

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, October 21, 2020

7:00 PM

Remote Meeting via Zoom

Members Present:

Kate M. Bosley, Chair
Philip M. Jones
Gladys Johnsen
Catherine Workman

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Rhett Lamb, Community Development
Director
Steven Russo, Police Chief

Members Not Present:

Mitchell H. Greenwald, Vice-Chair

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 7:02 PM and explained the procedures of the meeting. Roll call was conducted.

1) Relating to Social Hosting
Ordinance O-2020-12

Chair Bosley asked to hear from the City Attorney. City Attorney Thomas Mullins stated that except for a couple of minor scrivener errors, like the removal of “written warning” from Paragraph 66-159, this is essentially the proposed draft that the PLD Committee considered at its previous meeting, at which time the recommendation to the City Council was for staff to put the language in ordinance format with an ordinance number, which is what they have in front of them tonight. He continued that other than that, there have not been any changes made. He is glad to answer any questions.

Chair Bosley asked if anyone had any questions. Councilor Jones stated that he has a question for the City Manager – he will not rehash everything he has talked about, and he has faith in her for hiring a person for this job. He asked if there will be an opportunity for the City Council to review the work this person is doing. He assumes that will be next year when the municipal services contract is being reviewed and renewed.

City Manager Elizabeth Dragon replied that she proposes an amendment to the municipal services contract, coming to the Finance, Organization, and Personnel (FOP) Committee likely in

the next cycle. She continued that that amendment would articulate the 50/50 split of the position and have the job description attached. The job description is what she shared with this committee last time; they have not made any changes to it. Melinda Treadwell, President of Keene State College (KSC), has reviewed and agreed to it and to a 50/50 split. It is a 20 hours per week position and for the remainder of this year it would be about \$7,500 each. Councilor Jones asked when the City Council would be able to review what is being done, once the person has been there a while. He asked if that is part of the contract when it comes up for renewal in a year. The City Manager replied yes, it would have to be part of the conversation when they go to renew or amend that contract in the next year.

Chair Bosley stated that this is the first time that she has, as a City Councilor, been in the position of considering an ordinance with a position attached to it. She asked the City Manager if she could clarify how this comes back – does it come back to the PLD or FOP Committee? Would they be able to quantify what this person is doing? This is an ordinance they assume will have all these implications, maybe in the first year, but what if in the second year they have, say, three complaints? Once this is approved, how does that part get managed?

The City Manager replied that it goes to the FOP Committee. She continued that right now it will go as a request for an amendment to the municipal services contract with an attached job description. Then the following year when they have the conversation about renewing the municipal services agreement they will be looking at that job description. They do talk about the fact that they do not know exactly what the demand will be. They do know that it is about more than just the college. This is a city-wide ordinance. They are also looking to address noise ordinances, not just social host complaints. Hopefully they can prevent it from becoming a Social Host Ordinance violation if they can address some of the noise ordinances earlier. When they come back to do that renewal they will have a better understanding of the demand and the need. She had a conversation with President Treadwell about the potential changes at her organization and how the City and College might be able to better align in the following contract, but they simply do not have the time to do that right now. One concern she [the City Manager] has is putting the Ordinance in place without some sort of support behind it. She and President Treadwell are having the bigger conversation about the positions the College has that are reaching out to the community and how that relates to the ones that the City has. There may be a way for them to look at that more holistically, and maybe that is a change to the [new position's] job description in the following year.

The City Manager stated that she has a question for the City Attorney, regarding the effective date for this ordinance. She continued that the College has an extended break this year and is planning on returning January 25. They were looking to have this ordinance be effective at the end of this calendar year to allow them time to get things in place and have things in place before the return of the college in January. The City Attorney replied that language about the effective date, which is suggested to be December 31, would be part of the motion that would go to the City Council.

Councilor Workman stated that she wants to commend City staff for drafting this ordinance. She continued that it took very little back and forth for edits and revisions. They got something done pretty quickly, and she thanks them for their work and efforts, and President Treadwell and Chief Russo, too.

Chair Bosley asked if there were questions from members of the public.

Tim Zinn, of 43 Grove St., stated that he thanks everyone for working diligently on this ordinance and thanks his neighbors, with whom he has been working on this for over two years. He continued that there are varying opinions even amongst the neighborhood group about what is most important to them each individually and overall, so he does not want to distract from moving forward with this, but there are two people in the neighborhood group who have concerns about the \$300 initial fine and the possibility that people could skirt that by coming to the door (when the Officer arrives) one at a time on each occurrence and delay the progressive nature of the ordinance. He does not have all the answers, but they just want to make the point that potentially that is a loophole for people who want to delay the escalation of the progressive nature of the fines. It hinges on how many tenants are there. The extreme example is if there are eight tenants in one apartment, they could potentially delay it eight times and have eight \$300 fines. Ideally he and the other person in the neighborhood group would like to see wording that, if possible, ties the residence and the tenants together, so it holds the residence and the tenants who live there responsible for the first offense, and then escalates to a second offense regardless of who might host/take responsibility for a party a month from then. They want the foundation of the ordinance to have as few loopholes as possible so they can have some real relief. He knows there is concern that if it is a married couple, for instance, they are not going to fine the husband and wife \$300 each, but maybe there could be language about “unrelated tenants within the same household.” They encourage Staff to have a conversation about this with the former Police Chief in San Marcos, Texas, who knows the nitty gritty. He thinks Chief Russo spoke with her, but it might be worth another conversation, to hear what happens in these situations when an Officer arrives and there are tenants who are playing this game.

Mr. Zinn continued that he and the neighborhood group encourage the City to, if possible, button up any potential loopholes. He continued that other than that, they are really happy with the progress and appreciate it. He and his neighbor Andy Oram are the two who have concerns about this but they do not want to hold this up. They understand that COVID-19 makes passing this more urgent than anyone had anticipated.

Chair Bosley stated that she wants to place her faith in the Officers coming to the home. She continued that if it is the same Officer coming to a repeat party they would have the understanding that they had already been there and hopefully be looking for the original culprit and that person would have a consecutive fine if it was during the same night. She asked if Police Chief Steve Russo is able to speak to his perspective on this.

Chief Russo stated that there is not a reason to have another conversation with the people in Texas. He continued that their laws are significantly different and their community is different. If they want to go through changing the wording of this ordinance and what people can and cannot do, and the legalities of how many people the KPD can hold responsible, this process will drag out for quite some time, in his opinion. This is an ordinance that people can agree on. There could be a way around any ordinance or statute that deals with quality of life calls for service, and they will never solve all of them. [The changes Mr. Zinn is asking for] would complicate this very heavily.

Chair Bosley asked if the City Attorney had anything to add. The City Attorney stated that regarding the drafting, there were two choices the committee had: to tag the property or to tag the individual. He continued that the reason for tagging the individual is that would be the person in front of the fact-finder or judge. You really have to have an individual who is responsible. He cannot argue with Mr. Zinn, to the extent that if the Officer shows up and the original person is not there potentially the next person would get a \$300 fine. That is a possibility. But given the financial situation of college students, he suspects that once this is implemented and the fines start going out, there will be some change in behavior and some reluctance of individuals who are at these house parties to be tagged with the fine.

Chair Bosley stated that she agrees.

Councilor Johnsen stated that she received an email today, which she forwarded to the City Attorney and the Mayor, and she is trying to forward it to the other Councilors. She continued that it is from a former Police Officer who was working in this kind of position. He has quite a bit to say. He read about the proposed Social Host Ordinance in the paper. He said that it will not work if you have that fine for the host. There might be four or five people and they might just plan ahead and chip in money to pay the \$300 fine. The email is from Mr. Stewart. It is a long email and he says "I was the Keene State College Liaison Officer. I was tasked with responding to and handling large parties hosted by KSC students on a weekly basis. I have not read the entire ordinance but the information that was in the Keene Sentinel was concerning. The article stated specifying that penalties would be issued to only one host in the case that there are multiple people on the lease or multiple owners of a single house." She continued that he goes on to say "This will not work and here is why," and goes into a long discourse. He says that what they had to do, because it did not work, is utilize the state statute on Disorderly Conduct, RSA 644:2 and that was a violation level offered which earned no jail time, just a fine. He said that at that time it was far less restrictive and they found great success in utilizing that statute. She forwarded the email to all PLD Committee members tonight except for Councilor Jones because she does not have his exact email address. She felt this was quite legit, unless Chief Russo knows Mr. Stewart and what he is talking about, and she thought it important to bring in tonight.

Chair Bosley stated that she wants to point out something that she thinks was not pointed out in the letter - part of what the City is trying to do here is work in tandem with the College. There

will be a City portion where the individual will have a responsibility to the City to pay this fine, but this new position that will be shared with the College will be working directly with the College. Their intention is to hold these off-campus students to the standard that on-campus students are held to and there would potentially be additional penalties for behaviors that could result in maybe suspension; she is not aware of exactly what their regulations are, without President Treadwell here to describe exactly what the process is. But she believes that is the piece that will tie this back together. The City can only do so much. There has to be accountability on the College side. Their willingness to come to the table has shown that they are willing to do their part.

Chair Bosley asked the City Manager if that sounds like her understanding as well. The City Manager replied yes, President Treadwell has worked to address off-campus behavior through her Judicial Conduct process. One of the things the City is looking to do is report back these incidents to the College so they can be held accountable at the college level as well. Chair Bosley replied yes, hopefully that gives some added pressure as well.

Councilor Jones stated that he has a question for Mr. Lamb. He continued that this originally came out of a subcommittee of the City/College Commission (CCC) and they asked the authors to send it to the City Council themselves and not do it through the CCC. Once the CCC reconvenes this would be good to put on their agenda and have a presentation, since they were the first ones to hear about it.

Mr. Lamb replied yes, but at the moment that committee is not active because the membership from the College has been in flux. He continued that a number of layoffs took place and several of those layoffs were connected to members of the CCC. The group has not met since about April. It is on his agenda to make contact and reestablish membership through the College so they can meet again. Councilor Jones replied that he is not pushing them to meet, he is just asking that when they do meet, that this be put on the agenda.

Mr. Zinn stated that he wants to thank everyone again and he and the neighbors know that this is not a panacea, but the [ordinance] is a tool used in lots of college communities and they hope it will be an effective tool here, however they end up ironing everything out. He continued that a great point was brought up on the coordinator position, which addresses some of their concerns about partygoers playing the game – that person should be contacting the landlord and all tenants and communicating the seriousness of the problem. So they have that advantage and it just reinforces why the position is needed, for the legwork and communication with all tenants, because an Officer might only speak with one tenant that night and somehow the excuse has to be removed that the other tenants were not aware of the events of the night prior. That is a great tool within this program. He wants to clarify that he might have misspoken – when he mentioned the property and tenants tied together, it was not related to the proposed landlord ordinance from a few years ago. It was more just that maybe the property gets escalated to a secondary fine in the escalation of the process they are talking about here; he was not trying to infer that it was related to that previously proposed ordinance; he is not trying to go down that

rabbit hole. Despite the fact that everyone has little tweaks they would like to make to this ordinance he thinks they have some good meat on the bones and as they already discussed, an ordinance is not set in stone, and if something needs to be tweaked down the road hopefully they adjust it like they do with everything else.

Chair Bosley replied yes, they discussed that a little bit at a previous meeting, regarding having the ordinance tied to the residence or to an individual and she thinks that college students by nature tend to be a little transient, and she likes the ordinance being tied to the individual because if that person moves to another apartment and has the same behavior in the new apartment there needs to be that association there. Whereas if you escalate a residence and new tenants move in there should be a clean slate.

Councilor Johnsen asked if Chief Russo is familiar with John Stewart, who sent her the email. Chief Russo replied yes. Councilor Johnsen stated that she encourages folks to read the email because it has information she did not know. She continued that however, Mr. Stewart is talking about 2010 so maybe that is what Mr. Zinn is referring to. Chair Bosley stated that Mr. Stewart might have missed the fact that the City is trying to approach it from many angles, with the liaison and the college student judicial process and the City ordinance. There are a lot of pieces to the pie.

Councilor Jones stated that he knows John Stewart well. He was a very good Police Officer. He continued that the KPD can still use the same state statute that Mr. Stewart referred to. Now they have two tools. It is good all around.

The City Attorney stated that he wants to emphasize that point, and the Chief understands this as well: this ordinance is just one tool, and the Criminal Statutes still apply in this context. The KPD will use their judgement and make decisions about which route to go down in this process. It is important for everyone to remember. There are other potential matters that can apply in these circumstances.

The Chief replied that he would echo that. Yes, they are very aware. He continued that none of these statutes are new. The KPD uses them every day and night and in combination. It will come down to what the most appropriate charge is for what is occurring at each event. They have to realize: some ideas are really good ideas but not statutorily or constitutionally allowed. When you start thinking about moving a fine to a residence and not a person, there are serious issues with that.

Chair Bosley replied that that is fair. She continued that they have crafted this in a way that makes a lot of sense to her. If it is not an effective tool they will be revisiting it in a year, at a minimum, when the College contract comes up for renewal.

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

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

By a vote of 4-0, the Planning, Licenses, and Development Committee recommends the adoption of Ordinance O-2020-12 to take effect December 31, 2020.

There being no further business, Chair Bosley adjourned the meeting at 7:33 PM.

Respectfully submitted by,
Britta Reida, Minute Taker