

10/15/2020

A regular meeting of the Keene City Council was held on Thursday, October 15, 2020. The Honorable Mayor George S. Hansel called the meeting to order at 7:00 PM. Mayor Hansel read into the record the Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04. He continued that the members of the City Council would be participating remotely. The Mayor asked that during the roll call for attendance, each Councilor identify their online presence and whether there are others with them in the room. Roll called: Stephen L. Hooper, Michael J. Remy, Janis O. Manwaring, Michael Giacomo, Randy L. Filiault, Robert C. Williams, Philip M. Jones, Gladys Johnsen, Terry M. Clark, Raleigh C. Ormerod, Bettina A. Chadbourne, Mitchell H. Greenwald, Kate M. Bosley, and Thomas F. Powers. Catherine I. Workman was absent. A motion by Councilor Powers to accept the minutes from the October 1, 2020 regular meeting was duly seconded by Councilor Bosley. The motion passed on a roll call vote with 14 Councilors present and voting in favor. The Mayor led the Pledge of Allegiance.

#### ANNOUNCEMENT

Mayor Hansel announced that in observation of the Veterans Day holiday, the MSFI and PLD meetings scheduled for November 11 are rescheduled to Tuesday, November 10.

Two site visits are scheduled for November 5. The first at 5:15 PM at the Commercial Street parking lot behind the Colonial Theater. The second at 5:45 PM at Winchester Street between RT-101 and the Island/Pearl Streets intersection, for which Councilors should park in the Riverside Plaza and meet in the open field by Aspen Dental. Councilors will ride to the site visits individually and there will be no meal provided after.

To date, the Clerk's office had sent out 3,486 absentee ballots, 935 of which had not yet been returned. The Mayor encouraged everyone to return those ballots sooner than later and asked Councilors to encourage their constituents to do so early to ensure all votes are counted. Ballots in the mail must be received by the City Clerk's office by 5:00 PM on Election Day – Tuesday, November 3, 2020. Voters can also hand deliver their ballots to the Clerk's office at City Hall and one's family member or other certified delivery agent can deliver that ballot for them. Absentee ballots can be turned into one's polling location on Election Day if necessary.

#### RESOLUTION R-2020-35: IN APPRECIATION OF SHEILA H. WILLIAMS UPON HER RETIREMENT

The Mayor read Resolution R-2020-35: In Appreciation of Sheila H. Williams Upon Her Retirement in its entirety. A motion by Councilor Powers to adopt the Resolution was duly seconded by Councilor Bosley. On roll a call vote, with 14 Councilors present and voting in favor, the motion passed. Resolution R-2020-35 was declared adopted.

#### NOMINATIONS

Mayor Hansel received the following nomination: Yves Gakunde to serve as a regular member of the Library Board of Trustees, with a term ending June 30, 2021. The nomination was tabled until the next regular meeting.

#### COMMUNICATION – TAD SCHRANTZ/COLONIAL THEATER GROUP – REQUESTING A TRANSFER OF LAND

A communication was received by the Colonial Theater Group requesting a transfer of land with the City. The request was referred to the Finance, Organization & Personnel Committee.

#### COMMUNICATION – COUNCILOR TERRY M. CLARK – WORKSHOP ON CITY COUNCIL GOALS

A communication was received from Councilor Clark requesting that the Council work together as a whole to develop City Council goals. The Mayor said there had been discussions over the past several months about an effort to create a process for developing City Council goals that begins with community input. He said that through her statewide and national relationships, affiliations and memberships, the City Manager, Elizabeth Dragon, has interesting models to present to the Council. This idea is in early stages. Goal development might be best guided by an outside facilitator. The Mayor supported the City Manager's idea to begin with data from community input on priorities, which Councilors can use to frame goal development. This effort is evolving and the idea is to have the goals process occur in January 2021.

The Mayor welcomed comments from Councilor Clark on his communication. Councilor Clark wanted to know where this newly proposed process dovetails with the 2015 City Council decision to meet annually and share City Council goals with City Staff. He said the previous Mayor also opposed this newly proposed process in favor of a special Committee of Councilors and Staff. He said that in the last five years, no Council goals have actually been established. The Councilor questioned what the roadblock might be and why the City Council cannot meet to discuss goals as elected officials.

Mayor Hansel replied that the Council has met in the past as a whole for goal discussions and small Committee efforts have occurred also. The Mayor was unsure any of those efforts had been successful. He cited the annual Fiscal Policies Workshop, which allows for Council input. Mayor Hansel said that one of his priorities as Mayor is to find ways for the Council to work together and build consensus around goals; he agreed that past efforts were unsuccessful. The Mayor posited that he could have a goals session at the next Council meeting but he suspected that Councilor Clark would prefer that some thought first be given to the best, most constructive way for such a session to occur; the Mayor suggested an outside facilitator versus himself. Councilor Clark said that in 2017 an outside facilitator did lead a session for Council and the outcome was a small committee overwhelmingly dominated by Staff and not Councilors. In 2015, Councilor Clark and others recommended following the model from Concord, NH, which allows the Council to meet as a whole and provides each Councilor with five minutes to present what they think goals should be for the upcoming year. He said the City Manager and Staff are already working on the 2021/2022 budget, and so waiting until January to discuss goals does not provide the Council an opportunity to intercede with that budget. Currently, Councilor Clark said that the Mayor outlines priorities and by the time Councilors see the budget it is too late. The Mayor stopped Councilor Clark, stating that he was misrepresenting the Mayor. Mayor Hansel said he had discussed a Council goals workshop with many Councilors over the previous months to

develop a constructive process; he does not believe giving Councilors five minutes to tell Staff projects they think are most important was the most constructive avenue, stating it had been attempted in the past unsuccessfully. Rather, he said this should be an effort to build consensus for the entire community. He is interested to hear the City Manager's creative ideas that she has learned outside this community. Councilor Clark was displeased with the Mayor's response and not being provided an open forum. The Mayor reminded Councilors are always welcome to share their ideas with him by phone or letter.

The Mayor referred this communication to the City Manager for a report back in two weeks with more details.

Councilor Clark made a motion to challenge the Mayor's decision, which was duly seconded by Councilor Williams.

The Mayor recognized Councilor Clark, who stated his belief that the City Council has more representative authority than the Mayor was allowing. He did not understand the Mayor's opposition to allowing the City Council a special meeting to share ideas without duplication or frivolity; versus what he called Primex coming and telling them what to do. He said that in his 12 year tenure, Councilors had not been provided a chance to intervene in budget priorities before too late.

If Councilor Clark was challenging the Mayor's decision to refer this matter to the City Manager, then Mayor Hansel asked what the Councilor suggested alternatively. Councilor Clark wanted the Mayor to set a date for a goal setting workshop for the whole Council. The Mayor said he could easily do that but he questioned whether something fruitful would come from the process, unless thought is given to make the event effective and valuable, and not simply providing a microphone for City Councilors to speak. The decision was at the will of the Council.

The Mayor recognized Councilor Greenwald, who asked the City Attorney what the Council was voting on. The Mayor said Councilor Clark challenged the ruling to refer this to the City Manager. If the Mayor's ruling is unsuccessful, the Mayor said it would indicate to him that the Council wants him to set a special meeting for "Council goals," and provide – as Councilor Clark suggested – each Councilor five minutes to speak, and see how it goes. The City Attorney said that there should be no Council debate about the challenge and continued that the Council would be voting on whether the decision of the Mayor to refer the matter to the City Manager for further development shall be sustained. Votes in favor would be to sustain the Mayor's decision; votes in opposition would be to overturn the Mayor's decision.

On a roll call vote with 14 Councilor present and nine Councilors voted to overturn the decision of the Chair. Councilors Hooper, Remy, Giacomo, Johnsen, and Powers voted to sustain the ruling of the Chair.

Mayor Hansel stated he would schedule a special meeting on City Council goals after conferring with City Staff on the best forum.

The Mayor recognized Councilor Johnsen, who appreciated Councilor Clark's point. However, she noted that for the five new City Councilors, she thought that a process would have worked better versus being bombarded by what used to be. The Mayor felt that was a good point and suggested that this special meeting could be an opportunity for Councilors to better articulate how the Council goals process could evolve, with consideration of new ideas and models that could improve the process.

#### COMMUNICATION – DAVID RICHARDS – RESIGNATION FROM COLLEGE CITY COMMISSION

A communication was received from David Richards resigning from the College City Commission. A motion by Councilor Powers to accept the resignation with regret and appreciation of service was duly seconded by Councilor Bosley. On a roll call vote with 14 Councilors present and voting in favor, the motion passed.

#### PLD REPORT – TRAX CLUB – REQUEST TO USE CITY PROPERTY – RAILROAD SQUARE

A Planning, Licenses & Development Committee report read recommending to report out the Request to Use City Property from the Trax Club. The report was filed as informational.

#### PLD REPORT – FIRSTLIGHT FIBER REQUEST TO INSTALL CONDUIT IN THE ARCH STREET RIGHT-OF-WAY – CITY ENGINEER

A Planning, Licenses and Development Committee report read recommending on a vote of 5-0 that the City Manager be authorized to do all things necessary to negotiate and execute a revocable license agreement with TVC Albany, Inc., D/B/A Firstlight Fiber for the installation of conduit, cabling and associated appurtenances (licensed property) within the Arch Street Right-of-Way, subject to the following conditions:

1. The Licensed area shall be in the approximate location between two existing Consolidated Communications poles (Nos 134 & 30/36), with final locations to be approved by the Public Works Director.
2. Licensee is responsible for all costs associated with the installation, maintenance or repair of licensed property and the restoration of any area(s) which may be disturbed to the satisfaction of the City.
3. Licensee shall coordinate with and obtain approval from the New Hampshire Department of Transportation (NHDOT), Bureau of Rails, for the placement of equipment within the former railroad corridor. Any fees imposed by the NHDOT will be paid by the Licensee.
4. Licensee is required to obtain all required Federal, State and local permits, including but not limited to a City excavation permit, prior to performing any work.
5. Licensee shall be required to obtain an encumbrance or excavation permit from the City of Keene prior when performing any construction activity, maintenance tasks or accessing the licensed property in such a way that will obstruct public use of the right of way.
6. If the City requires the licensed property to be relocated or removed for any reason, Licensee shall perform such work and the cost of this work is the responsibility of the Licensee.

7. Licensee is responsible for the payment of any properly assessed real property or personal property taxes associated with its use and occupancy of the right-of-way in accordance with RSA 72:23, I (b), when due, failing which this license may be terminated.
8. Licensee agrees to allow any third-party to co-locate their cabling and equipment within the licensed property. Licensee shall be entitled to collect usual and customary lease fees from any such third party.
9. Licensee agrees to allow the Licensor to co-locate cabling and equipment within the licensed property and shall reserve not less than one (1) innerduct for such use. The Licensee will not be entitled to any lease fee or use charges as a result of such use by the Licensor.
10. Licensee agrees to indemnify, defend, and hold the City, its officers, officials, agents, employees, successors and assigns (collectively "City"), harmless from and against any claims, costs, losses, damages, causes of action, personal injuries, property damage (including any damage to the Premises), legal and administrative proceedings, liabilities, defenses, penalties, fines, liens, judgments, and expenses (including all costs, attorney(s)' fees and related expenses), whether at law or in equity relating to or arising from the use of the Premises by Licensee. Licensee shall hold the City harmless for any claim, demand, cost or expense arising from or related to the licensed property, including but not limited to any damage to the licensed property whether caused by the City or by any third party.
11. In any action brought by the City to enforce the terms of this License, the City shall be entitled to recover its costs, expenses, and reasonable attorney(s)' fees from Licensee. The terms stated at paragraph 9 shall survive the termination of this License.
12. Licensor may terminate this license for any reason upon ninety (90) days' prior written notice to Licensee. Licensee shall remove the licensed property and restore any disturbed areas to the satisfaction of the City within thirty (30) days of such termination.

Mayor Hansel recognized the City Attorney, who pointed out a Scribner's Error in paragraph 11, which should correctly read as: "In any action brought by the City to enforce the terms of this License, the City shall be entitled to recover its costs, expenses, and reasonable attorney(s)' fees from Licensee. The terms stated at paragraph ~~9~~ 10 shall survive the termination of this License."

Councilor Bosley made a motion to carry out the intent of the report, which was duly seconded by Councilor Greenwald. The motion passed on a roll call vote with 14 Councilors present and voting in favor.

#### PLD REPORT – SOCIAL HOST ORDINANCE – 2<sup>ND</sup> DRAFT

A Planning, Licenses and Development Committee report read recommending that the City Manager be directed to submit the draft Social Host Ordinance as a proposed Ordinance for further consideration and discussion by the City Council. The City Clerk noted that Staff had drafted the final version of the Ordinance, for which the introduction was presented later in this meeting's agenda. Mayor Hansel filed the report as informational.

## FOP REPORT – REQUEST TO PURCHASE CITY PROPERTY – CORNER NEWS – CITY ATTORNEY

A Finance, Organization and Personnel Committee report read recommending that the City Manager be authorized to do all things necessary to negotiate and execute the sale of the land at 2 Gilbo Avenue to Roberta Mastrogiovanni, owner of the Corner News, upon the following conditions: obtaining a full market appraisal to establish value; obtaining a survey to establish existing conditions and a potential boundary line adjustment for some additional real property located behind the building; obtaining a façade easement; obtaining an Air Rights Lease for the overhang onto the City's right-of-way; obtaining a first right of refusal to the City if/when the buyer intends to sell the property. Councilor Powers made a motion to carry out the intent of the report, which was duly seconded by Councilor Hooper.

The Mayor recognized Councilor Greenwald, who said this matter had been at hand since the late 1980s and he was pleased with the FOP Committee's unanimous recommendation, which he said would facilitate the owner's improvement of the building as an investment in her business and the downtown. He appreciated City Staff's support to reach this conclusion.

The motion to carry out the intent of the report passed on a roll call vote with 13 Councilors present and voting in favor. Councilor Jones voted in opposition.

## FOP REPORT – WINCHESTER STREET RECONSTRUCTION PROJECT – DESIGN CHANGE ORDER – CITY ENGINEER

A Finance, Organization and Personnel Committee report read recommending that the City Manager be authorized to do all things necessary to negotiate and execute a change order with McFarland Johnson for engineering and technical services associated with the Winchester Street Reconstruction Project, in an amount not to exceed \$18,971.70. Councilor Powers made a motion to carry out the intent of the report, which was duly seconded by Councilor Hooper.

Mayor Hansel recognized Councilor Jones who asked whether the Committee of stakeholders convened previously for this project was consulted on these changes. With the Mayor's permission, Councilor Powers said that to his best knowledge, the previous Committee was convened to consult in the conceptual design phases of the project and provide guidance to City Staff and consultants. Issues of sidewalks, driveways, and things of the like were not discussed in the conceptual design and that Committee is no longer active.

The motion to carry out the intent of the report passed on a roll call vote with 14 Councilors present and voting in favor.

## CITY MANAGER COMMENTS

The City Manager recognized the work of the team that put together the Land Use Development Code Ordinances that were included in this meeting's agenda for first reading – Medard Kopczynski, John Rogers, Rhett Lamb, Tom Mullins, and particularly Tara Kessler as the primary researcher and author. This project began in October of 2017 and has taken an extraordinary effort

to get to this point. Each of these individuals has juggled their other responsibilities while continuing to move this project forward. As the primary author, Tara Kessler has done an exemplary job and worked tirelessly to get us to this stage. The City Manager was grateful to each one of these individuals for all that they did to get us to this point, acknowledging how much time and effort this took.

The City Manager reported that the Parks & Recreation Department just closed the fall sports season, with a total of 150 participants between youth soccer and flag football. It was a great season. Coaches and players did an outstanding job adhering to state guidelines to help make for a successful season. The City Manager thanked Director of Parks & Recreation, Andy Bohannon, and the volunteers who made it happen.

The City Manager advertised the annual Beards for Bucks – Razorless for a Reason fundraising event for the month of October. The Police Department is raising money for the Granite State Children’s Alliance to benefit the Cheshire County Child Advocacy Center here in Keene. Anyone can donate online at [www.justgiving.com/team/kpd](http://www.justgiving.com/team/kpd).

The City Manager reported that there might be more activity in Keene on Saturday, October 17 as Plymouth State College athletes arrive to compete in soccer, volleyball, and cross country. Attendance to the games is limited to faculty, Staff, and students who have been through the most recent KSC Covid-19 testing protocols. The City Manager wished luck to the KSC Owls.

The City Manager said there had been discussion about outdoor café/sidewalk licenses, which typically end on November 1. This year, however, the City would send an email to all license holders providing more flexibility, which will be entirely weather dependent. If we get snow, obviously the sidewalks will need to be clear of all obstructions so that we can clear the snow. However, the City Manager said we might then get another stretch of warm weather and so they will have the option of putting the tables/chairs back out temporarily. At some point it will be become too cold and we will begin having heavy storms, which will make this too challenging for business owners and the City. However, in the meantime, the City Manager hoped for warm weather and no snow storms so that our businesses can extend the use of outdoor space. License owners will also be notified to contact John Bates at the Fire Department if they are interested in using outdoor heaters – before making any purchases – and Mr. Bates will work with each license holder to review manufacturer safety recommendations, fire codes, and how they apply in their space. This should be very helpful to businesses before making a purchase.

The City Manager said that former Councilor David Richards would be happy to hear this update related to our traffic lights. Staff plan to replace portions of our outdated loop systems at two locations – most likely the south side of West Street at School Street and the south side of the intersection at the Kohls plaza traffic lights – with SVS 1 video image detection systems. These systems are also known as motion or optical detection systems and have no capability to record. Their sole function is to detect traffic and control the traffic signals through the traffic control boxes located at these intersections. Other repairs are planned throughout the City in the CIP beginning in FY-23. Ultimately over several years, the plan is to update our entire signal system to a more modern system that allows automatic timing based on traffic flow and time of day.

The City Manager noted that at this meeting, the Social Host Ordinance would be sent back to the PLD Committee for review. During the PLD review, the City Manager had discussed the need for a part-time position funded jointly by the City and Keene State College to support this new program. The City Manager identified a funding source in the budget for the City's half of the position and she planned to establish the position through a temporary employment contract, which would give the City maximum flexibility while working to set-up this new program. President Treadwell and the City Manager have discussed articulating this in an addendum to the Municipal Services Agreement, which was extended one year. At that time, the addendum would be brought to the Council and the City Manager would request a vote to accept the additional funds for the College's share of this position.

The City Manager continued sharing a message from the Emergency Management Director and the Emergency Management Team, thanking residents and businesses for their continued efforts in reducing the risk of Covid-19 in the community through the wearing of masks, social distancing, and being creative in everyday activities. With Halloween rapidly approaching, a reminder was shared to plan ahead and be safe should you chose to participate in Trick-or-Treat activities. Everyone should be following NH and CDC guidance:

- Wear your mask,
- Maintain social distance,
- Wash hands before handing out treats and after handling treats,
- Trick-or-Treat with your pod,
- Consider Trick-or-Treating in your neighborhood, and
- Avoid parties and large gatherings.

The Emergency Management Team suggested thinking instead about a family spooky movie night! They wished everyone a great Halloween.

Finally, the City Manager shared good news that the day of this meeting, the Governor announced another round of Main Street Relief funding for businesses. There is a two week application turnaround deadline. Businesses that received funds in the first round of Main Street Relief funds can apply again. Staff would be working to get the word out to as many Keene businesses as possible over the next few weeks.

#### MORE TIME

The Mayor granted more time for the following items in Committee: Heather Servant – In Support of Lower Speed Limits on Eastern Avenue; and Colonial Theater Group, Inc. – Petition for Discontinuance R-2020-38.

#### MEMORANDUM – TARA KESSLER, SENIOR PLANNER – AND ORDINANCES O-2020-10: RELATING TO THE LAND DEVELOPMENT CODE AND O-2020-11: RELATING TO CHANGES TO THE DOWNTOWN ZONING DISTRICTS

A memorandum was received from Tara Kessler, Senior Planner, along with Ordinances O-2020-10 and O-2020-11. The memorandum recommended that Ordinances O-2020-10 and O-2020-11 relating to the Land Development Code and Changes to Downtown Zoning Districts, respectively,



be referred to the Planning Licenses and Development (PLD) Committee, and the Joint Committee of the Planning Board and PLD for a public workshop. The memorandum was filed into the record and the Mayor referred these Ordinances to the PLD Committee and the Joint Committee of the Planning Board and PLD for a public workshop. Mayor Hansel noted that this Code of Ordinances is approximately 300 pages and therefore would not be included in those Committee's agenda packets, but could be accessed on the City website's homepage.

**MEMORANDUM – CITY ATTORNEY – AND ORDINANCE O-2020-12: RELATING TO SOCIAL HOSTING**

A memorandum was received from the City Attorney, along with Ordinance O-2020-12 relating to Social Hosting. The memorandum was filed and Ordinance O-2020-12 was referred to the Planning, Licenses & Development Committee.

**FOP REPORT AND RESOLUTION R-2020-37: RELATING TO THE TRANSFER OF FUNDS FROM THE SOLID WASTE FUND BALANCE TO THE 2020/2021 SOLID WASTE OPERATING BUDGET FOR REPAIR OF EXISTING SCALE SYSTEM**

A Finance, Organization and Personnel Committee report read recommending on a vote of 5-0 the adoption of Resolution R-2020-37. A motion by Councilor Powers to adopt Resolution R-2020-37 was duly seconded by Councilor Hooper.

The Mayor recognized Councilor Jones, who asked whether the Solid Waste Fund referred to the Closure Fund. Councilor Powers replied that it is the undesignated fund balance of the Solid Waste Fund. Because this is an Enterprise Fund, it is treated differently than governmental operating budgets. Councilor Powers said that the Closure Fund is designated for closure unless the Council decides differently.

The motion to adopt Resolution R-2020-37 passed with 14 Councilors present and voting in favor.

A Finance, Organization & Personnel report read recommending on a vote of 5-0 that the City Manager be authorized to enter into a sole source agreement with Northeast Scale Company out of Auburn New Hampshire in the amount of \$49,677 for the repair of the scale. A motion by Councilor Powers to carry out the intent of the report was duly seconded by Councilor Hooper. The motion passed with 14 Councilors present and voting in favor.

**ADJOURNMENT**

There being no further business, Mayor Hansel adjourned the meeting at 8:06 PM.

A true record, attest:



City Clerk