

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

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

**Wednesday, September 23, 2020**

**7:00 PM**

**Council Chambers A/Zoom**

**Members Present:**

Kate M. Bosley, Chair  
Mitchell H. Greenwald, Vice-Chair  
Philip M. Jones  
Catherine Workman  
Gladys Johnsen (arrived at 7:13 PM)

**Staff Present:**

Elizabeth A. Dragon, City Manager  
Thomas P. Mullins, City Attorney  
Rhett Lamb, Community Development  
Director/ACM  
Kürt Blomquist, Public Works Director  
Mark Howard, Fire Chief

**Members Not Present:**

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 7:05 PM. Roll call was conducted.

**1. REPORT OUT: Let it Shine – Request for Use of City Property – Pumpkin Festival -  
Public Works Director/Emergency Management Director**

Chair Bosley asked to hear from Public Works Director/Emergency Management Director Kürt Blomquist.

Mr. Blomquist stated that this request for [use of City property for] Pumpkin Festival has been on the more time agenda for a month or so. He continued that it was on more time to provide staff the opportunity to have a meeting with Let it Shine, who was the sponsor then. People may be aware that most recently Let it Shine issued an announcement saying they are stepping back from sponsoring the Pumpkin Festival and looking for someone to take it over. Staff received a letter from Tim Zinn indicating that Let it Shine would not be sponsoring the program this year. Staff recommends that the committee report this out as informational. He expresses his appreciation for Mr. Zinn for his outstanding work. Staff will miss the protocol meetings that they have participated in with him.

Chair Bosley stated that there are people trying to get into the Zoom meeting and they are unable to because the meeting ID is wrong. Rhett Lamb stated that Rebecca Landry is monitoring the technical difficulties phone line. Ms. Landry stated that the City website calendar has the direct

link, and that is correct. Chair Bosley repeated the phone number that members of the public can use, and the correct meeting ID.

Chair Bosley asked to hear from Tim Zinn.

Tim Zinn, of 43 Grove St., Board member of Let it Shine, stated that he wants to thank staff and the City Council for working with Let it Shine this year for what they hoped would be a bright spot for October. He continued that unfortunately, it became too much of a challenge. The schools have their own challenges and are focused on the things they need to focus on. The pieces were not coming together this year. Ultimately they had tried to have something more like Art Walk with a smaller display of pumpkins up and down Main St. As Mr. Blomquist mentioned they did post that they are looking for the next group to take this on, and they are optimistic that the new group will work with the City and come up with something that makes the citizens of Keene happy. They still would like the public and downtown merchants and anyone else who wants to participate, to do so in the “online Pumpkin Festival,” for lack of a better term. They hope to get some positive message shared online and have it be a bright spot for Halloween for the kids. He is proud that Let it Shine and the City of Keene worked together on this. The future of it is up to the citizens of Keene. There are options for the future if they keep talking about it and find a way to keep this tradition alive in some way.

Councilor Jones stated that he always admired Mr. Zinn’s enthusiasm, initiative, and work ethic, and he thanks him for everything he has done. He continued that he was always a big fan of the Pumpkin Festival. He sees this as similar to when the Rotary Club could no longer do the 4<sup>th</sup> of July celebration and the Swamp Bats came in and took over. He wants to ask: if someone else does take over the Pumpkin Festival, is Let it Shine willing to share intellectual property, naming rights, and so on? Mr. Zinn replied yes, the board is talking it over. He continued that ideally, Let it Shine has the name recognition, the foundation with the finances, and the non-profit board. They want to hand it over as a complete package to whoever it is that would like to take it over. They will work with the new team as well, giving the new team guidance if they would like it.

Chair Bosley asked if committee members had questions. Councilor Johnsen arrived via telephone at 7:13 PM. She stated that she agrees with everything Councilor Jones just said. She continued that the Pumpkin Festival has been wonderful and her grandchildren have grown up enjoying it, and she thanks Mr. Zinn for all of his wonderful work.

Councilor Greenwald stated that finally this was a format that he thought was really going to work, with pumpkins along the sidewalk, and no street closures or jersey barriers. He continued that it is so unfortunate. He hopes they can reach out to the Downtown Coordinator, Beth Wood. This seems like something she should be able to pull together. It should not be so complicated to get planks and milk crates and put up pumpkins. He challenges her to step up and pick up the reins on this. Maybe next year it can get bigger, but for now, do not let it die. Let it Shine has done a great job. He thought this year would be the year of rebirth.

The City Manager asked Mr. Zinn: he said part of the reason the Pumpkin Festival is not happening is because the schools are unable to participate due to COVID-19 and that was really their source for pumpkins. She asked if that is accurate. Mr. Zinn replied that that is part of it; it

was numerous things. He continued that it was about coordinating with downtown merchants, which changed from the structure of previous years, and board members had a lot of things going on as well, and it was just a perfect storm where the stars were not aligning.

Chair Bosley asked if there were questions from members of the public. Hearing none, she stated that she would entertain a motion.

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

By a vote of 5-0, the Planning, Licenses, and Development Committee accepted the report as informational.

## **2. Informational Update - Broadband For Unserved Keene Neighborhoods - ACM/IT Director**

Assistant City Manager/IT Director Rebecca Landry stated that she will give a two-year history of what she and City Manager Elizabeth Dragon have been trying to accomplish for broadband. She continued that a brief overview of the problem is: at least four streets in Keene have been identified by providers as “unserved.” This means those four streets do not have access to at least 25 mg download speeds and 3 mg upload speeds. In fact, there are residents with speeds of less than 1 mg in addition to landline problems. She and the City Manager are very grateful to the residents of these streets who have been working with them very cooperatively and patiently as they try to help them solve this problem. Her hat is off to them, because especially during this pandemic, they have had so much difficulty. These four streets include students of various ages trying to do online education; an author, who finds it very difficult to work from home; and medical professionals trying to do remote visits with their patients, so this is a very serious problem. It was serious before the pandemic, and the pandemic only highlighted it.

Ms. Landry continued that a couple years ago she and the City Manager started looking into opportunities with current providers. The City has a franchise agreement with Spectrum, not for internet services, but for cable TV services. The company also provides internet services. She and the City Manager asked for Spectrum’s help in identifying where they could extend their current infrastructure. The franchise agreement calls for cable TV services for all Keene residences where the density is 15 homes per mile or greater. These streets [without broadband] are 13 or 14 homes per mile. They fall just short. Therefore, Spectrum is not required by contract to provide cable TV services to those homes. She and the City Manager did look into requesting that Spectrum install those services. Subscribers would be required to cover part of the installation costs because they do not meet the density requirements.

She continued that she and the City Manager also looked into Consolidated Communications as a possible provider. Consolidated has additional streets where they are not providing that minimum service; however, they are only looking at the overlap here where both of these providers have less than 25 mg services. Consolidated conducted a very comprehensive review. They were looking to install a beta solution, which was a good alternative to what they considered an exorbitant cost of fiber, which the City would like to see in those communities. An alternative to fiber was a beta solution using the existing infrastructure, which was very

promising, but then the stay-at-home order hit and the priorities changed for a lot of providers out there, including Consolidated and Spectrum. She and the City Manager had to go back to the drawing table. Thankfully one of the priorities of the Governor's Office for Emergency Relief and Recovery (GOFERR) was starting a broadband funding program. Spectrum applied for \$189,750 to connect 76 properties on these four streets. Despite the fact that they are unserved, not underserved, the grant did not get awarded. There is word on the street that that might not be the final answer. She appreciates that Spectrum is trying hard to get that funding. The timing is important, because they cannot just take money and get up on the poles. Thankfully these two providers already have infrastructure poles, so they are most likely to get fiber or other cables up on the poles they are already on, but there are supply chain issues, and of course, funding is a challenge. Either way, Spectrum has identified that specific cost, which is good, and Spectrum hopes to move forward whether or not they get the grant. She does not have the final word on that right now. There is a chance that if the local office gets support from the higher ups the project could proceed whether or not the grant funds are awarded. The City will be pushing for that.

Ms. Landry continued that there is another possibility: a number of towns in NH are doing the broadband bonding solution. Senate Bill 170 passed in 2018 and allows municipalities to issue bonds for broadband infrastructure much like they would for water and sewer or road projects. That allows municipalities to use bond funding. Consolidated is partnering in towns around the state to do this, in a manner that provides a revenue that pays back the bond. So those municipalities are not on the hook to pay it back. Those towns have bigger projects than what Keene needs. In Keene it is four streets, not a complete overbuild. Also in those towns Consolidated has been over-building the entire town and assuming the costs for properties that already have 25 mg or faster but using the bond funds for properties that have less than 25 mg, which is a requirement of the State law. She asked if anyone had questions.

Councilor Greenwald stated that Senator Kahn had questions and urged him to get this on the agenda, so the City gets aggressive about this. He continued that Senator Kahn is not letting this drop. The City needs to be aggressive. The money is out there. Communities are getting the money to do this, and whether the City gets the money or not may be up to how aggressive the City gets. So his advice to Ms. Landry is "Go get 'em." Ms. Landry replied that Senator Kahn was a sponsor of the bill that passed, and they are grateful to him. She continued that there is more legislation being considered to allow municipalities to create districts to do more joint projects. The original Senate Bill 170 was helpful to towns, but Keene was unique. Keene does not need a complete overbuild. Although they have properties with over 25 mg, they have issues with the cost of those services, and the bill did not address that. The issue is bigger than just those who do not have access. However, the priority now is getting broadband services to those streets that have nothing.

Councilor Jones stated that going way back when the City first negotiated its franchise with Time Warner, which was before Spectrum, before Elizabeth Dragon, and before Ms. Landry, Time Warner made an offer that if the City would split the cost of wiring to those areas they would be willing to do that. At that time the City did not have a franchise fee so the City had no return on investment and turned Time Warner down. Now the City does have a franchise fee and there is a return on investment if they were willing to split the cost with the City now. Is that

something to consider? Ms. Landry replied that there is still language in the current franchise agreement that requires that Spectrum install their services to neighborhoods that have less than 15 homes per mile density. That language is still in there and calls for a pro-rated cost, that they would share a portion of the cost based on the density. That is still in there and certainly an option. Whether the franchise fee money is used for that right now – she thinks the franchise fee is 3.5% right now, and could go up to 5% - 90% of the dollars from the franchise fee today are given to Cheshire TV for their operations. The 10% that remains is used for City Council audio and video systems, laptops, Novus, Granicus, and so on and so forth. If the City Council is interested in raising the franchise fee they can look into that. Or for reapplying the franchise fee dollars, they would have to come back with a synopsis of what that would look like. Councilor Jones replied that he would be more interested in reapplying the funds, not raising the fees.

Councilor Workman asked if there any alternative funding strains they could utilize, specifically related to COVID-19. Ms. Landry replied that there are loans and grants out there, but the one most likely is the one Spectrum applied for on Keene's behalf. She continued that she is not aware of others. USDA has a lot of rural development grants, but most of those are loan programs and they would have to compare the pros and cons of loans versus bonding. Some of those connect programs out there, which are really interesting, are ones that the City is not eligible for because the City of Keene's population is slightly too large to qualify.

Chair Bosley asked if Ms. Landry said the streets have a density of 13 to 14 houses per mile and the contract states 15 houses per mile. Ms. Landry replied yes, the streets are Daniels Hill Rd., Langley Rd., Hurricane Rd., and Chesterfield Rd. on the south side of Rt. 9. Chair Bosley asked if it is correct to say that whatever the percentage, 13 or 14 houses per mile, Spectrum would be on the hook to cover the cost of that percentage of the buildout, and is the ratio one to one, for the City and Spectrum covering the costs for that. Ms. Landry replied that the franchise agreement uses the term "pro-rated." She continued that the City would like to believe that if they have 13/15ths residency the provider would provide 13/15ths of the funding; however, that is subject to interpretation. They are continuing to look into that and are talking with Spectrum about it, trying to clarify that definition so they know what it entails on the City's behalf if they want to take that on.

Chair Bosley asked the City Attorney to weigh in. City Attorney Tom Mullins stated that Ms. Landry is right; they looked at this issue before. He continued that he has had a series of conversations and letters back and forth with Spectrum's general counsel. The City and Spectrum have a fundamental disagreement about what the franchise agreement requires. The franchise agreement from his perspective is clear: it says it is a pro rata amount. But there is an example in the agreement that basically said that if it is 50% density, the City pays 50% and Spectrum pays 50%, and Spectrum is relying on that provision to say, "Nope, we pay 50%." The City did explore this with outside counsel who helped with the franchise agreement in the first place. Part of the problem is he does not have lots of leverage. The City could say this is a material breach and terminate the franchise agreement, but that would not be well-received by the community. They are still working with the provider to see if they can work through this. He continued that everything he is saying tonight has been on the public record in some fashion. But if they were to make any other decisions it would be in non-public session.

Chair Bosley asked Ms. Landry what the timeframe would be if there was some magical funding source or they came to some sort of agreement. How long would it take to get this installed so users were up and running? Ms. Landry replied that that is great question and the answer is “it depends.” She continued that when they provided a number of letters to the GOFERR committee they encouraged that if they wanted short term solutions because of supply chain issues associated both with demand and global distribution issues, the existing providers already on the utility poles have the shortest time frame to install their services; that is primarily Consolidated and Spectrum. They could get things up and running in less than a year, or maybe faster. If Spectrum had received the grant they were planning on getting it done by the end of the year. That is the best case scenario. Any other provider that came to town would be looking at an overbuild situation or leasing space from the existing providers, and that requires time. If they are putting fiber optics on the poles they have to go through site surveys. Thankfully the Public Utility Commission (PUC), which regulates the utility poles, has time limits for those kinds of things, but it would take longer for someone who is not an incumbent provider.

Councilor Jones stated that going through Spectrum would be the quickest route. He asked, what is the dollar amount to provide service to those four streets? Ms. Landry replied that \$189,750 for all 76 addresses is what Spectrum came up with. She continued that she does not have a specific figure from Consolidated.

Chair Bosley asked the City Attorney if Spectrum was the company that said the provider and the City would each pay 50%. Ms. Landry replied yes, that was Spectrum. Chair Bosley asked if that means the City would be responsible for 50% of that \$189,750, or if that \$189,750 figure is what Spectrum says their 50% would be and the City would have to match it. The City Attorney replied that under Consolidated Communication’s interpretation of the agreement, the city would have to pay 50% of that. Chair Bosley asked if it thus would cost the City about \$90,000 to get broadband service to those 76 households. Ms. Landry replied that that would be the worst case scenario, but she agrees with the City Attorney that they want to push back on the obligation according to the language of the franchise agreement.

The City Manager stated that she has a further point of clarification: the franchise agreement talks not about the City paying that percentage, but about the property owners paying that. She continued that the definition of how much that percentage is is something the City has been trying to negotiate, to get a larger percentage paid for by the provider. But in the end, even in the bonding method, it would be the people actually receiving the service paying for it, either through their bills or a separate fee. The language did not refer to the City picking up those expenses. The City Attorney replied that that is right; it would be paid by the users of the service. He continued that was using the word ‘city’ to mean ‘residents of the city.’

Chair Bosley asked if committee members had questions. She asked if there were questions from members of the public. Hearing none, she asked for a motion.

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

By a vote of 5-0, the Planning, Licenses, and Development Committee accepts the report as informational.

### **3. Social Host Ordinance - DRAFT**

Chair Bosley asked to hear from the City Manager.

The City Manager stated that responding to a request from a neighborhood group, the City Council instructed the City Manager to draft a Social Host Ordinance (SHO) and a draft is before the PLD Committee tonight. She continued that Sarah Franklin and other concerned east side neighbors presented their request at the PLD Committee's June 10<sup>th</sup> meeting. At that time they provided an outline of what they called a working draft, and information from San Marcos, Texas, related to their use of a similar ordinance and their success with implementation. The ordinance is a tool, which she believes is only effective in San Marcos because it came with a funded position and support from the college. A newly-created Community Liaison position is the key to successfully implementing this type of ordinance. It would provide the support needed to track and monitor activity in the neighborhoods, in addition to the crucial follow-up between the City, college, students, and property owners. If an ordinance is approved here in Keene a Community Liaison to support it would be required. She has spoken with Keene State College (KSC) President Melinda Treadwell, who is attending this meeting, about sharing the cost of such a position, and she is very supportive. They are currently reviewing job description duties to create language that will support the intent of the proposed ordinance. KSC has made major changes to their Code of Conduct policy this year, which was prompted by COVID-19. It holds students accountable for on- and off-campus behavior. Continuing and strengthening the City's partnership with KSC to address quality of life issues in our neighborhoods is the key to success. Tonight the PLD has the first draft of the ordinance that was written by the City Attorney largely based on the San Marcos model.

The City Attorney stated that as City Manager pointed out, a lot of the language comes from the San Marcos ordinance, although he looked at others, too. One was from Amherst, MA. In the end he decided that the San Marcos approach was probably the most comprehensive and efficient/simple. He decided to revise that one for the PLD Committee's consideration, review, and discussion. The intent is to provide something into the committee to discuss, and that is why it does not have an ordinance number on it. He expected that other changes may be required before it is put into ordinance format. That is up to the committee.

He continued that the draft ordinance is broken into sections: first is the definitional section, with definitions taken from the City of Keene's Zoning Code and the San Marcos ordinance, such as "dwelling unit," "lodging house," and so on and so forth. Regarding the "Excessive noise" definition, he tied that back into the City Code's noise ordinance so there is hopefully congruence between those. He defined "noise" in this ordinance briefly. There is a definition for the "owner of the property," which is important, because the ordinance talks about notification to the property owners. The definition of "party" references a NH statutory structure, RSA 644:18. In the section of the Criminal Code (which is where this arises) called "Breeches of Peace and Related Offenses," there is "Facilitating a Drug or Underage Alcohol

House Party” which is a principal factor for this SHO so he tied that definition into the State statute’s definition of that. That has penalties associated with knowingly permitting a party with individuals under the age of 18 to consume alcohol or unlawful drugs. “Person” means “natural person” so it does not mean corporate entities. They have definitions of residential areas. The principal focus of the ordinance is residences, which includes single-family home, apartment, lodging house, and so on and so forth; it is all-encompassing. “Residential area” has two definitions. The Zoning Code defines which residential areas are in the city, but there are times when there could be a concentration of residences that do not necessarily fall within a residential district and they wanted to include that. Also, “unruly gathering” has a definition, which is important. It is defined as five or more persons [who engage in certain conditions]. The reason for that is some ordinances had a number as few as two. Five is important because RSA 644:18 defines an underage alcohol party as a gathering of five or more people [with at least one person under the age of 21 consuming alcohol or unlawful drugs]. In the draft SHO an “unruly gathering” is a group of five or more individuals who then engage in more than one of the following conditions on public or private property: rioting; the unlawful sale, furnishing, possession, or consumption of alcoholic beverages or drugs, the destruction of property; obstruction of driveways, roadways, or public ways by crowds or vehicles; excessive noise; disorderly conduct; public urination or defecation; or violating the fire or building code.

The City Attorney continued that the next section is the meat of the ordinance. It talks about the responsibilities of hosts, guests, and property owners and managers. There is a list of unlawful activities. Basically it is unlawful for the host to fail to cease and desist if required to do so by the Police Department that responds to it. If the KPD responds to it and determines that it is an unruly gathering the KPD can order that it cease and that people leave the area. An important piece of this is the next section, which has been requested by landlords: they want to have notice about the unruly gatherings. There is a section in here requiring that [notice be given] within three business days after the Officer responds, if it results in the issuance of a written warning. The issuance of a written warning is important. Maybe a Police Officer shows up and determines that it is not an unruly gathering by the definition in the ordinance; that would be the end of it. It is a written warning that triggers the requirement of giving notice to the owner of the property, as determined by who is listed on the deed, which the Assessor’s Department has.

He continued that the next section is about penalties. They initially thought about having a verbal warning, but in conversation with the KPD determined that that is probably unworkable. If an Officer shows up and determines that it meets the requirements of “unruly gathering” a written warning will be given and the gathering must cease and desist. If for some reason the Officer has to go back in that same evening, these penalties are cumulative. In the hopefully unlikely event that the host does not cease and desist the unruly gathering, the Officer can start issuing additional warnings to the host. There is potentially a penalty associated with a person who decides not to leave when requested to do so by the Officer and that can be given to the individual in violation. It goes up to the 3rd (\$500) and 4th and subsequent (\$1000) offense. Because these are sequential, they can be served that way, although the maximum fine for violation of a City ordinance is \$1,000 because each violation is a separate offense, the total



penalties may exceed \$1,000. This is supposed to reset at the end of a year. If you get to the end of the year and have had a written warning, for example, it is intended to reset at that point.

The City Attorney continued that the last section is enforcement of other laws. There is some issue here with respect to a City ordinance incorporating criminal statutes within it. If a host were to be found in violation of this for rioting the KPD would have to make a choice between going through with a SHO violation, or Rioting violation under the Criminal Code, to avoid double jeopardy. You have to pick your relief. To a large extent they can avoid that problem by finding other ways to charge this. It is important to remember that the SHO would apply throughout the city. It would apply to any property in the city.

Chair Bosley asked if committee members had questions.

Councilor Jones asked: what if it is a situation where the host cannot be identified? For example, in 2014 when the city had riots after the Pumpkin Festival, the host could not be identified. He continued that it was an internet company that just invited people to come to the Butler Court area for a party. The City Attorney replied that if the Police Officers are in a situation like that where it is clearly an unruly gathering, but they cannot identify a host, the ordinance still provides that people who are participating in that unruly gathering are required to leave when requested to do so, and if they refuse, the Officer could issue a summons.

Councilor Jones stated that his second question is about an issue the Police always had in enforcing these issues. Suppose, for example, he is [hypothetically] at a party at Councilor Greenwald's house and everyone is behaving, but then he and ten other people go two houses down and get unruly. He continued that Police cannot identify him as coming from Councilor Greenwald's house and cannot identify Councilor Greenwald's address. Councilor Greenwald was the host of the party but he (Councilor Jones) and the others were not unruly at Councilor Greenwald's house. They were being unruly two doors down. How would the Police respond? The City Attorney replied that it is almost the same as the first scenario: Councilor Greenwald would not be responsible, because Councilor Jones in a group of five or more has left and created an unruly gathering elsewhere. Councilor Greenwald has not sponsored the unruly gathering if Councilor Jones and the others have left the property and gathered elsewhere. If someone complains and the KPD responds and the Officer determines that Councilor Jones and the others meet the definition of "unruly gathering," the Officer would require them to cease and desist.

Councilor Jones stated that his third question is: the City Attorney used the word "residence," but the unruly parties could be at the Elks Lodge, the Blastos Room, a commercial area, a Councilor's office, or anywhere. It does not have to be a residence. Can they expand that? The City Attorney replied that it is up to the committee to decide what they want to do, but most of the ordinances he has reviewed do center on residential activity. He continued that once they go beyond that they have to be careful, because once they start stepping into commercial activities, those are *intended* to provide large gatherings and parties. They would have to carefully craft the

language if they were going to reach out beyond residences, but that is something the committee can talk about.

Councilor Greenwald stated that this is an excellent first swing at this. He continued that what is missing is: there is nothing about penalties for the building owners. That was part of the initial conversation – that after a certain number of violations, it would escalate into penalties for the landlord/building owner. This draft is an excellent first step and likely will not elicit a lot of opposition from property owners. He questions the gathering of “five or more.” Two people can make an awful lot of noise, or even one person. He asked for more information about why five was chosen and why not define it as a group of “persons” and leave off the number.

The City Attorney replied that he chose “five or more” to make it compliant with State law. He continued that this sort of looks like RSA 644:18, especially with respect to alcohol and drug use. He did not want to be in a situation where someone who is issued a summons for violating the ordinance could say, “Well, State law preempts, because State law says five people and we were only two people under this ordinance, and you can’t hold us accountable under the Criminal Code because of that.” He wanted to avoid that problem.

He continued that regarding Councilor Greenwald’s other comment, he wants to be careful about what Councilor Greenwald said about owners of properties. In Section 66-157 there is a section says “It is unlawful for the owner or manager of an apartment complex to knowingly allow an unruly gathering to occur or continue in a common area.” There could be a situation where the owner or manager of a complex is identified and there is an unruly gathering happening on that property; it is not directed at the owners of properties but there is a provision in the ordinance that could be used for that.

Councilor Greenwald asked how the Police will keep track of how many warnings and violations they have given, when there is such a revolving door of different Officers on different shifts. What are the logistics? The City Attorney replied that that question is for the KPD. He continued that this ordinance does not impact the operational activities of the KPD other than the need to give property owners notice within three business days after the issuance of a warning.

The City Manager stated that they do have a way to enter these written warnings into the system so they can be tracked, but there are challenges with the current system and they would have to make some changes if this ordinance moves forward.

Councilor Greenwald asks what happens if a neighbor keeps calling excessively and their complaints are not justified. The City Attorney replied that any time the KPD feels the ordinance is being used inappropriately the KPD has the opportunity to deal with that. He continued that if a person is continuing to make claims that are not true, and the KPD determines it is not true, ultimately there could be a charge for interfering with governmental operations.

Councilor Greenwald stated that that is okay as long as there is language in the ordinance to make that clear. He continued that he is looking at the last paragraph on the second page, 66-159 under “Penalties.” His concern is the last sentence that talks about a Police Officer being required to respond multiple times. The City Attorney replied that the Officer would use his/her judgment and his/her understanding of the ordinance to determine whether or not it constitutes an unruly gathering. He continued that this text is to allow sequential penalties. If s/he shows up and makes a determination that yes, it is an unruly gathering, and gives a written warning and leaves, and an hour later gets a call from the neighbor who says “They are still doing it,” and returns and finds yes, the unruly gathering is still going, the Officer can start imposing the sequence of penalties. That is the point of that. Even if the neighbor is calling and saying “I think there is an unruly gathering over here,” just like with anything else an Officer has to do, s/he has to show up and make a judgment about whether a claim is true. If not, they will not issue the written warning and the host would not be receiving the penalty.

Councilor Greenwald asked if all of this is complaint-driven, or if an Officer driving by what s/he thinks might be an unruly gathering can stop and get out of the car to start this process. The City Attorney replied it is not necessarily complaint-driven. It is like other things in criminal law. He continued that if a Police Officer is driving down the street and perceives, in the public sphere, a violation of criminal law or an ordinance, the Officer can act on that. It really has to be something that is open, apparent, obvious, and visible to the Officer acting within the public sphere. If an Officer is driving down the street and hears blaring noise, or sees someone breaking and entering, yes, they can address it. But it is more a problem if it is a grey area as to whether something is happening or not. An Officer does not have the right to enter a private property for the purposes of investigation. It has to be clear.

Councilor Greenwald stated that partially what he is referring to is a meeting he attended of landlords, the college, and the KPD, regarding the COVID-19 situation. He continued that he asked a patrol Officer: if he is driving down the street and sees a large gathering that is obviously in violation of the college’s policies and of the State’s policies on large gatherings, would he get out of his car and do something about it? He continued that the Officer replied no, not unless there was a noise complaint. The City Attorney replied that it would have to be something obvious to the Police Officer that is a violation of a City ordinance or criminal law. He continued that the KPD does not enforce the requirements of the college. Councilor Greenwald replied that it is about the COVID-19 rules that are going on. He continued that what inspired him to be very supportive of this [ordinance] is: as it sits right now, if there is a violation of the COVID-19 policies, such as a large gathering, the property owner could be deemed the “business” and be fined for the activities of the residents. This shifts the responsibility for the noise and all the shenanigans of college behavior, as well as the COVID-19 rules and regulations, back to the violators, which would be the residents, which is extremely good.

The City Attorney replied that he understands that but wants to make it clear, as the Police Chief would make it clear if he were here: this ordinance does not talk about college rules. He continued that it also does not cover enforcement of the Governor’s Emergency Orders, which is

the responsibility of the Attorney General's Office or Health and Human Services. This ordinance does not deal with either of those two things. Councilor Greenwald asked if the ordinance should include some reference to that. The City Attorney replied that the KPD does not have any authority to enforce the rules of the college and there would be heavy pushback from the KPD if the City Council tried to incorporate that in the ordinance. Councilor Greenwald replied that he was referring to the Governor's Emergency Orders about large gatherings. The City Attorney replied that that becomes complicated, because again, the City cannot enforce those Emergency Orders, unless it comes down through Health and Human Services and they can do the tie-in through the Health Officer. That starts moving this ordinance into a very different format. Councilor Greenwald stated that it sounds like he should leave this alone. The City Attorney replied yes, he would request that he do that.

Councilor Workman asked about Sections 158 and 159: the way she interprets it is the owner only gets notified about the first and second offense, but not the third and fourth. She asked if that is correct. The City Attorney replied that that is a good catch; it should say "or any subsequent penalty" and he will do that. Councilor Workman stated that there is no mention of the College Liaison's role in enforcement of the ordinance. She asked, is that because it is city-wide and not just about the college? Could someone elaborate on when that College Liaison would be pulled in and how would they know that it is a college student's residence? The City Manager replied that they intentionally left out reference to the position, because the ordinance is the rules, and the position is how they would manage the rules. She continued that it would be a City/College Liaison, which would monitor violations of this ordinance and then reach out to the College and the City, mediate issues, speak with the students, follow up with the property owner, and also educate about what it means to be a good neighbor. They wanted to keep it separate, to have the rules in one place and the position in another.

Councilor Jones stated that the college already has someone who is in charge of off-campus housing and does the follow-ups and orientations, and the City has a Liaison Officer. He continued that that seems like enough. He does not want to see them have to hire someone else. What would this new position do that they cannot do now with the two other people? The City Manager replied that she and Pres. Treadwell are looking at the job description language to make sure they are differentiating between the positions that Councilor Jones mentioned, which have a different focus. She continued that this would be a brand new program that the new position would be monitoring to make sure they are doing everything necessary to have a successful program. Councilor Jones stated that he does not think it is worthy of a new position. He continued that he thinks it can be handled. He would hate to add a new position to the operating budget, but that is just his opinion. The City Manager replied that the City and the College would be splitting the cost 50/50. Councilor Jones replied that he understands.

Chair Bosley asked if committee members had more questions. She asked if there were questions from members of the public. She called on Melinda Treadwell.

Pres. Treadwell stated that the college is increasingly committed to modeling neighborly behavior. She continued that this has been a major responsibility for the college, to ensure that faculty, staff, and students are engaged as citizens of Keene and they were modeling the best they can as community members. They have worked with the City to improve the perception and reality of off-campus behavior, and they are proud of the student body and the progress made to date. However, she has participated in numerous meetings with the City Manager to learn from what the college's neighbors look for from the college and what they look for them to improve. She has reviewed the SHO and she supports the intent and requirements, and believes it will continue to advance their commitments to one another and the city and the neighbors. As they just discussed, the college currently does fund the Liaison Officer with the KPD and they have a Liaison Officer that works with the Residential Life staff with regard to off-campus behavior. She agrees with the City Manager and they will commit to support a shared City/College position. The role is to augment the existing staff resources and provide increasing support not only for the SHO ordinance but to increase the neighbor-helping-neighbor efforts the college is committed to. The college will stand strongly with the City to support the SHO's implementation.

Peter Moran, of 38 Myrtle St., stated that he wants to thank everyone who has been involved in this process. He continued that he has had the fortune to meet a great many wonderful people who work for the City and College, and homeowners, and residents. This has been an excellent collaboration. The process has included anyone who wanted to sit at the table and add their opinions to get something put together for the common good. He feels strongly that everyone has stepped up and offered solutions to these difficult issues people have endured. He went around the neighborhood to get signatures for the petition. In the process he met people who had been in the area from 6 months to 81 years and everywhere in between. His neighbor Bernadette has lived in the house across the street for 81 years, and is the 4<sup>th</sup> generation in that house. Many people signed the petition and some people did not because they were fearful. He feels wonderful about all the work that everyone has done and he feels very confident. There is a lot of really fine detail. He thanks the City Attorney for the work he did in putting this together. It is concise. He is sure the City Attorney has had communication with Chief Russo - and all the other department heads, but the buck stops with the KPD – and he is confident that the City Attorney and the Chief put together something that is workable for all concerned. The goal was to get to the root of the problem, and this does.

Mr. Moran asked about the definition of "host." It is in the singular term. Is it just who is on the deed or lease, as singular? If there are four people on a lease, would the initial fine of \$300 be times four, or \$300 total? Likewise, would the fourth strike be \$4000, or \$1000? He would like clarification on that. That is his only question. The essence and detail is there, and the parallel with other ordinances is excellent, as well as tying it in with State regulations. He is wondering about when the clock starts on a written warning – do they have changeovers by semester? Or is it just a year from the date the warning is issued?

Chair Bosley asked the City Attorney to reply. The City Attorney stated that he understands the question about “host” versus “hosts.” He continued that he has to think about that a bit and talk with others about that. Holding multiple people who may be the “hosts” responsible is something he needs to think about in the context of how that applies under the general criminal standards of culpability and responsibility. His answer to the other question about the warning is: this applies to the whole city. He would be reluctant to use college-related terminology like “semester” in here. They would have to think about that time period. This is not necessarily tied back to the owner of a property. That is something they tried to avoid. The owner may not be the one hosting the party. He continued that he appreciates Mr. Moran’s comments. He also wants to remind the committee, because he appreciated Mr. Moran’s reference to the KPD, that Chief Russo is on vacation but before he left he (the City Attorney) circulated this draft and incorporated comments Chief Russo made on the original draft. This current draft has changes that the Police Chief has not yet had an opportunity to review and weigh in on. He may have further comments.

The City Manager stated that the San Marcos ordinance that this one is modeled on says the host is the person throwing the party. She continued that there could be multiple people on the lease, but if one person on the lease is at the library during the party, for example, it should be the other person throwing the party getting the fine.

Chair Bosley stated that she agrees that if a person on the lease is not present they should not be fined, but if there are two lessees present hosting the party, is it one fine, or two? She continued that she tries to think about how this would apply outside of a college situation, too, because this ordinance is not just for college citizens. Say there is a married couple hosting a birthday gathering and it goes late at night and gets unruly. Do both people receive fines? If they have an 18-year-old child who is at home, does that child receive a fine, too? They have to think about that. She does not see the individual fines applying as clearly in a familial situation as it might to two lessees hosting a party in an apartment building.

Councilor Greenwald proposed a hypothetical: three Councilors are renting an apartment and there is an unruly gathering going on. The KPD comes to issue a warning to one Councilor. An hour later, the Officer comes back and gives a second Councilor a warning. Then the Officer comes back later and gives the third Councilor a warning. How do they deal with that? The City Attorney replied that he has to go think about this and look at this. There is a criminal statute with respect to social host liability for, for example, if someone goes to your house and they drink too much and there is an accident, there is a responsible party. What he needs to do in response to Mr. Moran’s question is think about it more. He appreciates the City Manager’s point: there is a reason the San Marcos ordinance specified one person. At some point you have to be able to identify somebody. He will look at other legal standards to try to get an answer. He cannot give an answer tonight.

Chair Bosley stated that to speak to Mr. Moran’s other question, she thinks the warning fine scenario needs to be tied to the individual, not the property. There is turnover. If someone lives

on Water St. and throws a party then moves to Adams St. and throws a party, those warnings need to follow the individual, not be associated with the residence. Sometimes a property is rented by a [misbehaving group of students] but then they move out and the next group to move in does not behave in that manner. As for timeframes, she thinks the year timeframe is reasonable for cumulative fines and it should attach to the individual receiving those fines. The City Attorney replied that he thinks that is a good suggestion and will work on a draft with that.

Andy Oram of 390 Main St. thanked the City staff for the work they have done on this ordinance. He continued that he has a question about the use of the term “common area.” His understanding is a hallway, outdoor area, or a swimming pool perhaps. That leads to confusion. Does that exclude in some sense, using that term in one place but not in others, what is going on inside an apartment? To him that is not clear. The City Attorney replied that that is something he ruminates on. He continued that he did consider that question, about the definition of “common area.” He will look at that and will try to make it more precise. He will look at some other places. He appreciates the comment; that has been nagging at the back of his brain, too.

Chair Bosley replied that she wondered where the “common area” would be for four individuals renting four bedrooms in a home. Would it be the common area in the interior of the building, or would they be considered as renting a single-family home, which would preclude even the exterior area being called a “common area,” versus a multi-family home situation where the exterior of the building would be considered a “common area.” The City Attorney replied that generally “common area” is a term understood in condominium law. He will look there for examples and clarity. He agrees that it needs to be more precise.

Councilor Jones stated that it sounds like if this ordinance is passed the City Manager wants it tied to that new liaison position. He asked if that would come to the City Council for an inter-municipal agreement or if it would be a contractual thing handled administratively, or how it would work. The City Manager replied that it would probably be an MOU between the City and College in terms of funding. She continued that initially she and Pres. Treadwell thought to tie it to the Municipal Services Agreement but there is a lot the two of them need to talk about with the Municipal Services Agreement and has been pushed to the back burner, so in the interim, they would just use an MOU.

Councilor Jones replied that the City Council would need to know more about that, since the position is not part of the ordinance but it is tied to the ordinance. He continued that for that reason and for the many unknowns that were mentioned, he is thinking of placing this on more time instead of codifying this because then they would have to go through the amending process to make any changes. The City Attorney replied that he was going to suggest the same thing. He continued that the purpose tonight was to hear the comments from the committee and the public, and he received some very helpful feedback tonight so he can put together another draft, and give the Police Chief another opportunity to look at it. It could then go through one more committee cycle before they put a number on it, because once they do that, it starts to get complicated.

Chair Bosley replied that she agrees. Councilor Greenwald asked if another draft would be ready for the next PLD Committee meeting. The City Attorney replied yes.

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

By a vote of 5-0, the Planning, Licenses, and Development Committee places the Social Host Ordinance on more time, to return at the next PLD meeting.

Councilor Greenwald asked if at the next meeting they can get an update and try to clear up the more time items that are appropriate to address. Chair Bosley replied yes.

There being no further business, Chair Bosley adjourned the meeting at 8:36 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker