms. Brunner if staff discussed this. Ms. Brunner said that staff did not discuss this; however, her understanding is that the building code does require accessible units for multi-family units, but Mr. Rogers may be able to provide more information. Mr. Rogers addressed the Committee and said that the building code does dictate which unit must be accessible, this is only required for multi-family which could be another benefit of allowing multi-family. Chair Bosley asked whether there are any density bonuses or incentives for accessibility; Mr. Rogers said there are not, but this is a possibility, especially as the

Committee looks at other districts.

Chair Bosley asked if the Committee is in favor of removing the five to two acres from this ordinance. Councilor Jones asked if this would create two ordinances. Chair Bosley said it would move the CRD changes forward as part of this ordinance, and the Committee would come back at a later point to the five to two acres discussion. Ms. Russell Slack asked if this means that the Committee would be continuing the five to two acre discussion. She thought it was getting split into two ordinances, and both would move forward as separate issues. Chair Bosley said the five to two acres would need to be re-submitted as a formal ordinance and it would need to come back to this Committee for another discussion and vote. Ms. Russell Slack said she is not happy this issue will come back again, as the Committee has already discussed this twice. Chair Bosley said that the City Council wanted to separate out these issues because there were concerns from the community about the five to two acres, and any time we can be transparent and do things in front of the public is better.

Chair Bosley asked Dan Langille, the City Assessor to discuss the land taxation issue. Mr. Langille addressed the board, and said that what they do in the Assessing department is guided by state statute and assessing standards, it is based on state policy, not City policy, and they are required to follow what the state requires. The next thing to understand is that taxes are based on market value. They are not predicting what the value will be, they are merely reporting what the market is telling them. They look at what properties sell for. They revalue properties every five years at a minimum. For example, they valued a property in 2021 at 300,000, even if it is worth more today, they don't adjust for today's market, so they are always keeping that base year in mind. When there is a zoning change, they have to take a look at how the zoning change affects assessed values. If a lot becomes "subdividable," they have to consider that, again based on what the market is telling us. It is based on the market from the base year (2021), not today's market. Chair Bosley said that her concern is that, what we are saying is that if someone has an 8 acre lot, that can only have one home, if we change the minimum lot size, all the sudden it could be subdivided, the City could suddenly tax the property as if it could be subdivided. However, we don't do this for other potential property improvements (such as adding a second story or a second structure).

Mr. Langille said that they have to tax a property based on its highest and best use. They look at a property based on what the general market says. They don't look at a property based on the specific owner or property, it is what the market is generally doing. However, he noted that it would be doubling or tripling the rate – there would be an increase, but it wouldn't be doubling or tripling. Chair Bosley asks where this policy is coming from. Mr. Langille said it is the policy of the state that they have to assess based on the market value. This comes from state law.

Chair Bosley asked if everyone is comfortable with removing the five to two acres from the ordinance. Councilor Jones asked if this would still be the A version. Mr. Rounds said, if the Committee removes the five to two acres, it would be a "B" version. Councilor Jones asked for clarification about separating out the two issues. Chair Bosley said that the CRD changes seem less controversial, if the ordinance is not split, she is worried about throwing out the baby with the bathwater. Ms. Russell-Slack asked, if this ordinance is split, what happens to the CRD? She would like to understand the next steps. Mr. Rounds said that, if the Committee directs staff to create a "B" version, staff can do that and remove the five to two acres and submit a B version without that language present. The two to five acres could come back later.

Ms. Russell Slack said that she wants to address the five to two acres now, she doesn't want it to start over and come back sometime later. She read off notes from the public testimony. She said that there is a housing crisis. If someone doesn't want to sell their land, then don't sell your land, but there are people who want to do that. The fact is, we don't have time to wait for five years. We're building a brand new housing shelter, we have seven shelters and we're building a new one, because the need

is there. She said that this is for workers, for firemen and teachers, corrections officers, etc. and if people have great ideas, they should bring them forward. This is a solution that is before us now. We have been trying to come up with a resolution, and she's sorry not everyone likes it, but it is not possible to make everyone happy. She is in favor of both of these portions of the ordinance. Chair Bosley said she would be open to moving both forward as two separate ordinances.

Ms. Brunner said that the Committee could either move both of these issues forward together as one ordinance, or they can modify the ordinance and create a B version, but they cannot split it into two ordinances. Chair Bosley asked if that means the process would have to start over from the beginning for the five to two acres, and have a first reading, public workshop, public hearing, PLD vote, etc. Ms. Brunner said that is correct. Ms. Russell Slack said she doesn't want this to be delayed much longer, and asked that the five to two acres come back for the November Joint Planning Board and PLD Committee meeting. Staff said they will try to do this.

Councilor Jones said that he has been opposed to the ordinance from the beginning. He read a section of the Master Plan regarding the transfer of development rights, and said he thought this is what people have been asking for. Ms. Russell Slack said she has a difference of opinion. Councilor Ormerod clarified that we will have one B version of an ordinance coming back for CRD, a new ordinance for the five to two acres that will be coming back. Chair Bosley said that is correct.

Mayor Hansel made a motion to direct staff to create a B version of O-2022-09-A removing the changes having to do with five acre zoning down to two acre zoning. Councilor Ormerod seconded the motion, which passed with 10 in favor and one opposed, with Councilor Jones voting in opposition.

Mayor Hansel made a motion to find that ordinance O-2022-09-B is consistent with the Comprehensive Master Plan. David Orgaz seconded the motion, which passed unanimously.

Chair Bosley made a motion asking the Mayor to set a public hearing date on the ordinance. Councilor Johnsen seconded the motion, which passed with three in favor and one opposed, with Councilor Jones voting in opposition.



CITY OF KEENE

In the Year of Our Lord Two Thousand and**Twenty-Two**.....

AN ORDINANCE **Relating to Amendments to the Land Development Code**

Be it ordained by the City Council of the City of Keene, as follows:

That Chapter 100 of the Code of Ordinances of the City of Keene, New Hampshire, as amended, is hereby further amended by deleting the stricken text and adding the bolded and underlined text, as follows:

1. That Section 3.1.5 “Permitted Uses” of Article 3 be amended to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Rural District.
2. That Section 3.3.5 “Permitted Uses” of Article 3 be amended to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Low Density District.
3. That Section 3.4.5 “Permitted Uses” of Article 3 be amended to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Low Density 1 District.

4. Update Table 8-1 “Permitted Principal Uses by Zoning District” in Article 8 to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Rural, Low Density, and Low-Density 1 Districts.

5. That Section 19.3.2.C “Density” of Article 19 be amended as follows:

~~C. Density. The maximum number of dwelling units allowed within a conservation residential development subdivision shall be determined by dividing the total area of the existing tract by the density factor per dwelling unit specified in Table 19-2.~~

1. The number of dwelling units allowed within a conservation residential development subdivision shall be determined by dividing the total area of the existing tract by the density factor per dwelling unit specified in Table 19-2.
2. A density bonus may be granted to developments that meet the criteria for one or more of the density incentives detailed in Section 19.3.6. In no instance shall a total density bonus of more than 30% above the standard allowable density be granted to any single development. This section shall not be waivable.

6. That Table 19-1 “Dimensional Requirements for Conservation Residential Development Subdivisions” in Article 19 be amended to change the minimum lot area for the Rural District from 1 acre to 32,000 square feet.

7. That Table 19-1 “Dimensional Requirements for Conservation Residential Development Subdivisions” in Article 19 be amended to add a footnote that states “New lots in the Rural District that are created as part of a CRD that are less than 1 acre in size may utilize an approved Subsurface Disposal System.”
8. Remove Section 19.3.2.D “Open Space Reserve,” sub-section 2 of Article 19, which states “Conservation residential development subdivisions in the Rural zoning district that permanently reserve 60% of the existing tract area or greater as open space shall be eligible for a density bonus, as noted in Table 19-2.”
9. That Table 19-2 “Density & Open Space Requirements” in Article 19 be amended as follows:

Zoning District	Density Factor per Dwelling Unit ¹	Min Open Space
Rural	4-acres 2 acres	50%
	3-acres	60%
Low Density-1 (without city water)	1 acre	50%
Low Density-1 (with city water)	20,000 sf	50%
Low Density	10,000 sf	50%

¹ ***Density bonus(es) may be granted as specified in Section 19.3.6***

10. That Table 19-3 “Conservation Residential Development Permitted Uses” be amended as follows:

Permitted Use	Rural District	Low Density-1 District	Low Density District
Single-Family Dwelling	P	P	P
Two-Family Dwelling	P	P	P
Multifamily Dwelling	P¹ (max of 3 dwelling units per structure)	P¹ (max of 3 dwelling units per structure)	P (max of 6 dwelling units per structure)

“P” = Permitted Use “-” = Use Not Permitted

P¹ = Use permitted with workforce housing density incentive

11. That a new Section entitled “Optional Density Incentives” be added after Section 19.3.5 of Article 19, as follows:

Section 19.3.6: Optional Density Incentives

Conservation Residential Development Subdivisions that meet certain performance criteria shall be eligible for a density bonus above the standard allowable density, up to a maximum of 30%. The 30% density cap shall not be waivable. If a density incentive is granted, the minimum lot size specified in Table 19-1 shall be waived.

- A. Open Space Density Incentive. Conservation Residential Development Subdivisions with a minimum tract size of 10 acres that permanently reserve at least 65% of the existing tract area as open space shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater.**
- B. Solar Density Incentive. Conservation Residential Development Subdivisions that meet the following criteria shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater:**
- 1. At least 50% of the lots shall be solar-oriented. A "solar-oriented lot" shall mean a lot with its longest lot line dimension oriented to within thirty (30) degrees of a true east-west line.**
 - 2. The long axis of all dwelling units on solar-oriented lots shall be oriented so that the long axis faces within 20 degrees of true south.**
 - 3. At least four (4) kilowatts of solar PV shall be installed for each dwelling unit on a solar-oriented lot.**
 - 4. Where, as determined by the City, topographic, environmental, and soil conditions, and existing street configurations permit, the predominant pattern of new streets in subdivisions subject to this section shall be oriented within thirty (30) degrees of east-west orientation.**
- C. Workforce Housing Density Incentive. Conservation Residential Development Subdivisions that meet the criteria below shall be eligible for a density bonus of 20% or one dwelling unit, whichever is greater. In addition, the permitted uses for a development that meets this section in the Rural District or Low Density-1 District shall include "multifamily dwelling" (max of 3 units per structure).**
- 1. Workforce Housing, Owner-Occupied. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**
 - a. Twenty percent (20%) or more of the units constructed will be sold at initial sale for a price that can be afforded by a household with an income not more than 80% of the HUD Median Area Income for a family of four in Cheshire County.**
 - b. Units will be sold with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the purchaser meets the income requirements. The resale value of the unit shall be restricted to the affordable purchase price for a period of 30 years. The resale value of the unit is not to be more than the original purchase price plus two times the accumulated consumer price index.**

2. An existing conditions plan displaying the location of primary and secondary conservation values as defined in Section 19.3 of this LDC.
- ~~3. A yield analysis (1 copy on 22-in by 34-in paper or larger size; 1 copy on 11-in by 17-in paper; and, an electronic pdf file) to determine the number of residential units that may be permitted within a conservation residential development subdivision. Although this plan shall be drawn to scale, it need not be based upon a field survey. The yield analysis may be prepared as an overlay to the existing conditions plan.~~
 - ~~a. The yield analysis shall be performed by applying a conventional subdivision layout, including lots conforming to the dimensional standards of the underlying zoning district and streets needed to access such lots. The conventional layout shall reflect a development density and pattern, taking into account surface waters, floodplains, steep slopes, existing easements or encumbrances, and the suitability of soils for private subsurface wastewater disposal if City sewer service is not available.~~
- 4 **3.** A proposed conditions plan including the following.
 - a. The area(s) designated as Open Space, any common land and any specifically protected conservation values.
 - b. Any proposed uses of the Open Space (e.g. agriculture, recreation, forestry, etc.) and/or common lands shall be noted on the plan.
 - c. The location and dimensions of any proposed roads, sidewalks, and trails.
- ~~5~~ **4.** A landscaping plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) providing the following information:
 - a. The location of existing wooded and vegetated areas and proposed changes to the outline of these areas.
 - b. The location, species and size of all landscaping materials proposed to be installed on the site, including street trees.
 - c. A table listing all plant species to be installed on the site, indicating the size (average height and width) at planting and at maturity as well as the number of each species to be installed.
- 6 **5.** Written documentation of the process applied by the applicant in the layout of the proposed conservation residential development subdivision to ensure that proposed or future development does not adversely impact primary and secondary conservation areas as defined in Section 19.3 of this LDC.
6. **Applications that include a request for the Solar Density Incentive in Section 19.3.6.B shall include the following information:**
 - a. **A written request for the density incentive that describes how the application meets the requirements of Section 19.3.6.B.**
 - b. **A solar access plan that displays the building areas or locations of structures on all solar-oriented lots in order to demonstrate that it would be possible to site a structure**

which is unshaded by other nearby structures, site features, or topography. This solar access plan shall demonstrate that the building areas or structures on solar-oriented lots are not obscured by any vegetation, building, or object for a minimum of four hours between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year. This plan may be included as an overlay to the subdivision plan or site plan, if required.

7. Applications that include a request for the Workforce Housing Density Incentive in Section 19.3.6.C shall include the following information:
 - a. A written request for the density incentive that includes a calculation of the number of units provided under this section and a description of each unit's size, type, number of bedrooms, estimated cost, location within the development, and other relevant data.
 - c. Written statement describing how the proposed development will meet the requirements of Section 19.3.6.C.3.
 - d. The Planning Board shall request additional information if, in their judgment, it is necessary to determine whether the requirements of Section 19.3.6.C have been met.

13. That Section 25.10.9 "Filing," sub-section C of Article 25 be amended as follows:

- C. For approved conservation residential development subdivision applications, applicants shall also submit written documentation of any legal instruments required for the management of the designated Open Space land ~~to the Community Development Department.~~ **In addition, applicants shall submit written documentation of any legal instruments required to demonstrate compliance with the criteria of any and all optional density incentives granted by the Planning Board.** Such documents **shall be submitted to the Community Development Department and** are subject to the review and approval of the City Attorney prior to signature.

George S. Hansel, Mayor

Twenty-Two

Relating to Amendments to the Land Development Code

That Chapter 100 of the Code of Ordinances of the City of Keene, New Hampshire, as amended, is hereby further amended by deleting the stricken text and adding the bolded and underlined text, as follows:

- ~~1. That Section 3.1.2 “Dimensions & Siting” of Article 3 be amended as follows:~~

Min Lot Area	5 acres <u>2 acres</u>
Min lot area per dwelling unit without city water & sewer	5 acres
Min lot area per dwelling unit with city water & sewer	2 acres
Min Lot Width at Building Line	200 ft
Min Road Frontage	50 ft
Min Front Setback	50 ft
Min Rear Setback	50 ft
Min Side Setback	50 ft

1. That Section 3.1.5 “Permitted Uses” of Article 3 be amended to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Rural District.
2. That Section 3.3.5 “Permitted Uses” of Article 3 be amended to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Low Density District.
3. That Section 3.4.5 “Permitted Uses” of Article 3 be amended to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Low Density 1 District.
4. Update Table 8-1 “Permitted Principal Uses by Zoning District” in Article 8 to display “Dwelling, Two-Family / Duplex” and “Dwelling, Multifamily” as permitted uses by a Conservation Residential Development Subdivision in the Rural, Low Density, and Low-Density 1 Districts.

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2. A density bonus may be granted to developments that meet the criteria for one or more of the density incentives detailed in Section 19.3.6. In no instance shall a total density bonus of more than 30% above the standard allowable density be granted to any single development. This section shall not be waivable.

6. That Table 19-1 “Dimensional Requirements for Conservation Residential Development Subdivisions” in Article 19 be amended to change the minimum lot area for the Rural District from 1 acre to 32,000 square feet.

7. That Table 19-1 “Dimensional Requirements for Conservation Residential Development Subdivisions” in Article 19 be amended to add a footnote that states “New lots in the Rural District that are created as part of a CRD that are less than 1 acre in size may utilize an approved Subsurface Disposal System.”

8. Remove Section 19.3.2.D “Open Space Reserve,” sub-section 2 of Article 19, which states “Conservation residential development subdivisions in the Rural zoning district that permanently reserve 60% of the existing tract area or greater as open space shall be eligible for a density bonus, as noted in Table 19-2.”

9. That Table 19-2 “Density & Open Space Requirements” in Article 19 be amended as follows:

Zoning District	Density Factor per Dwelling Unit ¹	Min Open Space
Rural	4 acres 2 acres	50%
	3 acres	60%
Low Density-1 (without city water)	1 acre	50%
Low Density-1 (with city water)	20,000 sf	50%
Low Density	10,000 sf	50%

¹ Density bonus(es) may be granted as specified in Section 19.3.6

10. That Table 19-3 “Conservation Residential Development Permitted Uses” be amended as follows:

Permitted Use	Rural District	Low Density-1 District	Low Density District
Single-Family Dwelling	P	P	P
Two-Family Dwelling	P	P	P
Multifamily Dwelling	P ¹ (max of 3 dwelling units per structure)	P ¹ (max of 3 dwelling units per structure)	P (max of 6 dwelling units per structure)

"P" = Permitted Use " - " = Use Not Permitted

P1 = Use permitted with workforce housing density incentive

11. That a new Section entitled “Optional Density Incentives” be added after Section 19.3.5 of Article 19, as follows:

Section 19.3.6: Optional Density Incentives

Conservation Residential Development Subdivisions that meet certain performance criteria shall be eligible for a density bonus above the standard allowable density, up to a maximum of 30%. The 30% density cap shall not be waivable. If a density incentive is granted, the minimum lot size specified in Table 19-1 shall be waived.

- A. Open Space Density Incentive. Conservation Residential Development Subdivisions with a minimum tract size of 10 acres that permanently reserve at least 65% of the existing tract area as open space shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater.**
- B. Solar Density Incentive. Conservation Residential Development Subdivisions that meet the following criteria shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater:**
 - 1. At least 50% of the lots shall be solar-oriented. A "solar-oriented lot" shall mean a lot with its longest lot line dimension oriented to within thirty (30) degrees of a true east-west line.**
 - 2. The long axis of all dwelling units on solar-oriented lots shall be oriented so that the long axis faces within 20 degrees of true south.**
 - 3. At least four (4) kilowatts of solar PV shall be installed for each dwelling unit on a solar-oriented lot.**
 - 4. Where, as determined by the City, topographic, environmental, and soil conditions, and existing street configurations permit, the predominant pattern of new streets in subdivisions subject to this section shall be oriented within thirty (30) degrees of east-west orientation.**

- C. Workforce Housing Density Incentive. Conservation Residential Development Subdivisions that meet the criteria below shall be eligible for a density bonus of 20% or one dwelling unit, whichever is greater. In addition, the permitted uses for a development that meets this section in the Rural District or Low Density-1 District shall include "multifamily dwelling" (max of 3 units per structure).**
- 1. Workforce Housing, Owner-Occupied. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**
 - a. Twenty percent (20%) or more of the units constructed will be sold at initial sale for a price that can be afforded by a household with an income not more than 80% of the HUD Median Area Income for a family of four in Cheshire County.**
 - b. Units will be sold with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the purchaser meets the income requirements. The resale value of the unit shall be restricted to the affordable purchase price for a period of 30 years. The resale value of the unit is not to be more than the original purchase price plus two times the accumulated consumer price index.**
 - c. All units built under this provision shall be of the same approximate size, character, quality, and construction as the market rate units, and shall be distributed evenly throughout the project.**
 - d. Affordability shall be defined as housing that can be purchased under a conventional mortgage whereby the combined annual expenses for principal, interest, property taxes, homeowner's insurance and condominium fees (if applicable) will not exceed 30% of household income.**
 - 2. Workforce Housing, Rental. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**
 - a. Twenty percent (20%) or more of the units constructed will be rented for a price that can be afforded by a household with an income not more than 60% of the HUD Median Area Income for a family of three in Cheshire County.**
 - b. Units will be rented with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the renter meets the income requirements. The rental value of the unit shall be restricted to the affordable rental price for a period of 30 years.**
 - c. All units built under this provision shall be of the same approximate size, character, quality, and construction as the market rate units, and shall be evenly distributed throughout the project.**
 - d. Affordability shall be defined as housing that can be rented whereby the combined annual rental and utility expenses will not exceed 30% of household income.**
 - 3. Assurance of Continued Affordability. In order to qualify as workforce housing under this section, the application shall make a binding commitment that the dwelling units will remain affordable for a period of 30 years. This shall be enforced through a deed restriction, restrictive covenant, or some other contractual arrangement through a**

local, state or federal housing authority or other non-profit housing trust or agency to administer this provision. No dwelling unit created by this bonus shall be occupied until written confirmation of the income eligibility of the tenant or buyer of the unit has been documented.

12. That Section 25.10.5 “Submittal Requirements,” sub-section C “Conservation Residential Development Subdivision Applications” of Article 25 be amended as follows:

In addition to the submittal requirements for a subdivision or boundary line adjustment in Section 25.10.5.B, a completed application for a proposed conservation residential development subdivision shall include the following.

1. An overview plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17- in paper; and, an electronic pdf file), which displays the entire tract and any existing public roads, public or private protected lands, woodlands areas, surface waters, and precautionary or prohibitive slopes located within 200-ft of the tract.
2. An existing conditions plan displaying the location of primary and secondary conservation values as defined in Section 19.3 of this LDC.
- ~~3. A yield analysis (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) to determine the number of residential units that may be permitted within a conservation residential development subdivision. Although this plan shall be drawn to scale, it need not be based upon a field survey. The yield analysis may be prepared as an overlay to the existing conditions plan.~~
 - ~~a. The yield analysis shall be performed by applying a conventional subdivision layout, including lots conforming to the dimensional standards of the underlying zoning district and streets needed to access such lots. The conventional layout shall reflect a development density and pattern, taking into account surface waters, floodplains, steep slopes, existing easements or encumbrances, and the suitability of soils for private subsurface wastewater disposal if City sewer service is not available.~~
- 4 3.** A proposed conditions plan including the following.
 - a. The area(s) designated as Open Space, any common land and any specifically protected conservation values.
 - b. Any proposed uses of the Open Space (e.g. agriculture, recreation, forestry, etc.) and/or common lands shall be noted on the plan.
 - c. The location and dimensions of any proposed roads, sidewalks, and trails.
- ~~5 4.~~ **5 4.** A landscaping plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) providing the following information:
 - a. The location of existing wooded and vegetated areas and proposed changes to the outline of these areas.
 - b. The location, species and size of all landscaping materials proposed to be installed on the site,

including street trees.

- c. A table listing all plant species to be installed on the site, indicating the size (average height and width) at planting and at maturity as well as the number of each species to be installed.
- 6 **5.** Written documentation of the process applied by the applicant in the layout of the proposed conservation residential development subdivision to ensure that proposed or future development does not adversely impact primary and secondary conservation areas as defined in Section 19.3 of this LDC.

6. Applications that include a request for the Solar Density Incentive in Section 19.3.6.B shall include the following information:

- a. **A written request for the density incentive that describes how the application meets the requirements of Section 19.3.6.B.**
 - b. **A solar access plan that displays the building areas or locations of structures on all solar-oriented lots in order to demonstrate that it would be possible to site a structure which is unshaded by other nearby structures, site features, or topography. This solar access plan shall demonstrate that the building areas or structures on solar-oriented lots are not obscured by any vegetation, building, or object for a minimum of four hours between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year. This plan may be included as an overlay to the subdivision plan or site plan, if required.**
- 7. Applications that include a request for the Workforce Housing Density Incentive in Section 19.3.6.C shall include the following information:**
- a. **A written request for the density incentive that includes a calculation of the number of units provided under this section and a description of each unit's size, type, number of bedrooms, estimated cost, location within the development, and other relevant data.**
 - c. **Written statement describing how the proposed development will meet the requirements of Section 19.3.6.C.3.**
 - d. **The Planning Board shall request additional information if, in their judgment, it is necessary to determine whether the requirements of Section 19.3.6.C have been met.**

13. That Section 25.10.9 "Filing," sub-section C of Article 25 be amended as follows:

- C. For approved conservation residential development subdivision applications, applicants shall also submit written documentation of any legal instruments required for the management of the designated Open Space land to the Community Development Department. **In addition, applicants shall submit written documentation of any legal instruments required to demonstrate compliance with the criteria of any and all optional density incentives granted by the Planning Board.** Such documents **shall be submitted to the Community Development Department and** are subject to the review and approval of the City Attorney prior to signature.

George S. Hansel, Mayor



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: October 20, 2022

To: Mayor and Keene City Council

From: Planning, Licenses and Development Committee, Standing Committee

Through:

Subject: **Communications Relative to Public Health Concerns of Small Cell Wireless Facilities, and Possible Revisions to Ordinance O-2019-18-A**

Recommendation:

On a roll call vote of 4–1, the Planning, Licenses, and Development Committee recommended placing the communications from Terry Clark and Councilor Filiault on more time to allow the City Manager to make further recommendations to the Committee based on the comments made to the Committee by the Petitioners' and by the public. Councilor Giacomo voted in the minority.

Attachments:

None

Background:

Former Councilor Terry Clark was not present, so Chair Bosley heard comments from the other letter writer, Councilor Randy Filiault. The Councilor said he wrote his letter at the request of several neighbors of towers being erected, mainly because they can be harmful in residential neighborhoods. He reminded the Committee that the Ordinance could be changed.

Councilor Jones clarified that this only has to do with small wireless facilities in the City's right-of-way, not those on private property. The City Attorney, Thomas Mullins, said that was correct. He continued that Article 13 in the Land Development Code, which is the part of the Zoning Ordinance referring to telecommunication facilities, includes an overlay district and is applied in areas of the City with private property. This Small Cell Wireless Ordinance and the FCC orders apply in the City right-of-way only.

As a part of her research, Chair Bosley asked Staff to draft a list of installations and it was clear how many there are. She referred to these as small wireless facilities because 4G and 5G are used in marketing, whereas this discussion was about the lengths of radio waves emitted from the towers. The City currently has five small wireless facilities, with the potential for one more application. There are also 12 on State properties that the City has no regulation over. There are a few more on private properties, for which the City only has right and regulations regarding aesthetics; they cannot approve or deny construction. This discussion was only about properties in the City's right-of-way.

Chair Bosley continued providing some background on this issue and the timeline of how this had

been addressed by this committee in the past. The Ordinance was introduced in 2019 in response to the FCC putting forward the requirement that the City had no authority to deny the installation of these facilities in the City's rights-of-ways. The Committee spent a long time educating themselves and listening to public concerns, and they heard the City Attorney's perspective that in the absence of an ordinance, the City was left completely undermined. The FCC regulations put us in a situation where without some ordinance in place, the small wireless facilities could be constructed in any manner companies see fit, with any aesthetics. It was pertinent to have something on record that was adopted unanimously by the City Council in May 2020. The City Council can only revisit the same topic once per calendar year. Thus, in January 2021, Terry Clark submitted a letter requesting that the City Council revisit the Ordinance in light of the State report expressing concerns about potential medical liabilities of the small wireless facilities. There were strong opinions in the report and someone from the State then spoke to the City Council to describe the majority opinion of the report. The City Council found that their Ordinance met the State's suggested setback requirements. There was some additional legislation before the State that might have made some stricter State-backed ability for the City to regulate some of these items, which is why this had been on more time for some support from the State on this issue. The Chair said the information in the report might be worthy of supporting and heard an update from the City Attorney.

The City Attorney said that in one letter on October 6 he learned that HB-1644 contains some additional setback requirements—1,640 feet in multiple locations—and his understanding was that it would be going before the House again during this legislative session for adoption or not. Chair Bosley said that was important because a few weeks ago the Committee had this, and the State was in limbo still. She said the whole Committee should keep an eye on that. In January, the City's Ordinance could be revisited as it is a living document regardless of whether there is support from the State.

Chair Bosley asked the Committee's opinion on where the Ordinance stands currently.

Councilor Jones referred to Section 802-205 on Location Standards, which require small wireless facilities to be located no less than 750 feet from pre-schools, schools, and daycare centers. He asked why 750 feet? The City Attorney recalled that many resources were consulted when drafting this Ordinance and this number seemed to be consistent nationally. The FCC provided little guidance and left the decision at the discretion of each municipality. The City Attorney said that if HB-1644 were enacted it would put a specific State limit of 1,640 feet, in which case the City's Ordinance would need to be adjusted. He said the caveat about HB-1644 is that even though the FCC rule specifically does not preempt State law RSA 12-K regarding applications, if the 1,640 feet were challenged by the industry and they claimed it materially inhibited the ability for them to conduct their business; it would likely be heard by the Federal District Court against the State.

The Chair understood that radio waves do not travel far, which is why they are constructed in a grid to be useful.

Councilor Giacomo said it would be almost inconceivable for a telecommunications company to not challenge a 1,640-foot setback because the range of these on clear lands, without hills or trees in the way, is approximately 1,500 feet. So, anything above 1,500 feet is virtually invalidating them. If you wanted any usage from high bandwidth cellular service in places like hospitals, etc., where people want it, 1,500 feet would invalidate their use entirely.

Chair Bosley could not recall where the specific numbers came from but recalled that they did address these vulnerable locations like nursing homes, schools, and childcare facilities.

Chair Bosley opened the floor to public comment. Any questions posed by the public would be

answered at the end.

Doug Johnson of 20 New Acres Road encouraged more investment at the State level. He said it sounded like the community and Council were aware of the hard-published science behind it that he had been reading since 2014. He worries about it and encourages all to read more about it. Mr. Johnson said there are 16 homes on New Acres Road and 14 expressed to him that they are concerned about the new small wireless facilities at New Acres Road and Allen Court. He said the entire street is within those 750 feet, and the hospital is within 500 feet. He asked whether the City and citizens would be made aware when the companies change these small wireless facilities from 4G to 5G?

Ron Clace of 37 Allen Court posed three questions: 1) Is there a contract with the cell phone companies, and if so, for how long? 2) Is the City compensated by whoever owns the tower because it is in the right-of-way? and 3) In the future, will other companies be allowed to put their equipment on the same towers as small wireless facilities and magnify the radiation coming from them?

Jeananne Farrar of 59 School Street said her neighborhood had been deluged with variations for so many things and this is just one more she has tried to educate herself on—small wireless facilities, the FCC, the TCA, etc. She is upset because these facilities have been placed on the very corner of the Historic District. She said while that area may now be called the Downtown Transition Zone, it is increasingly populated by young families now living under and across the street from small wireless facilities. She said the poles are not incredibly unattractive, but that the fact of the matter is the FCC says radio frequencies that emanate from small wireless facilities are in great excess and they would have to put signage on those that would likely frighten people who do not want to live nearby. She said they affect people's health issues and they do not belong in neighborhoods full of people. Members of her neighborhood have spoken with the Director of Public Works.

Peter Espiefs stated he has lived at 29 Middle Street for 50 years. He is 91 years old. Mr. Espiefs does not want such a construct next to his home. The most favored position of these structures is not in residential areas; they are the least preferred. He said the Downtown Transition Zone is still residential and the small wireless facilities do not belong there. A Mr. Savastano from Mr. Espiefs' neighborhood wrote a letter to this Committee about this issue in July and stated good reasons why they should not be placed there. The residents appreciate the Committee's consideration. Mr. Espiefs said there are more suitable locations.

Anthony Trembley of 67 Summer Street thought that when this issue arose first, the neighborhood had concerns with whether there could be meaningful setbacks in an area with homes so close together. What is interesting about this neighborhood is that its demographics are changing, with more and more young families and children, which the older long-term residents love to see. He said this demonstrates that there is desire in the community to live in town. Mr. Trembley concluded that putting these towers in such a dense neighborhood is a major concern for all the residents.

Michael Zoll of 18 Summer Street said he was one of the new families in the neighborhood. He is happy to be in this wonderful City. He said most people own a cell phone. He said that when he read Public Works information, he was struck that the preferred placement for small wireless facilities is in non-residential districts, so he was unsure what was mixed up here. One of these facilities is 30 feet from his residence and is surrounded by other homes. He emphasized that this location is in the historic district, where residents must go through a lot to improve their homes and to support the district. He said a cell tower is an unaesthetic problem in the Historic District. Despite being in the Transition Zone, this is a residential area, with plenty of people living around it. There are better locations.

Robert Farrar of 59 School Street said the placement of the towers had been articulated already. He understood that they must be in the right-of-way, somewhere between the sidewalk and the road. That said he believed there were public ways all over town outside these residential areas. He also mentioned young families moving back into his neighborhood with children and no radiation is needed there. He questioned the small wireless facility on Winchester Street near to a dormitory, stating that it does not make sense. He said to move the towers away from residential neighborhoods, despite potential criticism for not having 5G, stating that peoples should “move away if a phone is that important”. He thinks the City Council needs to pay close attention to what is happening to neighborhoods; it is important as a community is built on neighborhoods, not businesses.

Jeananne Farrar of 59 School Street expressed sadness, wondering whether the local people have anything to say any more. She continued that the FCC and the State enforce policy and when it gets to the people; it is a done deal, if people do not follow the daily advancements. People have lived a long time in the School Street neighborhood since it began operating in the 1700s. The residents respect the history of that area—from Jonathan Daniels to various Mayors, doctors and others who were the backbone of the community. The people who live there and walk the street love the look and feel and want to keep it that way. She said if it were really that necessary, she was willing to go back to work with her preservation to try to create a neighborhood heritage community to work with her neighbors on these issues.

Chair Bosley went through the various issues the public brought forward. She pointed out that many who spoke are from parts of the community where an application is underway, or a tower has been constructed. She emphasized that this Committee must focus on the terminology and rules as these towers apply to the whole community and not each individual neighborhood. However, there is a process of notification to neighbors, and the Council has some ability to work within the FCC process, which she wanted everyone to understand so they can have their voices heard.

The City Manager addressed the question of whether the City has contracts for these small wireless facilities companies. She stated that the companies receive a license under Section 82-10, which says that, “The license term is one year automatically renewed one year from its issuance and every year thereafter.” Other language talks about when it can be revoked. The City does charge a fee (approximately \$270), which can only be charged to recuperate the expense it takes the City to review the application. The other compensation the City receives is property taxes for all structures in the right-of-way not owned by the City.

The City Manager continued explaining that other companies may install additional equipment on existing poles with small wireless facilities. The Chair said this discussion about co-location ensued when drafting the original Ordinance language. She said that because the companies do not work well together, and to avoid seeing three adjacent towers, the Ordinance states that if possible small wireless facilities must be co-located on existing towers.

Regarding the Historic District, the City Attorney said part of the problem is that these facilities exist in the right-of-way and the Zoning Ordinance and regulations do not apply in the public right-of-way. That was a huge concern the FCC passed over. Chair Bosley said the original draft language considered this issue.

The City Manager clarified that the City would not be notified when these companies switch from 4G to 5G.

Chair Bosley asked the process when the City receives an application for a small wireless facility. She knew that when an application comes in it goes to the Director of Public Works for review and

there is a stamped RF Engineering Report that goes with it. The City Attorney replied that the applicant must provide an engineering certificate stating that the unit complies with the FCC requirements for radiation. The City accepts that certification but does not have the technical capacity to review it. The Chair said that certification refers back to the FCC requirement for radiation.

The City Attorney said the annual license fee is \$270 but there is a \$500 charge at the time of application for review. With that money, the City sends written notifications to abutters within a 300-foot radius of the proposed installation, giving the public an opportunity to comment back to the Director of Public Works about the application. The applicant must provide all application requirements to the Director of Public Works. If an incomplete application were received, a shot clock would be applied; the municipality has certain number of days depending on whether a new or colocation structure of 45–90 days. The shot clock can be paused within a certain period if the reviewer says the application is incomplete and the applicant must submit anything missing.

Chair Bosley heard a common concern from the public about decisions on where these small wireless facilities are located and whether the City can intervene to have a company place them elsewhere to create a buffer from residential areas because the Ordinance advises such.

Chair Bosley continued asking, after abutters are noticed, what is their ability to express their concerns and appeal to the Director of Public Works? The City Attorney said this has occurred and the Public Works Director has a requirement that a particular installation be relocated for these types of reasons. What Staff discovered is that applicants are willing to work with the City and Director of Public Works; the underlying test to the point they would object would be if the new location inhibited the technology's ability to work, but at this point they had not done that. The City Manager referred to the appeal process under Section 82-209, which states that appeals of the Director are made to the court of the jurisdiction. There is no administrative appeal of the Director of Public Works' decision.

Chair Bosley asked the status of the application for 21 Summer Street and the City Attorney said he did not know the status. Chair Bosley suggested that since that application is with the Director of Public Works, that concerns should be brought to his attention. If the City Attorney is correct that applicants are willing to work with us, the Chair said perhaps a better placement may become available. She thinks the process of working together in the community is that if we cannot necessarily fix a problem, we bring together the people who can. The City Attorney said that negotiation or discussion usually happens at the beginning of the process to the extent that all design and permitting is accomplished at this point and the applicant might be very reluctant; the shot clock still applies. Chair Bosley's understanding was this was being accepted as a new application because the location had changed so there might be some flexibility and the residents should follow up with the Director of Public Works.

Councilor Filiault said his concern was lack of transparency, which he was not calling intentional, but he said it was a problem during his tenure on the Council. He understood that these applications go to the Director of Public Works and not back to Council because they do not have to be notified. Still, he said the City Council are the elected officials of the City, "the blame and the buck stops here", and the Council should be notified of these applications; he thinks not doing so is unacceptable. He does not want constituents calling him, him not having answers to questions, and having to call the Director of Public Works. He concluded that the City needs better transparency and this issue proved it.

Chair Bosley said there are questions she does not have answers to, and she is not an expert. She said the Council cannot know everything going on inside the City at all times. She was unsure she wanted to know every time an application was submitted but she can as a Councilor always find the information because she knows who to ask. She knew that other Councilors know whom to contact to

get those answers; it is a great group of Councilors who try hard to get back to people.

Chair Bosley addressed the Committee and asked where they stand on the current Ordinance and whether any tweaks were needed. Alternatively, they could wait to see what legislation comes from the State.

Councilor Johnsen said she also does not like when the FCC tells us what to do when we might not agree. Still, she said she did not know the full politics, so she was still listening and she really appreciated the residents coming to speak.

Councilor Ormerod asked what if the City Council were notified of every 5G application; what would that look like and could it be stopped or negotiated. How could we prevent something like this? The City Attorney said there were two parts to the answer: First, the notification to City Council is something the City Manager and/or Public Works Department could roll-up to be presented to the Council at their meetings. He said the second part of this is legal. Last time Staff and the Council went through this Ordinance in detail. The City Attorney stated that the FCC had put municipalities in a box; hundreds challenged their decisions at the 9th Superior Court of Appeal in 2019, when the Court upheld the FCC authority for this rule that impacted every municipal right-of-way and gave them little to do about small wireless facilities. He understood that was hard for people to hear, but there is very little the City can do to stop the roll-out of these towers, unfortunately. If people want to be engaged with this issue, the City Attorney said it should be through the State and Federal election processes because the FCC is appointed by Congress, where this originates.

Councilor Jones remembered 2020, when he tried to amend the Ordinance to limit it to 4G only; he was in the minority. Still, he thought this was an opportunity for transparency. He wondered if the Ordinance could be amended to have anything over 4G go through the City Council and not just the Director of Public Works review, even though the FCC says it must be allowed. He said that would at least make it transparent to the public, which it is not currently. He thought they could get around the shot clock by doing that.

The City Attorney said no. Once an application is tendered into the City, there is a period of time to act and sending it through the Council process would not stop the shot clock. The point is that this is a part of the FCC ruling—however and whenever an application is submitted to the City, a shot clock begins and if the City fails to act during that period, the court could order the installation.

Councilor Jones asked if there were a way to make this a more transparent process because this would happen every time a tower is installed in a neighborhood, with people unaware and of the rules and Ordinance, and Councilors unable to ask questions.

Chair Bosley said that most in the audience were concerned with towers in their communities and others did not show up because they are not in their front yards yet. She noted that there is a new licensing committee with this PLD Committee as the appeals board now with potential for conversation. She asked, if under time constraints, whether the Director of Public Works was the most expedient means to meet that requirement. The Chair suggested an opportunity for neighbors to voice their concerns to the applicants and Staff, with an opportunity for negotiation.

The City Manager replied that the Director of Public Works was chosen not for expediency but because he oversees many issues in the right-of-way, like driveway permits and other licenses, etc. She thought the City could certainly communicate to the public when applications come in and notify the City Council to be more transparent in terms of appeals. She added that the 300-foot radius could be broader to help more people be a part of the notification process. She would need to think through the rest because of the time process.

Chair Bosley said that the notification process was key to a lot of the frustration she heard from the public. She asked where that number came from; she understood that it parallels a variance abutter notification. The City Attorney said no, it is 200 feet for zoning and 300 feet for small wireless facilities. At the time this Ordinance was drafted, 300 feet seemed above and beyond, however, the Chair said the piece missing is that a Zoning Board application would be notified, with a chance for public comment. She suggested modeling that perhaps not formally through the process at Public Works with a Zoom meeting on each application to include that information in the abutter notice. The City Attorney replied again that the problem is the position the municipality is in. To the extent that the public would like to come in and stop it, the City Attorney said that was not something that would occur.

Councilor Giacomo said this is a utility like any other. He asked if there was a notification process when a phone pole is installed. The City Attorney said no, it is a statutorily defined utility and is specifically excluded from those requirements; they are essentially their own entity. Councilor Giacomo asked, if it is not a utility, whether anything else lies in the same category as small wireless facilities. The City Attorney said no, they have their own Statute RSA-12K, in addition to the FCC rules. The one thing the 9th Circuit Court of Appeal provided to municipalities is a great opportunity to deal with small wireless facilities' aesthetics, like a public utility, but not opportunity with respect to regulation and control.

Councilor Giacomo said that made sense. He thought it sounded like most of the problem neighbors should have with small wireless facilities would be aesthetic and he understood that they should not stick out. He thought the Ordinance passed last year accomplished that to the greatest extent possible. He said some of the locations in the Ordinance from most to least desirable also spoke to that by trying to place them in less populated and more hidden places aesthetically. He believed the current Ordinance was designed to do that and he did not think it necessary to change the language.

Councilor Johnsen noted that the audience shook their heads in opposition to some of Councilor Giacomo's comments.

Chair Bosley inferred from the audience reaction that the biggest concern was less aesthetic and more about wireless radiation from the poles. The Chair said that the hope is that some of these studies and perhaps state regulations—if they could agree—could show unhealthy radiation levels that could allow the City to set enforceable limits. At this moment, the City Council cannot regulate this until something comes from the State.

Councilor Giacomo thought it was problematic that people were operating under the assumption that—despite what FCC study showed—these small wireless facilities are dangerous. He understood that radiation was a scary word. However, it was necessary to understand how this radiation worked. He said 5G frequencies have been proven unharmed and studies created to show harm are deeply flawed. He said the issue with the new possibilities at the State level is that it is the same people who have pushed these studies the entire time; it is all the same information and was full of people who already believed it was harmful. The New York Times, The Atlantic, and the Wall Street Journal had pieces on it. The Councilor had even spoken to private investigators who have found these studies trace back to strange places; those are not good studies. There are thousands of good ones. He did not want Keene on the record putting credence to this.

Chair Bosley said that unfortunately the truth is there is so much information on this that supports both sides, and she feels that this Committee's decision is limited in authority. Regardless of individual beliefs, she read the long and wordy State study, which ultimately indicated to pull 4G and 5G out of schools. She said we are all bathed in wireless frequencies daily and she could not imagine

there was no humanistic effect—but that is not the Committee’s position. They could only try to make the best Ordinance for the community that protects people in the best way without going to court. She is looking to her State Representatives, who can take that information and hopefully provide a policy to follow or make adjustments to. Without that, the Chair said the City had little reasonable leg to stand on.

Councilor Ormerod suggested improving the notification process and widening the perimeter. That enhanced transparency is within the City’s power and the Council can make it clear that stopping this is the domain of the State and Federal governments. He stated that the Council cannot decide science, everyone has science.

Councilor Jones cited a technology Attorney, and suggested acquiring monitors to measure radiation. They could be lent from the Library to put people at ease. This was something he wanted to look into further. Councilor Bosley agreed that it could help ease people’s fears.

Councilor Giacomo emphasized, as an engineer, that good science is not for liking or disliking. He said we have to stop pretending this is an opinion. There is good science and bad science, and bad science perpetuates the myth, which causes fear. He stated that we cannot embarrass the City by giving it credence. He understood what people believe and feel, but there is good science that is fact and has proven that the effects of hypersensitivity to electromagnetic regulation is a fully psychosomatic affect, but not physical harm. He said we cannot keep pretending this is something with equal weighting on both sides. He compared this to the issue of scientific validation of vaccines. He said this is seriously problematic for the City.

Councilor Ormerod said that in his experience as a physicist, chemist, and engineer, he agreed with Councilor Giacomo’s assessment that there is insufficient information to prove small wireless facilities are harmful. Still, he said that we need to do what we can to improve the notification process.

Chair Bosley asked, if amendments to the Ordinance passed at this meeting, what would the timeframe be to have them passed this calendar year. The City Manager noted that the Ordinance refers to the 300’ radius and says the City must send the notices, not the person completing the application. The City Attorney said the pushback to widening the radius is if an applicant objects to that, which they could when they see the Ordinance. He thought it was appropriate to do otherwise. Chair Bosley said it was late in the season and legislation was hanging at the State level that might give the City credence to modify this Ordinance again in 2023. If the Committee started the process for a minor amendment now and it does not pass until next year, would that prohibit revisiting it again until 2024 or is there the time in this calendar year to affect the proper change to this Ordinance. The City Attorney said they could change the notification radius now and it would likely be approved by the end of the year. Then, if the State comes down with something in 2023, additional amendments could be made.

On increasing the radius, Councilor Ormerod suggested the same distance that the small wireless facilities must be from schools, 750 feet, to be consistent. Chair Bosley wanted to be specific, because the letter from Mr. Clace noted that he is 800 feet away. She asked if 1,000 feet was reasonable, noting that the radiation blast is approximately 1,500 feet from the tower. Councilor Giacomo said that radiation works in a spherical motion and the intensity of radiation reduces via a cubic formula. Councilor Giacomo thought it would take the City a lot of time to notify within 1,000 feet. Chair Bosley said it would be the responsibility of the applicant to provide that list of abutters and stamped envelopes. Chair Bosley agreed with 750 feet, which is halfway between two towers. The City Attorney thought 750 feet made sense under the current Ordinance because the small wireless facilities cannot be within 750 feet of each other. He said pushing it further than that might cause confusion between multiple towers.

Mr. Espiefs said the least favored location for such a tower is a residential area and that is because there is suspected radiation. Councilor Giacomo said there was no problem with radiation, but Mr. Espiefs asked why else that would be the least favored location and asked the Council to think about that.

Although the Chair agreed with Councilor Giacomo, who is an engineer, that there is science on both sides of this, Chair Bosley comes from the school of thought that just because there is no reason to think something is bad does not mean we should think it is good. She did not personally know the science that supports this as harmful, but she was one who advocated for the towers to be placed effectively, but away from vulnerable populations. The City does not have the authority to just say no, so they tried to compromise as thoughtfully as possible. She thinks residential communities were last on the preferred location list because of community aesthetics. She said the downtown is historic and is considered in transition by the City right now because there are offices mixed with homes. Chair Bosley thinks it would benefit the community most to place small wireless facilities in industrial locations where they would look less out of place.

Mr. Clace asked about the 750 feet from healthcare facilities, pre-schools, school, day cares, etc. Chair Bosley said yes, of existing buildings, but we cannot predict the future and there is nothing that preempts a school from moving within 750 feet of a small wireless facilities. Mr. Clace asked who would do the actual measuring. The City Attorney replied that it is the Director of Public Works' job. Mr. Clace asked if the daycare at Cheshire Medical Center was included, and the City Attorney said yes. Chair Bosley said it would be included and assumed it fell outside the 750-foot radius, but Mr. Clace could verify that.

Kristen Leech of 37 Middle Street said there is a small wireless facility on her corner. She appreciated the energy and time going into this from the City Council, who seemed as frustrated as the neighbors were. She appreciated the neighbors being heard. She said in her 21 years at this location, they had been through a lot with rezoning, some of which they advocated against before the ZBA. She realized there might be nothing the City Council could do about this. Whether because of science, she believed this small wireless facility would decrease hers and surrounding property values, when they do not know whether it is safe. The neighbors do not want it. She concluded speaking about the small wireless facility near the Fire Station, noting that fire trucks trying to return to the station must hit that bump-out and if they swing the opposite direction, they will hit a fire hydrant. The Chair suggested that Ms. Leech take this observation to the Director of Public Works.

With no further public comment, the Committee discussed a possible amendment.

Councilor Ormerod said that if going with 750 feet, that is approximately five to six times the number of current notices going out. The City Attorney said the \$500 application fee was presumptively reasonable and to increase it they would have to go through a justification process. The City Manager said, "The City shall mail public notice to all persons entitled to notice, including all owners of record," from Section 82-208.

Councilor Jones recalled discussing the notification process during the parklet process, when the City Attorney said there was concern if someone missed out on the notifications within the project area because it would fall back on the City. The City Attorney said that was true, but in this situation where the Ordinance is more a statutory requirement than legislative action it was different and added that the City is careful in the notification process. The City Attorney continued that under Section 3A for public notices where it says 300 feet it states that, "the applicant shall submit the mailing labels and pay the fee to cover the cost for mailing to each person requiring notices." The Chair was unsure if "paying the fee" meant it came out of the \$500 application fee and asked for clarification whether

that is a part of the initial fee or additional. If not, is it unreasonable to consider adding a fee. The City Attorney said that would be an actual cost not a fee; the application cost is generally for the review and then they pay the costs of the mailings, which could vary. Chair Bosley thinks the applicant should share the burden.

Councilor Jones did not think this was time for an amendment, but rather to give the City Manager this background so she can consult with the Director of Public Works about fees and distances and report back to the Committee. Chair Bosley noted that doing so would likely prohibit adoption of any amendments before the end of this calendar year without a suspension of the Rules of Order. The City Attorney agreed that would be like the recent Rules of Order process.

Councilor Johnsen liked what Councilor Jones said and wanted to hear from Councilor Giacomo.

Councilor Giacomo said that any radius value chosen would be arbitrary and no matter how far it is, someone will live farther than that and could be upset. Using the number estimated for other notifications makes more sense to him. He did not feel like this was accomplishing anything other than increasing the number of notifications, but he guessed the point was to notify everyone when something arises.

A motion by Councilor Giacomo to accept the communications from Terry Clark and Councilor Filiault as informational was duly seconded by Councilor Ormerod.

Councilor Jones wanted to know what that motion would mean. Chair Bosley said it would end this discussion now with no direction to Staff. The City Attorney said there would likely be little conversation left at Council if this were accepted as informational and this would end the process, inhibiting the Council's ability to adjust the distance. However, the City Attorney said this would not trigger the rule. Councilor Jones asked when it could be revisited. He did not agree with Councilor Giacomo. Councilor Jones saw the notifications as good will the community deserves. He said there was to harm in requiring applicants to provide additional notifications. Councilor Jones agreed with 750 feet and being consistent with the rest of the Ordinance.

Chair Bosley heard public comment on the motion.

Mr. Trembley said that Councilor Giacomo was right that there will always be someone outside the radius upset. But he said that his neighborhood was going through the Zoning Board with large group home on Summer Street that would require a variance; he lives three doors but 206 feet away from the building and was not happy they were preempted from the notifications. He said the notion of these tight-knit neighborhoods was being treated the same way as the rest of town, with larger lots and more distance between the homes. In his neighborhood, he felt that 750 feet was a welcome distance.

On a roll call vote of 2–3, the motion to accept the communications as informational failed. Councilors Giacomo and Ormerod voted in the minority.

A motion by Councilor Jones was duly seconded by Councilor Bosley to place the communications from Terry Clark and Councilor Filiault on more time to allow the City Manager to make further recommendations to the Committee based on the comments made to the Committee by the Petitioners and by the public.

Councilor Johnsen asked whether that leaves the opportunity to amend the abutter notification during this calendar year. The City Manager said yes, but it would require a change to the Ordinance, which would bring us into the new year. Chair Bosley said that was fine.

On a roll call vote of 4–1, the Planning, Licenses, and Development Committee recommended placing the communications from Terry Clark and Councilor Filiault on more time to allow the City Manager to make further recommendations to the Committee based on the comments made to the Committee by the Petitioners' and by the public. Councilor Giacomo voted in the minority.



CITY OF KEENE NEW HAMPSHIRE

ITEM #1.1.

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Elizabeth Dragon, City Manager
Through:
Subject: **Notice Requirements for Small Cell Wireless Facility Deployments Ordinance O-2022-16**

Recommendation:

That the City Council refer Ordinance O-2022-16 to the Planning, Licenses and Development Committee for their review and recommendation.

Attachments:

1. Ordinance O-2022-16

Background:

The proposed amendment would make two changes to the existing Small Wireless Facility Deployments in the Public Rights of Way Ordinance (O-2019-18-A).

At the October 12, 2022, Planning, Licenses and Development Committee two communications related to small cell wireless facilities were discussed. The two communications included a letter from Councilor Filiault and a letter from former Councilor Clark that had been placed on more time.

Based on the testimony heard, the committee members focused the discussion on potential ordinance changes to section 82-207 (Application requirements). The changes include an increase in notification requirements from a 300-foot radius to a 750-foot radius and amendment to the language to make it clear the applicant pays for the cost of mailing separate from the application fee.

A motion was made by Councilor Jones and duly seconded by Councilor Bosley to place the communications from Terry Clark and Councilor Filiault on more time to allow the City Manager to make further recommendations to the Committee based on the comments made to the Committee by the Petitioners and by the public.

The proposed ordinance is being introduced for first reading.



CITY OF KEENE

Ordinance O-2022-16

Twenty-two

In the Year of Our Lord Two Thousand and
Notice Requirements for Small Wireless Facility Deployments

AN ORDINANCE

Be it ordained by the City Council of the City of Keene, as follows:

That the Ordinances of the City of Keene, as amended, are hereby further amended by deleting the stricken text and inserting the bolded text in paragraph (3.a.) of Section 82-207 "Application Requirements" of Article VIII. "Small Wireless Facility Deployments in the Public Rights of Way" Chapter 82, entitled "Streets, Sidewalks and Certain Other Public Places", as follows:

- (3) *Applications to install a SWF on a new support structure.* In addition to the application requirements listed in section 82-207(1), all applicants proposing to install a SWF on a new or replacement support structure must include the following information and materials as part of a formal SWF License application to the city:
 - a. *Public notices.* For applications to locate a SWF on a new or replacement structure, the applicant shall include with the application a list that identifies all persons entitled to notice, including all owners of record and legal occupants of properties within a ~~300-foot~~ **750-foot** radius of the proposed SWF. In addition, the applicant shall submit two sets of mailing labels and pay ~~a fee to cover~~ the cost of mailing to each person entitled to notice.

George S. Hansel, Mayor



CITY OF KEENE NEW HAMPSHIRE

ITEM #K.1.

Meeting Date: October 20, 2022
To: Mayor and Keene City Council
From: Merri Howe, Finance Director/Treasurer
Through: Elizabeth Dragon, City Manager
Subject: **Relating to FY23 Fiscal Policies
Resolution R-2022-33**

Recommendation:

That Resolution R-2022-33 relating to FY23 Fiscal Policies have a first reading and that it be referred to the Finance, Organization and Personnel Committee for its consideration.

Attachments:

1. Resolution R-2022-33

Background:

Shortly after the beginning of each new fiscal year the fiscal policies of the City are reviewed and updated to provide guidance for fiscal management and decision making. This is also the time of year when the City Manager and staff start planning for the next fiscal year.

The update to the fiscal policies is the first step in the budget process. This document sets the boundaries for which both the Capital Improvements Program and City operating budget need to stay within while providing direction that incorporate City Council goals and objectives.

There are 2 housekeeping updates to the FY23 Fiscal Policies. On page four under Part 2 – Financial Polices, section B 1 c, Capital Funds, 2 new funds were added - Sewer Capital Projects Fund and Water Capital Projects Fund. As part of the setup and implementation of the new financial software, these 2 funds were created to account for sewer and water fund capital projects separately. In the City’s legacy software, capital projects were accounted for within the sewer and water funds while all other governmental funds accounted for capital projects in the in the Capital Projects Fund. The reminder of the fiscal policies remain unchanged from FY22.



CITY OF KEENE

R-2022-33

In the Year of Our Lord Two Thousand andTwenty-two.....

A RESOLUTION Relating to FISCAL POLICIES

Resolved by the City Council of the City of Keene, as follows:

WHEREAS: the National Advisory Council on State and Local Budgeting (NACSLB) has developed a comprehensive set of recommended practices on budgeting; and

WHEREAS: one key component of those recommended practices calls for the adoption of fiscal policies by the local legislative body to help frame resource allocation decisions; and

WHEREAS: the Government Finance Officers' Association (GFOA) has endorsed the recommended practice developed by the NACSLB; and

WHEREAS: it is the intent of the City Council, by this resolution, to articulate this financial blueprint as clearly and completely as possible.

NOW, THEREFORE, BE IT RESOLVED that the fiscal policy should be reviewed and adopted by the City Council on an annual basis effective July 1, superseding any prior fiscal policies and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the City Council of the City of Keene that its fiscal policies are as follows:

PART 1 – Budgetary Policies

Strategic Governance links both operational and capital budgets to long term goals established by the City's Master Plan and prioritized through the City Council goal's process. Departments prepare budgets with proposed strategies to advance the goals of the Master Plan along with three to five Council priorities which have been stated as outcome focused goals. Budget strategies may involve multiple years of investment above and beyond the City's base budget. This budget strategy is a hybrid of the priority based and the more traditional base budgeting approach. Priority based budgeting helps the city work towards its high level goals and ensures budget dollars are tied to community and council priorities and desired outcomes. The base budgeting approach separates budget items which are supplemental requests from those that are included in the base budget. The base budget is the amount required to maintain the current level of services.

I. Budget

- A. The City shall annually adopt and appropriate budgets for the following funds
 - 1) General Fund
 - 2) Parking Fund
 - 3) PC Replacement Fund
 - 4) Solid Waste Fund
 - 5) Sewer Fund
 - 6) Water Fund
 - 7) Equipment Fund

PASSED

- B. All appropriated budgets shall be balanced.
- C. All appropriations for annual operating budgets (exclusive of capital projects) shall lapse at fiscal year-end unless encumbered by a City of Keene purchase order that is recorded in the financial system on or before June 30th of any year, or as authorized by the City Manager in writing, on a case-by-case basis. Those encumbrances shall be reported to the City Council in an informational memorandum by the first week of October each year.
- D. All departments are authorized to vary actual departmental spending from line item estimates provided the total departmental budget is not exceeded within each fund; provided, however, that any item specifically eliminated by the City Council during budget approval cannot be purchased from another line item without City Council approval.
- E. Outside Agencies seeking funding from the City shall complete an application substantiating their request, the necessity of the services provided, and financial impact on the City if services were not provided. All applicants shall meet eligibility criteria set by the City and eligible applications shall be reviewed by a committee consisting of at least 2 City Councilors, and representation from Human Services, Finance, Community Development, and Police Departments. The committee shall put forth a list of Outside Agencies to the City Manager with recommended funding to be included in the budget.
- F. Any unexpended funds in a personnel line related to a vacancy cannot be expended without prior approval from the City Manager and the City Council unless funds are being expended to fill a vacancy, recruiting, or to employ temporary help including professional and contract services.
- G. A periodic budget status report for each fund will be provided to the City Council.
- H. The budget document shall provide multi-year projections of revenues and expenditures/expenses including property taxes and utility (water and sewer) rates.
- I. The budget will take into consideration the City's Policies on unassigned Fund Balance projected at the end of June.
- J. The City of Keene will contain its General Fund debt service, on a five (5) year average, at or less than twelve percent (12%) of the General Fund operating budget.
- K. Upon completion of any project, any residual funds shall be returned to the fund that provided the original appropriation.
- L. Property Taxes.
 - 1) The City shall limit its property tax revenue increases to a rolling three (3) year average of the Boston-Cambridge-Newton, (MA-NH) CPI net of expenditures required by law, and excluding debt service payments and capital leases. The City chooses to utilize the CPI, not because it reflects inflation in the City's costs, but because it reflects the overall inflation in what citizens purchase. This manages City spending such that increases in a citizen's tax bill are in line with increases in all of their other expenses. The goal is to have the cost of City services as a percentage of a taxpayer's total expenses remain constant.

2) Property Tax Credits and Exemptions.

All exemptions and credits will be reviewed with the City Council at least every five (5) years in conjunction with the City revaluation unless there are legislative changes that cause a review to occur on a more frequent basis.

3) The State has chosen to solve its revenue problem by downshifting expenses to the local communities and tapping into the broad based property tax at the local level. Downshifting is an effective strategy for the State; however, it is unsustainable at the local level and would quickly lead to a significant reduction in City services. The City is sensitive to these added expenses to the taxpayers and will attempt to limit the impact; however, as a State expense, the City will pass through the State downshifting to the taxpayers.

II. Capital Improvement Program

- A. The City of Keene shall prepare a capital improvement program (CIP) with a span of seven (7) years.
- B. The CIP shall be prepared biannually with a review each year during the operating budget cycle.
- C. All capital projects or equipment purchases that have an estimated cost of at least \$35,000 and an estimated useful life of at least five years will be included in the capital improvement program (CIP) planning process. These projects may include capital asset preservation projects (designed to preserve the functionality and condition of major infrastructure systems and City facilities) with an estimated cost of at least \$35,000 and which increases the useful life of the asset by at least five years.
- D. The CIP shall include all expenditure and funding activity anticipated from any capital reserve fund, including those activities less than \$35,000.
- E. The CIP shall contain revenue projections and rate impacts that support estimated operating costs as well as the proposed capital program. Expenditures included in each year of the CIP (operations, debt service and capital) will be equal to estimated revenue available to finance proposed activity in each year of the CIP. Cost and revenue estimates in projected years will be presented for planning purposes, and are based upon the then current best available information.
- F. City departments will prepare project funding-requests for capital projects as instructed by the City Manager.
- G. CIP Funding Methodology
 - 1) Whenever possible, CIP projects will be funded with available resources, examples of which are current revenues, grants, donations, and reserves, but not debt.
 - 2) Appropriate uses of debt include projects such as:
 - a) One-time nonrecurring investments (e.g. the construction of a new asset, or the expansion or adaptation of an existing asset) to provide added service delivery capacity or to meet changing community needs.

- b) Projects necessary due to regulatory requirements (e.g. water treatment plant expansion due to EPA permit changes) when resources other than debt are not available.
 - c) Projects necessary due to asset or system operational failure or obsolescence when resources other than debt are not available.
- H. The CIP shall be reviewed by the Finance, Organization and Personnel Committee and the Planning Board.
- I. The CIP will be the subject of a public hearing before adoption.
- J. The funding requests in the first year of the adopted CIP will be included in the next annual budget document. The City Manager after review will include the second year funding request in the subsequent budget document.
- K. Upon project completion, any residual funds shall be returned to the fund that provided the original appropriation unless otherwise directed by the City Council.
- L. Project transfer requests:
 - 1) Memorandums shall be presented to City Council for transfer request approval by majority vote for projects:
 - a) Within the same fund and
 - b) Not funded with bond proceeds/debt and/or
 - c) Have prior authorization to expend capital reserve funds and is within the purpose of the capital reserve.
 - 2) Resolutions shall be presented to City Council for transfer request adoption by 2/3 majority vote for projects:
 - a) Within the same fund and
 - b) Funded with bond/debt proceeds and/or
 - c) Funded with a new capital reserve appropriation.

PART 2 - Financial Policies

I. Fund Structure

- A. All funds are intended to be self-supporting, with no subsidies from one fund to another required for operations or capital outlay.
- B. The City will continue to conduct its financial activities through the use of the following funds:
 - 1) Governmental Funds.
 - a) General Fund – shall be used to account for those governmental activities that are not recorded in one of the other City Funds.
 - b) Special Revenue Funds.
 - i. Special Revenue Fund – shall be used for those activities that are funded in part or in whole by contributions from other entities.
 - ii. Parking Fund – shall be used to account for the operations, maintenance and capital outlay needs of the municipal parking areas.

- iii. Solid Waste Fund – shall be used to account for the activities of the transfer and recycling operations and for post-closure costs associated with the landfill.

c) Capital Funds.

- i. Capital Project Fund – shall be used to account for the capital projects funded by any of the governmental funds excluding the Sewer Fund and the Water Fund.
- ii. Sewer Capital Project Fund – shall be used to account for the capital projects funded by the Sewer Fund.
- iii. Water Capital Project Fund – shall be used to account for the capital projects funded by the Water Fund.

2) Proprietary Funds.

a) Enterprise Funds.

- i. Sewer Fund – shall be used to account for the operations, maintenance, and capital outlay needs of the sewer collection and treatment systems.
- ii. Water Fund – shall be used to account for the operations, maintenance, and capital outlay needs of the water treatment and distribution systems.

3) Internal Service Funds.

- a) PC Replacement Fund – shall be used to account for the on-going replacement of PC's, peripherals, and related software utilized by all City departments.
- b) Equipment Fund - shall be used to account for the operations, maintenance, and capital outlay needs of fleet services.

II. Revenues

A. One-Time Revenues.

One-time revenues will only be applied toward one-time expenditures; they will not be used to finance on-going programs or services. On-going revenues should be equal to, or greater than, on-going expenditures.

B. Diversity.

The City will diversify its revenues by maximizing the use of non- property tax revenues such as payments in lieu of taxes, and user fees and charges.

C. Designation of Revenues.

- 1) Each year, the City shall designate and set aside \$25,000 for conservation purposes, funded through the allocation of the Land Use Change Tax (LUCT). If the prior years' LUCT revenues are less than \$25,000, the General Fund will provide the difference from general revenues to ensure an annual contribution of \$25,000. Additionally, in the years when the LUCT revenues exceed \$25,000, fifty percent (50%) of the amount over \$25,000 will be designated for conservation purposes, with the total annual designation not to exceed \$100,000. Expenditure of funds to be made upon approval of the City Council. Balance of said sum not to exceed \$500,000.
- 2) Direct reimbursements from other entities shall be used to offset the appropriate City expense.

- 3) Except for the provisions stated above, or as provided otherwise by Federal, State law, or by local Code of Ordinances, no unanticipated revenues shall be designated for a specific purpose(s) unless directed by the City Council.

III. Fees and Charges

- A. Certain services provided by the City of Keene will be assigned a fee or charge for the users of the service, dependent upon how the community benefits from the provision of those services.
 - 1) In the case of general governmental services (such as fire protection, law enforcement, or general street maintenance) there will be no user fee or charge assessed.
 - 2) In the event that the service benefits a finite and definable sector of the community then that group will be assessed a fee or charge for provision of the service.
- B. Cost Recovery Standard for Fees and Charges.

Cost recovery should be based on the total cost of delivering the service, including direct costs, departmental administration costs, and when permitted organization-wide support costs (e.g. accounting, human resources, data processing, insurance, vehicle maintenance, and regulatory and enforcement costs).
- C. Exceptions to Cost Recovery Standard for Fees and Charges:
 - 1) Fees and Charges may be set at something less than full cost recovery when:
 - a) A high level of cost recovery will negatively impact the delivery of service to low-income groups.
 - b) Collecting the fees and charges is not cost effective.
 - c) There is no intended relationship between the amount paid and the benefit received (e.g. social service programs).
 - d) There is no intent to limit the use of the service (e.g. access to parks and playgrounds).
 - e) Collecting the fees would discourage compliance with regulatory requirements and adherence to said requirements is self-identified, and as such, failure to comply would not be readily detected by the City of Keene.
 - 2) Fees and Charges will be set at, or above, full cost recovery when:
 - a) The service is also provided, or could be provided, by the private sector.
 - b) The use of the service is discouraged (e.g. fire or police responses to false alarms).
 - c) The service is regulatory in nature and voluntary compliance is not expected (e.g. building permits, plans review, subdivisions).
 - d) When the fee or charge for the use of City property or resources is incurred by a commercial entity.
 - 3) Ambulance:
 - a) Service fees shall be set at two hundred fifty percent (250%) above the Medicare-determined usual and customary charge.

- b) A fee will be implemented for those instances when responses that involve the use of drugs or specialized services are provided but there is no transport.
- c) There will be no charge for responses determined by the Fire Department to be “public assists.”
- D. The method of assessing and collecting fees should be made as simple as possible in order to reduce the administrative and support costs of collection.
- E. The City will periodically utilize the services of a collection agency when all other reasonable efforts to collect fees and fines have been exhausted; fees for such services to be paid from amounts collected.
- F. Rate structures should be sensitive to the market price for comparable services in the private sector or other public sector entities.
- G. Fees and charges shall be adopted by the City Council when required.
- H. Fees and charges shall be reviewed in accordance with a schedule developed by the City Manager that has each fee reviewed biannually. Recommended changes will be reviewed and approved by the City Council when required.

IV. Bonded Debt

- A. The City of Keene will periodically incur debt to finance capital projects. All issuances of debt are subject to State of New Hampshire Statutes, RSA 34 and 162-K.
- B. Debt may be issued to fund projects with a public purpose of a lasting nature or as otherwise allowed by State law.
- C. Debt will not be issued to provide for the payment of expenses for current maintenance and operation except as otherwise provided by law.
- D. The City of Keene shall not incur debt that exceeds any limits set by State law.
- E. All bonds shall be authorized by resolution of the City Council and require a two-thirds (2/3) vote.
- F. The City of Keene may use the services of bond counsel and a financial advisor, if required, to assist in preparing for and executing the sale of bonds.
- G. The City of Keene issues bonds including but not limited to:
 - 1) General Obligation Bonds – repayment is backed by the full taxing power of the City of Keene.
 - 2) Tax Increment Financing Bonds – repayment is first backed by the revenue stream generated by increased revenues created within an established Tax Increment Financing District. To the extent that the increased revenues created within the district are not adequate, the repayment of the bonds would then be backed by the full taxing power of the City of Keene.
 - 3) Refunding Bonds – these bonds are issued to refinance outstanding bonds before their term in order to either remove restrictions on the original bonds and/or to take advantage of lower interest rates. Repayment is backed by the full taxing power of the City of Keene.

- H. Competitive sale is the preferred method of sale; however, negotiated sales may occur for a current or advance refunding, or for other appropriate reasons.
 - I. Term.
 - 1) Debt will be incurred only for projects with a useful life of at least seven (7) years.
 - 2) The term of any debt incurred by the City shall be limited to no greater than the expected useful life of the improvement.
- V. Other Sources
- A. To the extent they are available, the City of Keene will consider on a case-by-case basis, the use of other financing mechanisms including but not limited to:
 - 1) Capital leases.
 - 2) State programs (e.g. State Revolving Fund Loan programs).
 - B. To the extent they are available, the City of Keene will actively pursue other funding sources including but not limited to:
 - 1) Grants that reduce the City's initial investment in project/improvement.
 - 2) Grants that contribute to the on-going debt service for city project(s).
 - 3) Other financing tools such as tax credits that leverage the City's initial investment in a project.
 - 4) Public-private partnerships.
 - 5) Unanticipated revenues. These sources will be evaluated for placement and designated as committed fund balance for advancing budgetary policies related to bonded debt, capital outlay or property taxes.
- VI. Asset-Management Programs
- A. The City may develop, implement, and refine asset management programs (defined as an integrated business approach involving planning, engineering, finance, facilities management, utilities, technology and operations to effectively manage existing and new facilities and infrastructure to maximize benefits, manage cost, reduce risk, and provide satisfactory levels of service to community users in a socially, environmentally, and economically sustainable manner). The asset management should contain at least the following elements:
 - 1) Periodic inventories and assessment of the physical condition of City capital assets and infrastructure.
 - 2) Establishment of condition and functional standards for various types of asset.
 - 3) Criteria to evaluate infrastructure and facility assets and set priorities.
 - 4) Financing policies to maintain a condition assessment system(s) and promote sufficient funding for capital asset preservation, repair, and maintenance.
 - 5) Monitoring and development of periodic plain language status reports on the various components of the City's capital assets and infrastructure.

VII. Fund Balance Classification Policies and Procedures

A. Fund Balance.

Fund balance represents the difference between current assets and liabilities and shall be comprised of non-spendable, restricted, committed, assigned, and unassigned amounts defined as follows:

- 1) Non-spendable fund balance - includes amounts that are not in spendable form such as inventory or prepaid expenses or are required to be maintained intact such as perpetual care or the principal of an endowment fund.
- 2) Restricted fund balance - includes amounts that can only be spent for specific purposes stipulated by external resource providers such as grantors or, as in the case of special revenue funds, as established through enabling legislation.
- 3) Committed fund balance - includes amounts that can be reported and expended as a result of motions passed by the highest decision making authority - the City Council.
- 4) Assigned fund balance - includes amounts to be used for specific purposes including encumbrances and authorized carry forwards or fund balance to be used in the subsequent fiscal year.
- 5) Unassigned fund balance - includes amounts that are not obligated or specifically designated, and is available in future periods.

B. Spending Prioritization.

When an expenditure is incurred that would qualify for payment from multiple fund balance types, the City uses the following order to liquidate liabilities: restricted, committed, assigned, and unassigned.

C. Net Assets.

Net assets represent the difference between assets and liabilities. Net assets invested in capital assets, net of related debt, consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition, construction, or improvement of those assets. Net assets are reported as restricted when there are limitations imposed on their use either through enabling legislation adopted by the City or through external restrictions imposed by creditors, grantors, laws or regulations, or other governments. All other net assets are reported as unrestricted.

VIII. Stabilization Funds

A. Unassigned Fund Balance.

That portion of available funds within each fund that can be used to offset emergency expenditures, a downturn in collection of significant revenues, or other unforeseen events.

- 1) Unassigned fund balance for the General Fund will be maintained at an amount between seven percent (7%) and ten percent (10%) of the sum of the total of the General Fund annual operating budget and the property tax commitment for the school (both local and State) and the county.

- 2) Unrestricted fund balance, excluding capital reserves, for the enterprise funds should be maintained at an amount between the equivalent of 180 days to 365 days of the annual operating budget for that fund.
- 3) Unassigned/unrestricted fund balance for all remaining budgeted funds should be maintained at an amount between five percent (5%) and fifteen percent (15%) of the annual operating budget for that fund.

B. Self-Funded Health Insurance.

The City shall retain funds for its self-funded health insurance program. The intended purposes for these funds are to provide a measure to smooth rate fluctuations, to accommodate an unforeseen increase in claims, and to provide financial protection from run-out costs in the event the City moves toward a fully insured plan. The amount retained shall not exceed three (3) months of estimated claim costs.

C. Capital Reserves.

The City utilizes capital reserves, classified as committed funds, established under State of New Hampshire law, and invested by the Trustees of Trust Funds, for several purposes that include the construction, reconstruction, or acquisition of a specific capital improvement, or the acquisition of a specific item or of specific items of equipment, or other purposes identified in NH RSA 34, relating to Capital Reserve Funds for Cities.

D. Expendable Trust Funds.

The City Council may create and fund through annual operating budget appropriations, various expendable trust funds as it deems necessary for the maintenance and operation of the City; and any other public purpose that is not foreign to the City's institution or incompatible with the objects of its organization. The trust funds will be administered by the Trustees of the Trust Funds.

E. Revolving Funds.

The City Council may authorize the establishment and use of revolving funds as it deems necessary. The purpose of the funds and source of revenues will be determined at the time of creation. Monies in the revolving fund shall be allowed to accumulate from year to year, and shall not be considered a part of the City's general surplus.

IX. Deposits of Funds in Custody of City Treasurer

A. Objectives (in priority order):

- 1) Safety – the safety of principal is the foremost objective.
- 2) Liquidity – investments shall remain sufficiently liquid to meet the operational cash needs of the City of Keene.
- 3) Yield – taking into account the priority objectives of safety of principal and liquidity, a market rate of return.

- B. Authorized Investments:
- 1) US Treasury obligations.
 - 2) US government agency and instrumentality obligations.
 - 3) Repurchase agreements with New Hampshire Banks acting as principal or agent, collateralized by US Treasury/Agency obligations.
 - 4) Certificates of Deposits in New Hampshire Banks (collateralized).
 - 5) New Hampshire Public Deposit Investment Pool.
 - 6) Certificate of Deposit Account Registry Service (CDARS).

George S. Hansel, Mayor