

**City of Keene**  
**New Hampshire**

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

**Wednesday, May 13, 2020**

**7:00 PM**

**Remote Meeting via Zoom**

**Members Present:**

Kate M. Bosley, Chair  
Mitchell H. Greenwald, Vice-Chair  
Philip M. Jones  
Gladys Johnsen  
Catherine Workman

**Members Not Present:**

**Mayor George S. Hansel**

**Staff Present:**

Elizabeth A. Dragon, City Manager  
Thomas P. Mullins, City Attorney  
William Dow, Deputy City Clerk  
Terri Hood, Assistant City Clerk  
Mari Brunner, Planner  
Rhett Lamb, Community Development  
Director  
Kürt Blomquist, Public Works Director  
John Rogers, Zoning Administrator  
Andrew Bohannon, Parks, Recreation, and  
Facilities Director

Chair Bosley read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, which waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. She called the meeting to order at 7:03 PM and explained the procedures of the meeting, including how the public could participate. Roll call was conducted.

**1) Ashley Sheehan/Modestman Brewing – Request to Serve Alcohol on City Property**

Chair Bosley asked the applicant to speak.

Ash Sheehan, speaking via phone from 100 Main Street, stated that his business is about six months old, and is a “Nano plus” brewery. He continued that this is their first time applying for a sidewalk café license. They are requesting permission to serve alcohol on the front sidewalk in front of their Main Street location.

Chair Bosley asked if staff could speak to this. Public Works Director Kürt Blomquist stated that this is the standard application for permission to serve alcohol in the public right-of-way with the intent of potentially getting a café license from the City.

Chair Bosley asked if the process has been completed for the café portion. Mr. Blomquist replied that he is not aware of that. Chair Bosley asked if Mr. Sheehan has spoken with the City

Clerk's Office about getting the café portion of the license going. Mr. Sheehan replied yes, he has been through that process. He continued that they also have seating in the rear of the building, which is not City property, and that has been approved. The same aesthetics would be for the front. They applied in early March.

Chair Bosley stated that the food portion of a license can be approved administratively through the City Clerk's Office, but what has come before the PLD Committee is the first-time request to serve alcohol.

Zoning Administrator John Rogers stated that he wanted to confirm that Modestman Brewing has applied for a café license. He continued that Mr. Sheehan submitted a diagram for their sidewalk seating. It has been reviewed and appears to be compliant. They will do another review once the seating is set up.

Councilor Greenwald asked if food will be available at all times that there is seating out front. Mr. Sheehan replied yes. He continued that they comply with the Nano plus license issued by the State Liquor Commission. They have a kitchen in their restaurant and they have a menu that is available at all times that beer is served.

Councilor Workman thanked the petitioner for joining the meeting. She continued that Mr. Sheehan mentioned that they will have seating out back. She asked why they are looking for the additional seating out front, and whether that seating out front will have a barrier around it.

Mr. Sheehan replied that everything they applied for is pre-Covid-19 and the NH Liquor Commission is strict on having all alcohol tightly secured. He continued the NH Liquor Commission has approved all of their outdoor seating and the front is very secure. The reason why they want a front and back patio is because people like to sit outside and have a cold beer.

Chair Bosley replied that that is accurate and people are probably ready, with the start of this beautiful weather and the Governor's orders opening things back up.

Councilor Johnsen asked Mr. Sheehan to explain what the food situation is like in the back. Mr. Sheehan replied that that is a separate LLC that he also owns, which is a food truck. It parks on their private property in the rear of the building. He continued that Mr. Rogers and his staff have deemed it safe. The food truck offers food whenever Modestman Brewing is open. To be compliant with the NH Liquor Commission Modestman Brewing also has a 5-item menu they do in the kitchen inside, which has refrigerators, hand-washing sinks, dishwashers, etc.

Chair Bosley thanked Mr. Sheehan for the explanation, because there had been some questions about how the food truck and brewery worked together. She asked if the Committee had any more questions.

Councilor Jones stated that he wanted to say that he was one of the ones that voted to send this to committee, because it is the only time the public gets to speak to this. Otherwise there is no transparency. He continued that in the past they have had issues and one time they started the

revocation process on someone's license. One of the complaints from the public was that the business was not serving food and the business's comeback was "We're serving ice, that's food." The City Council is glad to hear that Mr. Sheehan is compliant and they look forward to this.

Councilor Clark stated that he was one of the ones who had questions, and now they have been answered, and he hopes the license is approved.

Councilor Greenwald made the following motion, which was seconded by Councilor Workman.

Move to recommend that Modestman Brewing be granted permission to serve alcoholic beverages in connection with their Sidewalk Café License, subject to the customary licensing requirements of the City Council, and compliance with the requirements of Sections 46-1191 through 46-1196 of the City Code. As part of the license conditions during and following the State of New Hampshire Emergency Declaration due to the Novel Coronavirus (COVID-19) and as amended, the Licensee shall:

- Maintain and monitor social distancing practices of at least six feet for customers and restaurant staff;
- Provide adequate space for patron seating and flow to maintain 6 foot social distancing practices;
- Use non-porous tables that can be easily disinfected;
- Discontinue the use of table items that cannot be cleaned and sanitized;
- Have access to and utilize hand sanitizer for use between customers;
- Disinfect customer surfaces between customers;
- Remain in strict compliance with the Seating Location Plan, which plan may be further altered or discontinued at the discretion of the City; and,
- Follow any other requirements that may be issued by the City and/or the State for health and safety of the restaurant staff and the public.

This license shall expire on March 1, 2021.

During the Emergency Declaration issued by the Governor due to the Novel Coronavirus (COVID-19) crisis, or until such time thereafter as determined by the City in its sole discretion, the Licensee shall comply with the recommendations of the Federal Center for Disease Control, the State of New Hampshire (with specific reference to Executive Order #40, Exhibit C, subsection A), and the City of Keene, with respect to the operation of a sidewalk café restaurant.

Chair Bosley asked if there was any additional discussion from the Committee or the public.

Councilor Johnsen asked if there is a way they can speed this up, since it is taking longer than expected. Chair Bosley replied that their recommendation is due to come to the City Council next Thursday. She continued that she does not think there can be a full vote on it any earlier than that. City Attorney Tom Mullins replied that that is correct. He continued that the process

is in place for it to now go to the full City Council next Thursday. The only way to have it acted upon faster would be to call a special meeting. Councilor Johnsen stated that she appreciates that Mr. Sheehan got all of the material in on time. She continued that the delay happened because no one anticipated the Covid-19 crisis.

Mr. Rogers stated that he wanted to point out that the Community Development Department did work with Mr. Sheehan and approved the outdoor seating for the rear of the building and that the rear location will be able to open on Monday when outdoor seating is allowed by the Governor's orders.

Chair Bosley asked if the seating out front can be approved administratively and they could just have the service of alcohol held until it is approved by the City Council. The City Attorney replied that the sidewalk café license is administrative, so the action the City Council is taking is with respect to the serving of alcohol. Therefore the answer is yes. As soon as the City Clerk completes the process of the sidewalk café license they can start serving food. Chair Bosley replied that that is fantastic, because everyone is anxious to get back to business. She continued that even if the process is slow, as Councilor Johnsen pointed out, maybe they can at least get Modestman Brewery able to serve food per the Governor's orders on Monday. If everything goes smoothly at the City Council meeting the alcohol piece would follow.

The motion passed with a vote of 5-0.

**2) Request to Sign on to the Clean Energy New Hampshire "Common Sense Net Metering Letter" - Energy and Climate Committee**

Chair Bosley stated that the Energy and Climate Committee (ECC) brought this before the City Council last week. She asked Peter Hansel to speak.

Peter Hansel, of 61 Bradford Road, stated that he is the Vice Chair of the ECC. He continued that this proposal is similar to one that the City Council voted on last year for a similar request to go to the Legislature to approve expanding the net metering from 1 megawatt to 5 megawatts. That proposal that was passed last year was vetoed by the Governor. This is a compromise proposal which basically adds several other categories into the existing legislation, allowing municipalities and other municipal organizations to go up to 5 megawatts. The second part of the letter says that projects that involve low-middle income projects would also be subject to the 5 megawatt cap instead of the 1 megawatt cap. The letter recommends that private businesses also be allowed to qualify if they have been approved after careful review by the PUC. The ECC met on May 5, reviewed this request, and voted unanimously to pass it along for the City Council's approval.

Chair Bosley thanked Mr. Hansel and asked Mr. Lamb to speak. Mr. Lamb stated that he is just here as backup in case they have questions.

Councilor Johnsen asked if she is hearing that this is superimposing 5G on them. Mr. Lamb replied that this is not related in any way to telecommunications or 5G. He continued that what Mr. Hansel is referring to is solar energy generation and the current limit of 1 megawatt.

Councilor Johnsen asked for clarification about the move “from 1 to 5.” Mr. Lamb replied that currently net-metered connections to the electricity grid for solar generation on private property are limited to the size of 1 megawatt. The request was to raise the cap to 5 megawatts, allowing larger solar generation to take place on private property and be net metered into the electricity grid.

Councilor Greenwald stated that he is very much in support of this, and in support of the City Council weighing in on important issues that affects Keene. It is important that the Legislature hear from Keene. Solar is the way of the future, environmentally smart, and financially terrific. This letter of support is hopefully something the Governor and Legislature will pay attention to.

Chair Bosley stated that she agrees. She continued that they heard at the City Council meeting that this could negatively impact many solar arrays that have already been installed.

Councilor Jones stated that he wants to thank Mr. Hansel, Councilor Clark, Dr. Shedd, and everyone else on the ECC. He continued that he knows how difficult it is dealing with the NH when it comes to this, and the NH PUC, and he hopes they do adopt this letter.

Chair Bosley asked if there were any more comments from the Committee. Hearing none, she asked if there were comments from the public.

Mr. Hansel stated that he left out one item in his earlier comments – Governor Sununu came to Keene last fall and spoke to the Keene Rotary Club. The Governor was asked why he had vetoed the previous legislation raising the cap to 5 megawatts. Governor Sununu’s reply was that he was preparing a compromise solution where municipalities like Keene would be eligible for the 5 megawatt proposal. Mr. Hansel continued that he thinks this compromise being proposed is partly what Governor Sununu has already publicly stated in Keene that he would endorse. There are a few other things that have been included, such as the low-middle income component, and the recommendation as described in the letter is to allow private businesses to also qualify as long as they go through the PUC review process.

Councilor Greenwald made the following motion, which was seconded by Councilor Workman.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that the “Common Sense Net Metering Letter” shared by Clean Energy New Hampshire on May 5, 2020 be signed on behalf of the City of Keene in order to show support for expanding the net metering project cap size from 1 MW to 5 MW for political sub-divisions of the State and low-moderate income community solar projects.

**3) Relating to Small Wireless Facility Deployments in the Public Rights-of-Way Ordinance O-2019-18-A**

Mr. Lamb stated this is the Ordinance that was referred back to Committee last week. They do not have a specific presentation tonight, but they are ready to listen to whatever edits or changes the Committee is asking for and he and Ms. Brunner, who was a primary drafter, is here to answer questions, as is Mr. Blomquist.

Chair Bosley asked for Committee members' questions or comments.

Councilor Jones asked: what is the biggest contrast between A and B? Chair Bosley replied that they do not have a "B" version of the ordinance. She continued that O-2019-18-A is what they reviewed two weeks ago at the PLD Committee meeting that had the red-lined changes and edits that the PLD Committee approved to go to the City Council. There were some concerns at the City Council meeting. Some Councilors thought the PLD Committee might want to take a second look at some the issues inside the Ordinance itself. Tonight they are deciding if they are any tweaks they want to make based on the comments or if they are happy with the Ordinance as is.

Councilor Jones stated that the Committee received several possible recommended motions for their consideration. He continued that the final sentence in each recommended motion talks about the City Manager accepting up to a maximum of 4G or allowing 5G after a certain date, which is January 2, 2021. He thinks they should eliminate the 5G one and use the one that says maximum of 4G, because there is a 4G+ out there that can be used. He thinks they should eliminate the motions that talk about allowing 5G after that date and keep the ones that say "a maximum of 4G."

Chair Bosley asked if the Councilor is happy with the Ordinance and the language within it, but his concern is for the potential delay in accepting 5G applications and he would like that delay to stay. Councilor Jones replied that some motions say "not to accept 5G," which opens the door for 4G+. Chair Bosley asked if he likes the wording "maximum of 4G" because it does not allow "4G+." Councilor Jones replied that that is correct.

Councilor Greenwald asked the City Attorney to comment on the differences between the possible recommended motions B and C. He continued that he was thinking they were discussing not accepting 5G applications and that that would be the question. He did not know there was a "4 and a half."

The City Attorney stated that what the committee has is the staff's effort to try and anticipate the possible outcomes of tonight's meeting, with respect to what the Committee might do or might not do. The four motions were suggested, with respect to trying to anticipate that discussion. With respect to the "enhanced 4G," that was not something he understood. He did not understand that there was a "4 and a half." He thinks that the language of "up to a maximum of 4G" was in the original recommendation from the PLD Committee. If that language needs to change because there is something greater than 4G that should be allowed, yes, they would need to consider that.

Chair Bosley asked if it is accurate to say that if they were to leave the original language of the interior of the Ordinance as it is, and leave their recommendation of "up to 4G," that would be recommended motion A; and if they were to eliminate the ability to delay the applications of 4G+ or 5G, then motion B would be accurate.

The City Attorney replied that if they do not make changes to the underlying ordinance and they want to keep the non-acceptance of 5G applications, then that would be the first proposed motion, about endorsing and adopting what they have already sent to the City Council. He continued that he needs to check what the language in that original action was.

Chair Bosley replied that while the City Attorney is looking that up, it might be helpful for the Committee to look at the proposed recommended motions: Options A and B are designed to leave the original body of the Ordinance alone, and the changes would revolve around whether to keep or remove the Committee's previous recommendation to delay the acceptance of 5G applications. She continued that motions C and D would be if the PLD Committee was recommending altering the body of the Ordinance and then again, keeping the delay or removing the delay on accepting applications.

Chair Bosley continued they have a few items that were brought to them at the last PLD Committee meeting, which had come up as questions about whether there were issues in the Ordinance the Committee wanted to reconsider. So the question for the Committee is: do they want to reconsider the delay? Do they want to reconsider any amendments to the interior of the Ordinance?

Councilor Greenwald stated that he thought the Ordinance itself was pretty much intact, but there was a Committee recommendation attached to the Ordinance. Chair Bosley replied that that is correct. She asked for the City Attorney to clarify.

The City Attorney stated that if the committee decides to do nothing at all, then the proposal is the first motion: "Move to endorse and adopt the recommendation with respect to Ordinance O-2019-18-A as previously submitted to the City Council." He continued that the original recommendation contains that limitation on not accepting 5G applications and only accepting up to a maximum of 4G. If the PLD Committee were to leave everything in place, that language of non-acceptance would remain. The question raised at this point by Councilor Jones is: is there "4G+" that the City Council would want? Because that recommendation on its face would foreclose 4G+, so they would need to adjust that.

The City Attorney stated that he does not know if the potential motions are all labeled the same on everyone's sheet, but on the sheet that he has, the motion that answers Councilor Greenwald's question reads as follows: "Move that the Planning, Licenses, and Development Committee recommend that Ordinance 0-2019-18-A be adopted, but that the direction to the City Manager not to accept 5g applications until January 2, 2021 contained in its previous recommendation be deleted." They would be accepting the ordinance as it was previously presented, but they would be deleting the part of the recommendation that has the non-acceptance of 5G applications until January 2, 2021.

Chair Bosley replied that on the committee members' sheet, motions A and B are to keep the main ordinance the same and either keeping or deleting the recommendation about the delay. She continued that motions C and D are about changing the body of the ordinance and either keeping or deleting the recommendation about the delay.

Councilor Johnsen stated that she was thinking they had until the end of December until they did anything with 5G. She continued that she has people contacting her again saying they do not want 5G.

Councilor Clark asked the City Attorney – if the City were to adopt option C, which makes no mention of 5G or a prohibition, would that lessen their exposure to a lawsuit by the industry? The City Attorney replied that he does not want to get into the questions of the legality of one action or another. He continued that the PLD Committee is here to discuss the merits and what they want to do to proceed and it is the Committee’s prerogative to do that. He requests that legal questions be deferred. The reality from his point of view is you put five lawyers in a room dealing with these kinds of issues and you will get 12 answers to the same question. He asks the Chair to defer these types of questions.

Chair Bosley welcomed comments from the public.

Beth Cooley, Assistant Vice President of State Legislative Affairs at CTIA, the trade association for the wireless communications industry, stated that members of the CTIA asked her to come tonight to reiterate their concerns and opposition to the proposed Ordinance. She continued that they submitted questions to the full City Council on April 30, so many of their arguments and comments are provided there, but she will be happy to provide them to the PLD Committee if needed. This Ordinance is unlawful on the State and Federal level. The overarching problem is it attempts to regulate facilities on utility poles, which violates NH RSA 12-K:10, regarding the deployment of personal wireless facilities. That Statute States that “notwithstanding anything to the contrary, an authority may not mandate, require, or regulate the installation, location, or use of wireless facilities on utility poles, including those owned by the municipality.”

Ms. Cooley continued that the Ordinance also has provisions that conflicts with Federal law. The PLD Committee has been talking about their 5G moratorium, which she expressed concerns about at their last meeting so she will not reiterate the comments on the moratorium being unlawful. Regardless of whether the Committee decides to have that moratorium be removed or kept, there is still an existing moratorium in the Ordinance Section 82-205.2 – “Prohibited Support Structures.” That also establishes a moratorium/blanket prohibition on attachments to new wooden poles and City decorative poles. That runs afoul of Sections 253 and 332 of the Communications Act.

Ms. Cooley continued that there are other provisions in the Ordinance of concern. The industry would be happy to work with the City on a path moving forward with this Ordinance. At a time when wireless connectivity is so important, the ability for wireless providers to enhance and upgrade their networks is paramount. The industry wants to meet the needs of its customers, who are also the City’s constituents. In order to meet the demand, their investment must be met with forward-looking infrastructure regulations that promote rapid and efficient deployment. This Ordinance does not reflect such forward-looking regulations. The CTIA asks that this Ordinance be rejected.

Councilor Johnsen thanked Ms. Cooley for the information. She if this Ordinance is not fitting with the State laws, does Ms. Cooley have a motion in mind? Ms. Cooley asked if she means



what Ordinance would she bring. Councilor Johnsen replied yes. Chair Bosley asked if Ms. Cooley has suggested amendments.

Ms. Cooley replied that the CTIA would need to work with the City Attorney and the wireless industry's attorney, because NH is so unique because of the Statute. It does not look like any other Ordinance in New England. She continued that she does not have anything to offer the PLD Committee today, but the CTIA would be happy to work with the City offline.

Councilor Giacomo asked: should the City enact a "moratorium" (or some other language that has that effect) on 5G? Or would it result in litigation or cause the City to be sued? Does Ms. Cooley know of a case where the wireless industry sued a municipality for having a moratorium on small cell facilities? Chair Bosley asked if he was asking the City Attorney. Councilor Giacomo replied that his questions were for Ms. Cooley.

Ms. Cooley replied that she cannot speak with any certainty regarding litigation on this type of ordinance, but she can say that there is precedent when a locality has passed a moratorium on 4G or 5G. She continued that wireless providers, wireless infrastructure providers, and the CTIA filed suit. Most recently in August 2017 CTIA filed a lawsuit against the City of Tampa, FL. They had an ordinance that was a moratorium. The lawsuit was rescinded in November 2017 because the City of Tampa passed an ordinance that undid the moratorium. This is just CTIA's point of view. There may be individual members with other plans she is not privy to – it is quite a competitive industry.

Councilor Ormerod stated that they have an Ordinance that represents the vision they have for the City of Keene - the look, the feel, and where they want to be. The Ordinance was extremely well-crafted. He continued that he wonders if the idea that they cannot accept applications before January 2 is confusing the issue. He wants to debate the merits of the Ordinance and if it does indeed represent where they want Keene to be. He invites anyone from the telecommunications industry to help him understand what the problem is with the City Council considering the concerns of its citizens and Keene's vision of where Keene wants to go.

Mayor George Hansel stated that he has thought a lot about this issue over the past several weeks. He continued that he does not think Keene is at the forefront of where 5G installations will be put in place. Right now 5G is being installed in Boston and metropolitan areas and is unlikely to come to Keene for a long time. He does not think the moratorium would accomplish much. They should think about taking it out of their recommendation. There are obviously some legal questions around 5G and the FCC ruling. The City and the City Council would be inserting themselves into the frontlines of the issue when they do not need to be, and they should think about taking the moratorium language out of their recommendation. He wants the City Council to think about the perception and message the moratorium sends. They are trying to attract new businesses and young people to Keene. There is a workforce problem here. There is a perception that would reverberate if they put themselves in a posture that is anti-new technology and anti-broadband. There are conflicting issues here with their need for connectivity and their need to enhance connectivity for current and future citizens, and taking a stand against this new technology from being implemented. Those are things for the City Council to think about as they are trying to figure out what to do.

Chair Bosley replied that she echoes a lot of that sentiment. She continued that she thinks they did a great job creating this Ordinance and yes, like Councilor Ormerod said, they are trying to protect their citizens and the look of downtown. She does not think 5G is just around the corner. They do not have any pending applications right now or any interest. The Keene community is probably a little ways down the road, while bigger communities like Boston, Chicago, San Francisco, and so on and so forth, are ripe for these installations and the roll out of 5G. The moratorium or delay on acceptance of those applications is there to create an environment of protection, but she does not know if it is against something that is actually happening. She thinks staff did a great job writing the body of the Ordinance, making sure they looked into all regulations thoroughly and complied with everything and they do feel like there is comfort that they have met the requirements they need to meet.

Councilor Greenwald stated that within the Ordinance right now there are many important protections and controls that need to get enacted before an application comes through. He continued that at first he was thinking they could just keep this in Committee and talk and talk and talk about it, but these controls need to be acted upon before they get an application. He thinks they need to focus on two issues: the moratorium they can talk about. If an individual Councilor is dead-set against 5G that is another variable. He wants to get an answer, perhaps from Ms. Cooley, on what 4G+ is.

Chair Bosley asked Ms. Cooley to speak. Ms. Cooley stated that she can speak broadly to that but she is not an expert in license spectrum, which the wireless carriers use. She continued that 4G+ is another name for LTE (Long Term Evolution) advanced. It uses multiple spectrum bands at once. 4G today generally uses one spectrum band at a time.

Chair Bosley asked if 4G+ has already proliferated the State. Ms. Cooley replied that she does not know. She continued that she can speak to her members and find out and follow up with Chair Bosley. Chair Bosley replied that she would like to know if 4G+ is already happening or if it is something that has not been rolled out in NH. She continued that she agrees with Councilor Greenwald that it is important to get something on the books. The City has a 4G application that has been waiting for this Ordinance. If the City has an Ordinance in place they can still potentially work on it and massage it into something better if needed, but if they have nothing on the books at all they have no control or protections over the aesthetics or other items that are in the Ordinance.

Councilor Workman stated that agrees with the Ordinance as written; she thinks the City Planners did an excellent job with it. She continued that prior to Covid-19 she would have been on board with the moratorium, but in light of recent developments and further information, it is her understanding that they do not have applicants knocking down their door with 5G requests. Her concern is the legal issue, and do they want to bring that, and potentially utilize those resources during a crisis, when those resources could be used for other purposes.

Councilor Jones asked the City Attorney – if they add something that gives direction to the City Manager that is automatically a B version, right? The City Attorney replied no, it is not automatically a B version of the Ordinance, because the issue with respect to this delay was

included in the recommendation, not the Ordinance. If they were going to remove the delay, there is a recommended motion for how to do that, without changing the underlying Ordinance.

Councilor Jones asked if that means they can do the A version of the Ordinance and give direction to the City Manager. The City Attorney asked what type of direction he is suggesting. Councilor Jones replied “to accept only applications for antenna and transmission equipment of up to a maximum of 4G.” The City Attorney replied that that is one of the available motions the Committee has before them. Chair Bosley replied yes, that is motion A; that was their original action. Councilor Jones replied that he just wanted to make sure it did not turn into a “B” Ordinance by adding that language.

Councilor Jones continued that he wants to say to the committee that they have to deal with these issues. They need to remember that if they do not take this action it falls under State guidelines, instead of where Keene went with it. Some examples of the differences are: under State and Federal guidelines, the height allowed was 50 feet, and Keene changed that to 35 feet. The spacing was different, as were the poles - Keene says a company cannot use a wooden pole. They have to take things into consideration that other people are not. The industry is looking to make money. The City Council has to look at public safety, quality of life, aesthetics, and property values. He thinks they did a great job with this Ordinance. The City Council had not had a statutorily required public hearing in over ten years. They heard a lot - they had a packed room and that public hearing was great to do. He thanks the Committee for recommending that and thanks the Mayor for holding it.

Councilor Jones concluded that if they do not do something, something is going to happen. This is something they have to do. They should do this and limit the City Manager to accepting applications for 4G now. It is the City Council’s job to help protect the City. His reason for asking for the delay: there is a State Commission investigating the safety of 5G and they want to hear the report on that. That is a good reason for waiting. It is not that they are trying to hold things up. He does not know when the report is coming out, but they need to wait for it.

Chair Bosley replied that the report is due in November from the State, which is why they had chosen the date of January 2, 2021.

Councilor Johnsen stated that motion C says: “Move to recommend the adoption of Ordinance 0-2019-18-B, with the condition that the City Manager or her designee be directed to accept only applications for antenna and transmission equipment of up to a maximum of 4G until January 2, 2021.”

Chair Bosley replied that the motion she just read would indicate that the PLD Committee was going to recommend changes to the body of the Ordinance. She continued that the Ordinance in question currently is the A version. The Ordinance referred to in both motions A and B is O-2019-18-A. That indicates that they are moving forward to the full City Council with the original ordinance. Motions C and D refer to a B version of the ordinance. That B version only gets created if the Committee asks for changes to the Ordinance. She has not heard anyone from the Committee asking for changes to the interior to the Ordinance. It sounds like they will be looking for a motion for the A version of the Ordinance to move forward. The last decision to be

made is whether to accept 5G applications or to limit the applications accepted to 4G until January 2.

Councilor Johnsen asked if that means making this motion: “Move to endorse and adopt the recommendation with respect to Ordinance 0-2019-18-A as previously submitted to the City Council.” Chair Bosley replied that that would be the motion to choose the original ordinance with the original recommendation to have a delay in accepting applications of 5G until January 2, 2021. Councilor Johnsen replied that that motion does not even say anything about 5G. Chair Bosley replied that that is because the original recommendation was attached to the original ordinance. So they basically would not be making any changes to what they originally recommended to be put before the City Council, with motion A.

Councilor Jones stated that he thinks she misspoke: he thinks motion A says the maximum of 4G. Chair Bosley replied yes, it does. She continued that the language of the motion says to “endorse and adopt the recommendation,” but does not specify what that recommendation was. She thinks what Councilor Johnsen is confused as to what that original recommendation was. Councilor Jones replied that her reply to Councilor Johnsen about the maximum, instead of 4G - he thinks she misspoke. Chair Bosley asked if he thinks the PLD Committee’s original recommendation said they will not accept 5G applications until January 2, 2021, or if it says “maximum of 4G.” Councilor Jones replied that it said “a maximum of 4G, until January 2, 2021.” Chair Bosley replied yes, that is correct, and that is how she recalls it as well. Councilor Jones replied that then he misheard what she said to Councilor Johnsen and apologizes. Chair Bosley replied that it is okay; it is a lot of language to get through and they can continue to clarify as needed.

Councilor Remy stated that they do not have a lot of people knocking down their door for [5G] and he has a hard time believing the industry would jump over Manchester, Portsmouth, and Hartford and jump right to Keene and start installing [5G] between now and January 2 when they are currently working on big cities like New York, Boston, San Francisco, and LA. That said, speaking in the interest of the taxpayers of Keene, for those who have been listening to the budget review discussions, Keene has an amazing City Attorney but he has mentioned before that his office as it is structured today could not handle a lawsuit like this. They do not have the budget. They do think the Ordinance and recommendation are defensible but speaking in the interest of the tax payers it is not worth spending the City’s money on it, when it is not likely to happen between now and January 2 anyway, just to prove a point. It would be irresponsible of the City Council. The money they have allocated for outside legal counsel is nowhere near enough to fight this kind of case.

Chair Bosley asked if he has recommendations or concerns about the interior of the ordinance. Councilor Giacomo replied that he knows there are concerns that Ms. Cooley raised. He continued that he thinks the interior of the Ordinance is well crafted. People in the community gave feedback to him saying they really support it. He got a call today from someone in support of the delay but he talked them through it and explained that 5G is not being installed in cities larger than Keene today and by the time the call ended the caller agreed with him that it is not worth spending taxpayer money on the potential lawsuit that would be just to prove a point and to set precedent for the rest of the State. He is sure the telecommunications industry would love for Keene to fight it because it would be less expensive than Portsmouth or Manchester.

Councilor Clark stated that he thinks that Councilor Jones summarized it very well. He continued that this entire issue of the moratorium is formed on the Commission that was tasked with studying the safety of 5G. They have serious questions, and that is where this proposed delay came from. He thinks there is reason to go with motion C. They need to ask themselves if business is more important the safety of the community. The State Legislature signed off on this Study Commission. Otherwise, would the City Council have put the moratorium in the Ordinance? Probably not. But they are doing it because it is really important, to protect Keene's citizens. He does not know that the arguments of "We won't get a 5G applicant anyway" is valid. They are already seeing promotions for 5G. The industry plans to ramp this up. Keene needs to draw a line in the sand and say, not in Keene. He doubts the industry will waste their time on a little town like Keene. He thinks it is time for Keene to stand up and say that they will not succumb to this ploy by the industry. They have a good plan and should go forward with it. He thinks option C is a very good alternative. They should not give the industry everything they want right from the get-go. 5G might not be safe. This is something that is important, especially at the time of the Covid-19 crisis. There are safety concerns, and that is important; it is not just about money. Money is not why the City Council is here; that is not their job. Their job is to protect the citizens of Keene so they can live and prosper. He urges them to choose option C.

Chair Bosley asked if Councilor Clark is saying that he likes the original Ordinance language with the original delay left in place. Councilor Clark replied yes, he would like the original Ordinance, but he understands that there is this option C. Chair Bosley replied that option C is for if they choose to edit the original ordinance. Councilor Clark replied that he hopes they do not alter the ordinance, but if they do, he hopes they follow the advice of Councilor Jones and choose option C. Councilor Jones replied that he thinks Councilor Clark means option A, which would be the adoption of the Ordinance without any changes to the text. Chair Bosley replied yes, that is accurate.

Lori Schreier from Westmoreland stated that she encourages the Committee and City Council to stay the course with the current Ordinance and the delay that the City Council approved quite a while ago. She continued that she knows new issues were raised that they need to consider. Industry is raising a lot of issues, and it sounds to her that even if the City Council removes the delay, industry will still come forward with the other issues they are claiming are not appropriate. So why remove the delay until the Commission report is released, which is important to many people in the City? They also might soon find out the result of several lawsuits that could change the whole legal landscape with the FCC and what the City is able to do.

Ms. Schreier stated that her understanding of LTE/4G+ is that it exists in NH, on those tall towers that are far away from people. If the City allows 4G LTE, which is a higher frequency and has more of an impact on people, closer to our homes and workplaces on small cell facilities, they are bringing the frequencies closer to our lives in every way. That is the concern about going above 4G. 5G is cellular communication. It is not internet service. If you want to improve internet service, you go to fiber optics to the premises. That is how you improve internet service in the community. 5G is for high speed videos on phones. It is not what the

average person will need to run their businesses. She hopes the Committee and City Council can stay the course.

Councilor Giacomo stated that he has a clarification: 4G+ is run on the same frequencies as 4G, just with more bands within those frequencies. He continued that it is not necessarily higher frequencies. Yes, Keene has 4G LTE (4G+), in downtown, at Keene State College, and at other locations. You can find all of this information online looking up the LTE maps.

He continued that he has been thinking along the same lines as numerous people who have previously spoken about this topic: he does not want the City to end up on the wrong side of history here. New technologies have always been met with suspicion and fear. This is nothing new. He had concerns when he heard of the need for a 5G Ordinance in Keene. Early on, the City Council was given many studies, write-ups, papers, and videos touting the negative impacts of electromagnetic radiation, specifically in the 5G range. The State put together a Commission to study the effects of 5G because they had a concern. Fortunately, he continued, his fear of this 5G technology led him to research the topic, out of interest. He read and watched every document/file sent to the City Council, including opinion pieces in scientific magazines, social media posts, studies, and legal advice. Remarkably, he did not find any peer-reviewed, proven, repeatable, scientific studies. He then did his own research and found this critical information. He found studies on the epidemiological effects of cell phone microwave frequencies on adults and children, and not only was there was no repeatable correlation with cancer or any other nervous system effects, several studies showed improved cognitive function and reduced risk of Alzheimer's disease. He continued that he is not promoting increased cell phone usage, which is problematic in other ways, but his point is that actual peer-reviewed, repeatable, published, scientific studies have been done and show no link to health risks. These studies were done on 3G and 4G, so many people worry that because 5G is an order of magnitude higher energy/frequency, the potential harm to our brains and internal organs is also amplified and it seems to make sense. But what people are not taking into account is the biology of human skin, which actually blocks radiation more the higher the frequency is. That is why the lights in your house do not make your insides glow. Even though visible light from a light bulb is 10,000 times more energetic than 5G signals. It is blocked by your skin. This is also why 5G cells need to be closer together: the higher-frequency waves cannot actually penetrate things like trees, buildings, or people. A misunderstood study was circulated, which planted and grew a seed of doubt in people in the echo chambers of the internet. Other fear-inducing narratives online claim that 5G causes Coronavirus or is a means by which the government controls people. Fear is powerful, and when fear is repeated and spread enough, it can become "fact." Conspiracy theories are born. How conspiracy theories work is that any evidence contradicting them are declared to be just part of the conspiracy. It is why these theories are so hard to defeat – "one drop of fear or doubt can create it, and an ocean of evidence can't destroy it." For this reason, he does not trust that the report coming out in November will change the views of people who are so militantly against 5G. He has aesthetic concerns about 5G and believes an Ordinance is absolutely critical to protect Keene from ugliness, telecoms, and legal liability, but as for protecting them from wireless signals, science already has that covered. Councilor Giacomo concluded that when the Councilors vote, they can follow science, or follow fear. They should ask themselves which side of history they want Keene to be on.

Councilor Clark stated that they are just asking that Keene wait for the report from the Legislative Committee. He continued that he likes his cell phone and internet connectivity as much as anyone else. Waiting to hear the report is not fear-mongering. This is about “Let’s find out first before we do something.” Hopefully the report will say everything is fine and there are no health risks and that would be wonderful. But Keene is not going to rush into this just because the industry wants to make more money. Yes, Keene will have to do something, but January is seven months from now. It is not likely that the industry is going to sue. He thinks it is a big ploy and the industry is trying to scare them into changing the ordinance. Keene should just wait for the report.

Chair asked for more public comment. Hearing none, she asked the committee for their thoughts on which direction to go in.

Councilor Jones stated that they have to pass something tonight, because if they do not, the State and Federal regulations go in effect by default, and the City’s regulations are more restrictive and protect Keene citizens more. He continued that the question is the delay, and they owe it to the citizens to wait for the report, and he strongly urges motion A. He thinks that is what is best for the citizens. At the public hearing they heard a lot of concern about safety, and not waiting for the report is a disservice.

Councilor Greenwald stated that to get a parliamentary track to get this through he is looking at motion B. He continued that starting with discussing the moratorium would open the door to an amendment to change 5G to 4G. The first discussion is about the moratorium.

Councilor Greenwald made the following motion, which was seconded by Councilor Workman.

Move to recommend that Ordinance 0-2019-18-A be adopted, but that the direction to the City Manager not to accept 5g applications until January 2, 2021 contained in its previous recommendation be deleted.

Chair Bosley stated that the motion is to remove the delay and to keep the body of the ordinance intact. She asked if anyone on the committee wanted to speak to that.

Councilor Johnsen stated that she heard what he said, but he said “previous recommendation be deleted,” and she would start with motion A: “Move to endorse and adopt the recommendation with respect to Ordinance 0-2019-18-A as previously submitted to the City Council.” Chair Bosley replied that they have a motion on the table right now. She continued that given what Councilor Johnsen just expressed, Councilor Johnsen would be voting “no” on the current motion, and then they could move forward with another motion if the one currently on the table does not pass.

Councilor Jones stated that he does not know whether to ask for an amendment or just vote “no” and hope it does not pass. He continued that he will vote “no” and hopes the majority does. Making an amendment would confuse people too much.

Chair Bosley asked if there were any further comments from the public. Hearing none, she called for a vote.

On a vote of 3-2, the Planning, Licenses and Development Committee recommended that ordinance O-2019-18-A be adopted, but that the direction to the City Manager not to accept 5G applications until January 2, 2021 contained in its previous recommendation be deleted. Councilor Johnsen and Councilor Jones voted in opposition.

Chair Bosley stated that the motion now goes to the City Council and probably they will have this whole conversation again next Thursday at the City Council meeting, and they can talk about amending it back.

Councilor Johnsen asked if Councilor Jones can retract his motion and then they could go back to motion A. Chair Bosley replied no, the motion tonight was made by Councilor Greenwald and he probably does not want to retract his motion. She continued that Councilor Johnsen will have another chance to speak to this entire process at the full City Council meeting next Thursday and should come prepared to speak about her position. It will be a split vote at the City Council like it was here, with a debate like this again.

Councilor Greenwald stated that he suggests that Councilors spend some time with the City Attorney about what the nuances are with all of these different choices. He continued that tonight was a good attempt but it was really confusing, the way it was laid out. The City Council meeting will turn into a “herd of cats,” so doing any amount of homework to figure out what your positions are (whether the issue is 4G, 5G, or the moratorium) so the meeting can move efficiently on Thursday would be a good use of time.

Chair Bosley stated that she agreed. She continued that it sounds like all of the Councilors they heard from tonight and the Committee is really happy with the Ordinance. They have gone back and forth on the Committee’s recommendation. People should digest it and come prepared to speak about it next Thursday because it definitely will be a topic of discussion.

Councilor Jones stated that he encourages everyone to read the Telecommunications Act of 1996, Section 704, as part of their preparation for next Thursday.

There being no further business, Chair Bosley adjourned the meeting at 8:43 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker