City of Keene
New Hampshire

PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE MEETING MINUTES

Wednesday, November 9, 2022 **6:00 PM** **Council Chambers, City Hall**

Members Present:
Kate M. Bosley, Chair
Michael Giacomo, Vice Chair
Philip M. Jones
Raleigh Ormerod

Members Not Present:
Gladys Johnsen

Staff Present:
Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Patty Little, City Clerk
Rebecca Landry, Communications Director/Assistant City Manager
Jesse Rounds, Community Development Director
Mari Brunner, Senior Planner
Kurt Blomquist, Director of Public Works

Chair Bosley called the meeting to order at 6:02 PM.

1) **Rules of Order Amendment – Remote Participation – City Attorney**

Chair Bosley welcomed comments from the City Attorney, Tom Mullins. He said this matter was about Section Four of the Council Rules of Order, titled Quorum and Remote Participation. The Council and this Committee requested an additional look at this item. This began initially as a communication from Councilor Mitch Greenwald requesting to talk about the possibility of adding some additional reasons to permit remote participation. As a result of that discussion, it became clear that the issue was less about what the reasons might be and more so about the process moving forward to make requests for remote participation. For the public's sake, the City Attorney explained that there is a provision in State Law RSA 91-A which provides a political body the opportunity to grant a request for remote participation, which everyone became familiar with during Covid-19. However, the remote participants cannot constitute a quorum of the public body and the quorum must be present physically in the room before remote participation is allowed. Based on the Committee's last discussion of this, the City Attorney drafted language focused on allowing notification to the City Clerk to allow remote participation. This is critical because it is the City Clerk who would need to place the matter on the agenda for review by the public body, which must have the opportunity to debate allowing a specific remote participation request. At this point, the City Clerk was being tasked with taking the appropriate action to provide for electronic or telephonic access. The City Clerk must be notified at least 24 hours in advance, which was already written in the Ordinance language. Beyond the technological issues, it is important to have the advance notice to ensure there will be a quorum present physically in

the room, and 24 hours gives the City Clerk that time. Once that occurs, the issue would appear before the public body for any objections. If there were an objection, per Councilor Ormerod's suggestion, it would require a two thirds majority vote to deny a request. This is to remove any sort of political considerations that may be associated to protect everyone concerned.

Chair Bosley welcomed the City Clerk, Patty Little, who said she was appreciative of the language about the 24-hour notice requirement and that if this language was adopted it would change a practice her office had used since starting with remote meetings. When 24-hour notice is provided, the Rules require that she would provide the meeting link to the Councilor. The Clerk noted that on the few occasions when she has not received 24 hours' notice, she has provided the Councilor with the meeting link with the understanding that the Council would need to suspend the Rules of Order. If this Rule change is adopted, and the 24-hour notice is not provided, the Clerk will no longer provide the meeting link. If the 24 hours' notice is not provided, she would no longer provide the meeting link. The City Clerk would prefer that this rule never be suspended because 24 hours is the standard notice, not only to ensure there is a quorum but if there would not be a quorum, she would need time to notify the media, contact support Staff, and try to reach the public who were attending to advise them the meeting was being canceled.

Chair Bosley thanked the City Attorney and City Clerk. The Chair had spoken with Councilor Greenwald because he could not attend this meeting. She said he reviewed this language and was comfortable with the draft. Chair Bosley continued stating that she felt this draft was an improvement, citing the challenges of how confusing it had become to give Staff directions.

Vice Chair Giacomo recalled that he was the one who most recently was confused about what 24-hour notice entailed. He thought this draft was a great clarification and that it was good to have a strict cut-off.

There were no public comments.

A motion by Vice Chair Giacomo to recommend that the City Attorney introduce amendments to Section Four of the Rules of Order as discussed by the Committee was duly seconded by Councilor Jones.

Councilor Jones said he liked the clarity of the language, but he had been against remote access since the beginning. He said we did not have it for 60 years and there was never a problem, so he would be voting no.

On a vote of 3–1, the Planning, Licenses, and Development Committee recommended that the City Attorney introduce amendments to Section Four of the Rules of Order as discussed by the Committee was duly seconded by Councilor Jones. Councilor Jones voted in opposition.

2) **MORE TIME: Councilor Mitchell Greenwald – Amendment to the City Council Rules of Order – Remote Access**

Chair Bosley removed this item from the more time agenda in order to report it out of committee.

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

On a vote of 4–0, the Planning, Licenses, and Development Committee reported out the more time issue regarding the communication from Councilor Greenwald relative to an amendment to the Rules of Order dealing with remote access.

