

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

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

**Wednesday, July 29, 2020**

**7:00 PM**

**Remote Meeting via Zoom**

**Members Present:**

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

**Staff Present:**

Beth Fox, Assistant City Manager/Human  
Resources Director  
Thomas P. Mullins, City Attorney  
Kürt Blomquist, Public Works Director  
Rhett Lamb, Assistant City  
Manager/Community Development Director  
Steven Russo, Police Chief  
John Rogers, Zoning Administrator

**Members Not Present:**

**George S. Hansel, Mayor**

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, 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 6:03 PM.

Chair Bosley explained how the meeting will proceed and how the public can participate. Roll call was conducted. Councilor Jones arrived at 6:05 PM.

**1) Ordinance O-2020-09-A**

Chair Bosley asked City Attorney Tom Mullins to speak. The City Attorney stated that he was tasked last week to take the structure of the ordinance that staff had presented, O-2020-09, and this is an A version now because of the changes to it. He continued that he tried to maintain the structure of the last draft. The first page contains only two changes, in section E. The Statement and Intent lay out the reason for the ordinance, with respect to the COVID-19 emergency. He highlighted the changes - “proper face covering” worn in a “proper manner.” This is to remind folks that there is a proper way to wear the face covering, and to be conscious of that.

He continued that the real substantive changes come next [in the “Requirements” section]. He made some language changes in “a)” relating to employees of businesses, to make it clear that employees are under this obligation (to wear a mask) while they are performing their duties,

because the way it was written before made it sound like an employee would have to wear a mask when they were out doing anything at all even if it was unrelated to their job. He also added the words “completely covering their mouth and nose at all times” so people understand that covering the nose is important. Recent research says that the nose is one of the primary transmitters of the virus. The second change to “a)” is the addition of the words “unless a barrier approved by a City Health Official provides sufficient separation.” Employees of some businesses are behind a proper barrier, like a teller. If the City Health Official agrees the barrier is appropriate there is an exception to the mask.

The City Attorney continued that “b)” talks about people entering businesses being required to wear masks, (and he added the words) “while conducting their business; provided however, that members of the public shall not be required to wear a face covering while actually seated at a restaurant table.” Otherwise you technically could not eat.

He continued that he took out the previous “c)” because it was duplicative based upon the language of the ordinance itself and covered in other sections. The new “c)” better defines “residents, visitors, and members of the public entering a residential complex” and he changed “containing two (2) or more units” to “three (3) or more units” so they are not bringing private duplexes into play. This is aimed at commercial areas. It is limited to interior common areas. This is not about the outside, and that is a general theme in this ordinance and the changes he has made. In this section it applies not to outdoor common areas, but only to *interior* common areas like stairwells and elevators and foyers, unless six feet of social distancing can be maintained. He also included language to clarify that if a business with common areas, regardless of number of units, allows members of the public in, the ordinance should apply to them as well.

The City Attorney continued that there are big changes to “d)” - he took great pains to define “business.” He stated that the definition is, for purposes of this ordinance: a business that invites the public in to your location to operate business, to provide them any services, provide them with what they need, or sell them anything. There is a list in the ordinance, which is not all inclusive, but gives examples: retail stores, fitness centers, personal care facilities, and so on. He included “public conveyances licensed by the City of Keene.” Having heard the comments from the last meeting, he exempted businesses that are conducted in a personal residence from the definition of “business” so that people can make their own rules at their own house.

He continued that he made changes in “e)” to better define “face covering.” He did include paper, because paper face coverings were not included before, listening to some of the comments. A mask cannot have holes, mesh, or exhaust valves, because that defeats the purpose of the face covering. He added the sentence “the face covering shall be worn in a manner to completely and continuously cover the nose and mouth of the wearer when required to be worn.” It is important for people to remember that if the mask is down below a person’s nose, according to what we know from the CDC and others, it will not provide the needed effect.

He continued that he provided a provision stating “this provision shall not supersede any Personal Protective Equipment requirements that may otherwise apply to employees” as a result

of their employment activities. There are employees who need to wear, say, a mask with an exhaust valve if they work in hazard mitigation.

The City Attorney stated that in “b)” he wants to point out something that a PLD Committee member pointed out to him: the text “such as a fabric mask, scarf, or bandana” should have been stricken. It was duplicative under the definition of face mask, and scarves and bandanas are not necessarily appropriate. If the committee recommends the ordinance as proposed he suggests that be considered a scrivener’s error so the ordinance does not have to return as a B version.

He continued that in “f)” he cleaned up the language to say that wearing a mask is not required for children under 10 years of age. The committee will note that throughout the ordinance, he has changed the word “encouraged” to “required” because it is now a directive ordinance.

He continued that regarding the changes to “g),” he looked at examples of other mandates for masks, and this is similar to language in the mask statute about to be adopted by the State of VT. It provides an exemption for a medical or developmental condition for which a mask might pose a health hazard. As with VT, and appropriately, the individual will not be required to provide documentation for that. No one is qualified to make that determination. They will be relying on people to act honestly and appropriately.

He continued that “h)” has the requirement that businesses need to notify their employees, and members of the public that may be entering, about the mask requirement through appropriate signage and that sort of thing, and internal procedures to comply with the ordinance. The last sentence of “h)” says “Businesses shall deny entry and/or services to any person who declines to wear a face covering after being requested to do so.”

He continued that “i)” is the penalty provision. If there are individuals who violate the ordinance, businesses are supposed to deny them service or entry. The provision applies more to the businesses because they are in control of their premises. If a business is found to be not complying, the first offense results in a verbal warning, the second is a written warning, then there is a \$100 fine for the third offense, and a \$250 fine for any fourth and subsequent offense.

Under “j)” they wanted to make sure everyone understands: there are all kinds of executive orders out there and guidance with respect to individual business operations and with members of the public. The orders and guidance are directive to businesses and suggestive to members of the public, but they wanted to make sure it is clear that this ordinance is not intended to change any of those, except to the extent that the mask is required by the ordinance as defined by the ordinance.

He continued that under “k)” it is clear that businesses have control over their own premises, so they want to make sure that a business that wants to impose more strict requirements with respect to wearing masks can do so. This means that if a person says “I don’t have to wear a mask because I have a medical condition,” the business can say “We still don’t want to let you in.”

The City Attorney continued that “i)” has the sunset provision that was requested. It is an automatic termination without any action needed from the City Council if the State of Emergency issued by the Governor is terminated. He is happy to answer questions.

Councilor Greenwald thanked the City Attorney for his excellent work. He continued that the City Attorney answered a lot of his questions and eliminated ambiguity. He thinks this will work. No one enjoys wearing a mask but they are essential for health and safety. We are in a nice healthy bubble in Keene. But in a few weeks new and returning KSC students will be coming here from CT, NJ, NY, MA, and they will be bringing all manner of things and they need to know masks are essential to our community. KSC President Treadwell is [taking this seriously], being sincere and aggressive [with health and safety measures]. Students will wear masks on campus. This ordinance will bring consistency to on and off campus.

Councilor Greenwald continued that he wants to insert language about house parties. The ordinance does not define “bars” and “restaurants” so they are one and the same? Students will congregate there in larger groups. Based on what he has seen in recent weeks, masks are not being worn (in these bars/restaurants) and the students are not following this. This needs some enforcement. Holding businesses responsible for enforcement and fining businesses is a very effective way of dealing with it. If a bar has a mask-wearing policy, as they all say they do, but is not enforcing it, they will get a fine. Can multiple warnings and fines be issued on the same day? Or do you only get one a day? For example, if a bar just does not get it, and if they are amenable to paying a \$100 fine and then just continuing with their chaos, can they be fined repeatedly? Or can they lose their license to do business?

Councilor Greenwald continued that the other issue is, when the social activities spill over into private apartments and housing, it would help to have some way to hold landlords accountable. This rises to the level of public health. He suggests holding a landlord responsible if s/he owns three or more buildings, since by real estate law, an owner of three or more is considered a professional. If such a landlord cannot control the house parties, he would like to see that landlord be fined and go through the same process as the other business owners.

Councilor Greenwald stated that overall this is an excellent start to work with. He thinks the public is behind this ordinance and it will be adhered to. There are many people not liking the masks but you do not have to wear a mask when you are on the sidewalk, riding a bike, or just doing basic activities; it is about when you are doing business. This is for the protection of all our citizens – not just the elderly, but everyone. He supports it.

Chair Bosley stated that she respectfully disagrees with reaching into private property. She continued that she likes the language in this ordinance a lot but would struggle with that process – where do you draw the line? She understands that he is trying to hold landlords accountable but she does not know how you could police mask-wearing inside a private residence, even with young adults. Once you insert that language you are opening it up to any private residents in this town, like people holding a gathering at their home having to require masks. She is

uncomfortable with that as a slippery slope. This ordinance is a good starting place. As they watch the climate for COVID-19 changing in the community they can revisit some of these finer points without overstepping any further than they have.

Councilor Johnsen thanked the City Attorney for this fine work. She continued that she has been in contact with a woman who is deaf, who cannot read lips when people are wearing masks. But then she (Councilor Johnsen) saw that the City Attorney included a provision in the ordinance saying that if a person has a disability [that makes mask-wearing difficult, they are exempt,] and that covers it. She thanks him for that.

Councilor Jones thanked the City Attorney. He continued that the day after he saw the ordinance he called and said “Wow, [Attorney Mullins], you’re a very good listener.” The City Attorney included almost all of the comments from the last meeting. He understands where Councilor Greenwald is going with his comments but sections “c)” and “h)” seem to cover what he was saying, unless he was talking about homes without a common area, and then he disagrees with Councilor Greenwald. If it was a private residence without a common area he does not know what they would do about that. The most important section is “h).” He was thinking about what Councilor Filiault said - some businesses are hesitant to say “We don’t want you in here without a mask.” Now those businesses can blame the City for the mask requirement and name the City ordinance. He thinks that is what they wanted and thinks this ordinance will help overall. He is really happy with this document. He thinks they covered what Councilor Filiault asked for. Councilor Filiault put it into perspective very well. He thought about what Councilor Clark said – do they have to put who the enforcer is? At the time, he kind of disagreed with Councilor Clark and thought yes, they do, because he was not sure if this was a criminal code or health. Now he knows it falls under the criminal code and thus, enforcement is automatic just as Councilor Clark said. He looks forward to the other comments. He hopes they can move this through and not have to make any amendments.

Councilor Greenwald stated that to clarify: no, he is not saying [they should require mask-wearing in] private residences. He continued that his issue when there is a house party, basement party, or students having an illegal alcohol event. That is his concern - to try and get enforcement for those situations. No, they do not need to go to a B version of the ordinance and no, they do not need amendments. Maybe he is just venting. Maybe the KPD can be a little more aggressive as they are shutting down these activities. He is fine with this ordinance as it is.

Chair Bosley stated that she has been thinking about enforcement, too, and if you have a big gathering with people packed in shoulder to shoulder and it is not in a business where the business is supposed to be managing that type of activity, does that go back to the social host ordinance that they have been looking at? They will see more about that as they continue that discussion. Also, she continued, at what point does the individual become responsible for their own mask-wearing, instead of the business being held responsible? If a business says “No, you cannot come in,” but the mask-less person is having a hard time understanding that, does the business owner call the police and have the KPD address it with the individual?

The City Attorney replied that this is a criminal ordinance, as Councilor Jones said. He continued that first the expectation is that most people will do the right thing. If there is an issue and the person will not leave, it is up to the business owner to decide what to do. If the person becomes belligerent and there starts to be some altercation, which has been happening around the country, at that point the KPD would be able to respond. They would not be responding with respect to the mask ordinance, per se, it would be because the person would be violating some other law, such as trespass or disorderly conduct. Businesses do have rights to allow people in or out and to keep people out, like the signs that say “We reserve the right to refuse service to anyone.” There are qualifications to that he will not get into, but businesses do have rights.

Chair Bosley asked for clarification: if a person enters a business and refuses to comply with this ordinance and the business does not confront or eject them or call the KPD, and a fellow patron contacts the KPD, the business would be fined? The City Attorney replied that the first time would be a verbal reminder. If it happened a second time, the business would get a written warning. If it happened a third time, the business would get a fine. To Councilor Greenwald’s question, it will not happen five times in a day, but it would be day sequential. If the KPD have to go back day after day after day, those would be successive. They are not anticipating multiple fines in one day.

Chair Bosley stated that she does think this ordinance will cause confrontation. She has heard anecdotes about businesses that currently require masks have had difficult interactions with customers. She is concerned with, for example, a 16 year old employee put in the position of enforcing this ordinance so their boss does not get fined. If an employee is in an uncomfortable situation she thinks they could call the police. The City Attorney replied that the first thing would be for the teenaged employee to get the manager. Chair Bosley replied that YOLO, for instance, has young workers working alone at night. The City Attorney replied that part of the requirement is for the businesses to put together internal policies and procedures. But yes, in that situation the teenage employee alone could call the police.

Chair Bosley asked if the committee members had more questions or comments. Hearing none, she asked for questions or comments from members of the public. She reiterated that comments will be limited to the language in the ordinance, and not about whether or not a person agrees with having a mask ordinance. The City Attorney stated that the usual process is to first have the petitioners speak to the changes. Chair Bosley agreed.

Councilor Filiault stated that he applauds the City Attorney for doing a fantastic job with this. He continued that this ordinance is very enforceable. It is not heavy-handed. He read the State orders from VT, ME, and MA. These bordering states all have State-mandated mask ordinances. Keene’s proposed ordinance is “light” compared to those. He thinks it is not heavy-handed; it is just enough. They wanted to just educate the public, and have a little enforcement behind it. It is about public safety. He personally cannot stand wearing a mask, but, he is content with the wording of this and gives kudos to the City Attorney.

Councilor Clark stated that he has a question about paragraph “h).” Will the City provide some sort of uniform wording for the signs they are requiring businesses to display, or will businesses write their own and maybe the city will have 15 or 20 different versions? The City Attorney replied that they did not require specific wording, similar to when they increased the tobacco age, they did not require specific wording for businesses to use in that context. He continued that they can probably put together suggested language. Councilor Clark replied that he has no problem with that; he just wanted to bring it forward. He did not want businesses who are against this ordinance to water down their warnings. He continued that he is glad this new version has come forward and the reaction he has gotten from people. Just today the World Health Organization (WHO) reported that COVID-19 is spreading like one big wave. That is sort of good news because they do not think the virus is affected by seasonal spreads, but it is also bad news, because it means the spread of the virus is dependent more on personal responsibility and human behavior. It is more important than ever that they mandate mask-wearing.

Councilor Williams stated that he echoes the sentiment that this is a well-written ordinance and the City Attorney did a very good job. He continued that it covers what it needs to cover and, as Councilor Filiault said, is not heavy-handed. It is a “light touch but a firm touch” and he appreciates that. Maybe they will have to tighten it up later if house parties become an issue, as Councilor Greenwald was talking about, but for now, in the current environment, this is a good measure to take and he supports it.

Opening it up to public comment, Chair Bosley called on Tiffany Matthews.

Tiffany Matthews, of 85 Nims Road, thanked the committee for the work they have been doing. She asked about children under 10 not being required to wear masks. She continued that NH has had 6,513 cases of COVID-19 and 6% of those people have died. She wants that to be clear, because she heard Councilor Greenwald say “we’re in this bubble.” She also wants to bring up that regarding children ages 0 to 9, there have been 127 cases and 4 hospitalizations (in NH). Children are likely to transmit the virus if they get it. For several months children have been out of school, with daycares and camps closed, and parents at home, so we do not really know the true number for children. While she appreciated that last week someone said the children could be having major psychological problems from wearing masks, she does not think that is true. She coordinates an SAU 29 parents’ group focused on COVID-19 safety. These parents talk about how their children have been doing low-risk activities for several months, but also learning about how to live with [the risk of] this virus and how to wear masks. Her children have severe asthma issues, and they wear masks. She would love for that [topic of children under 10 not being required to wear masks] to be revisited. It is not based in science. They know that masks work and can prevent transmission.

Trevor Gardner, of 54 Kennedy Drive, stated that this feels really weak. He continued that he thinks they should be fining people as well as businesses and cannot fathom why that is not

happening. We know masks are so important. The City needs to enforce it as much as they can. Just having the fine in the ordinance will convince a lot of people to wear a mask. What if a person walks into a business without a mask and is asked to leave - they could be asymptomatic and easily get people in that business sick. It spreads so easily. We also see countries using weak mask policies, like Spain and Belgium, having relapses. Keene is relatively fine now but it is a quick problem that could happen if we slip up. He continued that he was thinking that Main Street should have a particular ordinance, if that is legal and possible, from the KSC circle to the circle at the end. There are so many people walking close together. Someone could so easily spread it. It would not be that restrictive to require people to wear a mask on that section of Main Street, where most people are just running into a shop, not exercising or hanging out there.

Mr. Gardner continued that regarding section “g),” he was wondering – there are a lot of people making fake medical cards. How should people in the community handle those if they see them? These cards look like they are from the government and say that the HIPAA (Health Insurance Portability and Accountability Act) allows the card-carrier to not wear a mask, but they are fake. How will these cards be enforced or what will the penalty be?

Councilor Ormerod stated that he is seeking a clarification regarding the definition of “businesses” - what about churches and schools? Public schools have their own mask policy. But there is an election day coming up with school facilities used by the public. Do we need clarification on that?

The City Attorney stated that he did not include churches, on purpose. He continued that there are lots of executive orders and guidance that apply to all kinds of things, including churches. There is not a religious exemption in the ordinance. That triggers difficult questions under First Amendment rights. It is up to the committee; he could make this ordinance shorter, or longer, but he wants it to pass muster with places, so he did not include churches because of the concern with the First Amendment overlay. Schools are a separate governmental entity. They have their own statutory rights and obligations and they do what they need to do. That is also true for the County. Regarding Election Day, City staff is trying to get clarification from the State about elections and locations and what requirements are in place and what authority the City has with respect to that day. The City Council can stay tuned for that information.

Rebecca Montrone, of 75 Winter Street, stated that she is a citizen and a health practitioner and she understands a lot about this that probably other people do not. She continued that this is an unwarranted intrusion into people’s lives. She will not comply. She wants whoever is going to enforce this ordinance to know that her (business) address is: 103 Roxbury Street, Suite 300, and she will not be wearing a mask, so “come on up and see [her.]”

Chair Bosley stated that comments need to be kept specifically to the language of the ordinance. Ms. Montrone stated that she is commenting on section “i),” about the penalties.



Dr. John Walter, of 38 Felt Road, stated that he is a family physician and has been practicing in the county for 30 years. He continued that he feels strongly that this ordinance needs to pass. It will reduce the spread of this virus. It is not a big deal to wear a mask. People are claiming it is dangerous, because levels of carbon dioxide builds up, but surgeons wear masks hour after hour in the operating room, so masks are perfectly safe. This is a well written ordinance. He is concerned that there is a lot of anti-science bias from people testifying or speaking to this issue. He strongly encourages the committee to recommend the City Council pass this ordinance.

D’Vorah Kelly, of 9 Sugar Maple Lane, thanked Councilor Filiault, Councilor Clark, the City Attorney, and the whole committee. She continued that her comment/suggestion is regarding section “h)”, about signage. She wonders if there could be a brand - something that as soon as people saw it they would know what it meant without having to read the whole sign, such as an image, maybe a circle with a mask in it. It would be something that would designate that “This is a place that follows the mask ordinance,” without having to have a big sign or a lot of signage. Portland, ME has little blue stickers saying “We proudly serve Maine water” so you knew just walking up to it, recognizing the blue sticker, what you were going to get when you went in there. She continued that she gives kudos to the City Council for pursuing this. She strongly supports this ordinance. Her suggestion is to brand this ordinance.

Chair Bosley stated that she has thought about a public education campaign to accompany the ordinance.

Joseph Mirzoeff, of 641 Park Ave., stated that firstly, at the last meeting Chair Bosley mentioned she was concerned about locked businesses that the public was not able to just walk into, and thinking they should be exempt. He agrees. But that is not in this ordinance as far as he could tell. Second, He continued that, this is illegal for the City Council to do. NH is not a home rule state. The City Council is acting illegally and oppressively. Last is the sunset clause. The one they have here is that it sunsets “when the emergency is over.” But last time it was suggested that the ordinance might be sunset after two or three months. There might still be an emergency in NH because of cities like Manchester and Nashua, whose problems are very different than Keene’s. Keene has very few cases. That may change with the schools opening. But the sunset should be scheduled automatically two or three months from now. It might still be an emergency in the state but “we might find out that this really isn’t working for us” even though the State still thinks we should be in emergency.

Councilor Chadbourne asked the City Attorney – how are we addressing restaurants? She continued that people congregate in small or large groups. Servers wear masks but not the people eating. There is nothing the City can really do about that, right? She knows someone who just ate at The Stage and was informed that they were exposed to COVID-19 and had to self-quarantine. The City is taking all of these positive measures and trying to protect public safety, but the spread will still occur when there are groups in restaurants, if the City allows restaurants, which it should.

The City Attorney replied that nothing in this ordinance is expected to change, except with respect to the obligation to wear masks as defined by the ordinance in certain places, any executive orders or guidance from the State. There is extensive guidance from the Governor's Office with respect to how restaurants operate. The City's Health Inspector is here tonight, if anyone has questions for him. Restaurants are still supposed to comply with the requirements from the State, and one is to not allow people to congregate without being seated at tables.

Chair Bosley stated that the person Councilor Chadbourne spoke of who was exposed to COVID-19, and everyone else, should know that there is still a testing site available on Krif Road if they need it. Tests are available by appointment. Anyone who has concern of exposure, she encourages them to get tested. She believes it is free of charge.

Nancy Little, of 606 Marlboro St., stated that she has a question. She works with people with disabilities. She understands that "people with a medical or developmental condition, to whom the wearing of the face covering would pose a threat to their health and safety do not have to wear a mask," however, it says below that businesses can still deny entry to those people. She is not an attorney but she works with people with disabilities and knows that that might cause a serious problem, if a person with a disability chooses to not wear a mask because they have a disability. If they are still denied entry to a business that might cause a problem down the road.

The City Attorney replied that the language says that this ordinance does not interfere, affect, change, alter, or amend any other requirement that may be imposed on a business by federal, state, or local law, and that includes the Americans with Disabilities Act (ADA). A business that decides to do that against a person with a developmental disability, who is in a protected group, will do so at their own risk. They did not want the City's ordinance to require masks for medically compromised people. Businesses still have to comply with the laws.

Ben Robertson asked where the ordinance can be found, because he wants to read it. Chair Bosley replied that there is a copy attached to this meeting's agenda on the City's website.

Tracy Desteph, of 110 Church St., asked if there is language that will include private clubs. She continued that she sees them have events, one just a couple weeks ago, with 50 or more people in the building and she does not think they are requiring masks. Those are large groups of people gathering and then going out into the community. As medical professionals say, we need to stay ahead of the game and be proactive instead of reactive. Can the ordinance include wording to include these private clubs? They are required to follow CDC and Governor's orders, correct?

Chair Bosley stated that that is sort of a bridge between what Councilor Greenwald was talking about earlier, and public establishments. She would like to hear from the City Attorney. Is there any language in the ordinance that would refer to the private establishments that are buildings but not residences that are inviting the public in? Would they fall under the ordinance?

The City Attorney replied that if they are inviting the public in, the answer from his perspective would be yes, the ordinance applies. He continued that if it is strictly a private club and you cannot get in without being a member, then the language does not apply to that. He does not know off hand whether or not there is guidance from the Governor's Office about private clubs. The problem will arrive when it is a hybrid: something that is supposedly a private club, but you can get in if you sign in at the door and pay \$5. His point of view would be that the ordinance does apply then. If such clubs want to make a claim that it does not, they would have to establish that. For a purely private club, no, the ordinance would not apply.

Sean O'Mara stated that he thinks the proposed mask ordinance is good; it is based on common sense and science. He continued that on the issue raised by a speaker earlier: he does not see anything in it that is illegal or unconstitutional. He thanks the City for doing this. Two points on enforcement: one, individuals who refuse to comply should be fined in some way, if individuals refuse and are making things difficult for business owners. Two, he was walking around downtown and noticed that the bars were opening, and there is a small bar on Main Street near the college that is packed with people and no one is wearing a mask. A bar like that might just eat the fine over and over because of the amount of business they do. They might still be very profitable just eating the fine every night. If a business continues to violate the ordinance after several fines, would there be another step? Would a bar like that have to close down?

The City Attorney replied that it is important to keep in mind distinctions among public invitation places. He continued that as Councilor Greenwald pointed out, there is technically no strict "bar" in NH; bars have to provide some type of food. Those entities are still subject to the Health Code and HHS rules, which can be more stringent than the City ordinance. There are potentially options outside of this ordinance.

Chair Bosley asked if a restaurant/bar falls under the same Emergency Order requirements that if anyone is not seated at a table they should be wearing a mask. The City Attorney replied yes, and they also fall under the Executive Orders and guidance that exists with respect to those. He continued that when the openings happened the City did have to go and remind an entity that was subject to a food and liquor license that there are other mechanisms, if an entity does not comply with the requirements of the Executive Orders, in a public health context, and there were consequences, which could include shutting down the business.

Chair Bosley asked who a patron with concerns about compliance should contact. The City Attorney replied that they should always contact the KPD first.

Chair Bosley asked if there were members of the public wishing to speak for the first time. Hearing none, she called on Trevor Gardner again.

Mr. Gardner stated that he agrees with the people who say the City should be proactive instead of reactive. He continued that they should keep that in mind if they edit the ordinance. It is so easy to slip up and then suddenly they are reacting and not able to catch up. If you need examples,

look abroad – Europe, Hong Kong, and Singapore are really struggling. They loosened [the restrictions] and now they are paying the price in lives and businesses. Also, someone said this is an intrusion. Look at Article 4 of the NH Constitution - this is totally legal.

The City Attorney informed Chair Bosley that Mr. Gardner's comments are getting away from the topic of the ordinance language. Chair Bosley asked if Mr. Gardner had comments on the ordinance language. Mr. Gardner replied that he encourages the committee to make sure any edits are proactive instead of reactive.

Sarah Franklin, of 95 Adams St., stated that she applauds the committee for putting this together. She continued that regarding the language, she suggests one little detail about the "mask" definition: it is important that a mask be two-ply or preferably three-ply to really do the most good for people. She suggests that be added or researched. She also wants to back up Councilor Greenwald - the social host ordinance would help a lot with the other problems. That is the next thing to tackle. She thanked the committee.

Tiffany Matthews stated that she failed to mention that she is a college health practitioner in the area. She continued that regarding the mask language, she wants to make sure it includes that the mask (whether cloth or surgical) needs to cover the nose and mouth, especially since there is new scientific information about studies of the nose. She also wants to speak to Councilor Johnsen's point about deaf people and other people who benefit from reading lips – you can sew clear vinyl panels right into a cloth mask, which is very effective. Face shields are not effective. They are open. COVID-19 can go up and around the mask, kind of like the plexi-glass shields at some businesses, where employees are not wearing masks while standing behind them. She appreciates the last caller talking about different types of face coverings. Even a bandana or buff is better than nothing. Lastly, she is sensitive to people who cannot wear masks. We are lucky that there are different options in Keene, like deliveries and curbside pick-up.

Ben Robertson stated that he has a couple questions. Is it correct that an employee who is at work but not interacting with the public does not have to wear a mask? Chair Bosley replied that that is correct, if six foot distance can be maintained. The City Attorney replied that this is designed to be about interacting with the public. He continued that if employees in a business are not interacting with the public it is up to the business. The guidance from the Executive Orders applies. The business still needs requirements with respect to its own employees, even if they are not interacting with the public. The City did not want to reach into that context. That "six feet from a co-worker" language was specifically deleted from the proposed mask ordinance because the City did not want to reach too far into the personnel policies and procedures and that was already covered by the guidance from the Executive Orders.

Mr. Robertson asked where/how the ordinance covers healthcare workers treating patients. He asked if the ordinance is trying to say they have to have plexi-glass shields. The City Attorney replied that this does not apply to hospitals. He continued that people are generally being invited into the hospital for some reason because of medical issues; hospitals are not generally open for

people to walk in and out of. Mr. Robertson asked if the ordinance includes or excludes chiropractors and other alternative health practitioners. The City Attorney replied that for a health provider of any kind, you have to make an appointment; you cannot just walk in the door, generally. Staff wrestled with this. There are going to be areas where there are questions. But the thrust of the language is that if you are inviting the general public in, this will apply to you. If you have other restrictions, like requiring appointments, this arguably does not apply to you.

Mr. Roberston asked about bars. He has heard stories and seen that when people are drinking there is a lot of spitting and vocalization going on. Is the City expecting people to take their mask on and off between sips of their beer? How could this work? The City Attorney replied that people are required to be seated at a table. Again, there are already restrictions in place from the Executive Order. If you get up and walk around, under the existing guidance, you are supposed to wear a mask.

Nicholas Germana, of 206 Baker St., stated that he supports the ordinance and agrees that there should be fines; people who choose not to put on a mask for ethical reasons might need a financial reason to do so, unfortunately. He continued that there should be a specific sunset date upon which an extension needs to be granted, instead of leaving it open ended.

Chair Bosley called on Dale Montrone. The audio quality was poor and Chair Bosley stated that she could not hear him and suggested he try calling on the phone.

Jared Goodell, of 39 Central Square, asked if it is correct that the ordinance says that if a person has a medical or psychological condition that prevents them from wearing a mask they are exempt. The City Attorney replied that it says “medical or developmental” and does not specifically reference mental health. Mr. Goodell asked: what right does an employer or business have to ask a patron or employee about their reason for not wearing a mask, and what evidence does the individual need to give, if any? The City Attorney replied that the business would not be asking the question. If a customer comes in without a mask and says they have a medical or developmental condition to which a mask is a threat to their health or safety the business can accept that. He continued that it does not require documentation. Mr. Goodell replied that there is some guidance for service animals; you can ask what training the animal has but you cannot ask about a person’s condition. If someone comes in without a mask, should the business just assume they have a condition that prevents them from wearing a mask? Does it violate a person’s rights if you ask them to wear a mask? The City Attorney replied that the employee should ask any person coming into the business without a mask to wear a mask, and he strongly encourages businesses to have masks available for people. If the person complies, great. If they say they have a medical or developmental condition that prevents them from wearing a mask, the employee should accept that. A business still has rights and could choose to deny service. If they are denying service to someone who does not qualify under the ADA “public accommodations” they do that at their risk.

Mr. Goodell asked what exposure, if any, a business has if its patrons are coming in and not complying with the mask ordinance, whether it is because the people have medical or developmental conditions or not, but the business has done its due diligence in requesting that people wear masks. What sort of exposure, under this ordinance, would the business have? The City Attorney replied given that hypothetical, if someone says “I have a medical condition that prevents me from wearing a mask,” the business has none, under this ordinance. But if someone comes into the business and is not complying and the business allows them to continue coming into the business, the way the ordinance is drafted, the business is subject to a verbal warning for the first offense, a written warning for the second offense, a \$100 fine for the third offense, and a \$250 fine for fourth and subsequent offenses.

Mr. Gardner asked if these penalties would be adjudicated through the district court. The City Attorney replied the circuit court.

Mr. Gardner asked: if employees are alone in the business and there are no customers present, is it correct that the employees do not need to wear masks? The City Attorney replied that this ordinance would not apply in that situation, but the other guidance from the Executive Orders and the Governor’s Office might apply.

Rebecca Montrone shared a Ralph Waldo Emerson quote and gave comments not related to the language of the ordinance. Chair Bosley stated that they are keeping comments to the language of the ordinance.

Chair Bosley stated that she does not see anyone from the public still wishing to speak. She asked if the committee had suggested changes to the ordinance or points to review. The City Attorney recommended someone on the committee make a motion first.

Councilor Greenwald made a motion for the Planning, Licenses, and Development Committee to recommend the adoption of O-2020-09-A. Councilor Jones seconded the motion.

Councilor Johnsen asked if Councilors Filiault, Clark, and Williams want to give final feedback. The City Attorney replied that they cannot, now that a motion is on the floor (and they are not committee members), but they will have their opportunity at the full City Council meeting.

Councilor Workman thanked the City Attorney for his work on the document and all the people from the public who spoke. She continued that this has weighed heavily on her mind for the past six weeks. While she recognizes that there is a lot of concern about individual liberties we have to remember that the committee and the City Council as a whole are tasked with the safety of all 23,000+ Keene residents. While she fully supports rights and freedoms she has always said that it is best to be proactive rather than reactive and they have to protect the most vulnerable people of the community. She hopes that with more education and community outreach the issues people brought up today about non-compliance can be mitigated and they can get more collective buy-in. She reminds the public: “If you see something, say something.” Address it with the

appropriate authorities, who are the KPD in this matter. City staff are always available during business hours to point people in the right direction. She also wants to clarify that they can always revisit this ordinance if it is passed and make amendments to it. It can be a living, breathing document. If the situation and the data changes, they can change the ordinance. She will be voting “yes.”

Councilor Johnsen stated that she again thanks the City Attorney for being so on the money and for being able to clearly answer all the questions about it. It is so well written and she appreciates it.

Councilor Jones stated that he again thanks everyone. He continued that originally he was opposed to the mandate and now that they have made some really good corrections, he is for it. It covers what they wanted to accomplish: it is an opportunity for the businesses to be able to say that it is a City ordinance that people have to wear a mask. The City is being “the bad guy” so individual businesses do not have to. The City Council members have to look out for the health and well-being of the community, because if they do not, who will? He strongly feels that this ordinance should be passed. He wishes they did not have to do an ordinance, but the more they heard people talk, the more informed he became about how uninformed other people are. He looks forward to voting for this ordinance.

Councilor Greenwald thanked the City Attorney for his great work. He praised Chair Bosley for doing a super job listening to the public, managing the discussion, and keeping the train on the tracks. He also thanked the public, and stated that whether they were for or against the ordinance, they were heard. The committee received a lot of feedback. This has probably been the most intense involvement from the public than anything else he can remember, except maybe the topic of cutting down trees at Robin Hood Park years ago. He is ready to vote.

Chair Bosley stated that they should give the public one more chance to speak. Hearing no further comments, she called for a vote.

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends the adoption of Ordinance O-2020-09-A.

Chair Bosley announced that tomorrow night’s PLD Committee meeting is canceled because they do not need it.

There being no further business, Chair Bosley adjourned the meeting at 7:34 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker

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