

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, March 9, 2022

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Michael Giacomo, Vice Chair
Gladys Johnsen
Raleigh Ormerod

Members Not Present:

Philip M. Jones

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Rebecca Landry, Assistant City Manager/IT
Director
Med Kopczynski, Economic Development
Director

Chair Bosley called the meeting to order at 6:00 PM and declared a quorum present, with no one participating remotely.

1) Danya Landis/Machina Kitchen & Artbar - Request to Serve Alcohol at Sidewalk Café

Chair Bosley welcomed the applicant, Danya Landis of 433 Elm Street, who is the owner of the Machina Kitchen and Artbar, in addition to Brook Shumate of 12 West Street, to speak to this request. Ms. Landis was requesting to serve alcohol at her sidewalk café, which she said had been incredibly valuable to the business. She was thankful for being able to serve alcohol on the sidewalk during these past two years and hoped to move forward continuing the same way. She appreciated the Committee's consideration.

Chair Bosley requested comments from the City Manager, Elizabeth Dragon, who said that this was the first request of the City Council for permission to serve alcohol on the sidewalk. This was the one time that this request comes before City Council, after which the matter would be approved administratively. This is coming before the Council now because during Covid-19 there was flexibility under the emergency management order, and this restaurant was operating under that order for both their sidewalk and sale of alcohol on the sidewalk licenses.

Chair Bosley asked, once this was approved, whether it would fold back into their sidewalk café license. The City Manager replied in the affirmative.

With no Committee or public questions or comments, Chair Bosley entertained a motion.

Vice Chair Giacomo made the following motion, which Councilor Ormerod duly seconded.

On a vote of 4–0, the Planning, Licenses, & Development Committee recommends that Machina Kitchen & ArtBar be granted permission to serve alcoholic beverages in connection with their Sidewalk Café License, subject to the customary licensing requirements of the City Council, and compliance with the requirements of Sections 46-1191 through 46-1196 of the City Code.

The Chair advised Ms. Landis to work with the City to finalize the license.

2) Gail Somers/Yahso Jamaican Grille - Request to Serve Alcohol at Sidewalk Café

Chair Bosley welcomed the applicant, Gail Somers of 5 Orchard Street, owner of Yahso Jamaican Grille. Ms. Somers said she was present requesting permission to serve alcohol at the Grille’s outdoor sidewalk café. She said that during the last two years, this feature was very valuable to her business. Ms. Somers added that more importantly, they had operated outdoors with zero incidents. She thought it was prudent and appreciated if they were able to keep operating outdoors in this way. Ms. Somers thanked the Committee for their consideration.

Chair Bosley asked the City Manager whether this was a similar situation to the previous agenda item. The City Manager, Elizabeth Dragon, replied in the affirmative. The Chair continued, stating that the City was operating under emergency management orders originally, so this component would get folded back into the normal café license that would be issued administratively; the City Manager agreed.

With no Committee or public questions or comments. Chair Bosley entertained a motion.

Vice Chair Giacomo made the following motion, which Councilor Johnsen duly seconded.

On a vote of 4–0, the Planning, Licenses, & Development Committee recommends that Yahso Jamaican Grille be granted permission to serve alcoholic beverages in connection with their Sidewalk Café License, subject to the customary licensing requirements of the City Council, and compliance with the requirements of Sections 46-1191 through 46-1196 of the City Code.

Chair Bosley advised Ms. Somers to work with the City to formalize the license.

3) Keene Young Professionals Network – Keene Food Festival - Request to Use City Property

Chair Bosley welcomed representatives from the Keene Young Professionals Network (YPN): City Councilor Michael Remy and Alana Fiero of 744 W. Swanzey Road, Swanzey. She also welcomed the Director of Economic Development, Special Projects, & Initiatives, Med Koczynski.

Councilor Remy began describing the event, stating that overall, they sought to expand the footprint by closing down to Railroad Street and having more vendors located in that area. He said they had been working with some of the local businesses and had partnered with the Art Walk to determine the right layout. Their intent would be locate their activities so as not to block the view and access to the downtown businesses. They would begin by filling the median to leave businesses open to the street as much as possible, but if more restaurants wanted to participate, they could use those spaces. Still, the idea was to leave those spaces largely open to downtown business visitors on Main Street, which he said would not be possible for Central Square. Councilor Remy said the beer area was a part of the footprint but off City property, so the City Council does not need to worry about that in terms of the license. He returned to the partnership with the Art Walk, saying that in an effort to connect the events, the Art Walk would fill some of the available spaces with their artists. He continued that there would be an earlier start this year following feedback from some restaurants that it was challenging to get ready for dinner service with last years' event ending at 5:00 PM. Ms. Fiero added that last year they held the event with no incidents. Councilor Remy continued that last year they gave back almost \$50,000 and with sponsors it was over that, with some going to the local restaurants as a part of that. Chair Bosley said that was wonderful and very impressive.

Chair Bosley requested Staff comments from Mr. Kopczynski, who was pleased to be present in this role, filling-in for the Director of Public Works/Emergency Management Director. Mr. Kopczynski was grateful for a chance to laud a successful event in our downtown. He applauded both the Art Walk and the Keene YPN for combining their efforts after some conflicts last year that have been resolved through good communication this year. Along those lines, Mr. Kopczynski said that the parking spaces being used for this event are a minor part of what they are doing to ensure that our downtown is vital. He said that last year, thousands of people visited our downtown, and there would be thousands more this year. He said this was a great event last year and would be again. There had been two separate meetings and there were still some details to work out, but Mr. Kopczynski advised that by all means, this is something the City should go forward with. He was pleased express his support.

Vice Chair Giacomo asked whether the timing was shifted earlier or the whole event timing was condensed. Councilor Remy replied that it was 12:00 PM–5:00 PM last year and this year it would be 11:30 AM–4:00 PM; so, yes to both questions. Vice Chair Giacomo continued asking what effect that would have on the back end of the festival regarding break-down since it would be starting earlier; would that impact the streets reopening? Councilor Remy said the plan was to reopen at the same time as last year, but they would still endeavor to open the streets as soon as possible. Last year, Councilor Remy said clean-up was complicated because one restaurant thought they could remain serving on Main Street.

Mr. Kopczynski said there were still some coordination issues to work out. He said that 144 spaces would be blocked for some period of time, and they would open the streets as soon as they can. They need to direct traffic for parking from Main Street and Gilbo Avenue to both the Gilbo Avenue and the Commercial Street lots. Some work was still needed on directing traffic to

the upper Wells Street Parking deck. While there were still some coordination issues to resolve, Mr. Kopczynski said they were quite minor.

Vice Chair Giacomo asked whether expanding the footprint down Main Street would impact the number of barricades and the Staff effort for set-up and shutdown. Councilor Remy said there would actually be a few less barricades from a width perspective but there are a few other side streets to worry about, like Railroad and Church Streets. Councilor Remy said they expected an incremental cost from the City and agreed to cover any cost above what the City provided through the City Council action that had already occurred.

Councilor Johnsen said she was looking forward to the event and asked whether this would exclude a lot of people who work until 5:00 PM. Councilor Remy replied that he hoped not because it is a Saturday event.

In curiosity, Chair Bosley wondered if there were plans for special contests this year. Ms. Fiero said they were working on a spicy contest, whether it could be peppers. Councilor Remy noted that peppers are hard to source this time of the year. He said they learned some things about the tokens last year; the tokens will be \$2 each again this year, but last year there had been a separate ticketing system for the beer tent, which led to complexity, and they hope to revise that under one token system in one line. They are trying to fine tune the challenges from the first year. Chair Bosley said it sounded like it was a very successful event last year and she felt the Committee was excited to support this.

Chair Bosley heard public comment.

Danya Landis of 433 Elm Street, who said that as a restaurant owner, this event was amazing last year because there are few opportunities to reach that many people at once, especially with the challenges of reaching people during the pandemic. This was a return to that community feel and she hoped it would happen again. Chair Bosley was grateful for that feedback.

Mr. Kopczynski said this event had been a good model of how to bring diverse groups together with the City to define problems and find positive solutions to carry-on an event. He applauded the YPN and Public Works Staff for working closely and providing guidance for other groups attempting this sort of event. Chair Bosley was grateful for that feedback, stating that several times she had mentioned that she would like some basic template to facilitate more of these sorts of events and to make that work less daunting. She added these events are invaluable for the success of all downtown businesses.

Chair Bosley recognized Gail Somers of 5 Orchard Street, who wanted to echo Ms. Landis' comments. Ms. Somers stated that it was a great event last year for local restaurants and businesses; she wanted to see it happen successfully again. She noted that the event date had not been stated for the record. Councilor Remy confirmed that the event is scheduled for June 4 from

11:00 AM–4:00 PM, with a potential rain date on June 5; though he stated that is very difficult to move an event like this.

Mr. Kopczynski added that he wanted to thank the City Clerk's office and specifically Assistant City Clerk, Terri Hood, who he said does an amazing job keeping these events going. Councilor Remy continued thanking all City Staff for facilitating more of these opportunities.

Based on Councilor Remy's comments about a rain date, the City Attorney, Thomas Mullins, suggested that the rain date should be included in the recommended motion so they can work with the City directly and do not have to come back for additional approval. Chair Bosley said that sounded ideal.

Councilor Remy welcomed volunteers and sponsors and invited the public to attend. Ms. Fiero said that interested parties could email keeneypn@gmail.com or visit the Keene YPN Facebook page.

Vice Chair Giacomo made the following motion, which Councilor Ormerod duly seconded.

On a vote of 4–0, the Planning, Licenses and Development Committee recommends that the Keene Young Professionals Network be granted permission to use downtown City rights-of-way on Saturday, June 4, 2022 with rain date of June 5, 2022 subject to the discretion of the applicant, to conduct a Food Festival conditional upon the following:

