

A regular meeting of the Keene City Council was held on Thursday, February 3, 2022. The Honorable Mayor George S. Hansel called the meeting to order at 7:00 PM. Roll called: Bryan J. Lake, Michael Giacomo, Randy L. Filiault, Robert C. Williams, Philip M. Jones, Andrew M. Madison, Kris E. Roberts, Raleigh C. Ormerod, Bettina A. Chadbourne, Catherine I. Workman, Mitchell H. Greenwald, Kate M. Bosley, and Thomas F. Powers were present. Gladys Johnsen arrived at 7:07 PM. Councilor Workman led the Pledge of Allegiance.

Having determined a quorum was present in the Council Chambers, the Mayor said that Councilor Remy had requested to participate remotely because he still had one more day of Covid-19 quarantine. Mayor Hansel stated that he was not currently in an easy position, having to decide whether to allow remote participation without concrete rules from the Council. That said, he asked if there were any objections to Councilor Remy's remote participation. Hearing no objections, Mayor Hansel welcomed Councilor Remy via Zoom. Councilor Remy stated that he was alone at his location and participated remotely due to his quarantine status.

#### ANNOUNCEMENTS

The Finance, Organization and Personnel Committee will continue its review of the Capital Improvement Plan. The meetings for February 10 and February 24 will start at 5:30 PM. The public hearing has been scheduled for March 3, 2022 at 7:00 PM.

#### MINUTES

A motion by Councilor Powers to adopt the minutes of the January 20, 2022 regular meeting was duly seconded by Councilor Bosley and the motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Johnsen was absent for the vote.

#### CONFIRMATIONS

A motion was made by Councilor Powers and duly seconded by Councilor Bosley to confirm the following nominations: Councilor Michael Giacomo to serve on the Partner City Committee, with a term to expire December 31, 2023, and Heidi Schwieger to serve as an alternate to the Human Right Committee, with a term to expire December 31, 2024. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Johnsen was absent the vote.

#### RESIGNATIONS – ANDREW DEY FROM THE ENERGY AND CLIMATE COMMITTEE; ABIGAIL ABRASH WALTON FROM THE CONGREGATE LIVING AND SOCIAL SERVICES LICENSING BOARD

A memorandum was received from Senior Planner, Mari Brunner, recommending that the City Council accept Andrew Dey's resignation from the Energy and Climate Committee. Another memorandum was received from the Senior Planner, recommending that the City Council accept Abigail Abrash Walton's resignation from the Congregate Living and Social Services Licensing Board.

A motion by Councilor Powers to accept the resignations with regret and appreciation of service was duly seconded by Councilor Bosley. The motion carried unanimously on a roll call vote with 15 Councilors present and voting in favor.

#### NOMINATIONS

Mayor Hansel nominated: Sophia Cunha-Vasconcelos to the Historic District Commission, with a term to expire December 31, 2023; Beth Campbell to the Energy and Climate Committee, with a term to expire December 31, 2024; and Thomas Salvastano to the Congregate Living and Social Services Licensing Board, with a term to expire December 31, 2023. Mayor Hansel tabled the nominations until the next regular meeting.

#### COMMUNICATION – LORETTA SIMONDS – DAMAGE TO A SEWER LINE AND HOUSE FOUNDATION AT 79 WOODBURN STREET AND A REQUEST TO REMOVE A NEARBY CITY TREE

A communication was received from Loretta Simonds, who believes that her house foundation and a sewer line are being damaged from the roots of a nearby City tree. Ms. Simonds provided an inspection report from a NH Septic System Licensed Evaluator who is suggesting that because of the location of the mature trees in relation to the sewer line, as well as tree roots that were observed in the cellar, that the tree roots from the City tree have intruded into the sewer line. Mayor Hansel referred the communication to the Municipal Services, Facilities, & Infrastructure Committee.

#### COMMUNICATION – ADAM TOEPFER/KEENE PRIDE – REQUEST TO USE CITY PROPERTY – SEPTEMBER 11–18, 2022

A communication was received from Adam Toepfer, representing Keene Pride, requesting permission to decorate Central Square, the trees lining Main Street and the exterior of City Hall as part of the 1st annual Keene Pride celebration, which is a week-long celebration running from September 11, 2022 through September 18, 2022. In addition, Mr. Toepfer is requesting to block off Central Square and Main Street to Eagle Court/Emerald Street to accommodate a block party on Sunday, September 18. Finally, Mr. Toepfer is requesting that the City absorb the cost of City services. Mayor Hansel referred the communication to the Planning, Licenses, & Development Committee.

#### MSFI REPORT – KEVIN LEARY – ACCESS TO PROPERTY THROUGH THE OLD GILSUM ROAD – PUBLIC WORKS DIRECTOR/ACM

Municipal Services, Facilities, & Infrastructure Committee report read accepting the communication from Kevin Leary as informational.

The Municipal Services, Facilities, & Infrastructure Committee report further recommended per Section 94-238 of the City Code of Ordinances, that Kevin Leary, of 27 Meetinghouse Road, Keene, NH, be permitted to use motorized vehicles on the Class VI portion of the Old Gilsum Road for the purpose of accessing and transporting in and out equipment up to four (4) times per year until 2023 to the Fontaine Albert R Revocable Trust Property (218-09-00-000-000). This

motorized access to be coordinated with City staff with Mr. Leary abiding by all conditions set by Staff

A motion by Councilor Greenwald to carry out the intent of the Committee report was duly seconded by Councilor Filiault. The motion carried unanimously on a roll call vote with 15 Councilors present and voting in favor.

#### MSFI REPORT – RELOCATION OF WOODARD POND ROAD – CITY ATTORNEY

Municipal Services, Facilities, & Infrastructure Committee report read recommending that the City Manager be authorized to do all things necessary to negotiate and execute an Easement Deed with the Town of Roxbury for the relocation of Woodward Pond Road across City-owned property in Roxbury, New Hampshire.

A motion by Councilor Greenwald to carry out the intent of the Committee report was duly seconded by Councilor Filiault. The motion carried unanimously on a roll call vote with 15 Councilors present and voting in favor.

#### MSFI REPORT – MAINTENANCE OF THE WILSON POND DAM – CITY MANAGER

Municipal Services, Facilities, & Infrastructure Committee report read recommending that the issue of the maintenance of the Wilson Pond Dam be reported out as informational. Mayor Hansel filed the report as informational.

#### MSFI REPORT – MONICA MARSHALL – REQUEST THAT MAIN STREET BE DESIGNATED AS A SMOKE-FREE ZONE

Municipal Services, Facilities, & Infrastructure Committee report read recommending that the communication from Monica Marshall seeking to have Main Street designated as a Smoke Free Zone be reported out as informational. Mayor Hansel filed the report as informational.

#### FOP REPORT – AMERICAN RESCUE PLAN: HUMANITIES GRANTS FOR LIBRARIES – LIBRARY DIRECTOR

Finance, Organization, & Personnel Committee report read recommending that the City Manager be authorized to do all things necessary to accept and expend a grant of \$10,000 from the American Rescue Plan: Humanities Grants for Libraries award in support of library programs.

A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 15 Councilors present and voting in favor.

#### CITY MANAGER COMMENTS

The City Manager began with an update on the Fire Department Staffing Committee. She has established a Committee to review the staffing request made by the Fire Chief for an additional four firefighters. The City Manager asked Councilor Powers to Chair this Committee and Councilor Remy to act as Vice Chair. We have four members of the Fire Union participating, in addition to leadership at the Fire Department, as well as a member from both the Human

Resources and the Finance Departments. The first meeting is planned for February 4. The goals for the first meeting include having the Fire Department clearly define the need, identify the information/data needed to analyze the issue so that recommendations can be formulated, and set the schedule for future meetings.

As part of the FY22 budget request from the Fire Chief Howard, three options were presented: 1) hire four firefighters, 2) hire four certified paramedics and require them to obtain firefighter credentialing, or 3) hire four certified paramedics that remain as paramedics only in the Department. The Chief identified more than one way to meet the growing needs of the Department and the Committee may identify even more ways to do so. For example, Keene contracts with communities in our region to provide service. The Committee will evaluate the cost benefit of providing that service and the demand on the Department, including the amount of time we are outside of the City limits. This is just one example of many of the things the Committee will be analyzing. The City Manager will keep the Council updated. It is her plan to have recommendations to include as a part of the upcoming budget for FY23. She begins the process of evaluating budget requests in March and finalizes her budget for printing at the end of March, so that the budget book can be back from the printers and to Council for May 1. It is a short timeline, and so if the work of the Staffing Committee is not done, it may be necessary to discuss further adjustments to the budget with the Council as part of the FOP budget review process.

The City Manager continued explaining interim staffing changes at the Fire Department. She met with the Chief, deputies, and HR Director regarding some interim/more immediate staffing adjustments at the Fire Department. She noted that she supported the continuation of the 10th person on shift through the end of the fiscal year. This additional cost is just over \$170,000 from Dec 8, 2021—when the Chief authorized the 10<sup>th</sup> person—until the end of this fiscal year. The Fire Department applied for a grant to cover \$85,000. The City Manager said she did not have word yet, but it looks like they may have been successful. It still may be necessary before the end of the fiscal year to move funds to the Fire Department to cover the rest of the expense. If so, she will be seeking Council approval to transfer these funds. The City Manager noted that the Fire Chief also put out a very detailed press release the day of this meeting related to their inspections program, which she sent to the Council.

