

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, March 27, 2019

7:00 PM

Council Chambers A

Members Present:

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

Members Not Present:

Bart K. Sapeta

Staff Present:

John Rogers, Building Official
Patty Little, City Clerk
Terri Hood, Assistant City Clerk
Kurt Blomquist, Public Works Director
Rhett Lamb, ACM/Community Dev. Dir.
Tom Mullins, City Attorney
Elizabeth Dragon, City Manager
Med Kopczynski, Economic Development,
Initiatives, and Special Projects Director
Steve Russo, Keene Police Chief
Andy Bohannon, Parks & Rec. Director

Other Councilors Present

Carl Jacobs
Bob Sutherland
Bettina Chadbourne
Terry Clark
Jan Manwaring
Randy Filiault

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

1. Tim Zinn/Let it Shine - Request to Use City Property - 2019 Pumpkin Festival

Tim Zinn, of 43 Grove Street addressed the protocol meetings and the one change of adding four non-profit vendors this year. The vendors will be restricted to the sale of baked goods and cold drinks. He also noted there will be two more protocol meetings in June and September.

Kurt Blomquist, Public Works Director reported staff and organizers had met and City Staff is comfortable with what is proposed. Mr. Blomquist reiterated there will be two more meetings before the event. Staff is recommending approval of the event license.

Tim Zinn said there is an online application process for the non-profits and asked if he should wait until City Council votes to open up the participation to them. Mr. Blomquist said he does not

anticipate any problems at City Council and suggested Mr. Zinn could open his application process to the vendors.

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

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends that a license be granted to Let It Shine, Inc. to use the Downtown area including Central Square and Downtown City rights-of-way and City property along with closing of any City Street and/or public right-of-way as identified by City staff on Sunday, October 27, 2019 to hold the “Keene Pumpkin Festival, In the HeART of Downtown Keene, NH” subject to the following provisions:

- The Petitioner agrees to limit the number of pumpkins to 5,000;
- That the actual event will be held from 1:00 PM to 7:00 PM with the times for set up and clean up to be established with City staff;
- There shall be no changes to the agreed upon event footprint presented in March 2019;
- No changes to the license and/or the associated protocol documents will be accepted after September 1, 2019;
- The Petitioner shall absorb the cost of any City services over and above the amount of City funding allocated in the FY 20 Community Events Budget, and agrees to remit said payment within 30-days of the date of the invoicing from the City;
- That the Petitioner is permitted to place 10 porta-potties in City parking spaces located at the base of Washington Street from Friday, October 25, 2019 to Monday October 28, 2019, which will be chained together and affixed to ensure they are not vandalized while unattended overnight;
- That free parking be granted under the provisions of the free parking policy for City parking spaces on Washington Street needed for storage of equipment from Friday, October 25, 2019 to Monday October 28, 2019, and spaces within the event footprint on the day of the event;
- The furnishing of a certificate of liability insurance in the amount of \$1,000,000 naming the City of Keene as an additional insured;
- The signing of a standard revocable license and indemnification agreement and associated protocol documents; and
- That the Petitioner complies with any and all other recommendations of City staff.

2. Milone & MacBroom on Behalf of People's Linen - Request to Use City Property - Monitoring Well

Dave Borden, of People’s Linen apologized for not being present at the previous meeting. Mr. Borden reiterated the situation as explained at the March 13, 2019 meeting. This environmental investigatory work is being requested in accordance with the New Hampshire Department of Environmental Services (NHDES). Environmental work to date has involved creating a network of *on-Site* groundwater monitoring wells to demarcate the extents of the PCE impacted groundwater; however, the down-gradient extent has not *yet* been delineated. Hence our

proposed efforts to install a groundwater monitoring well on the City of Keene property (300 N. Lincoln Street), just south of the 43 George Street residence. Access for drilling the proposed well would be through the People's Linen-owned undeveloped lot (Parcel 535-025), located adjacent to 43 George Street, using a track-mounted ATV drill rig. The plan would be to have the well installed during this 2019 winter season, if possible, while the ground is frozen to alleviate impacts to the ground surface by the drill rig. Mr. Borden addressed the concern of needing a road to reach the site by stating there is no need for a paved road; but maybe a few trees will need to be cut down.

Councilor Jones clarified he did not remember any discussion regarding a road being needed. He does remember being told an individual could walk in with a backpack on. Mr. Borden affirmed the testing could be performed by someone walking in with a backpack.

Kurt Blomquist, Public Works Director addressed the previous concern regarding access to the site by stating he and Andy Bohannon met with the consultants to discuss the access issue. He confirmed they will access via property owned by People's Linen and they will be using a small drilling rig that will cause minimal disturbance. Mr. Blomquist reported staff is comfortable now with the consultant's proposal. Mr. Blomquist said this will be a two-step process; for the drilling component staff will issue an Excavation Permit. Staff is recommending a license be issued to People's Linen for that well, its continued maintenance access, and ultimately its removal.

Chair Richards asked for Committee questions or comments.

Councilor Hansel asked if this would be an annual license. Mr. Blomquist replied in the negative noting the license would be in place until the well testing is discontinued.

Following up on the license Councilor Rice asked if another license would need to be issued for the ATV to do in at the time of well removal. Mr. Blomquist replied in the negative noting an Excavation Permit would be issued administratively.

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

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a license with People's Linen Services, LLC for the installation and maintenance of a groundwater monitoring well on City of Keene parcel 534-004, 300 North Lincoln Street.

3. Reconsider Ordinance O-2019-03: Relating to Vendors - Time Limitations for Certain Activities

Councilor Filiault stated his comments are pretty much the same comments as they were a couple of weeks ago and he hopes the Councilors have listened and will reconsider the restricted timeframe for food truck operators. He hopes they can have an unlimited timeframe unless that proves wrong for a particular license holder. Councilor Filiault does not think starting the discussion by saying there will be a problem when there is not a problem is the right way to go.

He mentioned the new Burger King coming in, the process they follow and the fact they do not have to ask for business hours. Continuing Councilor Filiault said brick-and-mortar businesses do not have to ask us for hours. We do not look ahead and say you might make a problem or you might make noise. Councilor Filiault said he understands this is new and the City Manager and staff are working on it. As most bars and restaurants shut down their food around 11:00 PM which would be prime time (11:00 PM – 2:00 AM) for these food truck operators to make a profit. Councilor Filiault sees them having to come back to ask for hour extensions as a problem. He reiterated his comments at Council and asked who becomes the food police? He suggests being fair and allowing them the hours they want to operate, and then look back to see if there is an issue. He suggested there will not be any.

Patty Little, City Clerk noted the purpose of the ordinance is to establish definitions for a mobile food vendor, a fixed location food vendor, and a frozen confection vendor. She continued in addition the ordinance amends the hours of operation for the mobile food vendor and the fixed location food vendor by allowing an earlier start time (7:00 AM) and a later end time (11:00 PM). She reminded the Committee this is the first of several ordinances that will be introduced that recognize a changing business model for a food truck. The City Clerk said these three definitions are part of a class of licenses that regulate solicitation of a temporary and transient nature. Other types of solicitation in this classification include charitable and commercial solicitation. This section also covers what we call itinerant vendor solicitation; this may take place in a building or a tent. Finally, this section deals with Hawkers and Peddlers which is what the food vendor trucks are classified as. Food trucks should not be compared to outdoor cafes or restaurants; this is a solicitation activity that is licensed only when it can be carried out safely, and without posing hazard or inconvenience to the public. The City Clerk agreed with Councilor Filiault that the City does not ask outdoor cafes or restaurants what times they want to operate because it is a different class of license under the statutes and our ordinances. Solicitation licenses require background checks of the owner and any employees involved in direct sales; this does not apply to sidewalk cafes or restaurants. She said in addition a Hawkers and Peddlers license is required for any type of solicitation other than charitable organizations. The City Clerk reiterated this ordinance is talking about temporary, transient solicitations that happen to be conducted through the use of a food truck (fixed or mobile).

The City Clerk continued when Councilor Filiault first raised this issue staff researched food trucks and their growing popularity. She noted in New England communities have not changed their Hawkers and Peddlers ordinances to recognize this new business model. The City Clerk continued this business model potentially includes breakfast, lunch, dinner, and late night. Late night is typically associated with theatre districts, bars, and college campuses with 2:00 AM being the typical closing time for those communities that chose to have their food vendors cater to that late night crowd. The City Clerk noted from her online research it is unusual not to have a time restriction for this type of solicitation activity. If hours are not addressed in the ordinance a community's noise ordinance is relied upon. The City Clerk said staff is recommending the operating hours be placed on type of solicitation activity if for no other reason that it is one of many regulated temporary, transient solicitation activities. All of which have operating hours. She continued that staff believes that 11:00 PM is the appropriate end time for this type of solicitation. In addition, there is no business need for a food truck to require 24 hours of service. If a vendor wants to extend their operating hours they can request an extension from the Council

which would look at the proposed location and the abutting uses. The Committee would make a recommendation based on site conditions they found.

John Rogers, Building Official agreed with Councilor Filiault any fixed businesses like restaurant do have their appropriate zones where that use can exist, and they also need to go through a site plan review prior to building and receiving final approval. Mobile vendors also have some zones which are a little different in our Zoning Code. He noted we are talking about private property here; not City property. They are permitted in Central Business, Central Business Limited, and the Commerce Zone. Mr. Rogers continued the part that is a little tricky is where it goes on to say it is allowed on commercial property that is grandfathered or has received permission from the Zoning Board of Adjustment. He recognized that in the past the Council has approved all the late night requests and noted this was done with the applicant and staff reviewing the application to first ensure they are in appropriate places with proper lighting, trash removal, etc. He recommended The Council keep in mind the City is going through a Land Use Code update and some of the districts could be changing which might expand the areas where this activity can occur. Mr. Rogers reiterated it does make sense for staff to review requests for extended hours and for the Council to approve the applications.

Steve Russo, Keene Police Chief noted he agrees with the City Clerk's recommendation. He continued the Police Department would like to see set hours (11:00 PM). Hearing comments here and at the MSFI Committee meeting Chief Russo said we cannot be concerned with the what ifs; we are in the business of safety and security. It boils down to not wanting to encourage large groups of people to stick around town after the bars close. Chief Russo said he knows no easier way to say it. Unrestricted hours could be a budgetary or operational issue for the Police Department and from a Police perspective it would be better not to have large groups roaming around town after the bars close. Chief Russo continued having set times would be a safer way to go.

Tom Mullins, City Attorney noted his involvement is because of the question relating to the Noise Ordinance. The City Attorney said he wanted to clarify that under the Noise Ordinance this is an activity that is otherwise licensed or permitted by the City. The Noise Ordinance specifically exempts from its provisions noises resulting from activities of a temporary duration, either permitted by law or for which a temporary license or permit has been granted. The City Attorney said he wanted it to be clear if a food truck is operating at 2:00 AM or 3:00 AM in the morning the noise emanating from that vehicle would be exempt from the Noise Ordinance. The other problem is those people leaving the food truck going through neighborhoods creating noise. As we heard from Chief Russo transient noise is almost impossible to deal with. The City Attorney summarized the Noise Ordinance would not be a tool in the City's quiver in the event there was a problem with a food truck business.

Chair Richards referred to a meeting the Liquor Commissioner attended many years ago and a what if scenario of closing all the bars, which the then Police Chief disagreed with. He noted the bars close at specific hours and the Police have the people movement under control. Chair Richards asked Chief Russo if he would like to comment on that. Chief Russo said he would never vote for closing bars; they are a business, they attract people, and we do not want to discourage that. Chief Russo said transient noise is unenforceable; we get a lot of those

complaints and there is nothing we can do.

Chair Richards asked for Committee questions or comments.

Councilor Hansel commented he has not run into one person who is not in favor of the food trucks. He continued the point is we are accommodating the food trucks and the way they operate. We are doing it through several ordinances and one of which is extending the hours. The best part is we worked with some of the owners to come up with these changes. Councilor Hansel also noted the positive feedback from the food truck owners in regards to the City's efforts in accommodating them. Councilor Hansel said the hours is a very small thing, and for now he thinks leaving the hours as provided in the Ordinance is fine. He reiterated others comments that Council can always take another look at this if needed. He also noted downtown will be changing over the next decade or so and suggested the Committee err on the side of safety, and continue to move forward.

Councilor Rice referred to the previous amendment for unrestricted hours and comments at the last Council meeting noting she would continue to support the ordinance as she is looking forward to having food trucks in Keene. She referred to John Rogers comments regarding site plan reviews noting they give the public an opportunity to provide input. Councilor Rice said public dialogue is important and for that reason having people come back to ask for an extension of hours is also important and reasonable.

Chair Richards asked for public comments or questions.

Councilor Sutherland commented one thing that hit him was the comments tonight from Chief Russo regarding the safety perspective. He related an incident in Portsmouth where a stabbing occurred at a food truck. Noting he does not think this will happen here Councilor Sutherland said when we talk about the "what ifs" this is something to think about.

Tim Zinn, of 43 Grove Street commended the City for thinking outside the box in trying to reach businesses. He noted his concern with transient noise and how it has only been in the past year or two where he has seen an improvement. Mr. Zinn also commented it is not always the drunks making the noise; sometimes it is just very loud people. Mr. Zinn is also a member of the College-City Committee where they also consider these issues.

Councilor Chadbourne commented there is a common thread between the kiosk issue, parking issue, and this one. She said the focus has been on businesses as opposed to the customers. Councilor Chadbourne said she had been looking at it from the customers' perspective. We only have one or two food trucks and there is no reason to be overly concerned. Councilor Chadbourne said she was not necessarily in favor of all night, but maybe extending the hours because she does see a window of opportunity. She imagined during the 11:00 PM to 2:00 AM hours the food trucks would be in a parking lot like Gilbo Avenue where it is well lit. Councilor Chadbourne further stated she cannot imagine that would affect the quality of life for those who live downtown; depending on the spots chosen. She can see extending the hours until 2:00 AM. Councilor Chadbourne commented the pulse of the people wanting to buy from the food trucks is they should be able to stay open a little later. Chief Russo cautioned it is just one or two food

trucks right now and he hears the let's not worry about the future. He explained how people from Brattleboro might come to Keene to sell because they know there is late night activity. Chief Russo explained there are hundreds of people in the bars in Keene, Thursday through Saturday nights and the Department prefers they go home instead of lingering around town. His recommendation is based on training and experience.

Councilor Jacobs said he is trying to connect the dots between transient noise and food truck hours; we already have the transient noise and do not have the food trucks. Councilor Jacobs said he does not think having the food trucks will change much. Continuing he noted there are issues we need to address in our community at night, but he does not see where having the food trucks open late at night has much to do with that. Councilor Rice referred to Mr. Zinn's comments regarding transient noise getting better or past few years and he does not want that to change. Chief Russo added the City Manager has the statistics (2012-2018) but we as a community have seen a drastic reduction in the calls to service in the neighborhoods and we would like to continue that. Chief Russo referred to his earlier comments regarding operations noting if there are people on the streets and it is time for officers to go home- they are not going home. Chief Russo said he is not trying to over react he is just saying it may happen.

Councilor Hansel said this does not ban food trucks from serving food overnight. He referred to the licensing process and added the City is adjusting regulations in a transparent, fair way to all affected parties.

Councilor Chadbourne suggested Mr. Zinn may be referring to transient noise on Grove Street affecting his quality of living and it is most likely there would not be a food truck on Grove Street. Councilor Chadbourne shared the living experience in her neighborhood and how she deals with it. She noted the things the City is doing to make Keene more business and consumer friendly adding one of the things businesses complain about is having to go through too many hoops. She sees having to come back to get special exceptions as another inconvenience. Councilor Chadbourne said she did not mean to demean any of staff's comments she just feels having to come back is being overly cautious.

Councilor Jones referred to past history and a late night vendor on Ralston Street who was a benefit to the community. Councilor Jones commented looking at economics food trucks are incubators for restaurants and we want to encourage that type of business growth in the City. He said we want people to start small businesses and grow. Councilor Jones noted the City's participation in the Buy Local campaign, adding there is nothing more local than a food truck. Their money stays in town were as the chain stores monies go out of town and they do not buy locally. Councilor Jones said he heard all the "what ifs" noting they also pertain to our brick and mortars. He referred to the ongoing conversations regarding keeping young people in town and added young people like food trucks. Councilor Jones commented he thinks this is a great opportunity for the City to move forward and open itself up to being a pioneer. Referring to revocable licenses Councilor Jones said we still have plenty of ammunition if it does not work out, and we could always change the ordinance. Councilor Jones thinks unrestricted hours is worth a try.

Tim Zinn, of 43 Grove Street added one more perspective to transient noise by noting he is

surrounded by off-campus student housing. He suggested the two sources of transient noise are when the bars close and parties break up. Chair Richards commented we always say the college but the bars close at 1:30 AM and are also frequented by locals. Councilor Chadbourne said she did not know if it would increase the noise on her street. She continued she would rather see someone coming from a bar full of alcohol stop and fill their stomachs with food before they get in a car and drive.

Councilor Clark said this seems to be a common thread that we go through all the time. We talk about opening ourselves up, getting more business, bringing in more arts, and then at the end of the day we return to our puritanical atmosphere. Councilor Clark feels this is what we are doing here. He continued over controlling things is problematic when you are talking about bringing people here.

Jack Weststrate, of 27 Gates Street commented Gates Street is the corridor for on-campus students to get to and from the off-campus parties. He continued he does not think the food trucks will have any impact on that. He said we have that noise and we just have to live with it. Mr. Weststrate said he loves the idea of food trucks if they are in the right place and they do not increase the noise level the residents have to deal with already.

Chair Richards asked for any additional Committee thoughts or comments.

Councilor Hansel asked if the proper way to do this is to recommend approval of the ordinance again. Chair Richards replied in the affirmative.

Chair Richards clarified we are not trying to stop anyone from doing anything. He also referred to the late night vendor on Ralston Street noting he thinks that was a perfect example of how you can work with somebody and consider safety and other issues at the same time. Chair Richards reiterated the fact Council has never turned down a request for additional hours. The reason is because we had a chance to look at the site to see whether or not the location works. He agreed we are enhancing these businesses and added we also want to look at where they are and what is going on. Chair Richards also commented he is in favor of the current Ordinance due to the Land Use Code update and the uncertainty of where that will go.

Councilor Jones said he will probably vote for this assuming Councilor Filiault will be offering an amendment at Council.

There being no further questions or comments 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 4-0, the Planning, Licenses, and Development Committee recommends the adoption of Ordinance O-2019-03 Relating to Vendors Time Limitations for Certain Activities.

There being no further business before the committee, the meeting adjourned at 7:53 PM.

Respectfully submitted by,

PLD Meeting Minutes
March 27, 2019

Mary Lou Sheats Hall- Minute taker
March 28, 2019

Additional Edits by,
Terri M. Hood
Assistant City Clerk