- The furnishing of a certificate of liability insurance in the amount of \$1,000,000 naming the City of Keene as an additional insured;
- The signing of a standard revocable license and indemnification agreement;
- That the Petitioner agrees to absorb the cost of any City services over and above the amount of City funding allocated to the event, and agrees to remit said payment within 30-days of the date of invoicing;
- That the footprint and layout for the event shall encumber the traveled portions of Central Square, Main Street both sides from Central Square to Railroad Street and Gilbo Avenue, and a portion of Railroad Street. Road closures may include any portions of other streets needed to facilitate detour routes. The full extent of road closures and detour routes shall be agreed upon with City staff;
- That the Petitioner is permitted to place porta-potties in City parking spaces located at the base of Washington Street from Friday, June 3, 2022 to Monday June 6, 2022, which will be chained together and affixed to ensure they are not vandalized while unattended overnight;
- That the actual event will be held from 11:30 AM to 4:00 PM with the times for set up and clean up to be established with City staff;
- That free parking be granted under the provisions of the free parking policy for City parking spaces on Washington Street needed for storage of equipment from Friday, June 3, 2022 to Monday June 6, 2022; and spaces within the event footprint on the day of the event;
- The submittal of signed letters of permission from any private property owners for the use of their property; and

- Said permission is granted subject to obtainment of any necessary licenses or permits and compliance with all laws; and compliance with any recommendations of City staff.

Councilor Johnsen wondered whether the rain date would limit participation with people in later church services on a Sunday. Councilor Remy said that especially for the church on Central Square, they are aware of the timing, and Keene YPN is coordinating with them to ensure, for example, that a wedding is not letting-out onto Central Square in the middle of a food festival. Fortunately, Councilor Remy said the event is primarily in the afternoon after morning church services. He said the event would not block the Central Square church's parking lot in any way.

4) Councilors Remy, Bosley, & Giacomo – Rules of Order – Section 4 – Quorum (Remote Participation)

Chair Bosley said this item was referred back to this Committee from more time before the Finance, Organization, and Personnel Committee. She said this letter from herself and Councilors Remy and Giacomo was submitted to the Council before the Covid-19 pandemic, and before the City has acquired the technology to support the Council through the pandemic. She said it was timely that it was back before the Committee now that they could speak to the issue with more experience, and there is now the equipment available in the Council Chambers to support remote participation.

Chair Bosley welcomed Councilor Michael Remy to speak to this issue. Councilor Remy said they actually submitted this letter shortly into the pandemic, asking for the ability to continue doing participating remotely after the pandemic emergency order ended. He said the Council had proven it was capable of holding meetings with some of its members remote. He said there had been some bumps and occasional technical difficulties, but that the vast majority of the time it had worked perfectly. Personally, Councilor Remy said his initial reason for submitting this letter was because remote participation would allow a broader group of the community to potentially hold future City Council seats; he cited it being very difficult for him as a person who travels for work, and challenges for others on Council with children. He cited other situations like someone's car breaking down. Councilor Remy stated that he did not personally see the need to limit the reasons. He understood why some wanted to limit the reasons, noting that there could be an abuse of the privilege. Personally, Councilor Remy did not think anyone who abused remote participation would be re-elected, which was where he thought accountability would come into play. He appreciated the interest in putting restrictions on the ability, like not allowing it for vacations longer than two weeks. Councilor Remy stated his position that remote participation would largely allow for broadening who can participate on the City Council, and he thought any step in that direction was a great thing.

Councilor Giacomo said he had been reading through some of the drafts that this Committee had worked on and stated that he agreed there were a number of things he would consider as reasonable reasons to be absent from a meeting. He said that trying to outline all those reasons could go on forever and would be fruitless. However, he said that keeping it as strict as had been proposed did not necessarily accomplish what the original intent of this was, which was to open

the Council to be more accessible to those who cannot always be there. He was especially referring to parents, because he only saw a death in the family as the only reason listed regarding family, which he did not want to be the only reason. He thought it was something missed in the earlier draft. He said he understood physical disability, having recently needed to miss a meeting entirely. Vice Chair Giacomo said he understood the great need for Councilors to contribute at every meeting because that is what they are elected for. If he had the option to participate remotely during the situation he cited, he would have. He thought there was a big change from earlier drafts, with many things fine-tuned. He thought this was more relevant now than when the letter was submitted, despite needing some edits.

Councilor Bosley reminded everyone that the previous Planning, Licenses, and Development Committee did a lot of work with the City Attorney to draft the language that was presented to the Council. That draft was not adopted by the Council last year and she did not want to see the new draft's verbiage fall apart on the Council floor. Thus, she asked the Committee to really work through the language thoughtfully at this meeting. Ultimately, Chair Bosley believed that there needed to be allowance for some form of remote participation. While she did not claim to know the perfect language, she thought the Committee could really flesh it out. To Vice Chair Giacomo's point, the Chair had to bring her daughter to this meeting to sit in the audience because of the Chair's obligation to be present. She said that someone without childcare might be able to participate remotely and perhaps some of these decisions should be at the Chair's discretion. She said the Committee should perhaps outline broader things that would always be permissible for remote participation, with an additional opportunity for the Chair's discretion. Chair Bosley cited the poor road conditions getting to this meeting this evening and she thought that remote participation could have been allowed as long as a quorum was present in the room, which was allowed under the State law. However, she said the Council made it very clear last year that they want some guidelines set for this. She said the Committee could also "beat this to death at this meeting, send it to Council next week, and watch it all happen again in this room." The Chair asked the Committee to be conscientious of that while discussing the proposed language.

Councilor Remy highlighted that this matter was not adopted by Council the last time it was heard, and noted that was because one Councilor was absent, who could possibly have been participating remotely that could have made a difference. He said that went to show that when someone is absent, the rest of the Council might not represent their interests, as it had been suggested they would. Councilor Remy said that one vote does matter.

Chair Bosley said she had just a few short years on Council and recently saw a split vote at City Council because a member was absent, which she said really goes to show that every vote matters—in greater elections and when voting at Committee. She had personally voiced that she wanted to see this language regarding remote participation as broad as possible and to let the public tell Councilors when they think it is being abused. However, she said she understood and was willing to compromise and find a happy medium where everyone was comfortable with a version moving forward.

Councilor Johnsen thought the Chair really said it well. She continued that when she looked outside this evening, she was unsure how she could drive in the unplowed conditions and was really scared. Had the Chair not been kind enough to pick her up in her four-wheel drive vehicle, she said she would have likely ended up in a ditch trying to get down her hill. The Councilor cited another time she wanted to participate via Zoom when she had Covid-19 and did not want to miss the meeting, which creates a disconnection for her. She said it was really important for Councilors to be a part of meetings. Councilor Johnsen said remote participation also helps when someone is not feeling well but still wants to connect. She hoped the Council could do something about this. She does not believe in missing meetings and Councilors should do everything possible to be there, but she could not have tonight without the ride.

Councilor Ormerod asked if this rule would apply to all City Committees. The City Attorney, said this rule regarding remote participation would only apply to the City Council and its Standing Committees. Councilor Ormerod asked whether this applied to the Joint Planning Board—Planning, Licenses, and Development Committee, and the City Attorney said it applied to half of that Committee.

Councilor Ormerod continued, saying this Council put a lot of effort into writing a statement of Diversity and Inclusion, and he thought they needed to show they were up-to-date on where that thinking is. He had served on other boards, where there are people with temporary and permanent disabilities, who sometimes participate remotely. He said we want to have participation from people with younger families as well, too. He added that it was necessary to remember that there are rules for participation, and if a body implements rules that are barriers to that participation, they are interfering with “our” ability to fulfill “our” duty. He said there should not be barriers when the technology exists and there are a number of ways to do this. Councilor Ormerod strongly supported this amendment and said it needed to be in the bylaws so that people could debate it during elections if they want to, and bring up others’ participation if they feel they should not be re-elected. He said the Council should be more inclusive in taking advantage of the available technology and live in this world where many global and local businesses operations are running remotely. Councilor Ormerod believed that the Council needed to align with the interests of their constituents by operating the same way they do.

Chair Bosley said it sounds as though some consensus was happening at the Committee level and she was going to get to public comment shortly. She hoped everyone had read through the amendment thoroughly, because she felt the language was fairly broad. She said it started to get into physical attendance with, “shall be deemed to not be reasonably practical in the event of ...” which was where she wondered if the Committee wanted to make any changes to the language. Alternatively, the Committee could send the amendment to Council the way it was.

Vice Chair Giacomo agreed that the rest of the amendment seemed pretty rational until it reached “reasonably practical,” which he thought was subjective and he does not care for subjective language. After that language, he thought this Committee needed to figure out what would

happen and what this might be. He said there could be legal issues with this as well; obviously a quorum must still be present in the room. He wondered whether there was any legal reason why discretion of the Chair or a vote of the quorum present are not effective ways of allowing the remote participation.

The City Attorney said this would always fall back on the State Statute, which says that a public body may allow remote participation. He said the Committee could write into the amendment that the Chair has discretion. However, he said there were two issues: 1) if there is consensus as there is often, then the result is the decision of the Chair, though the body has the right to challenge the Chair's decision with a proper motion, and 2) this is a minor factor, but he said the Council often stumbles over too much discretion, and there is always a possible situation when that discretion could be used inappropriately. Thus, he suggested language for the amendment that is not too ambiguous, and he felt that discretion of the Chair and body could be very ambiguous.

Councilor Remy said he would potentially challenge that it could be written as "physical attendance shall be deemed to not be reasonably practical at the discretion of the Chair" or the physical body present." He said that would take away the restrictions and leave it up to the individual to state why they cannot be reasonably present, in addition to the fact that abuse would not lead to re-election.

The City Attorney commented that the Councilors should remember that, yes, an individual can state that it is not reasonably practical to be physically present, but it would still be at the discretion of the body whether to allow that. The Chair said that in the State Statute, every time a remote participation request is made, the body still must vote; for instance, if someone had requested to participate remotely in this meeting, she would have opened the meeting, explained the request, and then asked the Committee for a vote of confidence. The City Attorney said this goes back to the discretion; the Chair could simply state they were inclined to allow the remote participation if no one on the Committee objected. Not each request must be called to a vote. The Chair asked whether the individual would need to state their reason. The City Attorney said the individual would still have to state why.

Councilor Remy asked whether it would be reasonably defensible to say that by a super majority of 10 having to approve this change to the Rules of Order that they are thereby authorizing that. He asked the City Attorney whether by approving this Rule amendment authority for every request being authorized moving forward. The City Attorney said the individual would still have to state why, and if the Council had a rule, the individuals' reason would have to fall within that rule. Then, the individual would still have to state their reason to the body and the body would still have the right to deny that request. He said that at that point, this would only be a guideline for the body to consider the request; it does fall within particular parameters, yes, but there still may be some reason by the body decides that that action is inappropriate.

Councilor Johnsen added something that was helpful as a member of the Heritage Commission today during this weather, which was that as soon as she alerted the Commission that she was unable to travel, they had her (and others) on Zoom in no time. While she could not vote, she said they are working on some huge projects, and it was wonderful to be able to continue that conversation and not stop the process. Chair Bosley noted that Councilor Johnsen was identifying an incident where it was helpful to have the Zoom technology available. Chair Bosley continued that she does worry, because for every meeting, there are a lot of reasons/obligations that people have not been able to or will not be able to participate in the future. She said it was a concern of hers. She said that remote participation would not allow fixing any of that because a quorum must be physically present still, but it does allow some leniency. Chair Bosley would have loved to allow Councilor Johnsen to participate remotely for this meeting, so that she could have participated in this conversation and not been in danger.

Chair Bosley opened the floor to public comment.

City Councilor Randy Filiault said it would be no surprise that he was adamantly opposed to any change to this Rule of Order. He said Keene was incorporated as a City in 1874 and stated that he was not implying things should stay the way they had always been, but added that in a way his feeling was, "If it ain't broke, don't fix it." He realized there was technology but said having the technology did not make it better. He said there was a 15-member Council and if a few cannot make it to a meeting, the remaining Councilors would pick-up the slack until they could come back. He said they were "opening a can of worms" with this amendment. He said someone must alert the City Manager and Mayor within 24 hours if they cannot be present and then it is at the prerogative of the Council whether to allow remote participation. He envisioned challenges leading to a lawsuit when telling one Councilor they could participate remotely and then telling another they could not. He knew that some Councilors were just trying to open it up a bit and be fair, but he only thought it was opening to a bunch of lawsuits. He said if you cannot make it to a Council meeting, then you cannot, and not everyone can make it to a Council meeting. He asked that if trying to open this up to everybody, for example, what do you do with the people who work second shifts but who want to be City Councilors; "do we give them an extra hour of work or let them go in later?" He said there is a whole group of people like those who work second shifts who want to be City Councilors but cannot. He said sometimes Councilors' jobs impede them being at Council meetings or they do not feel well and do not make it, and they just have to stay home and allow the rest of the Council to get the job done. Councilor Filiault stated that this had never been a problem in the past and he "thinks it is all just kind of individual egos that want to do this, like I have to be out-of-town all the time." He said if you cannot make it to a meeting then you cannot. The Councilor said this was the City of Keene and it was not like the Councilors were state representatives who needed to drive two hours to Concord in a snowstorm. He said all Councilors live in town and can make it to meetings, like they have been since the 1800s. Councilor Filiault repeated that allowing remote access was opening a can of worms and that he could not predict the future legal ramifications. He thanked the Committee for their time.

Chair Bosley wanted to point out a few of Councilor Filiault's comments, like that this has worked since the 1800s. She said that may have been true for a certain number of people but that our Council had not been diverse at all, which she said was sad. She thought there was an opportunity to change that with this amendment, or to give a perception to people that they might have some more access to serve in this role in our community. Chair Bosley said that if the opportunity exists, why not offer it to people. She also thought there should be some things listed under "reasonably practical" that are outlined very clearly, like health issues, disability, and possibly out-of-town employment responsibilities. She continued that then perhaps there was appropriate terminology for the Chair's discretion, for instance, in a childcare or road condition situation. She thought there needed to be some sort of decision-making process. She said she was able to make it to this meeting, but that she almost made contact with a City vehicle in the process because of the conditions. Thus, if she had a Councilor who lived downtown and could make it to City Hall easily, she would use her discretion expect them to be at the meeting, versus a situation like Councilor Johnsen's, for example. She did not think that the Chairs should be deciding whose health issues or disabilities are more important than others'. These examples are reasons why she wanted more specific language and a broad list of categories that are deemed acceptable. She thinks that offering this accommodation to someone with a disability is essential to avoid lawsuits. Chair Bosley continued that the City invested in the remote participation technology and should use it. She welcomed comments and edits from her fellow Councilors.

Councilor Giacomo knew the death in the family and vacation for two weeks were added after the original language and thought that then then could say "other extenuating circumstances as allowed by the Committee Chair." The City Attorney said to keep it within the language used by the Statute, so at the end of this proposed list it could say "or otherwise at the reasonable discretion of the public body," which means if no one objects to a Chair's discretion to allow remote participation, it would be allowed. He said that still preserves the right that already exists for a member of the body to object.

Councilor Ormerod asked, when someone objects, if it would still be up to the Chair to make the ruling or would they need 100% consensus to continue. The City Attorney said it would be a vote under the Rules that exist now; the objection to the Chair's decision would be put to a simple majority vote. Chair Bosley inquired whether the member participating remotely would vote and the City Attorney responded at that point they would not be considered a member of the body.

The Chair asked whether the committee was comfortable, at the end of "responsibilities," inserting the City Attorney's language in place of the yellow highlighted portion of the document in from of them. The City Attorney clarified that would mean the Committee wanted him to strike the proposed language on vacations and family death provisions. He wanted to be sure he was clear about how the Committee wanted the language drafted. Chair Bosley said yes, because that allows that public body to make those decisions on an individual basis, which she believed still left protection for health issues, disability, and employment responsibilities that all received

support at full Council. Then, it would allow some grey areas for things like childcare, road conditions, and a death in the family.

The City Attorney he wanted to tune-up an earlier comment. He continued that once this Rule is in place, if an individual clearly states that their reason for being unable to participate is one of those three specifically permitted reasons, then it would be problematic and very difficult to say no to that and doing so would require a two-thirds vote because it would be a Rule at that point. The Chair said she was comfortable with that.

Councilor Johnsen directed her comment to Councilor Filiault, stating that she would not have been able to drive tonight, and she does not want to be left out. She anticipated that she was the oldest City Councilor at present, that she knows she brings a lot to the Council, and she enjoys being present.

Chair Bosley said it seemed the Committee had cleaned-up the language some. Seeing no further comments from the Committee, she asked what the Committee's intention was. She asked where this the amendment that the City Attorney is drafting with Committee guidance would go next. The City Attorney replied that it would still just be a recommendation and the language could be available at the next Council meeting, but the Council had not yet voted to include this in their rules. In response to the Chair, the City Attorney said that would be accomplished by stating the recommended motion that the City Attorney draft an amendment to Section 4 in accordance with the background notes of the PLD Committee's discussion. Then the City Attorney would prepare and submit proposed language that would not be operative until the City actually voted.

Councilor Johnsen asked if the City Manager had comments on this. The City Manager replied with gratitude for being asked. The City Manager said she understood both sides of this issue and she knew that some communities had really struggled with this. She said that some communities had created very liberal rules for remote participation, which had created quorum issues for them. She continued that other communities struggled with this topic because they had not invested in the equipment that the City had to make this successful. Thus, the City Manager was happy to see some guidelines because she was nervous about leaving it too vague. She said it would be much harder to leave the decision strictly to the Chairs. She thought the Committee had struck a good balance.

Chair Bosley welcomed remaining public comments and recognized Danya Landis of 433 Elm Street. Ms. Landis did not plan to stay for this portion of the meeting but found it quite interesting. She wanted to remind everyone how lucky we are to have so many young people on City Council, which she said was not typical in NH or New England as a whole and we want to continue that. She thought it was great the Council was even talking about this and hoped that it passed because she wants people in her generation to have the opportunity to raise their voice and talk; this is the way our world is moving and people with young families and young professionals who travel probably want to be on Council and this would give them the chance.

She did not want to close those doors. She said this was not the 1800s, this is 2022, and she thought it was important to utilize the technology if they have it.

With no further comments or questions, Chair Bosley entertained a motion.

Vice Chair Giacomo made the following motion, which Councilor Johnsen duly seconded.

On a vote of 4–0, the Planning, Licenses and Development Committee recommends that the City Attorney draft an amendment to Section 4 of the Rules of Order in accordance with the background notes of the Committee’s discussion.

Councilor Ormerod asked whether this would be prepared for the next City Council meeting. The City Attorney said it would go to the City Council as a recommendation. If the City Council approves it, it would still come back to this Committee as a formality under the Rules for an amendment. However, because it is a Rule, the City Council could suspend the Rules of Order to act on it at the Council meeting. Because this is a change to the Rules, it will ultimately require a two-thirds vote.

5) Councilor Kate Bosley – Rules of Order – Section 15 – Conflicts of Interest

Chair Bosley said the Committee did a lot of work on this as well last year. She said this issue was important to her and she briefly recalled the moment she realized that the Conflict of Interest section of the Council’s Rules of Order needed tuning-up. She said the instance regarded a Councilor requesting a budget increase for a non-profit board. She said he was green on the Council at the time, and it was her first budget season. She was caught off guard and was uncomfortable when it happened on the Council floor, and was unclear about her responsibility because it was not spelled out clearly anywhere, nor was the individual’s responsibility to disclose. She realized then that the Rules needed to be clearer on what the responsibilities as fellow Councilors are when they encounter such a situation. Chair Bosley said that an important thing for her was adding the obligation for members to complete what the Rules refer to as a Statement of Interests, which “shall identify each person in a Councilor’s household or persons, employers, and any boards and commissions, organizations, and associations, or other entity which person is a member of, and whether the person holds a leadership position in that organization. The Statements of Interest shall be available at the office of the City Clerk for public inspection.” She said this Council had talked a lot about transparency and that this was just another opportunity to prove they were being transparent. She said there were a lot of grey areas, and they should always err on the side of caution. The Council would make the decision whether someone is recused. Still, the Chair said not having that information available publicly would diminish transparency. She said she loved the language that the PLD Committee had worked on and thought it was smart. She thought it missed the mark because the greater document failed last year. She hoped that they could clean-up the language and get it back in front of the full Council again. She welcomed comments and questions from the Committee.

Vice Chair Giacomo said he was not on the Council when they voted on this matter last time. He continued stating that he has a serious problem with the end of the first full paragraph. He was fine with it saying “membership and organization generally, and not in the leadership capacity, shall not be considered personal conflict of interest.” However, he found the next sentence deeply problematic: “A conflict of interest shall be deemed to exist when a Councilor’s spouse, parent, child, or other member of the Councilor's immediate family has a conflict of interest.” Vice Chair Giacomo said they had just finished defining a conflict of interest as either pecuniary or personal and thus having a child in a certain program that the City sends something to, that child would not be getting a benefit. He added that “child” is not restricted to kids and until very recently a majority of the Council had children of adult ages, who do not live at home. He thought that if there was going to be a family clause, it had to be strictly pecuniary interest, otherwise it would get into a complicated grey area very quickly. He thought the list he quoted could be pared down to the spouse or other person who contributes to the household income to keep it about finances. While that section did not work for him, he thought it was a good amendment overall.

Councilor Ormerod said he had a similar question, wanting to understand the intent, because it seemed far reaching to include children, parents, and siblings. In his case he has five siblings living in three different countries on a number of boards that could someday move to Keene. He really wanted to understand that it seemed that if the Council wants to disclose all the boards they are on, do they have to declare all the boards their family members are on too? He sought clarification and guidance on what seemed pretty onerous. Would it have to be done each January? Say he changes boards in the middle of the year, or his small company is sold to a larger global player. He thought pecuniary interest was a good idea to simplify things but he was truly trying to understand the intent to arrive at something less onerous.

Chair Bosley said that in her situation, she asked the Council to recuse her for her spouse’s employment over a financial matter, because the employer was requesting City funds. While she would not say which way she would have voted, but if she had voted against it, that could negatively impact her spouse’s employment if they thought his wife was unsupportive. She did not know whether she was far reaching, but she felt that there was a really close connection with spouses. However, she did not think this needed to go as far as parents and children; her mind went to adult children and not preschool. Thus, she wanted this section tuned-up and asked the City Attorney if it was possible. The City Attorney replied in the affirmative, stating that the language presented was the original Conflict of Interest clause, when there was no personal interest, only pecuniary. Over time, he said that questions and concerns were raised about personal aspects in addition to financial. The old Rule also included fiduciary obligations, which generally requires a lawyer to figure out. Whereas he said one does not have to be a lawyer to identify an individual who might be voting on something they could receive money from. Thus, he said the presented language was a way to try moving away from fiduciary aspects toward a more generalized personal aspect that people can understand. Back to the specific point, the City Attorney said he could craft language that basically says for spouses, parents, children or other members of the household, that it must be a pecuniary interest, to remove this issue; it does not

matter whether an adult or minor child is in or out of the household, if there is a pecuniary interest and financial advantage it would be a conflict of interest. He would craft the language making it specifically pecuniary.

Councilor Ormerod still wondered about the Statements of Interest. He wondered about if a Councilor is a shareholder in a place, which are often private and non-disclosable, so he was trying to understand the intent of that. He was also trying to understand, for example, if a Councilor who invests thematically and handles that through a third party, whether that is cleared from fiduciary. He wants to have people who to invest in the community, bring more business, create economic development, grow the tax base, and provide the quality of life. He thought some clarification on that would help. He asked the intent and burden/scope of the Declaration of Interests. The City Attorney said it was fairly narrow and it was modeled to a small extent on the statement that is required by individuals who sit on boards for the State of NH. This applies to identifying one's employer but that does not mean that you must disclose your status as a shareholder in a corporation. On the other issue of boards, commissions, or organizations of which you are a member, the City Attorney said that you would simply disclose those, but it only means something if you are in a leadership role, which must be disclosed. He said it was drafted with the intention to not reach further than that.

Councilor Ormerod asked how often the Statement of Interests must be updated and the City Attorney said annually each January. Councilor Ormerod posited that he was serving in a leadership capacity on a board that were absorbed by a larger corporation, whether he would have to notify the City Clerk immediately of an updated membership or just each January. The City Attorney said there were two reasons for this: 1) to let the world know to the extent that they want to know. It only must be updated once per year in January. However, if a Councilor's personal circumstances change during the year and now fall within the conflict of interest policy, it would be incumbent on the Councilor to disclose to the City Clerk and City Council, which would determine whether it was a true conflict. Chair Bosley thought it only really happened when a negotiation or a financial matter comes before the Council; she thought the Keene Young Professionals Network (YPN) was a good example, with Councilors sitting on that Board and coming to the Council asking for a license. She said there was no financial gain for the YPN for that license, but they are going to the Finance, Organization, and Personnel Committee seeking funds, which changes the conversations. The Chair thought that those were the subtle nuances that need to be exposed on when it is appropriate to disclose a conflict and to allow the Council to decide whether to err on the side of caution; as opposed to an individual sitting quietly with the knowledge that they could be doing something that could be perceived as un-transparent.

Councilor Ormerod said he could go for that. He had questions on the employment issue because he is self-employed and has sources of passive income like many others, all of which he said would be onerous to list. The City Attorney replied that if you are self-employed, you simply must list that, no clients or anything else.

The City Attorney noticed that the word “household” was undefined in the Rules, which he would rectify. So, he would make a defined phrase for “household” as the pecuniary interests regarding parents, children, or other immediate members of a Councilor’s family.

Chair Bosley pointed out a housekeeping issue under quorum and remote participation, where there was still reference to a “Chairman,” which should be changed to “Chair.” The City Attorney agreed.

Vice Chair Giacomo thought that like anything, there were a lot of “devils in the details” on this matter. Regarding Councilors who sit on other boards, he said the Keene YPN instance presented a really curious situation because the YPN is not its own organization, but merely a sub-organization under Hannah Grimes, which is the actual fiscal agent and 501(c)3 partner for the YPN. Thus where the money for the festival was going got quite confusing. He said this brought up that one person on “our Board” was also on the Hannah Grimes Board and controls their checkbooks, bank accounts, and everything else. So, he said there could be “weirdness that arises with this.” Ultimately, he said it was about being honest and declaring what you can and being open about. Vice Chair Giacomo said that last year at the FOP meeting vote on the YPN money, Councilors Giacomo and Remy offered, and the Council voted to recuse them. It was a split vote, however, with only half the Council seeing the conflict. He said it is about honesty and not about trying to find loopholes.

The Chair thought that ultimately, everyone wanted to walk away from making these decisions feeling good about the fact that everyone came to the table with good intentions. She said that was it for her. Additionally, Chair Bosley said she believed that even in the situation she cited earlier, there were not bad intentions, but it did not feel right to her. She said from the public perception, there were any number of ways to spin things and everyone is human and should just do as well as they can each day. The Chair thought this was a good move forward.

The City Attorney confirmed that a draft would go to Council and then would come back to PLD for one more vote, unless the Rules of Order were suspended at the Council meeting.

Councilor Remy said the only thought he had when getting into employment and sources of income was that “substantial” sources of income might be more appropriate. He thinks that if he received \$1 million each year from a park organization that was influencing his decision to make more parks in the City, but it was not his employer, it would still influence his decision and be a conflict of interest. He understood that it towed the line of campaign matters but thought it was conflict. The City Attorney clarified that the Councilor was saying that if for some reason a Councilor received funding in some fashion from a parks organization and there was a matter before the council dealing with a change to City parks, which Councilor Remy was saying would trigger a conflict of interest for him. Councilor Remy replied in the affirmative. He said, for example, if he received a significant campaign contribution as source of income and the donor came before the Council asking for something, he thought that would be a conflict of interest. He

did not think anyone was getting substantial campaign contributions, but thought to Councilor Ormerod's point, that there were other sources of income that can generate conflicts.

The City Attorney said at some point he would have to default because you cannot draft over everything. He had to default back to what they just talked about—you have to act in good faith and if you are not going to, there is no policy in the world that can catch that unless someone calls it out in another manner. Thus, he said he did not want to make the language so complicated that it is hard to understand and apply. The City Attorney thought the high points of risk were whether someone is getting money directly for something before the Council as a clear pecuniary interest that someone should not vote on or whether someone has a personal interest like the one Councilor Remy described where it is not directly pecuniary.

Chair Bosley provided an example. She posited that a Councilor had a piece of real estate they wanted to sell to the City, but their employment is not selling real estate. She did not think that Councilor should vote on the City's decision to purchase the land. The City Attorney confirmed that would be a pecuniary interest. The Chair continued stating that invariably what the City Attorney was saying was that if an individual had an interest in some organization and a contract with the City were negotiated, it would also be a conflict.

The City Manager said they were trying to get at the idea of even if it is not one's employer. For example, if a self-employed Councilor had a contract with Stantec and received a substantial amount of money from them, that would be a financial interest but not a direct employer. Councilor Remy said he was trying to account for those things outside a direct employer. He considered the Statement of Interest and the Chair agreed, asking how far that should go. The City Attorney reminded that they were conflating things at this point. He said the language regarding pecuniary interest is fairly broad and would cover the situation the City Manager just explained, but it would not fall into a Statement of Interest potentially, because it does not fall into one of those categories. The City Attorney continued that the Statement of Interest is sort of an alert to what these categories are, it does not remove the obligation for the individual to state that they have a conflict.

Chair Bosley thought education of the Council about this particular Rule was needed in addition to cleaning-up the language. She said the Rules are a lot to absorb as a new Councilors and ongoing education is important. The Chair requested comments from her peers on the Committee to ensure everyone was on the same page.

Councilor Johnsen stated that three Councilors were recently elected to the Keene School Board and wondered if there would be a point at which they have a conflict. The City Attorney said to remember that this is about pecuniary interest in a private financial matter that is generally unavailable to the public, which is the same reason that Councilors can vote on the budget even though they are taxpayers; it is why Councilors can vote on the Zoning Ordinance even though they may be subject to the Ordinance. Those members would need to state that they are on the School Board.

The Chair asked about the Wilson Dam project. The City Attorney stating that it would present a more direct issue because that is a direct cost to their employer and not to the Board they are on, so it would fall into that same sort of gap category. The City Attorney said that if a Councilor is in a leadership position on a Board that would benefit from a negotiation with the City then they should recuse.

The Chair said they could come up with a million scenarios. She thought having this conversation was the important part because it planted these seeds with people, who can ask further questions of the City Attorney. The Chair felt they had some direction and with no further comments, she entertained a motion.

Vice Chair Giacomo made the following motion, which Councilor Ormerod duly seconded.

On a vote of 4-0, the Planning, Licenses, and Development Committee recommends that the City Attorney draft an amendment to Section 15 of the Rules of Order in accordance with the background notes of the Committee's discussion.

6) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 7:31 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
March 11, 2022

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