Next, the City Manager reported that the letter the City sent to NH Department of Transportation, requesting use of toll credits to help offset the local match of the lower Winchester Street project was denied. Subsequently, she had drafted a letter to our Senator and Representatives to urge them to support legislative initiatives that would allow this type of use. The City Manager concluded her comments by reporting that there were three out-of-state applicants moving forward in the hiring process for the new Community Development Director.

#### CITY OFFICER REPORT – ORDINANCE 0-2021-16-B: RELATING TO THE WEARING OF FACE COVERINGS

A memorandum was received from City Clerk, Patricia Little, presenting Ordinance O-2021-16-B, Related to the Wearing of Face Coverings.

As provided for in the Ordinance, Mayor Hansel requested that the Ordinance appear on this meeting's agenda, as it must be reviewed every 60 days. He said there were several possible options the Council could consider. First, they could hear a motion to rescind the Ordinance. If the Council did not choose to rescind, they would have to determine whether to continue the educational period or to begin enforcement. He said that it was clear during the last discussion that the Council was not ready to proceed with enforcement. Therefore, the Ordinance had been in an educational phase, as the Council did not want the onus placed on the business owners. Mayor Hansel requested a motion to begin the discussion.

A motion by Councilor Powers to rescind Ordinance O-2021-16-B was duly seconded by Councilor Bosley. Discussion ensued.

Councilor Greenwald said the Ordinance reads on the surface as though it is a complaint-driven situation, where someone makes a complaint, there is a response, and the unmasked person is issued a summons. The City Attorney replied that they were a couple of steps short of that happening. Councilor Greenwald asked what the involvement of businesses would be as the Ordinance was currently adopted. The City Attorney replied that the requirements on a business are stated in the Ordinance, which he said are essentially for the business to prepare appropriate policies and procedures internally for their own employees (i.e., when to wear a mask), to post notice at entry to the business that a mask is required per City Ordinance, and that the business deny service to any individual who enters and does not comply with the mask requirement. In a situation where the business has complied with posting a notice and a patron does not comply, the business can request that they wear a mask and if the individual refuses, the business can ask them to leave. If the individual does not leave, the business has the right to call the Police Department, which will respond. Regarding penalties on the business, which are not spelled out in the Ordinance, the City Code (§1-15) provides that if a requirement is placed on an entity or individual by City Code that does not otherwise contain a penalty provision associated with it, then the general penalty under §1-15 would apply, which states that it is up to \$1,000 (the statutory limit under NH law). The City can issue a category of fines lower than that based on the summons it creates (the fine category is \$100 after warning and failure to comply, and \$250 after that).

Councilor Filiault said he appreciated comments and questions, but the motion on the floor was to rescind and it was not about enforcement. In his opinion, he did not believe the Council should rescind because of the science and numbers; everyone had seen the reports from Cheshire Medical. He said the numbers were higher now than when the Ordinance was adopted and so it made no sense to rescind. He suggested reconsidering rescinding in one month. Although it had turned political, he said his vote would be a health matter.

On a roll call vote of 5 in favor and 10 opposed, the motion to rescind the Ordinance failed. Councilors Remy, Giacomo, Roberts, Bosley, and Powers voted in opposition.

Mayor Hansel sought clarification from the Council as to whether Staff should move forward with enforcement or continue the educational phase. He said moving into a higher level of enforcement could lead to more confrontations and potentially fines.

Councilor Giacomo asked what the difference looks like; should language be added to the Ordinance stating that “we really mean it this time.” Mayor Hansel said the Ordinance would stay the same. The Mayor said the educational phase was important to not spring a new Ordinance on the community. Thus, after several weeks of education, when prompted, Staff would explain the Ordinance and expectations on business owners and public. He said at this point Staff needs more direction because during the last discussion, it was clear that the Council did not want the Police out ticketing unmasked people and it was clear they did not want the burden of the Ordinance to be on the business owners. Unfortunately, with the way the Ordinance is crafted, both are possible if the Ordinance is moved into full enforcement. Staff needed direction. Councilor Giacomo stated that the Council was making no change to the Ordinance, but voting to tell Staff that the Ordinance actually means something now. Mayor Hansel said they were showing Staff whether they want to fully enforce this Ordinance and move out of the educational phase.

The City Attorney said that currently with the way things were presented procedurally, the City Council had adopted the Ordinance as the legislative body and the City Manager is the executive of the City who has the authority to implement and enforce the City’s ordinances. He said it is not unusual for the executive to take a position on a new Ordinance, allowing a period of time for education to occur to the public. The last time this was seen statewide was when the statute was passed prohibiting handheld devices and there was an educational phase before enforcement began. He said that was the City Manager’s position at this point and she has the authority to move into enforcement without changes to the Ordinance. If the City Council wanted to change the Ordinance, it would have to go through the usual ordinance amendment process, with a request submitted to the City Clerk and the amendment reviewed first by the City Council, and referred to the appropriate Committee for a recommendation before coming back to Council.

The City Manager reiterated what the Mayor said, stating that there was an extensive educational period due to the overwhelming feelings of the Council when the Ordinance was adopted. The Council made amendments that they thought took the onus off businesses. Once Staff determined that there were still parts of the Ordinance that would require businesses to do certain things like post and refuse service, and Staff articulated what that meant in terms of enforcement of the Ordinance, it was difficult for the City Manager to move directly into an enforcement phase. Therefore, at this meeting she sought consensus on whether the Council wanted Staff to move to enforcement, which would be across the board, penalizing both individuals and businesses—they cannot be separated. She said that so far during the educational period, there was a lot of voluntary compliance. Otherwise, Staff responded to complaints, provided copies of the Ordinance, and answered questions. She said they had maximized the voluntary compliance portion and now it was up to the Council to determine whether they wanted Staff to move into enforcement.

Councilor Workman asked about the level of education in the informational blitz to the community, particularly businesses, regarding the §15 caveat. Are businesses aware they are responsible under this Ordinance without it being explicitly detailed in the Ordinance? The City Manager replied that businesses are aware. Staff received a list of contacts for all businesses in

the City and did a direct email to them. In addition, if someone is not on that list and there had been a complaint, Staff went and talked to them, provided a copy of the Ordinance, and explained their responsibilities under the Ordinance. She said it was possible that some businesses still did not know, but she felt Staff did its diligence. Regardless, even during enforcement, the first visit is a verbal warning and education. Councilor Workman said it sounded like the City did its due diligence in educating the community.

Councilor Johnsen recommended extending the educational phase at least through February, while there is such a peak time scientifically.

Councilor Roberts stated that last meeting, when there was a motion to extend the education for 30 days and then move into enforcement, it was overwhelmingly “shot down.” Now, he said the discussion was to wait another 30 days, by which time this peak would be over. He said that if the Council believed that, then there would be no need for an enforcement phase if just considering taking this away again in 30 days; it would be rushing enforcement to pick it apart in 30 days. He said that within those 30 days, it might take a few weeks for the enforcement to run smoothly. Councilor Roberts continued that if the Covid-19 rates are looking good in 30 days, the City should keep the education because many are doing well wearing masks. He said others are happy leaving Keene where they do not have to mask, when he said some get viruses and bring them back to Keene because the virus knows no borders. He said the majority of people wear their masks without having to be told. He suggested continuing the educational phase for 30 days, when it might be possible to lift the Ordinance entirely.

Councilor Bosley agreed with continuing the educational phase. She said the hospital had indicated that it started offering other forms of therapy, and the surge ward and hospital numbers were on the way down. She believed that the peak was met and on the way down. She agreed that going into enforcement for 30 days was not her preference. She thought there had been the maximum voluntary compliance and that most people in the City were doing the right thing. She wanted to move forward with education.

A motion by Councilor Greenwald to recommend that the City Manager work within her authority to extend the educational period for Ordinance O-2021-16-B was duly seconded by Councilor Roberts.

Mayor Hansel noted that the time period was not included in the motion because the Ordinance requires that it be revisited every 60 days.

Councilor Filiault had no objection, stating that we are a nation of laws, and ordinances at all levels keep honest people honest. There would be people who violate the Ordinance no matter what, just like speed limits. He said some people enjoy violating ordinances because they do not care. Others violate on accident. He said people would gleefully ignore this mask Ordinance and Staff would continue doing its job educating people. He said this was not about “big brother coming down on people,” but about health. He hopes the numbers come down in the next month so they can lift the Ordinance.

02/03/2022

On a roll call vote of 14 in favor and 1 opposed, the motion to extend the educational period for Ordinance O-2021-16-B carried. Councilor Workman voted in opposition.

Mayor Hansel reminded that this would be reviewed again within 60 days.

ADJOURNMENT FOR LEGAL ADVICE

There being no further business, Mayor Hansel adjourned the meeting for legal advice at 7:44 PM.

A true record, attest:



Assistant City Clerk