3) **Relating to Amendments to the Business, Growth, and Reuse District – Recreational/Entertainment Facility – Indoor – Ordinance O-2022-11**

Chair Bosley requested comments from the Community Development Director, Jesse Rounds. Mr. Rounds said this change to the Business, Growth, and Reuse (BGR) District would allow for some additional uses that are related to the existing permitted uses in terms of the process brought forward in August 2022. He said that there was no comment at the most recent public hearing before the City Council. Mr. Rounds welcomed questions.

Chair Bosley recalled that there was a public hearing on this matter at the last City Council meeting, so there would be no further comments allowed at this meeting.

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

On a vote of 4–0, the Planning, Licenses, and Development Committee recommended the adoption of Ordinance O-2022-11.

4) **Relating to Amendments to the City of Keene Land Development Code – Ordinance O-2022-09-B**

Chair Bosley recalled that there was a public hearing on this matter at the last City Council meeting and so no further public comments would be heard at this meeting.

The Chair welcomed the Community Development Director, Jesse Rounds, and Senior Planner, Mari Brunner. Ms. Brunner recalled that there were several concerns and questions posed at the public hearing that Staff wanted to address. The first item Ms. Brunner wanted to discuss was a question about the impact that these proposed changes to the Planning Board Subdivision Regulations would have on taxes and taxation. She said she spoke with the City Assessor, Dan Langille, who said the potential for a CRD subdivision would not have any impact at all on how land is taxed or assessed. She said this is because changing the Planning Board's Subdivision regulations is a very different thing than changing the minimum lot size in the Zoning Ordinance. She said that once Staff removed the part of the Ordinance that would have changed the

minimum lot size from five-to-two acres, that eliminated any potential impact on taxes, which Ms. Brunner wanted to clarify. She said it can be confusing because there are lot sizes in the CRD regulations but those are outside the Zoning Ordinance and have no impact on taxes.

The second item Ms. Brunner heard some comments and questions about at the public hearing indicated that there was still some confusion as to what Staff meant when they talked about workforce housing. She said one of the density incentives is for workforce housing and she clarified that workforce housing is not meant for the homeless population. It is not geared toward low-income or subsidized housing. According to the Pew Research Center's income calculator, workforce housing is for a middle-class income for a family of four in Cheshire County. This is about lower middle-class families.

Next, Ms. Brunner wanted to respond to a public question about whether a 30,000 square foot lot is sufficient in the Rural District to site a house, septic system, and a well. Ms. Brunner said that was an excellent question and in some cases that would not be sufficient space, which is why it is a minimum size. There are still many other regulations and the CRD regulations sit on top of those. When subdividing, one must demonstrate compliance, and in some cases 32,000 square feet will not be sufficient depending on the underlying soils. Additionally, Ms. Brunner clarified that if a parcel of land does not have access to City sewer, and a subdivision would create a new lot that is less than five acres, the subdivision would require approval from the NH Department of Environmental Services (DES) to ensure adequate septage. In addition, when it comes time to design that septic system, it would require DES approval again before they permit construction and operation of the septic system. Ms. Brunner said there is a high level of review by the State on septic systems in addition to local regulations.

Finally, Ms. Brunner clarified that CRDs are not normal subdivisions. A CRD requires the formation of a homeowners' association or condo association. This is because someone must oversee maintenance of the open space created and the shared infrastructure. Often, there are shared drainage systems or shared private utilities that must be managed. Thus, Ms. Brunner said the CRD becomes much more powerful, and it is likely that a developer would include shared wells and septic systems, which is a more efficient use of the space. Ms. Brunner continued conventional subdivisions must have a certain amount of frontage on the road and all new parcels created have their access from an interior road or interior shared driveway; and they can receive a waiver from having a road from the Planning Board. She said if there were a CRD on Hurricane Road, then all other driveways would come off an interior road that connects to Hurricane Road.

The City Attorney understood there was another language clarification. Ms. Brunner agreed, citing another speaker who brought this up. She said that in the current Ordinance, under the Workforce Housing Density Incentive criteria for owner-occupied units, it talks about what the resale value of workforce housing can be. It says that you have 30 years where the resale value is limited to either the affordable purchase price or the initial purchase price plus two times the accumulated Consumer Price Index (CPI). The CPI is a measure of inflation. The initial purchase

price plus one times the CPI would essentially mean no loss. By saying two times the CPI it means money can be earned. It was intended for the Ordinance language to indicate the greater of those two options, but the current language is too vague, stating, "The resale value of the unit shall be restricted to the affordable purchase price for a period of 30 years. The resale value is not to be more than the original purchase price plus two times the accumulated CPI." She said those two sentences were unclear. Staff suggested the following proposed language, "For a period of 30 years. The resale value of the unit shall be restricted to either the affordable purchase price or the original purchase plus two times the accumulated CPI, whichever is greater." This clarified the true meaning of the language. She shared some examples of what this looks like in practice.

Chair Bosley said she heard at the public hearings before Council and the Joint Committee a reference to the amount of property that was currently available for sale in the City of Keene. She felt like it was important for the public to understand what the real constraint is on the availability of housing currently in our community. Based on her research, she found 17 homes for sale in Keene and out of those homes, many were mobile and on rented lots, and some were not livable. There were seven properties between $200,000–$300,000 and three of those were two-bedroom homes, which she said is very difficult for a family to occupy. There were three homes between $300,000–$400,000 and three homes over $400,000. She said that for Keene, that is all that is available for a City of over 20,000 people; that is not a feasible market that would sustain us. She said it was creating so much pressure on all the different markets and it is part of why some of these costs rise continuously, pushing lower income families out of the community. She said it was a stale market where people cannot move, and the entire community was gridlocked. She said we must help not only in the Rural District but in the downtown districts as well. The Chair thought this was a way to promote additional growth, which is a problem City Staff would continue working on. She said this was not the last Resolution and that a housing study was coming, which she expected to align anecdotally with what they were hearing. The Chair thought this was a great thing.

Councilor Jones thanked Ms. Brunner for clearing up some things up for him. He recalled the revaluation process and asked, if two people have six-acre lots, and one has the frontage with the ability to subdivide and the other did not, whether they would still be equal in value. Ms. Brunner replied that with this Ordinance, in the specific scenario the Councilor cited, there would be zero impact on taxes, which the City Assessor told her point blank—CRD subdivisions are not considered during land valuation and determining tax rates. She said there are too many unknown variables for a CRD in the Rural District. The starting tract must be minimally 10 acres, so a six-acre lot would not be eligible for a CRD. This Ordinance does not affect properties under 10 acres in the Rural District. Chair Bosley also pointed out that any lots over 10 acres would be eligible for a current use land use land abatement. Councilor Jones said that was based on the City Assessor, but that real estate market values were something the City could not control. Ms. Brunner did not think so. Chair Bosley said she spoke personally with the City Assessor because she wanted to understand this. The Assessor reiterated what Ms. Brunner told the Committee, which is that CRDs are not taken into consideration whatsoever. She continued

that anything under 10 acres would have zero affect and any lot over 10 acres could be put into current use, which would also negate any ability to have any land zoning changes affect a property. She said this clarified things for her.

The City Manager said that since the minimum lot size change was removed for a future potential Ordinance conversation, she said the only time a CRD would impact the value of a property is when they actually do a CRD development because it is impossible to know which parcels might do a CRD. This change in Zoning would not impact the assessment. It will not change the value of a property until someone implements it.

Councilor Ormerod appreciated the examples that Staff provided. He asked a clarifying question under the fifth bullet point, where it listed the initial price plus two times the CPI followed by the affordable purchase price, and those are different numbers. Ms. Brunner said exactly, and Councilor Ormerod asked why that was. Ms. Brunner said the initial sale price must be whatever the affordable purchase price is for that year; the affordable purchase price is what HUD says a family of four in Cheshire County could afford at 80% of the area median income. Those numbers are published annually, and they change year-to-year. Ms. Brunner continued describing the calculations in the example one of the handouts she provided to the Committee, in which she said the owner in that instance would do better to sell the house at the affordable price for that year. In example number two, she said it was the same math but accounted for this year's inflation, and in this case the owner could choose the higher of the two prices.

Chair Bosley said she was a visual person, so the examples were helpful in clarifying and she appreciated the extra time the Staff put into them.

Vice Chair Giacomo asked a few direct questions. First, Ms. Brunner mentioned the creation of a homeowners' association for a CRD because someone needs to maintain the open space. He asked whether Ms. Brunner was referring to the conservation space or just generic open areas in the CRD. Ms. Brunner said at least 50% of the land must be dedicated open space, which she said is its own separate parcel of land, which they are referring to as the open space lot. This was not just about common space, but the open space dedicated to conservation. The Vice Chair continued referring to many of Matthew Hall's points during the public hearing about the State's guidelines. The Vice Chair spent time reading the State's document and he thought there was come confusion with how they were defining percentages and whether they were discussing conserving 50% of the buildable area and 80% of the non-buildable area, or 50% of the whole lot. Ms. Brunner said it was hard to compare to the State's handbook because it was not comparing apples to apples. The Handbook guidelines come from the State statute, but they are not regulations, and the handbook recognizes that every community is unique. She said that what the handbook recommends does not necessarily make sense for Keene. She referred to the Hillside Protection Ordinance, for example, which is an overlay district in the Zoning Code and if someone wants a variance from these overlay districts, they must receive that from the Zoning Board of Adjustment. This is a very high bar to reach with strong protections, which the CRD sits on top of. To identify open space in Keene, an applicant must identify all primary conservation areas and show them on the plan. All of the primary conservation areas must be places in open space, though they do not have to be contiguous. She said it can be very difficult

to work around these constraints in the Rural District. She reiterated that these were hard things to compare because they were not apples to apples. Ms. Brunner said Keene places a high priority on ensuring those environmentally sensitive areas are conserved. She added that part of why the Handbook recommended 50% buildable space be conserved is to protect prime agriculture and forested uplands that are already identified for primary conservation in Keene. There is the Agricultural District and the Conservation District, and neither are eligible for a CRD. Ms. Brunner agreed that CRD regulations are complex and difficult to grasp in just one meeting. Still, she said the way those regulations are structured provides a lot of protections. Ms. Brunner added that those areas identified in the State Wildlife Action Plan are secondary conservation areas in a Keene CRD. While they have less protection than primary conservation areas, the applicant must demonstrate that they have minimized all secondary conservation impacts to the extent possible, which is a part of the Planning Board review of the application. Vice Chair Giacomo summarized that the State recommendation is 80% non-buildable land and the City was doing 50% of the whole lot, which can vary based on the nature of the land. He said the most valuable land is being conserved. He added that there is the Wildlife Action Plan that NFI provides a GIS overlay for, which showed there are maybe only four properties not in conservation already that would be eligible. He said this seems pretty protective, more so than it did at first glance.

Chair Bosley said that after discussing this a few times, she thought Keene was doing a really great job of taking the right steps to protect the things that are important to us. To her, the CRDs are a prime example of how to do that in the best way possible, with a good portion of these lands dedicated to conservation, helping to maintain green space in the Rural District.

Councilor Jones congratulated Staff for being very transparent through this whole process even thought it was confusing to the public. He said Staff put their best work into this. He said his mind was not changed yet. He asked a question from the Comprehensive Master Plan under the CRD, where it says that "within these areas there are opportunities to transfer the right to develop parcels to other areas in the community that are more appropriate for development. He asked if that was about mitigation. Ms. Brunner said that was in the future land use section of the Master Plan and means that if the City has identified areas where they think development is more or less desirable it is a program to develop a sending area and receiving area within the City; if a developer were working in receiving area, they could purchase development rights from someone in the sending area that the owner of the parcel in the sending areas gives up their right to develop the parcel though a financial transaction and then the developer in the receiving area gets additional units. She said it was a way to promote infill and protect environmentally sensitive areas. So, Councilor Jones said that was another piece of legislation that had nothing to do with this. Ms. Brunner said that had nothing to do with CRD but was something Staff were exploring with the current housing needs analysis and that it was something the community would likely be receptive to, like they were when compiling the Master Plan in 2010.

Chair Bosley said she was excited to hear that language because there have been talks about opportunities and maybe this should be on the short list of topics for the Joint Committee.

Vice Chair Giacomo said he had many conversations about this over the past few months and he lives in the Rural District. A lot of his neighbors have shown up to the public hearings. He said he moved to the Rural District for a reason, which was to have fewer people around; the whole point was that he did not want to be in a development. He fully understood the sentiment to protect the land around us, saying it was critical to him and the history of land conservation in Keene. He cited Zoning changes that occurred closer to the downtown core and then branched out. He thought the City needed to figure out ways to encourage development across the board in Keene instead of singling out the Rural District. He said this was not just saying "okay there is empty land, let's use it," but rather this is a later stage in a long process of prioritizing areas the City does not want to build up more. He agreed that we need more of all types of housing everywhere. The Vice Chair said if someone one land in the Rural District and was going to develop it; potentially none of that land would have put conserved. In the case of a CRD, at least 50% of the land would be guaranteed conserved. He understood that development in general was not something the Rural District loved to see, but at least this is a way to do so that is more consistent with City goals.

Chair Bosley said she was not done looking at the different districts and noted that there are parking rules in some areas that prevent additional density in the downtown core and surrounding neighborhoods. She said at some point the City would have to look at that. She said this would not solve all problems but was a step forward. She thought this was for the health of the City as a whole.

The City Attorney, Tom Mullins, provided clarification on the motion language.

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

On a vote of 3–1, the Planning, Licenses, and Development Committee recommended the adoption of Ordinance O-2022-09-B, and revising Section 19.3.6.C.1.b regarding workforce housing resale value, as discussed by the Committee. Councilor Jones voted in opposition.

5) Relating to Notice Requirements for Small Cell Wireless Facility Deployments – Ordinance O-2022-16-A

Chair Bosley heard from the City Manager, Elizabeth Dragon. The City Manager recalled that the Committee had a letter on more time for a long while regarding public health concerns of small cell wireless facilities and possible revisions to Ordinance O-2019-18-A At the committee's meeting in October there was public comment and the Committee agreed to make an amendment related to the distance of notice for requirements when a facility is installed. Based on those testimonies, this Ordinance change to Section 82-207—Application Requirements, increases the notification distance from a 300-foot radius to a 750-foot radius. The amendment also clarifies that it is the applicant's responsibility to pay for the cost of mailings separate from the application fee. The 750-foot figure was chosen because that is the minimum distance allowed between these facilities; it made sense not to overlap notice requirements to reduce confusion.

Councilor Ormerod thought 750 feet was half the distance between facilities. The City Attorney confirmed that it is 750 feet between facilities.

Councilor Jones said he asked for this amendment and was pleased with it.

Vice Chair Giacomo said he would be voting against this for the same reason he did at the last committee meeting, because he does not see the reason for increasing the distance, while he supports transparency. He said it is really no different than a lamp post and, in fact, created lower frequency radiation than a lamp post. He said that creating changes to an Ordinance based on a "disinformation campaign" did not make sense to him. He thought the 300-foot radius was reasonable and said that they could not notice everyone. The Vice Chair would not support adopting this amendment despite enjoying the transparency it was trying to promote.

Councilor Ormerod agreed that they were not meaning to suggest that there is something more dangerous about this than a lamp post. What the Councilor liked about the 750-foot radius was the fact that the City could provide facts directly to all residents in the area, instead of a smaller notification that might get distorted when discussed without all of the facts. He thought this accomplished the goal of more transparency and more direct communication. The Councilor would vote in favor.

Chair Bosley opened the floor to public comment.

Ann Savastano of 75 Winter Street supported the Ordinance to increase the notification distance. She also requested that notice of these installments be mailed sooner so the public can make comments. She cited a recent application where she was within the radius for notification, and she received notice so close to the deadline it made submitting comments very difficult. Ms. Savastano went on to put on record her concerns, and encouraged the Council and this Committee to review the final report of the Commission to Study the Environmental Health Effects of Evolving 5G Technology that was commissioned by the State Legislature through HB 522. She believed the City Council may have reviewed some of the 390-page report released in November 2020. She said the Commission had members from physics, occupational health, tax, toxicology, public health, policy, business and law, and more. She recommended a webinar from the Americans for Responsible Technology that is geared toward municipalities, which called "5G: An Undeniable Risk." She said this was very evidence-based science. She said there is evidence that suggests that optic fiber is better in many ways. She said Keene is already saturated in 4G and more towers were not needed. She said pervasive 5G poles threaten pollinators, birds, and the environment in general. She urged consideration if the Committee cared about conservation and human health.

Councilor Jones mentioned that this Committee did a thorough review of the Commission report and had members of the majority and minority before this Committee to speak on it, so the Council was well aware. Chair Bosley agreed and asked the exact timeframe in the Ordinance for

notifications and the Public Works process. The Director of Public Works, Kürt Blomquist, said that once the application is complete, they can issue the notification letter and he usually provides 14 days for comments to be returned.

Ruth Ellen Davidson of 656 Main Street read a statement:

I understand that the FCC specifies that health considerations cannot be a reason for municipal code. However, as City government, you are supposed to look out for our health and safety, and should take this into account, please, when deciding to exercise the powers you have under the Telecommunications Act of 1996. I am an alternate healthcare provider and several of my patients have concerns regarding RF and EMF frequencies that may be in my office. Some of them have brought their own frequency readers to their appointments to test levels. Currently, my office space is free and clear with the exception of a patient's or my own cell phone. She does not have a modem in her office, and I keep my cell phone in airplane mode to preserve the highest level of health and well-being, and she asks her patients to do the same and I take time to explain to them why I have made this request. 5G is more harmful to the wellness of humans than 3G and 4G. Turning off a cellphone or modem, or putting them in airplane mode, will not mitigate the damage to residents of the City of Keene due to the necessity of closely placed 5G towers to send signals. I ask you to exercise the power you have under the Telecommunications Act of 1996.

Melissa White of Peterborough works at 16 Church Street and said the legal exposure limits for radiation have not changed in over a quarter century. In that time, five generations of radio frequency had been developed. She said [Vice Chair Giacomo] might say the towers alone are safe but she stated that was questionable because it is the industry doing the studies. She said we must take into account the cumulative effect of all the sources of radiation in the environment; we live in a toxic soup of radiation. She cited an instance in downtown Peterborough. She said the health effects of wireless radiation are well-documented in animal and human studies. She said to look around and just see that people are sick. She continued that something is wrong, citing prominence of various illnesses, suggesting looking in our schools at hyperactivity, asthma, autism, and more. She wanted to address Vice Chair Giacomo's use of the term "disinformation," stating "Just please stop, and that goes for all of us, like stop with that. There's so many great scientists out there that are saying hold on, hold on, we can't do this."

