



## AGENDA

### Joint Planning Board and Planning, Licenses & Development Committee

TUESDAY, November 12, 2019

6:30 PM

Council Chambers

1. Roll Call
2. Approval of Meeting Minutes – October 15, 2019
3. Continued Public Workshop

**Ordinances – O-2019-13 and O-2019-14 – Relating to Social Service and Congregate Living Uses**. Petitioner, City of Keene, proposes changes to Chapter 102 – Zoning, Chapter 46 – Licenses and Permits, Chapter 18 – Building Regulations, and Appendix B – Fee Schedule of the City Code of Ordinances. The amendments proposed include the introduction of land uses categorized broadly as Social Service and Congregate Living uses as well as a conditional use permit and City operating license for some of these uses.

4. Next Meeting – Monday, December 9, 2019
5. Adjourn

**CITY OF KEENE  
NEW HAMPSHIRE**

**JOINT  
PLANNING BOARD/  
PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE  
MEETING MINUTES**

Monday, October 15, 2019

6:30 PM

Council Chambers

**Planning Board Members Present**

Douglas Barrett, Chairman  
Andrew Weglinski  
Martha Landry  
Mayor Kendall Lane  
Gary Spykman  
Councilor George Hansel  
Tammy Adams, Alternate

**Planning Board Members Not Present**

Chris Cusack, Vice-Chair  
Michael Burke  
Pamela Russell Slack

**Planning, Licenses and Development  
Committee Members Present**

David Richards, Chairman  
Councilor Philip Jones  
Councilor Kate Bosley  
Councilor George Hansel

**Planning, Licenses and Development  
Committee Members Not Present**

Councilor Robert O'Connor

**Staff Present**

Tara Kessler, Senior Planner  
John Rogers, Building and Health Official  
Med Kopczynski, Director Economic  
Development and Special Projects

**1. Roll Call**

Chair Barrett called the meeting to order at 6:30 pm and a roll call was taken.

**2. August 26, 2019 and September 9, 2019 meeting minutes**

Gary Spykman offered the following correction – page 13 – change month reference from May and June to October.

A motion was made by Councilor George Hansel that the Joint Committee accept the August 26, 2019 and September 9, 2019 meeting minutes as amended. The motion was seconded by Councilor Phil Jones and was unanimously approved.

**3. Continued Public Workshop**

**Ordinances – O-2019-13 and O-2019-14 – Relating to Social Service and**

**Congregate Living Uses.** Petitioner, City of Keene, proposes changes to Chapter 102 – Zoning, Chapter 46 – Licenses and Permits, Chapter 18 – Building Regulations, and Appendix B – Fee Schedule of the City Code of Ordinances. The amendments proposed include the introduction of

land uses categorized broadly as Social Service and Congregate Living uses as well as a conditional use permit and City operating license for some of these uses.

Senior Planner Tara Kessler started by saying the purpose of this ordinance is to introduce a number of new land uses into the Zoning Code as the current code is fairly outdated and does not reflect modern uses. She noted last month was the first public workshop for this draft ordinance and there were comments and concerns expressed at that time.

Ms. Kessler referred to an overhead presentation and went over some of those comments and concerns that have been raised to date on the draft ordinance. She noted that some of the definitions included in the draft ordinance have been identified as either too specific or not offering enough distinction from other similar uses. She provided the examples of definitions for social service center and residential care facility. She displayed a new definition proposed for social service centers as well as the existing definition. The proposed definition is: *“a facility operated by a public, nonprofit or charitable institution, which provides meeting space and counseling, therapy or other social or human services to persons in need of such services. It does not include in-patient, overnight, or personal care services for recipients of the service or for the staff. Such service does not include medical examinations or procedures, or medical detoxification, dispensing of drugs or medications, or other treatments normally conducted in a medical office.”*

She noted it is staff’s recommendation to remove the requirement for abutter notice for the annual operating license. However, abutter notice would still be required for a conditional use permit. Staff is also recommending removing the fee for obtaining a license, which staff believes would be consistent with the Council’s fiscal policy.

Ms. Kessler noted that feedback was received at the last meeting regarding the proposed Conditional use permit criteria being too subjective. She displayed the criteria that is currently proposed. Ms. Kessler stated that it can be difficult to be objective with these criteria without being too prescriptive. She added that having some generality within the review criteria was intended to provide more flexibility as every proposal/site/project is different. However, she stated that staff is willing to work on edits to these criteria to make them less subjective. She asked the Committee for some guidance on this item.

Under the conditional use permit criteria there had been concern expressed about restricting some uses from being located directly adjacent to a residential zoning district. Staff propose a setback requirement in place of this restriction.

Finally, Ms. Kessler noted the topic of location of these proposed uses. She explained that the draft ordinance proposes zoning districts where the proposed uses would be allowed to operate either by right or by a conditional use permit. She noted that there was concern expressed at the last meeting for the allowance of group homes in the Office District and the potential impact of these proposed uses on neighborhoods. Comments have also been made that these uses should be allowed in more zoning districts.

Ms. Kessler stated what the public might not be aware of is that the city is working on establishing new form based zoning subdistricts in the downtown as part of the Building Better Together project. These subdistricts would replace the downtown zoning districts. As such, staff are proposing to continue the conversation with the Joint Committee about the proposed uses, definitions, review criteria, and operating license, and to address the topic of where these uses should go in the City as part of the Form Based Zoning / Unified Development Ordinance effort.

She referred to a rendering of a map for the downtown, which displayed the proposed zoning subdistricts. She noted a draft ordinance for internal review on the Form Based Downtown Zoning is scheduled to be ready by October 21, draft for public review in early November and public engagement on the draft in December.

Mr. Kopczynski noted to the importance of keeping both these ordinances moving forward. He asked the committee for its input on the definitions keeping in mind this likely to change as the process moves forward.

Ms. Kessler stated staff's plan is to continue working on definitions until this committee is confident the definitions are solid as well as the conditional use permit criteria and the operating license criteria. Then to inter-weave the form based district and where these uses should be located in the city.

Councilor Jones referred to the fee waiver proposal and asked whether this would not be in conflict with city regulations and noted to the instance when the school district asked for a fee waiver and they were turned down – as city resources still need to be utilized. Mr. Kopczynski noted the Council's fiscal policies talk about fees and fee recovery. There are instances where the Council would determine it is in the best interest to waive a fee for a particular entity. Chair Barrett asked whether the fee waiver was just for nonprofit organizations or whether fees are going to be removed from the process altogether. Ms. Kessler stated the proposal was to waive it altogether.

Councilor Richards felt there should not be a charge for an operating permit for a non-profit. Councilor Hansel clarified the new map would be adopted as part of the UDO and asked what the timeline was to getting the new map adopted. Ms. Kessler stated the formal public release of the first draft of the Ordinance would be the first week of November with internal review happening the last week of October. City staff anticipate that the Ordinance would be submitted for adoption in early 2020.

Mayor Lane joined the session at 6:55 pm.

Ms. Landry asked for clarification of the term for social service center and clarified the proposed definition seems to indicate all social service centers are not privately owned. Ms. Landry felt the definition leaves out privately owned institutions and wasn't sure whether that could be an issue. Chair Barrett asked whether it matters if it is privately owned or not. Mr. Kopczynski stated what is before the committee is specific, based on comments received but staff can remove the terms non-profit and charitable from the proposed definition, if the Committee feels it is appropriate.

Councilor Jones clarified some of the definitions that used to fall under the lodging house license will now fall under Congregate Living and Social Service License. Ms. Kessler answered in the affirmative and went on to say, one of the ordinances being proposed would change chapter 46 of the current code of ordinances, which deals with licenses. This change would remove the section on lodging house license and create a congregate living, social service section and lodging houses would be one of those uses that would need a license under this category. The Councilor clarified that all Conditional Use Permits go before the Planning Board. Ms. Kessler explained if a use is allowed by a Conditional Use Permit it will first go before the Planning Board and the Board will decide if this use could occur based on the criteria they have. If a Conditional Use Permit is issued and it is one of the listed uses, that use will require a license each year issued by the Community Development Department. Councilor Jones stated his concern is lodginghouse licenses used to come before the City Council and the Council was able to place conditions on them, that ability is now being deleted. Councilor Jones stated this is a concern.

Mr. Spykman referred to language as it relates to social service center and the rationale for the language as it exists now as the language indicates this agency would only be operated by public, nonprofit or charitable institutions. He added there was discussion as to whether this language should be altered to allow for private or for profit organizations. Ms. Kessler stated that when staff was looking at this use they looked at it more as it relating to a civic type use. Mr. Kopczynski added this use it clearly different from some other uses such as clinics and jails – this use fits somewhere in the middle. Mr. Spykman stated he wanted to make sure the language is clear enough, it is not over-limiting and felt keeping it as nonprofit or charitable helps to keep the focus tighter.

Ms. Landry stated for her it would be in the services provided, not who is providing the service. Chair Barrett stated for him it would be about regulating the use not the ownership. Councilor Bosley stated she agrees – she operates a for profit business which appears as a nonprofit entity in the community and felt once an industry starts to develop the for profit sector is going to try to get into the industry. She felt it is about what is happening inside the facility but not who owns it. The Councilor asked whether the Community Development Department still has access to add conditions as is done currently by the PLD Committee. Ms. Kessler stated the conditions would be land use specific.

Mayor Lane stated he too feels the legal structure of the organization does not matter as opposed to the uses being conducted inside the structure which is what is critical and what the city should be regulating. The Mayor felt this is an area in transition, something that is changing on a regular basis.

Councilor Hansel stated the language he is struggling with is the term “health of the neighborhood” and stated he is struggling with an argument for that concept. Mr. Kopczynski stated the term “welfare, health and safety” is a term of art and has a lot to do with how a use affects a community, how a building is structured – it is a big variable. The Mayor stated this is a term that is often used in Trust Law and both the Federal Government and the IRS have recognized this term as having a specific meaning. Mr. Kopczynski noted this term seems to have the biggest connotation of uncertainty and perhaps it should be better defined.

Mr. Spykman stated the term that is vague for him is– “character” and felt there should be more “check boxes” of criteria rather than be about whoever is on the Planning Board trying to define and interpret criteria based on how they personally feel about the issue. Ms. Kessler in response stated there is definitely the argument to make the criteria less open ended. However, when there needs to be more specificity, standards for things like lighting level, hours of operation etc. would need to be set. This would cause the Board to be stricter and not leave room for variation in the types of sites and scale of projects in their review.

Ms. Adams asked for more explanation as to what the different terms mean.

Ms. Landry stated she agrees with Councilor Hansel with reference to the term health would need further defining.

The Chairman asked for public comment next.

Mr. Keith Thibault of Southwest Community Services (SCS) addressed the Committee first. Mr. Thiebault referred to the Conditional Use Permit criteria the committee was discussing; he stated the concern he had is with the reference to compatibility with surrounding areas and suggested making it compatible with the zone. He went on to say with reference to the buffer the Town of Swanzey addresses this issue by providing for a vegetative buffer. With reference to domestic violence shelters, stated SCS does not operate such centers but does work with them and noted to the last sentence which indicates that “the facility shall be managed with in house supervision provided on a 24-hour basis” and added the model of domestic violence shelters does not provide for 24-hour coverage as this could provide to be very costly and added Monadnock Center for Violence Prevention (MCVP) is looking to move away from communal living to individual living units. He offered one more suggestion regarding the renewal of licenses – should the management change hands, the process should be restarted.

Peter Mumma President of Phoenix House was the next speaker. Mr. Mumma felt a Conditional Use Permit versus a permitted use is a very specific way to go. He stated one of the things they are seeing when Conditional Use Permits are renewed each year – it limits organizations to a one-year lease and questioned why a not for profit like Phoenix House would purchase a property if they might lose that property in one year. He went on to say what communities see when a for profit addiction treatment facility comes into town is that access to services dries up as it could cost upwards of \$40,000 to enter such a facility. However, not for profit organizations welcome anyone regardless of their method of payment. He noted the median per capita income in Keene is \$29,000 and family income is \$52,000, which make \$40,000 for treatment impossible and residents would have to leave the community to get treatment. Mr. Mumma went on to say integrating services would be his recommendation which reduces the overall expense of treatment,

Mr. Steve Bragdon of Keene stated there is no easy solution to this problem and commended the Committee for the work it is doing. With respect to abutter notice, he did not see a need for it and felt if things not are going well abutters will pay attention to when a hearing on the issue is coming up and the city can then be notified. He however, stated he feels it was necessary to have an annual means to regulate these entities. With respect to waiving of fees, felt if an entity could

not afford \$200 they should not be in service and felt staff time costs more than \$200 for these efforts. Mr. Bragdon stated he was unclear whether the Planning Board would have the same kind of power the Council had with respect to imposing conditions and felt this was necessary and he would rather see the Council handle this issue who are elected officials as opposed to the Board who are appointed officials. He also added he did not have an issue with the term “health” – and felt everyone deserves a place but it needs to be managed.

Ms. Mindy Cambiar of Hundred Nights stated she was looking for clarification – she stated she was confused in that Hundred Nights is classified as a homeless shelter but they also offer social services and asked how that affects their status. With respect to square footage, their current social service area can only accommodate about 25 people but in reality it serves over 600 people annually. A social service center can locate in a variety of areas as opposed to a homeless shelter. Ms. Cambiar further stated she had hoped this process would enable them to apply for funding in January, which she felt was not going to happen – she noted at this point the shelter is open they only have 5 beds open, and questioned what her agency should do when these five are filled up and 25 more people need to come in.

Chair Barrett stated with respect to the combined uses – there is one principal use and other uses are considered accessory uses and these uses do not need to be permitted in the district. He asked for staff clarification. Building and Health Official John Rogers agreed and added the primary use is something that would be allowed in the district and the accessory use is based on the percentage to be considered accessory. He further added Hundred Nights currently operates two buildings and they are both considered primary uses.

Rev. Elsa Worth of St. James Church stated many who use social service agencies do not have transportation and hence services need to be relatively close to each other. She stated she has clarification on the larger picture as to how these agencies work together for the city and hoped this sense of integration was part of the plan. Chair Barrett asked whether Rev. Worth had any ideas as to how to put what she has suggested in place. Rev. Worth stated the city is the city and not separate boxes but did not quite have an answer. She stated she wanted to be a voice for those who don't have a voice at this table but who are our neighbors.

Mr. Peter Espiefs of Middle Street addressed the Committee next. Mr. Espiefs applauded the committee for trying to help those who are in need but added there are some people who are derelicts and cannot operate by themselves and are going to be travelling back and forth to appointments in areas where families reside. He felt this has to do with more than standards that relate to light, traffic etc.

Mr. James Duffy of Winchester who is on the Board of Hundred Nights Shelter thanked the Committee for all its hard work. He asked whether instead of the term social service center the Committee would consider community resource center and felt this name has a more positive image. He also suggested some sort of limited medical care (exams, flu shots). Mr. Duffy stated limiting homeless shelters to commerce and central business limited, places an undue burden on any agency. He suggested high density, and high density one as other areas for these social service agencies to provide for more flexibility; serve more in a concentrated way.

Mr. Duffy referred to the southeast neighborhood which has many housing issues. He stated if the city is trying to address some of these social problems they need to be addressed in a more comprehensive way and not judge one group over the other.

Rev. Worth in reference to Chair Barrett's question noted that to obtain a permit there are a number of things that would disqualify an entity and asked if something could be added which would qualify an entity – "services offered by one agency has complimentary services within walking distance" – is an example.

Pastor Derek Scalia, Deacon of St. James Church stated when restrictions are created to keep individuals out who have already been marginalized they are then considered to be "others" with negative connotation. He stated as a member of the clergy he has a responsibility of looking at each member of this community as his brother and sister and asked the Committee do the same and create zoning regulations that ends the stigmatization of the poor and those needing services.

Ms. Jan Peterson Board Chair of Hundred Nights Shelter addressed the Committee next. Ms. Peterson stated her concern is when the city starts policing these organizations as has been suggested it has a specific meaning to her. As far as the abutter notice – she stated if abutters are permitted to address the license issue each year, the permit will start to be re-litigated each year.

Ms. Kessler stated the Conditional Use Permit will be a one-time permit issued by the Planning Board after a public hearing. An annual operating license is proposed in the draft, which will require certain objective information to be presented (e.g. contact name, safety plan, documentation of state license if required, etc.) and the approval authority for this license would be the Community Development Director. The primary reason for the operating license is to make sure building, fire, and life safety codes are being met for the protection of the client population as well as the surrounding community. Chair Barrett clarified the license renewal will be handled administratively and if there are complaints from abutters those are items that will be considered by staff during the license renewal process without the need for a public hearing. Ms. Kessler agreed and added there will be an a process for appeals of the Community Development Director's decision, which would be to the City Manager not the City Council.

Polly Morris of Winchester was the next speaker. She referred to the definition for Health as stated in Wikipedia: *'Health is a state of physical, mental and social well-being in which disease and infirmity are absent.'* She stated she liked Mr. Duffy's suggestion for changing the name of social service centers to community resource centers. She added that 23.5 million people in this country are afflicted with a drug addiction but there are that many in recovery. There is also research which indicates that there are about 40 million people in this country who will suffer from a mental health crisis, 5 million who are affected by Alzheimer's, who can get difficult to handle at times, then there are burn victims who don't look normal and noted it is important to decide who we want to help and who we want living in our neighborhoods. She stated it is important to keep in mind who we are separating and keep in mind the well-being of everyone and treating each other like humans and give their voices a chance.



Alicia Deaver, Director for Rise for Baby and Family, stated their model is working with children from birth to three years old with developmental delays and their families. They also have a home visit opportunity but families at times need more that they can offer and need other services in the community and wanted the Committee to be more cognizant of this need and not making obtaining these services a barrier.

With no further comments, the Chairman closed public hearing.

Mr. Spykman thanked everyone who made comments.

Councilor Jones stated he heard mentioned that the licensing official was the City Manager but the documents before the Committee indicate this would be the Community Development Director. Chair Barrett stated it would be the Community Development Director but any appeal would go before the City Manager.

Mayor Lane stated that not only are there comments from tonight and last month but there are other meetings going on in the community, which could have an impact on this ordinance. He noted this is just a starting point.

A motion was made by Mayor Lane to continue this public hearing to Tuesday, November 12 2019. The motion was seconded by Gary Spykman and was unanimously approved.

4. Adjourn

The meeting adjourned at 8:20 pm

.

Respectfully submitted,

Krishni Pahl,  
Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner