

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, July 27, 2016

7:00 PM

Council Chambers

Members Present:

Philip M. Jones, Chairman
George S. Hansel
Robert B. Sutherland

Staff Present:

City Manager, Medard Kopczynski
City Attorney, Thomas Mullins
Acting Health Director, John Rogers

Councilors Present:

Carl B. Jacobs

Members Not Present:

David C. Richards
Bettina A. Chadbourne

Vice Chair Jones called the meeting to order at 7:00 PM.

**1) Peg Bruce/Keene Kiwanis Club - Request to Use City Property - 350/400
Marlboro Street**

Vice Chair Jones introduced the request by noting the issue with this request is the Police Department is using much of this space for training and lost-bicycle storage. He noted staff would like the opportunity to speak with the Police Department to see if anything can be done so the Kiwanis Club could use this space for storage.

City Manager, Medard Kopczynski stated another issue with is the Kiwanis Club is looking for a yearly approval and the City has always done short term approvals. The other issue is the restructuring for Keene Ice and there are concerns about security at the back of the site. He noted the bigger issue is the security to make sure the Police Department is comfortable with the arrangement.

Peg Bruce 15 Winter Court stated the Kiwanis Club currently pays for two storage units to store their supplies and they would like to remove supplies that pertain to tree lighting from these units. They currently pay \$660 yearly for these units. She noted these items are used for tree lighting and hence the reason for the request. Ms. Bruce stated she didn't quite understand the security issue. Vice Chair Jones explained individuals from the Kiwanis Club will be going into areas where the Police Department has items stored.

Councilor Sutherland asked whether there wasn't another space between Keene Ice and Public Works. Mr. Kopczynski stated this is why staff is asking for additional time for conversation.

Councilor Hansel made the following motion which was seconded by Councilor Sutherland.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends the request from the Kiwanis Club be placed on more time to provide staff an opportunity to identify some options.

2) Ordinance O-2016-11: Relating to Food Service Establishment Permit Fees Memorandum - Acting Health Director

Acting Health Director John Rogers stated this item was before the Council but was referred to this Committee with a request from the Agricultural Commission. There were certain comparisons done of the State of New Hampshire Food Protection Division where the classification was being drawn from. A Class G license will allow for a vendor to sell frozen meat at a much lower license fee because of the time involved; these meats are coming to a farm from a USDA facility. The animals are inspected by a vet on location and the facility is inspected by a USDA Inspector.

The State has several self-inspecting cities and towns and in review of these cities and towns nearly half of them have this same category for a classification for their license – the price is anywhere between \$50 - \$125 for this license. Mr. Rogers stated staff is recommending a \$100 fee and that this Class VI license be added to the Ordinance. Mr. Rogers went on to say the Ordinance for Division three currently reads that the city inspects food establishment every six months. Mr. Rogers stated the City performs inspections based on a need and he felt every six months didn't make much sense. He stated the areas they like to target more frequently are restaurants and schools where food production is taking place, as opposed to someplace like a convenience store which carries candy bars and soda. Staff is recommending inspections happen once a year.

Councilor Hansel asked whether there are any current licensees that would try to fall into this category. Mr. Rogers stated it would not be a concern, because this license indicates it is solely for frozen USDA meat.

Vice Chair Jones clarified the six month inspection term in the Ordinance is being replaced with "as needed". Mr. Rogers agreed and added if they look at the FDA Codes they have inspection times upwards of four times per year and sometimes once a year. He indicated the City has not adopted the FDA Code but they use it as a reference. The City has its own Food Code; if there is no food preparation going on there is very little risk.

Vice Chair Jones asked whether there should be some sort of minimum time limit added in; he felt there might be an establishment which could require more visits but this establishment might feel like they are being "picked" on. Mr. Rogers stated the inspections are based off a 100 point score system and the score is dependent on what is considered critical and non-critical. There would be evidence that would call for an

additional inspection if an establishment had a lower score. He added the reason the City would visit such an establishment would be to get them to the higher score and to work with them and towards that end, they are given a critical action plan to help them address the issues the City finds.

Councilor Sutherland stated he has a problem striking the time line out of this and does not understand the various classes listed under this ordinance, however, not having a time line says an establishment might never have an inspection. The Councilor felt when dealing with food there is always a risk. The second issue Councilor Sutherland raised was related to mobile facilities which travel to a farm for slaughtering operations and those facilities also offer smoking operations as well. He asked for a facility that should have eggs or smoked meats, what classification would that type of facility fit into. Mr. Rogers stated if there is some type of food production it will fall into Class 2 – he referred to the following language from the Fee Schedule: “...*food processing operations processing less than 100,000 or more packages of food/year...*” and added they could then move into the Class 1 category if they had a larger operation.

Councilor Sutherland clarified if someone wanted for instance to sell frozen pork and bacon, they would pay \$100 for the frozen pork and the price would increase for the smoked items. Mr. Rogers stated in this instance Class 2 could carry both products.

Councilor Hansel asked if it is a timeline, whether it would be prudent to change it from six months to a year. Mr. Rogers explained he hesitated to put a specific number because of the different levels where the inspections are required. He noted the school system requires inspections once every six months. Schools also fall under the non-profit category and this is also what the church kitchens fall under, and to add all these institutions under the Class 5 category becomes difficult. Councilor Hansel felt taking out the time limit in its entirety makes it very ambiguous. Mr. Rogers felt perhaps “annual” and “as needed” could be an option. The City Manager asked whether “not less than annually” could be a possible wording.

Councilor Sutherland made the following motion which was seconded by Councilor Hansel.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends amending the Ordinance to stipulate the health authority shall inspect not less than annually each food service establishment located in the city or its police jurisdiction and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this article. The Committee further recommends the adoption of Ordinance O-2016-11-A.

Councilor Hansel made the following motion which was seconded by Councilor Sutherland.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends accepting the memorandum from the acting Health Director as informational.

3) Ordinance O-2016-09: Relating to Dormitory, Lodging or Rooming Houses and Residential Board and Care

Vice Chair Jones asked whether this item was on the Council agenda. Attorney Mullins stated it was referred back from the Council to this Committee. Attorney Mullins stated he would recommend the Committee place this item on more time. He stated it came back for a number of reasons, the least of which is to make sure any other provisions in the City Code which also use the “lodging house” designation are consistent. The other reason for the referral back to the Committee is that an accompanying fee ordinance for the Fire Department has not yet been introduced. The Fire Department is going to have to come back with a Fee Ordinance and staff feels this should move forward as a package.

Vice Chair Jones stated he has been opposed to this Ordinance for a number of reasons. The Vice Chair clarified what a property owner would have to do in this instance is to meet the fire and building code and they could obtain a license from staff without having to go before the Council. Attorney Mullins agreed and added staff was directed by the PLD Committee in the first instance to bring this item forward in this format. Attorney Mullins went on to say if they meet the life safety code, health code, building code and zoning code they could obtain a license. Vice Chair Jones stated he is still opposed to the Ordinance noting this issue came up at the Joint Committee level on two different instances and there was a lot of concern raised at that time. Vice Chair Jones stated the fact that you no longer have to go before Council, but meet the requirements for approval administratively will cause a lot of issues. The Councilor noted he felt there will be an influx of people applying for this license, especially those that rent to college students.

The Vice Chair further stated that the matter not going before the Council takes away the advertising component so the public is informed. He stated he would like this item to stay with the Council and further that the Ordinance is expanded to require that abutters are notified. He further stated only four of these licenses are done in a year at the present time and hence did not feel it would be too time consuming for the Council to retain this license. Councilor Sutherland agreed if this is something which came before the Joint Committee the matter needs to be discussed in that context.

Councilor Hansel asked if a property owner already has a multi-unit property what the advantage would be to turning it into a lodging housing. Mr. Kopczynski explained the term “lodging house” has been in the City Code since the 1940’s and so was the term “boarding house”. The term “boarding house” was eliminated from the City Code because it was synonymous with lodging house. In the history of Keene, a working class community, boarding houses were very common and evolved into those properties which were fraternities or sororities; mostly but not entirely. There are four in total in the

community, two have licenses and the City is waiting on the other two to decide how the City wishes to move forward with this Ordinance.

Mr. Kopczynski went on to say a lodging house is a property which has more than four but less than 16 unrelated people living in it and they share cooking facilities. There may be an opportunity for people to want to reinvigorate that market such as with the possibility of bringing Airbnb into the community, but he has heard issues with this nationally. The Manager noted the markets are changing. He added if the Council is looking for more control, staff should be so advised so they can cease what they are doing or put something in the ordinance to provide for some additional control. He added to create a lodging house you need a special exception.

Vice Chair Jones recalled giving a license to the United Church of Christ but there were conditions placed on this license, such as stipulating that it is an overflow facility for 100 Nights Shelter and that it had to be managed by 100 Nights Shelter. He stated if this license is managed by staff these types of conditions cannot be placed on this license. The Vice Chair stated he could see one of these houses opening up for instance on Adams Street, across from Wheelock School or across from Franklin School with the potential of turning into what used to be called "Flop Houses" back in 1930's. He questioned whether this is not something we would want to avoid next to a school where people pay for a room and just hang out all day.

Attorney Mullins explained a lodging house is a defined use within the zoning ordinance. Hence, if someone meets the conditions and obtains a special exception they can open a lodging house. The question raised by the Chairman is: once a license is obtained what further conditions can be placed on it. The Attorney stated the Council could not prevent a lodging house from going into a zone where a lodging house is permitted under the zoning code but the question is what other conditions can be placed on them once a license is granted.

Councilor Hansel noted there was also enforcement issues associated with this, where the Fire Department was checking on the life safety codes but could not prevent an owner from obtaining a license. Mr. Kopczynski stated in this case the Fire Department would issue an operating permit. The licensure process the City has is two-fold; the inspecting Authority had the opportunity to look at the residences and make sure there were no significant issues. The other was to get input from the Police Chief as to whether there were other types of problems. He noted the City Council licenses are enforced by the Police Department in the first instance and the reason it was done in this manner is because of the significant problems the City was having with fraternities off campus. The Manager added even today, when the City goes into these types of residences there are still some significant issues they identify.

Vice Chair Jones stated his concern is there is no notification process, there is no public input process and there is no way to place specific conditions.

Councilor Sutherland felt the concerns outweigh what the City is trying to fix. He felt taking this item away from Council and placing it with staff might not effectively address some of these concerns. The Councilor talked about the rising homeless population which we have seen moving to Keene. He further stated if he lived in a neighborhood which was zoned for a lodging house but he was not notified of a license given to a property owner, he would be concerned about such an addition as a taxpayer.

Councilor Hansel pointed out, notice would happen because a lodging house would need a Special Exception from the Zoning Board of Adjustment. Attorney Mullins stated this would be something he would need to check into, but added it is clear this Committee wants to have more discussion on this item. Staff was under the impression this item will be placed on more time. The Attorney felt it was important to have the Police and Fire Chiefs present. Staff should also look at the Zoning Ordinance regarding the notice issue. He added some of these questions might already be addressed in the existing Zoning Ordinance. He felt it would be prudent for all staff who could weigh in on this item to be present to address some of these questions.

Councilor Hansel made the following motion which was seconded by Vice Chair Jones.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends placing Ordinance O-2016-09 on more time.

Councilor Hansel stated he would like more time to explore this item and asked whether it would be prudent to place a time limit on this. Mr. Kopczynski stated this item was not time sensitive.

Councilor Hansel made the following motion which was seconded by Councilor Sutherland.

On a vote of 3-0, the Planning, Licenses and Development Committee recommends accepting the accompanying report as informational.

The meeting adjourned at 7:40 pm.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Additional Edits by,
Terri M. Hood, Assistant City Clerk