Castine Clerkin of 137 Silent Way works in the public health field, specifically with cancer registries across the nation, and determining health outcomes of exposures from existing studies. She said two of those studies include a congressionally mandated study of aviators in the military. This is a cohort of 10.9 million individuals looking to link with cancer registries and see if there are health effects from ionizing radiation. There is another study on an American exposed to radiation in their job duties. She said these studies are congressionally mandated at the Federal level, indicating that there is concern about radiation exposure. She encouraged this Committee to do as much as possible to inform the community when these radiation emitting devises are established around the community, so people can take the necessary measures to

protect their health. She concluded that we may not be able to stop the implementation of 5G, but could at least be notified to take those measures.

Councilor Giacomo appreciated those studies cited, noting that two of his brothers were among those aviators and clarifying that 5G is actually non-ionizing, so it is unrelated.

John Aruda of 31 Summer Street cited the nearby tower and the many children living around it. Whether people believe it is bad or good, he said there were too many question marks online for him when he would be living within 100 feet of one. He thought there must be a better place, like around commercial buildings. He said fiber optic is another way. He did not think people were advocating for the children near these devices. He cited past common uses like lead paint and Teflon that were eventually revealed as unsafe because there was not previously enough research on them. Mr. Aruda said that he was happy Councilor Jones was present, after reading some of his comments on social media about this in the past, when he said this was an obvious issue the community was concerned about. As a new member of the community, he said these devices were not attracting new families to the area. He asked for more time and research from people not associated with the financial gains.

Ruth Venezia of School Street had not spoken before the City Council in 10 years. She was a former City Councilor. She cited a new tower on School Street, stating that she only found out about it a few days ago. She said she did not have the research but that she had been a good member of the community for over 40 years and to find something like this going into a very important downtown neighborhood was distressing. She said the people on the street did not know about it. She supported the 750-foot radius, but she wanted it doubled because she thought more people were affected by it.

John Schmitt of 31 Green Acres Road agreed with everyone who had testified already about the 5g dangers, stating that a lot of scientists and doctors are talking about it, but he said of course they are censored just like the discussion of vaccines. “They don’t want to tell you about the hazards and then they just shoot you down. Mr. Schmitt thought this should be discussed and that there should be a public hearing to let people discuss their concerns about 5G before more of these are installed in town. He was not interested in a notification and wanted an opportunity to stop these things if possible. He would have to move if one were erected in front of his house, at which point he imagined his property value would be diminished. He suggested a public hearing instead of saying this is disinformation.

Chair Bosley explained that this Committee had been discussing this since 2019 and the Ordinance would not have been adopted without an official public hearing. So, there was a process when a lot of testimony was heard, and the FCC regulations were discussed in-depth. The Committee considered the tests, recommendations, impacts, and the City’s legal authority to restrict the implementation of these towers. She understood that as these were arriving in neighborhoods, a new energy had been created on the topic and questions from people who might not have been aware of the whole process that happened. She said the Council wants the feedback and that any Ordinance is a living document that can be reviewed. Still, she cited

limitations based on what the Federal government says, so the City was working within many different constraints.

Jennifer Zoll of 18 Summer Street read the following statement:

I would like to request more time for this issue to be explored before decisions are made. In my own research, respected organizations such as the American Cancer Society, the National Institute of Health, and the World Health Organization all agreed that there is a need for more unbiased research on any potential dangers from living in close proximity to 5G towers. Due to lack of research, they all suggest limiting exposure near homes, schools, and hospitals until this exposure might be proven safe. I would also like to register a complaint at the lack of notification to the tower placement, which is being discussed as being placed one house away from ours. We were also not notified, except by neighbors.

Ben Robertson of 62 Roxbury Street is a member of the industry as an agent for Verizon Wireless. Last month, he was at the Verizon Innovation Center in Boston by invitation, where they demonstrated a huge number of really incredible technologies based on 5G. He urged the Council to do anything in their power to limit the industry's ability to spread this technology widely in our community. He thought it was fantastic technology with a lot of potentially huge benefits for people, and he sells it, but if someone put one in front of his home he would not want to live there anymore. He had taken great solace in the fact that there is one tower on Beech Hill and not in the downtown. He cited the emissions from the various technologies in his life and having measured the EMF frequencies in his home to determine the risk. He does not want to see cancers rise in the community. He urged the committee to do everything in their power to err on the side of caution.

Merrick Finn of 48 South Street and his wife moved here a year ago. He is a beekeeper and was observing bee colony collapse disorder, which arose in beehives in the last 10 years, and is contributing to serious disorders among bees and birds that provide our food stock. He said this was a serious concern and that there was a growing body of literature on the EMF radiation and growing evidence of harm from wireless non-ionizing radiation, such as from cell phone towers. He cited studies showing the detrimental effects of EMF on insects and birds and a broad spectrum of behavior and physiological issues of concern. He said that through 4G, the emissions had not risen above six gigahertz and the new 5G technology utilizes 120 gigahertz, which is even more detrimental to birds and insects such as honeybees that could cause catastrophic collapse.

Ms. Savastano spoke again, stating that she heard the history the Chair provided, but said there was an Ordinance submitted at that time based on some of the health concerns. She believed it was prepared by Attorney Lori Schrier and labeled O-2019-18-A, adopted by the Council as the Ordinance on small cell wireless facilities under Article 8. She did not understand the reasons why it was removed and thought it was due to a setback around residential areas, schools, and daycares. She believed that Provision C.7-a of the 1996 Telecommunications Act gave municipalities the authority to determine location of these facilities as well as (she thought) the number of towers that could be installed. She said Lori Schrier took care to follow the FCC

regulations so the City would not be sued. She was unsure why that was changed back again to the current Ordinance, which does not allow for any setbacks. She cited a document submitted to the City Clerk the day of this meeting saying that it is up to the municipality to test for these emissions. She would like the Council to take a closer look at all of her research on the benefits of optic fiber over these installations.

Chair Bosley asked the City Attorney about the suggestions about a 2018 Ordinance. The City Attorney said that was not an entirely accurate representation given. What happened during that period was that suggested revisions were submitted and considered in the process. When Section 82 Article 7 in our code was finally adopted, which is the small cell wireless Ordinance, there were suggested revisions during consideration. The Ordinance that was finally adopted is the one that is in place today. It was not adopted and then revoked. He reiterated that the original draft language was written by the Community Development Department based on ordinances from around the country and keeping in mind the FCC requirements. Chair Bosley said that if Ms. Schrier did submit something, it would have just been taken under review as a part of the process. It was not formally adopted, for clarification.

Chair Bosley continued that per the FCC regulations, if the City did not have a Small Cell Ordinance in place, they would have no mechanism to control the placement, appearance, or anything to do with the facilities, and companies could do anything they please. With an Ordinance in place, it allows the City to at least have minimal control in that Ordinance. The Chair was one that asked for those setbacks in the Ordinance, which were implemented, and there are limits on how near these facilities can be to daycares, hospitals, and schools. So, she thought the City tried to be forward thinking. She certainly read through the State Commission's study, which she said focused on why to have these technologies and less so on the specific frequencies. She said that report did indicate that wireless signals have potential health considerations, and the City was making these decisions understanding that we all are bathed in radiation in our daily lives. The City tried to balance the Federal guidelines with their community responsibilities—the City cannot regulate what goes on private properties. Chair Bosley said this technology is moving forward and, in her opinion, there needed to be as much concise City control as possible without overstepping the City's bounds and putting the City in a potentially litigious situation.

Councilor Ormerod clarified that the 750 feet is a notification, just like for leaf collection. This is only about increasing the notification distance.

Councilor Jones thought this was important to everyone. What struck him was the reference to him on the 2001 Ordinance, which dealt with the view scape and was a totally different Ordinance. He heard a lot of people talk about the Telecommunications Act of 1996, which he was very familiar with. He thought the City had done everything it could. He said this was already allowed in the City and the City Council could not stop that. He thinks the Ordinance ensures that the facilities are spaced a part as far as possible in a way that could be defended in court. He said the notification process was also implemented and he did not know of anything else the City could do. Staff likely did not know either. Councilor Jones said we cannot stop them from being installed and the City had placed as many limitations as possible. At the last

meeting, Councilor Jones recalled asking for the background notes that reflect a town called Ashby, MA, which has a monitor lending system from their library that people can borrow to test the levels in their homes or work, which he said was something for Staff to consider in the background notes.

The City Attorney clarified that there were two references in Chapter 82-208.5 that needed to be changed to 750 feet.

A motion by Councilor Ormerod to recommend the amendment of Ordinance O-2022-16 to include the 750-foot notification radius in Section 82-208.5 and specifically that the applicant must pay the cost of the notice in Chapter 82-208.5, was duly seconded by Councilor Jones.

Vice Chair Giacomo said he was convinced about getting the proper information out to the community and he would change his vote to yes.

Chair Bosley recognized Ms. Savastano again who requested more advanced timing of the notifications, such as two weeks advanced notice. Chair Bosley believed that was a part of the Public Works Department process not spelled out in this Ordinance, so they could consider that and make adjustments as they see appropriate.

Chair Bosley recognized Lucious Arcel of Marlboro, who cited HB-1644 as recommending a 15,440-foot setback between towers. He said the matter at hand was about notification and not setbacks. He noted that this legislation was recently recommended for further study and his Committee on Science and Technology was looking at the situation as well. He asked where the 750-foot notification radius came from. Chair Bosley recalled the last meeting on this matter and the discussion that a 300-foot radius was insufficient. Additionally, according to the Ordinance, these installations cannot be closer to each other than 1,500 feet to maintain a working network, and so 750 feet would encompass almost everyone who could potentially be affected by the perimeter of radiation that would be expected to be emitted. Going over 750 feet risked people being double notified. The Chair had noticed that because this is so new, that when the towers are going into a neighborhood there is concern and no concern from other neighborhoods. Every time there is a new tower, a new group of citizens are educating themselves and coming before the Council. It would be easier if these individuals were receiving information from the City and have the resources to call and ask questions. She thought sharing information in a neighborhood group was great but that it was also important to come to the source for the facts.

On a vote of 4–0, the Planning, Licenses, and Development Committee recommended adopting the amendment of Ordinance O-2022-16 to include the 750-foot notification radius in Section 82-208.5 and specifically that the applicant must pay the cost of the notice in Chapter 82-208.5

The following motion by Councilor Ormerod was duly seconded by Councilor Jones. On a vote of 4–0, the Planning, Licenses, and Development Committee recommended adopting Ordinance O-2016-16-A.

6) **MORE TIME: Communications Relative to Public Health Concerns of Small Cell Wireless Facilities, and Possible Revisions to Ordinance O-2022-18-A**

Chair Bosley brough this item forward from more time to report out.

A motion by Vice Chair Giacomo was duly seconded by Councilor Jones.

On a vote of 4–0, the Planning, Licenses, and Development Committee recommended to report out the more time issue regarding communication from Councilor Filiault and Terry Clark relative to public health concerns of small cell wireless facilities.

7) **Relating to the Use of Central Square Common and Railroad Square – Ordinance O-2022-14 – Proposed Draft Amendments**

Chair Bosley heard from the City Attorney, Tom Mullins, who said this was for all intents and purposes a housekeeping matter. During some Ordinance review while preparing for a community event, Staff discovered inconsistencies with respect to the granting of a license for the use of the Downtown Central Square Commons and Railroad Square for community events. Essentially, when that license if granted, it says the holder of the license has the authority to regulate the uses within that area. Unfortunately, though, other sections of the Code of Ordinances provided that because Central Square and Railroad Square were public places generally, that no individual entity could claim exclusive rights to those. So, there was a conflict. Thus, Staff submitted this Ordinance to resolve the conflict and clarify that when a community event license is issued, that the license holder has supervision control within the area, but the City still has exclusive control in the area. There was concern that the original language in the Ordinance was too broad and so the changes were made to ensure that the City retained its rights to authority, supervision, and control as it says in Section 46-1007 and to ensure that licensees have to comply with requirements of City officials for event operation.

The Director of Public Works, Kürt Blomquist, agreed and reiterated the City Attorney's explanation. He recalled an issue last year with a group wanting to express their thoughts publicly. Another license event brought this issue forward and so the license language had been adjusted to ensure the City retains its ability, if necessary, to require things for the general public's health and safety. For example, if the Police determine that extra security is required, the licensee would be responsible for that cost. This cleaned-up a potential conflict.

Chair Bosley understood that the City was looking into alternate locations for people who would like to express their personal beliefs. The Director of Public Works agreed that part of the conversation was designating a place where people can express their beliefs while events are occurring. The common has traditionally been the area of free thoughts and could be something again. He would continue working with the City Attorney about designating such a space.

Vice Chair Giacomo noted that most of the changes were the difference between the words "permit" and "license." He asked the difference between the two. The City Attorney replied that a "permit" is for something like using the pergola in the park whereas a "license" is much more involved and has insurance requirements. Councilor Jones noted that there are criteria within a license for things like parking spacing and more, and the licensee is subject to the City Code that

has authority with respect to the uses. The City Attorney said not necessarily be included in the licenses because the licenses spells out all other aspects. This clarifies in the Code that licensees has authority regarding the uses. The Chair asked for this in laymen's terms that the license holder would not have to allow potential protestors inside the licensed areas and the City Attorney replied yes. The City Attorney said this was really to clarify that the license holder really does have control over what happens in the designated area. The Public Works Director said this applied to other things like café licenses and other activities that the Council has granted through the City Code. This would suspend those other licenses during larger licensed events, like a pumpkin festival, because both cannot be managed at the same time, and giving the licensee the authority to demand that during their events.

Vice Chair Giacomo recalled challenges when the Food Fest was the same day as the Art Walk a few years ago. This clarified several of those issues.

Hearing no public comments, Chair Bosley entertained a motion by Councilor Ormerod, which was duly seconded by Councilor Jones.

On a vote of 4–0, the Planning, Licenses, and Development Committee recommended the adoption of Ordinance O-2022-14 to incorporate the proposed amendments as discussed by the Committee.

8) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 7:56 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker
November 13, 2022

Reviewed and edited by,
City Clerk's Office