

City of Keene  
New Hampshire

**PLANNING, LICENSES AND DEVELOPMENT COMMITTEE**  
**MEETING MINUTES**

**Wednesday, January 23, 2019**

**7:00 PM**

**Council Chambers A**

**Members Present:**

David C. Richards, Chair  
Philip M. Jones, Vice-Chair  
George S. Hansel  
Bart K. Sapeta  
Margaret M. Rice

**Staff Present:**

John Rogers, Building Official  
Kurt Blomquist, Public Works Director  
Tom Mullins, City Attorney  
Elizabeth Dragon, City Manager  
Terri Hood, Assistant City Clerk  
Rhett Lamb, ACM/Community Dev. Dir.

**Members Not Present:**

**Other Councilors Present**

Randy Filiault  
Jan Manwaring

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

1. **Pathways for Keene - Request to Use City Property - 4 on the 4th Road Race**

Jan Manwaring, of 50 Belmont Avenue addressed the request noting this is the 17<sup>th</sup> annual race. She continued this year the race is on a Thursday and we are hoping for 1,000 participants this year.

Kurt Blomquist, Public Works Director/Emergency Management Director reported this is one of the larger events in the community. Mr. Blomquist said we are looking to hold one protocol meeting as they are expecting to increase their numbers and we want to ensure we have the correct staff. This is a Community Event and we are looking to bring it back to the Committee in two cycles.

There being no questions from the Committee or public Chair Richards asked for a motion.

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

On a vote of 5-0, the Planning, Licenses and Development Committee recommends the request for use of city property to be placed on more time so protocol meetings may be held.

2. **Councilor Filiault - Hours of Operation - Hawkers or Peddler's**

Councilor Randy Filiault, reported he had been approached by food truck owners regarding the City's regulations for operating hours. He noted the food truck owners he spoke to felt the regulations were a bit archaic and after looking at the regulations he agreed. Councilor Filiault noted the current hours of operation permitted by City Code and added if they want to deviate from those hours they can come back and ask for an extension from the City Council. Commenting we always say we want to be business friendly, Councilor Filiault continued this is a perfect example of how we are not business friendly. Councilor Filiault said in his opinion we do not need to limit their hours. He noted resistance from City staff because of potential noise complaints. Councilor Filiault stated he looks at this as being similar to outdoor café licensing- we tell them you have the license but if you screw up we are pulling it back. He noted we have 24-hour convenience stores and restaurants (large corporations) with no restrictions so why not let the small business person have the same opportunity.

Chair Richards asked staff why we do things the way we do now. Rhett Lamb, ACM/Community Dev. Director said Council members might remember we have had these discussions in the past that established the ordinance the way it is today. At the moment we are talking about mobile vendors on private property so going through the steps to confirm whether it is in the right zoning district, has safe access, and adequate lighting are some of the things we look at. Because of the lighting some of these are approved site specific. Mr. Lamb thinks this is the reason why we saw the difference between Daylight Savings Time and Eastern Standard Time. There were discussions on whether or not this should change. One of the other areas of consideration was whether or not this was adjacent to residential units. Mr. Lamb continued there have been extensions to the operating hours for vendors at certain locations in the past. Chair Richards commented he did remember this occurring.

Councilor Hansel said he agrees with Councilor Filiault and is in favor of taking this restriction away. He is much more in favor of parties that may have some sort of conflict come together and work through it. Councilor Hansel noted there are certain expectations when living close to downtown as he and Councilor Filiault do. He shared getting woken up on Friday mornings by the trash pickup as an example. Councilor Filiault asked staff if we still have the right to set operating hours, even if we took this away, when the application comes into the City Clerk's office. Mr. Lamb replied in the negative adding if you open it up to an ordinance with a fixed hour that would be managed by the ordinance alone. Councilor Hansel then said so we have no leeway to add special conditions. The City Attorney said the licensing process does not incorporate special conditions now and the City Clerk's office is responsible for the issuance of licenses. This is all within an ordinance that is within the City Code. City Council would not see this unless the vendor came to request an extension under the existing ordinance. This was adopted in 2008 as a result of the vendor over by the Pub Restaurant. Councilor Hansel said he is in favor of taking away the hour requirement.

Councilor Rice asked to be walked through the process for extending hours for a food vendor. Mr. Lamb replied following the ordinance today you would apply for a City Council license to vary the hours. As the City Attorney referred to, this is only a limitation on the hours and does not give you authority to manage other aspects of the license. After the application there

would be an evaluation done through the Community Development Department; where they would look at the zoning and specific site conditions. Those are done through John Rogers' office and also through the granting of a food license. Then there would be an evaluation to see if Planning Board site plan authority would need to be invoked or not. In no circumstances has this been true but, we do look at it from a staff administrative standpoint to make sure those standards are met (lighting, safety, vehicle access). Noting the Councilor's comments the City Attorney commented the current ordinance does allow for the City Council to impose some reasonable conditions with respect to the extended hours. Those conditions would almost certainly be based upon the recommendations coming from City staff. Following up Councilor Rice agreed it is important to evaluate the site for safety especially at night.

Councilor Jones said we have had two variances; Ralston Street (late at night) and Railroad Square (early morning). He pointed out there are specified spaces downtown where we can make all the necessary checks. Councilor Jones commented the vendor on Ralston Street was an asset to the neighborhood. Continuing he said food trucks are the new starting place for small businesses, and is becoming a part of economic development in some cities. Councilor Jones said it is a revocable license so under the guise of the nuisance ordinance we can revoke it if there are nuisance issues. The City Attorney noted there is a hearing process that would apply in that context which is spelled out in the City Code. Councilor Jones clarified that is the point he was trying to make- there is a process to revoke a license.

Chair Richards commented he likes it the way it is; we have had two requests for variances and we granted them both. Councilor Hansel agreed with Councilor Jones' comments regarding food trucks being the start for small businesses. He also agrees all the safety checks and lighting requirements would still be in place. Mr. Lamb noted we do not have a specific lighting standard that we use. Those mentioned by Councilor Jones were granted where they were specifically because of the lighting. Mr. Lamb also noted noise is another issue and we are finding many of these folks now use generators. He said this does change the formula a bit- those plugged into a power source do not have an issue of noise from the truck operation. We do pay attention to generator sourced power for the truck; some generators are quiet and some are not. Mr. Lamb added you would not want that running next to your bedroom window.

Councilor Sapeta thanked Councilor Filiault for bringing this forward and added it is important to support small businesses. Councilor Sapeta said he does not see this as a big problem at this point. He suggested having the Economic Development Committee look at this in more depth, and come back with something for us to think about. Councilor Sapeta is not in favor of changing the ordinance at this time. He likes the comments made by Councilors Jones and Hansel with regards to helping launch small business venues.

John Rogers, Building Official clarified City Council has issued four extensions over the years. He agreed a lot of the concerns, already mentioned by the Councilors, were noise, trash, and crowd behavior. Mr. Rogers noted mobile vending is allowed under the Zoning Code in a few different zones (Central Business, Central Business Limited, Commercial) and private properties. As of late we have had more food trucks coming on line offering different varieties of foods. Addressing the generators used he agreed some are quiet and some not; he verified these are things we do look at. He continued when the application comes in we do a site visit. One of the major concerns is the lighting- the area may be lit when we visit but that does not mean it will be the same at 2:00 AM. Mr. Rogers commented the food truck vendor here tonight is concerned with the 7:00 PM shut down time which is a prime sales time. Councilor Jones asked Mr. Rogers if he asks the vendor if they are using a generator. Mr. Rogers replied in the affirmative. Councilor Jones then asked if it were possible to use

a decibel rating for those using generators. Mr. Rogers commented he is unsure how the ordinance would handle that, and it could be difficult to enforce.

Chair Richards asked for questions or comments from the public.

Austin Reida, of 538 Alstead Center Road, Alstead introduced his partner Kayla noting they represent the Street and Savory food truck. Mr. Reida noted the uphill battle getting started. He said he wanted to clarify a couple of points; one being each site they go to is still looked at by John Rogers and John Bates. So there are considerations compared to granting the license and saying go where ever you want and do whatever you want. In order to setup and sell we still have to get specific permission for the site. In essence you are not granting a freedom that you cannot take back. Both Mr. Rogers and Mr. Bates are interested in the well-being of the community and will look upon the specifics incumbent to our operations in any specific place. Mr. Reida noted his generator (enclosed with separate piping) puts out 68 decibels and would not be heard over normal conversation. Mr. Reida understands the Council has the ability to extend the hours past 7:00 PM. He said the problem they have is being site specific you will not grant us that permission based on the conditions we are operating under now. Based on questions he might be asked Mr. Reida said he could not tell you if it would be a nuisance or that we are operating from one site. Keene historically has had food trucks at fixed locations with regular business hours. If you go to cities where food trucks are proliferating- food trucks are highly mobile. They make their living by cooperating with other businesses and participating in events; bouncing around quite a bit in fact. Mr. Reida noted in major cities food trucks are also followed on social media to see what they are serving and where they will be. This is the business model he uses and he thinks they are the first ones in Keene to use this model. Mr. Reida encouraged the Committee to think about how this model works in other cities. Mr. Reida shared a recent experience where he was asked to provide food for two events at the same location 17 Roxbury Street (early) and Hanna Grimes (late). Keene did not have a mechanism to support this type of event license. He noted people were helpful and they ended up getting an Outdoor Event Permit (free of cost) that did not exactly apply to what they were doing. He stated he would have made no profits if he had to pay the \$150 permit fee. Mr. Reida is in favor of hours being eliminated from the requirements and that staff be trusted to do the job they are already doing. Mr. Reida commended staff for the job they are doing. He also noted not being able to sell dinner is a hardship. Mr. Reida addressed the concerns of being in a residential area at night stating he does not want to be somewhere that is not already lit or busy.

Chair Richards clarified the gentleman got a license that did not match the event and asked for staff input. Terri Hood, Assistant City Clerk reported this came to the Clerk's office fairly close to the event date. The mechanism to support a waiver for the hours of this event was not possible due to the Council cycle. Ms. Hood said the compromise we put in place was to have the entity inviting Mr. Reida apply for an Outdoor Event Permit to allow Mr. Reida to do business in their parking lot, as that type of license does not have a time limitation. This was the only way we could see a way to grant a license for them to move forward with that event that had already been well advertised. Chair Richards said he understood and added he thinks that 9:00 PM is better than 7:00 PM. He noted this is interesting because it does not really have anything to do with changing the time on the license; it has to do with a completely different business model. Mr. Lamb clarified he sees two questions here maybe more in addition to the time and location pattern not fitting the business model suggested by Mr. Reida. Mr. Lamb suggested there is research to be done if the Committee wants staff to pursue this. Chair Richards agreed research is needed because this portrays a different business model happening that we are in no way prepared for.

Councilor Rice commented she is curious as to what other cities are doing. She pulled up (online) the Food Truck Vendors Guide for New York City and commented on how in-depth it is. Councilor Rice would like to see what other places are doing that might be useful to our business owners so they can be more flexible, safe, and meet noise requirements. Mr. Lamb commented it is the business model Mr. Reida presented that is unique; the rest of the ordinance and delivery for food trucks so far has been based on fixed locations in Keene. Chair Richards agreed and recommended the City Clerk's office continue to grant waivers without expense until this is solved.

Chair Richards said if we are going to look at this how do we parse it – we have downtown that is established, you have private property that sits in a different kind of realm, and now we have a mobile entity that fits none of our models. Elizabeth Dragon, City Manager said we will definitely look elsewhere to see what other cities are doing for a model to apply here. We were also talking about making it administrative for when we cannot make Council cycles. The plan is to bring something back to you that can make the process more efficient and look at what other cities are doing.

Councilor Filiault said he appreciates what the City Manager just said as we do need to look at this. He addressed Chair Richard's comments noting we think we are doing this well but we are not, and we do not own a food truck. Councilor Filiault said he was glad Mr. Reida showed up to tell us we are not doing things well. As a City we need to start thinking differently. Chair Richards disagreed with Councilor Filiault noting staff stepped in to help Mr. Reida solve his problem immediately. Continuing this Chair Richards said we did not anticipate this so we are asking staff to figure out how to make this work. We are clearly saying we need something that is more business friendly and more in-line with what may be coming up. The City Manager reiterated staff would look at this and come back in a couple of cycles with a proposal; in the meantime if anything comes up we will address it as we recently did.

Councilor Hansel asked if a recommendation for more time was needed. Councilor Sapeta suggested placing this on information only with staff and maybe even the Economic Development Committee looking at this further. Councilor Hansel disagreed with Councilor Sapeta noting what we heard tonight is not the only testimony that he has heard on the street. He continued keeping it on the agenda is going to make sure we pay attention. Chair Richards did not disagree with either Councilor. He noted we need to look at hours, business models, mobility, and site review for longer hours especially if in someplace residential.

For the television viewers and anyone reading about this the City Manager said if there are any other mobile vendors having problems they should reach out to us. She heard a different scenario tonight that gave her a better understanding of what the issue was. Chair Richards agreed with the City Manager's comments and added this is brand new information about the rolling platform that the Committee was not quite ready for.

Councilor Jones asked Mr. Lamb as we move forward getting away from Euclidean zoning that is delineated by areas, and into Unified Development Ordinance (UDO) can this be addressed better. Mr. Lamb suggested it would not come up as part of the UDO; we are currently using the

zoning boundary district for some of the analysis for where these things are allowed on private property. Mr. Lamb commented we may have to change the way we look at this because this is not a fixed building or fixed use of a site. We are talking about a truck, that from a land use standpoint probably has no relevance at all, except to say we are going to allow it in a place where there is already a lot of commercial activity. Mr. Lamb concluded he does not feel this comes up as part of our Land Use Code at all.

There being no further questions from the Committee or public Chair Richards asked for a motion.

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

On a vote of 5-0, the Planning, Licenses and Development Committee recommends that this item be placed on more time.

3. **Adjournment** - There being no further business before the Committee Chair Richards adjourned the meeting at 7:48 PM.

Respectfully submitted by,  
Mary Lou Sheats Hall  
January 25, 2019